
# Resources Handout

OHIO STATE BAR FOUNDATION

Trauma Informed Lawyering SYMPOSIUM

- **Trauma-Informed Care for Attorneys Slides**
- **ACE score**
- **Halder Pedagogy of Trauma-Informed Lawyering**
- **National Center on Law & Elder Rights: Trauma-Informed Lawyering**
- **Essential Components of Trauma-Informed Judicial Practice**
- **Reading Recommendations for Panel 1**
- **Professional Quality of Life Scale**
- **Secondary Trauma Stress Scale**
- **Understanding Secondary Trauma: A Guide for Law Working with Child Victims**
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# Trauma-Informed Care for Attorneys Slides

OHIO STATE BAR FOUNDATION

Ohio Department of Children & Youth

The Ohio State University
STAR | STRESS, TRAUMA AND RESILIENCE
*Reclaim your sense of safety. We help people heal.*

# Trauma-Informed Care for Attorneys

**Kim Kehl**
**Arianna Galligher**

# The Value of Trauma-Informed Care

## Understanding the Problem

Trauma seems to be the overwhelming negative factor affecting many people who come to court

From treatment court participants to those who have experienced child abuse and neglect, “adverse childhood events” (ACE) seem to be present in many cases.

Tragically, people may leave the courtroom worse off than when they came in having suffered “Jurigenic Harm” unanticipated harms caused by the justice system

Judge Michael Town (ret) Mediator, Arbitrator, Counselor

# The Value of Trauma-Informed Care

## Connecting to Your "Why"

- To help you work with individuals with behavioral health challenges
- Increase an awareness of the impact of trauma on behavior
- Ensure safety for all participants
- Develop trauma-informed responses
- Avoid re-traumatizing
- Reduce recidivism and promote recovery

# The Value of Trauma-Informed Care

## Benefits

- Helps you treat clients with dignity and respect and lessen chance of re-traumatizing them
- Creates a safe place for everyone
- Fosters deeper and more accurate understanding of motivating and limiting factors that may play a role in the courtroom
- Helps you prepare clients for next steps in their case
- Creates more effective communication pathways

# The Value of Trauma-Informed Care

## Being Trauma-Informed Helps You…

- See the entire person – not just what you see in court
- Understand the people in front of you – who you are working with
- Understand the trauma of a court room and judicial proceedings
- Be more intentional in the way you communicate specific rulings so that they are equitable and more likely to be well-received
- Balance accountability with common sense and compassion

# Trauma-Informed Care is NOT

## …repeat, NOT

- Absolution from accountability
  - Rather, it brings greater understanding and balance to accountability
  - Actions do have consequences, but that doesn't necessitate treating the whole person as being without worth
- Fragilizing people

# Stress & Trauma

## The 3 E's of TRAUMA:

Trauma is…an
**EVENT**, series of events, or set of circumstances that is

**EXPERIENCED** by an individual as physically or emotionally harmful or life threatening and has lasting adverse

**EFFECTS** on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

# Stress & Trauma


Brief increases in heart rate, mild elevations in stress hormone levels.

Serious, temporary stress responses, buffered by supportive relationships.

Prolonged activation of stress response systems in the absence of protective relationships.

# The ACE Study: Adverse Childhood Experiences

- The ACE Study was conducted by the CDC & Kaiser Permanente from 1995 to 1997
- 17,000 participants were surveyed
- All had access to commercial health insurance through Kaiser Permanente
- Female Participants
  - 13% reported emotional abuse
  - 27% reported physical abuse
  - 24.7% reported sexual abuse
- Male Participants
  - 7.6% reported emotional abuse
  - 29.9% reported physical abuse
  - 16% reported sexual abuse

Felitti et al., (1998) American Journal of Preventive Medicine, 14: 245-258.

# The ACE Study: Maslow's Hierarchy of Needs


- Individual are unable to focus when their "immediate" basic needs for safety are not being met as a result of toxic stress
- Long-term exposure to toxic stress leads to changes in brain development and the ability to cope successfully

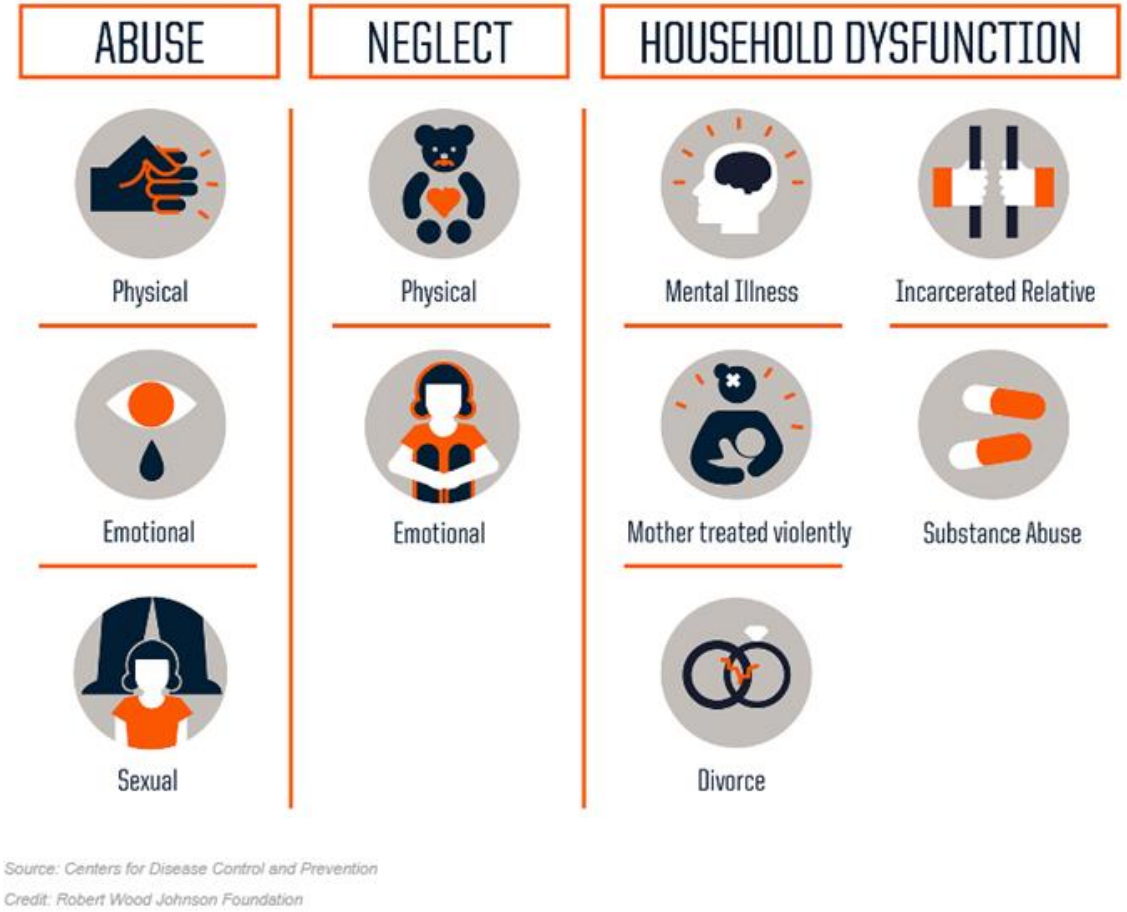
Maslow, A. H., Maslow, A. H., & Salenger Educational Media (Firm). (1987). *Maslow's hierarchy of needs*. Santa Monica, CA: Salenger.

# What's an "ACE"?

There are three types of adverse childhood experiences; Abuse, Neglect, and Household Dysfunction

Forms of ACEs include:

- Maltreatment – abuse or neglect
- Violence and Coercion – domestic abuse, gang membership, being the victim of a crime
- Adjustment – migration, asylum, ending relationships
- Prejudice – LGBTQ+ prejudice, sexism, racism, or disablism
- Household or Family Adversity – misuse of substances, intergenerational trauma destitution, or deprivation
- Inhumane Treatment – torture, forced imprisonment or institutionalism
- Adult Responsibilities – parentified child, being a young caretaker, or child labor
- Bereavement and Survivorship – traumatic deaths, surviving an illness or accident



# ACE Survey

## Adverse Childhood Experience (ACE) Questionnaire
## Finding your ACE Score

**While you were growing up, during your first 18 years of life:**

1. Did a parent or other adult in the household **often** …Swear at you, insult you, put you down, or humiliate you?
**Or** Act in a way that made you afraid that you might be physically hurt?
Yes /No , If yes enter 1 _____

2. Did a parent or other adult in the household **often** …Push, grab, slap, or throw something at you?
**Or Ever** hit you so hard that you had marks or were injured?
Yes/No, If yes enter 1 _____

3. Did an adult or person at least 5 years older than you **ever**…Touch or fondle you or have you touch their body in a sexual way?
**Or** Try to or actually have oral, anal, or vaginal sex with you?
Yes/No, If yes enter 1 _____

4. Did you **often** feel that …No one in your family loved you or thought you were important or special?
**Or** Your family didn't look out for each other, feel close to each other, or support each other?
Yes/No, If yes enter 1 _____

5. Did you **often** feel that …You didn't have enough to eat, had to wear dirty clothes, and had no one to protect you?
**Or** Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?
Yes/No, If yes enter 1 _____

# ACE Survey

## Adverse Childhood Experience (ACE) Questionnaire
## Finding your ACE Score

**While you were growing up, during your first 18 years of life:**

6. Were your parents **ever** separated or divorced?
Yes/No, If yes enter 1 _____

7. Was your mother or stepmother: **Often** pushed, grabbed, slapped, or had something thrown at her?
**Or Sometimes or often** kicked, bitten, hit with a fist, or hit with something hard?
**Or Ever** repeatedly hit over at least a few minutes or threatened with a gun or knife?
Yes/No, If yes enter 1 _____

8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?
Yes/No, If yes enter 1 _____

9. Was a household member depressed or mentally ill or did a household member attempt suicide?
Yes/No, If yes enter 1 _____

10. Did a household member go to prison?
Yes/No, If yes enter 1 _____

**Now add up your "Yes" answers: _____ This is your ACE Score**

# What's an "ACE"?

- When I was a kid, someone in my household was a violent drinker
- My mom felt trapped because she had my siblings and me to take care of
- My sibling got caught selling drugs and went to prison when I was young
- When they got out, they were shot and killed in my neighborhood

Impact:

- Feels nervous and mad whenever there's conflict
- Feels guilty and worthless, like a burden
- Has trouble with relationships
- Feels very protective of family

- ***ACE score: 4/10***

# What's an "ACE"?

- I've had a sexual experience that wasn't consensual
- Some people in my family found out, and blamed me for what happened
- I felt damaged, broken and ashamed
- I became depressed, and used alcohol, drugs, and sex to try to cope

Impact:

- Difficulty telling the difference between sex and love/acceptance
- Rejection/lack of support from family
- Questions faith
- Unhealthy relationships/further abuse

- ***ACE score: 3/10***

# Why Do ACEs Matter?

ACEs can echo across generations

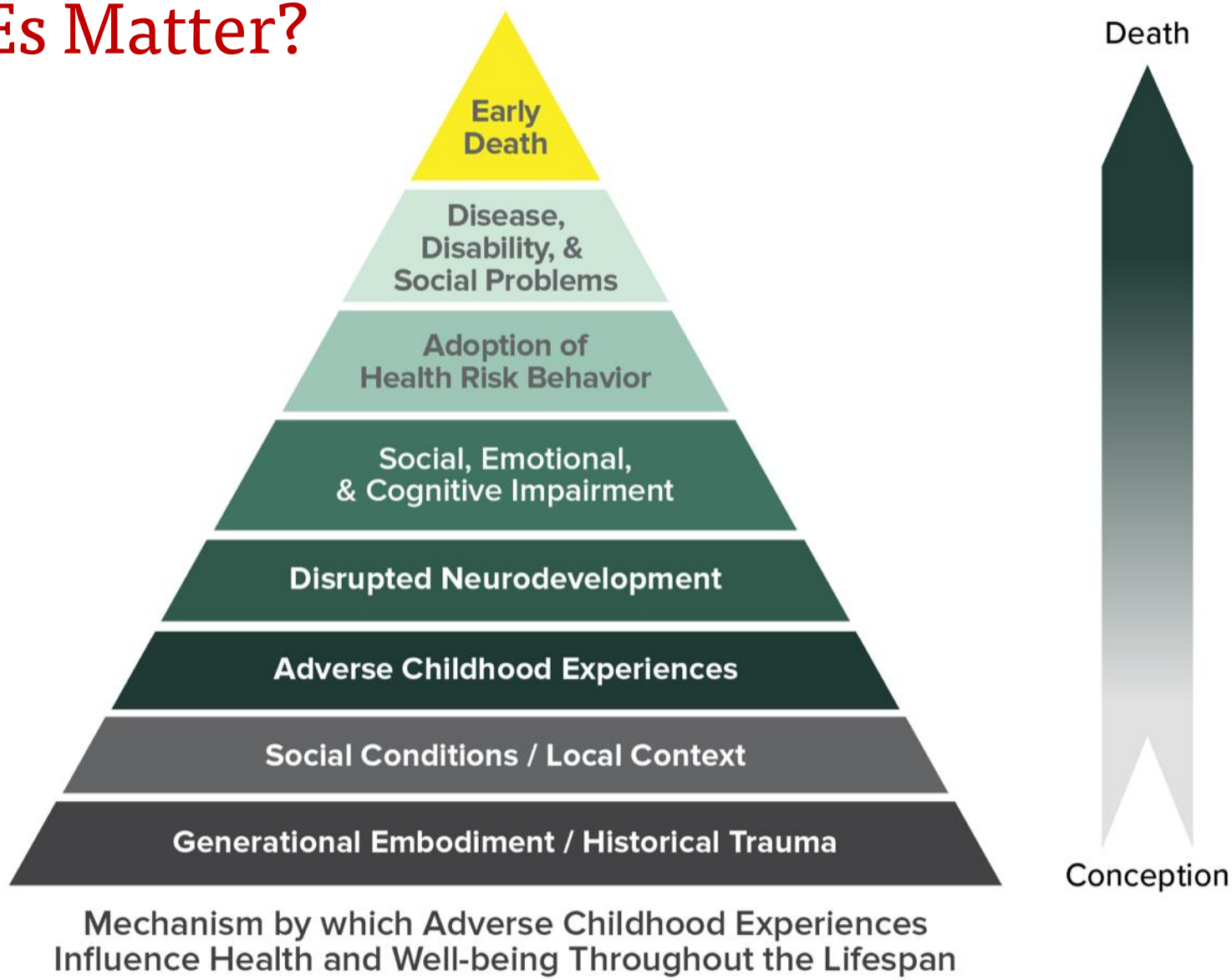
- Children tend to learn what they live
- If a child grows up in adversity, they may struggle to be healthy as an adult
- If this adult has children they may struggle to parent effectively, and they may perpetuate adversity
- When families experience historical and systemic racism or disenfranchisement for generations, the effects of ACEs can add up over time

# Adversity and Trauma Effect Adults, Too

## Crisis Situations Can Overwhelm an Individual's Ability to Cope

- Coping through a pandemic
- Natural disasters
- Fires or explosions
- Accidents that lead to injury
- Physical assault
- Assault with a weapon
- Sexual harassment or assault
- Exposure to war
- Kidnapping or being held hostage
- Serious or life-threatening illness or injury
- Co-survivors of homicide or suicide

# Why Do ACEs Matter?




Mechanism by which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

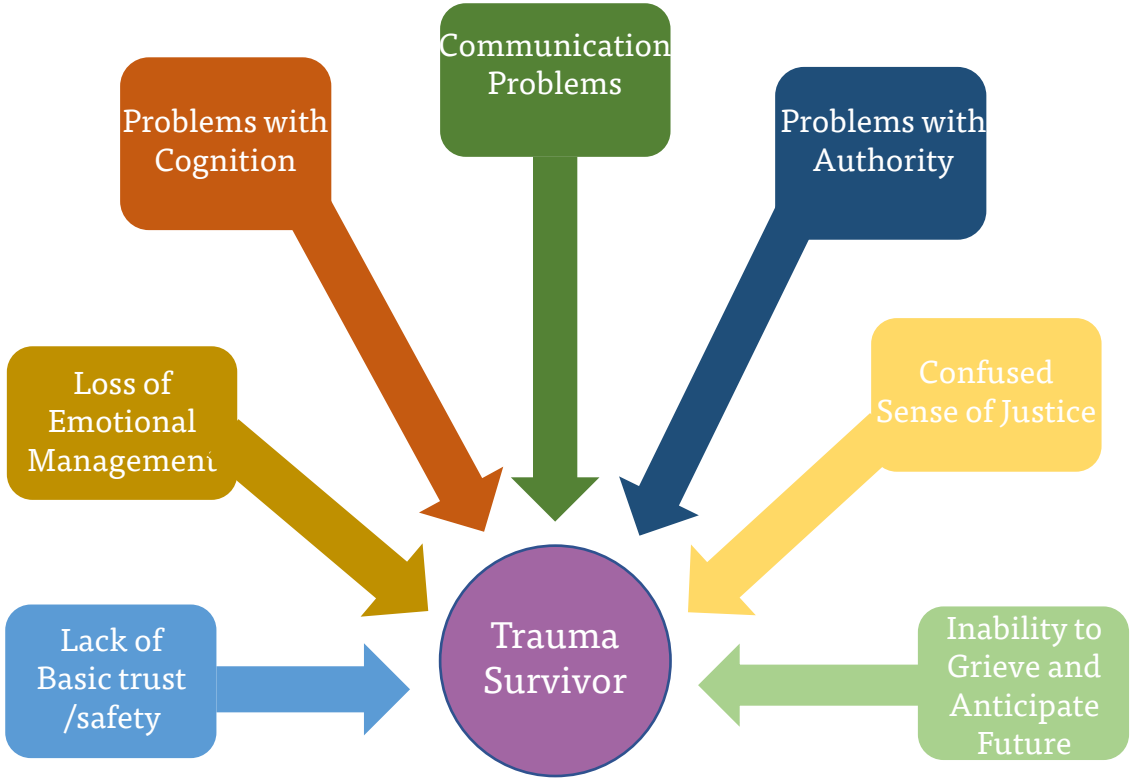
Felitti et al., (1998) American Journal of Preventive Medicine, 14: 245-258.

# Why Do ACEs Matter?

Think about the community you serve…

- How many would you identify as potentially having an ACE Score of 1?
- How did you come to this conclusion?
- What are you recognizing or identifying as potential trauma?
- How are you getting this information?
- Do you know what to do with this information?

# Recognizing Trauma: Who Is the Traumatized Community Member?



# Common Signs, Symptoms and Psychological Responses to Crisis:

## Physical

- Headaches or backaches
- Muscle tension and stiffness
- Hypersomnia or Insomnia
- Chest pain, rapid heartbeat
- Change in appetite
- Nausea, dizziness
- Vivid dreaming
- Diarrhea or constipation
- Weight gain or loss
- Skin breakouts (hives, eczema)
- Decreased levels of libido
- Increased susceptibility to illness

## Emotional

- Mood swings
- Agitation/irritability
- Restlessness
- Impatience
- Anger
- Feeling “on edge”
- Excessive tension
- Feeling overwhelmed
- Feeling isolated
- Feeling misunderstood
- Feeling nervous, or ill-at-ease
- Dystopia

## Cognitive

- Forgetfulness/short-term memory loss
- Difficulty making decisions
- Decreased levels of judgment
- Decreased levels of insight
- Inability to concentrate
- Increased negative thought processes
- Racing thoughts
- Anticipation of the worst

## Behavioral

- Teeth grinding (bruxism) or jaw clenching
- Over or under eating
- Avoiding sleep or sleeping all the time
- Tendency toward isolation
- Procrastination
- Increased alcohol, cigarettes, or drug consumption to relax
- Obsessive responses (e.g. over attention to small detail)
- Overreacting to unexpected problems
- Displacement of anger and feelings of inadequacy
- Lashing out at others

# We See the Impact of Trauma

## …but it often gets mislabeled and misunderstood

A Troubled Soul by Ferdinand Hodler

- “Behavior Disorder”
- “Aggression”
- “Manipulation”
- “Self Injury”
- “Criminal behavior”
- “At risk behavior”
- “Lazy”
- “Bad attitude”
- “Addict”

# Fostering a Trauma-Informed Approach

Because many of our traumatized clients have behavioral challenges,

it's easy to get caught in a cycle of questioning,

What's ***WRONG*** with you?!

***WHY*** are you like this?!

A Trauma-Informed Approach represents a paradigm shift toward,

What ***HAPPENED*** to you?

How can we ***HELP***?

**Think again about the community you work in…**

- What impact do you see ACEs having on the community?
- How is your exposure to trauma impacting you?
- What is important for you to think about for your ongoing work? e.g., potential risk factors – 0r- protective factors?
- **How can/will you make a difference?**

# Trauma-Informed Responses

## Key Concepts to Incorporate into Practice

- Respect
  - Remember that we are more than the worst things we've done
  - Everyone deserves dignity, respect, and due process
- Safety
  - Physical and psychological
- Allow safe space
  - When possible, ask before touching
- Announce intentions and manage expectations
  - Tell "what happens next"
  - Define your role and any next steps
  - Ask permission
- Communication
  - Keep calm, consider your facial expression and body language
  - Keep it conversational and normalize to the extent possible
  - Use clear simple phrasing to avoid confusion

# Helpful Courtroom Demeanor

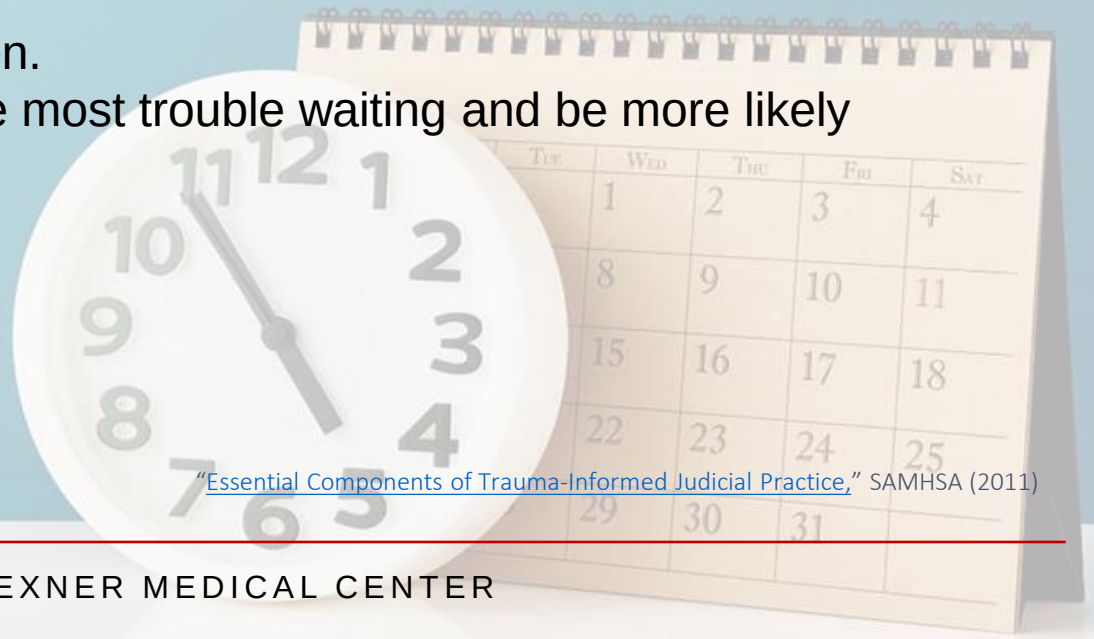
## Creating a Consistent Framework

- Compassion, understanding, and respect
- Be genuine
- Not aggressive, assaultive, punitive
- Show you want to help – prevent the cycle
- Manner in inquiring into past – non-intrusive but helpful
- Establish a relationship of trust – takes time
- Adapt and adjust the courtroom – who is with the defendant (abuser/boyfriend)
- You set the standard for how people are treated in your courtroom

# Examples of Trauma-Informed Practice

## Practical Applications

- **Courtroom Experience**
  - Individuals who are agitated or “acting out” are required to wait before speaking to the judge.
- **Reaction of Trauma Survivor**
  - Increased agitation; anxiety; acting out.
- **Trauma-Informed Approach**
  - Provide scheduling information so participants know what will be expected of them and when.
  - Prioritize those who appear before you and when.
  - Those who are especially anxious may have the most trouble waiting and be more likely to act out



“Essential Components of Trauma-Informed Judicial Practice,” SAMHSA (2011)

# Examples of Trauma-Informed Practice

## Practical Applications

- **Courtroom Experience**
  - A judge conducts a sidebar conversation with attorneys.
- **Reaction of Trauma Survivor**
  - Suspicion, betrayal, shame, fear.
- **Trauma-Informed Approach**
  - Tell participant what is happening and why.
  - “We have to discuss some legal issues related to your case. We just need a minute to do it on the side.”

# Examples of Trauma-Informed Practice

## Practical Applications

- **Courtroom Experience:**
  - Judge remands one drug court participant for having a positive test but not another.
  - They are both in the courtroom at the same time.
- **Reaction of Trauma Survivor**
  - Concern about fairness; feeling that someone else is getting special treatment.
- **Trauma-Informed Approach**
  - Explain for first participant, sobriety is a proximal goal and for second it is not.
  - Compare time in the program and progress in treatment.
  - Explain jail is a last resort and you hope participant will not give up on recovery.

# Self-Care Teaser

## Coping with Secondary Trauma

- Working within the Criminal Justice field is difficult
- Exposure to the suffering of others takes a toll
- Moral injury is a common experience
- It’s important to be intentional about your own self-care strategies in order to maintain a healthy balance across your career

# Self-Maintenance & Resilience

**What is "resilience?"**

- The ability to cope healthfully with stressors
- The ability to bounce back from adversity
- The process of adapting to changing circumstances
- Using skills and available resources to balance stress with self-care

*How do we learn to live with our own challenges, to incorporate them, without them becoming our sole identity?*

# Questions?

## Contact Us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https://go.osu.edu/startrcprogram

Trauma Informed Lawyering SYMPOSIUM

# ACE Score

OHIO STATE BAR FOUNDATION

## Finding Your ACE Score

**While you were growing up, during your first 18 years of life:**

1. Did a parent or other adult in the household **often or very often**…
   Swear at you, insult you, put you down, or humiliate you?
   **or**
   Act in a way that made you afraid that you might be physically hurt?

   Yes No If yes enter 1 _____

2. Did a parent or other adult in the household **often or very often**…
   Push, grab, slap, or throw something at you?
   **or**
   **Ever** hit you so hard that you had marks or were injured?

   Yes No If yes enter 1 _____

3. Did an adult or person at least 5 years older than you **ever**…
   Touch or fondle you or have you touch their body in a sexual way?
   **or**
   Attempt or actually have oral, anal, or vaginal intercourse with you?

   Yes No If yes enter 1 _____

4. Did you **often or very often** feel that …
   No one in your family loved you or thought you were important or special?
   **or**
   Your family didn't look out for each other, feel close to each other, or support each other?

   Yes No If yes enter 1 _____

5. Did you **often or very often** feel that …
   You didn't have enough to eat, had to wear dirty clothes, and had no one to protect you?
   **or**
   Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?

   Yes No If yes enter 1 _____

6. Were your parents **ever** separated or divorced?

   Yes No If yes enter 1 _____

7. Was your mother or stepmother:
   **Often or very often** pushed, grabbed, slapped, or had something thrown at her?
   **or**
   **Sometimes, often, or very often** kicked, bitten, hit with a fist, or hit with something hard?
   **or**
   **Ever** repeatedly hit at least a few minutes or threatened with a gun or knife?

   Yes No If yes enter 1 _____

8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?

   Yes No If yes enter 1 _____

9. Was a household member depressed or mentally ill, or did a household member attempt suicide?

   Yes No If yes enter 1 _____

10. Did a household member go to prison?

    Yes No If yes enter 1 _____

**Now add up your "Yes" answers: _____ This is your ACE Score.**

*Adapted from: http://www.acestudy.org/files/ACE_Score_Calculator.pdf, 092406RA4CR*

Trauma Informed Lawyering SYMPOSIUM

# Halder Pedagogy of Trauma-Informed Lawyering

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# THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING

SARAH KATZ & DEEYA HALDAR*

*"Trauma-informed practice" is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client's trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client's trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.*

*This article posits that teaching trauma-informed practice in law school clinics furthers the goals of clinical teaching, and is a critical aspect of preparing law students for legal careers. Trauma-informed practice is relevant to many legal practice areas. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. As clinical professors who each supervise a family law clinic, we of course teach our students how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of our clinics' clients are survivors of intimate partner violence or have experienced other significant traumatic events that are relevant to their family court matters. Law students should learn to recognize the effects these traumatic experiences may have on their clients' actions and behaviors. Further, law students should learn to recognize the effect that their clients' stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work and ultimately into legal practice.*

*This article argues that four key characteristics of trauma-informed lawyering are: identifying trauma, adjusting the attorney-cli-*

* The authors are Sarah Katz, Assistant Clinical Professor of Law, James E. Beasley School of Law, Temple University, and Deeya Haldar, Adjunct Professor of Law, Thomas R. Kline School of Law at Drexel University. The authors are extremely grateful for the research assistance of Khadijeh Jaber, Temple Law '15, and Janice Daul, Drexel Law '14. Sarah Boonin, Brad Colbert, Phyllis Goldfarb, Natalie Nanasi and Jane Stoever provided invaluable feedback on an early version at the *Clinical Law Review* workshop at New York University. Colleagues at the AALS Clinical Conference, AALS Family Law Mid-Year Meeting, and the Mid-Atlantic Clinical Workshop gave thoughtful suggestions and edits. Thank you also to Susan Brooks for helpful guidance as this project unfolded.

*ent relationship, adapting litigation strategy, and preventing vicarious trauma. Specifically, the article discusses how to teach trauma-informed lawyering through direct examples of pedagogical approaches.*

## INTRODUCTION

*When Victoria*[1] *came into the clinic for an intake appointment with a law student, the student knew only that this was a child and spousal support case. After explaining the goals and purpose of an intake interview, the law student asked a simple question: what legal problem brings you here today? Victoria broke down crying and began explaining that about two years before, she learned that her husband of twenty-one years had been sexually abusing their now thirteen year-old daughter and fifteen year-old son since they were small children. Victoria stated that her husband had sometimes physically abused her, but she knew nothing of the sexual abuse. After the disclosure, she had filed for and been granted a protection order in Tennessee on behalf of herself and her children. She then moved with her children from the marital home in Tennessee to Philadelphia to be with family. The Tennessee protection order expired, and because of threatening phone messages received from her husband, she had sought a protection order again in Philadelphia. A local domestic violence legal services agency had referred her to the clinic for help with a child and spousal support case.*

*During the meeting with the law student, Victoria became increasingly upset, and continued to share details of the abuse she and her children had suffered. Victoria seemed intent on convincing the law student that she really had not known about the abuse of her children while it was happening. The law student offered tissues and told Victoria repeatedly that he believed her, and that it must have been so awful to make this realization. When the law student tried to move the focus of the conversation to the pending support case, it turned out that Victoria had not brought any of the paperwork she had been asked to bring by the clinic's office manager. The law student got as much information as Victoria could provide, and then explained that for the clinic to see if it could help her with the case, he would need to see the paperwork. The law student and Victoria scheduled another appointment, and the law student provided Victoria a written list of the needed documents. The law student discussed with his supervisor, and later shared in class case rounds, how challenging the interview had been. Victoria did bring the needed documents to the second appointment, and the clinic ultimately accepted the case.*

[1] This case description is based on the experience of a client represented by Professor Katz's clinic. Names and identifying information have been changed.

*Prior to going to court, Victoria called the law student asking if she could just not attend the court date, because she was terrified of seeing her husband. The law student calmly explained that Victoria needed to be present if she wanted to pursue the support claim. They scheduled a time to meet the day before court, and the law student spent a lot of time reviewing with Victoria exactly what occurs in a support hearing, including where she and others would sit, what types of questions would be asked, and what the law student would be doing. The law student also arranged to meet Victoria prior to the hearing time at a location near the courthouse, so they could walk into court together. Because the litigation became very contentious and there were multiple court hearings, the law student repeated this approach each time there was a court hearing. He also encouraged Victoria to speak with her therapist about her anxiety over dealing with her husband. Ultimately the support case was resolved favorably for Victoria.*

While many reading would view the description of the law student's handling of the case above as simply "good lawyering," it is also an example of "trauma-informed practice." "Trauma-informed practice" is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner, here a law student, puts the realities of the clients' trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the individual client's trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.

Although there is a body of clinical legal education literature devoted to the value of teaching and developing law students' empathy toward their clients, less attention has been devoted to the importance of teaching trauma-informed practice, the pedagogy of teaching law students to recognize and understand trauma, and the effect of vicarious trauma on law students (and attorneys) who work with clients who have experienced serious trauma. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. In practice areas such as family law, immigration, child welfare, criminal law and others, by necessity, clients must share some of the most intimate and painful details of their lives. In our family law clinics, our students are taught how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of

our clinics' clients are domestic violence survivors or have experienced other significant traumatic events that are relevant to their family court matters. Law students must learn to recognize the effects these traumatic experiences may have on their clients' actions and behaviors. Further, law students must learn to recognize the effect that their clients' stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work, and ultimately into legal practice.

Although the authors draw from their own experience teaching family law clinics, other types of law school clinics could likely benefit from the pedagogy of trauma-informed lawyering, such as immigration law, criminal law, juvenile law, and veterans' rights law.[2] A significant body of literature exists regarding working with traumatized children involved in the legal system, including in the law school clinical context.[3] It is the authors' intention that this article will provide tools for teaching trauma-informed practice in all law school clinic settings, while the examples offered are specific to family law experience.

This article proceeds in three sections. The first section will further explore trauma-informed practice, and what is meant by the terms "trauma," and "vicarious trauma." The second section will argue why teaching trauma-informed lawyering in a clinical legal educa-

[2] *See, e.g.*, Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007) (discussing students in immigration clinic begin confronted with traumatized client seeking asylum); Ingrid Loreen, *Therapeutic Jurisprudence & The Law School Asylum Clinic,* 17 ST. THOMAS L. REV. 835, 845 (2005) (arguing that students need training in therapeutic jurisprudence topics, including trauma training in order to adequately serve traumatized clients seeking asylum); Sarah Mourer, *Study, Support, and Save: Teaching Sensitivity in the Law School Death Penalty Clinic*, 7 U. MIAMI L. REV. 357 (2013) (discussing students exposed to clients with trauma histories in the Miami Law Death Penalty Clinic); Capt. Evan R. Seamone, *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Posttraumatic Stress Disorder,* 202 MIL. L. REV. 185 (2009).

[3] *See* Carolyn Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 ST. THOMAS L. REV. 623 (2005). *See also* Renee DeBoard-Lucas, Kate Wasserman, Betsy McAlister Groves & Megan Bair-Merritt, *16 Trauma-Informed, Evidence-Based Recommendations for Advocates Working with Children Exposed to Intimate Partner Violence*, 32(9) CHILD L. PRAC. 136 (2013); JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 9 (2007); NATIONAL CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR JUDGES AND ATTORNEYS, *available at* http://www.nctsn.org/products/birth-parents-trauma-histories-child-welfare-system-guide-birth-parents-2012 (last viewed Dec. 20, 2015).

tion setting makes sense. The third section will identify four hallmarks of trauma-informed legal practice: (1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The article then discusses how to incorporate these hallmarks of trauma-informed lawyering as teaching goals in law school clinics through direct examples of pedagogical approaches.

## I. Defining Trauma-Informed Practice

Trauma-informed practice has gained traction in the therapeutic world for at least the last decade. As one practitioner has explained, "[t]rauma-informed practice incorporates assessment of trauma and trauma symptoms into all routine practice; it also ensures that clients have access to trauma-focused interventions, that is, interventions that treat the consequences of traumatic stress. A trauma-informed perspective asks clients not 'What is wrong with you?' but instead, 'What happened to you?'"[4] As psychiatrist Sandra Bloom has written, "It connects a person's behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw."[5] A trauma-informed system also focuses on how services are delivered, and how service-systems are organized.[6] These approaches in the therapeutic context have begun to profoundly inform the delivery of other types of human and social services, such as child welfare,[7] law enforcement, and the courts.[8] But in order to understand what is meant by trauma-informed practice, an understanding of trauma, and vicarious trauma is necessary; this section will define and explain these terms, and then return to a discussion of how trauma-

[4] Nancy Smyth, *Trauma-Informed Social Work Practice: What Is It and Why Should We Care?*, Social Work/Social Care & Media (Mar. 20, 2012), *available at* http://swscmedia.wordpress.com/2012/03/20/trauma-informed-social-work-practice-what-is-it-and-why-should-we-care-opinion-piece-by-dr-nancy-smyth/ (*citing* Sandra L. Bloom, & Brian Farragher, Destroying sanctuary: the crisis in human services delivery systems (2011)).

[5] Sandra L. Bloom, *Why Should Philadelphia Become a Trauma-Informed City*, Briefing Paper Prepared for the Philadelphia Mayoral Forum, sponsored by the Scattergood Foundation (2015), *available at* http://sanctuaryweb.com/Portals/0/Bloom%20Pubs/2015%20Bloom%20Why%20should%20Philadelphia%20become%20a%20Trauma.pdf.

[6] Sandra L. Bloom, *The Sanctuary Model of Trauma-Informed Organizational Change,* 16 (1) The Source 12, 14 (Nat'l Abandoned Infants Resource Center, 2007).

[7] ABA Center for Children & the Law, Implementing Trauma-Informed Practices in Child Welfare (2013) *available at* http://childwelfaresparc.org/wp-content/uploads/2013/11/Implementing-Trauma-Informed-Practices.pdf.

[8] Substance Abuse and Mental Health Services Administration, Essential Components of Trauma-Informed Judicial Practice, *available at* http://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf (last viewed Dec. 20, 2015) [hereinafter SAMHSA].

informed practice is implemented.

### *A. Understanding Trauma*

An event is defined as traumatic when it renders an individual's internal and external resources inadequate, making effective coping impossible.[9] A traumatic experience occurs when an individual subjectively experiences a threat to life, bodily integrity or sanity.[10] The American Psychological Association further defines trauma as:

> [An] emotional response to a terrible event like an accident, rape or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea. While these feelings are normal, some people have difficulty moving on with their lives.[11]

External threats that result in trauma can include "experiencing, witnessing, anticipating, or being confronted with an event or events that involve actual or threatened death or serious injury, or threats to the physical integrity of one's self or others."[12]

Trauma can take many different forms. A 1997 study found that about one third of the population will experience severe trauma at some point.[13] The most common sources of trauma, experienced by 15 to 35 percent of the people surveyed, included witnessing someone being hurt or killed, or being involved in a fire, flood, or other such life-threatening accidents.[14] Other common experiences included robbery and sudden deaths of loved ones.[15] An estimated 0.5 percent of people (1.2 million) in the United States were victims of a violent crime in 2014.[16] Researchers have begun to confirm the interconnection between the effects of racism and trauma.[17] Further the intercon-

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[9] Richard R. Kluft, Sandra L. Bloom, & John D. Kinzie, *Treating the Traumatized Patient and Victims of Violence, in* 86 NEW DIRECTIONS IN MENTAL HEALTH SERVICES 79 (2000) (*citing* B. A. Van der Kolk, *The Compulsion to Repeat the Trauma: Re-enactment, Re-victimization, and Masochism*, 12 PSYCHIATRIC CLINICS OF N. AM. 2 (1989)).

[10] LAURIE A. PEARLMAN & KAREN SAAKVITNE, TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS 60 (1995).

[11] *Trauma*, AMERICAN PSYCHOLOGICAL ASSOCIATION, http://www.apa.org/topics/trauma/ (last viewed Dec. 20, 2015).

[12] *Id*.

[13] S.D. Solomon & J.R.T. Davidson, *Trauma: Prevalence, Impairment, Service Use, and Cost*, 58 J. CLINICAL PSYCHIATRY (SUPPL. 9) 5-11, 7 (1997).

[14] *Id.*

[15] *Id.*

[16] Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2014* at 1 (U.S. Dept. of Justice Sept. 29, 2015), available at http://www.bjs.gov/content/pub/pdf/cv14.pdf.

[17] *See, e.g.*, Dottie Lebron, Laura Morrison, Dan Ferris, Amanda Alcantara, Danielle Cummings, Gary Parker & Mary McKay, *The Trauma of Racism* (McSilver Institute for

nection between urban poverty and trauma has been established.[18]

Intimate partner violence and child maltreatment are other examples of trauma, and are far more prevalent than is often acknowledged. On average, twenty four people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States—more than twelve million women and men over the course of a year.[19] Nearly three in ten women and one in ten men in the US have experienced rape, physical violence, and/or stalking by a partner and report a related impact on their functioning.[20] A reported 1.71% of children are maltreated in the United States.[21]

The rates of abuse are higher among the population of litigants in family court. The anecdotal experience of our family law clinics is many of our clients have experienced serious incidents of physical or sexual abuse by an intimate partner, and in the past as a child. They may also have witnessed or experienced their own child(ren) being physically or sexually abused. These anecdotal observations are supported by empirical study. For example, one study indicated that 80% of parents who were separating or divorcing were able to agree on custody and parenting time with their children. But among the 20% of parents who needed the court to intervene to decide custody, domestic violence was remarkably prevalent, and a domestic violence allegation was substantiated in 41-55% of these cases.[22] In fact, experts have noted the "majority of parents in 'high-conflict divorces' involving child custody disputes report a history of domestic violence."[23] The National Center for State Courts has found documented evidence in court records of domestic violence in 20-55% of contested custody cases.[24]

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Poverty Policy & Research, NYU 2015), *available at* http://www.mcsilver.org/wp-content/uploads/2015/04/Trauma-of-Racism-Report.pdf; Glenn H. Miller, *Commentary: The Trauma of Insidious Racism* 37(1) J Am. Acad. Psychiatry Law 41, 42 (Mar. 2009).

[18] *See, e.g.*, Kathryn Collins et al., Understanding the Impact of Trauma and Urban Poverty on Family Systems: Risks, Resilience & Interventions (Family Informed Trauma Treatment Center 2010).

[19] Centers for Disease Control, Understanding Intimate Partner Violence Fact Sheet, *available at,* http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf (last viewed Dec. 20, 2015).

[20] *Id.*

[21] U.S. Dept. of Health and Human Services, Fourth National Incidence Study of Child Abuse and Neglect (NIS–4): Report to Congress, at 3-3 (2010).

[22] Janet R. Johnson, Soyoung Lee, Nancy W. Oleson, & Marjorie G. Walters,, *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 Fam. Ct. Rev. 283, 289-290 (2005).

[23] Peter Jaffe, Michelle Zerwer, Samantha Poisson, Access Denied: The Barriers of Violence and Poverty for Abused Women and their Children After Separation 1 (2002).

[24] National Center for State Courts, Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers 5 (1997).

The trauma experiences of clients have a direct relationship to how they relate to their attorneys and the courts, because trauma has a distinct physiological effect on the brain, which in turn affects behavior in the short-term and long-term. Colloquially, this evolutionary response is sometimes referred to as a "flight, fight, freeze." As one writer has explained:

> The brain's prefrontal cortex—which is key to decision-making and memory—often becomes temporarily impaired. The amygdala, known to encode emotional experiences, begins to dominate, triggering the release of stress hormones and helping to record particular fragments of sensory information. Victims can also experience tonic immobility—a sensation of being frozen in place—or a dissociative state.[25]

Subsequently, a traumatic experience becomes encoded as a traumatic memory and is stored in the brain via a pathway involving high levels of activity in the amygdala, making recall of the traumatic event highly affectively charged.[26] Recall, either intentional or through inadvertent exposure to internal or external stimuli related to the trauma, leads to the release of stress hormones.[27] For many individuals who have experienced trauma, specific conditioned stimuli may be linked to the traumatic event (unconditional stimulus) such that re-exposure to a similar environment produces recurrence of fear and anxiety similar to what was experienced during the trauma itself.[28] Thus the physiological effects of trauma can manifest far after the traumatic incident occurs, as the amygdala does not always discriminate between real dangers and memory from a past dangerous situation.

In response to traumatic experiences, an individual may feel intense fear, helplessness, or horror.[29] People process these reactions differently, resulting in different indicators of trauma.[30] Four common behaviors are: anxiety and depression, intense anger towards self or others, the formation of unhealthy relationships, and denial.[31] Yet, although these common behaviors can result from trauma, the reac-

[25] Rebecca Ruiz, *Why Don't Cops Believe Rape Victims?*, SLATE (June 19, 2013), http://www.slate.com/articles/news_and_politics/jurisprudence/2013/06/why_cops_don_t_believe_rape_victims_and_how_brain_science_can_solve_the.html.

[26] Ronald A. Ruden, *Neurobiology of Encoding Trauma*, *in* THE ENCYCLOPEDIA OF TRAUMA: AN INTERDISCIPLINARY GUIDE (Charles R. Figley ed.) 228, 230-231 (2012).

[27] *Id.*

[28] Dennis Charney, *Psychobiological Mechanisms of Resilience and Vulnerability: Implications for Successful Adaptation to Extreme Stress,* 2 AM. J. PSYCHIATRY 161 (2004).

[29] Kluft et al., *supra* note 9, at 1. R

[30] *Id.* at 3.

[31] Sandra L. Bloom, *The Grief That Dare Not Speak Its Name Part I: Dealing With the Ravages of Childhood Abuse*, PSYCHOTHERAPY REV. 2 (9), 408, 408-409 (2000). *See also* JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC TO POLITICAL TERROR, 88-95 (1992).

tions to traumatic events can look different among individuals because although trauma is a common human experience, it is affected by a wide range of "personality styles, ego strengths, diatheses for mental and physical illnesses, social supports, intercurrent stressors, and cultural backgrounds."[32] Thus, the reactions to trauma are psychobiologic and are influenced by complex individual and social contexts, all of which determine the ways in which each individual processes trauma.[33] As a result there are no universal indicators of, or responses to, traumatic events.[34]

The responses to trauma can be short term or long term.[35] Short-term consequences can include re-experiencing the traumatic event, such as having recurrent or intrusive distressing recollections of the event, acting or feeling as if the event is recurring, or avoidance of stimuli associated with the trauma.[36] Avoidance may include efforts to avoid thoughts, feelings, or conversations associated with the trauma, efforts to avoid activities, places, or people that arouse recollections of the trauma. Avoidance can also include amnesia for aspects of the trauma, detachment or estrangement from others, defensive mumbling, or dissociative symptoms.[37] Dissociation may consist of a diminished awareness or realization of ones surroundings, problems with concentration and attention, or increased arousal.[38] Increased arousal refers to such symptoms as experiencing difficulty falling or staying asleep, hypervigilance, or an exaggerated startle response.[39]

Long-term consequences may include persistence of the short term symptoms, chronic guilt and shame, a sense of helplessness and ineffectiveness, a sense of being permanently damaged, difficulty trusting others or maintaining relationships, vulnerability to re-victimization, and becoming a perpetrator of trauma.[40] The responses may also be triggered or exacerbated by anniversaries of traumatic events or stressors that are suggestive of the past trauma.[41]

### *B. Understanding Vicarious Trauma*

Vicarious trauma, also sometimes called "compassion fatigue" or "secondary trauma," is a term for the effect that working with survi-

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[32] Kluft et al., *supra* note 9, at 3. R
[33] *Id*. at 1.
[34] *Id*. at 3.
[35] *Id*. at 4.
[36] *Id.* at 4.
[37] *Id.* at 4-5; HERMAN, *supra* note 31, at 89. R
[38] HERMAN, *supra* note 31, at 94. R
[39] *Id.* at 5.
[40] *Id*. at 4.
[41] *Id*.

vors of trauma may have on counselors, therapists, doctors, attorneys, and others who directly help them.[42] Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients.[43] As psychologist Mark Evces has written, "[s]econdary, or indirect, traumatic exposure is not limited to mental health providers. Anyone who repeatedly and empathically engages with traumatized individuals can be at risk for distress and impairment due to indirect exposure to others' traumatic material."[44]

Vicarious trauma is distinct from "burnout," which refers to the toll that work may take over time.[45] Burnout can usually be remedied by taking time off, by moving to a new job. Vicarious trauma is a state of tension or preoccupation with clients' stories of trauma.[46] It may be marked by either an avoidance of clients' trauma histories (almost a numbness to the trauma) or by a state of persistent hyperarousal.[47]

Professionals experiencing vicarious trauma may experience painful images and emotions associated with their clients' traumatic memories and may, over time, incorporate these memories into their own memory systems.[48] As a result, there may be disruptions to schema in five areas.[49] These are safety, trust, esteem, intimacy, and control, each representing a psychological need.[50] Each schema is experienced in relation to self and others. The harmful effects of vicarious trauma occur through the disruptions to these schemas.[51] Vicarious trauma "has been described as a common, long-term response to working with traumatized populations, and as part of a continuum of helper reactions ranging from vicarious growth and resilience to vicarious traumatization and impairment."[52]

As a normal response to the continuing challenges to their beliefs

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[42] AMERICAN COUNSELING ASSOCIATION, VICARIOUS TRAUMA FACT SHEET #9, *available at,* http://www.counseling.org/docs/trauma-disaster/fact-sheet-9—-vicarious-trauma.pdf ?sfvrsn=2 (last viewed Dec. 20, 2015).

[43] Katie Baird & Amanda C. Kracen, *Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*, 19 COUNSELING PSYCHOL. Q. 181 (2006).

[44] Mark R. Evces, *What is Vicarious Trauma?*, *in* VICARIOUS TRAUMA AND DISASTER MENTAL HEALTH: UNDERSTANDING RISKS AND PROMOTING RESILIENCE, 9, 10 (Gertie Quintangon & Mark R. Evces, eds.) (2015).

[45] Lisa McCann & Larie A. Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990).

[46] AMERICAN COUNSELING ASSOCIATION, *supra* note 42. R

[47] *Id.*

[48] McCann & Pearlman, *supra* note 45, at 144. R

[49] Baird & Kracen, *supra* note 43. R

[50] *Id*.

[51] *Id*.

[52] Evces, *supra* note 44, at 11. R

and values, individuals experiencing vicarious trauma may exhibit varying symptoms.[53] Some of these symptoms include: denial of clients' trauma, over-identification with clients, no time and energy for oneself, feelings of great vulnerability, experiencing insignificant daily events as threatening, feelings of alienation, social withdrawal, disconnection from loved ones, loss of confidence that good is still possible in the world, generalized despair and hopelessness, loss of feeling secure, increased sensitivity to violence, cynicism, feeling disillusioned by humanity, disrupted frame of reference, changes in identity, world view, and spirituality, diminished self-capacities, impaired ego resources, and alterations in sensory experiences.[54]

### *C. Understanding Trauma-Informed Practice*

The increase in studies on trauma and vicarious trauma, and the various measures taken to mitigate the effects of the two have resulted in a systemic approach to how human services can be delivered to address the concerns of trauma and vicarious trauma simultaneously. "A trauma-informed approach to services or intervention acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis."[55] To be trauma-informed means to be educated about the impact of interpersonal violence and victimization on an individual's life and development."[56] Providing trauma-informed services requires all the staff of an organization to understand the effects of trauma on the people being served, so that all interactions with the organization reduce the possibility of retraumatization and are consistent with the process of recovery.[57] Trauma-informed practice recognizes the ways in which trauma impacts systems and individuals.[58] Becoming trauma informed results in the recognition that behavioral

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[53] *Id*.

[54] Christian Pross, *Burnout, vicarious traumatization and its prevention*, 16 TORTURE 1 (2006).

[55] SAMSHA, *supra* note 8, at 1. R

[56] Denise E. Elliott and Paula Bjelajac et al., *Trauma-Informed or Trauma Denied: Principles and Implementation of Trauma-Informed Services for Women,* 33(4) JOURNAL OF COMMUNITY PSYCHOLOGY, 461-477, 462 (2005).

[57] *Id.*

[58] Whereas vicarious trauma impacts individuals exposed to trauma victims, organizations working with a traumatized population can experience organizational trauma, in which an organization's adaptation to chronic stress can create "a state of dysfunction that in some cases virtually prohibits the recovery of the individual clients who are the source of its underlying and original mission, and damages many of the people who work within it." SANDRA L. BLOOM, & BRIAN FARRAGHER, DESTROYING SANCTUARY: THE CRISIS IN HUMAN SERVICES DELIVERY SYSTEMS 14 (2011). *See also* Shana Hormann and Pat Vivian, *Toward and Understanding of Traumatized Organizations and How to Intervene in Them*, 11(3) TRAUMATOLOGY 159, 160-164 (September 2005).

symptoms, mental health diagnoses, and involvement in the criminal justice system are all manifestations of injury, rather than indicators of sickness or badness – the two current explanations for such behavior.[59] As a result, trauma-informed services and programs are more supportive (rather than controlling and punitive), avoid retraumatizing and punishing those served, and avoid vicarious traumatization of those serving the survivors.[60]

In particular, trauma-informed practice has had a significant impact in the fields of domestic violence,[61] health care, child welfare, law enforcement and judicial administration. As discussed in the next section, trauma-informed practice has also informed the practice of law.

## II. THE TRAUMA-INFORMED LAWYER

The concepts of trauma-informed practice have begun to have a profound effect on attorneys who routinely work with trauma survivors.[62] Particularly for attorneys in practice areas such as domestic vi-

[59] SANDRA L. BLOOM & BRIAN FARRAGHER, RESTORING SANCTUARY: A NEW OPERATING SYSTEM FOR TRAUMA-INFORMED SYSTEMS OF CARE, 1, 7-9 (2013).

[60] For example, one model used to accomplish these goals is the Sanctuary Model, a trauma-informed method for changing organizational culture, created by psychiatrist Sandra Bloom. The Sanctuary Model can be described as a "plan, process, and method for creating trauma-sensitive, democratic, nonviolent cultures that are far better equipped to engage in the innovative treatment planning and implementation that is necessary to adequately respond to the extremely complex and deeply embedded injuries that children, adults, and families have sustained." Sandra L. Bloom, *The Sanctuary Model of Organizational Change for Children's Residential Treatment,* THERAPEUTIC COMMUNITY: THE INTERNATIONAL JOURNAL FOR THERAPEUTIC AND SUPPORTIVE ORGANIZATIONS 26(1): 65-81, 70-71 (2005). The Sanctuary Model proposes seven characteristics that would result in an organization being trauma informed: a culture of nonviolence, which means committing to safety skills and higher goals; a culture of emotional intelligence, which means to teach and model emotional management skills; a culture of social learning, which involves creating an environment that promotes conflict resolution and transformation; a culture of shared governance, which involves encouraging self-control, self-discipline, and healthy authority figures; a culture of open communication; a culture of social responsibility, which involves building healthy relationships and connections; and a culture of growth and change, which requires restoring hope, meaning and purpose by actively working through loss/trauma. *Id.* at 71.

[61] Joshua M. Wilson, Jenny E. Fauci, & Lisa A. Goodman, *Bringing trauma-informed practice to domestic violence programs: A qualitative analysis of current approaches*, 85(6) AM. J. OF ORTHOPSYCHIATRY 586, 587 (2015).

[62] *See* LISA PILNIK & JESSICA R KENDALL, OFFICE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, IDENTIFYING POLYVICTIMIZATION AND TRAUMA AMONG COURT-INVOLVED CHILDREN AND YOUTH: *A Checklist and Resource Guide for Attorneys and Other Court-Appointed Advocates* (2012), http://www.ojjdp.gov/programs/safestart/IdentifyingPolyvictimization.pdf. KAREN REITMAN, ATTORNEYS FOR CHILDREN GUIDE TO INTERVIEWING CLIENTS: INTEGRATING TRAUMA INFORMED CARE AND SOLUTION FOCUSED STRATEGIES (2011); Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney,* 75 UMKC L. REV. 965 (2007); Lynda Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protecting Strategies*, 24 SEATTLE U.L. REV. 483 (2000); Susan Daicoff,

olence, immigration, and child welfare, the principles of trauma-informed practice have altered the way legal services are delivered.[63] In fact, trauma-informed practice can have relevance to all areas of practice, as clients may present with a trauma history whether central to the subject of the representation or not.

Trauma-informed practice can be particularly salient for attorneys because traditionally attorneys are trained to separate emotions from the law in order to competently analyze legal problems.[64] By borrowing trauma-informed techniques developed in the therapeutic context, attorneys are learning to provide more effective representation.[65] Attorneys can learn how to identify trauma, and to adjust their methods of counseling and representation to incorporate an understanding of their clients' trauma history. Attorneys can also help clients identify the need for behavioral health intervention, or help clients secure trauma-informed therapeutic services.[66] Attorneys can also employ methods of self-care to prevent vicarious traumatization. Systemic implementation of these methods form trauma-informed legal practice. Domestic violence legal centers, immigration legal centers, and other public interest legal services offices have become particularly adept at incorporating these practices into daily legal work. This article posits that clinical law professors can and should incorporate this methodology into law school clinics.

The experience of Victoria, the client described at the beginning of this article, is a good example of trauma-informed lawyering at work. First, the law student handling the case was trained to recognize trauma. In other words, the student could recognize that the

*Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1 (2006); MARJORIE SILVER, THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (2007); Marjorie Silver, *Love, Hate, and Other Emotional Interferences in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259 (1999); Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147, 148 (2009); MARY MALEFYT SEIGHMAN, ERIKA SUSSMAN, & OLGA TRUJILLO, REPRESENTING DOMESTIC VIOLENCE SURVIVORS WHO ARE EXPERIENCING TRAUMA AND OTHER MENTAL HEALTH CHALLENGES: A HANDBOOK FOR ATTORNEYS, *available at* http://www.nationalcenterdvtraumamh.org/publications-products/attorneys-handbook/ (last viewed Dec. 20, 2015).

[63] Both authors had the opportunity as legal services attorneys to work in family law practices that trained staff in and applied methods of trauma-informed practice.

[64] Parker, *supra* note 2. R

[65] *Id. See also* AMERICAN BAR ASSOCIATION, ABA POLICY ON TRAUMA-INFORMED ADVOCACY FOR CHILDREN & YOUTH (Feb. 10, 2014), http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf; Eliza Patten & Talia Kraemer, *Practice Recommendations for Trauma-Informed Legal Services* (July 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/child_law/5C_Patten%20Kraemer_Practice%20Recommendations%20for%20Trauma%20Informed%20Legal%20Services.authcheckdam.pdf.

[66] *See* PILNIK & KENDALL, *supra* note 62. R

physical abuse that Victoria had experienced, as well as the knowledge that her children had been sexually abused, were traumatic experiences which would profoundly affect the attorney-client relationship and the nature of the representation, even though the abuse allegations were not directly pertinent to the case. If the law student not been trained in trauma-informed practice, he might have been more dismissive of the client's insistence on telling her trauma story. Instead, the law student exhibited patience and affirmation for the client that ultimately enabled the client to develop a trusting relationship with the law student. Similarly, the law student adjusted his approach to counseling the client and preparing the client for court, based upon the law student's acknowledgement and understanding of the client's trauma experience. Instead of simply preparing the client for the kinds of testimony and evidence that would be requested, the law student took into account how terrifying it was for the client to go to court against her abusive ex-husband. The student also encouraged the client regarding the importance of continuing in therapy, drawing clear lines between the kind of counseling the law student could provide, and support that could be provided by a therapist. Finally, the law student also had opportunities for self-reflection and sharing through supervision to allow him to process the impact of working with a client who had experienced severe trauma.

Rather than waiting until lawyers enter practice to learn these skills, law schools can and should teach trauma-informed lawyering, particularly in the law clinic setting.[67] Teaching trauma-informed lawyering in law school clinics bolsters and builds upon existing approaches to clinical pedagogy. Clinical legal education has traditionally emphasized teaching social justice values, client-centered lawyering and the acquisition of practical lawyering skills,[68] and teaching trauma-informed lawyering reinforces each of these areas. Further, trauma-informed lawyering builds upon existing clinical pedagogical literature on therapeutic jurisprudence, empathy and emotional intelligence, and vicarious trauma.[69] Law school clinics are particularly well-suited to teach trauma-informed lawyering because

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[67] *See, e.g.*, Jill Engle, *Taming the Tigers: Domestic Violence, Legal Professionalism and Well-Being*, 4 TENN. J. RACE, GENDER & SOC. JUST. 1 (2015); Joan Meier, *Teaching Lawyering With Heart*, *forthcoming in* VIOLENCE AGAINST WOMEN (2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685926##.

[68] *See, e.g.,* Stephen Wizner, *Beyond Skills Training,* 7 CLIN L. REV. 327, 338 (2001); David Binder and Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191 (2003); Katherine Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation,* 12 CLIN. L. REV. 369 (2006).

[69] *See, e.g.*, MARJORIE A. SILVER, THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (2007).

of the focus on reflective practice, and their capacity to teach law students important practice skills to take into their legal careers.

### *A. Teaching Trauma-Informed Lawyering Fits with the Values of Clinical Pedagogy and into Already Existing Clinical Theoretical Areas*

Teaching trauma-informed lawyering in law school clinics furthers the value clinical legal education places on teaching social justice principles and the notion of client-centered lawyering.

#### *1. Social Justice*

Clinical legal education has always had a social justice focus, in its mission to provide much-needed legal services for the indigent, and also in its goals of exposing law students to the lack of legal services for the poor, and to the limits and realities of the legal system. The first clinics were established and developed in the 1920s and 1930s as a way to supplement traditional, doctrinal classes taught in the Langdellian case method. However, clinical legal education did not really take hold in law schools until the 1960s and 1970s. A crucial event in the development of clinical pedagogy was the establishment of the Council on Legal Education and Professional Responsibility (CLEPR), by William Pincus, Vice President of the Ford Foundation. The mission of the CLEPR was to provide legal services to the poor, and in order to do so, CLEPR funded several law school clinics, significantly affecting legal education by infusing clinical legal education with a social justice purpose.[70]

Although the initial mission of law school clinics was to provide access to legal services for low-income clients, as clinical pedagogy developed, clinics developed the added function of exposing students to the realities of the legal system, and in particular its limitations for meeting the goals of indigent individuals.[71] Teaching trauma-informed lawyering in clinics reinforces the social justice value of clinical education because it causes students to be exposed to the realities and limits of the legal system.[72] Teaching trauma enables students to see, though the experiences of their trauma-affected client, how, for that particular individual, legal doctrines, theories, or the litigation

[70] *Id.* at 338 ("From the beginning of the clinical legal education movement, experiential learning and skills-training were seen as the means for achieving the justice goal articulated by William Pincus, not as ends in themselves.").

[71] Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics, and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 39-40 (2006).

[72] *See, e.g.*, Wizner, *supra* note 68. R

system may or may not work to achieve the client's stated goals.[73] Recognition that the legal system may not always be an effective mechanism of pursuing the client's goals is particularly relevant when the client has experienced trauma. This statement is particularly true in light of the fact that for a traumatized client, court proceedings may run the risk of causing the client to relive or confront the trauma, and court proceedings themselves may cause further trauma to the client.

Additionally, teaching students trauma-informed lawyering, and specifically focusing on the ways in which the current legal system may not be able to meet a client's goals, encourages students to think critically about the legal system as it affects litigants who have been subject to trauma in their lives.[74] By learning about trauma-informed lawyering and thinking critically about the legal system, students will begin to think not only about procedural justice, defined as access to the courts or representation in court, but also about true substantive justice for litigants, a term which "could be perceived to require disassembling the existing power structure in order to precipitate a redistribution of resources."[75] Thinking critically about the legal system, developing strong professional values, and developing an appreciation for the important role that attorneys play in society are all sub-parts of the larger clinical goal of teaching social justice to law students through their clinical work.[76]

The importance of teaching trauma-informed lawyering to clinic students to further the social justice goal of clinics is underscored by the literature on therapeutic jurisprudence, which focuses on the extent to which the law enhances or inhibits the wellbeing of those who are affected by it.[77] The practice of trauma-informed lawyering can be a natural extension of the teachings of therapeutic jurisprudence. Therapeutic jurisprudence is a lens for viewing litigation[78] and concerns itself with the therapeutic and anti-therapeutic goals that flow from legal rules, procedures, and the operation of the legal system.[79]

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[73] *Id.* at 351.

[74] Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J. OF LAW & POLICY 301, 314 (2012) (quoting Sue Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic: Designing a Clinical Program which Encourages a Problem Solving Vision of Lawyering*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 212-215 (1992)).

[75] Carasik *supra* note 71, at 45 (citing John O. Calmore, "*Chasing the Wind": Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization*, 37 LOY. L.A. L. REV. 1167, 1175 (2004)). R

[76] Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. L. J. & SOC. JUST. 345 (2012) (exploring the social justice mission of law school clinics).

[77] *See, e.g.*, Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLIN. L. REV. 213 (2006).

[78] David B. Wexler, *Therapeutic Jurisprudence,* 20 TOURO L. REV. 353 (2004).

[79] *Id.*

One of the crucial principles is the emphasis on voice and validation for clients. Pursuant to a therapeutic jurisprudence perspective, achieving voice and validation has special significance and importance for survivors of violence.[80] Survivors need to be accorded a sense of "voice," the ability to tell their side of the story, and "validation," the sense that what they have to say is taken seriously. By acknowledging and honoring the client's trauma experience, lawyers can help give voice to the client's perspective. Therapeutic jurisprudence scholars emphasize that these survivors should be treated with dignity and respect, which will diminish the extent to which they feel coerced and gives them a sense of voluntary choice.[81] Rather than viewing the client's trauma experience as a weakness, a therapeutic jurisprudence approach emphasizes the resilience of the client.[82] Teaching trauma-informed lawyering to clinic students furthers these therapeutic jurisprudence goals and causes students to think more about the meaning of the broader clinical goal of social justice.[83]

### *2. Client–Centered Lawyering*

Teaching trauma-informed lawyering in clinics also reinforces one of clinical legal education's central tenets, the importance of client-centered lawyering. Client-centered lawyering focuses on understanding clients' perspectives, emotions, and values, including the possible effects of prior trauma on a client's decisions and actions.[84] Client-centered lawyering is perhaps the central value in many current law school clinics, particularly in clinics where clients are individual litigants. The goals of client-centered lawyering focus on maintaining respect for a client's decision-making authority within the lawyer-client relationship. In the client-centered lawyering paradigm, the lawyer should remain neutral as to the goals of the representation.[85] Unlike

[80] Carolyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in A Children's Law Clinic*, 17 ST. THOMAS L. REV. 623, 654-55 (2005)

[81] Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 63 (2000).

[82] Pilar Hernandez & David Gangsei, *Vicarious Resilience: A New Concept in Work with Those Who Survive Trauma*, 46 FAMILY PROCESS 229 (2007).

[83] Closely related to therapeutic jurisprudence is the literature on restorative justice, which focuses on having all of the individuals who have been affected by a particular act come together and agree on how to repair the harm. According to restorative justice principles, the focus of the process is on healing, rather than finding a way to hurt the offender in a way that would be proportional to the victim's hurt. *See* John Brathwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?* 46 UCLA L. REV. 1727, 1743 (1999).

[84] Kruse, *supra* note 68, at 377 (describing the cornerstones of client-centered lawyering). R

[85] *Id.* at 376.

traditional doctrinal law school classes which focus on appellate court decisions, a clinic with a client-centered philosophy helps the client solve their identified problems, through either legal or non-legal means. The four central tenets of client-centered lawyering can be summarized as follows: 1) it draws attention to the critical importance of non-legal aspects of a client's situation; 2) it cabins the lawyer's role in the representation within limitations set by a sharply circumscribed view of the lawyer's professional expertise; 3) it insists on the primacy of client decision-making; and 4) it places a high value on lawyers' understanding their clients' perspectives, emotions, and values.[86] A lawyer's principal role in a client-centered lawyering model is to help the client solve a problem, not simply to identify and apply legal rules.[87] Teaching trauma-informed lawyering to clinic students in law clinics reinforces all of the main tenets of client-centered lawyering.

Teaching trauma-informed practice as part of client-centered lawyering improves the client's experience of representation, by encouraging students to consider the non-legal aspects of a client's situation, and also places a high value on the law student's understanding of a client's perspectives, emotions, and values. Teaching about the possible effects of trauma on clients encourages students to look at the client outside of the narrow context of litigation, and to consider the other effects of her life experiences. Additionally, trauma-informed lawyering, with its emphasis on the effects of prior trauma, persuades students to look at what the client may be seeking from the representation, and to consider whether the litigation process will achieve that goal, or whether that goal is best achieved by non-legal methods. The student must take into account the effect of the trauma on the client and the effect on the client's current decision-making, even though that decision process may be different from the process that the student is using to make a decision as a legal advocate.

The theory behind client-centered law practice is based on the influence of other social sciences on law, particularly psychology, in which empathy is considered a useful skill for supporting clients.[88] Law students will be better able to incorporate empathy into their interactions with clients if they are trained in trauma. The literature on emotional intelligence and the literature on the clinical pedagogy of teaching empathy focus on the legitimacy of emotions and their

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[86] *Id.* at 377.

[87] *Id.* at 376-77 (quoting Binder's textbook).

[88] Emily Gould, *The Empathy Debate: The Role of Empathy in Law, Mediation, and the New Professionalism*, 36-FALL VT. B.J. 23, 24 (2010). *See also* Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19 CLIN. L. REV. 405 (2013).

relevance to our actions and decisions, and also on the need and manner in which the clinical supervisor facilitates a process through which law students interpret their emotional experiences as advocates, a process which will positively affect the representation.[89] Trauma-informed clinic students will better empathize with their clients. Empathy can be a key part of the information-gathering function of a client interview and client counseling.[90] Empathy encompasses several different phenomena: feeling the emotions of another; understanding another's situation or experience; and taking actions based on another's situation.[91] Similarly, the literature regarding teaching empathy to law students in a clinical context explores the concept of "identification." Identification can be defined as taking on the attitudes, behaviors, and perspectives of others.[92] Identification and empathy allow an attorney to "enter" into the emotional state of the client,[93] which provides the attorney with a far more complex understanding of the client and the client's legal needs. With clients in particularly difficult situations, such as clients who have experienced trauma or torture, a student may become overwhelmed by the experiences of suffering and therefore fail to identify and empathize with the client.[94] Teaching law students to identify trauma and its effects on clients will aid in identification with a client in a situation where identification and empathy might otherwise not be possible, and will enable the student to achieve a greater empathy for and understanding of the client's perspectives and needs. Trauma-informed clinic students will achieve greater empathy with a client, and also will use that empathy to adjust the attorney-client relationship or to adjust the litigation strategy.

Teaching trauma-informed lawyering in law clinics will also encourage students to circumscribe their view of their own expertise, emotional understanding and role as law students in the representation, and will encourage students to focus on the primacy of client decision-making as emphasized in the client-centered lawyering model.[95] In the client-centered lawyering model, the lawyer and the client work together as problem-solvers, and the client is able to

[89] *See, e.g.*, Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLIN. L. REV. 135 (2002); Gould, *supra* note 88; *see also,* Silver, *supra* note 69 at 5. R

[90] Fletcher & Weinstein, *supra* note 89. R

[91] John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 336-37 (2008).

[92] *Id.*

[93] *Id.* at 142.

[94] Fletcher & Weinstein, supra note 89, at 143. R

[95] Kruse, *supra* note 68, at 377. R

choose what s/he wants from the lawyer and the legal system.[96] A lawyer working in a client-centered model should listen to all of the client's concerns, not just the facts which are deemed legally relevant.[97]

### *B. Acquisition of Practical Lawyering Skills: Teaching Trauma-Informed Lawyering Makes Students Better Advocates*

Another central value in clinical pedagogy is that students should acquire practical lawyering skills, by gaining experience in practice and by participating in the lawyer/client relationship.[98] Students are generally more motivated to learn because they are given a tremendous amount of responsibility over the case of a real-life individual, and this responsibility leads to greater identification with the client and other individuals who are similarly situated.[99] Clinics are particularly well-suited for teaching trauma-informed lawyering because students are readily able to put into practice with their clients the trauma-informed lawyering goals of identifying trauma, adjusting the attorney-client relationship, adjusting the litigation strategy, and preventing vicarious trauma.

Clinics are also ideally suited to teaching trauma-informed lawyering to students because clinics are one of the primary vehicles through which law students learn the practical aspects of professional responsibility. The Model Rules of Professional Conduct summarizes the duty of competent representation as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[100] When representing clients who have survived trauma in the past, the duty of competent representation requires not only legal knowledge and preparation, but also requires a thorough understanding of the ways in which trauma may present in clients, and of the ways prior trauma may affect the attorney-client relationship and the litigation process. Competent representation may also mean acknowledging the limits of the attorney's role, and using mental health professionals as supports when necessary.

Teaching trauma-informed lawyering will cause students to become better, more effective advocates who are able to fulfill the duty

96 Jane Stoever, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 496 (2012-2013).

97 *Id.* at 498.

98 *See, e.g.*, David Binder & Paul Bergman, *supra* note 68, at 194-95, 198. R

99 *See* Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 511 (2013) (Grose refers to a student's participation in the lawyer-client relationship as "the heart of clinical pedagogy.").

100 MODEL RULES OF PROF'L CONDUCT §1.1 (2015).

of competent representation. Through learning about trauma-informed lawyering, law students will become better advocates because they will gain better interviewing skills; more effectively build trust with their clients; and more effectively tackle problems that clients face. Students will also be better prepared for hearings, and better able to prepare their clients for hearings.[101] Students who interview clients may be better able to identify signs of such trauma such as: clients experiencing difficulty telling their story in a linear manner; clients describing violent or upsetting events in a flat, detached matter; clients seeming disassociated or emotionally absent during interviews; and clients not remembering key details of abuse.[102]

Here is another example of how law students are able to implement trauma-informed practice to better represent their clients:

*Jane*[103] *came to the clinic seeking representation for her two family law cases. She had filed a Protection From Abuse (PFA) petition against her boyfriend, Tom, because he had become physically abusive a few months before, and on the last night they were together, beat her and tried to run her over with his car. Jane had a daughter, Anne. When Anne's father, Mark learned of the abuse by Tom, he didn't give Anne back to Jane for a month after a weekend visit. Jane had to involve the police to get Anne back. Mark filed a custody modification petition asking the court to give him primary physical custody of Anne. Jane filed a contempt of custody petition against him for keeping Anne away from her.*

*Jane missed the first two appointments and arrived two hours late for her third appointment with the law student assigned to her case. During her meeting, which was to begin to prepare for the PFA case against Tom, Jane only wanted to talk about Anne and whether she might lose custody. She became very emotional when talking about the custody case. Jane was angry with Mark for keeping Anne for so long and said that she hoped he would be punished by the Judge for what he did. Jane did not remember when the abuse by Tom began, when he tried to run her over, or when she had gone to the police. She also did not remember when Mark had kept Anne from a month, or the date when she was able to get Anne back.*

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101 Parker, *supra* note 2. R

102 See NAT'L CENTER ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH, SUPPORTING SURVIVORS IN CONTESTED CUSTODY CASES: TRAUMA-INFORMED STRATEGIES FOR BUILDING ON PARENTING STRENGTHS WHERE MENTAL HEALTH IS A FACTOR (March 2014), *available at* http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/01/Supporting-Survivors-in-Custody-Cases-April-7-FINAL-v3.pdf.

103 This case description is based on the experience of a client represented by Professor Haldar's clinic. Names and identifying information have been changed.

Rather than thinking a client is difficult or uncooperative, a student who has been taught trauma-informed lawyering will be able to recognize the preceding characteristics as signs of trauma, and will develop the skills to counteract the specific trauma symptoms which arise during client interviews.[104] These skills include developing mechanisms to: interview and prepare clients' cases with minimal re-traumatization; work with emotional clients more effectively by validating their feelings; focus or re-focus clients who are avoiding talking about a traumatic experience; help clients remember significant details; anticipate and handle clients who are late to an appointment or who miss the appointment entirely; define the role of the legal advocate, as opposed to a therapist or social worker; and build trust with the client. In short, teaching trauma-informed lawyering will allow students to specifically tailor their interviewing and case preparation to the client's individual circumstances, which include past trauma.

*During the first meeting with Jane, the law student recalled the guest lecture by an area psychologist regarding trauma and recognized the indicators of trauma in Jane's actions. He told her that both the abuse by Tom and having Anne taken away from her must have been very difficult for her. He told her that during that first meeting, they would talk about what she most wanted to discuss, and then he and Jane together planned a timeline of appointments to get ready for both the PFA hearing and the custody hearing. The law student explained the purpose of each hearing and how the Judge would make a decision in each case. The law student let Jane know what documents she needed to bring to each meeting.*

*Additionally, the law student was able to use the police report filed when Jane got Anne back to determine when Mark had taken her and returned her. He also looked at Tom's date of arrest and Jane's PFA petition to get a rough timeframe of when the abuse happened, and Jane was able to supplement that information.*

*During a later meeting to prepare for the custody hearing, Jane revealed that as part of the abuse, Tom had forced her to join him in his drug use. Substance abuse was particularly emotionally difficult for Jane to discuss, because she and Anne's father Mark both had severe addiction issues when they were together, and they both stopped using when Jane became pregnant with Anne. Because the law student had this important bit of information, he was able to inform Jane that it was very common for custody judges to ask litigants to take drug tests, particularly if there is a history of drug abuse. He also discussed with her the importance of continuing to attend her substance abuse meetings,*

[104] Parker, *supra* note 2, at 182. R

*which served as a support for her in staying drug-free.*

*The law student went over Jane's direct examination with her several times before each hearing. He stressed the importance of being on time for the hearing, told her exactly who would be in the courtroom, and what each party might say. He emphasized that although she felt very emotional about the events, it was important to remember to answer only the questions asked of her in court. The law student reminded her the day before each time she had to be in court, and would meet her just inside the entrance to the courthouse. The custody judge decided not to modify the order in Jane's custody case with Mark, and the Protection From Abuse judge granted Jane a final protection order.*

The enhanced interview skills that students learn when taught trauma-informed lawyering can help to nurture a trusting relationship between the client and the student lawyer. The law student and the client can then analyze risks, review and develop safety plans, and devise legal strategies together. Building this kind of a trusting relationship may help avoid a situation in which a client does not reveal crucial information. In addition to hearings, building a trusting relationship between a client and a law student recognizes the fact that advocating effectively for a client may not always involve an adversarial, court-centered litigation strategy. In fact, any form of litigation may not be the best way for the client to achieve her goals. Encouraging a client to speak as freely as possible about the past trauma, as well as her current experiences, can lead both parties to exchange important information so that they can most productively discuss the next steps to take in a client's case. Students will also be able to more effectively prepare for hearings if they are trained in trauma-informed lawyering. Once students understand which types of events can trigger the trauma of a client, they can work to lessen that potential.[105]

Additionally, teaching trauma-informed lawyering will also cause students to more effectively tackle clients' trauma-related problems. For example, in family law cases, two of the most significant problems with the domestic violence survivor client population are mental health issues, often caused or exacerbated by the trauma and more recent trauma-related triggers, and substance abuse, which may also be cause or heightened by a traumatic situation. A crucial aspect of trauma-informed legal practice is recognizing the limits of lawyers' professional role, and knowing when to help the client seek behavioral health supports. Particularly for law students who are in the midst of

[105] *See* Parker, *supra* note 2, at 177-178 (discussing the importance of credible testimony in political asylum cases, where a traumatized client may have difficult expressing emotion). R

cultivating their professional identities, and are still developing their competency at lawyering skills, it is important to underscore their professional boundaries.

An additional important aspect of clinical pedagogy is the importance of teaching students how to integrate being lawyers with the rest of their lives as they move forward as practicing attorneys. Recent research indicates that attorneys exhibited a higher level of vicarious traumatization compared to mental health professionals, at least in part because they felt that they had not received systemic education regarding the effects of trauma in their clients and themselves.[106] If explicitly taught trauma-informed lawyering, law clinic students will be more effectively prepared to handle their own feelings upon hearing their clients' traumatic stories, and will as a result suffer less from vicarious trauma and burnout.[107] Teaching trauma-informed lawyering in clinics creates foundations for students for positive self-care as they pursue and develop their legal careers.

## III. The Pedagogy Of Trauma-Informed Lawyering: How to Teach Trauma-Informed Lawyering in Law Clinics

While acknowledging that teaching trauma-informed practice is an important goal, clinical law professors may struggle with how to integrate it into their clinics. This section will first describe four key hallmarks of trauma-informed lawyering: (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The following section will give concrete examples of how to teach these hallmarks in law clinics.

### *A. The Hallmarks of Trauma-Informed Lawyering*

The authors have identified four teaching goals that we believe are the key hallmarks of trauma-informed lawyering:

*Identifying Trauma.* Simply learning to identify trauma can go a long way in making an attorney more effective. Arguably, an attorney's ability to communicate with clients and develop a relationship of trust with clients is critical to attorney competence.[108] An attorney need not be a mental health expert to recognize that what the client is describing, or behavior the client in exhibiting, is indicative of trauma. Unless the law student has a previous professional background in

106 *See, e.g.*, Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 Pace L. Rev. 245, 252 (2003).

107 *Id.* at 251-252.

108 Fines & Madsen, *supra* note 62. R

trauma-related practice, law students tend not to be particularly aware of how trauma is defined or presents. A client who has experienced trauma needs to be able to feel safe in the attorney-client relationship, and an attorney who can be both affirming and empathetic to the client will help create that feeling of safety.

*Adjusting Attorney-Client Relationship.* Once an attorney has recognized that a client has experience with trauma, the attorney can adjust the attorney-client relationship accordingly. Trauma may affect the attorney's ability to get the whole story, and law students need training in these techniques. Because trauma manifests differently in different people, the attorney should be versed in a variety of strategies to work with the client. For example, the client may be very withdrawn, and the attorney will need to help the client gain a sense of trust and safety in order to get necessary information to prepare the case.[109] Another client might be highly emotional, flooding the attorney with a lot of information; the attorney will need to employ strategies to focus the client on key facts pertinent to the representation.[110] Another client may be angry or suspicious, and the attorney will need to put continued focus on transparency and trust.[111] Cultivating these strategies will make the attorney more effective in developing a relationship with clients and handling their cases.

*Adapting Litigation Strategy.* The client's trauma experience may also change the attorney's litigation strategy in a variety of ways. Court can be overwhelming or frightening to many clients, but a client with a trauma history may have a particularly difficult time coping.[112] Law students need to be introduced to these topics to effectively prepare their clients. To the extent the client needs to testify about the traumatic events, the client may have difficulty telling the story consistently and credibly. The attorney can help the client by making the situation as predictable as possible by de-sensitizing the client by rehearsing.[113] The attorney may make certain adaptations for the client, like making a plan to take a break if the testimony becomes too trying, or enlisting the support of a mental health provider or other support person in preparing for or attending court.[114] Finally, the

[109] Judy I. Eidelson, *Representing Traumatized Clients*, Phila. Bar Assoc. Family Law Section, Nov. 4, 2013.

[110] *Id.*

[111] *Id.*

[112] *See generally* Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress & the Need for Compassionate Witnesses*, 11 AM. U.J. GENDER SOC. POL'Y & L. 567 (2003).

[113] Eidelson, *supra* note 109, at slide 13. R

[114] *Id.*

attorney may need to give extra thought to how the client will be able to testify about the traumatic experiences in court.[115] By employing these strategies, the attorney may make court more palatable for the client and simultaneously more successfully advocate for the client's position.

*Preventing Vicarious Trauma.* Attorneys working with clients who have experienced severe trauma can also take preventive measures to avoid vicarious trauma. The risks of vicarious trauma for attorneys working with survivors of trauma may be even higher than those in other helping professions, because those in the legal profession tend to have higher caseloads,[116] and to not be trained in the dynamics of trauma.[117] Particularly in a high volume practice, with limited resources, attorneys are at a high risk of developing clinically significant symptoms of vicarious trauma.[118] Although it is unlikely that law students in a clinic practice setting will develop vicarious trauma, it is important that they become aware of the risks and prevention measures at the start of their practice experience. One of the most important preventive measures for attorneys is to diversify and manage case load, so that the attorney has the opportunity to work with trauma survivors as well as clients who have not experienced severe trauma, and so the attorney does not become overwhelmed with too many cases.[119] Further, attorneys can create a workplace culture that acknowledges the potential for vicarious trauma. This can include creating spaces for supervision and peer support, and encouraging open communication about the effect of the work.[120]

### *B. Incorporating the Hallmarks of Trauma-Informed Lawyering as Teaching Goals*

This next section will give concrete examples of how to achieve the teaching goals of (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.

Consider the examples of the clients Victoria and Jane, from the perspective of the clinical professor. The law students who worked

115 *Id.*

116 Levin, *supra* note 106. R

117 Fines & Madsen, *supra* note 62, at 992. *See also* Yael Fischman, *Secondary trauma in the legal professions, a clinical perspective*, 18 TORTURE 107 (2008). R

118 Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and their Administrative Support Staff Working With Trauma- Exposed Clients*, 199 J. OF NERVOUS & MENTAL DISEASE 946, 953 (2011).

119 Fines & Madsen, *supra* note 62, at 993. R

120 *Id.* at 994.

with Victoria and Jane had been introduced to the concepts of trauma-informed practice in clinical seminar. The clinical professor had informed the students at orientation that learning to identify trauma, understand the effect of trauma on clients' behavior, and alter the attorney-client relationship and litigation strategy accordingly, were part of the teaching goals for the clinic. The clinical professor brought in an outside speaker to talk to the class about the dynamics of intimate partner violence, and also brought in a psychologist to discuss the impact of trauma on the brain, and how it may manifest. The clinical professor reinforced these lessons through reflection exercises such as case rounds, journaling, supervision and evaluation. And finally, the clinical professor introduced the concept of vicarious trauma, and educated the law students on how to prevent it, by focusing on creating confidential space to talk about the effect the work and clients had on the students, as well as underscoring the importance of good self care. By incorporating these teaching methods into the clinic, the professor created an environment where clients like Victoria and Jane can feel supported and empowered through the experience of representation by the clinic, and the law students are prepared to be excellent advocates on their behalf.

### *1. Identifying Trauma*

To teach law students to identify trauma, the students must learn the definition of trauma and why it is relevant to the practice area in the clinic. Law students may incorrectly assume that in teaching about trauma, we are asking them to step outside the bounds of their role as attorney; in contrast, the purpose is to enhance their capacity to build an effective attorney-client relationship.[121] In the context of family law clinics, whether the clinic has a specific domestic violence focus or not, identifying trauma can be introduced by contextualizing what we know about the population that relies on family courts to resolve disputes, specifically that there is a high prevalence of family violence.[122] In other clinical settings, there may be other common types of trauma with which clients present; for example in an immigration clinic, there may be high rates of clients who witnessed family members or other individuals be harmed in tragic ways. In a child or family advocacy clinic, there may be many clients who have experienced severe child abuse or neglect.

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[121] Parker, *supra* note 2, at 169. R

[122] Janet Johnson et al., *supra* note 22. The link between child custody decisions and domestic violence is one that has been acknowledged by state legislatures and courts. *See* Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions,* 44 VAND. L. REV. 1041, 1062 (1991). R

It is important to help the students shape what is meant when we refer to trauma. The word "trauma" is tossed around a lot ("*My favorite tv show is on summer hiatus and I am SO traumatized!*"; "*My child was lost in the department store for 10 minutes and I was so traumatized!*"). Although trauma is subjective to a specific individual's ability to cope, not every bad experience is a traumatic one. And not every client who has experienced trauma carries a diagnosis of post-traumatic stress disorder. Further, in teaching about trauma, there is a risk that students will essentialize clients' experiences, assuming they all share common histories or characteristics. By focusing on the particular commonalities and needs of the population served by the clinic, the professor can guide students toward being alert to relevant information in the client's history and/or experience which may have an effect on the nature of the representation.

To teach students to identify trauma, the professor may elect to bring in a psychiatrist or psychologist to class, who can speak about how trauma presents and how it affects the brain. With some research and preparation, the clinical professor may also elect to teach this information on her own. The outside speaker or the professor can also focus on some of the common ways trauma presents in the population served by the clinic, and suggest or model strategies for working with these types of clients. For some clients the content of the representation will be specific to the trauma experience, such as representation in a protection order matter regarding abuse perpetrated by the opposing party, or representation in a custody matter about child abuse perpetrated by the opposing party. There are also times where the student may have to deduce that a backdrop of trauma is affecting the client's demeanor or ability to relate to the student, such as representation in a child welfare case concerning allegations of mother's mental health issues. With a basic understanding of how trauma may present, the student can develop greater sensitivity toward the client, and be alert to (sometimes subtle) indications that the client has experienced trauma.

Frequently, students have preconceived notions about how a survivor will present; the student expects the client to be forthcoming and compliant in relaying her story. An effective way to teach law students to identify trauma is to incorporate this learning goal into exercises focused on learning interviewing skills. For example toward the beginning of the semester, the authors utilize Laurie Shanks' storytelling exercise to teach students about how difficult it sometimes is for clients to share intimate details of their lives.[123] In this exercise, students

[123] Laurie Shanks, *Whose Story is it, Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling,* 14 CLIN. L. REV. 509, 516-517 (2008).

are paired in class and then asked to tell a story to each other about something that changed their life; the other student is then charged with telling her partner's story to the rest of the class, and a discussion ensues about the challenges and obstacles of telling someone else's narrative.[124] Although not specifically a trauma-related exercise, it can create a forum to underscore some of the barriers to effective fact gathering with clients who have experienced trauma. As Psychologist Judy Eidelson has hypothesized, some of these internal barriers for the interviewer may include fear of what we might have to hear, fear of not knowing how to respond, fear of losing composure, our own moral judgments, and idealization of the trauma survivor followed by disillusionment.[125]

The law student should ensure that her representation creates no additional harm.[126] Clients' trauma history may affect representation by making it difficult to get the whole story (because of avoidance) and to get a consistent story (traumatic memories get stored in the brain in disconnected ways).[127] In addition to disruptions to the client's memory of the relevant events, the client may experience shame, hopelessness, traumatic flashbacks and/or distrust in being asked about the traumatic events.[128] Because trauma presents differently, it is helpful to make students aware that it is quite common for a trauma survivor to present as withdrawn and with flat emotion, *or* to flood with an overload of information, *or* to be angry and/or suspicious.[129] Through hypotheticals or role plays, the professor can brainstorm with the students effective strategies for working with each type of client. For example, with the withdrawn client, the client may feel more in control of the interview if the law student affirms how difficult it is to share the information.[130] With the flooding client, it can be valuable to be upfront and transparent about the goals and focus of the interview.[131] With the angry or suspicious client, it can be beneficial to validate the client's frustration while not getting defensive.[132]

All of the above teaching strategies can be reinforced throughout the students' work in the clinic through supervision and reflection. The student may need help or feedback around why a particular client interview did not go as smoothly as planned, or assistance with

124 *Id.* at 518-526.
125 Eidelson, *supra* note 109. R
126 SEIGHMAN ET AL., *supra* note 63, at 5., at 5.
127 Eidelson, *supra* note 109, at slide 3. R
128 *Id.*
129 *Id.* at slides 6-11.
130 *Id.* at slide 7.
131 *Id.* at slide 9.
132 *Id.* at slide 10.

strategizing how to most effectively handle a particularly challenging client interview. Not every student will immediately draw the connection between the lessons learned about trauma in class and a client's particular behavior. For example, the student may feel frustrated by a client's repeated cancellation of appointments, or unwillingness to talk about key events in her history. By introducing trauma-informed practice early, the clinical professor can redirect the student to these lessons. In the authors' clinics, we frequently revisit how a client's trauma history may be affecting the law student-client relationship through supervision and case rounds.

### *2. Adjusting the Attorney Client Relationship*

Once students learn to identify trauma in their clients, the next step is to enable the student to make adjustments to their strategy for building an attorney-client relationship. As mentioned above, an outside speaker or the clinical professor can teach students about how trauma or indicators of trauma may manifest in clients. In the family law context, both Professor Katz and Professor Haldar bring in outside speakers from a local domestic violence agency, who can talk about the dynamics of domestic violence. These speakers introduce the students to basic concepts like the idea that domestic violence is about power and control,[133] and that there is a cycle of abuse.[134] Without this backdrop, it can be hard for students to understand why their clients behave in certain ways: *Why did she decide to drop this protection order?*[135] *Why didn't she show up to court, I thought this case was important to her!*[136]

Once students are informed about the effects their clients' trauma experience may have on the client's behavior, the clinical professor can help the students develop strategies for working with these clients. Such strategies can be integrated into lessons on client counseling through hypotheticals or simulations, as well as addressed through supervision and reflection. Because trauma presents differently in different clients, students need to be versed in a wide array of strategies. Students should learn that working with clients with trauma experience requires investing extra time in the attorney-client relationship, perhaps scheduling more in-person meetings than might otherwise be usual practice, and being particularly patient and consistent with the

133 *See generally* LENORE E. WALKER, THE BATTERED WOMAN (1979).

134 *Id.*

135 James C. Roberts, Loreen Wolfer & Marie Mele, *Why Victims of Intimate Partner Violence Withdraw Protection Orders*, 23 J. FAM. VIOL. 369 (2008).

136 Avoidance or withdrawal are common ways for clients' trauma to manifest. *See* Eidelson, *supra* note 109, at slides 6-7. R

client. Student can also help the client identify and acknowledge how the trauma experience impacts their interactions with their law student, the opposing party or the judge. Transparently engaging the client in developing solutions can be empowering to the client and lays a strong foundation for a meaningful attorney-client relationship.[137] The student can also become versed in contemplating non-legal solutions with the client, such as referrals to trauma-informed therapy, connections to other social services or supports, or reliance on trusted family or friends.

Clinical professors should be aware that students, just like clients, may also present with their own trauma history. Working with particular clients may present triggers for certain students. While this will be addressed further in the discussion of vicarious trauma in Section III. B. 4., infra, the clinical professor can help students be mindful that the experience of listening to someone else's trauma history is not neutral. The students can be encouraged to be reflective with regard to their own reactions and responses to clients.

### *3. Adapting Litigation Strategy*

Preparing a client with trauma experience for court requires particularized strategies which law students can learn through a clinic. The experience of going to court in and of itself can be re-traumatizing, particularly because the trier of fact may not know the client has a trauma history, or may not be aware of how trauma presents. To the extent that the client may have to testify about the traumatic events, many triers of fact might assume that if something really horrible happened that the client will be able to testify about it with great specificity.[138] In contrast, clients with trauma experience can make terrible witnesses for a variety of reasons.[139] First, because the brain stores memories in mismatched ways, the client may be unable to present a linear narrative.[140] Second, the client may not remember key elements of what occurred; while this may make a trier of fact question client's credibility, it is a normal trauma reaction.[141] Third, a client's emotions or lack thereof may unnerve or misguide the trier of

137 SEIGHMAN ET AL., *supra* note 63, at 7.

138 Joan Meier, *Symposium: Domestic Violence, Child Custody & Child Protection: Understanding Judicial Resistance And Imagining Solutions*, 11 AM. U. J. GENDER SOC. POL'Y 657, 662 (2003) ("The failure of many courts to apply new understandings of domestic violence in cases concerning custody actually contrasts sharply with the demonstrable increases over the past ten years in judicial awareness and sensitivity to domestic violence in more standard 'domestic violence' cases, such as civil protection orders or criminal prosecutions.").

139 Parker, *supra* note 2, at 171. R

140 Eidelson, *supra* note 109. R

141 Parker, *supra* note 2, at 171. R

fact: the client may appear with a flat affect; or the client may want to tell the full story in a rush of hysterical emotion; or the client may appear angry (thus making her seem like the aggressor) or the client may simply disassociate and not be able to articulate what happened at all.[142]

Extra time spent on preparation can go a long way in making the litigation process palatable for clients with trauma experience. The student can spend extra time preparing the client for what to expect in the courtroom, reviewing details as mundane as where everyone will sit or stand, to what types of questions will be asked. The more the experience of court can become normalized and predictable for a client, the more likely they will be able to cope. In addition, because constantly re-telling the story of the traumatic events can be re-traumatizing for the client, dividing the preparation into shorter sessions can help minimize the risk of re-traumatization.[143]

Students can utilize extra preparation time to work on mental safety-planning with the client. For example, the student can work with the client around how they will handle being asked difficult questions, or where to focus their energy when the opposing party is talking. The student and client can set up a safety signal, whereby the student can ask for a break in the testimony should it become too overwhelming for the client. Allowing the client to be an active participant in planning for how to handle going to court can help empower the client and normalize the experience of the court hearing.

The student can spend extra time preparing the client for the worst possible case outcomes (e.g. *The worst thing that may happen is that the judge grants his petition for shared custody*). Being able to visualize the possible results will help normalize the experience of court.

Finally, although difficult, students can seek to educate the trier of fact about dynamics of trauma through the litigation process. Some resources exist for training judges in a more systemic manner.[144]

### *4. Preventing Vicarious Trauma*

Perhaps the most crucial aspect of the pedagogy of teaching trauma- informed lawyering in law clinics, and certainly the aspect that students have the greatest need to carry forward with them in their legal practice, is the awareness of vicarious trauma and the need

[142] Eidelson, *supra* note 109. One client in Professor Katz's clinic, after repeated questioning in court about the history of intimate partner violence between the parties simply blurted out "he has a hand problem!" (meaning 'he puts his hands on me'). R

[143] Parker, *supra* note 2, at 176. R

[144] SAMSHA, *supra* note 8. R

to take preventive measures against its effects. While students may not be likely to experience vicarious trauma in their clinical work, it is important that they learn about the risks, and are able to implement preventive measures starting with their clinical legal work. Preventive measures can be implemented in a number of ways. First, in the authors' clinical courses, the possibility and effects of vicarious trauma are explicitly taught and the authors are each transparent with their students about the preventive measures that are being implemented. When new students begin, as mentioned previously, a psychologist speaks with the students about the effects of trauma on clients, but also discusses the issue of vicarious trauma and how to identify vicarious trauma symptoms and also to protect oneself against vicarious trauma. Students read material about the effects of trauma and the effects of vicarious trauma on professionals who work with trauma survivors, and discuss the effects of vicarious trauma in class.[145]

It is also possible and crucial to consider vicarious trauma when structuring clinical courses. One of the best ways to prevent vicarious trauma is balance and limit caseloads.[146] For example, cases should be distributed among students such that the cases involving clients with significant trauma histories are evenly distributed among the students. In Professor Haldar's clinic, where students handle both Protection From Abuse and custody cases, students are assigned both kinds of cases to increase the chance that each student will have at least a few clients who have not recently experienced traumatic events. Thus, every effort is made to ensure that no one student will have only clients who have recent trauma histories, and this balance is a significant factor to protect against vicarious traumatization.

Another recognized prevention technique is to create safe space for practitioners to talk about the effects of working with their clients with trauma histories on a regular basis.[147] In a law school clinic, this can be accomplished through supervision and reflection, and through effective use of case rounds. Both Professor Haldar and Professor Katz ask students to reflect upon vicarious trauma-related topics specifically in their journal assignments. The journal entries call for students to think specifically about whether and how they are being

145 In addition to journal assignments, sample assignments might include role playing a client interview session when a client discusses a traumatic past event or reading articles about the effects of vicarious trauma in the therapy context and discussing in class the similarities and differences in the legal context.

146 T. Bober and C.D. Regehr, *Strategies for Reducing Secondary or Vicarious Trauma: Do They Work?*, 6 BRIEF TREATMENT AND CRISIS INTERVENTION 1-9, 7 *available at* http://dx.doi.org/10.1093/brief-treatment/mhj001 (last viewed Dec. 20, 2015).

147 Barbara Dane, *Child Welfare Workers: An Innovative Approach for Interacting with Secondary Trauma,* 36 (1) J. OF SOC. WORK EDUC., 27, 34-35 (2000).

affected by their clients' trauma histories, and whether they are experiencing vicarious trauma symptoms.

In clinics, students should be taught explicit strategies to prevent vicarious trauma that they can carry forward with them into their legal practices. One very effective way to teach students about preventing vicarious trauma is to encourage good self-care and model good self-care. Self-care, in the sense of setting appropriate boundaries between the advocate and the client, is recognized to be a protective factor against vicarious trauma.[148] Sandra Bloom divides self-care into several components: personal physical; personal psychological; personal social; personal moral; professional; organizational/work setting; societal.[149] In the beginning of the semester, along with a discussion of vicarious trauma, clinical professors may choose to encourage their students to develop their own self-care plans, incorporating all of the different components of self-care. In case rounds and supervision, students and the professor can refer back to these self-care plans as needed, especially when working with clients with trauma histories.

Clinical professors may also find it helpful to themselves model good self-care techniques for students. For instance, professors can be transparent about making sure they themselves get to exercise regularly, or about using mental health counseling if needed. Specific discussion of mental health services, and of their availability, may also help students to avoid the effects of vicarious trauma, as knowledge of mental health services is a protective factor.[150]

Although not strictly vicarious trauma, it is also important to note here that students often come to our clinics with their own trauma histories; in fact, it is often a student's own trauma history which motivates them to enroll in the clinic to assist clients with similar issues. Of course, working with clients with trauma histories can be triggering for students with their own trauma histories. A crucial aspect of the

[148] Prof. Katz gives the following prompt: *Vicarious trauma, also sometimes called compassion fatigue or secondary trauma, is a term for the effect that working with survivors of trauma may have on counselors, therapists, doctors, lawyers and others who directly help them. Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic and/or traumatic experiences of their clients. Vicarious trauma occurs in someone who is not the primary person experiencing the trauma. Vicarious trauma happens when a secondary person is exposed to the original victim or offender, likely in the course of their profession.*

*In the practice of family law, our clients share some of the most painful and intimate details of their lives. Please use this journal entry to reflect on how you manage your reactions to these stories, and coping mechanisms you are developing to maintain balance as you move through this work.*

[149] Sandra L. Bloom, *Caring for the Caregiver: Avoiding and Treating Vicarious Traumatization, in* SEXUAL ASSAULT: VICTIMIZATION ACROSS THE LIFESPAN – A CLINICAL GUIDE 459, 466-467 (A.P. Giardino, E. M. Datner, and J.B. Asher eds.) (2003).

[150] Parker, *supra* note 2, at 178, 198. R

pedagogy of trauma-informed lawyering consists of acknowledging for law students that they may have their own trauma histories that have an effect on them as they proceed in their legal careers, particularly in working with clients with trauma histories. It is important to create a space for students to talk about and/or reflect on their own trauma experience as needed, as they proceed in working with clients with trauma histories.

## Conclusion

As this article explains, teaching trauma-informed lawyering is a critical aspect of law students' education in the clinical legal educational setting, particularly in clinics which focus on practice areas where clients' trauma experiences are the direct subject of the representation. This article is not meant to be an exhaustive treatise on how to teach these subjects in law school clinics. Rather the message is simple: a little knowledge about trauma goes a long way in helping students adjust their practice skills to competently and zealously represent clients who have experienced trauma. By implementing the four hallmark teaching goals of trauma-informed lawyering, clinical law professors can not only enhance the advocacy of their students while in the clinic, but also convey lasting skills which will set their students on the path to being excellent lawyers throughout their careers.


# National Center on Law & Elder Rights:

# Trauma-Informed Lawyering

NATIONAL CENTER ON LAW & ELDER RIGHTS

# Trauma-Informed Lawyering

Vivianne Mbaku, Justice in Aging

## Introduction

A trauma-informed legal practice aims to reduce re-traumatization and recognize the role trauma plays in the lawyer-client relationship. Integrating trauma-informed practices provides lawyers with the opportunity to increase connections to their clients and improve advocacy.

## Key Lessons

1. The widespread prevalence of trauma underlines the importance of civil legal aid attorneys adopting trauma-informed practices.
2. Trauma-informed lawyering leads to better communication between the lawyer and client, discovery of additional legal issues, and better referrals.
3. Trauma-informed lawyering is generally free of cost, but will take additional lawyer time.

## One-Third of Adults Experience Severe Trauma in Their Lifetime

The American Psychological Association defines trauma as "an emotional response to a terrible event like an accident, rape, or natural disaster."[1] An event is defined as traumatic when it renders an individual's internal and external resources inadequate, making effective coping impossible."[2] Trauma is very common, with an estimated one third of the U.S. population expected to experience severe trauma in their lifetime.[3] Women are much more likely than men to experience traumatic events like rape and stalking, and consequently more likely to report an impact on their functioning related to the traumatic event.[4] Further, new research connects higher rates of post-traumatic stress disorder (PTSD) among racial and ethnic minorities to the traumatic experience of racism.[5]

## Trauma-Informed Lawyering Improves Legal Advocacy

Trauma-informed care recognizes the widespread prevalence of trauma and its impact while aiming to reduce re-traumatization.[6] The term 'trauma-informed' was coined in 2001 by PhD researchers Maxine Harris and Roger Fallot.[7] Trauma-informed lawyering "asks clients not 'what is wrong with you?' but instead, 'what happened to you?'"[8]

The central goals of trauma-informed lawyering are to reduce re-traumatization and to improve legal advocacy by recognizing the role trauma plays in the lawyer-client relationship. Considering high rates of trauma among the general population, it is imperative that civil legal aid attorneys integrate trauma-informed practices to reduce re-traumatization. Common examples of trauma-informed practice include providing accommodations for client interviewing or extensive witness preparation to alleviate client anxiety. Regardless of

1 American Psychological Association, "Trauma," available at: apa.org/topics/trauma.
2 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 Clinical L. Rev. 359, 364.
3 *Id.*
4 *Id.* at 365
5 American Psychological Association, "Uncovering the Trauma of Racism" apa.org/pubs/highlights/spotlight/issue-128.
6 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.
7 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.
8 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 Clinical L. Rev. 359, 363.

its form, a trauma-informed practice assists lawyers in connecting to their clients, creating better legal outcomes and more robust advocacy.

## Self-Care is Important to Counterbalance Secondary Trauma

Integral to trauma-informed lawyering is the practice of "employing modes of self-care to counterbalance the effect [a] client's trauma experience may have on the practitioner."[9] The concept of 'vicarious/secondary trauma' or 'compassion fatigue' has been explored extensively within the legal field. This condition resembles post traumatic stress disorder and is "caused by being indirectly exposed to someone else's trauma."[10] Secondary trauma can manifest as avoidance, black and white thinking, and frustration with clients or losing empathy towards clients.[11] Further, direct exposure to clients experiencing trauma is not the only way to be affected by secondary trauma. Secondary trauma can develop from listening to others recount a traumatic event or working with others who are dealing with secondary trauma.[12]

The Trauma-Informed Legal Advocacy Project (TILA) of the National Center on Domestic Violence, Trauma & Mental Health encourages reflective practice to help counteract the effect that a client's traumatic experiences may have on their attorney.[13] A reflective practice includes "regularly engaging in reflection, both in the context of individual interactions and after big successes or losses."[14] Changes in organizational culture to foster discussion of secondary traumatic stress and encourage employees to take breaks from work can assist in mitigating the effects of secondary trauma.[15]

Here is more information on secondary trauma and tools to better support employees.

## Clients Benefit from Transparency and Trust in Trauma Informed Lawyering

A trauma-informed practice provides many benefits to both the attorney and client. Clients benefit from more transparency in the lawyer-client relationship, leading to higher levels of trust in lawyers.

Many clients have had negative experiences with the legal system and may not understand the process. Lawyers are also prone to not explaining their motivations or process during representation. By explaining their role, the role of others in the court, and what can happen during the course of representation, lawyers can alleviate the stress and anxiety of the process. Lawyers should start interviewing by explaining the nature of the meeting and providing as much information about what will happen to ease anxiety. By starting with transparency, the lawyer establishes trust with the client. When the client feels comfortable, they are more likely to share sensitive information that may be integral to their case. Lawyers can then provide proper referrals to additional services and better prepare cases for settlement or trial.

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9 *Id.* at 359.

10 American Bar Association, "Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims", September 10, 2015, available at: americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

11 *Id.*

12 *Id.*

13 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, "Practice Scenarios Series", available at: nationalcenterdvtraumamh.org/wp-content/uploads/2013/08/TILA_ReflectivePractice_Apr22.pdf.

14 *Id.*

15 American Bar Association, "Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims", September 10, 2015, available at: americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

**PRACTICE TIP**

The trauma-informed practice takes place in two steps. First, identifying the trauma, and second, adjusting the lawyer-client relationship in relation to the trauma.[16] It is important for attorneys to remember that this process does not include diagnosing a client or trying to be a "therapist" for clients. Attorneys should make proper referrals to mental health services for any client who is struggling.

## Identifying Trauma and Adjusting the Relationship

In the first step of identifying the trauma, trauma might be easily identified because it is related to the nature of the legal relationship, i.e. the client seeking assistance with an elder abuse protective order. In other cases, the existence of trauma may not be readily apparent. Lawyers should make efforts to note their client's body language, tone, and general demeanor. Trauma manifests differently in everyone, and it "may affect the attorney's ability to get the whole story."[17] A client may seem closed off, uneasy, agitated, or annoyed. Acknowledging any discomfort is encouraged, as it gives your client the opportunity to voice needs or concerns. Lawyers can then accommodate clients' needs, and adjust their techniques to provide a better environment for the client. The key here is to not fall back on assumptions, wondering "what is wrong with this person? Why are they so _____?" but to embrace "what is going on with them, what happened? How can I make them more comfortable?"

The second step of adjusting the lawyer-client relationship in relation to the trauma, can take many forms. Offering options to clients to accommodate their reactions to their traumatic experience is one of the easiest changes to the lawyer-client relationship to make. Options like flexibility with meeting time and place, seating arrangements, or whether the door is closed or open are simple ways to adjust the lawyer client relationship while building trust.[18]

The Trauma-Informed Legal Advocacy Project also outlines the following strategies as other helpful best practices:[19]

- **Take breaks.** Breaks provide a client with the space they need to stay present during a meeting or interview. Offer breaks not only at the beginning of the meeting but also periodically throughout.
- **Explain the process.** Be open about what you are doing, such as taking notes, and ask permission before taking notes. During the interview, use open body language to help avoid creating an objectifying experience. After the interview, summarize the notes you took with the client.

**Validate feelings**. Clients should know that their feelings matter. By verbally validating, you can help the client become aware of what is happening with them.

**CASE EXAMPLE**

Len is a new client coming in for assistance with a debt collection case. As you ask him questions, you realize his leg is literally "jumping" he is shaking so much. He seems a bit withdrawn and keeps looking towards the door. You stop legal questioning and note that he seems uncomfortable, and ask if there is anything you can do to make him feel more comfortable. Len shares that he was a victim of torture in his home country and

16 *Katz* at 382.
17 *Katz*, at 383.
18 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.
19 *Id.*

feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape. You readjust the seating and move the open conference room in your office. You assure Len that if he had any other concerns to let you know.

Strategies for helping the client feel comfortable:

- You stop legal questioning and note that he seems uncomfortable. You realize that you jumped into the interview without really explaining your role or what you will be doing today.
- You acknowledge that Len seems uncomfortable and ask if there is anything you can do to make him more comfortable.
- Len shares that he was a victim of torture in his home country and feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape.
- You readjust the seating and move to the open conference room in your office. You assure Len that if he had any other concerns to let you know.
- You then explain the process and what will happen at this interview. You let Len know that if he needs breaks or anything else to let you know.

## Conclusion

A trauma-informed legal practice not only reduces re-traumatization, it also makes better lawyers. A lawyer who is able to recognize the role trauma plays in the lawyer-client relationship is able to be a better advocate.

**Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.**

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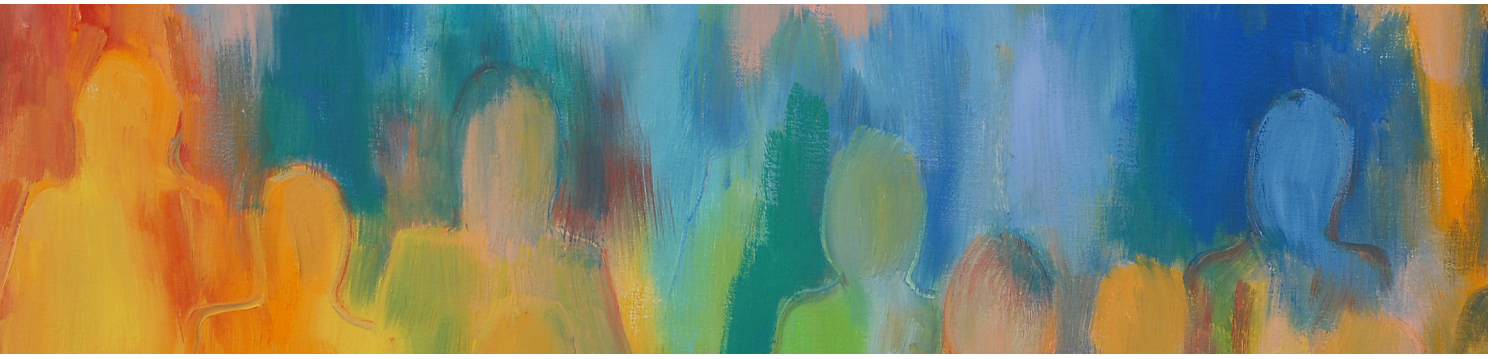
# Essential Components of Trauma-Informed Judicial Practice

# Essential Components of Trauma-Informed Judicial Practice

## WHAT EVERY JUDGE NEEDS TO KNOW ABOUT TRAUMA

As a judge with a treatment or problem-solving court, you probably know that many people who appear before you have experienced violence or other traumatic events. In fact, the experience of trauma among people with substance abuse and mental health disorders, especially those involved with the justice system, is so high as to be considered an almost universal experience.



What you may not know is that these trauma experiences affect the person's physical health, mental health, and ability to respond successfully to treatment and other interventions. The stress of the courtroom environment may also affect the ability of trauma survivors to communicate effectively with you and court personnel. **Many judges have come to recognize that acknowledging and understanding the impact of trauma on court participants may lead to more successful interactions and outcomes.**

Recognizing the impact of past trauma on treatment court participants does not mean that you must be both judge and treatment provider. Rather, trauma awareness is an opportunity to make small adjustments that improve judicial outcomes while minimizing avoidable challenges and conflict during and after hearings. **This issue brief provides information, specific strategies, and resources that many treatment court judges have found beneficial.**



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## DEFINING TRAUMA, TRAUMA-SPECIFIC SERVICES, AND TRAUMA-INFORMED APPROACHES

*During every incarceration, every institutionalization, every court-ordered drug treatment program, it was always the same: I was always treated like a hopeless case. All people could see was the way I looked or the way I smelled. It wasn't until I finally entered a recovery-oriented, trauma-informed treatment program, where I felt safe and respected, that I could begin to heal…Someone finally asked me "What happened to you?" instead of "What's wrong with you?"* — Tonier Cain, Team Leader, SAMHSA's National Center for Trauma-Informed Care

In a medical context, the term trauma is often used to refer to a serious bodily injury. In the context of people who have experienced violence or other adverse events, **trauma** is the psychological response to these events when they 1) are experienced as physically or emotionally harmful or threatening and 2) have lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being.

Trauma may be caused by exposure to violence, physical and sexual abuse, neglect, natural disasters and accidents, and any other events that induce powerlessness, fear, recurrent hopelessness, and a constant state of alert. Trauma may also be caused by discrimination due to gender, race, poverty, and sexual orientation. The most traumatic experiences often include betrayal by a trusted person or institution.

Unfortunately, people who have experienced trauma may cycle in and out of the mental health, substance abuse, and criminal justice systems. If their trauma is not addressed, they may be considered "treatment resistant" or "difficult" clients. In the criminal justice system, they may be disruptive, require additional time and resources in the courtroom, and be at risk of re-offending.

Several evidence-based services and interventions exist to effectively treat trauma. These are called **trauma-specific services and interventions**, and they are designed to help individuals understand how their past experiences shape their behavior and responses to current events. Trauma-specific services often help individuals develop more effective coping strategies to address the impact of trauma.

**A trauma-informed approach** to services or intervention **acknowledges the prevalence and impact of trauma and attempts to create a sense of safety** for all participants, whether or not they have a trauma-related diagnosis. Becoming trauma-informed requires re-examining policies and procedures that may result in participants feeling loss of control in specific situations, training staff to be welcoming and non-judgmental, and modifying physical environments. The goal is to fully engage participants by minimizing perceived threats, avoiding re-traumatization, and supporting recovery. There is often little or no cost involved in implementing trauma-informed principles, policies, and practices.

More information about well-established trauma-specific interventions is available online at **www.samhsa.gov/nctic/trauma.asp**.

## IMPACT OF TRAUMA

*Someone who's been beaten as a child expects that they're going to be beaten. I saw the provocation all the time, with young men in particular. They provoke the court officers so at least they're controlling when it happens.* —Treatment Court Judge

The Adverse Childhood Experiences (ACE) study, conducted by the Centers for Disease Control and Prevention and Kaiser Permanente, is one of the largest investigations ever conducted

to assess associations between childhood maltreatment and later-life health and well-being.[1] It documents strong and significant relationships between adverse childhood experiences and adult health and behavioral health problems, social and economic costs, and early mortality. Untreated trauma may result in a range of problematic behaviors—including substance abuse, interpersonal violence, and gambling—that can lead to arrest, incarceration, and recidivism.

The ACE study involved 17,000 Kaiser Permanente health plan members, the majority of whom were white, over age 50, and had some college education. Study participants were asked whether they had experienced potentially traumatic events[2] during their first 18 years of life.

The results indicate that childhood experiences of abuse and neglect are common and destructive, even half a century after they occur. ACE scores are significantly correlated with depression, substance abuse, attempted suicide, hallucinations, the use of antipsychotic medications, multiple sex partners, and increased likelihood of becoming a victim of sexual assault or domestic violence. High ACE scores are also significantly related to liver disease, chronic pulmonary obstructive disease, heart disease, autoimmune disease, and lung cancer.

Researchers hypothesize that adverse experiences in childhood affect the health and behavior of adults through two primary mechanisms. First, they increase conventional risk factors such as smoking, excessive drinking, overeating, self-injury, and engaging in risky sex—behaviors that often are used to cope with the pain of the trauma. Second, biomedical research shows that childhood trauma affects the developing brain and body, causing deregulation of the stress response.[3]

At a more immediate level, traumatic events—regardless of the age of the person experiencing them—can shatter an individual's sense of safety and trust. This may lead to general fearfulness and isolation that makes connecting to family, friends, and treatment professionals difficult. Many people who have experienced trauma feel a sense of powerlessness or helplessness over their own lives, which may make it difficult to engage in treatment programs and in judicial proceedings.

A 5-year, 14-site study on women and violence, sponsored by the Substance Abuse and Mental Health Services Administration (SAMHSA), found that services may be more effective if they:

- Are gender-specific
- Include trauma survivors in planning and delivery services
- Integrate trauma-specific treatment, mental health, and substance abuse services, rather than treat these problems separately
- Use group environments to help restore trust and promote healing from trauma

It is important to be aware that many people who appear before you remain in harmful environments and relationships, even while they participate in treatment court programs. In addition, many trauma survivors are re-traumatized in the behavioral health and criminal justice systems. Re-traumatization refers to the psychological and physiological experience of being "triggered," perhaps by a smell, a sound, or a sensation, that recreates or recalls the original abuse. Triggers for re-traumatization may include strip searches, room searches that involve inspecting personal items, cuffs or restraints, isolation, sudden room changes, yelling, and insults. Exposure to acts of terrorism, natural disasters, and personal loss such as the death of a family member also may trigger re-traumatization. All these experiences keep old wounds open and may invoke habitual, self-protective responses, including violent outbursts and withdrawal from treatment.

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[1] **http://www.cdc.gov/ace/**

[2] Specifically, participants were asked whether they had experienced one or more of the following events during childhood: emotional, physical, or sexual abuse; domestic violence; substance abuse, mental illness, or incarceration of a household member; and parental separation. You can access the current version of the ACE study questionnaire at http://acestudy.org/ace_score.

[3] Administration for Children and Families. (2009). Understanding the effects of maltreatment on brain development. Available online at **https://www.childwelfare.gov/pubs/issue_briefs/brain_development/brain_development.pdf**.

## BEHAVIOR AS ADAPTATIONS

*I was in the mental health system for 14 years before somebody thought to ask me if I'd been hit, kicked, punched, slapped, or knocked out. When they asked those kinds of questions, I said, "Oh, yeah, sure." But when they asked if I'd been abused, I said, "No." It was just my life.*

— A Trauma Survivor

Many treatment court participants have engaged in behavior that others might consider self-destructive, such as IV drug use, other substance abuse, prostitution, and self-injury. **An essential component of being trauma-informed is to understand these behaviors not as character flaws or symptoms of mental illness, but as strategies or behavioral adaptations developed to cope with the physical and emotional impact of past trauma.** This paradigm shift does not imply lack of responsibility for illegal behavior, but it does provide an opportunity to apply approaches that are most effective in promoting recovery and reducing recidivism.

The adverse effects of trauma may occur immediately, but often they emerge months or even years after the events. Often, the individual may not recognize the connection between the events and the effects of the trauma. People who are affected in specific ways may be diagnosed with post-traumatic stress disorder (PTSD), but because individual responses to trauma vary, many people whose lives are adversely affected by trauma do not meet the clinical criteria for PTSD.

Many people are reluctant to talk about interpersonal violence and other traumatic experiences. In some cases, they may not think of their past experiences with abuse as trauma or victimization. In addition, both women and men who have been physically or sexually assaulted may be afraid to talk about their experiences for fear they will be mislabeled, mistreated, or simply not believed. In many cases, their fears are well-founded. One study found that people diagnosed with mental illnesses seeking assistance for domestic violence are often referred to psychiatric inpatient or outpatient treatment; their report of a crime is viewed as part of their mental health issues.

## ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE

*Once our courtroom team participated in trauma training, we questioned all our routine practices. We communicated more respectfully and effectively, and we began to be much more individualized in our approach to each case.* — Treatment Court Judge

It is not an exaggeration to say that untreated trauma is at the root of many of society's ills. That does not mean that people with histories of trauma who commit crimes are not responsible for their actions. However, recognizing and addressing trauma benefits individuals and the systems that serve them.

**Trauma-informed judicial interactions begin with good judicial practice, treating individuals who come before the court with dignity and respect.** Judges who are trauma-informed expect the presence of trauma, take care not to replicate it, and understand that it may affect court participants' feelings and behavior, as well as their success in treatment. Trauma-informed judges work closely with court personnel and other members of the team—attorneys, court coordinators, case managers, and even treatment providers— to ensure an individualized approach that maximizes opportunities for a positive treatment outcome.

## What You Say: *Communication Counts*

*I deal with sexually violent persons. These men have at least two convictions each for either adult violent rapes or child molestation. I don't have any problems with security. I don't have one person that has to come into court in shackles, not one, because I give them respect. I call them by their names. It starts there.* — Criminal Court Judge

Every interaction between a judge and a treatment court participant is an opportunity for engagement. For a person who has experienced past trauma or may still be experiencing violence in their lives, a judge's words can be potentially hurtful or potentially healing. Trauma-informed judicial practice recognizes the role that trauma may play in how an individual perceives what the judge says and how he or she says it.

There are an infinite number of possible communications between a judge and treatment court participant, and there is no script to follow to ensure that each communication is trauma-informed. However, the table below provides some common examples of comments a judge might make; how a trauma survivor might hear or perceive that comment; and another, more trauma-informed way of expressing the judge's concern.

### Courtroom Communication

| JUDGE'S COMMENT | PERCEPTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| "Your drug screen is dirty." | "*I'm dirty.* There is something wrong with me." | "Your drug screen shows the presence of drugs." |
| "Did you take your pills today?" | "I'm a failure. I'm a bad person. No one cares how the drugs make me feel." | "Are the medications your doctor prescribed working well for you?" |
| "You didn't follow the contract, you're going to jail; we're done with you. There is nothing more we can do." | "I'm hopeless. Why should I care how I behave in jail? They expect trouble anyway." | "Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you." |
| "I'm sending you for a mental health evaluation." | "I must be crazy. There is something wrong with me that can't be fixed." | "I'd like to refer you to a doctor who can help us better understand how to support you." |

Many judges have found that expressing concern and using less negative, punitive, or judgmental language has a positive impact on participants. A treatment court judge serving veterans explained, "I always begin by telling a participant, 'Thank you for your service.' One court graduate later said to me, 'Here I was, charged with 10 felonies, and you thanked me for my service. I really struggled with that, but it gave me hope, and it was a good thing to say.'"

Treatment court judges who have made an effort to implement trauma-informed approaches point out that it is important not to give short shrift to those who are doing well. Giving them credit may bolster their chances of success. Hearing positive feedback given to others also serves as an incentive to individuals who may be struggling to complete court-ordered treatment. For example, one treatment court judge tells participants:

"Many of you have done well, and I would like to be able to spend an equal amount of time with each of you. I have several cases to get through today and I'm going to spend a bit more time with individuals who are having problems. I am proud of all of you who are doing well; you serve as an inspiration to your peers."

## What You Do: *Court Processes and Procedures*

*So here I was, in front of this judge, asking for a restraining order against a family member who was also going to show up in that courtroom, and I was actively hearing voices. I was having a very hard time expressing what I needed to say to get the job done. The restraining order was against my grandfather, and the judge was an older man who looked like my grandfather. I couldn't speak. I had to try to articulate something that I was not even able to speak about very well in the first place. And I needed to do it quickly and succinctly.*

*What the judge did was pretty incredible. He asked me to come forward. It created a sense of privacy. I didn't have to shout across a really busy courtroom. He really helped me in that simple act of asking me to come closer. I was able to do what I needed to do, and he was able to hear what he needed to hear. I had been in the mental health system for 14 years, and* ***this judge changed my life in that one simple act****.* — Trauma Survivor

Much of what takes place in a legal proceeding, even in treatment courts, may be confusing to someone new to the criminal justice system. In many cases, the simple act of giving treatment court participants a clear explanation of what is going to happen helps alleviate their fears and lessen the possibility that they will disrupt courtroom proceedings.

The table on the following page lists some common courtroom experiences, how a trauma survivor might respond to or perceive them, and concrete suggestions for providing a more trauma-informed experience that is more likely to engage the participant. Note that many of these tools are effective not only in working with treatment court participants, but with witnesses and other people who may come before the court. The goal is to guarantee physical and emotional safety for all trauma survivors who appear in your court.

## Courtroom Procedures

| COURTROOM EXPERIENCE | REACTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| A court officer handcuffs a participant without warning to remand him or her to jail because they have not met the requirements of their agreement with the court. | Anxiety about being restrained; fear about what is going to happen. | Tell the court officer and the individual you intend to remand them. Explain why. Explain what is going to happen and when. *(The court officer will walk behind you; you will be handcuffed, etc.).* |
| A judge remands one individual to jail but not another when they both have done the same things (e.g., had a positive drug screen) and they are both in the courtroom at the same time. | Concern about fairness; feeling that someone else is getting special treatment. | Explain why you are doing this. For example, *"Both Sam and Meredith had positive drugs screens. Sam is new to drug court and this is the first time he had a positive screen. We are going to try again to see if the approach we're using can be effective. Meredith has had multiple positive drug screens; I'm remanding her to jail because the approach we've been using here hasn't been effective in supporting her recovery. I wish I had a better choice, and I hope she won't give up on recovery."* |
| Individuals who are frightened and agitated are required to wait before appearing before the judge. | Increased agitation; anxiety; acting out. | Clearly provide scheduling information in the morning so participants know what will be expected of them and when. To the greatest extent possible, prioritize who appears before you and when; those who are especially anxious may have the most trouble waiting and be more likely to act out. |
| A judge conducts a sidebar conversation with attorneys. | Suspicion, betrayal, shame, fear. | Tell the participant what is happening and why. For example, *"We have to discuss some issues related to your case. We just need a minute to do it on the side."* |
| A participant enters a plea that does not appear to be consistent with the evidence, his or her own description of the event, or his or her own best interests. | Memory impairment; confusion about courtroom procedures; inability to process implications of the plea. | Adjourn to allow time for courtroom team to discuss whether and how to accept the plea. |



In addition to modifying courtroom procedures, many treatment judges have developed unique ways to help individuals participate more fully in their own recovery. They include the following:

**Photography.** Some treatment court judges give participants disposable cameras and ask them to record what is important for them to stay sober. The individuals work with their case managers to write about what the photographs mean to them. This has been used successfully in a Brooklyn treatment court, where the photographs are used as an incentive for participants to remain in treatment. When shared with the judge, they help her understand better what the individual needs to do to recover.

**Letters.** In similar fashion, some treatment court judges have participants write letters or journal entries. These letters may focus on positive experiences the individual has had since they last saw the judge or times that they felt good about themselves. They may write about their hopes for recovery or problems they are having in treatment.

**Stories/DVDs for children.** Another treatment court judge has found a way to help parents who are in residential treatment stay connected with their children. Parents choose from among donated children's books and are videotaped reading for their child. They may offer a short introduction (e.g., "Mommy can't be with you now, but I'm going to read you this story"). The books and DVDs are given to the children's caregiver. This helps lessen the chance that individuals will drop out of treatment because they are separated from their children and reinforces the importance of their role as parents.

Many trauma survivors involved in the justice system report that forensic peer specialists have helped bridge the gap between the treatment and judicial systems. Forensic peer specialists are individuals with histories of mental health and/or substance abuse treatment and criminal justice involvement who are trained to help those with similar histories. They share their experiences as people in recovery and ex-offenders and can help link treatment court participants with housing, employment, educational opportunities, and community services.

## How You Do It: *The Courtroom Environment*

> *When you go into a court you don't know what's going on because you're terrified. There are guns, they've got you chained up, and you're under the influence. All these things are happening at once.* — Trauma Survivor

The courtroom setting can be intimidating, even for individuals who have not experienced violence and trauma in their lives. Many practices may be perceived as shocking and dehumanizing to someone experiencing the court for the first time. For example, in some courts, people are handcuffed and forced to appear in prison jumpsuits. Courtrooms frequently include many signs telling individuals what not to do. For example: "Don't touch court papers." "No cell phones allowed in court." "No food, drinks, or gum," "No T-shirts or tank tops. Dress code enforced." Many of the signs serve to intimidate and separate participants, who may feel as if they are being treated with disdain. There is also concern about how to make the courtroom safe for participants when perpetrators and/or victims of their crimes are in attendance.

The table below highlights some aspects of the physical environment in a typical courtroom, how a trauma survivor might react to them, and how they can be modified. The goal is to promote physical and emotional safety for trauma survivors, as well as for victims, while not sacrificing the security or formality of the judicial proceedings.

## Courtroom Environment

| PHYSICAL ENVIRONMENT | REACTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| The judge sits behind a desk (or "bench"), and participants sit at a table some distance from the bench. | Feeling separate; isolated; unworthy; afraid. | In some treatment courts, the judge comes out from behind the bench and sits at a table in front. |
| Participants are required to address the court from their place at the defendant's table. | Fear of authority; inability to communicate clearly, especially if an abuser is in the courtroom. | When practical, ask the participant to come close; speak to them beside or right in front of the bench. |
| Multiple signs instruct participants about what they are not allowed to do. | Feeling intimidated; lack of respect; untrustworthy; treated like a child. | Eliminate all but the most necessary of signs; word those that remain to indicate respect for everyone who reads them. |
| A court officer jingles handcuffs while standing behind a participant. | Anxiety; inability to pay attention to what the judge is saying; fear. | Eliminate this type of nonverbal intimidation, especially if you have no intention of remanding the individual. Tell the court officers not to stand too close. Respect an individual's personal space. |
| A judge asks a participant to explain her behavior or the impact of abuse without acknowledging the impact of others in the courtroom. | Intimidation or fear of abusers who may be in the courtroom; reluctance to share information in front of family members or others who do not believe them. | Save questions about sensitive issues for when the courtroom is empty or allow the participant to approach the bench. If ongoing abuse or intimidation is suspected, engage those people in activities outside the courtroom while the participant shares her story. |

Treatment court judges who have received training in trauma-informed approaches have cited it as a valuable experience. The purpose of training is not to have judges probe for trauma experiences or do the work of case managers or treatment providers. Rather, the aim is for judges and all court personnel to have a better understanding of trauma, its impact on an individual's behavior in the courtroom and in treatment, and the types of services that help trauma survivors heal. Trauma training can also help you understand what to look for in a trauma-informed service provider before you make a referral. Resources for judicial training are listed at the end of this document.

Serving in a treatment court may result in secondary or vicarious trauma for judicial officers and staff. Because trauma is so prevalent, trainings that provide opportunities for all court personnel to explore their own experiences of trauma may help them better understand their own and participants' behavior and create a safe, healing environment for all.



Knowledge of evidence-based, trauma-specific treatments can help a judge evaluate whether participants referred for community treatment are receiving the services most likely to promote recovery. In many communities, the presence of treatment courts has helped bolster the number and range of trauma services available to individuals with mental health and substance use diagnoses. Judges who understand trauma and its consequences are in a better position to advocate for the development of trauma-specific services and trauma-informed service systems.

## CONCLUSION

Most treatment court participants are survivors of trauma. Many treatment court judges have found that understanding and acknowledging trauma helps to engage participants in services, treatment, and judicial interventions, whether or not they have a trauma-related or other mental health diagnosis. Communicating effectively and respectfully with treatment court participants, eliminating unnecessary court procedures that could be perceived as threatening, and modifying the physical environment to create a sense of safety can help to ensure that trauma survivors benefit from judicial interventions. Training and resources are available to support treatment courts in becoming trauma-informed.

## RESOURCES FOR MORE INFORMATION

**SAMHSA'S National Center on Trauma-Informed Care (NCTIC):** NCTIC provides training, consultation, and other technical assistance to courts, jails and prisons, and other justice system partners. NCTIC also provides free training and materials on the Trauma, Addictions, and Mental Health Recovery (TAMAR) program, a structured, 15-week trauma-specific group intervention for women and men with histories of trauma who are in corrections, state psychiatric hospitals, and community settings. For more information, visit the NCTIC website at http://www.nasmhpd.org/TA/nctic.aspx.

**The National Child Traumatic Stress Network (NCTSN):** NCTSN has developed a suite of products for judges serving traumatized children. They are available free online at www.nctsn.org.

**SAMHSA's National GAINS Center for Behavioral Health and Justice:** The GAINS Center's primary focus is on expanding access to community based services for adults with behavioral health issues at all points of contact with the criminal justice system. The GAINS Center provides technical assistance to several of SAMHSA's justice-related grant programs and to the field, including trauma-informed response trainings, strategic planning workshops, and policy academies. For more information, visit the GAINS Center website at http://gainscenter. samhsa.gov/ or call (800) 311-4246.

# Behavioral Health Is Essential to Health

## Prevention Works

## Treatment is Effective

## People Recover

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Trauma Informed Lawyering SYMPOSIUM

# Reading Recommendations for Panel 1

OHIO STATE BAR FOUNDATION

# Professional Quality of Life Scale (ProQOL)

*Compassion Satisfaction and Compassion Fatigue*
*(ProQOL) Version 5 (2009)*

When you *[help]* people you have direct contact with their lives. As you may have found, your compassion for those you *[help]* can affect you in positive and negative ways. Below are some questions about your experiences, both positive and negative, as a *[helper]*. Consider each of the following questions about you and your current work situation. Select the number that honestly reflects how frequently you experienced these things in the *last 30 days*.

| 1=Never | 2=Rarely | 3=Sometimes | 4=Often | 5=Very Often |
|---|---|---|---|---|

_____ 1. I am happy.
_____ 2. I am preoccupied with more than one person I *[help]*.
_____ 3. I get satisfaction from being able to *[help]* people.
_____ 4. I feel connected to others.
_____ 5. I jump or am startled by unexpected sounds.
_____ 6. I feel invigorated after working with those I *[help]*.
_____ 7. I find it difficult to separate my personal life from my life as a *[helper]*.
_____ 8. I am not as productive at work because I am losing sleep over traumatic experiences of a person I *[help]*.
_____ 9. I think that I might have been affected by the traumatic stress of those I *[help]*.
_____ 10. I feel trapped by my job as a *[helper]*.
_____ 11. Because of my *[helping]*, I have felt "on edge" about various things.
_____ 12. I like my work as a *[helper]*.
_____ 13. I feel depressed because of the traumatic experiences of the people I *[help]*.
_____ 14. I feel as though I am experiencing the trauma of someone I have *[helped]*.
_____ 15. I have beliefs that sustain me.
_____ 16. I am pleased with how I am able to keep up with *[helping]* techniques and protocols.
_____ 17. I am the person I always wanted to be.
_____ 18. My work makes me feel satisfied.
_____ 19. I feel worn out because of my work as a *[helper]*.
_____ 20. I have happy thoughts and feelings about those I *[help]* and how I could help them.
_____ 21. I feel overwhelmed because my case [work] load seems endless.
_____ 22. I believe I can make a difference through my work.
_____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I *[help]*.
_____ 24. I am proud of what I can do to *[help]*.
_____ 25. As a result of my *[helping]*, I have intrusive, frightening thoughts.
_____ 26. I feel "bogged down" by the system.
_____ 27. I have thoughts that I am a "success" as a *[helper]*.
_____ 28. I can't recall important parts of my work with trauma victims.
_____ 29. I am a very caring person.
_____ 30. I am happy that I chose to do this work.


# Professional Quality of Life Scale


# Secondary Trauma Stress Scale

## SA-8. Secondary Traumatic Stress Scale

The following is a list of statements made by persons who have been impacted by their work with traumatized clients. Read each statement then indicate how frequently the statement was true for you in the past **seven (7) days** by circling the corresponding number next to the statement.

NOTE: "Client" is used to indicate persons with whom you have been engaged in a helping relationship. You may substitute another noun that better represents your work such as consumer, patient, recipient, etc.

| | 0 | 1 | 2 | 3 | 4 |
|---|---|---|---|---|---|
| | Never | Rarely | Occasionally | Often | Very Often |
| 1. I felt emotionally numb | | | | | |
| 2. My heart started pounding when I thought about my work with clients | | | | | |
| 3. It seemed as if I was reliving the trauma(s) experienced by my client(s) | | | | | |
| 4. I had trouble sleeping | | | | | |
| 5. I felt discouraged about the future | | | | | |
| 6. Reminders of my work with clients upset me | | | | | |
| 7. I had little interest in being around others | | | | | |
| 8. I felt jumpy | | | | | |
| 9. I was less active than usual. | | | | | |
| 10. I thought about my work with clients when I didn't intend to | | | | | |
| 11. I had trouble concentrating | | | | | |
| 12. I avoided people, places, or things that reminded me of my work with clients | | | | | |
| 13. I had disturbing dreams about my work with clients | | | | | |
| 14. I wanted to avoid working with some clients | | | | | |
| 15. I was easily annoyed | | | | | |
| 16. I expected something bad to happen | | | | | |
| 17. I noticed gaps in my memory about client sessions | | | | | |

## Scoring Instructions

For each subscale below, add your scores for the items listed. Add the three scores in the right hand column for a total score.

| Subscale | Items | Score |
|---|---|---|
| Intrusion | 2<br>3<br>6<br>10<br>13 | |
| Avoidance | 1<br>5<br>7<br>9<br>12<br>14<br>17 | |
| Arousal | 4<br>8<br>11<br>15<br>16 | |
| | Total | |

## Score Interpretation[18]

| Little or No STS | Mild STS | Moderate STS | High STS | Severe STS |
|---|---|---|---|---|
| 27 or less | 28-37 | 38-43 | 44-48 | 49+ |

Trauma Informed Lawyering SYMPOSIUM

# Understanding Secondary Trauma: A Guide for Law Working with Child Victims

OHIO STATE BAR FOUNDATION

September 01, 2015

# Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims

Christina Rainville

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One day recently, Tammy Loveland —a well-regarded victim's advocate who works in a prosecutor's office—did something out of character. A defense lawyer was taking a position that was upsetting a victim. Of course, defense lawyers often need to take positions that upset a victim —there is nothing unusual about that.

On this day, Loveland stormed into a young prosecutor's office and started screaming at the prosecutor about the defense lawyer's demands and telling the prosecutor she was not doing enough to protect the victim. After yelling and using colorful language for several minutes, Loveland burst into tears and fled to her office.

For 18 years, Loveland has worked with countless children (and adults) who have been sexually abused, physically abused, neglected or who have witnessed heinous crimes like murder. She has done it all with endless compassion and grace and never appears fazed by it. Her conduct on this day, however, was the kind that could result in job loss or disciplinary action.

Secondary traumatic stress, also known as vicarious trauma or compassion fatigue, is a condition that mimics post-traumatic stress disorder. It is caused by being indirectly exposed to someone else's trauma. Much has been written about secondary trauma for social workers and therapists who work directly with children and adults who have experienced trauma. Indeed, many social workers and therapists learn about secondary trauma in their coursework and some have regular trainings on secondary trauma once they start working.

Many lawyers, judges, and others who work in the juvenile court system, however, are unaware that secondary trauma might be affecting them or their colleagues. You do not have to work directly with a traumatized child to develop secondary traumatic stress: anyone who works in a courtroom and listens to testimony about traumatic events can be at risk.

Erika Tullberg, an expert on secondary trauma and the resulting secondary traumatic stress, is an assistant professor at New York University's Child Study Center and the director of a federally-funded effort to implement trauma-informed child welfare practice in New York. Tullberg describes secondary trauma as "a behavioral toxin." Not only can one develop secondary traumatic stress from listening to others describe traumatic events, one can also be impacted merely by working in an office where others are suffering from secondary trauma. Tullberg says anyone who has experienced a personal trauma, especially in childhood, can be more vulnerable to developing secondary traumatic stress—especially if the individual is working with clients who have suffered a similar kind of trauma.

Any organization that works with individuals who have suffered trauma should focus on secondary trauma, says Tullberg. Secondary trauma can affect an employee's longevity on the job, as well as the employee's effectiveness.

If you work in the juvenile court system in any capacity, it is important to know the signs, so you can get help if you have symptoms, and support your colleagues when they need help.

- avoidance (e.g.,arriving late, leaving early, missing meetings, avoiding clients, skipping certain questions during interviews),
- hypervigilance (e.g., feeling on edge, perceiving colleagues and clients as threatening, feeling like all clients are in danger),
- seeing things as "black or white" rather than tolerating ambiguity,
- becoming argumentative, and
- shutting down or numbing out (alcohol and drug use are common coping mechanisms).

Tullberg says that organizations often view employees with these symptoms as poor performing workers rather than focusing on the impact that the work has on the employee. Tullberg explains that an organization should not address these symptoms as a disciplinary matter, but rather, organizations should work to do a better job of preparing and sustaining staff through their difficult work.

## Personal life symptoms

Secondary traumatic stress can also impact people's personal lives. Common symptoms can include:

- sleep disturbance and nightmares,

- PTSD symptoms such as intrusive thoughts and memories; severe emotional distress or physical reactions to something that reminds the person of the traumatic event; avoidance of people, places or things that remind the person of the event; irritability, angry outbursts or aggressive behavior; inability to focus; being easily started; hypervigilance,
- extreme fatigue/always tired,
- negative thinking and a tendency to become upset about everything,
- strained relationships with family and friends,
- compromised parenting, and
- doubts about whether the world is a safe place.

Tullberg believes training about secondary trauma is key. She notes that organizations provide training on the nuts and bolts of doing the job, but often do not provide training on the emotional impact of the work.

## Sources of Secondary Traumatic Stress

Loveland's situation is a good example of how secondary traumatic stress develops. Her outburst with the prosecutor involved a victim who had recently attempted suicide. The victim's only adult "family" was the abuser, so when the victim showed up in the emergency room after attempting suicide, the police called Loveland looking for a family contact. There was no one, so Loveland

Working with individuals suffering from suicidal thoughts or behaviors is part of working in the juvenile and criminal court systems. Loveland had previously worked closely with a victim who committed suicide, and that changed her forever. She found, years later, that it was not something she could ever get over.

The victim who committed suicide had had lifelong mental health issues stemming from horrific sexual abuse as a child. She had spent her life in and out of mental health hospitals. She was hospitalized multiple times during the case. She had been raped by a serial rapist who preyed on vulnerable women with mental health issues and other disabilities. Everyone wanted him prosecuted; the only question was whether the stress of the pending case was too much for the victim. She seemed to be handling it okay. She said she was okay. Her therapist gave the go-ahead at every step of the proceeding. After the defendant pled guilty, she came to the sentencing and seemed happy with the result. Loveland took her out to lunch the day after the verdict, and she seemed fine. Two days later she was gone.

To Loveland, her personal second-guessing was unending. Was the victim unhappy with the sentence? Was the pressure of the case too much for her? Had the case triggered the trauma of her youth? Were signs somehow missed that she was in danger?

Loveland explains that after that suicide, she became hypervigilant. She obsessed about whether every person she works with might be thinking about suicide. She asked victims questions to assess their mental health that she never would have asked before; and she thought about it—constantly.

Given Loveland's prior trauma of having a victim commit suicide, her behavior with the prosecutor in the second case made sense. Someone who has been through the trauma of losing one victim to suicide would be emotional and "over the top" when another victim, who had previously attempted suicide, was being pushed to the edge.

Loveland also thinks her issues with secondary traumatic stress began before the suicide. After having a child, it became difficult to sit through meetings about child sexual abuse. She says she started squirming and could not stop thinking about whether she was doing enough to protect her child from the abuse she was hearing about during the workday. It became difficult to listen to details without feeling physically uncomfortable and wanting to leave the room. Loveland, the ultimate professional, never let her colleagues know the work conversations were keeping her up at night. She suffered in silence and never complained, but 18 years of working with trauma victims had an effect.

## Addressing Secondary Trauma

Tullberg describes two kinds of help for secondary traumatic stress: self-help, and organizational help.

## Self-Help

**Take care of general health and well-being.** Tullberg recommends a number of self-help measures, some of which she describes as "general health" recommendations: take regular vacations; exercise regularly; get enough sleep; eat well, etc. In addition, Tullberg recommends leaving the office at a reasonable hour each day, not working outside office hours except in an emergency, and having an agreement with your colleagues not to contact each other off-hours unless it is truly an emergency. People who work in trauma-related fields need defined breaks and should not be checking their emails and texts every few minutes, all night, and on weekends. Put it away, but have some mechanism for people to reach you if there is a true emergency.

It is also important to focus on things you like to do, whether it be art, writing, being connected to your community or friends.

**Perform self-assessments.** It is important for employees to do regular "self-assessments" or "check-ins." Free online surveys can help employees gauge where things stand and whether a problem is developing. Two tools to consider:

- Proqol.org has a self-assessment tool to help employees gauge where they stand on the "compassion fatigue/burnout" scale. It also looks at "compassion satisfaction," or the positive aspects of one's work.

- Secondary Traumatic Stress Scale

These kinds of self-assessments can be helpful, as it is easy to lose perspective when one is in the thick of things.

**Focus on positive job aspects.** Tullberg recommends taking time to focus on positive job aspects and the things that go well, rather than focusing on the trauma. Taking time to do this with colleagues, rather than alone, can help combat the negativity that can develop within a group that is impacted by secondary trauma.

**Take vacations.** Loveland finds it helpful to take long vacations as often as possible. She recommends taking two-week vacations because she finds that it takes a few days from work just to begin to unwind.

## Organizational Help

While self-help can play an important role in recovery, organizational-level interventions are key. Some organizations look to the employees to "cure" themselves, but that is not a reasonable expectation. Other organizations look to a "quick fix" of running one training session. Tullberg says the most effective programs involve an organization's long-term commitment to actively

These surveys can help the employee recognize a developing problem before it gets out of control. These surveys also can be done anonymously but collected by the agency so that the organizational leadership gets an accurate reflection of how the staff is doing on an ongoing basis.

**Focus on changing the workplace and organizational culture.** Is this an office where everyone works until 8 p.m. and it is a badge of honor to work long hours? Is everyone expected to respond to emails within five minutes, 24/7, including on the weekend and while on vacation? If so, the culture at the organization will need to change. People who are working around trauma need regular, defined breaks in their schedule.

**Create a supportive atmosphere.** Do supervisors take time to support employees? Or do people get reactive and bounce their reactivity off each other, such that, when one person is over-reacting to a situation, or unable to accept ambiguity (for example, perhaps that parent did not mean to hurt the child?), others join in and escalate the response? Is this the kind of office where everyone "one-ups" each other in gruesome details about the cases they are working on? Or do people support each other when discussing trauma and only share limited information on a need-to-know basis or when an employee needs support from a colleague?

**Be sensitive when discussing cases.** Loveland recommends greater sensitivity when discussing case details. Even though employees may seem "numb" to the trauma, she points out that topics being discussed can be sensitive for people in the room who do not want to let on that they are suffering. She recommends toning down the discussions and not going into detail unless it is essential for the group to hear.

**"Normalize" conversation around secondary traumatic stress.** Organizations should spread the message that secondary trauma symptoms are not a sign of weakness or failure, says Tullberg. The message should be that this is a "normal response to doing this kind of work." Organizations also need to train employees so they understand the symptoms and can talk openly about it.

## How to Help a Colleague

Many people who work in the juvenile court system might recognize the signs of secondary traumatic stress in a colleague, but not know how to help. Approaching colleagues can be difficult, unless the organization's culture normalizes secondary traumatic stress so everyone feels comfortable having that conversation. Some steps to take:

- Talk about your own struggles with the work as a way to start the conversation.
- Forward helpful resources. The National Child Traumatic Stress Network has a number of helpful resources on secondary trauma.
- Raise the topic at a staff meeting.
- Host a broader training in your office.

## Conclusion

Secondary traumatic stress is a normal consequence of the work we do, but we can all work to limit its prevalence and its symptoms.

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ABA American Bar Association
/content/aba-cms-dotorg/en/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with

Trauma Informed Lawyering SYMPOSIUM

# Judge Bench Cards

OHIO STATE BAR FOUNDATION

NCTSN The National Child Traumatic Stress Network

NCJFCJ est. 1937 NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES WWW.NCJFCJ.ORG

# NCTSN BENCH CARD

## FOR THE TRAUMA-INFORMED JUDGE

Research has conclusively demonstrated that court-involved children and adolescents present with extremely high rates of traumatic stress caused by their adverse life experiences. In the court setting, we may perceive these youth as inherently disrespectful, defiant, or antisocial, when, in fact, their disruptive behavior may be better understood in the context of traumatic stress disorders. These two Bench Cards provide judges with useful questions and guidelines to help them make decisions based on the emerging scientific findings in the traumatic stress field. These cards are part of a larger packet of materials about child and adolescent trauma available and downloadable from the NCTSN Trauma-Informed Juvenile Justice System Resource Site* and are best used with reference to those materials.

1. **Asking trauma-informed questions can help judges identify children who need or could benefit from trauma-informed services from a mental health professional. A judge can begin by asking, "Have I considered whether or not trauma has played a role in the child's[1] behavior?" Use the questions listed below to assess whether trauma-informed services are warranted.**

   **TRAUMA EXPOSURE:** Has this child experienced a traumatic event? These are events that involve actual or threatened exposure of the child to death, severe injury, or sexual abuse, and may include domestic violence, community violence, assault, severe bullying or harassment, natural or man-made disasters, such as fires, floods, and explosions, severe accidents, serious or terminal illness, or sudden homelessness.

   **MULTIPLE OR PROLONGED EXPOSURES:** Has the child been exposed to traumatic events on more than one occasion or for a prolonged period? Repeated or prolonged exposure increases the likelihood that the child will be adversely affected.

   **OUTCOMES OF PREVIOUS SANCTIONS OR INTERVENTIONS:** Has a schedule of increasingly restrictive sanctions or higher levels of care proven ineffective in this case? Traumatized children may be operating in "survival mode," trying to cope by behaving in a defiant or superficially indifferent manner. As a result, they might respond poorly to traditional sanctions, treatments, and placements.

   **CAREGIVERS' ROLES:** How are the child's caregivers or other significant people helping this child feel safe or preventing (either intentionally or unintentionally) this child from feeling safe? Has the caregiver been a consistent presence in the child's life? Does the caregiver acknowledge and protect the child? Are caregivers themselves operating in survival mode due to their own history of exposure to trauma?

   **SAFETY ISSUES FOR THE CHILD:** Where, when and with whom does this child feel safest? Where, when and with whom does he or she feel unsafe and distrustful? Is the home chaotic or dangerous? Does a caregiver in the household have a restraining order against another person? Is school a safe or unsafe place? Is the child being bullied at school or does the child believe that he or she is being bullied?

   **TRAUMA TRIGGERS IN CURRENT PLACEMENT:** Is the child currently in a home, out-of-home placement, school, or institution where the child is being re-exposed to danger or being "triggered" by reminders of traumatic experiences?

   **UNUSUAL COURTROOM BEHAVIORS:** Is this child behaving in a highly anxious or hypervigilant manner that suggests an inability to effectively participate in court proceedings? (Such behaviors include inappropriate smiling or laughter, extreme passivity, quickness to anger, and non-responsiveness to simple questions.) Is there anything I, as a judge, can do to lower anxiety, increase trust, and enhance participation?

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This project was funded by the Substance Abuse and Mental Health Services Administration (SAMHSA), US Department of Health and Human Services (HHS). The views, policies, and opinions expressed are those of the authors and do not necessarily reflect those of SAMHSA or HHS.

2. **It is crucial to have complete information from all the systems that are working with the child and family. Asking the questions referenced below can help develop a clearer picture of the child's trauma and assess needs for additional information.**

   **COMPLETENESS OF DATA FOR DECISIONS:** Has all the relevant information about this child's history been made available to the court, including child welfare and out-of-jurisdiction or out-of-state juvenile justice information?

   **INTER-PROFESSIONAL COOPERATION:** Who are the professionals who work with this child and family? Are they communicating with each other and working as a team?

   **UNUSUAL BEHAVIORS IN THE COMMUNITY:** Does this child's behavior make sense in light of currently available information about the child's life? Has the child exhibited extreme or paradoxical reactions to previous assistance or sanctions? Could those reactions be the result of trauma?

   **DEVELOPMENT:** Is this child experiencing or suffering from emotional or psychological delays? Does the child need to be assessed developmentally?

   **PREVIOUS COURT CONTACTS:** Has this child been the subject of other court proceedings? (Dependency/Neglect/Abuse; Divorce/Custody; Juvenile Court; Criminal; Other)

   **OUT-OF-HOME PLACEMENT HISTORY:** How many placements has this child experienced? Have previous placements been disrupted? Were the disruptions caused by reactions related to the child's trauma history? How did child welfare and other relevant professionals manage these disruptions?

   **BEHAVIORAL HEALTH HISTORY:** Has this child ever received trauma-informed, evidence-based evaluation and treatment? (Well-intentioned psychiatric, psychological, or substance abuse interventions are sometimes ineffective because they overlook the impact of traumatic stress on youth and families.)

3. **Am I sufficiently considering trauma as I decide where this child is going to live and with whom?**

   **PLACEMENT OUTCOMES:** How might the various placement options affect this child? Will they help the child feel safe and secure and to successfully recover from traumatic stress or loss?

   **PLACEMENT RISKS:** Is an out-of-home placement or detention truly necessary? Does the benefit outweigh the potential harm of exposing the child to peers who encourage aggression, substance use, and criminal behavior that may possibly lead to further trauma?

   **PREVENTION:** If placement, detention or hospitalization is required, what can be done to ensure that the child's traumatic stress responses will not be "triggered?" (For example, if placed in isolation or physical restraints, the child may be reminded of previous traumatic experiences.)

   **DISCLOSURE:** Are there reasons for not informing caregivers or staff at the proposed placement about the child's trauma history? (Will this enhance care or create stigma and re-victimization?)

   **TRAUMA-INFORMED APPROACHES:** How does the programming at the planned placement employ trauma-informed approaches to monitoring, rehabilitation and treatment? Are staff knowledgeable about recognizing and managing traumatic stress reactions? Are they trained to help children cope with their traumatic reactions?

   **POSITIVE RELATIONSHIPS:** How does the planned placement enable the child to maintain continuous relationships with supportive adults, siblings or peers?

4. **If you do not have enough information, it may be useful to have a trauma assessment done by a trauma-informed professional. Utilizing the NCTSN BENCH CARD FOR COURT-ORDERED TRAUMA-INFORMED MENTAL HEALTH EVALUATION OF CHILD, you can request information that will assist you in making trauma-informed decisions.**

[1] The use of "child" on this bench card refers to any youth who comes under jurisdiction of the juvenile court.
*http://learn.nctsn.org/course/view.php?id=74

NCTSN The National Child Traumatic Stress Network

NCJFCJ est. 1937 NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES WWW.NCJFCJ.ORG

# NCTSN BENCH CARD

## FOR COURT-ORDERED TRAUMA-INFORMED MENTAL HEALTH EVALUATION OF CHILD: SAMPLE ADDENDUM

This Court has referred this child[1] for mental health assessment. Your report will assist the judge in making important decisions. Please be sure the Court is aware of your professional training and credentials. In addition to your standard psychosocial report, we are seeking trauma-specific information. Please include your opinion regarding the child's current level of danger and risk of harm. The Court is also interested in information about the child's history of prescribed psychiatric medications. We realize that you may be unable to address every issue raised below, but the domains listed below are provided as an evidence-based approach to trauma-informed assessment.

### 1. SCREENING AND ASSESSMENT OF THE CHILD AND CAREGIVERS

Please describe the interview approaches (structured as well as unstructured) used for the evaluation. Describe the evidence supporting the validity, reliability, and accuracy of these methods for children or adolescents. For screens or tests, please report their validity and reliability, and if they were designed for the population to which this child belongs. If feasible, please report standardized norms.

Discuss any other data that contributed to your picture of this child. Please describe how the perspectives of key adults have been obtained. Are the child's caregivers or other significant adults intentionally or unintentionally preventing this child from feeling safe, worthy of respect, and effective? Are caregivers capable of protecting and fostering the healthy development of the child? Are caregivers operating in "survival mode" (such as interacting with the child in a generally anxious, indifferent, hopeless, or angry way) due to their own history of exposure to trauma? What additional support/resources might help these adults help this child?

### 2. STRENGTHS, COPING APPROACHES, AND RESILIENCE FACTORS

Please discuss the child's existing strengths and coping approaches that can be reinforced to assist in the recovery or rehabilitation process. Strengths might include perseverance, patience, assertiveness, organization, creativity, and empathy, but coping might take distorted forms. Consider how the child's inherent strengths might have been converted into "survival strategies" that present as non-cooperative or even antisocial behaviors that have brought this child to the attention of the Court.

Please report perspectives voiced by the child, as well as by caregivers and other significant adults, that highlight areas of hope and recovery.

### 3. DIAGNOSIS (POST TRAUMATIC STRESS DISORDER [PTSD])

Acknowledging that child and adolescent presentations of PTSD symptoms will differ from adult presentations, please "rule-in" or "rule-out" specific DSM-V criteria for PTSD for adolescents and children older than six years, which include the following criteria:

- Exposure to actual or threatened death, serious injury, or sexual violence, either experienced directly, witnessed, or learning that the event occurred to a close family member or friend (Criteria A)
- Presence of intrusion symptoms such as intrusive memories, distressing dreams, flashbacks, physical reactions, trauma-specific re-enactment through play, psychological distress at exposure to cues (Criteria B)
- Avoidance of stimuli or reminders associated with the traumatic event, including avoidance of internal thoughts and feelings related to the event, as well as external activities, places, people, or situations that arouse recollections of the event (Criteria C)

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- Negative changes in cognition, mood, and expectations; diminished interest in, detachment, and estrangement from others; guilt and shame; socially withdrawn behavior; reduction in positive emotions (Criteria D)
- Alterations in arousal and reactivity, including irritable or aggressive behavior, angry outbursts, reckless or self-destructive behavior, hypervigilance, exaggerated startle response, concentration problems, and sleep disturbance (Criteria E)
- Exhibiting these disturbances in behavior, thoughts and mood for over a month (Criteria F)
- Significant distress or impairment in relationships with parents, siblings, peers, or other caregivers or with school behavior (Criteria G)
- The disturbed behavior and mood cannot be attributed to the effects of a medication, street drug, or other medical condition (Criteria H)

PTSD can also be present for children ages six and younger. Criteria include exposure; intrusive symptoms, including distressing memories or play re-enactment and physiological reactions to reminders; avoidance of people, conversations or situations; negative emotional states such as fear, sadness, or confusion, sometimes resulting in constriction of play; irritable behavior and hypervigilance; and impairment in relationships with parents, siblings, peers or other caregivers.

Even if an official DSM-V diagnosis of PTSD is not warranted, traumatic stress reactions can definitely or potentially contribute to the child's behavioral, emotional, interpersonal, or attitudinal problems. Traumatic stress reactions may contribute to problems with aggression, defiance, avoidance, impulsivity, rule-breaking, school failure or truancy, running away, substance abuse, and an inability to trust or maintain cooperative and respectful relationships with peers or adults.

## 4. TRAUMA-INFORMED SERVICES

Has this child ever received Trauma-Focused, Evidence-Based Treatment?*** Sometimes well-intentioned psychiatric, psychological, social work, or substance abuse evaluations and treatment are incomplete and of limited effectiveness because they do not systematically address the impact of children's traumatic stress reactions.

The Court is interested in potential sources of trauma-informed services in your area and your thoughts about the likelihood that the child can receive those services.

In the meantime, what can be done immediately for and with the family, school, and community to enhance safety, build on the child's strengths, and to provide support and guidance? How can this child best develop alternative coping skills that will help with emotional and behavioral self-regulation?

## 5. SUGGESTIONS FOR STRUCTURING PROBATION, COMMUNITY SUPERVISION AND/OR PLACEMENT OPTIONS.

Structured case plans for probation, community supervision, and/or placement should consider the ability of the setting and the people involved to assist the child in feeling safe, valued, and respected. This is especially important for traumatized children. Similarly, the plan for returning home, for continuing school and education, and for additional court or probationary monitoring should also clearly address each child's unique concerns about safety, personal effectiveness, self-worth, and respect. Please consider where, when, and with whom this child feels most safe, effective, valued and respected. Where, when, and with whom does the child feel unsafe, ineffective, or not respected? What out-of-home placements are available that can better provide for this child's health and safety, as well as for the community's safety? What placements might encourage success in school, relationships, and personal development?

[1] The use of "child" on this bench card refers to any youth who comes under jurisdiction of the juvenile court.

*** Trauma-Focused, Evidence-Based (TI-EB) Treatment is science-based, often requires training in a specific protocol with careful clinical supervision, and emphasizes the treatment relationship, personal/psychological safety, emotional and behavioral self-regulation, development of coping skills, specific treatment of child traumatic experiences, and development of self-enhancing/pro-social thinking, feeling, decision-making, and behaving. TI-EB treatments include: Trauma-Focused Cognitive Behavioral Therapy, Parent-Child Interaction Therapy, Trauma Affect Regulation: Guidelines for Education and Therapy, Child Parent Psychotherapy and more. See website: http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices


# Trauma-Informed Court

# JUVENILE COURT TRAUMA-INFORMED PRACTICES

## CONSIDERING TRAUMA IN CHILDREN

### EXPOSURE TO TRAUMA

A traumatic experience may be defined as an event involving actual or threatened exposure to death, severe injury, or sexual abuse. Complex trauma, exposure to multiple or prolonged traumatic events, increases the likelihood and severity of a reaction to the trauma.

- Has the child been exposed to abuse, including physical or sexual, or domestic violence?
- Has the child been exposed to substance abuse in the home?
- Has the child experienced a severe accident or major illness?
- Has the child experienced significant grief due to a major loss?
- Has the child experienced a natural or man-made disaster?
- Has the child been subjected to community violence, including gang activity?
- Has the child experienced an assault, harassment, or bullying?
- Has the child experienced homelessness?
- Has the child been exposed to multiple or prolonged traumatic events?

### EFFECTS OF TRAUMA

Trauma may cause children to act in "survival mode," causing maladaptive coping behaviors such as defiance, superficial indifference, inappropriate smiling or laughter, extreme passivity, quickness to anger, and non-responsiveness to simple questions.

- Have previous sanctions against the child been unsuccessful?
- Does the child exhibit unusual behaviors in the courtroom or out in the community?
- Are there signs of distress in the parent-child relationship, e.g., a distant or disapproving relationship, inconsistent or inappropriate response to the child?
  - Does the birth parent have a history of trauma?
- Are the child's caregivers helping or preventing the child from feeling safe?
  - Does the child have a protective caregiver?
  - Have the caregivers been a consistent presence in the child's life?
- Are there people or places that do not make the child feel safe?
  - Is the environment chaotic or dangerous?
  - Is the child at risk of being re-exposed to trauma or triggered by reminders of traumatic experiences?

## RELEVANT INFORMATION

- Does the court have all the information regarding the child's history, including child welfare reports and any other court proceedings involving the child?
- Is the court aware of all the professionals working with the child? Do they coordinate care and communicate with the court?
- Has the child been assessed for developmental delays, learning problems, or mental health diagnoses?
  - If not and concerns have been recognized, order appropriate evaluations.
- Has the child received trauma-informed, evidence-based evaluation and treatment?
- Has the child ever been placed outside of the home?
  - If so, was the child successful in the placement?
  - If previous disruptions, were the behaviors leading to disruption related to triggers that may be associated with the child's trauma history?
  - Were placement changes managed in a trauma-informed manner?
  - If child is in placement, has the caregiver provided any reports on the child's adjustment and behavior?

## OUT-OF-HOME PLACEMENT

Placement, even if necessary, may be a traumatizing event. When making placement decisions, consider child's trauma history and the effect of the placement.

- What is the best placement option to recover from traumatic stress or loss? Will the child feel safe and secure?
- Will the child be harmed by being exposed to peers with similar histories of trauma or the potential of further exposure to traumatic events, i.e., aggression?
- Can safeguards be put into place to minimize the child's triggers, i.e., could isolation or physical restraint cause a traumatic response?
- Will disclosing the child's history of trauma to the caregivers or staff enhance care or re-victimize the child?
- Are the caregivers and staff knowledgeable about recognizing and managing trauma reactions to help support the child's safety and ability to recover from the traumatic stress?
- How will the child maintain contact with supportive adults, siblings, and peers, as appropriate?

Juvenile Court Trauma-Informed Practices was prepared by the Children and Families Section in collaboration with its Advisory Committee on Children and Families. Special thanks to the National Council of Juvenile and Family Court Judges and National Child Traumatic Stress Network for granting Ohio permission to adapt the Bench Card for the Trauma Informed Judge for the courts. The points of view in this piece are those of the authors and may not represent the official policies or positions of the Supreme Court of Ohio. Funding for the creation and distribution of this publication was provided through a grant from the U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, State Court Improvement Program Grant awarded under the provisions of Section 438 of the Social Security Act; Section 7401 of the Deficit Reduction Act of 2005 (Public Law 109-171); Titles IV-B and IV-E of the Social Security Act; and the Child and Family Services Improvement and Innovation Act Public Law (112-34).

# STRATEGIES FOR TRAUMA-INFORMED COURTS

## COURTROOM PRACTICES[1]

- Provide opportunities for education to all staff on the adverse effects of traumatic events on children and appropriate responses to prevent further traumatization and minimize the reactivation of traumatic response.
- Appoint legal representation who understand the effect of trauma on children and families.
- Apply procedural justice principles in all court proceedings, including explaining proceedings to the children and their families, inquiring about their needs, and asking their input, as appropriate.
- Promote diversion programs that result in the least restrictive level of court involvement.
- Develop cross-system collaboration.
- Identify treatment and other social service providers who have expertise in evidence-based trauma assessment and interventions.
- Implement procedures to identify children involved in multiple systems, e.g., crossover youth.
- Ensure that language barriers or cognitive limitations do not limit access to trauma-informed services.
- Promote opportunities to prevent and manage the effects of secondary traumatic stress, including access to resources, e.g., employee assistance programs.

## PARENTS WITH TRAUMA HISTORIES[2]

Parents' own experience of trauma may impact their ability to act as parents.

- Traumatic experiences may present difficulty with:
  - Making appropriate safety judgments.
  - Meeting their children's emotional needs.
  - Forming trusting relationships, including with their children.
  - Managing their own and their children's emotions.
  - Managing other stresses, such as poverty, racism, substance abuse, and lack of social support.

Court experiences may trigger or re-traumatize parents, causing a parent to appear numb, disengaged, or defensive.

- Strategies that may be useful with traumatized parents include:
  - Let the parent know that attorneys and judges want to help them and their families, especially if the parents appear numb or disengaged.
  - Build on the parent's strengths and their desires to be effective.
  - Become familiar with providers who can perform trauma assessments and have experience treating trauma and co-occurring disorders, e.g., substance abuse and other mental health disorders, in adults.

1 National Child Traumatic Stress Network. (2016) Essential Elements of a Trauma Informed Juvenile Justice System.

2 National Child Traumatic Stress Network, Child Welfare Committee. (2011). Birth parents with trauma histories and the child welfare system: A guide for judges and attorneys. Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress.

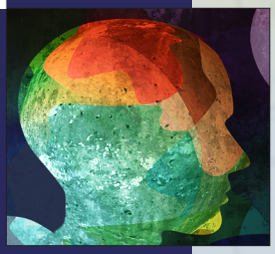
## FOSTER RESILIENCE[3]

Adverse childhood experiences (ACEs) create toxic stress which may damage the developing brains of children and affect their mental and physical health.

- Identify services for parents and caregivers that promote problem-solving and healthy relationships.
- Identify services for parents and caregivers that provide education on ACEs and healthy child development.
- Support the nurturing relationships and attachments that children have with their caregivers and other adults.
- Look for ways to increase a child's social connections.
- Ensure the basic needs of the child are being met consistently.
- Consider supports or interventions that build social and emotional skills.
- Evaluate the children's support network to ensure they are physically and emotionally safe.
- Identify services for children that promote a safe environment to identify and manage emotions.

3 Community & Family Services Division at the Spokane (WA) Regional Health District. Stress and Early Brain Development: Understanding Adverse Childhood Experiences (ACEs).


# Trauma and Trauma-Informed Responses



# Trauma and Trauma-Informed Responses

**Think of a time** a court participant did or said something startling, failed to follow through with a court order, or acted in a way contrary to their best interest. It may be difficult to understand why they acted in that manner. For some individuals, their actions and reactions are a result of having experienced trauma.

Many people who come into contact with the justice system, across all case types and courtrooms, have experienced traumatic events in their lives. Seventy percent of adults in the U.S., 223.4 million people,[1] have experienced some type of traumatic event at least once in their lives. Youth in foster care are more likely than the general population to have directly experienced violence themselves, specifically abuse and/or neglect.[2] Over 90 percent of youth in the justice system have experienced at least one trauma, 84 percent experienced more than one trauma, and over 55 percent reported being exposed to trauma six or more times.[3]

Experiences of trauma influence the way individuals act and react to a perceived threat. Judges who are trauma-informed expect the presence of trauma, take care not to replicate it, and understand that it may affect court participants' feelings and behavior, as well as their success in treatment. Understanding trauma and applying trauma-informed responses helps judges to more effectively engage court participants and increase their likelihood for success.

## TRAUMA

"Trauma has no boundaries regarding age, gender, socioeconomic status, race, ethnicity, or sexual orientation. Trauma is a common experience for adults and children in American communities, and it is especially common in the lives of people with mental and substance use disorders."[4] For this reason, the need to identify and address trauma is increasingly seen as an important part of effective court practices, behavioral health care, and the healing and recovery process. "Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being."[5] There are three components to trauma: the event, experience, and effects.

[1] The National Council for Behavioral Health, How to Manage Trauma, https://www.thenationalcouncil.org/wp-content/uploads/2013/05/Trauma-infographic.pdf?daf=375ateTbd56

[2] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3667554/

[3] https://www.nctsn.org/sites/default/files/resources//judges_child_trauma_findings_nctsn_njcfcj_focus_groups.pdf

[4] SAMHSA, Trauma and Violence, https://www.samhsa.gov/trauma-violence#:~:text=SAMHSA%20describes%20individual%20trauma%20as,physical%2C%20social%2C%20emotional%2C%20or

[5] *Ibid.*

**Event.** Trauma can include a direct encounter with a dangerous or threatening event, or it can be an event that is witnessed. Events are traumatic when they overwhelm a person's capacity to cope and elicit intense feelings such as fear, terror, helplessness, hopelessness, and despair. Traumatic events vary in intensity and duration. Examples of traumatic events include living in combat and warzones, physical or sexual abuse, witnessing or experiencing domestic violence, rape, school violence, forced displacement, accidents, natural disasters, fires, or acts of terrorism. Common examples of traumatic events for children include the sudden death of a loved one or living with a caregiver with substance use disorder or severe mental health needs. Historical and cultural trauma can be experienced over time and across generations by groups of people who have been subject to oppression.

**Experience.** Everyone reacts differently to traumatic events, depending on the type, severity, duration, and frequency of the event. An individual's existing health issues, coping mechanisms, and ability to build resistance, are also factors. The ability to adapt well in the face of adversity is referred to as resiliency. Individuals who have strong family ties, extensive social networks, connection to the community, employment, or strong cultural or religious beliefs are often more resilient and better able to cope with a traumatic event.[6]

**Effects.** Trauma has a pervasive impact in numerous aspects of a person's life and overall functioning. Experiencing trauma can cause long-term emotional, behavioral, and physical difficulties. Individuals can become hypervigilant living in a constant state of fight or flight response; they may flee from triggering events through social isolation or dissociation, or they may be quick to respond to perceived threats with aggression, violence, rage, and threats. They may develop coping strategies that were protective at the time of the traumatic event but become maladaptive over time, such as self-harming behaviors, substance use, or eating disorders. They often have difficulty assessing risk to themselves or their children, regulating their emotions, and helping their children to regulate their emotions. Some individuals develop mental health issues such as depression or anxiety as a result of trauma. Further, experiencing trauma as a child has been linked to physical health complications as an adult, including heart disease and cancer.

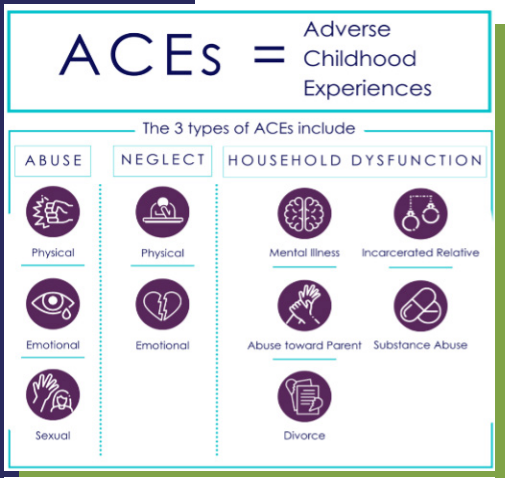
Moreover, trauma can influence the person's ability to feel safe and to trust and engage with judges, probation officers, caseworkers, service providers, and others.

[6] American Psychological Association, Building Your Resilience, https://www.apa.org/topics/resilience

## THE COURT'S ROLE IN IDENTIFYING AND ADDRESSING TRAUMA

When court professionals are aware of how traumatic experiences impact behavior, they can better understand how to effectively support the individual. Sometimes this means diverting the individual from the justice system entirely to a treatment option, and other times it means being intentional about how to interpret their actions, work with them, and manage cases.

There are standardized screening tools to help court professionals identify whether an individual has experienced trauma and whether there is a need for further assessment by a clinician. "Trauma screening is a brief, focused inquiry to determine whether an individual has experienced one or more traumatic events, has reactions to such events, has specific mental or behavioral health needs, and/or needs a referral for a comprehensive trauma-informed mental health assessment."[7]




Adverse Childhood Experiences Study (ACES) – Advokids: A Legal Resource for California Foster Children and Their Advocates, https://advokids.org/adverse-childhood-experience-study-aces/

There are several trauma screenings available. Some are self-administered, while others must be conducted by a clinician. When courts decide to implement a trauma screening, there must be a process for using the information gathered to refer the individual for further assessment or other support services. It can be damaging and retraumatizing to conduct a trauma screening, ask an individual to disclose traumatic events, and then do nothing beneficial with the information.

A commonly used trauma screening tool is the Adverse Childhood Experiences (ACEs)[8]. This self-administered screener poses questions regarding three types of trauma: abuse, neglect, and household dysfunction. The ACEs screener identifies the number and type of traumatic events an individual has experienced but does not describe how those events have affected an individual's thinking or behavior.

Other types of screening tools describe physical and mental symptoms that may be present in individuals who have experienced trauma. For example, the PTSD Checklist for DSM-5 (PCL-5)[9] is a screening tool for use with adults. This tool can be self-administered or administered by a clinician and can indicate the need for further mental health assessment. There are several similar tools for children and youth, such as the Child Trauma Screen (CTS).[10] The CTS does not require a clinician and can be administered by professionals who have been trained in child trauma and screening. Other trauma screens can be found at the National Center for PTSD.[11]

[7] National Child Traumatic Stress Network

[8] https://www.acesaware.org/learn-about-screening/screening-tools/

[9] U.S. Department of Veterans Affairs, National Center for PTSD https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp

[10] Child Health and Development Institute of Connecticut, https://www.chdi.org/our-work/mental-health/trauma-informed-initiatives/ct-trauma-screen-cts/

[11] U.S. Department of Veterans Affairs, National Center for PTSD, https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp#obtain

## TRAUMA-INFORMED APPROACH

The description "trauma-informed" means that there is an underlying understanding that trauma is a common experience, that traumatic experiences impact the way individuals respond and react, and there is intentional effort not to worsen or retraumatize individuals. SAMHSA promotes six key principles of a trauma-informed approach,[12] and these principles can be applied to the court experience.


Centers for Disease Control and Prevention, Infographic: 6 Guiding Principles to a Trauma-Informed Approach, https://www.cdc.gov/cpr/infographics/6_principles_trauma_info.htm

1. **Safety.** All individuals in the courthouse feel physically and psychologically safe.
2. **Trustworthiness and Transparency.** Operations and decisions are transparent with the goal of building trust between court participants and court professionals.
3. **Peer Support.** The court supports opportunities for peer support and mutual self-help.
4. **Collaboration and Mutuality.** There is a culture of building relationships and problem-solving both among court professionals and in interactions with court participants.
5. **Empowerment, Voice, and Choice.** The court honors the court participant's ability to advocate for themselves and ensures that court participants have an opportunity to share in decisionmaking.
6. **Cultural, Historical, and Gender Issues.** The court recognizes and addresses historical trauma and provides access to culturally responsive services.

## TRAUMA-INFORMED JUDICIAL PRACTICE

Many judges have found that understanding and acknowledging the impact of trauma can help them to engage court participants in services, treatment, and judicial interventions. Communicating effectively and respectfully with individuals, eliminating court procedures that could be perceived as threatening, and modifying the physical environment, where possible, to create a sense of safety are some of the ways that judges can adopt a trauma-informed approach.[13]

SAMHSA's publication, *Essential Components of Trauma-Informed Judicial Practice*, states "Trauma-informed judicial interactions begin with good judicial practice, treating individuals who come before the court with dignity and respect. Judges who are trauma-informed expect the presence of trauma, take care not to replicate it, and understand that it may affect court participants' feelings and behavior, as well as their success in treatment. Trauma-informed

[12] https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf

[13] SAMHSA, Essential Components of Trauma-Informed Judicial Practice, https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

judges work closely with court personnel and other members of the team—attorneys, court coordinators, case managers, and treatment providers— to ensure an individualized approach that maximizes opportunities for a positive treatment outcome."

Judges who are trauma-informed are intentional about the language used in their courtroom and the way that they interact with court participants. The table below provides some examples of comments a judge might make; how a trauma survivor might hear or perceive that comment; and another, more trauma-informed method. For more information about trauma-informed courtrooms, see SAMHSA's Essential Components of Trauma-Informed Judicial Practice.

**COURTROOM COMMUNICATION**

| JUDGE'S COMMENT | PERCEPTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| "Your drug screen is dirty." | "*I'm dirty.* There is something wrong with me." | "Your drug screen shows the presence of drugs." |
| "Did you take your pills today?" | "I'm a failure. I'm a bad person. No one cares how the drugs make me feel." | "Are the medications your doctor prescribed working well for you?" |
| "You didn't follow the contract, you're going to jail; we're done with you. There is nothing more we can do." | "I'm hopeless. Why should I care how I behave in jail? They expect trouble anyway." | "Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you." |
| "I'm sending you for a mental health evaluation." | "I must be crazy. There is something wrong with me that can't be fixed." | "I'd like to refer you to a doctor who can help us better understand how to support you." |

SAMHSA, Essential Components of Trauma-Informed Judicial Practice, https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

## RECOMMENDATIONS FOR BECOMING A TRAUMA-INFORMED COURT

Communication, processes and procedures, and courtroom environment all play a role in creating a trauma-informed courtroom. Both system-level and courtroom-level changes are needed to improve court participants' sense of safety, reduce exposure to traumatic reminders, and equip individuals with tools to cope with traumatic stress.[14] Experts recommend several strategies to instill a trauma-informed approach in a court.

**Assess current courtroom practices and environment.** Walk through the courthouse and processes as a court participant would, applying a trauma-informed lens. Look for potential environmental triggers, such as dark spaces or poorly marked hallways and processes that are confusing or difficult for court participants to navigate. Elicit input from court participants and stakeholders on their experiences in the court and ideas they have for improvement. The National Council of Juvenile and Family Court Judges and the National Childhood Traumatic Stress Network have resources to assist with a trauma audit.

[14] 10 Things Every Juvenile Court Judge Should Know about Trauma

**Implement a trauma screening and referral process.** Screen all individuals who come to the attention of the court for exposure to trauma. Select screening tools for the population(s) served by the court and the court professionals who will be administering the screener. Partner with mental health professionals to implement a protocol for referring individuals for further assessment when the need is identified on the screener. Ensure that the clinicians completing the comprehensive mental health assessment, when warranted, use evidence-based assessments and interventions. Often, people with multiple adverse childhood experiences are misdiagnosed with behavioral disorders, and their treatment does not address underlying trauma. To increase positive outcomes and maximize resources, clinicians should use evidence-based assessments to make accurate diagnoses that inform appropriate treatment.[15]

**Collect and review data on trauma-informed practices and perceptions of court participants.** Monitoring the efficiency and effectiveness of court processes while making efforts to be more trauma-informed helps to quantify the differences the changes are making. This data should also include the number of individuals who are screened for exposure to trauma, and the percentage of those who were referred for further assessment. Additionally, courts should regularly ask participants for their input, either informally or more formally through surveys, like the Access and Fairness survey in NCSC's CourTools. Courts should also strongly encourage treatment providers to collect and share data on the effectiveness of trauma-informed programs.

**Promote collaboration between systems.** Courts should encourage all systems to be aware of how traumatic events impact a person and make efforts to implement trauma-informed protocols, practices, and environments. Court officials, prosecutors, defense attorneys, law enforcement, schools, community organizations and advocates can attend trainings together, share information, and engage in efforts to ensure all court participants receive the support and services they need.

## CONCLUSION

**We need to change the paradigm from "What's wrong with you?" to "What's happened to you?"**

Many individuals who come to the attention of the court have experienced traumatic events. When judges acknowledge the impact of trauma, they are better positioned to respond to court participants in ways that support healing and avoid retraumatization. Being trauma-informed gives judges a different lens to view court participants' behavior and decisions and can increase the likelihood of successful outcomes. As Judge Mary Triggiano (WI) says, "We need to change the paradigm from "What's wrong with you?" to "What's happened to you?"[16]

[15] 10 Things Every Juvenile Court Judge Should Know about Trauma

[16] Triggiano, Mary Hon., "Childhood Trauma: Essential Information for Courts," Wisconsin Association of Treatment Court Professionals, (Mar. 26, 2015)

## RESOURCES


Adverse Childhood Experiences Questionnaire, http://www.odmhsas.org/picis/TraningInfo/ACE.pdf

American Institutes for Research, Trauma-Informed Care and Trauma Specific Services: A Comprehensive Approach to Trauma Intervention, https://www.air.org/sites/default/files/downloads/report/Trauma-Informed%20Care%20White%20Paper_October%202014.pdf

Centers for Disease Control and Prevention, Adverse Childhood Events (ACEs), https://www.cdc.gov/violenceprevention/aces/index.html

Center for Disease Control, Preventing Adverse Childhood Experiences: Leveraging the Best Available Evidence, https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf

Clinician Administered PTSD Scale for DSM-5 (CAPS-5), https://www.ptsd.va.gov/professional/assessment/adult-int/caps.asp

Felitti, V. J., Anda, R. F., Nordenberg, D., Williamson, D. F., Spitz, A. M., Edwards, V., Koss, M. P., & Marks, J. S. (1998). Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. *American Journal of Preventive Medicine, 14(4), 245–258*.

Justice Speakers Institute, The Trauma-Informed Courtroom, http://justicespeakersinstitute.com/the-trauma-informed-courtroom/

Justice Speakers Institute, Effective Judging: Trauma in the Courtroom, http://justicespeakersinstitute.com/%ef%bf%bceffective-judging-trauma-in-the-courtroom/?utm_campaign=shareaholic&utm_medium=email_this&utm_source=email%3cBR%3e%3cBR%3e%3cBR%3e%3cBR%3e--%3cBR%3eShared

Lessons Learned from Developing a Trauma Consultation Protocol for Article by Dr. Shawn Marsh and Dr. Alicia Summers); NCJFCJ Journal, https://onlinelibrary.wiley.com/doi/epdf/10.1111/jfcj.12059

Mental Health.org, Trauma-Informed Approach and Specific Interventions, https://www.mentalhealth.org/get-help/trauma

National Council for Behavioral Health, How to Manage Trauma Infographic, https://www.thenationalcouncil.org/resources/how-to-manage-trauma-2/

National Association of State Mental Health Program Directors, https://www.nasmhpd.org

National Council of Juvenile and Family Court Judges, Trauma-informed Courts, Pima County Trauma Audit Report 2013.docx (Article by Dr. Shawn Marsh); https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/

Office of the Victims of Crime, Trauma-Informed Courts, https://www.ovcttac.gov/taskforceguide/eguide/6-the-role-of-courts/63-trauma-informed-courts/

PCL-5 https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp#obtain

SAMHSA Concept of Trauma and Guidance for a Trauma-Informed Approach, https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf

SAMHSA, Essential Components of Trauma-Informed Judicial Practices, https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

SAMHSA Interagency Task Force for Trauma-Informed Care, https://www.samhsa.gov/trauma-informed-care

SAMHSA – TIP 57 Trauma-Informed Care in Behavioral Health Services, https://www.samhsa.gov/resource/ebp/tip-57-trauma-informed-care-behavioral-health-services

SAMHSA – Trauma and Violence, https://www.samhsa.gov/trauma-violence

Texas Children's Commission, Trauma-Informed Care, http://texaschildrenscommission.gov/media/83503/trauma-informed-care-final-report.pdf

The National Child Traumatic Stress Network, Bench Card for the Trauma-Informed Judge, https://nationalcenterforstatecourts.box.com/s/bvoahc1d1wl80vbk1cb21x0x9p580jsz

The National Child Traumatic Stress Network, Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency, https://www.nctsn.org/resources/ten-things-every-juvenile-court-judge-should-know-about-trauma-and-delinquency

Trauma-Informed Care Implementation Resource Center, https://www.traumainformedcare.chcs.org/what-is-trauma/

University of Minnesota Extension, Historical Trauma and Cultural Healing, https://extension.umn.edu/mental-health/historical-trauma-and-cultural-healing#how-historical-trauma-is-perpetuated-today-378611

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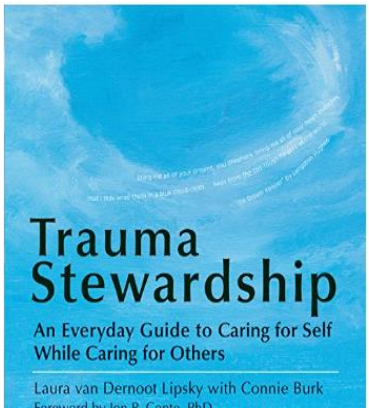
Trauma Informed Lawyering SYMPOSIUM

# Mental Health Resources

OHIO STATE BAR FOUNDATION

**Tava Health**

A comprehensive mental health service that provides convenient, high-quality, accessible mental health resources to individuals, couples, and families through technology-enabled platforms (included with OSBA Membership). https://www.tavahealth.com




**Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others**

The beloved bestseller that has helped caregivers worldwide keep themselves emotionally, psychologically, spiritually, and physically healthy in the face of the sometimes overwhelming traumas they confront every day. Purchase book here.

**Ohio Lawyers Assistance Program**

Dedicated to helping Ohio's judges, attorneys, and law students obtain treatment for substance use disorders and mental health issues. https://www.ohiolap.org