

# Trauma-Informed Legal Advocacy: A Resource for Juvenile Defense Attorneys



## EXECUTIVE SUMMARY

Over 45 million children in the United States are affected by violence, crime, abuse, or psychological trauma each year, and many of them will become involved in the juvenile justice system. The majority of youth involved with the justice system (70-90%) have been exposed to trauma.<sup>1</sup> The trauma experienced by justice-involved youth is often in multiple forms including, but not limited to, physical or sexual abuse, neglect, family and/or community violence, sex trafficking or commercial sexual exploitation, or loss of loved ones.<sup>2</sup> Childhood exposure to violence and other traumatic events is a risk factor for arrest in adolescence, and youth with prior trauma exposure and related symptoms experience worse legal outcomes compared to youth without such a history.<sup>3</sup>

Further, many youth experience additional stresses after entering the justice system apart from the inherent stress of the court interaction, including exposure to violence in detention/correctional facilities; infliction of harsh or invasive security practices such as shackling and other forms of physical restraint, punitive isolation, and strip searches; and separation from family, friends, and community. Collectively, these additional stressors are sometimes referred to as system-induced trauma. Some juvenile justice-involved youth may also be dually-involved with the child welfare system (i.e., dual system youth). It is important to keep in mind how involvement in both systems may affect youth, psychologically and legally.

This resource is intended to provide juvenile defense attorneys with an increased understanding of what trauma-informed legal advocacy entails, how trauma impacts child development, the attorney-client relationship, family and caregivers, and attorneys themselves. Additionally, this resource addresses screening and assessment, information sharing, transitions and placement decisions, and effective treatments for traumatic stress. Within each topic area, strategies for integrating this knowledge into legal advocacy (“Practice Tips”) are offered. Finally, this resource is intended to help you understand your role as the gatekeeper of trauma-based information for your client and support judiciously choosing how and when to use this information to best advocate for your client.

Trauma-informed legal practice can strengthen legal advocacy, improve attorney-client relationships, and ultimately improve outcomes for youth. Additionally, awareness of secondary traumatic stress can improve prevention, identification, and self-care among legal professionals.

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The Attorney General's National Task Force on Children Exposed to Violence (2012) recommends that all professionals serving youth and families in the justice system learn about trauma-informed care and trauma-focused services. Specifically, recommendation 6.7 of the Task Force's report recognizes the critical role juvenile defense attorneys play when youth exposed to trauma are prosecuted.<sup>4</sup> Similarly, the American Bar Association and the National Juvenile Defender Center have called for integrating trauma knowledge into daily legal practice and integrating and sustaining trauma awareness and skills in practice and policies.<sup>5,6,7,8</sup> Defense attorneys play a crucial role in advancing trauma-informed client relationships, advocating for their client's expressed interests, and achieving client success.<sup>9</sup>

Trauma-informed systems are structured with an understanding of the causes and effects of traumatic experiences and incorporate practices that support recovery, resilience, and youth success.<sup>10</sup> By enhancing the lawyer's ability to recognize the impact of trauma and respond appropriately, while also avoiding legal practices that may re-traumatize youth and their families, trauma-informed legal representation can improve outcomes for juvenile clients. Incorporating trauma-informed skills into legal practice can also improve attorney-client relationships, increase opportunities to advocate for appropriate services, and enhance prevention, recognition, and mitigation of secondary traumatic stress among defense attorneys. Within the context of client-driven advocacy, trauma-informed legal representation in a juvenile delinquency matter includes the following skills:

- Learning to recognize the signs and symptoms indicating that the client may have experienced trauma
- Understanding that trauma only equates to an experience and is not a diagnosis; some people with trauma histories will have a mental health diagnosis and others will not
- Considering the legal implications of routine screening for trauma exposure and related symptoms, staying mindful of how screening may inadvertently lead to deeper court system involvement
- Making appropriate referrals for culturally sensitive, evidence-based assessment and treatment for traumatic stress and associated mental health symptoms
- Advocating for resources on trauma exposure (e.g., psychoeducational books, victim assistance information), its impact, and treatment for children, families, and stakeholders
- Understanding and promoting resilience and protective factors for youth and their families
- Understanding parent and caregiver trauma and its effects on the juvenile client's case
- Maintaining work environments for staff that increase staff resilience and address, reduce, and treat vicarious or secondary traumatic stress
- Considering issues of physical and psychological safety when advocating for clients and resisting practices that may re-traumatize youth and their families
- Maintaining awareness of the attorney's own behaviors, tone of voice, body language, and approach when engaging and interacting with clients who may have a history of trauma
- Taking steps to help clients cope with stressful court proceedings and recognizing when clients may be having a trauma reaction
- Engaging in continuing education about trauma to stay informed of new developments that can benefit clients

Attorneys can use these skills to promote a trauma-informed response to their clients, ***with the understanding that the confines of professional conduct, including confidentiality and ethical considerations as well as strategic case planning, may affect one's ability to act on these recommendations in individual cases.*** In addition, advocates should always be clear with

clients about their role, i.e., that it is the defense attorney's ethical obligation to represent the client's expressed wishes, even when all other stakeholders must consider what is in the youth's "best interest." The defense attorney, however, should communicate to the client that if the attorney thinks the client is making a harmful choice, the attorney has the obligation to discuss alternatives with the client, provide additional information and advice, and help the client weigh the pros and cons of the decision.

By keeping these principles in mind, attorneys can build more effective relationships with their clients that serve their legal interests, work to ensure desired and necessary services are provided, and support clients' current and future well-being.



## GLOSSARY OF TERMS

### Trauma

Exposure to actual or threatened death, serious injury, or violence in one of the following ways: (1) Directly experienced; (2) Witnessed; (3) Learning that a loved one experienced trauma; or (4) Repeated or extreme exposure to aversive details of traumatic events (e.g., attorneys working with trauma survivors). Traumatic events can include, but are not limited to, physical abuse, sexual abuse, psychological abuse, loss of a loved one, exposure to domestic violence, exposure to community violence, sexual exploitation, and exposure to war or a natural disaster.

### Child Traumatic Stress Reactions

Occur when a child experiences a traumatic event or situation that upsets and overwhelms the child's ability to cope. A child exposed to trauma may experience a variety of traumatic stress reactions, including but not limited to nightmares, difficulty sleeping, hypervigilance, trouble concentrating, depressive symptoms (e.g., sadness, loss of interest in activities, changes in appetite), and exaggerated startle responses. These symptoms may interfere with daily life across multiple settings including home, work, school, and within relationships.

### The Body's Alarm System

The part of the brain that scans the environment for danger and prepares us to act. When triggered, the alarm system sets off a cascade of immediate physiological changes that prepare one to *fight-flight-freeze* in order to stay safe. This is a complex response that involves multiple areas of the brain, including the sympathetic nervous system, the prefrontal cortex, and the amygdala.

### Trigger

A reminder of a past traumatic event that sets off the body's alarm system, making people feel as if they are once again in imminent danger. A trigger can be anything connected to a traumatic event, including an event, situation, place, physical sensation, or even people. It need not be inherently threatening.

### Posttraumatic Stress Disorder

One of several mental health disorders often associated with trauma exposure. PTSD is characterized by problems in 4 areas: *Re-Experiencing* (e.g., flashbacks or nightmares of traumatic event); *Avoidance* of thoughts or reminders of past trauma; *Negative Changes in Thought or Mood* (e.g., persistent negative emotions, persistent or exaggerated negative beliefs about oneself, others, or the world); and *Hyperarousal* (angry outbursts, constantly "on guard" against potential threats). Some people may also experience *Dissociation* (See Appendix for additional information).

### Complex Trauma

While not an official diagnosis, this term refers to exposure to multiple or prolonged forms of traumatic experiences and the wide-ranging, long-term impact of this exposure. Complex trauma disrupts normal child development and may lead to difficulties with attachment (e.g., ability to form trusting, meaningful relationships), managing emotions and behavior, and executive functioning (e.g., ability to focus attention, solve problems, plan or pursue long-term goals).

### Survival Coping

Refers to the management of stressful situations and responses to trauma reminders following a traumatic experience. Specifically, this involves coping strategies designed to relieve the anxiety brought on by feeling "victimized" while attempting to protect oneself. It includes behaviors such as hypervigilance (e.g., distrustful/on edge), aggression, hopelessness masked as indifference, and self-destructive behaviors (e.g., substance use, self-harm, eating disorders, unsafe sex). When unaddressed, it can become a chronic and default style of engaging others and addressing problems.

### Psychological Safety

The belief that one is safe from emotional harm and has the ability to manage threats to safety. Psychologically safe environments encourage respect for others' feelings, even when there is disagreement. Individuals can also increase their sense of psychological safety in stressful situations by learning and using coping skills.

### Resilience

Refers to the ability to adapt and function effectively despite exposure to trauma or other stressful life events. Even youth and families who face extraordinary stresses have the capacity for resilience.

Up to 90% of youth involved in the juvenile justice system have experienced at least one traumatic event.<sup>1</sup> Trauma may result from either direct experiences (e.g., being neglected or abused) or witnessed experiences (e.g., exposure to domestic violence between caregivers). Children may also be traumatized by hearing about something that happened to their parent or caregiver (e.g., serious injury, incarceration).<sup>14</sup> Moreover, exposure to multiple forms of trauma or repeated trauma has a compounding effect on children.<sup>15,16</sup>

Traumatic experiences early in life may alter how the brain assesses threat and how clients respond to stress. Clients' fight, flight, or freeze responses may be "triggered" by anything that reminds them of past traumatic events, causing them to believe that they are in immediate danger and prompting their mind to engage in survival coping strategies to maintain or regain safety. When triggered, youth may react with aggressive or avoidant behaviors in an effort to feel safe, such as behaving defiantly or aggressively to keep others at a distance or attempting to escape the situation. Some of the behaviors that led to their involvement in the juvenile justice system may also be survival coping strategies. For example, the use of substances may be an attempt to manage traumatic stress reactions, such as nightmares and hypervigilance. Youth may join a gang or carry a weapon in order to increase feelings of safety, or they may fight other youth in an attempt to feel empowered or in control of their safety. Other common responses include running away from home, the classroom, or the courtroom; avoiding attorneys or court hearings they perceive as threatening; shutting down; or "spacing out."

It should be noted that these traumatic stress reactions may continue to occur even when the attorney is offering help or the situation appears to others as safe. For some youth, previous experiences with trusted adults may have resulted in adverse or traumatic experiences. This may cause the youth to use survival coping strategies to maintain safety, even when the youth's attorney is an excellent advocate and has demonstrated a commitment to the youth. Understanding how and why these reactions may occur can facilitate improved counsel to clients.

### ***Trauma Reactions in Context***

A robust understanding of the impact of trauma on child and adolescent development requires a more in-depth review of the context in which traumatic events occur and how context should inform our understanding of functionality. Often justice-involved youth exposed to traumatic events live in neighborhoods that present frequent threats to safety, such as ongoing community violence. Some survival coping strategies employed in these environments may serve adaptive functions to help youth navigate dangerous situations safely. When these situations are frequent during childhood, the brain develops shortcuts to quickly identify a threat and initiate the body's alarm system. The brain accesses memories that resemble threatening situations and unconsciously uses this information to respond more quickly than it would in non-threatening situations during which impulse control, decision making, and problem solving are more likely. Moreover, it should be noted that the structures of the brain responsible for optimal decision making during non-threatening situations are governed by neuro-anatomy that doesn't fully mature until a youth's mid-20s (i.e., frontal lobe, pre-frontal cortex).<sup>17</sup> In the end, the trauma-created shortcuts can result in decisions based on fear or anxiety rather than mature reflection, even in non-threatening environments. Taken together, some of the strategies that youth have employed to survive threats persist in non-threatening situations and become maladaptive traumatic stress reactions that disrupt their behavior, relationships, and other vital areas of their lives.

Individuals have a range of reactions to traumatic events. Most trauma survivors will recover from their experiences and thus should not be viewed or treated as "damaged" or beyond help. Trauma's impact on the brain and normal child development depends on the level of resilience and, even when there is significant harm, can be reversed with appropriate treatment and other supports (see Section 6: Effective Treatments for Traumatic Stress).

### ***Resilience, Recovery, and Functioning***

Recognizing the nuanced responses youth may have after experiencing traumatic events involves identifying signs of resilience and recovery, as well as impaired functioning. Resilience speaks to a youth's ability to adapt and function following a traumatic event and recovery reflects the ability to regain functionality after initially experiencing traumatic stress reactions. Both highlight the importance of focusing on youth functionality in key areas (e.g., social, academic) after experiencing a traumatic event, as well as strengths or supports that bolster adaptive functionality if functionality appears to have been

adversely impacted by the trauma.

Common contributors to both resilience and recovery include identifying life goals, developing optimistic expectations for the future, feeling a sense of control over one's life, connecting with social support systems, and an ability to reframe one's life experiences in a way that promotes stress management and allows for development of constructive strategies for addressing frustration.<sup>18</sup> For recovery in particular, the ability to employ problem-solving strategies and practice healthy emotional expression (i.e., active coping) has been linked to resilience, even after an individual experiences strong, acute traumatic stress reactions following trauma exposure.<sup>19</sup> As many of the factors contributing to resilience and recovery are learned skills, it is essential for attorneys to understand how to work with youth to maximize their use of these skills and to advocate for resources that best position youth to bolster underdeveloped or underused skills.



## PRACTICE TIPS: PROMOTING CLIENT RESILIENCE

**Use social supports.** Ask clients about existing social supports (e.g., immediate and extended family, fictive kin, community and religious leaders, school staff, coaches) and leverage those supports.

**Empower youth.** Explore clients' interests and advocate for client involvement in services or activities that increase their sense of mastery or competence (e.g., classes/training, afterschool activities).

**Promote coping skills.** Support clients in developing effective coping skills (e.g., refer to trauma-informed treatment as appropriate, help clients cope with distressing court proceedings or transitions by adequately explaining them in advance).

**Get community support when possible.** Connect clients to agencies and/or organizations that offer opportunities for prosocial interactions (e.g., mentoring programs, basketball league) in community-based settings. Incarceration will not help client resilience.

**Support staying connected to community.** Explore the client's connections to the community (e.g., school, religious affiliations, existing community-based services) and advocate for clients to remain connected to those resources.

**Use their strengths as defense.** Identify clients' strengths and consider incorporating those strengths into legal advocacy whenever possible. All youth have strengths that should be leveraged. Behavior seen as "challenging" is often behavior that has enabled a youth to survive and can be redirected in a positive, productive way when a youth is no longer experiencing traumatic stress.

### Traumatic Stress & Diagnoses

While many youth and adults who experience trauma can work through subsequent challenges without professional intervention, some will develop a variety of traumatic stress reactions that disrupt their interpersonal, social-emotional, and academic functioning. Common traumatic stress reactions include severe depressed or anxious mood, aggressive behavior, difficulty concentrating, and difficulty sleeping. These traumatic stress reactions may become severe enough to warrant a clinical diagnosis. In addition to clinical depression and anxiety, symptoms may reflect the onset of Posttraumatic Stress Disorder (PTSD—see sidebar for definition). PTSD increases the risk for negative outcomes across the lifespan, including academic failure and peer problems in childhood and justice involvement in adolescence and adulthood (see Appendix for additional resources on how trauma may affect clients in different age groups).

Many trauma survivors will not meet criteria for a diagnosis of PTSD or another disorder, but still may be experiencing significant trauma-related impairment in their daily lives. Youth or adults with more chronic or pervasive exposure to trau-

matic events (termed complex trauma) may suffer additional challenges that are not captured by the PTSD diagnosis (see sidebar). Additionally, some youth may receive clinical diagnoses such as Conduct Disorder, Oppositional Defiant Disorder, or a substance use disorder in response to behaviors that may be more accurately conceptualized or defined as reactions to traumatic events, even if criteria for PTSD are not met.<sup>20</sup> Defenders and their clients should work together to consider whether clients would benefit from a trauma screening. If a trauma screen reveals trauma exposure, a further in-depth assessment for trauma exposure and related symptoms may be warranted to determine the impact of their traumatic experiences and need for appropriate treatment.

Determining the client's need for and openness to trauma screening, assessment, and treatment is an important step toward providing trauma-informed counsel. While it is recommended that youth receive information about general screening for trauma and any indicated follow-up, defense attorneys' use of such resources should be guided by their professional judgement and consideration of the scope of legal protections available in the jurisdiction. A primary guiding principle for attorneys when investigating the impact of traumatic events on their clients should be a desire to maximize contributors to resilience/recovery and contextualize traumatic stress reactions in a manner that facilitates support for youth to return to adaptive functioning. Whenever the court is initiating or paying for the trauma screening— as opposed to when the attorney is seeking it through an independent defense source— attorneys should be careful to understand what will and will not be shared with the court and the state. These considerations may greatly affect how defenders approach trauma screening and interventions (see Section 5: Purpose of Trauma Screening & Assessment). This resource is intended to help you comprehend your role as the gatekeeper of trauma-based information for your client and support judiciously choosing how and when to use this information to best advocate for your client.

### 3

## Impact of Trauma on the Attorney-Client Relationship

Trauma can interfere with the formation of strong attorney-client relationships by impairing the client's capacity to trust others, process information, communicate, and respond to stressful situations. Understanding trauma's impact on behavior can help attorneys modify their approach with traumatized clients, prepare clients for court proceedings in a way that reduces their likelihood of a traumatic response, and advocate for clients in a way that supports them and builds a sense of safety and resiliency. With adequate preparation, clients may feel empowered by the opportunity to tell their story and receive empathic and effective support from the professionals involved. To establish an effective working relationship with clients suffering from adverse reactions to trauma, attorneys should focus on fostering physical and psychological safety, communication, and client support.

### *Physical and psychological safety.*

When something either consciously or unconsciously reminds clients of a past trauma, that trigger may cause them to feel as if they are in imminent danger. When traumatized clients feel unsafe, either physically or psychologically, they may become narrowly focused on protecting themselves and getting out of the perceived danger. Accordingly, they may not listen or process information accurately, refuse to talk, or simply agree to anything in order to leave. Attorneys can assist their clients and establish a safe environment by providing structure and predictability and allowing clients to make informed decisions about their cases whenever possible.

Court hearings and other procedures in the delinquency system may inadvertently trigger reactions to trauma reminders or re-traumatize clients. For example, clients are frequently triggered by a perceived loss of control or power (e.g., court decisions made about placement or visitation). Therefore, attorneys should give clients a clear voice in decisions related to their representation and should elicit the clients' views to enable their active involvement in the case.

When triggered, a client may react in ways that are misinterpreted by the court. For example, a youth may withdraw emotionally or physically ("freeze" or "shut down") in response to questions about having contact with a parent or may flee the courtroom, tune out, or react defiantly during cross-examination. A youth—particularly an adolescent—who is in a group home or some other non-secure out-of-home placement may run away or act out in response to conflict with a resident or a staff member. Judges, attorneys, and other professionals may view such clients as uncooperative or disinterested, rather than someone who is having a trauma response. Attorneys should talk with their clients about whether and how to explain

to the court and the other parties that their behavior is an expected and normal reflection of underlying trauma. Attorneys can also work with their clients to help recognize and minimize trauma behaviors. Decisions regarding such disclosures should be case-specific and within the bounds of attorney-client privilege and the attorney's specific role.



## PRACTICE TIPS TO INCREASE PHYSICAL AND PSYCHOLOGICAL SAFETY

**Meet in a quiet space.** Ensure that there are minimal distractions and that the meeting takes place outside the presence of other parties who may make your client feel threatened.

**Be upfront and clear on meeting goals.** Inform the client of the purpose of that day's meeting, what to expect during the meeting, and how long the meeting will last. Several shorter meetings can build familiarity and be more productive than a single, longer meeting.

**Don't simply ask clients whether they understand.** Even youth on a normative adolescent development track, regardless of trauma history, often will simply agree whether they understand or not. Instead, ask clients to explain what they understand. Make sure to ask what questions the client has.

**It takes time.** Although time with clients may be limited, it is essential to explain the court process and ensure that the client has the opportunity to ask questions. Let the client know what will be said in court, questions you may ask and questions the judge or opposing attorney may ask (particularly when you anticipate an adversarial cross-examination), and the purpose of such questions. Knowing what to expect can make the client less anxious during a hearing. Allowing the client time to practice responding and role-playing can increase a sense of control and safety.

**Prepare clients for what others will say about them.** Part of a client feeling safe is not being blindsided by what is about to happen. Many clients may react negatively to having other people talk about their mental health and trauma history, particularly in open court, and may not be prepared to hear negative information or the insensitive delivery of that information. Discussing with your client what other people know and may say in court, preparing the youth to hear it, and explaining how that information will impact the case may help increase feelings of safety and minimize outbursts or other negative behaviors.

As a part of explaining the court process to juvenile clients, you will want to provide a realistic understanding of the possible outcomes of a court hearing. It can be empowering for clients to know that the attorney is listening to them and will express their wishes in court, but it is also imperative for the client to be prepared to hear that those desires may not be persuasive or ultimately adopted by the judge, the prosecutor, or the probation officer.

Additionally, when juvenile clients are excluded from court hearings, the awareness of the hearing, coupled with anxiety about the results, can trigger negative emotional reactions. Children and adolescents should attend their hearings in person, absent significant contrary indications and prior court approval. There has been a national trend toward increasing the use of videoconferencing for youth who are in custody. While videoconference hearings may make the court process more efficient for the judge, prosecutor, detention and transport staff, and even the defense attorney, it can pose significant challenges for youth. Even youth who do not have trauma reactions can become more easily disengaged, distracted, and removed from the process when they are simply observing it on a screen. For youth with trauma histories, the fight, flight, or freeze response can be exacerbated by being excluded from an in-person court appearance. When use of videoconferencing is unavoidable, try to mitigate the impact of traumatic stress reactions by preparing youth for how to best engage in this format.

## Communication

Clients who have experienced trauma may have difficulty forming trusting relationships with their attorneys. Many youth in the juvenile justice system have been hurt by a caretaker or authority figure whom they trusted—such as a parent, police officer, or a school official. Others may have experienced removal from their family or homes and/or multiple foster care placements due to child protective cases (i.e., dually-involved youth). Such clients may have difficulty believing that the attorney actually will advocate for them. Clients also may be slow to share emotionally-charged information or may not feel safe expressing their desired outcomes, such as preferences for services or placement options. Developing an effective attorney-client relationship often takes time and patience, and this is especially true when representing youth with a history of trauma exposure.

Attorneys can learn to recognize signs that a client may be reacting to a trauma trigger or feeling unsafe so that they do not misinterpret or exacerbate their client's response. Trauma reactions typically represent some version of fight, flight, or freeze. A client who suddenly becomes loud or combative may be going into "fight mode," pushing others away in an attempt to feel safer. Clients may also manifest "flight mode" by refusing to answer sensitive questions or by attempting to leave a meeting or court hearing. Clients may "freeze" by shutting down or dissociating (a common response to trauma when a person mentally shuts down or "goes elsewhere"). They may sit quietly but no longer pay attention or lose the ability to form complex sentences. Do not assume that silence means the client understands or consents. Additionally, if an attorney is aware of the client's triggers and the client consents, the attorney may find it useful to share this information with the judge, prosecutor, and other court actors (e.g., court security) in order to reduce the potential for trauma reactions near or in the courtroom. (Appendix includes information about identifying signs of trauma reactions in clients.)



### PRACTICE TIPS TO HELP REDUCE CLIENT REACTIONS TO TRIGGERS

**Look for signs of trauma reactions.** As discussed throughout, clients may exhibit variations of the fight, flight, or freeze response.

**Try not to startle the client.** Loud noises (including yelling), sudden movements (jumping up from a chair), or unexpected news can all trigger trauma responses.

**Predictability helps to establish a trusting relationship.** Preparing the client for what is ahead can help minimize a youth's heightened alertness to threats from unfamiliar or unexpected sources.

**Minimize touching the client.** You may intend to be supportive when you put your arm around a youth, but that can trigger a reaction in people who have been physically or sexually abused. Respecting a client's personal space helps build the client's sense of control and safety.

**Do not tell the client "everything will be fine" or overpromise.** Do not promise a client that you will always be there for him—attorneys frequently change. Be clear, forthright, and honest in all communications; clients may be triggered by feeling let down or misled if a setback occurs with their attorney. Remember that clients' behaviors also may be influenced by the expectation that you will inevitably disappoint them.



## Client Support

Many youth, including those in the juvenile justice system, have strong attachments to their families, even if the family has been the source of stress and/or trauma. In fact, even when a youth has experienced trauma within the family, the youth may remain attached and can be further traumatized by complete loss of contact with relatives. As such, court-ordered removal from the home can have a trauma-inducing effect on youth. Family members can offer the best source of long-term support for a traumatized youth, and it is essential that a youth stay connected with siblings, relatives and extended family (as defined by the client), and friends whenever possible. In cases in which ongoing family contact is not feasible or is contraindicated, attorneys can try to involve other people trusted by their client (e.g., a family friend, coach, teacher, or pastor). Defense attorneys should thoughtfully consider and discuss with their clients how they would want trauma-related issues raised and how they can demonstrate to the court the effectiveness of home- or community-based placements/services in promoting both the client's rehabilitation and public safety over options that remove the youth from the community.

Attorneys should also be aware that some clients may find the experience of being in court traumatizing, whether due to past involvement, interactions with or observations of others at the courthouse, or the intensity of the courtroom environment itself. Trauma triggers might include an attorney's behaviors, tone of voice, body language, or approach to questioning. Attorneys can take steps to make their clients feel more comfortable and to recognize when they are reacting to a trauma trigger. Attorneys should ask youth about prior experiences in detention or other juvenile justice settings, as violence and harsh practices in some settings may increase risk for trauma.<sup>22</sup> In particular, youth in certain groups, such as LGBTQ youth and youth who have been commercially sexually exploited (CSEC youth), may be at increased risk for physical assault, sexual assault, and other traumatic events in juvenile justice settings.<sup>22,23,24,25</sup> Research has also found that dually-involved youth often receive more punitive dispositions in juvenile delinquency cases as compared to justice-involved youth without child welfare involvement.<sup>26,27</sup> These dually-involved youth may face additional stresses, including removal from their biological families and placement in foster homes or group homes.

## Client Resilience

Most youth are extremely resilient; a history of trauma does not automatically mean that a client will have traumatic stress reactions or will experience symptoms of PTSD or other co-morbid disorders. Even clients who have reactions to reminders of traumatic events can be resilient and able to function in daily life despite any symptoms of PTSD or other disorders. The attorney's actions during legal proceedings can further bolster resilience. Defense attorneys should identify—and help their clients to identify—the existing strengths and supports in their clients' lives. All too often, other stakeholders focus exclusively on the negative aspects of a youth's life and behavior. Yet most clients engage in some form of pro-social activities, such as sports, jobs, religious groups, or extracurricular pursuits. They may also have mentors, leadership opportunities, or creative outlets in the community that support resilience and positive youth development. Defense attorneys should look for and highlight these strengths and supports in all aspects of the case. Moreover, becoming a supportive and protective ally in the client's eyes can help reinforce a youth's inherent resilience. Whether through advocating for a client's requests (Section 6: Effective Treatments for Traumatic Stress), focusing on a client's strengths, or fostering a client-attorney relationship that conveys awareness of traumatic stress reactions, attorneys can promote a psychologically safe environment to support clients' improved management of traumatic stress reactions.

### POSSIBLE SIGNS THAT A CLIENT HAS BEEN TRIGGERED

- Lashing out verbally or physically
- Behaving with defiance or disrespect (fight response meant to keep threats at a distance)
- Difficulty following the attorney's questions
- Shutting down, stops talking
- Becoming jumpy or fidgety, pacing
- Shifting mood suddenly or dramatically
- Looking spaced out, losing place in the conversation, appearing to have "gone somewhere else"
- Speaking louder or faster
- Trying suddenly to leave situation (flight response)
- Showing regressive behaviors (thumb sucking, rocking)

For non-defender stakeholders in the juvenile justice system, a key principle of trauma-informed practice and systems is collaboration and coordination among service providers and systems. Defense attorneys, however, have an ethical obligation of loyalty and confidentiality to their individual clients and are required to represent the clients' expressed interests. Despite its rehabilitative goals, the juvenile justice system may lead to additional trauma for a youth. Accordingly, defense attorneys must consider—while being mindful of their ethical obligations—how information they share about a client's trauma history can both help and hurt the client's legal and personal interests.

Some benefits of information sharing—with the client's consent—include the following:

- Preventing clients from having to repeat their trauma histories to multiple agencies or providers
- Ensuring that all involved parties understand trauma's impact on the client and tailor their interventions accordingly
- Helping contextualize the client's behavior as a normal symptom of trauma, rather than as being incorrigible, defiant, or defiant
- Enabling other stakeholders to have a holistic understanding of the youth, strengthening the attorney's ability to be an effective advocate.

While the goal is to have trauma-informed juvenile court systems in which all stakeholders are knowledgeable about appropriate interventions with youth exposed to trauma, the reality is that not all juvenile court systems are trauma-informed. Stakeholders still misuse information about trauma, sometimes unwittingly, in ways that can exacerbate trauma, rather than improve it. Some drawbacks of information-sharing may include the following:

- Violating ethical rules of confidentiality by sharing information your client has expressly told you not to share or which you have reason to believe the client would not want shared. Confidentiality applies not only to attorney-client communications, but to all information learned about the client during the course of the lawyer's representation, regardless of its source.<sup>1</sup>
- Alerting the court or the prosecution to uncharged offenses that could negatively impact the current legal case or risk new charges.
- Exposing the client to deeper involvement in the justice system and the potential for punitive sanctions for non-compliance, through prolonged services or interventions that are inappropriate, ineffective, or could have been accessed by the youth without any court involvement or oversight.
- Exposing the client to new justice-system-induced trauma or exacerbating existing trauma through inappropriate court responses or interventions.
- Issuing punitive court decisions based on a fear or misperception that a youth's trauma puts the youth at greater risk of future offending.

Below are several juvenile court stakeholders with whom a defense attorney might consider sharing trauma information, assuming the client has consented, and why sharing may or may not be helpful to the client's legal and expressed interests:

**Probation Officer.** The youth's probation officer typically meets with the youth regularly and may have gained a different perspective from seeing the client interact with parents or service providers. Probation officers have a supervisory role over the youth, often pre- and post-disposition, and will have the power to ask the court to impose sanctions or revoke a youth's release status. Providing probation officers with information about trauma can help contextualize a client's behav-

<sup>1</sup> ABA Model Rules of Prof'l Conduct, R. 1.6 (2018)

ioral responses and stave off revocation proceedings. Sharing information with the probation officer may better inform the interventions the probation department has the discretion to impose. Conversely, sharing information about trauma may lead to deeper and prolonged involvement in the court system or may expose the client to shame, embarrassment, or further trauma. Defense attorneys must communicate to their clients any concerns they have about sharing information and always be true to the client's expressed interests.

**The Prosecution.** Prosecutors have significant power over the client's case, and there are times when sharing information about a client's trauma history and providing an understanding of the root causes of underlying behavioral responses might lead to creative solutions for disposing of the case, such as diversion, mediation, appropriate dispositional services, or even dismissal. Conversely, information about a client's trauma history could be used to the client's legal detriment pre-trial, at trial, in disposition, or regarding placement. When collaborating with a prosecutor, it is critical that defense attorneys be open and honest with their clients about that collaboration, outline the pros and cons of sharing, give the lawyer's professional opinion on how to proceed, and estimate the likelihood of success. As youth exposed to trauma can have significant trust issues, defenders must be careful to clearly explain the role of negotiation in the court process and help youth understand they are honoring the client's expressed interests and not collaborating with the prosecution, or anyone else, against their interests. Clear and honest communication with clients will help minimize that risk.

**School Contact.** Schools vary widely in understanding trauma, but they can also be a good source of non-court interventions when armed with the right information and resources. Defense attorneys, after obtaining the appropriate releases and client consent, should consider whether informing the school about the youth's specific trauma needs would help. Attorneys should never share with the school more information than is needed and should ensure information is provided only to individuals who are trained in protecting the youth's confidentiality and who need the information to serve the youth. In general, schools do not require any information about the client's legal case. Moreover, a case file will often have information about a youth's history, experiences, and family background that the school does not need in order to provide services. Not all schools have comprehensive policies to protect a youth's privacy.

Many youth who are experiencing neurological responses to traumatic events require accommodations in school to access their education. Common accommodations, often provided in an Individual Education Plan (IEP) or 504 plan, include the following:

- Permission for the youth to leave class early (to avoid the hustle and bustle of busy pass times in the hall)
- Permission for the youth to leave class at any time to speak to a counselor
- Warnings of materials in the curriculum that might trigger the student and allowing alternative assignments (for example, doing an independent study in English when the class is studying a book likely to trigger the student)
- Modification of the youth's class schedule to permit participation in effective services outside of school

The school may have information that will help the attorney understand the youth's cognitive and socio-emotional status, as well as any accommodations the youth might require in court or in a meeting. For this reason, it may be helpful to have ongoing dialogue with the school. However, in some school systems or with personnel who are not trauma-informed, sharing trauma history may lead educators to inappropriately label the youth as troubled or dangerous, leading to greater obstacles at school.

**Court staff.** When appropriate and with the client's consent, defense attorneys can inform the court and court staff of concerns they have and request in-court accommodations to ameliorate stressful conditions. Some important questions to consider include: Will the youth need accommodations in court or in lock-up? Will the client experience a traumatic stress reaction if an abuser is in the courtroom (e.g., abusive parent or sibling)? Should security personnel be made aware of physical procedures that could inadvertently escalate a situation? Or will raising these issues put court personnel on edge, less likely to be accommodating or empathetic? Will sharing this information lead to greater or unnecessary interventions that will exacerbate existing or cause new trauma for the client?

**Treating therapist.** With regular collaboration, the treating therapist can play a key role in making sure that a client's needs and interests are met at school, at home, and in court. Attorneys and therapists alike must be mindful of their respective

ethical duties to their clients. Treating therapists can generally share information about what would be helpful to a client without disclosing communications between the client and therapist. Attorneys can advise the therapist of upcoming court hearings so the therapist can help the client process the information, address potential triggers, and prepare for court. It is also helpful for attorneys to obtain information from the treating therapist about a client's trauma triggers and strategies for preventing, addressing, or mitigating those triggers. Before sharing information, a defense attorney must consider the therapist's ethical duties in a given jurisdiction, such as statutory mandatory reporting requirements or whether the court will expect or demand reports on treatment and to what extent the therapist will share legal and non-legal information. In some instances, it may be possible to craft a memorandum of understanding between the defense attorney and the therapist so there is clarity on what can and cannot be shared with other stakeholders if there is a fear of legal ramifications for the client.

## 5

### Screening and Assessment

Defense attorneys should be on the lookout for signals of trauma reactions and other indications that a client may have a trauma history that is affecting the case or the attorney-client relationship. If signs of trauma are present, defenders may consider a referral for a more thorough screening to determine whether past trauma is contributing to the behaviors, to ascertain the scope and effects of past traumatic events, and to weigh the benefits of an assessment to determine the need for therapy and other services. Screenings and assessments initiated by the defense should be done in a way to ensure that information is kept confidential until the attorney and the client agree that there is a reason to share it with others; many court-ordered screenings and assessments do not have these protections.

When there is a pending—or even a potential—delinquency case, a youth has the same Fifth Amendment right against self-incrimination as an adult.<sup>ii</sup> As such, defense attorneys have an obligation to safeguard the client's right to remain silent about any topic that could incriminate the client on current or any potential future charges. Because of the real danger of youth saying things during questioning by court personnel or court-contracted practitioners, many jurisdictions have introduced statutes, court rules, or memoranda of understanding that prohibit the disclosure by the screener or assessor of any potentially incriminating statements.<sup>29,30</sup> Many mental health and justice officials recognize that prosecuting youth for statements they make while seeking trauma intervention will likely further traumatize them. In many other jurisdictions, however, court-ordered screenings and assessments have little or no protections in place. In such cases, defense attorneys have an obligation to object to the unfettered questioning, to insist on being present to protect the client's interests, or to raise legal objections to any sharing or use of statements that have the potential to be incriminating.<sup>iii</sup>

Excessive screening and assessment may be counterproductive and harmful. Repeatedly asking questions about traumatic events, particularly when not part of a therapeutic session, asks the youth to relive the trauma and can, in itself, be trauma-inducing. Juvenile defense attorneys must determine whether their clients have been screened or assessed, when, where, and for what purpose. Defense attorneys must object to repetitive or additionally invasive screenings or assessments, particularly when they are not conducted by licensed clinicians trained to provide best available resources and treatment for trauma-exposed youth.

In this section we will distinguish between: *screening*, *assessment*, and *neuropsychological evaluation*.

**Trauma screening** refers to a brief set of questions administered to children, adolescents, parents, or caregivers to identify clients who are *likely* suffering from trauma-related impairment. Screening can be conducted by attorneys. Any client who screens positive for likely trauma exposure or symptoms can be referred to a qualified mental health professional for a full assessment. Such a referral may be ordered by a court or requested directly by the juvenile defender. Various trauma-informed screening instruments and questionnaires are available for use (see NCTSN Measures Review Database). These screening tools do not result in a diagnosis; they simply identify whether further assessment may be needed.

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<sup>ii</sup> In re Gault, 187 US 1 (1967).

<sup>iii</sup> It is important to note that an incriminating statement is not limited to one that directly implicates a child in wrongdoing; it includes “any link in the chain of evidence” that could lead to prosecution or other harm to a child's legal interests. See United States v. Hubbell, 530 U.S. 27, 42 (2000).

A **trauma-informed mental health assessment** refers to a comprehensive evaluation conducted by a trained mental health provider such as a social worker, psychologist, or psychiatrist. The goal is to determine if the client is suffering from traumatic stress or other mental health problems and to generate recommendations for treatment or other social services, if indicated. The provider conducting the assessment gathers information on trauma experiences or symptoms along with other mental health symptoms, medical issues, academic and employment history, family dynamics, and strengths exhibited by the youth and supported by parents, family, and the community. A thorough assessment should include information from several sources, including clinical interviews with the youth, caregivers, and collateral informants; review of client records (school, medical, court, and mental health treatment); and behavioral observations. Defenders should treat assessments by mental health professionals like any expert examination and opinion, taking steps to control what, when, and how information is shared so as not to undermine the client's legal interests.

A **psychoeducational assessment** focuses primarily on evaluating a youth's academic functioning. Such evaluations may be warranted for clients who are experiencing significant academic or vocational problems or are suspected of having undiagnosed learning disorders or developmental delays, which is quite common among youth with prior trauma exposure involved in the delinquency system. Attorneys may seek these assessments outside the court system. For example, such assessments are used as part of an Individualized Education Plan (IEP) for youth with special education needs. The client's caregiver may already have such an evaluation or could request one through the public school system, rather than the court.

A **neuropsychological evaluation** focuses more specifically on the intersection of brain and behavior and is used to determine whether deficits in certain areas of the brain or in brain functioning may be contributing to changes in behavioral and/or cognitive functioning. Neuropsychological evaluations use standardized measures and can assist in the diagnosis of cognitive deficits and/or other neurological disorders (e.g., Parkinson's disease, Huntington's disease, dementia). Neuropsychology is a specialty within psychology and neuropsychological evaluations should be conducted by psychologists with specialized training.<sup>31</sup>

Thoughtfully integrating trauma screening and assessment findings into defense advocacy is a key element of a trauma-informed juvenile defense practice. Doing so will assist the attorney in understanding the impact of trauma on the youth and family, developing plans that support the client's resilience, and advocating for decisions that do not re-traumatize the youth. Properly understood trauma responses could also be used to contextualize or mitigate a youth's behavior in either the alleged offense or during the court processing. Keep in mind that if screenings, assessments, and evaluations are court-ordered, the results generally will be made available to all parties, depending on local law. In all such cases, defense attorneys should approach screenings and assessments with a level of caution and counsel the client as to the potential benefits and down sides of answering any questions related to any behavior that might be incriminating. Determining whether to seek a court-ordered assessment or neuropsychological evaluation is a strategic decision to consider carefully, as some courts may use the results of more in-depth assessments to support removal from the home and community.



### **PRACTICE TIPS: CONSIDERATIONS FOR TRAUMA SCREENING AND ASSESSMENT**

**Seek trauma screening when in client's interest.** Defense attorneys should learn to identify trauma “red flags” and should seek non-court screening whenever possible and appropriate. If the only screening available is through the court, a defense attorney should either (1) oppose participation unless the jurisdiction has sufficient legal protections to ensure the information will not be used in ways that will further harm the youth or (2) insist on being present for the assessment to protect the youth's Fifth Amendment privileges.

**Know the difference between assessment and competency evaluation.** A trauma assessment is very different from a mental health assessment conducted as part of a competency evaluation. A trauma assessment is not designed to provide recommendations regarding a youth's capacity to assist in their defense or understand the charges against them, whereas a mental health assessment may be a part of a competency evaluation, which is a forensic evaluation intended to answer a legal ques-

tion. Although different from a competency evaluation, trauma assessments still have important legal implications. Defense attorneys should consider how findings from trauma assessments can be used in arguments related to *mens rea*, culpability, and mitigation or how the findings can be used to implement diversion, detention, or disposition programming.

***Use a client-centered approach to engage assessment.*** Although it is recommended that attorneys advocate for trauma-informed assessments of clients who screen positive for trauma exposure or symptoms, this may not always be possible within the confines of an attorney's particular role. Defense attorneys may resist trauma assessments for their clients if the youth is not amenable to an assessment or if the attorney has a concern the youth may be viewed by courts as not amenable to treatment in a community setting. In deciding whether to request an assessment, attorneys must consider the potential benefits that trauma screening and assessment may have to ensure clients receive appropriate, community-based services to facilitate their healing and address mental health issues that can impact their legal cases. While it is ultimately the client's decision, it is imperative that defense attorneys engage in client-centered and developmentally appropriate counseling to present both the potential benefits and risks of a trauma-informed assessment. An independent assessment is an option when the resources for obtaining such services are available.

***Understand legal implications of information sharing.*** Defense attorneys should be aware of legal consequences related to information shared during court-ordered assessments. For example, youth accused of wrongdoing may report information on trauma history that could be used against them in court proceedings (e.g., acknowledgment of inappropriate sexual conduct with another child or violent behavior that is not the subject of the charged misconduct).

***Request trauma-informed assessments developed for youth.*** Not all mental health agencies routinely use assessments that are youth-specific or that ask about trauma exposure or symptoms. When appropriate, attorneys should make efforts to ensure the assessing agency arranges for trauma-informed assessments that are youth-informed.

Not all youth exposed to traumatic events experience residual trauma reactions that interfere with functioning. Defense attorneys should guard against knee-jerk reactions by judges, prosecutors, probation officers, or other stakeholders to equate all exposure to traumatic events with a need for court-ordered services, which may not be warranted. Defense-controlled screening and assessment will help defenders tailor their advocacy by providing a systematic method for evaluating what, if any, services are appropriate.

Moreover, exposure to trauma does not mean that youth are irreparably damaged. Even severely traumatized youth and adults can recover from trauma with the right supports, including effective mental health treatment. Trauma-specific or trauma-focused treatment refers to mental health interventions designed to help people recover from traumatic stress. There are multiple trauma-focused treatments for adolescents that are “evidence-based” (i.e., shown effective in rigorous research studies), although only a few have been tested and shown effective with youth involved in the juvenile justice system.<sup>32</sup> Trauma-specific treatments can include individual treatments (1:1 counseling for youth), group treatments (for multiple youth), and treatments designed for the youth and parent(s) to work together. Trauma-focused treatments can support clients’ resilience by helping them understand the ways they have been affected by trauma, develop effective coping and problem-solving skills, build on their strengths, reduce trauma-related symptoms, and improve functioning in multiple areas (e.g., social, academic, developmental).

When a client has undergone a comprehensive assessment (see Section 5) and is found to be suffering from trauma-related impairment, the attorney should counsel the client about the benefits of trauma-informed treatment. A core principle of trauma-informed practice is to provide clients with a sense of control over the process. Thus, attorneys should ask and advocate for client preferences about treatment modality (e.g., individual, family, or group treatment) and therapist gender (e.g., some youth have an aversion to or may be triggered by a clinician of the same gender as their abuser), with an eye toward advancing the youth’s expressed interests, both legal and personal. That said, currently in many jurisdictions trauma-specific treatments are not widely available to youth involved in the juvenile justice system.

Note that not all treatments are trauma-informed, including many of the treatments commonly mandated for justice-involved youth (e.g., parenting groups, substance abuse treatment, anger management). Clients with traumatic stress are less likely to benefit from such interventions and more likely to end treatment prematurely, which may result in the perception that they are “out of compliance” with the program. Evidence-based, trauma-specific treatments are those treatments that are empirically proven to be effective at reducing stress related to trauma reminders and building skills to manage traumatic stress reactions (e.g., avoidance, aggressive outbursts, and withdrawal from important relationships; see Appendix for recommended databases of evidence-based trauma-informed treatments). Strategies for managing distress are particularly important; without those strategies, youth may disengage from treatment. A negative treatment outcome may be misused against the juvenile client as evidence that they are unwilling or “too damaged” to change their behavior. Therefore, attorneys should advocate that their clients are referred to trauma-specific treatment when indicated and appropriate.

Many mental health providers have not been trained in trauma-specific treatment. To identify trained providers, attorneys should ask prospective treatment providers detailed questions about the treatment(s) they utilize (see Appendix for potential questions) and reference an evidence-based treatment database (e.g., SAMHSA NREPP or CEBC databases) to validate

#### CORE ELEMENTS OF TRAUMA-SPECIFIC/ FOCUSED TREATMENT

Juvenile defense attorneys should consider whether a proposed service or treatment program is appropriate for clients with a trauma history and trauma-related reactions by questioning whether the program:

- Educates youth about trauma and its effects on thoughts, feelings, and behavior
- Increases a youth’s sense of physical & psychological safety
- Identifies reminders that trigger trauma reactions
- Accounts for how seemingly “non-compliant” behavior can be related to trauma, rather than willfulness or lack of cooperation, and addresses the behavior accordingly
- Develops emotional regulation skills (i.e., skills to help control and express strong feelings or to respond to difficult situations)
- Promotes trauma-informed parenting skills
- Addresses grief and loss (when appropriate)
- Teaches youth to manage traumatic memories
- Identifies and cultivates existing supports and strengths that promote recovery.

the efficacy of the treatment being provided.

Defense attorneys should also be cautious of attempts to over-pathologize youth as damaged or only capable of success if thrown into intense and all-encompassing “services.” Such a lens discounts individual resiliency. Moreover, there is a danger of court systems using trauma as a “net widening” tool that pulls youth deeper and deeper into the court system, where the threat of ever-increasing sanctions for perceived non-compliance is a real peril. This approach risks making a trauma-related diagnosis a marker for disproportionately longer involvement in the system.

The key to effective treatment is appropriate treatment. While the goal is for all juvenile court systems to be evidence-based, developmentally appropriate, and trauma-informed, the reality is that not all systems operate this way. Sometimes, the court system is not set up to be the appropriate place for youth to receive trauma services. Placing a youth into the wrong services can negatively impact resilience and create further obstacles. In such situations, defense attorneys have an obligation to seek alternatives and advocate for other case outcomes. When questions arise regarding the appropriateness of treatment, attorneys should consider reaching out to a trauma-informed mental health professional for guidance.

## 7

### The Impact of Trauma Exposure on Family and Caregivers

Juvenile delinquency proceedings inevitably include parents, caregivers, and other family members. It is critical for a defense attorney to understand the client’s family dynamics and how they may influence the youth-client’s decision-making. Families are often a young person’s greatest source of strength and protective factors that promote resilience, but families can also be the source of stress or trauma. While defense attorneys do not represent anyone other than their youth-client, interventions rarely impact the client alone. It is important to understand how family and caregivers can support or hamper prospective outcomes.

While research is lacking on the prevalence rates of trauma exposure among caregivers of justice-system-involved youth, approximately 90% of parents or caregivers involved in the child welfare system have histories of trauma exposure, including high rates of childhood abuse and neglect, and a significant number were involved in the system as children.<sup>33,34,35</sup> It is critical that defense attorneys and other stakeholders keep in mind that traumatic stress may not be limited to the youth, but may be impacting the entire family. This may be particularly true for justice-system-involved youth who are dually involved (i.e., simultaneously receiving services from both the child welfare and juvenile justice systems). Additionally, families may be affected by historical trauma resulting from societal or institutional racism and oppression towards ethnic minorities, particularly African-American, Native American, and immigrant communities. The impact of these traumatic experiences on both caregivers and their children can be inadvertently exacerbated by institutional practices within the child welfare or juvenile justice systems.<sup>36</sup>

Parents and caregivers may need to receive trauma-informed services to support their healing process and engage effectively in their child’s defense. While delinquency attorneys do not represent the parents, the delinquency courts in many jurisdictions have statutory authority to include parents or caregivers in court-ordered delinquency services. Attorneys should consider, with their clients, whether advocating for services that include family involvement are appropriate and advance the client’s expressed goals.

Parents who have experienced trauma may exhibit problematic behaviors such as angry outbursts, lateness, refusal to return phone calls, and missed appointments or court appearances. One study of child welfare-involved mothers found that those who had previous involvement with the system as children were significantly less engaged with services provided through child welfare agencies.<sup>37</sup> While these behaviors may be misinterpreted as hostility or apathy, they may in fact be symptoms of traumatic stress. Traumatic stress pushes the brain into a hyper-vigilant mode that may cause individuals to be highly sensitive to power differentials, perceived attacks, and a perceived loss of control. This may result in a parent’s distrust of, and irritability toward, those who appear more powerful and in control, such as attorneys, judges, and probation officers.<sup>iv</sup> Trying to understand the possible underlying cause of the parent’s reactions can help defense attorneys engage families in a more respectful and empathetic way that encourages cooperation, when appropriate.

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<sup>iv</sup> Traumatic stress may decrease a parent’s ability to perceive the world accurately, process information, remain organized due to executive function deficits, and increase risk of substance use. In turn, this may contribute to an increased risk of maltreating their children.



The juvenile court system was established with a focus on rehabilitation for young people. Over the years, however, increased attention on public safety and victims' rights has sometimes conflicted with the juvenile court's rehabilitative objectives. Most jurisdictions now recognize that both public safety and rehabilitation are achieved when youth accused of law violations feel fairly treated, feel physically and psychologically safe, and receive appropriate services. Even when a child has physical safety, a lack of psychological safety can impede interpersonal relationships, increase anxiety, and can lead to the use of a variety of maladaptive coping strategies.

Removal from home on a juvenile delinquency case can have significant implications for a youth's sense of physical and psychological safety. Removal from home makes it more difficult for treatment providers to address the underlying issues that may be contributing to the youth's behaviors, which in turn effects the likelihood of rehabilitation and long-term public safety. Furthermore, recent research highlights the significant risks for trauma exposure in detention and incarceration settings,<sup>38</sup> and related studies of youth in child welfare settings show that frequent placement changes are associated with poor outcomes.<sup>36</sup> For dually-involved youth, removal from a home environment where there is neglect, abuse, or other influences that negatively affect a youth's behavior may improve physical safety, but may result in a lack of psychological safety for that youth. A lack of psychological safety can negatively impact a youth's rehabilitation, and ultimately, public safety. Attorneys may not have the power to alleviate their client's distress, but they can minimize trauma caused by forceful removal from the family or community and improve their sense of safety by advocating for them in the following ways:

**Placement.** All defense attorneys have an ethical obligation to advocate for a client's expressed interests. Giving the youth a voice in the proceedings will help the youth feel a greater sense of control in a process that can otherwise be overwhelming and even traumatic. Defense attorneys are ethically barred from advocating for what they view as being in the youth's best interest if it conflicts with what the youth wants or is willing to do. If a client desires to stay with the family, the defense attorney should identify support mechanisms that will assure the court that the youth can safely remain in the home. Social workers, community members, and even probation officers may be helpful in identifying workable community-based options. In cases where the court insists that a youth must be removed from home, the attorney should advocate for placement in a less restrictive, community-based program that can provide a physically and psychologically safe home environment, rather than secure confinement away from support structures the youth currently has. Additionally, many of the elements inherent in secure confinement settings, such as strip searches, restraints, fear of aggression by staff or fellow residents, and an increased risk for sexual abuse,<sup>41,42,43</sup> may also be particularly triggering for youth with a history of trauma.

Attorneys should seek the input of their client regarding relatives who may be able to provide a safe alternative home or greater supervision, if that is the court's concern. Confinement is not the only non-home environment available, so if home is not possible, the client should help identify the next best options that maintain the client's psychological safety. In cases when an out of home placement is unavoidable, attorneys should consider advocating for a placement close to the youth's home community so that the youth can maintain contact with their support systems, including extended family, church, school, teachers, neighbors, mentors, and coaches. When a youth is placed outside of the community, attorneys should advocate for the youth to remain enrolled in the same school, unless the client desires to move to a new school. This can provide needed stability, continuity, and connections with positive and familiar adults.<sup>44</sup> One positive relationship with an adult can make all the difference for a youth. Specifically, having a stable, nurturing relationship with an adult can facilitate tremendous healing and recovery for a youth who has experienced trauma.

**Transitions.** Attorneys can help with transitions to and from out-of-home placement through thoughtful, planned, and client-driven decisions regarding detention arguments, disposition conditions, placement, and reentry. Specifically, they can do the following:

- Advocate for the least restrictive alternatives to detention at disposition, as well as the least restrictive and fewest conditions or services that achieve the client's informed, expressed goals
- Assess the appropriateness of any placement based on the youth's emotional, social, developmental, educational, and medical status and expressed goals

- Advocate for family contact with the youth while in out-of-home placement, if the youth desires
- Advise clients of the short- and long-term consequences of their expressed goals and the dangers of rejecting trauma treatment that could be beneficial, to help ensure the client's choices are informed, even if the attorney disagrees with the ultimate decision
- Assist youth who are reentering the community from confinement or from other non-home placements to reconnect with school, employment, and families in a way that promotes rehabilitation and success; attorneys can do this by representing youth in the reentry phase or by holding other stakeholders accountable for fulfilling the requirements of the court's rehabilitative order. Too often, youth are terminated from placement or supervision with no plan for successful reintegration, setting them up for failure and a return to the justice system.

## 9

## Secondary Traumatic Stress and Attorneys

*Vicarious or Secondary Trauma* describes the negative physical and psychological health consequences resulting from repeated exposure to the stories and experiences of traumatized clients. Attorneys handling juvenile cases are at high risk for developing secondary trauma reactions due to their frequent exposure to trauma survivors and their stories of trauma exposure. Furthermore, research suggests that the majority of attorneys will be threatened with violence at least once in their careers.<sup>45</sup> One study of public defenders found that 34% of attorneys reported symptoms of secondary trauma while 11% met criteria for a diagnosis of PTSD.<sup>46,47</sup>

Although not a specific diagnosis, Secondary Traumatic Stress (STS) reactions range from decreased empathy towards clients and changes in a sense of personal safety to the onset of PTSD symptoms (see Section 2). STS can lead to impairment in attorneys' mental or physical health, job performance, and personal relationships.<sup>48</sup> Attorneys may engage in risky or unhealthy behaviors to cope with STS, including increased substance use, isolation or estrangement from loved ones, or overly focusing on protecting their own children from danger.

**Risk Factors for Secondary Trauma.** Both individual and job-related or organizational factors may increase an attorney's risk for developing secondary trauma. Individual factors include a prior history of trauma exposure (e.g., attorneys who were themselves abused as children) and use of effective strategies for coping with distress.<sup>49</sup> Job and organizational factors that influence risk for STS include the number of trauma survivors on the attorney's caseload, level of support from coworkers and supervisors, and education and training on STS.<sup>50</sup> In a study on secondary trauma among attorneys, participants attributed their traumatic stress reactions to a lack of education on understanding clients with trauma histories and the absence of a regular forum for discussing the impacts of working with clients with trauma histories.<sup>51</sup>

**Preventing Secondary Trauma.** There are several strategies that individual attorneys and agencies can take to help prevent secondary traumatic stress. Training on working with trauma survivors has been shown to increase empathy and confidence in working with this population among

### STRATEGIES FOR ATTORNEY SELF-CARE

- Exercise regularly and maintain a consistent sleep schedule.
- Eat healthy food and reward yourself with your favorite food occasionally.
- Build breaks into your schedule—even if just a few minutes.
- Connect daily with others who recharge your emotional state.
- Practice mindful activities that can include meditation, yoga, or spiritual practices.
- Set and maintain boundaries with clients—specifically, clarify your role as attorney (versus social worker, case manager, or other service provider).
- Reduce your caseload or diversify your practice, if possible.
- Monitor your risk for STS by periodically completing a STS self-assessment tool such as the ProQOL or the Secondary Traumatic Stress Scale (see Appendix).
- Connect clients with appropriate service providers—use a team approach for clients who need a high level of support. Make a go-to list of local resources to hand to clients and support connection with these resources.
- Access state bar legal assistance programs or confidential support services when available, or seek counseling services as needed.
- Identify colleagues or friends who can be an emotional support and sounding board for your feelings, and commiserate in a positive, cathartic way.

mental health providers.<sup>52</sup> Recommended areas of focus for training with attorneys include the following:

- Understanding the impact of trauma on children and adults
- Skills for working with trauma survivors
- Recognizing the signs and risks for secondary trauma
- Stress reduction and management skills (e.g., mindfulness)<sup>53</sup>

Formal supervision and peer support groups can also help prevent STS by providing attorneys with support and a forum for discussing the challenges of working with trauma survivors. Agencies should also offer employee assistance programs or referrals to outside mental health providers for attorneys who develop symptoms of STS.

Some traumatized professionals, believing they can no longer be of service to their clients, end up leaving their jobs or their field altogether. Several studies indicate the development of secondary traumatic stress often predicts that a helping professional will eventually leave the field for another type of work. With attention to these challenges, attorneys will have the tools to stay healthy for themselves and their clients.

### POTENTIAL IMPACT OF SECONDARY TRAUMA ON JOB PERFORMANCE

- Reduced empathy towards clients
- Inability to listen to, or avoidance of, clients
- Over-identification with clients or shutting down emotionally (both responses interfere with effective legal representation)
- Distancing oneself from exposure to key aspects of a client's history and on-going trauma—thereby missing events with high probative value in litigation
- Disregard for clients' challenges, difficulties, or limitations
- Displaying hypervigilance through inappropriate outbursts in court or with colleagues, clients, witnesses, or others
- Expressing excessive anger or irritability that, while appearing as zealous advocacy in a trial setting, in fact could be damaging to the attorney and client

Emotional depletion or cognitive distortion that could compromise the quality of legal representation

### SIGNS OF VICARIOUS OR SECONDARY TRAUMA

- Disruption in perceptions of safety, trust, and independence
- Sleeping difficulties or nightmares
- Exhaustion
- Using alcohol or drugs to self-medicate
- Anger or cynicism towards “the system” that begins to interfere with work or personal life
- Difficulty controlling emotions
- Hyper-sensitivity to danger
- Increased fear and anxiety
- Intrusive thoughts or images of client trauma stories
- Social withdrawal
- Minimizing the effects of trauma on self and others, including clients, families, and court professionals
- Illness, increase in sick days at work
- Diminished self-care and depletion of personal resources
- Reduced sense of self-efficacy



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## APPENDIX

This section provides resources that may be helpful to juvenile defense attorneys in their representation of youth with histories of exposure to traumatic events.

### RESOURCES FOR ATTORNEYS

#### TRAUMA AND ITS EFFECTS ON YOUTH:

Forkey, H. (2015). Medical effects of trauma: A guide for lawyers. *Child Law Practice*, 34, 97. Retrieved from: <https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/chilawpt34&id=96>

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National Child Traumatic Stress Network. (2016). Racial injustice and trauma: African Americans in the US. Los Angeles, CA & Durham, NC. Retrieved from: [http://www.nctsn.org/sites/default/files/assets/pdfs/racialinjusticeandtrauma\\_101816\\_final.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/racialinjusticeandtrauma_101816_final.pdf)

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Center for Child Trauma Assessment and Service Planning. (2016) Remembering Trauma [motion picture]. United States: Northwestern University.

Ikpe, U., & Coker, K. L. (2009). Encouraging the use of community involvement and restorative practices as treatment for trauma with black juvenile offenders. *Public Interest Law Reporter*, 15, 220. Retrieved from: [https://heinonline.org/HOL/Page?handle=hein.journals/pilr15&div=39&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/pilr15&div=39&g_sent=1&casa_token=&collection=journals)

#### TRAUMA-INFORMED LEGAL ADVOCACY:

American Bar Association [ABA]. (2014, February). Policy on trauma-informed advocacy for children and youth. Retrieved from: [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf)

American Bar Association [ABA] Center on Children and the Law Resource List for Polyvictimization and Trau-

ma-informed Legal Advocacy. Trauma and polyvictimization. Retrieved from: [https://www.americanbar.org/groups/child\\_law/resources/child\\_law\\_practiceonline/article\\_collections0/trauma-polyvictimization.html](https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/article_collections0/trauma-polyvictimization.html)

Kavanaugh, A. & National Juvenile Defense Center [NJDC]. (2017). Tips on youth trauma: For juvenile defenders. Retrieved from: <http://njdc.info/wp-content/uploads/2018/01/Tips-on-Youth-Trauma-for-Juvenile-Defenders.pdf>

Simkins, S., & Cohen, L. (2014). The critical role of post-disposition representation in addressing the needs of incarcerated youth. *John Marshall Law Journal*, 8, 311. Retrieved from: <http://youthviolence.rutgers.edu/wp-content/uploads/2015/11/8JohnMarshallLJ-311-Simkins-and-Cohen.pdf>

#### **IMPACT OF TRAUMA ON THE ATTORNEY-CLIENT RELATIONSHIP:**

Reitman, K. A. (2011). *Attorneys for children guide to interviewing clients: Integrating trauma informed care and solution focused strategies*. Utica, NY: Child Welfare Court Improvement Project, New York State Unified Court System. Retrieved from: <http://www.nycourts.gov/ip/cwcip/Publications/attorneyGuide.pdf>

#### **INFORMATION SHARING:**

Stewart, M. (2013). *Cross-system collaboration*. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. Retrieved from: [http://www.nctsn.org/sites/default/files/assets/pdfs/jj\\_trauma\\_brief\\_crosssystem\\_stewart\\_final.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/jj_trauma_brief_crosssystem_stewart_final.pdf)

The Juvenile Law Center and Robert F. Kennedy National Resource Center for Juvenile Justice have developed the Models for Change Information Sharing Toolkit. Retrieved from: [www.infosharetoolkit.org/](http://www.infosharetoolkit.org/)

#### **SCREENING AND ASSESSMENT:**

Pilnik, L., & Kendall, J. R. (2012). *Identifying polyvictimization and trauma among court-involved children and youth: A checklist and resource guide for attorneys and other court-appointed advocates*. Retrieved from: [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/IdentifyingPolyvictimization.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/IdentifyingPolyvictimization.pdf)

National Center for Mental Health and Juvenile Justice [NCMHJJ] (2007, November) *Mental health screening within juvenile justice: The next frontier*. Retrieved from <http://www.modelsforchange.net/publications/198>

#### **TREATMENT:**

National Child Traumatic Stress Network. (n.d.). *Finding effective trauma-informed treatment for children, teens, & families*. Retrieved from <http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices>

The National Child Traumatic Stress Network's website includes a comprehensive list of the most effective and widely used trauma-informed treatments for children, adolescents, and families. This site includes a description of the core components of trauma-informed treatments and a list of trauma-informed interventions for children, adolescents, and families, with fact sheets summarizing the key components of each treatment and the research evidence that shows its effectiveness.

#### **FINDING A TRAUMA-INFORMED THERAPIST OR EXPERT IN YOUR AREA:**

<http://www.nctsn.org/about-us/network-members>

The National Child Traumatic Stress Network is comprised of more than 100 federally-funded and affiliated academic and treatment centers around the US that provide trauma-informed mental health services and



training/consultation on child traumatic stress. To find a trauma expert in your area, search the NCTSN's list of network members by state.

<http://www.istss.org/find-a-clinician.aspx>

The International Society for Traumatic Stress Studies offers a searchable online database of mental health professionals that offer trauma-informed treatment across the globe.

<http://www.nctsn.org/resources/get-help-now>

The NCTSN's *Get Help Now* site offers information on help for children who have experienced abuse or neglect.

NCTSN Fact Sheet: *List of Questions to Ask Mental Health Professionals*

(Retrieved from the NCTSN Child Welfare Trauma Training Toolkit [CWTTT])

1. Does the individual/agency that provides therapy conduct a comprehensive trauma assessment?
  - a. What specific standardized measures are given?
  - b. What did your assessment show?
  - c. What were some of the major strengths and/or areas of concern?
2. Is the clinician/agency familiar with evidenced-based treatment models?
3. Have clinicians had specific training in an evidenced-based model (when, where, by whom, how much)?
4. Does the individual/agency provide ongoing clinical supervision and consultation to its staff, including how model fidelity is monitored?
5. Which approaches does the clinician/agency use with children and families?
6. Is parent support, conjoint therapy, parent training, and/or psychoeducation offered?
7. Which techniques are used for assisting with the following: Building a strong therapeutic relationship; Affect expression and regulation skills; Anxiety management; Relaxation skills; Cognitive processing/reframing; Construction of a coherent trauma narrative; Strategies that allow exposure to traumatic memories and feelings in tolerable doses so that they can be mastered and integrated into the child's experience; Personal safety/empowerment activities; Resiliency and closure
8. How are cultural competency and special needs issues addressed?
9. Is the clinician or agency willing to participate in the multidisciplinary team (MDT) meetings and in the court process, as appropriate?

## **SECONDARY TRAUMATIC STRESS:**

Rainville, C. (2015, September). Understanding secondary trauma: A guide for lawyers working with child victims. *ABA Child Law Practice*, 34, (9). Retrieved from: [http://www.americanbar.org/groups/child\\_law/what\\_we\\_do/projects/child-and-adolescent-health/polyvictimization/understanding-secondary-trauma-a-guide-for-lawyers-working-with.html](http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/understanding-secondary-trauma-a-guide-for-lawyers-working-with.html)

Institute for Redress & Recovery, Santa Clara Law. (n.d.) Secondary trauma and the legal process: A primer & literature review. Santa Clara, CA: Author. Retrieved from: <http://law.scu.edu/redress#5>

van Dernoot Lipsky, L., & Burk, C. (2009). *Trauma stewardship: An everyday guide to caring for self while caring for others*. San Francisco, CA: Berrett-Koehler Publishers. Retrieved from: <http://traumastewardship.com/inside-the-book/>

Stamm, B. H. (2009). Professional quality of life: Compassion satisfaction and fatigue version 5 (ProQOL). 2011-03-20].

The Professional Quality of Life Scale is a 30-question assessment of secondary traumatic stress, burn-out, and compassion satisfaction that is intended for use with a wide range of helping professionals. To download a free copy of the ProQOL, including instructions on how to complete and score the questionnaire, visit [http://www.proqol.org/ProQol\\_Test.html](http://www.proqol.org/ProQol_Test.html). Mental health counseling or other supports can be helpful in

addressing high scores on the secondary trauma or burnout scales of the ProQOL. Refer to Section 6 of this Appendix for additional information on locating a trauma-informed therapist in your area.

## RESOURCES PERTAINING TO JUVENILE COURT JUDGES AND SYSTEMS

National Council of Juvenile & Family Court Judges [NCJFCJ]. (n.d.). Trauma-informed systems of care. Retrieved from: <http://www.ncjfcj.org/our-work/trauma-informed-system-care>

National Child Traumatic Stress Network and National Council of Juvenile & Family Court Judges. (2013). Bench card for the trauma-informed judge. Los Angeles, CA and Durham, NC: Authors. <http://www.nctsn.org/products/nctsn-bench-card-trauma-informed-judge>

### Resources for Trauma-Informed Court Systems

National Council of Juvenile & Family Court Judges [NCJFCJ]. (2014). Trauma court audit. Retrieved from: <http://www.ncjfcj.org/sites/default/files/Trauma%20Audit%20-%20Snapshot.pdf>

Finkel, E. (2014, September). Trauma-informed judges take gentler approach, administer problem-solving justice to stop cycle of ACEs. Retrieved from: <https://acestoohigh.com/2014/09/24/trauma-informed-judges-take-gentler-approach-administer-problem-solving-justice-to-stop-cycle-of-aces/>

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