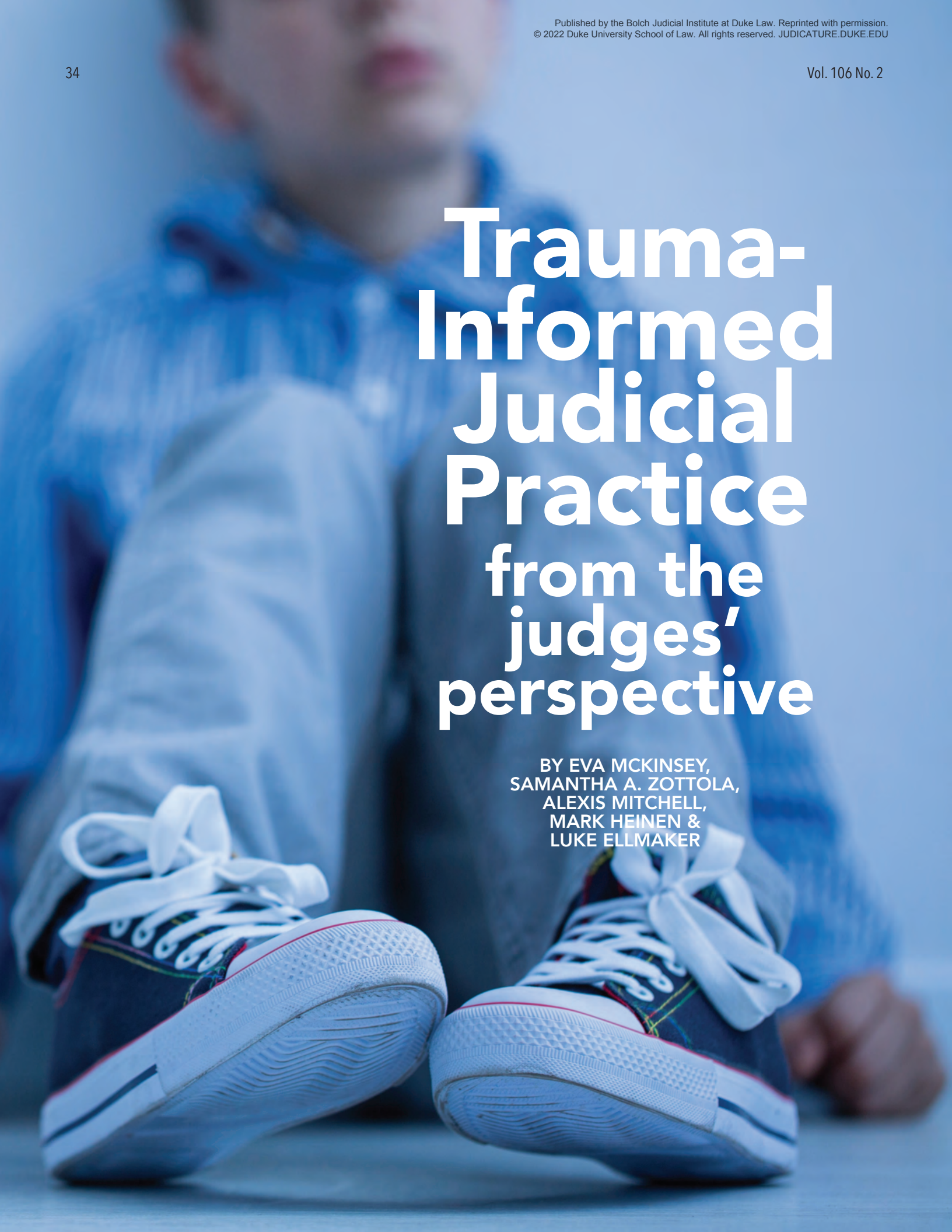


Trauma- Informed Judicial Practice from the judges' perspective

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Research sends a clear message: The effects of trauma cannot be ignored within our court system. Up to 90 percent of adolescents and 75 percent of adults involved in the U.S. criminal legal system report at least one traumatic event during childhood,¹ and decades of research demonstrate the link between early experiences of trauma and later negative outcomes, including criminal legal system involvement. What can judges do to help address this endemic problem? In this article, we describe an in-depth investigation of judges' perspectives on how to make judicial practice more "trauma-informed." But first, we offer an overview of trauma and its relevance to the criminal legal context.

One of the first large-scale explorations of trauma was the Adverse Childhood Experiences (ACEs) study, a massive undertaking that surveyed 17,000 people between 1995 and 1997.² In this study, Kaiser Permanente asked participants a series of questions about their experiences as a child to investigate whether exposure to traumatic events in childhood was linked to physical and mental health issues in adulthood. The questions covered events a person may have experienced themselves or may have witnessed happening to someone with whom they lived, and they focused on three broad categories — abuse, neglect, and family dysfunction. Had the child experienced physical, sexual, or emotional abuse, or physical or emotional neglect? Did the child have a family member who was depressed or diagnosed with other mental illness, or who was addicted to alcohol or another substance, or who was in prison? Had the child witnessed a mother being abused? Had the child lost a parent to separation, divorce, or some other reason?³

The findings of the study shocked researchers: Nearly two-thirds of adults had at least one ACE.⁴ And the more adversity a person had experienced as a child, the more likely they were to suffer from both negative mental *and* physical outcomes as an adult, including chronic disease, suicidality, cancer, and other health concerns.⁵ An ACE score of 4, for example, is associated with a 400 percent increase in the risk of emphysema and a 1,200 per-

cent increase in the risk of suicide.⁶ The study suggested that trauma and its effects were more prevalent than ever imagined and flipped the script: Whereas trauma used to be seen as a problem predominantly within poorer communities of color, the study also revealed noticeable ACE scores among white participants and those with college degrees.⁷

Today, many judges, lawyers, and other system actors realize that not only can trauma not be ignored in their work, but that adopting a trauma-informed approach is part of doing their jobs well.

What began as a study about health quickly evolved into something much more. Further research revealed that the effects of early and/or severe adversity — including the original ACE categories, as well as others like bullying, systemic oppression, and community-based violence — are relevant to a wide range of contexts.⁸ Indeed, experiencing traumatic events can impact a person's brain and body development, and thus their behavior, in profound ways. Trauma can affect the actual physical structure of the brain — leading, at times, to more impulsive behavior, emotional regu-

lation challenges, trouble identifying threats, and other behaviors that may contribute to a person's involvement in the criminal legal system.⁹ These behaviors also contribute to outcomes that often occur in tandem with criminal legal system involvement, such as substance use, housing instability, relationship problems, and employment challenges.¹⁰ A vast program of research, some conducted even before the ACEs study, illustrates these links between trauma and system involvement,¹¹ showing that experiencing trauma during childhood increases the odds of engaging in violent behavior by more than 200 percent.¹² Importantly, research also shows that some people demonstrate growth and resilience, and can heal through psychotherapy,¹³ social support,¹⁴ and other interventions following traumatic events.¹⁵

This body of research, including a special issue in the *Juvenile and Family Court Journal* devoted to trauma in 2006, brought the concept of "trauma-informed care" to the forefront of the criminal legal context. Nearly a decade later, the government agency Substance Abuse and Mental Health Services Administration (SAMHSA) developed a framework for taking a trauma-informed approach that could be adopted across a range of service systems, including the criminal legal system. This framework articulates the "4 Rs" of a trauma-informed approach: *realizing* the prevalence of ►

Judges expressed confidence in their knowledge of trauma but uncertainty about what to do with that knowledge.

trauma and potential pathways for recovery; *recognizing* signs and symptoms of trauma in the people who come through the courtroom; *responding* by integrating knowledge of trauma into practice; and actively *resisting re-traumatization*.¹⁶ Studies examining the impacts of trauma-informed interventions directed at people who are justice-involved* have shown reduced recidivism and perpetration of violent behavior among youth in juvenile detention centers,¹⁷ and decreased presence of post-traumatic stress disorder symptoms among women who are incarcerated.¹⁸ Today, many judges, lawyers, and other system actors realize that not only can trauma not be ignored in their work, but that adopting a trauma-informed approach is part of doing their jobs well.

Despite widespread recognition of the importance of trauma-informed care throughout the U.S. criminal legal system broadly and the court system specifically, many system actors still have questions surrounding this concept: What exactly does it mean to be “trauma-informed” within a courtroom? How much does trauma *really* influence a person’s involvement in the system? How should court professionals, including judges, be trained on this concept?

There is some guidance on these questions. The National Child Traumatic Stress Network published a resource

guide on the Essential Elements of a Trauma-Informed Juvenile Justice System,¹⁹ and a recent study investigated perceptions of judicial educators about what does and does not work when engaging in trauma education for the judiciary.²⁰ However, the perceptions of judges themselves have not been extensively explored. And these perceptions matter, as studies show that the success of any practice depends in part upon whether the practitioner actually believes the practice is appropriate and relevant.²¹ Indeed, judicial educators recognize the importance of understanding judges’ perceptions and recommend that anyone creating trainings should “engage judicial voice in assessing how trauma education is designed and delivered.”²² The investigation described here aimed to do just that by asking judges themselves about their experiences with receiving training on trauma-informed courtrooms and engaging in trauma-informed practices.

OUR INVESTIGATION

Over the past year, a team of investigators set out to explore judges’ perceptions of trauma training and trauma-informed courtrooms. The process began in August 2021 with a pilot trauma education course for a small group of North Carolina district court judges. The course was developed and administered by the Bolch Judicial Institute at Duke Law School, which serves as the academic leader of the North Carolina Chief Justice’s Task Force on ACEs-Informed Courts, created by Chief Justice Paul Newby in May 2021 (the Institute also publishes *Judicature*). The course concluded with a feedback session in which research-

ers asked participating judges for their thoughts on the effectiveness of the course and how to improve future trainings.

The curriculum covered three topics: 1) the science of trauma; 2) efforts to grow a trauma-informed system of care in North Carolina; and 3) pragmatic ways to implement trauma-informed practices in the courtroom. The training lasted two and a half hours, took place over Zoom due to COVID-19 precautions, had one session for each topic, and included an introduction by a North Carolina chief district court judge who opened the program by discussing the goals and purpose of the course. The course that followed included a session on the brain science of trauma led by a professor of psychiatry; a session on the trauma movement within the state led by a clinical psychologist; and a session on practical application of trauma-informed court in the courtroom led by two experienced judges.²³

Eleven district court judges, five of whom were chiefs of their respective district courts, attended the pilot training. The participating judges came from both urban and rural jurisdictions across North Carolina, and their years of experience on the bench ranged from one year to 21 years, with the majority having served over ten years. Knowledge of trauma varied among the judges, though all had at least some baseline familiarity.

Directly following the pilot training, the judges engaged in a feedback session on the training. The feedback session was structured using the group-level assessment model, a research method in which stakeholders — in this case, participating judges — join the

* Throughout our article, we use the terms *justice-involved* or *court-involved* to refer to people who are involved with the court or justice system at any stage (e.g., pretrial, sentencing, post-conviction, probation). Using a term that allows for person-first language (i.e., person who is justice-involved), rather than a label (e.g., defendant, perpetrator), is aligned with the key principles of trauma-informed practices laid out by SAMHSA: specifically, the principle of collaboration and mutuality.

evaluation process as co-researchers.²⁴ This model allows those with the greatest courtroom knowledge and expertise to play a central role in the generation, analysis, and interpretation of data.²⁵

We also conducted in-depth interviews with nine of the judges three to four months after the training to learn about their experiences implementing the content of the training and their opinions of trauma-informed courtrooms broadly. Here, we share our findings on judges' perceptions of various topics and issues surrounding trauma-informed judicial practice focusing on three overarching topics:

1. Trauma Education — What do judges believe makes an effective trauma education program for court professionals?
2. Trauma-informed Courts — What do judges believe makes a courtroom trauma-informed?
3. Barriers and Solutions — What do judges consider to be the greatest barriers to implementing trauma-informed judicial practice and how do they believe these barriers should be addressed?

In the sections that follow, we dig into each of the above-listed questions, first providing brief overviews of the general topic and then reporting our findings.

WHAT MAKES AN EFFECTIVE TRAUMA EDUCATION PROGRAM FOR COURT PROFESSIONALS?

A recent survey of 343 court professionals (probation/parole officers, lawyers, judges, and law students) found that nearly one in two respondents had previously participated in a training or educational program focused on the impact of trauma.²⁶ Trauma-related education takes many forms. It might

be, for example, a broader educational curriculum on child development or a viewing of the movie *Resilience: The Biology of Stress and the Science of Hope*. Whatever the form, these educational efforts generally have the same overarching goals — defining trauma and traumatic events, explaining how trauma affects the brain and behavior, describing the relevance of trauma to the criminal legal context, and illustrating how to adjust court practices and procedures to account for the influence of trauma on court-involved people.

Findings

We gleaned 11 essential recommendations for future trauma education from the feedback we received from our judge participants. These recommendations cover two broad categories: the content of training and the structure of training.

Content Recommendation #1: Focus on the practical

“Many trainings are conceptually strong, but weak on practicality.”

In both the feedback session and interviews, judges expressed confidence in their knowledge of trauma but uncertainty about what to do with that knowledge. Future trainings should dedicate substantial time to concrete changes judges and other legal actors can make and specific skills they can develop to foster a trauma-informed courtroom. As one judge described, seemingly simple skills, such as communicating with courtroom participants in a trauma-informed manner, can be challenging. “You have to ask questions but try to not be too personal with people either — you don’t want people to have to talk about all of their problems within a courtroom with 100

people sitting there, but being positive and supportive and praising people for the steps that they’re taking is important. Sometimes, I get so rushed that I forget to do that.”

Content Recommendation #2: Incorporate research, data, and statistics into training

“The brain studies on the actual biological impact of trauma, neuroplasticity, etc., [are] amazing for someone who went to law school.”

Judges appreciated the inclusion of research speaking to the neuropsychological impacts of trauma, statistics on the prevalence of trauma in North Carolina, and research on the impacts of trauma-informed interventions in other criminal legal contexts (e.g., juvenile detention centers). They also expressed a desire for more research on topics they thought would help foster a trauma-informed approach and increase buy-in among other court professionals, such as research showing the impacts of courtroom-based trauma-informed practices on future legal system involvement and life outcomes. In other words, several judges asked: Do these practices “work”?

Content Recommendation #3: Include broad messaging and discussion about what it means to be a judge

“[My main takeaway of the pilot training was] the concept of making court procedures and processes more about everybody else and not just about the judges and lawyers.”

Most judges shared the perspective that becoming trauma-informed necessarily involves re-examining the role of the judge. Several referred to this as a ►

Most judges shared the perspective that becoming trauma-informed necessarily involves re-examining the role of the judge. Several referred to this as a “mindset” or “culture” shift. Trainings should directly address this shift by emphasizing the ways in which taking a trauma-informed approach to one’s judicial role often means defying the traditional perceptions of what it means to hold that role.

“mindset” or “culture” shift. Trainings should directly address this shift by emphasizing the ways in which taking a trauma-informed approach to one’s judicial role often means defying the traditional perceptions of what it means to hold that role, which tend to include instilling fear in others or having authority over others. To demonstrate, one judge described a trauma-informed communication approach in contrast to the approach many judges were trained in: “You know, not being so challenging of ‘Why did you do this?’ . . . and [instead] trying to speak to them in a way that you’re trying to understand what happened in their lives that led them to where they’re standing in front of you . . . that’s always tricky for judges, though, because you do want accountability and personal responsibility, but how you get someone to be personally responsible . . . there are definitely different ways to do that – and not just fear. Fear is the old one that most judges have been trained to use. . . . That works for a certain number of people, but it doesn’t work for the majority of people. Unfortunately, that’s usually the mindset judges come from.”

Content Recommendation #4: Supplement training with educational resources

“I think bench cards, checklists, videos – all those things are extremely helpful.”

Judges expressed that a wide range of resources can be helpful at differ-

ent times, but that bench cards and checklists were the easiest to implement. Additionally, some judges said that sharing a list of trauma-informed practices that other court professionals frequently use would encourage such practices among other judges.

Content Recommendation #5: Don’t forget about adults

“My perspective is that it’s all been about children.”

Several judges noted how current trauma trainings are heavily centered around children. While early adversity has the greatest impact on young developing minds, trauma can occur at any age and often presents differently depending on a person’s age.²⁷ As such, trauma trainings should address the ways in which trauma manifests in adults and how to take a trauma-informed approach when working with adults in the system.

Content Recommendation #6: Include information and resources on vicarious trauma

“I think one training issue that needs to be dealt with is [that] being a juvenile court judge is traumatic. We see traumatic stuff; it affects us.”

As noted by several of the interviewed judges, the frequent exposure to and contact with trauma in other people’s lives can itself be traumatic. Research

shows that legal professionals are susceptible to vicarious, or secondary, trauma. One study of work-related symptoms associated with vicarious trauma found that the majority of judges (63 percent) reported experiencing either long- or short-term symptoms.²⁸ Another study that surveyed attorneys, mental health professionals, and social workers found that attorneys were the most likely to experience burnout from becoming “over-extended” with their clients.²⁹ Trainings should incorporate information on vicarious trauma and ways to address it, and should also avoid content that could re-traumatize training participants (e.g., video or audio clips presenting physical abuse).

Content Recommendation #7: Consider differences in the availability of resources faced by training participants

“I wish I could show you this room that I’m holding court in. I mean we [in rural courts] live in a very different world and we don’t have all those options. . . . We can’t paint the walls blue because it’s a soothing color. I can’t get paint on the walls in the hallway of my offices with holes punched in it with no paint at all on it for 10 years. . . . [Y]ou are talking about two completely different worlds when you talk about rural versus the urban metropolitan areas and all that.”

Some judges from low-resourced jurisdictions expressed frustration over trauma-informed courtroom

suggestions that rely on money, such as making structural changes to the courthouse. Trainers should recognize the potential resource limitations some districts face when making recommendations for changes to courtrooms and focus on affordable trauma-informed practices. Many potential practices cost little or nothing to implement, like improving communication and scheduling dockets to avoid exposing court-participants to unnecessary wait times and traumatic testimony, and even some physical changes are low cost, like adding children's books to waiting areas. Trainers should make it clear that costly courtroom changes are only some options among many and should consider proposing costly options only if courts strongly buy into making changes and have the means to implement them. Further, trainers should include information about free resources available for courts interested in implementing a trauma-informed courtroom, such as those available on the SAMHSA website.

Structure Recommendation #1: Form training teams with diverse voices and perspectives

"I would like to see a multiple-disciplinary team type of approach . . . have a judge make a presentation, somebody from the juvenile justice system, somebody from the district attorney's office."

Judges valued the diversity of presenters in the pilot training — researchers, clinical professionals, and judicial actors. They shared that hearing directly from a judge about trauma and their approach to trauma-informed practice was particularly impactful for increasing buy-in. Hearing from, and being able to ask specific questions of, trauma experts during the train-

ing was also helpful. That said, several judges expressed that some voices were missing, particularly voices of trauma survivors who had been system-involved. Trainings, whether in person or virtual, should include people with a wide range of perspectives and expertise.

Structure Recommendation #2: Provide training opportunities for all court professionals

"Out of 100 people, [court participants] might only interact with the judge 2 percent of the time. Ninety-eight percent of the time they are interacting with everyone else in the system, and so a lot of judges will go, 'Well, how much impact can I really have?'"

Most of the judges highlighted the fact that an individual will encounter many different court professionals (e.g., law enforcement officers, lawyers, clerks, magistrates, judge, etc.) while moving through the system. These multiple points of contact signal the need to educate all court professionals on trauma and trauma-informed judicial practice. Indeed, trauma-informed care describes a system-level approach to providing services to people, which requires all actors within that system to be on the "same page."

Structure Recommendation #3: Provide independent and collaborative training sessions across professions and jurisdictions

"If you have these meetings in silos, an agency may understand what their role is, but they don't understand how it connects to the other agency."

In recognizing that different actors have different frames of reference,

many judges suggested a training structure in which groups of actors are first trained independently (e.g., all judges together, all clerks together, etc.) to discuss group-specific issues and then brought together to discuss how to collectively create a trauma-informed experience for people who are system-involved. As one judge put it, "the left hand has to know what the right hand is doing." Several judges emphasized that these collaborative sessions would be most effective if they grouped actors by district so that they could discuss inventive ways to provide trauma-informed care while working around system- and resource-limitations in their districts.

Structure Recommendation #4: Ensure trainings are in person and interactive

"More expansive, in person, and ideally on site if that's an option."

Nearly all judges recommended in-person trainings that include sufficient time for discussion. In-person and, if possible, on-site trainings would allow more opportunity for the collaborative brainstorming and dialogue needed to turn trauma knowledge into trauma-informed practice. Though judges acknowledged that it can be challenging to gather a group of court professionals in one room for any significant amount of time, they suggested that trauma training may be one situation in which the effort is worthwhile.

WHAT MAKES A COURTROOM TRAUMA-INFORMED?

Many available resources (e.g., trainings, academic articles, published bench cards, and online guides) provide suggestions for creating a more trauma-informed justice system, yet ►

it can be difficult for judges to determine exactly how to implement these suggestions. For instance, a systematic review of 10 publications on trauma-informed care in the juvenile justice system found moderate consistency across publications on the abstract core domains of a trauma-informed juvenile justice system, such as the importance of promoting a safe environment, but much less consistency around the concrete trauma-informed practices, interventions, and policies to employ, such as the use of positive behavior-management strategies.³⁰

We sought to better understand what judges believe to be the core components of a trauma-informed courtroom. Understanding judges' perceptions of what a trauma-informed courtroom *does* look like allows for specific recommendations that address those perceptions and elucidates gaps in knowledge about what trauma-informed courtrooms *could* look like.

Findings

During interviews, judges' comments tended to center on five core components of a trauma-informed courtroom.

Component #1: Consider the judge's demeanor and behavior

"It goes deeper than [respect] when you're talking about trauma . . . we don't know what circumstances have brought the individual into the courtroom and why they're standing before me, so I have to try to be mindful in the way I talk to people, the language I use, the tone I use, because I have a furrowed brow and I can look mean and tough just naturally without intending to."

Judges focused heavily on judge demeanor and behavior when describ-

"If there is a traumatic condition that's causing this criminal behavior, if we don't treat that or get to the bottom of that, this person is going to continually be involved in the criminal justice system."

ing trauma-informed courtrooms. They recognized that their treatment of courtroom participants can have a significant impact on those participants' experience in court. Many emphasized the need for judges to shift their communication style to focus more on having a conversation rather than an interrogation or lecture. According to the judges, asking questions aimed at understanding as opposed to blaming (e.g., "What have you been through?" instead of "What is wrong with you?"), listening, and then asking more questions is at the crux of taking a trauma-informed approach as a judge.

Component #2: Prioritize treatment

"[It's] almost like I preside over a treatment court . . . the person obviously still needs to be held accountable, but maybe we're not so punitive, maybe we're more treatment-oriented and realizing that if there is a traumatic condition that's causing this criminal behavior, if we don't treat that or get to the bottom of that, this person is going to continually be involved in the criminal justice system."

All judges recognized prioritization of treatment as an essential element of trauma-informed judicial practice. They acknowledged that a trauma-informed courtroom should help individuals who have experienced trauma receive proper treatment to reduce the odds that they return to that courtroom in the future. That said, many judges also described a degree of tension or incompatibil-

ity between their desire to prioritize treatment and their responsibility to hold people accountable. As one judge explained, "On the one hand, you have the accountability; on the other hand, you have treatment." Future trainings should directly address how trauma-informed goals do not necessarily conflict with accountability goals.

Component #3: Slow down

"Too often, the prosecutors, everybody in the courtroom wants to hurry up. They want to get it done. They want to move on. They don't want to spend the time with this person or this child, so I'm trying to slow things down."

Across all interviews, judges noted the need to slow down despite their huge caseloads and the fast-paced environment of court. They believed that if they had more time with courtroom participants, they would be able to address participants' trauma more effectively and make decisions with everyone's best interest in mind. One judge described the way they intentionally manage their schedule to ensure they are able to slow down to the extent needed for some cases:

"It takes a little forethought, you know . . . like today, I knew that I was going to have a kid testifying. I had one other remote matter, but besides that I scheduled nothing else. . . . Every other day I might have 10 cases on the calendar, but because I knew a kid was going to be testifying, I blocked out the entire morning and, as luck would have it, it lasted all morning long."

Component #4: Reimagine the court environment

“I think the courtroom environment could be a little bit softer . . . I guess we have to maintain a certain amount of decorum and it’d still be a courtroom, but I think there’s ways of making it a little less formal, less daunting.”

Judges described the need to “soften” the courtroom environment, structurally and procedurally. Regarding structure, several judges expressed support for the use of round conference tables in the well of the courtroom to discuss disposition decisions. They described situations in which it would be beneficial to come off the bench, perhaps without a robe on, and join courtroom participants at their same level to discuss next steps and solutions together. As for procedural changes, several judges noted the need to re-think who is in the courtroom and when. As one judge questioned: “I don’t know what effect it might have if we have a murder case and the next case behind it is a kid who got in a fight in school . . . and they’re seeing the murder defendant walking out in chains. Does that affect them?” Taking intentional steps toward creating an environment that is calming, supportive, and not re-traumatizing is an essential component of a trauma-informed courtroom.

Component #5: Involve everyone

“The way that the bailiffs and other courtroom actors interact with people — I try to monitor that because, in my experience, [it] has been triggering to some people.”

Although judges recognized the weight their own behaviors hold within the

courtroom, they also noted that a true trauma-informed approach would require an integrated effort from all actors, both inside and outside of the courtroom. They stressed the importance of the ways in which bailiffs, sheriff deputies, juvenile court counselors, public defenders, guardians ad litem, and district attorneys behave and interact with courtroom participants, including court-involved youth and victims. Several noted the role that the district attorney’s office, and specifically district attorney legal assistants, can play in making the process more trauma-responsive for victims, not only by advocating for accountability throughout the court proceedings but also by ensuring victims are connected to the services and support they need going forward.

WHAT ARE THE BARRIERS TO TRAUMA-INFORMED JUDICIAL PRACTICE, AND HOW SHOULD WE ADDRESS THEM?

As with any practice, intervention, or training, understanding barriers to implementation and how to address those barriers is essential to success. Barriers to trauma-informed judicial practice, however, have not been thoroughly examined. That may explain why trauma-informed courtrooms are still not the norm in the United States, despite decades of research supporting the need for them. The limited research that does exist suggests that misconceptions regarding trauma (e.g., trauma is an excuse for bad behavior) may be one barrier to the successful translation of trauma education into trauma-informed practices in the courtroom.³¹

To build on this knowledge, we explored judges’ perspectives on these barriers and their ideas for addressing them.

Findings

Judges’ comments tended to center on three types of barriers that most often impede the successful implementation of trauma-informed judicial practice. Many also offered potential solutions for addressing these barriers.

Barrier Type #1: Lack of Buy-in

“You’re going to have a target population of people who do not believe in therapists, who think it’s junk science, who have not really taken the opportunity to take a look at it, or they think that they know better, and my personal favorite, ‘we’ve never done it that way.’”

All judges agreed that lack of buy-in to the concept of trauma-informed care from court professionals across roles (e.g., judges, lawyers, district attorneys) presents a major hurdle to a trauma-informed system. The reasons for such pushback range broadly. Judges noted that some actors do not fully believe in the science behind trauma and ACEs; that some would rather not switch up “the way things have always been”; and that others, particularly judges, may resist a trauma-informed approach out of fear that it requires them to relinquish some of their authority. As one judge shared: “I think some judges’ egos are going to have a hard time with this.”

Judges also spoke extensively about how concerns surrounding accountability may decrease buy-in. As previously noted, some judges we spoke to described a perceived dichotomy between treatment and accountability, believing that a trauma-informed approach that prioritizes treatment could diminish the extent to which they are able to achieve accountability. One judge illustrated the perceived tension between these two concepts: ►

“We certainly want the treatment aspect of the situation to work, because if a child receives effective treatment, we probably won’t see him again But at the same time, the victim is sitting there wondering what you are going to do to this kid; what are you going to do to make him accountable for disrupting the classroom or punching the teacher in the face or kicking some kid down the stairs or more serious things.” This perceived dichotomy between treatment and accountability may deter some judges from taking the more trauma-informed approach, particularly judges who see their primary responsibility to be enforcing rules and upholding the law.

Judges proposed several ways to increase buy-in to trauma-informed judicial practice:

- *Focus on getting judges, particularly chief judges, on board first.* Their opinions often carry the most weight in regard to changing courtroom policies and procedures, as well as other actors’ perspectives. As one judge stated: “If you have a judge saying ‘everyone, hey, let’s do this,’ there’s a lot more power and influence in that.”
- *Broaden the conversation of trauma-informed care to include discussion of what it means to be a judge, more broadly.* The traditional perception of a judge as primarily someone who is meant to have authority over others inhibits progress toward trauma-informed practice. Conversations about reconceptualizing a judge’s role would likely be most effective if they occur from one judge to another.
- *Clarify that punishment is not synonymous with accountability, and that sometimes trauma-informed practices can achieve goals tradi-*

Punishment is not synonymous with accountability. Sometimes trauma-informed practices can achieve goals traditionally associated with punishment (e.g., reducing recidivism).

tionally associated with punishment (e.g., reducing recidivism). One judge explained “If you want to talk about accountability, one of our goals here is [reducing] recidivism [You often hear complaints] about how we see the same people here over and over again. . . . Well, if you want to change that . . . [trauma-informed care] is one way to do it. If you get to them early enough, you can actually stop that cycle and reduce these folks from coming back again and again. . . . If we punish every time and a person has a lengthy record, just punishing them is not stopping them from coming back to court.”

Barrier Type # 2: Practical barriers

“We are limited by the number of courtrooms we have. We are limited by the number of clerks we have available for those courtrooms. We are limited by the number of sheriff personnel who are bailiffs in the courtroom.”

Even judges who were exceedingly knowledgeable about trauma and fully bought-in to the concept of trauma-informed care indicated they experienced difficulty in implementing trauma-informed judicial practice due to various practical barriers. All judges spoke repeatedly about the sheer number of cases they deal with on a daily basis. According to several judges, these high numbers result in court professionals too often treating people “like case numbers and not real people.” They expressed that, due to the high volume of cases, they simply could not “slow

down,” despite believing this to be one of the most essential components of a trauma-informed approach.

Other judges spoke about the lack of resources in their counties, and specifically, about the uneven distribution of resources across the state. As one judge shared: “If I live in [X county], I’m going to get program after program thrown at me or available to me. . . . In the smaller counties, we don’t have a lot of this programming, and that’s very frustrating that we live in a state that has a statewide system, but the system is so radically different depending on where you are.” Lack of money was most frequently mentioned as an obstacle to making physical changes to the courthouse that are trauma-informed, such as painting the walls a soothing color, installing multilingual signage, or reorganizing waiting areas.

The judges suggested the following actions to help address some of these practical barriers:

- *Partner with the community.* Several judges spoke about the resources and support that other folks and organizations in their communities — such as advocacy groups, schools, local mental health services, and faith-based groups — can offer. One judge said: “I think it’s a matter of getting our community organized, talking, and working together.”
- *Engage in deliberate scheduling and meticulous time management.* Judges who have learned to “slow down” shared how deliberate this change of pace has to be. It takes intention in the moment and forethought

Best practices for trauma-informed virtual hearings

When physical distancing measures required courts to quickly adapt operations, the National Center for State Courts (NCSC) saw an opportunity to examine the experience of families and child welfare court professionals in virtual hearings. Most families who come to the attention of the child welfare system have experienced trauma, and, for many, the court experience exacerbates trauma. Many jurisdictions have moved in recent years to implement trauma-informed practices for in-person hearings, including environmental changes and judicial engagement strategies. But early in the pandemic, how those practices would translate to the virtual environment was unclear.

With support from Annie E. Casey Foundation Inc. and Casey Family Programs, NCSC began a study that aimed to describe how families and court professionals experienced online court proceedings through the lenses of procedural fairness, access, and judicial engagement. Sixteen jurisdictions in five states welcomed NCSC into their virtual courtrooms to observe more than 400 child welfare hearings in early 2021. NCSC supplemented hearing observations with interviews and surveys of judges, parents, older youth, attorneys, and case workers.

A key takeaway from the study is that no two sites conducted virtual hearings in the same way — even courtrooms within the same state or courthouse. When courts began facilitating virtual hearings, there was little guidance available and immense pressure to become operational quickly. Most courts simply took in-person practices and transitioned them online with limited time to consider how the virtual courtroom impacted effective

One way to be trauma-responsive and support feelings of safety for hearing participants is to ask them where they are physically and whether they feel safe and able to meaningfully participate from that location.

communication, access to justice, and meaningful engagement.

For example, camera use in videoconferencing sessions varied widely across hearing participants. Very few courts in the study articulated clear expectations on this issue. Individuals joining hearings by video have the benefit of seeing all participants and observing nonverbal cues, while those joining by phone only are often unaware of who is present and may not know how and when to contribute. These limitations make an already difficult situation even more stressful, can contribute to feelings of mistrust, and impede an individual's ability to meaningfully engage in a hearing — all experiences that can trigger a trauma response.

While the pandemic forced courts to quickly adopt technological solutions, it also created an opportunity for courts to expand access to justice for families and a responsibility to learn how to do so in an effective, fair, and trauma-responsive way. NCSC's study of virtual child welfare hearings identified several practices to improve the quality

of virtual hearings, and many of these practices align with the key principles of the Substance Abuse and Mental Health Services Administration's trauma-informed approach (<https://bit.ly/3aUvdms>). Some crucial practices of trauma-informed virtual hearings are described here; see the NCSC's full report at <https://bit.ly/3ttEuby> for more practices and details.

Safety. Virtual (video) hearings present different challenges for ensuring physical and emotional safety for hearing participants. The virtual courtroom may be less intimidating for some; however, it creates the possibility that participants may join from a public location or a place that may otherwise inhibit meaningful engagement. One way to be trauma-responsive and support feelings of safety for hearing participants is to ask them where they are physically and whether they feel safe and able to meaningfully participate from that location. In the study of virtual child welfare hearings, it was extremely rare for judges to ask individuals where they were, though this simple act can help determine whether a parent or child is able to meaningfully engage in the virtual hearing.

Transparency and Trustworthiness. Trauma-responsive virtual hearings require courts to communicate expectations and processes clearly, starting with the hearing notice. Courts can demonstrate transparency and build trust by providing instructions on how to access the hearing, how to use the platform, and how clients can privately interact with their attorney, as

well in advance, too (such as by reorganizing dockets and start times for cases). As one judge noted, scheduling changes is something judges ultimately do “have more control over.”

- **Commit to trauma-informed judicial practice.** As several judges acknowledged, the number of cases will continue to be high until judges commit to engaging in practices that get to the root of why persons end up in the system in the first place.

Barrier Type #3: Systemic Barriers

“You’ve got this dynamic where the courthouse is owned by the county commissioners, the clerk of superior court is responsible for the physicality, and it’s the judge’s courtroom. Okay, so walk through that for just a second . . . I can’t change the colors on the walls of my courtroom because I don’t own the building, the county does. The clerk of superior court technically runs the courthouse as far as its physicality, but the county commissioners pass the budget.”

Judges described a wide range of barriers to trauma-informed judicial practice related to, or perpetuated by, the way the criminal legal system is “set

well as the court’s expectations around camera use, before the hearing. Most parents surveyed said they received a link for the hearing from their attorney, and youth often received the link from their caseworker. Courts can develop and disseminate clear instructions for accessing hearings for court professionals like these to share with clients so that everyone receives the same information.

Empowerment, Voice, and Choice. As requirements for physical distanc-

ing wane, many states are deciding to keep virtual hearings in child welfare cases, and several have given careful thought to which hearing types and situations are best for virtual hearings. Ideally, courts will offer families a choice as to how they access a hearing. Giving families a choice embodies the trauma-responsive principle of empowerment, voice, and choice.

Several judges also emphasized that many parts of the current system are simply not, and likely will never be, set up to address trauma. For instance, one judge explained how we cannot rely on jails to provide mental health services to individuals who are system-involved: “Jail is not the place to send someone who has mental health issues, who’s getting [into] criminal problems, because nothing is going to

happen at the jail except they are going to just sit there alone.”

Judges identified other system-level obstacles that impede implementation of trauma-informed judicial practice:

• **Election politics:** One judge explained how pressure to get reelected can influence the way judges behave: “In North Carolina, you have to get reelected. You’re not going to get too many ‘activist judges’ in their first four years or if they have to run for election if they [originally] got appointed. If you’ve been around 25 to 30 years, you feel a lot more comfortable saying whatever you want to, what’s on your heart, and what’s on your sleeve.”

• **Underpaid attorneys:** “We’re dealing with a system that quite candidly doesn’t pay attorneys enough money to do this kind of work. We have fewer and fewer people that are willing to take these kinds of cases.”

• **Assignment of young and inexperienced district attorneys to juvenile court:** “Historically, across [North Carolina], when you’re a new assistant DA, just out of law school, with no experience, they put you in juvenile court . . . and then the idea is you work your way up to your goal

families or all hearings, they do have benefits. Through careful consideration of technology, open and clear communication, and realistic expectations, child welfare courts can facilitate virtual hearings that not only respond to impacts of past traumas experienced by families involved in the child welfare system, but also avoid creating new traumatic experiences.

— **TERI DEAL** is a principal court management consultant at the National Center for State Courts.

... most of their goals is to become a superior court DA and try murder cases Unfortunately, that leads to [juvenile court] just being a steppingstone.”

Judges provided several ideas for higher-level changes that could help address some of these barriers:

- *Leadership should encourage trauma-informed practices specifically and directly.* This encouragement could be the tipping point for some judges who question whether they have the authority or the permission to implement common trauma-informed change recommendations.
- *Consider enacting laws to explicitly recommend certain trauma-informed practices.* As one judge shared: “I’d like to have a juvenile rule that says, ‘Here’s how we’re going to do disposition’ and specifically state ‘We will have this conversation in this manner, these are the issues that need to be addressed during that disposition in a more thoughtful manner’ — rather than, ‘Here’s the juvenile court counselor’s recommendation, you look at them, follow the recommendations, you have a minute or two conversation with the juvenile and the parents, and send them on their way.’”
- *Ensure all district attorneys, particularly the ones who begin their career in juvenile court, are trained on trauma and trauma-informed practice.* Several judges noted the unique position district attorneys are in to support courtroom participants, prepare them for the courtroom experience, and help connect them to community resources.

CONCLUSION

In this article, we share results from an investigation into judges’ perspec-

Several judges also emphasized that many parts of the current system are simply not, and likely will never be, set up to address trauma. For instance, one judge explained how we cannot rely on jails to provide mental health services to individuals who are system-involved.

tives on trauma education programs and on trauma-informed courtrooms more broadly. Judges shared important recommendations for the structure and content of trainings and insights into the barriers to implementing trauma-informed practices in their courtrooms. We conclude by highlighting a few recommendations that came out of this research and that we believe are important considerations as the work of creating a trauma-informed criminal legal system continues. The first is a takeaway for developers and facilitators of trauma education, the second is a takeaway for researchers of effective trauma-informed practices, and the third is a takeaway for all parties working to create trauma-informed environments.

First, future trainings should include the voices of people who have experienced trauma and have been justice-involved. While many trauma education programs increasingly involve various system actors and academic experts, the inclusion of people who have been justice-involved themselves is not common practice, nor is it commonly recommended in the literature.³² Yet judges recognized the unique insight this population could bring to the movement toward trauma-informed courts and expressed that inclusion of such voices would have enhanced the training.

Second, future research should focus on understanding perceptions of accountability in the context of trauma-

informed court practices. The concept of accountability is complex, and the judges acknowledged this complexity by grappling with the question of how to achieve accountability and implement trauma-informed practices simultaneously. Tension between these concepts was salient when judges described consideration of victims’ wishes. Some judges expressed concern that an increased focus on treatment may reduce their ability to hold a person accountable, suggesting there may be conflation between the concepts of punishment and accountability. Yet research suggests that, for some victims at least, accountability and punishment are not synonymous,³³ highlighting a misalignment between victims’ views of accountability and judges’ perceptions of those views. Future research must explore perceptions of the relationship between accountability, punishment, and trauma-informed practices for all parties to help alleviate accountability concerns as a barrier to adoption of these practices.

Third, greater attention must be paid to diversity, equity, and inclusion (DEI) — a critical aspect of trauma-informed courts. As Shawn Marsh, former chief program officer for Juvenile Law at the National Council of Juvenile and Family Court Judges and expert on trauma-responsive justice, said, “Diversity, equity, and inclusion is a priority [for the future of trauma-responsive justice]. . . . It comes down to DEI being a trauma-informed prac- ▶

tice.”³⁴ The topic of DEI did not come up in the interviews with judges, highlighting a potential gap in awareness of the connections between DEI and trauma-informed practice and a weakness of the pilot training for not emphasizing this topic. Among other actions, helping make courts navigable by offering multilingual signage and ensuring courthouse leadership reflects the gen-

der and racial diversity of the people who come through the courthouse are central to promoting a sense of safety for people who are court-involved.³⁵ Such practices must be promoted in future training and integrated into efforts to create trauma-informed courts — without them, the efforts will fall short.

¹ Carly B. Dierkhising et al., *Trauma Histories Among Justice-involved Youth: Findings from the National Child Traumatic Stress Network*, 4 EUR. J. OF PSYCHOTRAUMATOLOGY 1, 1–11 (2013); Flora Matheson, *Implications of Trauma Among Male and Female Offenders*, 9 INT. J. OF ENV'T. RSCH. AND PUB. HEALTH 97, 97–99 (2012).

² Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. OF PREVENTIVE MED. 245, 245–258. (1998); *About the CDC-Kaiser ACE Study*, CTNS. FOR DISEASE CONTROL & PREVENTION (June 14, 2016), [hereinafter *About CDC-Kaiser*], <http://www.cdc.gov/violenceprevention/acestudy/about.html> [<https://perma.cc/LJ2E-EBWC>].

³ See Felitti et al., *supra* note 2, at 248 (abbreviating list of ACE questions in Table 1).

⁴ See *About CDC-Kaiser*, *supra* note 2 (highlighting major ACE findings).

⁵ See Felitti et al., *supra* note 2, at 249 (“We found a strong dose response relationship between the breadth of exposure to abuse or household dysfunction during childhood and . . . ischemic heart disease, cancer, chronic lung disease, skeletal fractures, and liver disease.”)

⁶ See *id.* at 250 (highlighting emphysema and suicide associations in Tables 4 and 7).

⁷ *Id.* at 251 (Tabl. 3); see also *PACES Science 101, ACES TOO HIGH*, <https://acestoohigh.com/aces-101/> [<https://perma.cc/M9CJ-L3PL>] (“What’s particularly startling is that the 17,000 ACE Study participants were mostly white, middle- and upper-middle class, college, educated, and all had jobs and great health care . . .”).

⁸ *The Original ACE Study*, NAT’L HUMAN TRAFFICKING TRAINING AND TECHNICAL ASSISTANCE CTR., https://nhttac.acf.hhs.gov/soar/eguide/stop/adverse_childhood_experiences [<https://perma.cc/2YLD-H76C>].

⁹ Bryanna H. Fox et al., *Trauma Changes Everything: Examining the Relationship Between Adverse Childhood Experiences and Serious, Violent, and Chronic Juvenile Offenders*, 46 CHILD ABUSE AND NEGLECT 163, 164–165 (2015).

¹⁰ Matheson, *Implications of Trauma Among Male and Female Offenders*, *supra* note 1, at 97.

¹¹ See, e.g., Michael G. Maxfield and Cathy S. Widom, *The Cycle of Violence: Revisited Six Years Later*, 150 ARCHIVES OF PEDIATRICS & ADOLESCENT MED. 390, 390 (1996) (“Childhood abuse and neglect have a significant impact on the likelihood of arrest for delinquency, adult criminality, and violence.”).

¹² Fox, *supra* note 9, at 164.

¹³ See generally LOUIS J. COZOLINO, *THE NEUROSCIENCE OF PSYCHOTHERAPY: BUILDING AND REBUILDING THE HUMAN BRAIN* 14 (3rd ed. 2017) (“Psychotherapy can be thought of as a specific type of enriched environment that promotes social and emotional development . . . the way the brain changes during therapy will depend upon the neural networks involved in the symptoms and focus of the treatment.”)

¹⁴ See Kristen Clements-Nolle & Rachel Waddington, *Adverse Childhood Experiences and Distress in Juvenile Offenders: The Protective Influence of Resilience and Youth Assets*, 64 JOURNAL OF ADOLESCENT HEALTH, 49, 52–55 (2019) (finding that “protective factors,” such as family communication, school connectedness, peer role models, and nonparent role models are “associated with a reduction in psychological distress . . .”).

¹⁵ See Sukhdeep K. Purewal Boparai et al., *Ameliorating the Biological Impacts of Childhood Adversity: A Review of Intervention Programs*, 81 CHILD ABUSE AND NEGLECT, 82, 84–102 (2018) (demonstrating through an extensive literature review that “interventions can indeed improve or normalize outcomes in children exposed to adversity across institutional foster care, and community settings”).

¹⁶ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP’T OF HEALTH & HUMAN SERVS., *Concept of Trauma and Guidance for a Trauma-Informed Approach*, 9–10 (2014), https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf [<https://perma.cc/J9HS-8GXK>].

¹⁷ See, e.g., Carly L. Baetz et al., *Impact of a Trauma-Informed Intervention for Youth and Staff on Rates of Violence in Juvenile Detention Settings*, 36 J. OF INTERPERSONAL VIOLENCE NP9463, NP9464 (2019) (“The analyses revealed the intervention was significantly related to a reduction of violent incidents . . .”); Haley Zettler, *Much to Do About Trauma: A Systematic Review of Existing Trauma-Informed Treatments on Youth Violence and Recidivism*, 19 YOUTH VIOLENCE AND JUV. JUST. 113, 117 (2021) (“Systematic reviews . . . report that these interventions are effective at reducing recidivism in both adolescent samples . . .”).

¹⁸ See, e.g., Erin A. King, *Outcomes of Trauma-Informed Interventions for Incarcerated Women: A Review*, 67 INT. J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 667, 684–685 (2017) (“Overall, the identified trauma-informed interventions appear to have a positive impact on PTSD symptomatology.”).

¹⁹ *Essential Elements: Trauma-Informed Juvenile Justice System*, NATIONAL CHILD TRAUMATIC STRESS



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- NETWORK, https://www.nctsn.org/sites/default/files/resources/essential_elements_trauma_informed_juvenile_justice_system.pdf [https://perma.cc/3U3G-P2A3].
- 20 Shawn C. Marsh, *Judicial Educators' Perspectives on Trauma Education for the Judiciary*, 70 JUV. AND FAM. CT. J. 55, 55–67 (2019).
- 21 See, e.g., Enola Proctor et al., *Outcomes for Implementation Research: Conceptual Distinctions, Measurement Challenges, and Research Agenda*, 38 ADMIN. AND POLICY IN MENTAL HEALTH SERV. AND MENTAL HEALTH SERV. RSCH. 65, 69–73 (2011) (defining “appropriateness” as including “relevance” and demonstrating the relationship between perceived appropriateness and the “adoption, penetration, and sustainability” of an intervention).
- 22 Marsh, *supra* note 17, at 63.
- 23 Drawing on his own experiences, a judge introduced the program with introductory remarks on why trauma education ought to matter to the judiciary. The first session, “The Science of Trauma & Resilience,” was led by a professor and practitioner of medicine who focused on defining trauma and resilience, trauma’s effect on the brain and body, and the prevalence of trauma in N.C. and nationally. The second session, “The Trauma-Awareness Movement in N.C.,” was led by the director of a trauma-focused nonprofit organization who presented information on trauma awareness and resilience across systems, the evolution of the trauma movement in N.C., and trauma approaches in different sectors of the community. The final session, “Trauma-Informed Practice on the Bench,” was led by two judges, the N.C. chief district court judge who had led the introduction and a retired circuit court judge from Florida, both of whom are heavily involved in trauma education and practice in their districts. This session included concrete ways to implement trauma awareness skills from the bench. The judges covered courtroom practices, relationship-building techniques, the cost savings potential of trauma-sensitive policies, and skills for handling vicarious trauma and building resilience for judges.
- 24 Lisa Vaughn & Maryann Lohmueller, *Calling All Stakeholders: Group-Level Assessment (GLA) – A Qualitative and Participatory Method for Large Groups*, 38 EVALUATION REV. 336, 336–355 (2014).
- 25 This collaborative process involved four steps. First, the participating judges responded to 20 feedback prompts on a digital, interactive whiteboard platform called Jamboard. All responses were completely anonymous. Second, the judges reviewed and responded to each other’s responses. Third, in Zoom breakout rooms of three to four people, the judges discussed themes they saw within the digital responses. Fourth and lastly, the judges and other conference attendees engaged in a full group discussion to expand on their observations of and feedback on the training, identify overarching themes within the data, and talk about how to use this information moving forward.
- 26 McKinsey, E. & Desmarais, S. L. *Impact of growth mindset-enhanced trauma education on criminal legal professionals’ attitudes and perceptions* (2022) (draft manuscript on file with author).
- 27 Jonathon DePierro et al., *Beyond PTSD: Client presentations of developmental trauma disorder from a national survey of clinicians*, PSYCH. TRAUMA: THEORY, RSCH., PRAC., AND POL’Y. (2019) (on file with the National Library of Medicine).
- 28 Peter G. Jaffre et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. AND FAM. CT. J. 1, 14 (2009).
- 29 Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 251 (2003).
- 30 Christopher E. Branson et al., *Trauma-informed Juvenile Justice Systems: A Systematic Review of Definitions and Core Components*, 9 PSYCH. TRAUMA: THEORY, RSCH., AND POLICY 635, 635–646 (2017).
- 31 Marsh, *supra* note 17, at 63.
- 32 But see Kathryn A. Becker-Blease, *As the World Becomes Trauma Informed, Work to Do*, 18 J. OF TRAUMA AND DISSOCIATION 2, 131–138 (describing the input of trauma victims/survivors as a forgotten yet essential component of the trauma-informed care movement).
- 33 See Barton Poulson, *A Third Voice: A Review of Empirical Research on the Psychological Outcome of Restorative Justice*, 2003 UTAH L. REV. 167, 178 (“Table 1 and Figure 1 . . . [show] that both victims and offenders in restorative justice were significantly and substantively more likely . . . to believe that the criminal justice system was fair than were victims or offenders in court”).
- 34 See New York Youth Justice Institute, *Reflections on the Status and Future of Trauma-Responsive Justice in Communities of Healing*, YOUTUBE, at 24:14 (Oct. 14, 2021), <https://www.youtube.com/watch?v=vljtZSL366U> [https://perma.cc/UD97-DFHR].
- 35 See Alicia DeVault et al., *Environmental Considerations for Trauma-Responsive Juvenile and Family Courts: A Review of the Literature with Recommendations for Practice*, 69 JUV. AND FAM. CT. J. 5, 5–20 (2018) (“Public trust in the courts and feelings of safety within the courthouse, which are important conditions for healing, are undermined by a lack of diversity.”).

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