

ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE

WHAT EVERY JUDGE NEEDS TO KNOW ABOUT TRAUMA

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



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

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

BEHAVIORAL HEALTH IS ESSENTIAL TO HEALTH • PREVENTION WORKS • TREATMENT IS EFFECTIVE • PEOPLE RECOVER

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

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

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

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

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

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

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

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

IMPACT OF TRAUMA

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

The Adverse Childhood Experiences (ACE) study, conducted by the Centers for Disease Control

and Prevention and Kaiser Permanente, is one of the largest investigations ever conducted

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

The ACE study involved 17,000 Kaiser Permanente health plan members, the majority of whom were white, over age 50, and had some college education. Study participants were asked whether they had experienced potentially traumatic events² during their first 18 years of life.

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

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

¹ <http://www.cdc.gov/ace/>

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

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

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

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

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

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

BEHAVIOR AS ADAPTATIONS

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

— A Trauma Survivor

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

The adverse effects of trauma may occur immediately, but often they emerge months or even years after the events. Often, the individual may not recognize the connection between the events and the effects of the trauma. People who are affected in specific ways may be

diagnosed with post-traumatic stress disorder (PTSD), but because individual responses to trauma vary, many people whose lives are adversely affected by trauma do not meet the clinical criteria for PTSD.

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

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

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

Trauma-informed judicial interactions begin with good judicial practice, treating individuals who come before the court with

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

What You Say: *Communication Counts*

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

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

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

Courtroom Communication

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

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

Treatment court judges who have made an effort to implement trauma-informed approaches point out that it is important not to give short shrift to those who are doing well. Giving them credit may

bolster their chances of success. Hearing positive feedback given to others also serves as an incentive to individuals who may be struggling to complete court-ordered treatment. For example, one treatment court judge tells participants:

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

What You Do: Court Processes and Procedures

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

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

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

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

Courtroom Procedures

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

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

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

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

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

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

How You Do It: *The Courtroom Environment*

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

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

they are being treated with disdain. There is also concern about how to make the courtroom safe for participants when perpetrators and/or victims of their crimes are in attendance.

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

Courtroom Environment

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

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

informed service provider before you make a referral. Resources for judicial training are listed at the end of this document.

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

Knowledge of evidence-based, trauma-specific treatments can help a judge evaluate whether participants referred for community treatment are receiving the services most likely to promote recovery. In many communities, the presence of treatment courts has helped bolster the number and range of trauma services available

to individuals with mental health and substance use diagnoses. Judges who understand trauma and its consequences are in a better position to advocate for the development of trauma-specific services and trauma-informed service systems.

CONCLUSION

Most treatment court participants are survivors of trauma. Many treatment court judges have found that understanding and acknowledging trauma helps to engage participants in services, treatment, and judicial interventions, whether or not they have a trauma-related or other mental health diagnosis. Communicating effectively and respectfully with treatment court participants,

eliminating unnecessary court procedures that could be perceived as threatening, and modifying the physical environment to create a sense of safety can help to ensure that trauma survivors benefit from judicial interventions. Training and resources are available to support treatment courts in becoming trauma-informed.



RESOURCES FOR MORE INFORMATION

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

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

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

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