

2013

Toward a Conceptual Framework for Trauma-Responsive Practice in Courts

Shawn C. Marsh

National Council of Juvenile and Family Court Judges

Joan Byer

Jefferson Circuit Court

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/clp>



Part of the [Courts Commons](#), and the [Criminal Law Commons](#)

Recommended Citation

Marsh, Shawn C. and Byer, Joan (2013) "Toward a Conceptual Framework for Trauma-Responsive Practice in Courts," *Criminal Law Practitioner*. Vol. 1 : Iss. 1 , Article 9.

Available at: <https://digitalcommons.wcl.american.edu/clp/vol1/iss1/9>

This Article is brought to you for free and open access by Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Criminal Law Practitioner by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.



TOWARD A CONCEPTUAL FRAMEWORK FOR TRAUMA-RESPONSIVE PRACTICE IN COURTS

by Shawn C. Marsh, Ph.D. & Honorable Joan Byer

Courts across the United States have become increasingly interested in how to develop trauma-responsive practices, particularly among juveniles. For example, the National Council of Juvenile and Family Court Judges (“NCJFCJ”)¹ has received a surge of requests for training on trauma in the last several years. Since the start of 2013 alone, NCJFCJ staff, member judges, and partners such as the National Child Traumatic Stress Network (NCTSN)² have provided trauma-related training to well over 2500 juvenile and family court professionals across the country.

Although courts’ efforts to understand and address trauma is noteworthy, important questions remain regarding the definition and scope of trauma-responsive practice. To what degree are courts responsible for identifying and considering trauma as a part of a case? Are there unintended consequences of screening for and introducing trauma history into a case? Further, at a practice level, what is actually meant by trauma-responsive practice in juvenile courts and how difficult will it be to achieve? Perhaps not surprisingly, justice and human service professionals have yet to reach

a consensus on the answers to these questions. Rather, it is clear that remains substantial debate between social scientists and legal experts regarding the definition of trauma-responsive practices, the use of information about adverse experiences, and what our understanding of toxic stress means specifically for court policy and practice.

Fortunately, this important debate and courts’ efforts to become trauma-responsive does not need to occur in a vacuum. Much of what we know about the long-term impact of trauma on child and adult development, including involvement in justice systems, is likely best understood and applied through a public health approach.³ Put simply, early adversity in life—particularly multiple adversities like abuse and neglect—puts children at risk for later involvement in the juvenile and criminal justice systems; ultimately this leads to negative psychosocial and physical health outcomes later in life. With this trajectory in mind, there are steps courts can take to better serve those that become system-involved. For example, moving from a sick/well or victim/offender dichotomy to one of viewing those appearing in court as injured⁴ in some manner begins to change how

1 The NCJFCJ is currently developing and testing a protocol to conduct “trauma audits” in juvenile and family courts with a focus on assessing environment, practice, and policy; supporting subsequent changes desired by the court through intensive technical assistance; and evaluating how these changes might improve outcomes for children, youth, and families. See National Council of Juvenile and Family Court Judges, www.ncjfcj.org (last visited Dec. 18, 2013).

2 See NAT’L CHILD TRAUMATIC STRESS NETWORK, www.nctsn.org (last visited Dec. 18, 2013).

3 See CENTERS FOR DISEASE CONTROL AND PREVENTION: ADVERSE CHILDHOOD EXPERIENCES STUDY (ACES), <http://www.cdc.gov/ace/> (last visited Dec. 18, 2013) (demonstrating a thorough treatment of a public health approach to limiting the negative outcomes associated with adverse childhood experiences and detailing what constitutes adversity).

4 The term “injured” represents a public health orientation. It is considered a neutral and inclusive term that captures a range of adverse experiences and associated nega-



we conceptualize human behavior and subsequently seeks to promote healing in children and adults who become system-involved.

Through a public health lens, when one views individuals appearing before the court as likely injured in some way, it then becomes necessary to use a universal precautions approach in our work. Specifically, a universal precautions approach to trauma in justice systems assumes that all people appearing in courts have experienced adversity in some manner. Thus, the focus for courts then becomes ensuring that physical and social environments are sensitive to limiting unnecessary arousal (e.g., reducing stress), practices reflect an understanding of trauma triggers (e.g., well-designed security procedures), and policies are designed to help promote healing (e.g., screening and treatment). Inherent in this approach is that all system professionals, whether injured or not, benefit from the focus on safety and well-being that is instilled in trauma-responsive court environments.

Together with efforts to better define trauma-responsive practices in courts and what it means for environments, practices, and policies, there has recently been a call at the federal level for a developmentally-responsive juvenile justice system.⁵ Suggested key features of such a system include integration of developmental science with trauma-responsive interventions and the utilization of implementation science to achieve this integration in a meaningful and lasting way. Foundationally, a developmentally-informed justice system recognizes that adolescents are different from adults and need to be treated as such. This requires that practices and policies reflect our understanding of those differences that exist across age, gender, and culture. Advances in neuroscience have fundamentally changed our work with youth, as

tive outcomes without unnecessarily stigmatizing consumers as sick, victims, or offenders, among other defaming labels.

5 See generally NAT'L RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH (Richard J. Bonnie, et al. eds., 1st ed. 2013) available at http://www.nap.edu/openbook.php?record_id=14685&page=R1.

witnessed by recent Supreme Court decisions⁶ that reinforce the need to view "adolescence as a mitigating factor."⁷ Developmental science has also taught us that risk taking is normal in adolescence and serves an adaptive purpose; that adolescents have a less mature future orientation; and that there is an increased susceptibility to peer influences at this early stage of development.

When striving to implement a developmentally-responsive approach to court practice, this effort is by definition inclusive of trauma-informed practice because trauma and development are inextricably linked. In other words, being attuned to what a child, youth, or family needs in order to promote well-being and healthy development should incorporate consideration of prior adversities, regardless of the type of case before the court (e.g., dependency, domestic violence, divorce, or criminal). Further, this approach recognizes the thematic issues that system-involved children, youth, and families tend to encounter: mental health, substance abuse, domestic violence, educational disengagement, and trauma or adverse experiences. Approaching injured parties through this holistic and contextual lens encourages responsiveness to the needs of children and families, versus processing based on the needs of institutions (e.g., hearing schedule preferences). Responding in a developmentally informed and thus a trauma-responsive manner

has been hypothesized to enhance a sense of procedural justice by putting in place supports and interventions that are tailored to the needs of children, youth, and families, which ultimately improve case outcomes in general.

6 See generally *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (the Court issued a joint opinion for *Miller* and *Jackson v. Hobbs*, 132 S. Ct. 548 (2011)).

7 See Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. LAW & CRIMINOLOGY 1, 137-89 (1997); 137-189; see also Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 2 (2008).



Much work certainly remains to integrate our current understanding of human development and the impact of trauma into our work in courts across the nation. These are exciting times and it is essential to incorporate recent developmental science findings in crafting effective intervention with our most vulnerable populations. This emergence of a science-informed call for reform is evidenced not only by the work of courts such as those in Tucson and Gila River, Arizona; Louisville, Kentucky; Canton, Ohio; and others but also by major federal initiatives such as the Defending Childhood Initiative⁸ and the Task Force on Children Exposed to Violence.⁹ With thoughtful education, planning, and a sense of urgency, we are now poised to initiate a paradigm shift in efforts to improve outcomes for all individuals who appear in courts across the nation. Stakeholders, such as judges, prosecutors, public defenders, court administrators, social workers, and probation officers, now often need little convincing that trauma is an issue impacting many system-involved children and families and that system-involvement itself can be traumatic. Instead, we are now striving to aid in defining, implementing, and evaluating trauma-responsive environments, practices, and policies *for courts by courts*.¹⁰ Our conceptual framework for these exciting next steps in trauma-responsive practice as briefly elucidated here (e.g., a public health orientation), will be developmentally appropriate and grounded in science, with the ultimate goal of improving the long-term health and well-being of children, their families, and in turn, disrupting intergenerational cycles of adversity.¹¹

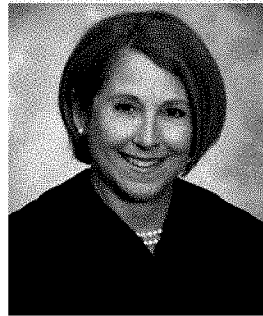
8 See USDOJ: Defending Childhood, <http://www.justice.gov/defendingchildhood/> (last visited Dec. 19, 2013).

9 ROBERT L. LISTENBEE, JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

10 See Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response*, 59 JUVENILE & FAMILY COURT J. 4, 21-34 (2008); see also Kristine Buffington et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, 61 JUVENILE & FAMILY COURT J. 3, 13-23 (2010).

11 For a copy of a bench card on the topic of trauma

About the AUTHORS



JUDGE JOAN BYER has served as a Circuit Court Judge in the family division since 1996. Named Louisville Bar Association Judge of the Year in 2002, Judge Byer has received numerous recognitions reflecting her exemplary qualifications as a jurist and as a community leader. She has served as a Trustee on the Board for the National Council of Family and Juvenile Court Judges and as President of the National Truancy Prevention Association, a non-profit organization dedicated to the needs of challenged school aged youth. Among her published articles is *A Model Response to Truancy Prevention: The Louisville Truancy Court Diversion Project*, *Juvenile and Family Court Journal*, Winter 2003. She received her juris doctorate from Loyola Law School, Los Angeles, California and was admitted to the California Bar in 1982, followed by admission to the Kentucky Bar in 1983. Judge Byer can be contacted via email at jbyer@kycourts.net.



SHAWN C. MARSH, PH.D., is the Chief Program Officer over Juvenile Law at the National Council of Juvenile and Family Court Judges. Dr. Marsh is a social psychologist with research and teaching interests in the areas of psychology and the law, adolescent development, trauma, and juvenile justice. His background includes working with youth in detention and correction settings as an educator and mental health clinician, and he is a licensed school counselor, professional counselor, and clinical professional counselor. Dr. Marsh is affiliated with several academic departments at the University of Nevada, and his publications include numerous articles in scholarly journals such as *Youth Violence and Juvenile Justice* and *Victims & Offenders*, as well as chapters in textbooks such as *Correctional Psychiatry* and *Juvenile Crime and Justice*. Dr. Marsh can be contacted via email at smarsh@ncjfcj.org.

that was jointly developed by the NCTSN and the NCJFCJ, visit <http://www.ncjfcj.org/resource-library/publications/nctsn-bench-card-trauma-informed-judge>.