

Trauma *and* Resilience

Executive Summary

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EXECUTIVE SUMMARY

While rates of trauma are high for all youth, they are particularly high for youth in the juvenile justice and child welfare systems. This publication sets forth key risks of and opportunities for using research on trauma in youth advocacy. The publication focuses on legal strategies advocates can use in court, and the state and local policies needed to support these strategies.

Advocacy Cautions

This publication concludes that while information about trauma can be vital for advocates for youth in the juvenile justice and child welfare systems, there are important cautions to consider:

- (1) Judges may interpret a youth's trauma history or symptoms to mean that the youth is too damaged to be safe in the community, or that a parent is too damaged to take care of his or her child.
- (2) Discussions about trauma can exacerbate racial biases. In both the juvenile justice and child welfare systems, children of color are overrepresented because of persistent differential treatment along lines of race. Addressing trauma without discussing racial biases risks incorrectly implying that youth of color are system-involved because of family problems rather than system biases.
- (3) A focus on trauma can draw attention away from important jurisprudence on adolescent development. Unlike adolescent development, in which legal theory applies categorically, research on trauma relies on distinctions based on a youth's previous experiences, and his or her reactions to those experiences.

- (4) Trauma information may bring youth into the child welfare or juvenile justice systems who would not otherwise be system-involved, when those youth would do better with voluntary services from other systems.
- (5) The process of identifying trauma—by service providers, agencies, or attorneys—may cause self-incrimination problems.

Advocacy Opportunities

Despite these cautions, research on trauma can play a vital role in advocacy on behalf of youth for a number of reasons:

- (1) The juvenile justice and child welfare systems themselves can cause harm, traumatization, and retraumatization in youth. Research on trauma can support legal arguments to address harmful practices within public systems.
- (2) Information about the trauma histories and symptoms of youth are already regularly introduced in courts—attorneys need the information to make conscious decisions about whether to highlight or underplay the information, and how best to characterize it through the lens of resilience.
- (3) Trauma symptoms are often misdiagnosed as other, hard-to-treat mental health problems. This can lead to inappropriate mental health treatment, including psychotropic medication; to youth or family failure to comply with treatment; and to harsher legal consequences.

Case Law Analysis: Our Findings

This publication provides a detailed analysis of published case law addressing trauma in juvenile justice and child welfare cases. We conclude that advocates must be attentive to the legal context in which trauma is raised.

In the juvenile and criminal justice context, published decisions suggest that information about a youth's trauma history has particular potential to be helpful in: some diversion cases; life without parole cases and possibly some other adult sentencing cases. In these cases, trauma information tends to operate as a mitigating factor, connecting youth with treatment, or helping a youth to avoid potentially harmful justice system involvement.

In contrast, information about youth trauma has particular risks when a judge must decide whether a youth should be in the community or in a secure facility. In those cases—including some juvenile disposition cases, some sentencing cases, and adult court transfer cases—judges may interpret information about a youth's trauma history or symptoms to suggest that the youth is too damaged to be safe in the community.

In other cases—juvenile confessions and competency determinations—the law is unclear about how trauma is viewed or applied, and to what extent it will be useful.

In the child welfare context, published cases suggest that while information about trauma can and should be used to connect youth with needed services, there is a real risk that courts will interpret the trauma experienced by a child or parent as justification for terminating parental rights. This is true despite strong evidence suggesting that for most youth, remaining with family—sometimes with added supports—will best assist the youth in overcoming childhood adversity.

Policy Recommendations

Our case law analysis makes clear the need for strong policies to ensure that trauma information is used to help youth and families. State laws should:

- Ensure the availability of high-quality, trauma-informed interventions and supports in the community and in less secure settings—for both youth and families.
- Place the burden on courts and state and local agencies to ensure that juvenile justice and child welfare systems help—and don't harm—youth who have been traumatized.
- Require that information about a child's trauma history or symptoms be used a) as a defense; b) as mitigation in sentencing or disposition; c) to divert youth from the juvenile justice or child welfare system; and d) to connect youth and families with high-quality, voluntary services.
- Ensure that “reasonable efforts” and “best interests” standards in the child welfare system take into account the unique needs of youth and families who have suffered trauma.

“Trauma” is currently a buzzword in both the juvenile justice and child welfare systems, for good reason. Information about a youth or family's trauma history and ongoing symptoms can help courts and systems understand a youth's action, and can better match services to youth or family needs. That said, this publication urges caution. Not only must we use clarity in our definition of what constitutes “trauma,” and “resilience,” we must also recognize potential pitfalls of raising trauma in court in the absence of sound policies. A careful attention to legal context will inform courtroom strategies and policy advocacy, and will lead to better outcomes for youth and families.