

The Impact of Traumatic Stress and Alcohol Exposure on Youth: Implications for Lawyers, Judges, and Courts

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Since its inception in the late nineteenth century, the juvenile court has been concerned with the legal problems of children and their families. From the court's earliest days, it has sought to address child abuse and neglect and juvenile delinquency as social problems that result from familial and community breakdown. Over the decades, researchers from various disciplines have provided varying explanations of how and why family systems break down, why some parents fail to nurture their children, why some physically or sexually abuse their children, and why some children become delinquent.¹

Research conducted over the past two decades demonstrates that exposure to traumatic events can have devastating consequences for children's development. Whether that trauma is experienced in the pre-natal period in the form of alcohol or drug exposure, is the result of exposure to violence directed at the child, or is the result of witnessing violence between others in the environment (e.g., domestic violence or community violence), traumatic stress can change both the chemistry and physical architecture of a developing child's brain. Exposure to traumatic events can impair a child's physical and emotional development, and provides poor models for the child to imitate. Exposure to abuse and neglect as a young child is correlated with subsequent delinquent behavior.²

Efforts to help children who have been traumatized by family violence can themselves be traumatic for children; repetitive interviewing about traumatic events; dislocation from immediate and extended family; removal from their community and disruption of significant relationships with friends, schools, and places of worship; changes in placements; and participation in the legal system have all been identified as sources of trauma for children in the child protection system.³ So, when addressing individual cases, courts and lawyers must carefully balance the harm children

experience in their homes and the risk to the community against the harm that can result from our efforts to respond to child maltreatment and delinquency. In the delinquency context, maltreatment by law enforcement officers and inappropriate handling and supervision by authorities while in confinement can exacerbate preexisting effects of trauma. At a systemic level, we seek to increase the resources available to address the needs of children and families and to push the various systems—legal, social services, mental health, and educational—to work more closely together and with greater cooperation to ensure the needs of traumatized children are addressed.

Scope of the Impact on Legal Practice

In their article in this issue of the *Michigan Child Welfare Law Journal*, Connie Black-Pond and James Henry detail numerous impacts of traumatic stress on children and discuss from a systemic level some steps that may be taken to make Michigan's legal system more sensitive and responsive to the needs of traumatized children. In virtually every child protection case, and in most juvenile justice cases, lawyers and judges encounter a child who is before the court who has been impacted by the effects of trauma, including prenatal exposure to alcohol.

Researchers have found that as many as half of all cases reported to children's protective services involve parental substance abuse.⁴ One study published in 1999 found that in 79 percent of the cases in which the court removed a child from the parental home, the parent had a substance abuse problem.⁵ Similar findings have been noted in juvenile justice cases. In a study of 287 youth remanded for an inpatient assessment, 23 percent (67) had an alcohol related diagnosis.⁶ Each of the 67 "had a history of significant prenatal exposure to alcohol."⁷

This article will address some of the practical implications for representing clients in child welfare and juvenile justice cases given our knowledge of the impact of childhood trauma on children's functioning.

Communicating With and Counseling Clients

Children who have experienced fetal exposure to alcohol⁸ or drugs,⁹ and those who have experienced complex trauma¹⁰ may have difficulty communicating.¹¹ At a physical level, prenatal exposure to alcohol damages the central nervous system and is a leading cause of developmental delay.¹² Such exposure has been shown to significantly impact the physical development of the brain in ways that impair communication skills. For example, both receptive and expressive language skills are impacted by prenatal exposure to alcohol.¹³ Even if they do not have physical damage to their brains as a result, children who have experienced trauma may have developmental emotional delays which have no physiological basis but that cause them to function at levels below their chronological ages, sometimes significantly so.

Youth with receptive language deficits have difficulty processing information that they hear, such as when their rights are explained to them. These youth may say that they understand things they have heard when in fact they do not.¹⁴ In part, these kids have learned to do this as a mechanism of social adaptation to overcome the neurological deficits with which they must cope. As Timothy Moore, a psychologist, and Melvyn Green, a lawyer, have observed,

These language impairments interfere with academic progress because FASD children have difficulty understanding their teachers and other adults. They learn to exploit nonverbal cues to maintain conversational flow, but their degree of comprehension may be much lower than it appears. They develop a glibness that belies their actual competence. Subtleties of language use are beyond them.¹⁵

Obviously, children and youth with these difficulties in communication present real challenges for lawyers and courts. Children with these sorts of communication problems will need to be interviewed carefully and will require evaluation by medical and mental health professionals to understand their level

of functioning and how to best communicate with them effectively. One easy and effective technique for gauging the youth's level of understanding is to ask him or her to reflect back what you have said. After the court has explained to a child his or her rights when taking a plea and the child indicates an understanding, ask the child to repeat to you in his or her own words what you have just explained. If the youth cannot do so in a way that manifests at least a basic understanding, then you will need to explain the concept again. Similarly, a youth should be asked about and able to explain the consequences of what the lawyer or judge has explained.

In addition to developmental delays that may impair traumatized children's capacity to communicate, some abused and neglected children will have developed inhibitions that have a negative impact on communication. Children who have experienced abuse or neglect are sometimes threatened that if they disclose information about their abuse or abuser they will experience some additional harm; this is perhaps especially true of children who have experienced sexual abuse.¹⁶ In these cases, it is important to consult with the protective services worker, the foster care worker, the child's custodian, and any mental health provider working with the child before you begin interviewing the child. Speaking with these people who know the child may assist you in developing an interview strategy. It will typically be the case that eliciting information from and conveying information to these children will take more time and effort than communicating with children who have been less severely traumatized.¹⁷

Investigation

Whether representing a child in a protective proceeding or in a delinquency matter, careful investigation of the case is crucially important. Michigan's Juvenile Code requires that a child's lawyer-guardian ad litem (L-GAL) conduct an independent investigation of the case.¹⁸ The law requires that the L-GAL interview family members, case workers, and "others as necessary." The L-GAL should also review "relevant reports and other information." To carry out this responsibility, MCL 712A.17d(1)(b) broadly grants the L-GAL access to "all relevant information regarding the child." Similarly, effective representation of a minor charged with delinquency requires the attor-

ney to conduct a thorough investigation of both the circumstances of the alleged delinquent act and the child-client's background in order to properly prepare a defense strategy.¹⁹

Counsel should pursue medical, educational, mental health, law enforcement, and any other records that may shed light on a child's history of trauma. A birth record, for example, may contain evidence of prenatal exposure to drugs or alcohol, or other environmental stressors such as domestic violence or mental illness on the part of the child's mother. Medical records may contain information about injuries the child may have suffered as a result of abuse, neglect, or other causes (e.g., injuries sustained in accidents²⁰) that may be helpful to understanding alleged delinquent behavior.²¹ Similarly, school records may contain a wealth of information regarding a child's intellectual and emotional functioning over time since the school is in a good position to observe cognitive capabilities. For example, fetal alcohol spectrum disorder (FASD) is very often not diagnosed until after a child begins school and shows academic and social delay. Similarly, intellectual limitations as a result of intrauterine drug exposure often will not manifest until the child is seen in the educational setting.

Addressing System Trauma

As noted in the introduction to this article, the child welfare system's efforts to help children and families can be traumatic for youth.²² Dislocation from a primary attachment figure, even one who is less than optimal, is traumatic for children, and repeated moves while in the foster care system cause tremendous stress, which in turn causes alterations in brain chemistry and architecture. Similarly, repeatedly interviewing young people about their traumatic experiences, which causes them to relive these experiences at an emotional level, may cause additional trauma, as can multiple court appearances to testify, and vigorous cross-examination. There are a number of steps a child's L-GAL can take to address these issues. Of course, the child's experienced trauma and its ramifications are important considerations regarding many, if not all of, these efforts.

First, preparing the child if he or she will need to testify is important. There are a number of educational materials available to help kids understand what will

happen in court and what they can expect to happen if and when they must testify.²³ Children will be better able to testify if they have had the opportunity to see the courtroom in which they will need to testify, and have discussed where the judge will sit, where the jurors will be if there is a jury trial, and where their parents and the various lawyers will sit. Your local victim-witness program may be of assistance in regard to helping your child-clients with this.

The law provides two helpful means by which a child's hearsay statements may be admitted. First, for children under 10 years of age, the court rules provide a specific exception for statements regarding child abuse or neglect.²⁴ For children's statements that do not fit within the court rule exception, due to age or some other circumstance, MRE 803(24), the residual hearsay exception, may provide a means of admitting the statements, thereby obviating the need for the child to have to testify.²⁵ Each of these options has a notice requirement.

Next, as part of your routine case preparation, you should decide whether to use the child witness protections established in the Juvenile Code and related court rules. For example, MCL 712A.17b provides for a support person to accompany a child who must testify. It also provides for the taking and use of a "videorecorded statement" at all phases of a child protective proceeding except the trial. Thus, the CPS agency could make a videorecording of a forensic interview with the child, and this could be used, if necessary, at the preliminary hearing and in the dispositional phase of a proceeding. The statute also provides that a child's testimony may be taken by way of a videorecorded deposition, which will then be played at trial in lieu of the child's live testimony.²⁶ Some of these methods of witness protection require a showing that the child would likely experience psychological harm if the protective measures are not taken.²⁷ Similarly, the court rules provide for several other measures intended to protect child witnesses (e.g., closed circuit TV, speaker phone, impartial questioner).²⁸

Assessments and Pre-Trial Motions

Evaluations by medical and mental health professionals are extremely helpful in both the child protection and, in some cases, delinquency context.

Child Protection

The child's L-GAL may need to seek a court order for additional evaluations of the child if doing so would, in the lawyer's judgment, assist the lawyer in understanding the child's history of trauma or preparing the case for trial. The Juvenile Code expressly provides the court the authority to order that a child receive medical and mental health evaluations once a petition has been filed.²⁹ This authority is expanded upon in the court rules to include evaluations of parents as well as children.³⁰

Early comprehensive and interdisciplinary evaluations of children and parents are essential to a complete understanding of the case history and to ensure that the proper services are utilized for both the child and the parent. First, there is some research evidence that early multidisciplinary assessment—before court involvement—can keep families together, improve child functioning, and obviate the need to remove children from parental custody.³¹ One reason for this seems to be that an early and comprehensive assessment more precisely identifies the needs of the child, the parent, and the family, which leads to the provision of services more likely to meet those needs. Lawyers and courts should press their local children's protective services agency to adopt a practice of seeking such a comprehensive assessment in each case that they open for services.³²

Even if a petition has been filed and the child removed from the home, an early and comprehensive assessment can promptly identify the need for services. For example, the author recently became involved in a case that had been pending for five months. After reviewing the file and meeting briefly with the children and observing the mother, the author requested and the court ordered such an evaluation. The results of the evaluation were telling. The mother had an IQ of 70, which placed her on the borderline of intellectual impairment. (Some parents with an IQ of 70 can parent effectively while others cannot.) A functional assessment of her abilities (assessed in part through a parent-child interaction) revealed that she actually functioned as a parent at a level lower than her IQ itself would have suggested. With this assessment, it became clear that the services the agency had been providing were inadequate to meet the mother's needs—they were not of the correct intensity or

duration to provide her a fair opportunity to regain custody of her child and did not meet the agency's obligations established in *In re Terry*³³ to comply with the Americans with Disabilities Act. As this example illustrates, we very often do not recognize problems that parents and their children have until months into a case. Given the exacting timelines under which child welfare cases must be handled, it is essential that we do a better job of identifying problems with functioning early in the court's involvement of the case if families are to have a fair opportunity to reunify.

A comprehensive evaluation at the beginning of the case also establishes a baseline against which to measure the parents' progress toward resolving the issues that brought the family to the court's attention. Too often, we require parents to attend "counseling" without any real idea of what the issues are they should be working on or what exactly we expect the counselors and parents to accomplish.

Delinquency

A child's history of trauma and its neurological, psychological, and behavioral sequela is important to understand when representing a child in a delinquency case. As has been noted, children who are exposed to trauma may have communication, intellectual, and functional deficits. These may have a negative impact on the child's functioning in relation to the ability to understand and waive rights, competency to stand trial, whether the client may have a cognizable mental health defense, and the appropriate disposition in such a case.

Even developmentally normal youth very often lack competence to understand and assert or knowingly and intentionally waive *Miranda* warnings. This fact was recognized by the United States Supreme Court more than 40 years ago in *Gallegos v Colorado*, when the court said that "A 14-year-old boy, no matter how sophisticated . . . is not equal to the police in knowledge and understanding . . . and is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."³⁴ True as the court's observation was, it is even truer when the child has the sort of developmental and language delays that many allegedly delinquent children have as a result of experienced trauma. Social science researchers have articulated a very clear link between childhood abuse

and victimization and subsequent delinquency.³⁵ Unfortunately, the juvenile justice system makes no reasoned accommodation for this fact. As a Yale University professor of psychiatry has observed,

Today our justice system wrestles with the question of whether normal adolescents, with as yet immature, poorly insulated frontal lobes, should be held as accountable for their violent acts as normal adults.³⁶ Psychiatrically ill, neurologically impaired, and abused adolescents are even more handicapped than their normal peers. The question of ethics that their conditions pose is to what extent these impaired juveniles should be held accountable for their violent acts.³⁷

Plainly the client's history of maltreatment and resultant impairment is a crucial part of the totality of the circumstances that must be considered when determining whether a juvenile understood and provided a knowing and intelligent waiver of his or her *Miranda* rights.³⁸ Moreover, aggressive questioning techniques that police routinely use in questioning suspects can easily overwhelm such a youth.³⁹ Youths who have the sort of developmental delays that result from a history of trauma may confess to being involved in crimes in which they simply were not involved or having committed specific acts that even the complaining witness has not alleged happened.⁴⁰ These considerations should be accounted for in determining whether to file motions to suppress statements, and what strategies should be used to do so.

A child's developmental impairments that grow out of a history of trauma are also relevant to the determination of the minor's competency to stand trial. In *In re Carey*,⁴¹ the Michigan Court of Appeals held that the Due Process Clause requires that, if raised, a juvenile's competency to stand trial must be evaluated. The court noted that a child might be incompetent based solely on age and immaturity.⁴² While no Michigan case has squarely addressed whether a child may be developmentally incompetent, courts in other states have addressed this issue.⁴³ It is crucial to understand that children who have experienced trauma that has resulted in neurological impairments and developmental delays may function at levels substantially below their chronological age. These developmental delays should be taken into account when determining whether a juvenile is competent to stand trial.

Limiting Cross

A trial is said to be a search for the truth.⁴⁴ How witnesses are questioned is directly related to whether the court is able to ascertain the truth in a given case. Michigan Rule of Evidence 611(A) provides that "the court shall exercise reasonable control over the mode . . . of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth. . . ." Generally, of course, direct examination is to be conducted using open ended questions, while cross-examination is "ordinarily" conducted by leading question.⁴⁵ Rule 611 makes clear that the court has the authority to exercise reasonable control over the questioning of witnesses to maximize the truth seeking function of hearings at which the rules of evidence apply.

A great deal of social science research demonstrates that children are susceptible to suggestion if they are questioned in a leading manner.⁴⁶ While susceptibility to suggestion is especially problematic with young children, even older children can be influenced by aggressive questioners.⁴⁷ This is the major reason why a decade ago Michigan adopted a forensic interviewing protocol to be used by children's protective services workers and staff members of child advocacy centers who interview children.⁴⁸

Children charged with law violations who have experienced trauma are young and, as a general proposition, are susceptible to suggestion just as are their counterparts in child protection cases. These children also may suffer the effects of trauma-inflicted developmental delays in language and cognition. Developmentally, they may lag years behind their chronological age. Children's capacity to handle courtroom testimony, and especially cross-examination, should be gauged not by their chronological age but by their developmental age. Determining the youth's developmental age, of course, requires careful expert evaluation.

Cross-examination, it has been said, is the "greatest engine ever invented for the discovery of the truth."⁴⁹ To keep it so, in both child protection and delinquency cases, counsel for the child should consider whether to file a motion requesting that the court exercise its authority to prohibit the use of leading questions when the child or the delinquency respondent testifies. Such a motion should contain a description of the factual basis on which the request is made, such as the child's IQ, developmental age in relation

to chronological age, sources of the delay, and known history of traumatic experience. It should also detail the medical and social science research that substantiates the claims that children who have experienced various forms of trauma are susceptible to improper suggestion that may result from vigorous cross-examination. Successfully pursuing such a motion will likely enhance the truth-seeking function of the legal proceeding.

Developing a Litigation Strategy

The child's experience of trauma and its effects on the child's development also will influence the litigation strategy. Trauma history and developmental status should be carefully considered in terms of the theory of the case. A theory of the case is a succinct statement of what the case is about and which takes into account both the good and bad facts presented. In a child sexual abuse case, for instance, the child may suffer from post traumatic stress disorder, a psychological condition that is prevalent in these cases. This may explain some peculiar behaviors exhibited by the child which would otherwise seem counterintuitive. Similarly, in a delinquency case, information about the child's developmental delays secondary to traumatic experiences may suggest a defense based upon an inability to formulate a specific intent or may provide the foundational evidence to assert a mental health defense. As these examples illustrate, understanding the child-client's history of trauma is essential in developing a strategy for handling the case.

Child Protection

Sadly, many of the parents of the children who populate the child welfare system are living with the consequences of their own traumatic victimization in childhood. Maltreated children are at heightened risk for mental illness, substance abuse, domestic violence, criminality, and similar problems as adults.⁵⁰ In some of these cases, the parents' problems may be of such a magnitude that there is simply no reason to believe that they will be able to overcome their parenting deficits in a timeframe that would be conducive to reunifying the family. As Dr. Steven Ondersma of the Merrill-Palmer Institute and his colleagues have observed, "In addition to the risks to children presented by drug use alone, the many factors associated with substance use are also important to consider.

Depression, criminality, poverty, prior abuse, and family violence are all more common in homes where illicit substances are used."⁵¹ He goes on to observe that "chemical dependency can easily require years of treatment and is characterized by repeated relapses."⁵² Obviously, with limited time and resources to address the problems presented by parental substance abuse, it is clear that in some cases the interests of the children would be best served by an early move in the direction of a permanency plan that excludes consideration of reunification.

Both federal and Michigan law permit the court to terminate parental rights or to make other permanent plans for a child without the need to expend limited resources or time that is crucial to a child's development on efforts to rehabilitate a parent who is unlikely to benefit from services. Two underutilized provisions of the federal Adoption and Safe Families Act (ASFA) speak directly to movement in the direction of early permanency. First, one provision of ASFA provides that the state child welfare agency may seek an early termination of parental rights in any case if doing so would serve the interests of the child. It provides:

Nothing in this section or in part E of Title IV of the Social Security Act [42 U.S.C. § 670 et seq.] shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than those specified in Part E of Title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.⁵³

Similarly, 42 U.S.C. § 678 directly addresses the court's ability to make decisions in children's best interests in any case other than one in which the federal law requires termination of parental rights:

Nothing in this part [42 U.S.C. §670 et seq.] shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D) [42 U.S.C. §671(a)(15)(D)].

Michigan law, too, permits the court to terminate parental rights at the first dispositional hearing in any case in which such an outcome is requested.⁵⁴ In cases

in which the parent is unlikely to be able to regain custody in a timeframe that is conducive to the child's needs, the child's L-GAL should consider whether to seek early termination of parental rights or some other permanent resolution to the case.

Delinquency

Some children who exhibit aggression and violent behavior, many of whom may be assigned the labels such as "oppositional defiant disorder" or "conduct disorder," have been shown to have abnormally high levels of certain neurotransmitters (i.e., chemicals in the brain) and stress hormones.⁵⁵ These abnormalities may provide a biological basis to explain their aggressive, impulsive behavior. In some cases, these biological indicators may provide a legal excuse, diminish responsibility for the child's acts, or provide evidence that the youth was incapable of forming or as a factual matter did not form a specific intent in a particular situation.

Services

When considering the services to be provided to the children and families that come before the court, we must be both soft hearted and hard headed. We must exhibit the compassion to provide services aimed at rehabilitating the neglectful or abusive parent and remember that youth who commit violent acts are doing their best to cope with a world that has been hostile and violent to them and overwhelms their capacity to cope, that they are not simply "bad" kids. But we must also be hard headed. We must recognize that some parents' capacity to parent is so impaired by substance abuse, mental illness, developmental delay, and the like that no amount of services we can provide can change their course in the timeframe necessary to meet the needs of their children. Similarly, we must recognize that some young people, because of their own brutalization, present a very real danger to the community and must be very closely monitored, or, in some rare instances, removed from the community altogether.

As noted earlier in this article, early and comprehensive evaluations of parents and children are essential to understand the variety and complexity of a parent's and child's needs encountered by our juvenile courts. But evaluation is only the beginning of

the process. After the evaluation has been completed, children's L-GALs and parents' attorneys must advocate for services for both the child and the parent (if reunification is the goal) that will actually address the needs of the *particular* child, the *particular* parent, and the *particular* family. Boilerplate, cookie-cutter treatment plans do not take into consideration the unique needs of the individuals involved and provide neither hope to the child to return home nor fair opportunity to a parent to regain custody of his or her child. In advocating for or ordering services, it is essential that they accomplish the following:

- (1) Maximize the child's sense of psychological safety. Many of the chemical and architectural changes that take place in the brain as a result of abuse and neglect result from the brain's reaction to flight or fight states, that is, a lack of psychological safety.
- (2) Ensure that services are coordinated and trauma informed.
- (3) Connect children with professionals who can help them develop a coherent understanding of their traumatic experiences and help them integrate and gain mastery over their experiences.
- (4) Address the ripple effects on the child's behavior that result from the traumatic experiences. This includes the ability to form and maintain healthy attachments, aggressive behavior, and academic/learning problems.
- (5) Provide support and guidance to the child's family.

It is essential that lawyers advocating for children or parents and courts become informed consumers of the services being provided to the families with whom we work.

Child Protection

After the evaluation has been concluded, the L-GAL and the parent's attorney should seek evidence based treatments to address the identified needs. A research team at Duke University Medical School has outlined several treatment programs that have been tested empirically and have shown promise in addressing the needs of children and families in the child welfare system.⁵⁶ They recommend the following approaches to treatment:

- (1) **Trauma Focused Cognitive Behavior Therapy (TF-CBT):** TF-CBT, which is used with both the child and the parents, “addresses behavioral and negative thought patterns associated with childhood trauma.”⁵⁷ In this form of treatment, the therapist teaches the child how to cope with the emotional impact of the trauma he or she experienced and teaches the parent how to encourage and support the child’s use of these skills. Research has demonstrated that TF-CBT is “linked to improvements in PTSD symptoms, depression, anxiety, behavioral problems, and feelings of shame and mistrust.”⁵⁸
- (2) **TF-CBT for Childhood Traumatic Grief** is a form of treatment “designed specifically to help children suffering from traumatic grief after experiencing the loss of a loved one in traumatic circumstances.”⁵⁹ Some of the children who enter the foster care system have lost loved ones to violent death—a mother is killed by a father; a sibling is beaten to death. Sometimes children will directly witness these horrific incidents⁶⁰ and will be severely traumatized as a result. TF-CBT for Traumatic Grief is a fairly new approach, but two studies have shown positive outcomes for the children who have participated in this form of treatment.
- (3) **Abuse-Focused Cognitive Behavior Therapy (AF-CBT)** is a short term approach to therapy that lasts 12-18 hours and has proven effective at reducing the risk of parental anger spilling over into physical abuse. It does this by reducing the use of physical discipline and physical force to get children to comply with parental directives. In this form of treatment, children are taught positive social skills and to reduce their aggressive behavior at the same time parents are taught anger management and relaxation skills. This form of treatment can be provided in the family’s home and should be considered for use in those cases that children’s protective services (CPS) has categorized Category III or Category II.⁶¹
- (4) **Parent Child Interaction Therapy (PCIT)** lasts between 12 and 20 sessions and can be used with children from 4 to 12-years of age. In this approach, parents learn to use positive discipline techniques while children learn to be more compliant with parents’ directions. The goal of this treatment modality “is to change negative parent-child interaction patterns.”⁶² This form of treatment has been shown to reduce the number of incidents of physical abuse, reduce child behavior problems, reduce parental stress, and to increase positive interactions between parents and their children.
- (5) **Child-Parent Psychotherapy for Family Violence (CPP-FV)** is a method of providing individual treatment to pre-school-aged children who have witnessed domestic violence and exhibit trauma symptoms related to their exposure to violence in their homes. This form of treatment is typically provided once per week for about a year. Research has shown it to be more effective than other forms of treatment at reducing symptoms of traumatic stress, behavior problems, and maternal avoidance of the child.
- (6) **Project 12-Ways/Safe Care for Child Neglect:** as the name suggests, is aimed at addressing neglect rather than abuse or exposure to violence. This approach specifically addresses issues such as environmental safety, bonding between the parent and the child, and responding to the child’s medical needs. Project 12-Ways has been shown to improve both interpersonal skills and functional skills (i.e., home management, job training) of the parents who have participated in the program.

Delinquency

As with child protection cases, attorneys for children in delinquency cases should also be aware of the need for and availability of evidence-based approaches to treatment, and should insist that they be ordered by the court and utilized when children are on probation or in placement. Historically, the juvenile justice system has over-relied on the use of secure detention before trial and secure confinement post-adjudication, which has resulted in overcrowding of detention facilities.⁶³ The excessive use of secure confinement can be

dangerous for both youth and for the staff members who work in facilities.⁶⁴ In addition to being expensive, secure detention and confinement have a proven track record of failure, exemplified by high recidivism rates.⁶⁵ Children are routinely brutalized in many of these programs.⁶⁶ Since at least the 1960s, research has consistently demonstrated that properly designed, well-run, community-based juvenile correctional programs are more effective at reducing recidivism and enhancing community adjustment of adjudicated juvenile offenders.⁶⁷

There are a number of alternatives to secure detention and confinement that have proven effective at both providing community safety and providing effective supervision and treatment of juvenile offenders in the community. Massachusetts has long rejected the large-scale confinement of juvenile offenders, instead relying on intensive, community-based programs to monitor and treat juveniles in both the pre-trial and post-adjudication phases of delinquency proceedings. These programs "have shown powerful effects in reducing subsequent involvement in delinquency."⁶⁸ Below are several programs that have proven effective in the pre-trial and the post-adjudication phases of the process.

Pre-Trial Detention or Monitoring

Pre-trial detention or monitoring of allegedly delinquent children has two legitimate goals: 1) to ensure that the minor appears for court hearings; and 2) to maintain community safety by guarding against recidivism. In order to achieve these goals, communities across the nation have developed alternative programs to monitor youth.

- (1) **Home detention** demands that youth be home at certain periods. For some youth, this means at all times; for others, when not in school or at work. It also applies to curfew hours as established by the community generally or as established for the individual youth by the court. Contact with these youth is often made daily. Home detention has proven to be both cost effective and effective at meeting the two objectives of pre-trial detention or monitoring.
- (2) **Electronic monitoring** monitors the youth's whereabouts by way of an electronic monitoring device and random phone calls to the

youth's home. It is often used in conjunction with home detention. Electronic monitoring has shown success. For example, in a study done in Lake County, Indiana, youth involved in electronic monitoring completed their programs 90 percent of the time, as compared with 75 percent for youth who were not monitored, and had recidivism rates 9 percent lower than unmonitored youth.

- (3) **Day and evening reporting centers** require that youth report to a given place on a daily basis. These programs vary, but a number of them provide an array of services in addition to merely requiring that youth report. These services may include job skills training, counseling, recreation, and independent living skills. Cook County (Chicago), Illinois is a national leader in implementing day and evening reporting, and they claim a 92% success rate.

Post-Adjudication

Broadly speaking, the purpose of the disposition in a delinquency case is to provide rehabilitative services to the youth and to protect the community from further delinquent conduct. A recent publication by the Office of Juvenile Justice and Delinquency Prevention noted that, "Youth's behavior problems are deeply embedded in their psychosocial systems (e.g., family and community); to be effective, therefore, interventions should treat youth while addressing their complex multidimensional problems."⁶⁹ A number of programs have proven successful in addressing the challenges presented by delinquent youth:

- (1) **Intensive supervision programs (ISP)** provide increased monitoring for some higher risk youth in order to maintain them in their home. While research has shown mixed results, ISPs, when properly structured and implemented, have shown promise in reducing recidivism. In general, those programs that provided more services (e.g., individual and family therapy, job training, and educational supports) are more successful than those that simply provided an increased level of monitoring.⁷⁰
- (2) **Multi-Systemic Therapy (MST)** provides family-based, intensive therapeutic intervention with delinquent youth at risk for place-

ment in out-of-home care. "The overriding purpose of MST is to help parents deal effectively with their youth's behavioral problems; help youth cope with family, peer, school, and neighborhood problems; and reduce or eliminate the need for out-of-home placements."⁷¹

Research studies have demonstrated that MST is one of our most successful programs at rehabilitating delinquent youth, preventing recidivism.⁷² MST has been shown to reduce the need for out-of-home placement from 47 to 64 percent.⁷³ In studies in which MST was used with "violent and chronic" juvenile offenders, re-arrest rates dropped 25 to 70 percent, and there were decreases in the youths' mental health problems and improved family functioning.⁷⁴ The benefits of MST have been shown to last at least four years, and it has proven to be a cost effective alternative to out-of-home placement.⁷⁵

- (3) **Functional Family Therapy (FFT)** is a short-term program which typically consists of between 12 and 30 one-hour therapeutic sessions over a three-month period of time. Research has shown FFT to be successful in engaging youth and their families (80% of the families that participate in the program complete it), effective at reducing recidivism, and highly cost effective (\$700–\$1000 per case as compared to \$6,000–\$13,000 for detention or residential placement). FFT has the attendant benefit that it has been shown to prevent siblings of the delinquent youth from entering into delinquency.⁷⁶
- (4) **Multidimensional Treatment Foster Care (MTFC)** is a program for those youth who cannot be maintained in their family home. In this program, youth are placed into a foster home rather than in a group care setting. The foster parents receive specialized training in addressing the needs of delinquent youth, including close supervision and emotional support. Youth in MTFC assist in developing a schedule of activities and behavioral expectations, and are intensively monitored by both their foster parents and by a case manager. The youth's family of origin is provided family therapy with a focus on assisting the family to develop the structure the youth needs to be

successful. When compared with youth who were placed in residential programs for delinquents, youth who participated in MTFC programs had "significantly fewer arrests" after one year.⁷⁷

As the programs briefly described here demonstrate, there are viable community-based programs which can address the needs of youth and their families, maintain community safety, and save money. But many, if not most, Michigan communities lack sufficient programming of the type described here, requiring that lawyers, and especially judges, be involved in system reform and demanding that these programs be made available. This will take considerable cross-systemic work.

Reforming the System

Understanding the impact of complex trauma on children demands that we be engaged in reforming the system to better respond to their needs. Judges especially play a crucial role. They are in a position to convene a community's leadership to marshal its resources—the court itself, the Department of Human Services, community mental health, and the school system—to address the needs of these children, their families, and their communities. Judges should seek to bring together representatives of various community agencies to ensure that the programs discussed earlier are available in the community. Judges should order the evaluations that children and families need, not merely those that are available. When the demand is made, the programming will follow. In short, judges must take a leadership role at the systemic and community level in responding to the effects of trauma on children.

But lawyers play an important role, too. When lawyers representing children in individual cases begin to educate courts about the need for early assessment and evidence-based programming aimed at addressing the child's history of experienced trauma, the system will begin to respond. When lawyers demand that every child and family coming before the court be evaluated at the beginning of the proceedings rather than after months have passed, the system will begin to provide these services as a routine rather than as the exception to the rule. When lawyers insist that courts reject boilerplate treatment plans for children and families in favor of services that are tailored to the needs of that child and that family, then courts will

understand why they so insist and will act with this in mind. Also, lawyers—through individual effort as well as local and statewide bar committees—must also be involved in systemic reform. Lawyers should press courts and agencies to address the issues at a systemic level to ensure that trauma sensitive services are available in their communities. To do this, lawyers must increase their level of sophistication regarding clinical matters and must be knowledgeable about resources available in the community.

Further Reading

Whether a lawyer or a judge, legal professionals working in child protection and juvenile justice must develop a working knowledge of the impact of child maltreatment and other forms of traumatic experience on the children with whom they work. A good place to start is the winter 2007 issue of *Focal Point*, which is published by the Regional Research Institute for Human Services at Portland State University and available free online.⁷⁸ This publication contains several short articles that provide a helpful introduction to the issue of traumatic stress in the child welfare context. These articles provide an overview of the impact of traumatic stress on children, ways in which we as advocates can work to make the child welfare system more sensitive to child traumatic stress, and information about evidence-based practices that have been shown to work for children and families.

Another helpful introductory source of information is Bruce Perry's recently published book *The Boy Who Was Raised As a Dog*.⁷⁹ In this book, Dr. Perry, one of the nation's leading researchers on the impact of traumatic stress on children, provides an introduction to the numerous ways that exposure to traumatic stress early in childhood can impact upon development. Using case vignettes from his practice, Perry illustrates how trauma can contribute to emotional and behavioral problems from depression and withdrawal to aggression and violence.

For a more detailed treatment of the importance of relationships in early childhood to neurodevelopment, Louis Cozolino's *The Neuroscience of Human Relationships* is invaluable.⁸⁰ Cozolino discusses in depth—and in understandable terms—the science of how human relationships, particularly those in the early years of life, shape the human brain and the human being that one becomes.

Conclusion

Over the past decade or so, we have learned a great deal about the impacts of traumatic stress on children. Whether in the form of prenatal exposure to alcohol, abuse, neglect, or witnessing violence at home or in the community, traumatic stress can cause changes in brain chemistry and the physical architecture of the child's developing brain. These changes in brain functioning, in turn, have impacts on children's intellectual and emotional development as well as their behavior. Some children may become passive and self-destructive while others may become aggressive and violent. Lawyers and judges handling child welfare cases should educate themselves about the causes and impacts of traumatic stress on children—and the adults that they become—and should begin to use this knowledge in both their day-to-day handling of child protection and juvenile justice cases and to institute systemic change in our child protection and juvenile justice systems. ©

Endnotes

- * The author wishes to thank Joshua Kay, Ph.D., J.D. (expected 2008) for his helpful comments on an earlier draft of this article.
- 1 See, e.g., Clifford R. Shaw, "The Jack-Roller: A Delinquent Boy's Own Story" (1930); "Juvenile Delinquency"; Vernon L. Qunsey, et al., "Juvenile Delinquency: Understanding The Origins of Individual Difference" (2004); Katharine D. Kelly & Mark Totten, "When Children Kill: A Social-Psychological Study of Youth Homicide 1-20" (2002); Jascha Hoffman, "Criminal Element: Was Getting Lead Out of Gasoline a Factor in the Drop in Crime?", *New York Times Magazine*, October 21, 2007 at 32 (describing several research studies that link juvenile delinquency and crime rates to levels of lead in the human body; exposure to high levels of lead has been shown to lower IQ and is linked with increased impulsiveness and aggression).
- 2 The August 2007 issue of the social journal *Child Maltreatment* is dedicated to articles exploring the connection between child maltreatment and subsequent delinquent behavior and contains a number of interesting articles.
- 3 See Robyn Igelman, Lisa Conradi & Barbara Ryan, "Creating a Trauma-Informed Child System," *24 Focal Point* 23 (Winter 2007); Jim Henry, "System Intervention Trauma to Child Sexual Abuse Victims Following Disclosure," *12 J. Interpersonal Violence* 499 (1997).
- 4 See Steven J. Ondersma, et al., "Prenatal Drug Exposure and Social Policy: The Search for an Appropriate

- Response," 5 *Child Maltreatment* 91, 96 (2000) (internal citations omitted).
- 5 Id., citing Besinger, et al., "Caregiver Substance Abuse Among Maltreated Children Placed in Out-of-Home Care," 78 *Child Welfare* 221 (1999).
 - 6 Diane K. Fast, Julianne Contry & Christine A. Look, "Identifying Fetal Alcohol Syndrome Among Youth in the Criminal Justice System," 20 *Developmental and Behavioral Pediatrics* 370 (1999).
 - 7 Id. at 371.
 - 8 Id. (2000) (noting that alcohol exposure in the prenatal period may have irreversible negative effects on children's development).
 - 9 Id. at 95 (citing research findings that intrauterine cocaine exposure lowers IQ).
 - 10 See Generally, Jim Henry, Mark Sloane & Connie Black-Pond, "Neurobiology and Neurodevelopmental Impact of Childhood Traumatic Stress and Prenatal Alcohol Exposure," 38 *Language, Speech, and Hearing Services in Schools* 99 (2007).
 - 11 See generally, Timothy E. Moore & Melvyn Green, "Fetal Alcohol Spectrum Disorder (FASD): A Need for Closer Examination by the Criminal Justice System," 19 *Criminal Reports* 99, 100 (2004) (noting that "The CNS [central nervous system] dysfunctions associated with FASD manifest in various cognitive deficits including problems with memory, language and social skills") (hereinafter, "A Need for Closer Examination").
 - 12 Diane V. Malbin, "Fetal Alcohol Spectrum Disorder (FASD) and the Role of Family Court Judges in Improving Outcomes for Children and Families," 55 *Juvenile and Family Court Journal* 53, 54 (Spring 2004).
 - 13 See "A Need for Closer Examination," supra, note 11 at 100, citing; L.A. Jazen, J.L. Nanson & G.W. Block, "Neuropsychological Evaluation of Preschoolers with Fetal Alcohol Syndrome," 17 *Neurotoxicology & Teratology* 273 (2000).
 - 14 See "A Need for Closer Examination," supra, note 11 at 100.
 - 15 Id. (internal citation omitted).
 - 16 Kathleen Coulborn Faller, "Interviewing Children About Sexual Abuse: Controversies and Best Practice 184" (2007) (citing research findings that one half of the children studied did not disclose sexual abuse in part because they were told by their abuser not to tell); Charles Felzen Johnson, "Sexual Abuse in Children," 27 *Pediatrics in Review* 17 (2006) (discussing the role of threats by the perpetrator of sexual abuse).
 - 17 See Ann Tobey, Thomas Grisso & Robert G. Schwartz, "Youths' Trial Preparation as Seen by Youths and Their Attorneys: An Exploration of Competence-Based Issues," in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 225-242 (Thomas Grisso & Robert G. Schwartz, eds. 2000) (noting that communicating complex legal concepts to developmentally normal youth requires a good deal of time and effort).
 - 18 MCL 712A.17d(1)(C).
 - 19 See Frank E. Vandervort, "When Minors Face Major Consequences," 80 *Mich. B. J.* 36 (September 2001).
 - 20 Research studies have found that many delinquent youth have sustained brain injuries as a result of accidents which impair their ability to control violent impulses. See, e.g., Dorothy Otnow Lewis, et al., "Ethics Questions Raised by the Neuropsychiatric, Neuropsychological, Educational, Developmental, and Family characteristics of 18 Juveniles Awaiting Execution in Texas," 32 *J. Am. Acad. Psychiatry & Law* 408, 414-417 (2004).
 - 21 See generally, Pavlos Hatzitaskos et al., "The Documentation of Central Nervous System Insults in Violent Offenders," 45 *Juvenile and Family Court Journal* 29 (1994); Dorothy Otnow Lewis, Shelley S. Shanok & David A. Balla, "Perinatal Difficulties, Head and Face Trauma, and Child Abuse in the Medical Histories of Seriously Delinquent Children," 136 *Am. J. Psychiatry* 419 (1979); Dorothy Otnow Lewis & Shelley S. Shanok, "Medical Histories of Delinquent and Non-delinquent Children: An Epidemiological Study," 134 *Am. J. Psychiatry* 1020 (1977);
 - 22 See, e.g., James Henry, "System Intervention Trauma to Child Sexual Abuse Victims Following Disclosure," 12 *J. Interpersonal Violence* 499 (1997).
 - 23 There are many resources available to help prepare children to testify in court. For instance, the National Center for Missing and Exploited Children publishes *Just In Case: Guidelines in Case Your Child is Testifying in Court*; B.J. Learns About Federal and Tribal Court (video) is a production of the U.S. Attorney's Office in Arizona; *Me In Court* is a coloring book developed by Sex Offender Services in St. Paul, Minnesota. Your local victim witness assistance program may be of help in locating additional or jurisdiction specific materials.
 - 24 MCR 3.972(C)(2).
 - 25 See *People v Katt*, 468 Mich. 272 (2003).
 - 26 MCL 712A.17b(13).
 - 27 MCL 712A.17b(12) and (13); see *In re Hensley*, 220 Mich. App. 331 (1996).
 - 28 MCR 3.923(E) and (F).
 - 29 MCL 712A.12.
 - 30 MCR 3.923(B).
 - 31 Kathleen Coulborn Faller, Mary B. Ortega & Elaine Pomeranz, "Can Early Assessment Make a Difference in Child Protection? Results From a Pilot Study," *J. Public Child Welfare* (forthcoming).
 - 32 See MCL 722.628d. Such a policy would ensure that in each case in which the agency has determined that

- child abuse or neglect has taken place, the family is comprehensively evaluated.
- 33 240 Mich. App. 14 (2000) (holding that the Americans with Disabilities Act applies to child protection cases; the agency must provide services that meet the ADA's requirement for reasonable accommodations).
 - 34 370 U.S. 49, 54 (1962).
 - 35 Special Issue, "Child Maltreatment and Adolescent Violence: Understanding Complex Connections," 12 *Child Maltreatment* 203-298; James Garbarino, *Lost Boys: Why Our Sons Turn Violent and How We Can Save Them* (1999).
 - 36 See generally *Roper v Simmons*, 543 U.S. 551 (2005) (QUOTE).
 - 37 Dorothy Otnow Lewis, et al., "Ethics Questions Raised by the Neuropsychiatric, Neuropsychological, Educational, Developmental, and Family Characteristics of 18 Juveniles Awaiting Execution in Texas," 32 *J. Am. Acad. Psychiatry and the Law* 408, 427 (2004); see generally *Roper v Simmons*, 543 U.S. 551 (2005) (holding unconstitutional the death penalty as applied to juveniles in part because the developmental differences between adults and minors render minors less culpable for their crimes).
 - 38 See *In re SLL*, 246 Mich. App. 204 (2001) (holding that the totality of the circumstances test applies to the taking of a juvenile's confession).
 - 39 As the Central Park jogger case aptly illustrates, even developmentally normal youth may confess under intense questioning to crimes they did not commit. In that case, several teenagers admitted, in videotaped confessions, that they had physically and sexually assaulted a woman who was jogging in the park. Years later, when DNA linked the assault to an adult, he confessed that he, and only he, had been responsible for the assault. See generally, Steven A. Drizin & Berth A. Colgan, *Tales From the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions From Juvenile Suspects, in Interrogations, Confessions, and Entrapment* (G. Daniel Lassiter ed., 2004).
 - 40 See, e.g., *In re Rueckert* (Unpublished Michigan Court of Appeals case, n. 250829) (16-year-old defendant who suffered from fetal alcohol syndrome, had been neglected and abandoned by his parents, and was sexually abused admitted to having committed a CSC in the first degree involving penetration when the complaining witness stated that he had committed only a CSC involving no penetration; although medical exam indicated no physical evidence of penetration in circumstances where there likely would have been had penetration taken place, defendant charged as an adult with CSC first degree).
 - 41 *In re Carey*, 241 Mich. App. 222 (2000).
 - 42 *Id.* at 234 ("we . . . note that it is possible that a juvenile, merely because of youthfulness, would be unable to understand the proceedings with the same degree of comprehension an adult would.")
 - 43 See, e.g., *In re Timothy J.*, 150 Cal. App. 4th 847; 58 Cal. Rptr. 3d 746 (2007) (holding that a juvenile who is allegedly delinquent need not suffer from a mental disorder or a developmental delay in order to be incompetent to stand trial).
 - 44 *People v Shipp*, 175 Mich. App. 332, 340 (1989).
 - 45 MRE 611(C)(2).
 - 46 Stephen J. Ceci & Maggie Bruck, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony* (1995).
 - 47 See *Tales From the Juvenile Confession Front*, supra note 39.
 - 48 Governor's Task Force on Children's Justice, Forensic Interviewing Protocol (Revised Ed. 2005); MCL 722.628(6).
 - 49 James Carey, Charles Laughton, Marlene Dietrich and the Prior Inconsistent Statement, 36 *Loyola of Chicago L. J.* 433 (2005) (internal citation omitted).
 - 50 See "When Children Kill," supra, note 1 at 12.
 - 51 "Prenatal Drug Exposure and Social Policy," supra, note 4 at 97 (citation omitted).
 - 52 *Id.* at 100.
 - 53 P.L. 105-89 § 103(d); 42 U.S.C. § 675 note.
 - 54 MCL 712A.19b(4).
 - 55 Bruce D. Perry & Maia Szalavitz, *The Boy Who Was Raised as a Dog and Other Stories From A Child Psychiatrist's Notebook: What Traumatized Children Can Teach Us About Loss, Love, and Healing* 117 (2006).
 - 56 See Leyla Stambaugh, et al., "Evidence-Based Treatment for Children in Child Welfare," 21 *Focal Point* 12 (2007). The information in this section is adapted from this article.
 - 57 *Id.*
 - 58 *Id.* at 13.
 - 59 *Id.*
 - 60 In his book *The Boy Who Was Raised as a Dog*, Bruce Perry describes one such case in which a little girl's mother was murdered while she was present and the emotional impact upon the child.
 - 61 MCL 722.628d(c), (d).
 - 62 See *Evidence-Based Treatment for Children in Child Welfare*, et al., supra, note 56 at 13.
 - 63 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin*, "Alternatives to Secure

- Detention and Confinement of Juvenile Offenders 2” (September 2005).
- 64 See, e.g., Solomon Moore, “Troubles Mount Within Texas Youth Detention Agency,” *New York Times*, Tuesday, October 16, 2007.
- 65 *Alternatives to Secure Detention*, supra, note 63 at 3.
- 66 See, e.g., Kenneth Wooten, “Weeping in the Playtime of Others: America’s Incarcerated Children” (1976) (discussing the abuse and neglect of youth in various delinquency programs); “Lost Boys,” supra, note 35 at 232-233 (discussing juvenile bootcamp programs); “Troubles Mount Within Texas Youth Detention Agency,” supra, note 64.
- 67 Id.
- 68 Id. at 3 (internal citations omitted).
- 69 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin*, “Blueprints for Violence Prevention 10” (July 2001).
- 70 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin*, “Alternatives to the Secure Detention and Confinement of Juvenile Offenders 18-19” (September 2005).
- 71 “Blueprints for Violence Prevention,” supra, note 69 at 10.
- 72 See “Alternatives to Secure Detention,” supra, note 63 at 19.
- 73 See “Blueprints for Violence Prevention,” supra, note 69 at 10.
- 74 Id.
- 75 Id.
- 76 Id. at 9.
- 77 Id. at 11.
- 78 Go to: www rtc pdx edu/pgFocalPoint.shtml
- 79 Bruce D. Perry & Maia Szalavitz, *The Boy Who Was Raised as a Dog: and Other Stories From a Child Psychiatrist’s Notebook: What Traumatized Children Can Teach Us About Loss, Love, and Healing* (2006).
- 80 Louis Cozolino, *The Neuroscience of Human Relationships: Attachment and the Developing Brain* (2006).