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“Trauma is inherent to the work of the judicial system; vicarious trauma and stress are natural by-products.”

Judge Victor Reyes,
National Council of Juvenile
and Family Court Judges

EXPLAINER

Trauma-Informed Court Processes

Part Three of a Four-Part Series

February 2024

This is part of the “Trauma-Informed Criminal Justice” series.
[Read the introduction and view other posts here.](#)

Introduction

On Jan. 3, 2024, Clark County, Nevada District Judge Mary Kay Holthus was **attacked** by a defendant after rejecting his request to be sentenced to probation for felony battery (TW: courtroom violence). Courtroom attacks on judges are rare, but in 2021, U.S. federal judges were the target of **4,500 threats**. Such incidents can be personally and vicariously traumatizing for the individual and other members of the bench. Trauma is **conceptualized** as the long-term consequences of experiencing an event or series of events perceived as physically or emotionally harmful or life-threatening. Unresolved trauma can **impair** executive functioning, planning, decision-making, communication, and memory—all important elements of the legal process for involved parties.

The traumatic experiences of **perpetrators** and **victims** of crime are well documented. Trauma experienced in the courtroom by witnesses, children, bystanders, and other court personnel is less documented, but having to testify; prosecute crimes of violence; preside over criminal and civil matters; listen to case details; and watch loved ones in the role of victim, witness, or perpetrator can undoubtedly take a physical or emotional toll. Owing to the substantial likelihood that many (if not all) people in the courtroom have experienced or are experiencing trauma as a result of entanglement in the legal process, implementing **trauma-informed** court policies and practices is critical to mitigate harm for all involved.

Trauma and the Civil and Criminal Court Process

There are two types of court processes. **Civil cases** involve disputes between two parties, including contract violations, foreclosure or eviction, child custody, adoption, divorce, faulty consumer goods, and protection from abuse petitions. **Criminal cases** involve allegations of violations to local, state, or federal laws. Some cases, like domestic violence and sexual assault, can proceed through both, as the victim pursues violations of criminal law and protections under civil law. Juveniles are usually processed through separate courts than adults, but they can be waived or moved to the adult criminal court for specific (often violent) crimes. The court process is typically **adversarial**, with the outcome favoring one party or the other. Understandably, the party not favored suffers a loss; but in the event of protection from abuse orders, even the favored party may experience trauma. Exceptions to the adversarial system, referred to as **therapeutic jurisprudence**, include diversion or problem-solving courts in which all courtroom actors work together to address the root cause of the crime by rehabilitating the individual and holding them accountable for their behavior.

Because the **court process** can be unfamiliar and the outcomes are so significant for both parties, the process can be traumatic in and of itself. Physical, cognitive, and emotional **signs of trauma** can be misinterpreted by courtroom professionals, as individuals may appear anxious or hypervigilant, have difficulty answering questions or recalling events, display inappropriate affect or atypical emotional responses, and have difficulty regulating their emotions. Inadvertently adding insult to injury, judges, prosecutors, defense attorneys, sheriffs, and support staff, having long borne witness to the trials and tribulations of others, may appear detached and desensitized to even the most horrific events. According to **Judge Victor Reyes**, judge-in-residence for the National Council of Juvenile and Family Court Judges, “Trauma is inherent to the work of the judicial system; vicarious trauma and stress are natural by-products.”



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Psychological harm is [exacerbated](#) when victims and witnesses are retraumatized by the legal process and do not have the support resources they need, making recovery more difficult. [Most victims](#) do not go on to commit crime, but many perpetrators of crime have experienced violence or victimization. [Victim-offender overlap](#) occurs when individuals develop maladaptive coping strategies like alcohol or substance abuse that attract legal system involvement or learn to commit crime and violence through their own victimization.

Trauma-Informed Courts

When judges operate under the assumption that courtroom trauma is universal, they can mitigate harm for themselves; their staff; and the victims, witnesses, and others present. [Trauma-informed courts](#) seek to “realize the widespread impact of trauma and understand potential paths for recovery; recognize the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and respond by fully integrating knowledge about trauma into policies, procedures, and practices, and seek to actively resist re-traumatization.” Court personnel can prosecute, defend, adjudicate, and sentence people fairly and arduously in a manner that reduces further harm. According to the [HEAL PA Criminal Justice Action Team Report and Recommendations](#), incorporating trauma-informed policies and practices empowers “all parties to participate in their cases without re-experiencing the impact of their traumatic experiences and adversity.” The hope is that this approach will ensure a just outcome and increase respect for the court process.

Judges set the tone for the conduct of their courtrooms and must lead by example to establish and maintain trauma-informed policies and practices. Small changes in communication style and demeanor can have a big impact. Person-first, non-stigmatizing language that promotes an individual’s humanity rather than a negative stereotype is critical to this effort. According to [labeling theory](#), addressing or referring to someone as a “drug addict,” “thief,” or “criminal” can become a [self-fulfilling prophecy](#) that disincentivizes individuals from moving beyond the label, reaffirming their commitment to deviance and a socially ascribed status. The Office for Victims of Crime [recommends](#) physical changes to the courtroom environment, regular trauma training for all courtroom staff, establishing trauma teams, and encouraging input from stakeholders. [Access](#) to behavioral health services and resources for victims, perpetrators, witnesses, and others should be standard, in addition to regular training and support for self-care among court professionals. Courts that regularly address the needs of children, families, the elderly, and victims have unique considerations in regard to the physical environment and the manner of clear, simple, and respectful communication needed to reduce the likelihood of retraumatization.

Conclusion

The judicial system is complex, often confusing, and intimidating. The court process can be traumatizing, overwhelming, and stressful for all parties involved. For professionals working within the system, daily exposure to the experiences of others can be burdensome, resulting in [secondary traumatic stress](#) or [vicarious trauma](#). In order to mitigate the harm of the court process and resist retraumatizing others, courts should implement trauma-informed approaches that benefit personnel, participants, and bystanders alike. [Trauma-informed approaches](#) can reduce recidivism and incidents of violence while improving service delivery, rehabilitation, healing, and recovery. While this does represent a [cultural shift](#), there are many small ways, as articulated above, that [courts](#) can provide an environment that is physically and emotionally safe, conveys transparency and trustworthiness, and offers peer support. Being culturally competent and encouraging people to voice their concerns, advocate for themselves, and take agency over their choices and the resources they need can restore trust and a sense of fairness in the American legal system.



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