

Enhancing Access to Justice through a Trauma-Informed Approach

By Olga Trujillo, JD & Patricia Moen

Tip Sheet #2 July 2019

Victims and witnesses of crime have experienced trauma when they are exposed to violence, physical or sexual abuse, neglect, natural disasters, accidents, or any other events that induce powerlessness, fear, recurrent hopelessness, and a constant state of alert. These victims and/or witnesses appear in court as parties to, or witnesses in, civil or criminal legal proceedings as a result of the crime.

Why Consider Trauma?

A trauma-informed court practice enables all parties and witnesses to participate in civil and criminal legal proceedings. Knowing about trauma and how it affects people will help courts respond to reasonable requests of accommodations for participation in legal proceedings and determine credibility of parties and witnesses more accurately.

The trauma that people experienced can affect the outcome of their cases in two key ways:

1. Participation in legal proceedings can be difficult for victims and witnesses who have experienced trauma, because they can be easily reminded of the crime by seeing the people, pictures of the places or scenes of the incidents of violence. This can bring up the feelings and sensations associated with those traumatic events, which can cause a

literal re-experiencing of the incident. This kind of re-experiencing may cause feelings of panic, anger, disorientation, physical pain, grief, or numbing and shutting down. These traumatic reminders are referred to as “triggers” and these triggers during a court proceeding can disrupt the victim and witness testimony, cross examination or make it too hard for them to participate at all.

Lawyers and legal advocates find legal proceedings compromised or interrupted when their client and witnesses are triggered. In many cases the trigger can lead the victim or witness to recant or change their testimony. Moreover, hearings give the opposing party the opportunity to exploit a victim’s or witnesses’ mental state to gain an advantage in the courtroom. This can make a participation very challenging.

2. Credibility determinations are often made in legal proceedings without recognizing the impact of trauma on victims and witnesses. Judges and juries determine whether a person is truthful based on that adjudicator’s sense of what a reasonable person can remember, or how they believe a client should look or sound when testifying about life threatening events. However, traumatic events can alter the way a person thinks, talks and even remembers an incident, which is in conflict with the linear, logical manner a judge or jury expects, and can leave judges and juries finding it hard to believe a client that is showing some signs of trauma. Rather than discounting victims or witnesses as unbelievable, Judges knowledgeable about the after-effects of trauma will see these symptoms of the trauma itself.

What Can Courts Do?

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 and avoiding re-traumatization.

There is often little to no cost involved in implementing trauma-informed principles, policies and practices. Trauma-informed court interactions begin with good judicial practice where individuals who come before the court are treated with dignity and respect.

Judges who are trauma-informed:

DURING LEGAL PROCEEDINGS:

- Expect the presence of trauma.
- Are prepared to rephrase questions, when interpretation is needed and it's clear that the interpretation process is additionally retraumatizing or confusing.
- Prevent manipulation of the courtroom to re-traumatize victims and intimidate witnesses.
- Understand that trauma may affect court participants' feelings and behavior, as well as their ability to participate.
- Are patient with victims who struggle to recount (and may be reliving) some of the worst moments of their lives.
- Work closely with court personnel and other members of the team – attorneys, court coordinators, case managers, and advocates – to help victims and witnesses feel safe in their court.
- Promote trauma-specific services and interventions designed to help individuals understand how their past experiences shape their behavior and responses to current events.

- Explain to court participants what to expect to help alleviate fears and help all parties and witnesses prepare to participate.
- Encourage lawyers and advocates to consider incorporating a what-to-expect discussion into every victim's routine preparation for court, including logistical details such as where both parties will wait before court opens, where they will take breaks, and the location of restrooms.
- Maintain an awareness of how power and control and intimidation are being used in the court room.
- Keep control of the courtroom and limit the respondent/defendant's ability to interact with victim and witnesses.
- Provide reasonable alternatives to testifying in view of the respondent/defendant. For example, some courts allow victims and witnesses to testify behind a screen or through closed circuit television.

CONSIDER THIS FOR COURT DECORUM

Within the bounds of appropriate time management and courtroom decorum, the following represent some trauma-informed courtroom strategies. (These same suggestions can apply to interactions with the respondent as well so that there is no semblance of impartiality¹)

¹ Beyond the basic impartiality issue mentioned above, it should be noted that some respondents may actually be dealing with similar issues when appearing before the court. The large number of veterans suffering from PTSD as well as traumatic brain injuries may well require a more nuanced understanding of our understanding of domestic violence dynamics while never making excuses for family violence. We look forward to providing a future article on this topic.

- Let everyone know what to expect².
- Make sure the petitioner and respondent are kept as far apart in (and outside) the courtroom as possible.
- Listen as attentively as possible, making appropriate eye contact while avoiding looking at files.
- Be as patient with emotion as courtroom etiquette will allow.
- Take a break if needed and if possible.
- Grant recesses when requested by victims' advocates and lawyers wherever possible.
- Be tolerant of repetitions and try not to interrupt.
- Remain calm and even keeled.

Authors: Olga Trujillo, JD, and Patricia Moen Caminar Latino/Latinos United for Peace & Equity
Resource Center Partners for Trauma-Informed, Culturally Responsive Practices

This Vera Institute of Justice produced this document under award #2016-XV-GX-K015, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

² M. Malefyt Seighman, JD, E. Sussman, JD & O. Trujillo, JD, *Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges*, The National Center on Domestic Violence, Trauma and Mental Health, January 2013