"Trauma-Informed Advocacy: A Lawyer's Ethical Duty Involving a Child's Constitutional Rights"

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Trauma

"Trauma, or traumatic stress…is psychological and biological distress experienced by an individual exposed to an event that overwhelms the individual's ability to cope. Trauma is marked by a sense of horror and helplessness or the threat of serious injury or death."

- National Child Traumatic Stress Network, www.nctsn.org

Relational or Interpersonal Trauma

Refers to “the range of maltreatment, interpersonal violence, abuse, assault, and neglect experiences encountered by children and adolescents, including familial physical, sexual, emotional abuse and incest; community-, peer-, and school-based assault, molestation, and severe bullying; severe physical, medical, and emotional neglect; witnessing domestic violence; as well as the impact of serious and pervasive disruptions in caregiving as a consequence of severe caregiver mental illness, substance abuse, criminal involvement, or abrupt separation or traumatic loss.”

David Cross, Ph. D., Karyn Purvis Institute of Child Development, adapted from D, Andrea et al. (2012, p. 188)

ABA House of Delegates Resolution

February 10, 2014

- "urges the development of **trauma-informed**, evidence-based approaches and practices on behalf of justice system-involved children and youth"
  - "Recognizing the **impact** that current or prior exposure to violence and trauma has on physical, emotional, psychological, and behavioral development"

ABA House of Delegates Resolution

February 10, 2014

- "Responding to child traumatic stress through **legal representation that reflects awareness of trauma's adverse impacts on children and youth**. . . ."

- "Acting in collaboration with other professionals involved with the child or youth to **facilitate and support recovery and resiliency**. . . ."

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Effective June 1, 2005

I. CLIENT-LAWYER RELATIONSHIP
Rule 1.01 Competent and Diligent Representation

(a) A lawyer **shall not accept or continue employment** in a legal matter which the lawyer knows or should know is **beyond the lawyer's competence**, unless:

(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or

(2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

(b) In representing a client, a lawyer **shall not**:

(1) **neglect a legal matter** entrusted to the lawyer; or

(2) frequently **fail to carry out completely the obligations** that the lawyer owes to a client or clients.

(c) As used in this Rule neglect signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

2017 Legislative Session added (HB 7)--

Texas Family Code §107.004 is amended to include—

"(d-3) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall periodically **continue to review the child's safety and well-being, including any effects of trauma to the child, and take appropriate action,** including requesting a review hearing when necessary to address an issue of concern."

M.D. v. Abbott, No. 2:11-cv-00084, Doc. 368, 243-44 (S.D. Tex. 2015)

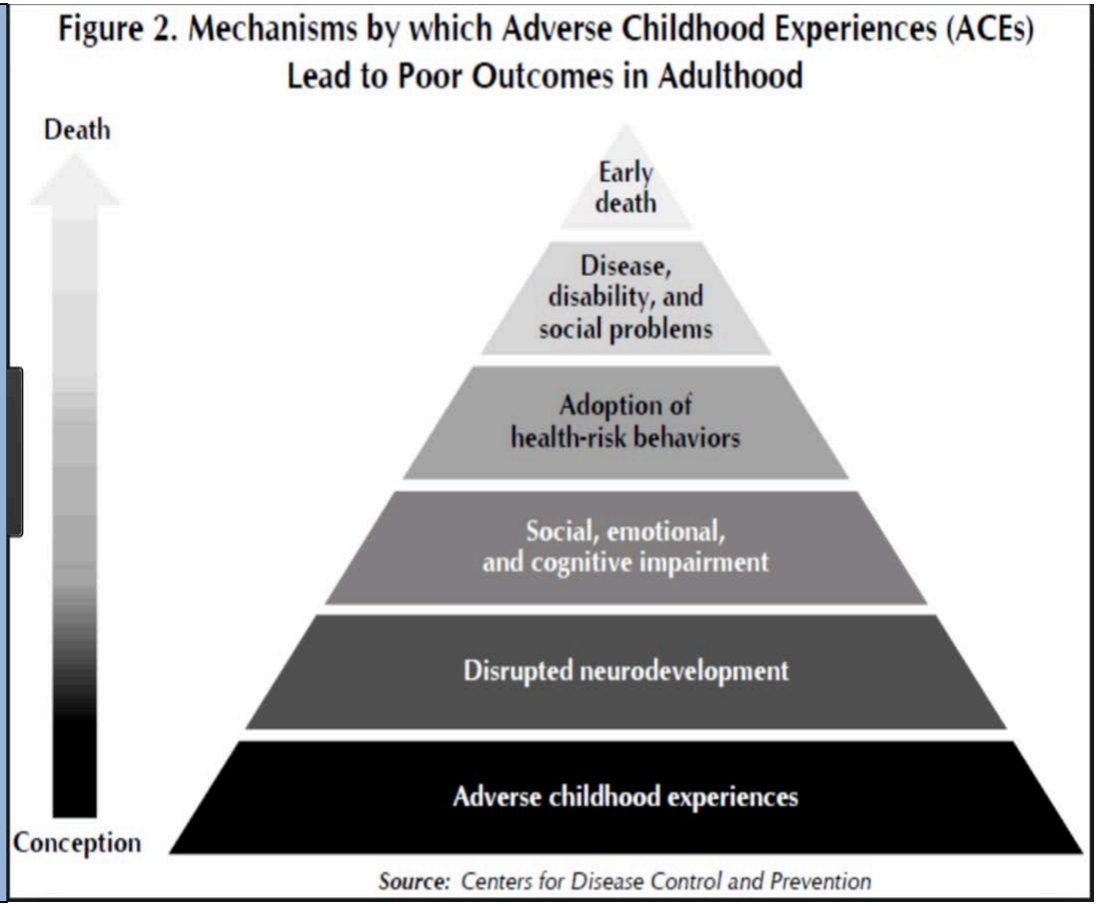
"Texas has violated Plaintiffs' **Fourteenth Amendment right to be free from an unreasonable risk of harm.** Remedies besides injunctive relief – which Plaintiffs have not requested – could not compensate for the **repeated exposure to physical abuse, sexual abuse, and psychological abuse.** Until Texas's structural deficiencies are cured, Plaintiffs will be harmed."

Judge Janis Graham Jack (M.D. v. Abbott)

“Children often enter foster care at the Basic service level, are assigned a carousel of overburdened caseworkers, suffer abuse and neglect that is rarely confirmed or treated, are shuttled between placements, often inappropriate for their needs throughout the State, are migrated through schools that makes academic achievement impossible, are medicated with psychotropic drugs, and then age out of foster care at the Intense service level, damaged, institutionalized, and unable to succeed as adults.”

Adverse Childhood Experiences

- Personal
  - Physical Abuse
  - Verbal Abuse
  - Sexual Abuse
  - Physical Neglect
  - Emotional Neglect
- Events Affecting Family Members
  - Alcoholic Parent
  - Parent Who is Victim of Domestic Violence
  - Family Member in Jail
  - Family Member Diagnosed with Mental Illness
  - Disappearance of Parent by Divorce, Death, or Abandonment

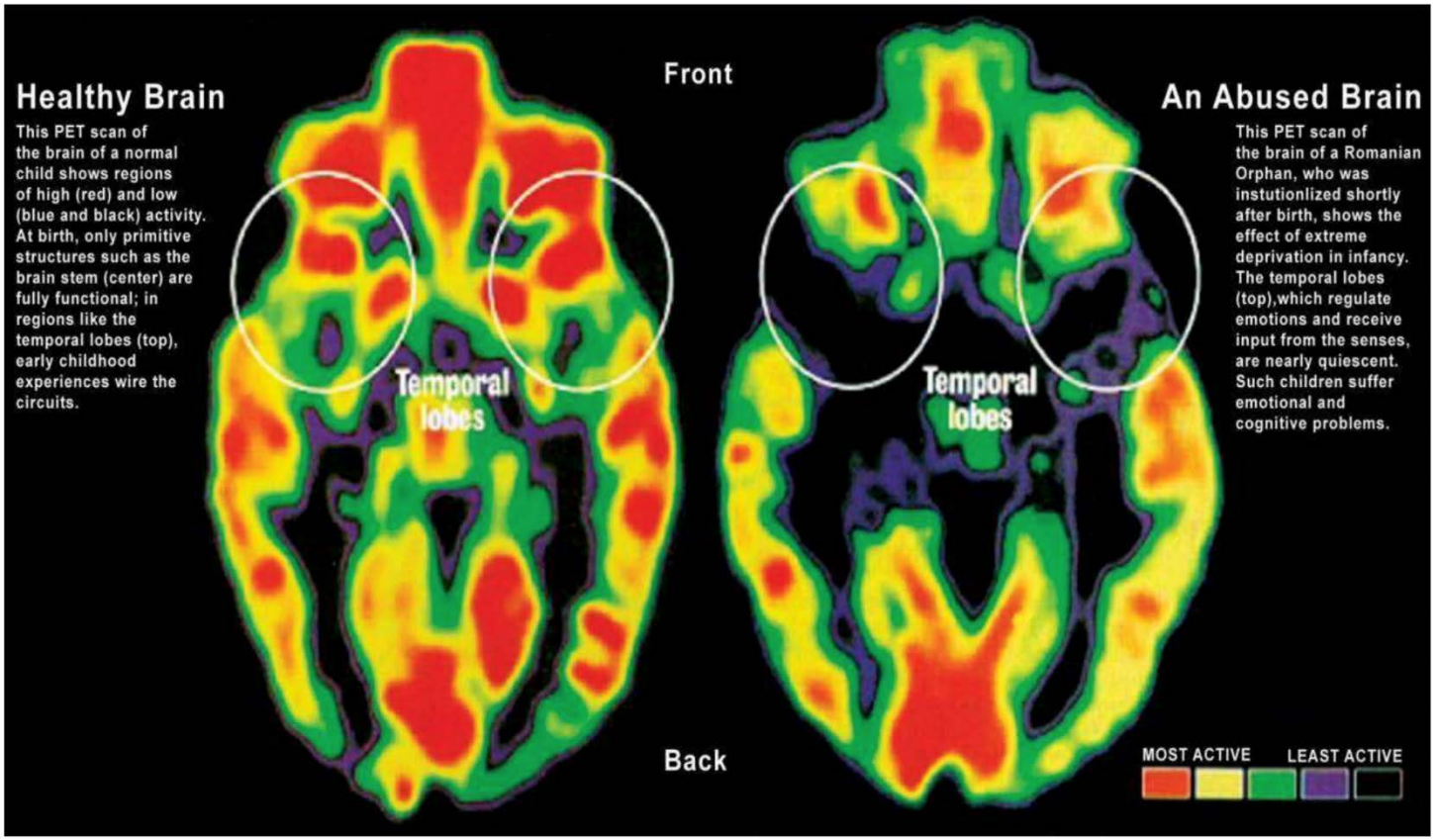


Trauma affects a child's:

- Brain
- Biology
- Body
- Beliefs
- Behavior

(The "5 B's" from Karyn Purvis, Ph.D.)

How childhood trauma affects the brain



Center for Disease Control & Protection; United Way

S.B. No. 219 (2011)

Adds Section 533.0052 to Government Code to require the STAR Health Program to offer training in trauma-informed care and in post-traumatic stress disorder and attention-deficit/hyperactivity disorder to contracted physicians or providers

Overlapping symptoms of child trauma and psychiatric disorders

Psychiatric Disorder	Overlapping Symptoms
Anxiety Disorders	avoidance of feared stimuli, physiologic and psychological hyperarousal upon exposure to feared stimuli, sleep problems, hypervigilance, and increased startle reaction
ADHD	restless, hyperactive, disorganized, and/or agitated activity; difficulty sleeping, poor concentration, and hypervigilant motor activity
Bipolar Disorder	hyperarousal and other anxiety symptoms mimicking hypomania; traumatic reenactment mimicking aggressive or hypersexual behavior; and maladaptive attempts at cognitive coping mimicking pseudo-manic statements
Major Depressive Disorder	self-injurious behaviors as avoidant coping with trauma reminders, social withdrawal, affective numbing, and/or sleep difficulties
Oppositional Defiant Disorder	a predominance of angry outbursts and irritability
Panic Disorder	striking anxiety and psychological and physiologic distress upon exposure to trauma reminders and avoidance of talking about the trauma
Psychotic Disorder	severely agitated, hypervigilance, flashbacks, sleep disturbance, numbing, and/or social withdrawal, unusual perceptions, impairment of sensorium and fluctuating levels of consciousness
Substance Abuse Disorder	drugs and/or alcohol used to numb or avoid trauma reminders

Source: Griffin, Gene. *A Trauma-Informed Approach to Diagnosing Children in Foster Care*. Presented on August 28, 2012 at Because Minds Matter: Collaborating to Strengthen Management of Psychotropic Medications for Children and Youth in Foster Care.

Downward Cycle of Harm

Leads to more trauma for the child in care

How do we prevent re-traumatization & promote resiliency?

Trauma-Informed Care—

1) **Creates safety** (physical & psychological);
2) **Builds connections** & relationships;
3) **Builds** child's sense of **self worth**;
4) **Guides child to regulate emotions** & behavior;

Builds resiliency for the ups and downs of life.

What are some practices that re-traumatize children in care and increase the number of ACEs they experience?

- **Separation from siblings**
- **Unnecessary re-telling of traumatic events**
- **Repeated exposure to triggers of traumatic memories**
- **Viewing “bad” behavior as “willful disobedience” rather than “fear-driven, survival strategies”**
- **Repeated placement instability**
- **Educational instability**
- **Isolation & punitive practices in foster homes, educational, & juvenile justice settings**
- **Misdiagnosis & overuse of psychotropic medications**
- **Institutionalization**
- **Exposure to physical, sexual, or emotional abuse while in care**

Interacting with and advocating on behalf of abused and neglected children

- Recognize instances in child's history that would indicate a traumatic experience;
- Be mindful of what is developmentally appropriate for a traumatized child;
- Look for patterns of behavior that could help identify triggers of traumatic memories (smells, touch, individuals, anniversaries);
- Be thoughtful when meeting with a child client to create safety and build connections (casual dress/eye contact/friendly tone of voice/absence of perfume/ use of play);
- Give the child as much choice and control as possible;
- Watch verbal and non-verbal judgments;
- Use what you know about trauma and the child to begin conversations with school, doctors, and mental health professionals to seek treatments and services that are trauma informed;
- Ask questions when placement changes or prescription of psychotropic medications are recommended, and offer alternatives that take into account the trauma the child has faced;
- Help foster parents recognize when a child's behavior may actually be a symptom of trauma and guide them to appropriate resources;
- Use existing laws and policies to promote trauma-informed care for the child; and
- Bring to the court's attention instances where the child faces potential harm because the services provided are not trauma-informed.

The Most Basic Rule

- A child-focused, trauma-informed system looks at the **needs of *this particular child*** and causes the system to adjust to meet those needs
- As advocates for children, we have an **ethical duty and moral responsibility** to advocate for what our child-clients need not merely what the system can currently provide

How can we build resiliency (and promote safety, connection, self worth and appropriate emotional regulation)?

- Appropriate Services for Biological Parents
- Trauma Screening & Understanding of Trauma History
- Placement Stability & Adoption
- Trauma-Informed Caregivers & Caseworkers
- Appropriate Trauma-Informed Mental Health Services & Treatments
- Contact with Biological Family, Mentors, & Siblings
- Educational & Placement Stability
- Elimination of Punitive Discipline
- Participation in Extra-Curricular Activities
- Hope/Plans for the Future
- Strong Peer Relationships (Normalcy)

Trauma-Focused Therapy

- Trust Based Relational Intervention – (TBRI)
- Theraplay
- Eye Movement Desensitization & Reprocessing – (EMDR)
- Trauma-Focused Cognitive Behavioral Therapy – (TF-CBT)
- Parent-Child Interaction Therapy – (PCIT)
- Many others – check California Evidence-Based Clearinghouse for Child Welfare
  - http://www.cebc4cw.org/

Alternatives to Current Therapist

New Therapist with Superior Health/Cenpatico

Local Mental Health Authority (formerly MHMR)

Community Counseling Centers

Private Therapist

Family First Prevention Services Act

Passed by Congress in February 2018.

Foundational Component of Services & Interventions Provided Under the Act:

TRAUMA-INFORMED

- understanding, recognizing and responding to the effects of all types of trauma
- in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions
- to address trauma's consequences and promote healing

A Qualified Residential Treatment Center must have a trauma-informed treatment model.

Texas Family Code: DUTIES OF AAL

(TFC §§ 107.003, 107.004)

- Interview the child in a **developmentally appropriate** manner, in private setting that allows for **confidential communications**;
- Interview each person who has **significant knowledge of the child's history & condition**;
- Seek to elicit in a **developmentally appropriate manner** the **child's expressed objectives** of representation;
- **Consider the impact on the child** in formulating the presentation of the child's expressed objectives or representation to the court;
- Take any action **consistent with the child's interests** that the attorney considers necessary to **expedite the proceedings**;
- Review the **medical care** provided to the child, and in a manner **developmentally appropriate** to the child, seek to **elicit the child's opinion** on the medical care provided;
- Determine whether the **child's educational needs and goals** have been identified and addressed

Texas Statutory Provisions Related to Oversight of Medical Care

- Texas Family Code § 263.306 & 263.5031: In permanency hearings before and after the final order, if a child is receiving psychotropic medications, the judge must determine if the child has been seen by the physician and has received **appropriate non-pharmacological interventions**.
- Texas Family Code § 266.007: At each Chapter 263 hearing, the judge must hear a summary of mental health treatments, use of psychotropic medications, **non-pharmacological interventions** being used, and outcomes.
- Texas Family Code § 266.004 gives training requirements for an informed medical consenter, requiring that the training discusses the administration of psychotropic medications and appropriate use of **non-pharmacological interventions**.

Texas Statutory Provisions Related to Oversight of Medical Care (cont.)

- Texas Family Code § 266.0042: Informed Medical Consenter may only consent to use of psychotropic medications under certain conditions, including having received information on **non-pharmacological interventions.**
- Texas Family Code § 266. 011: The Informed Medical Consenter must monitor the use of psychotropic medications and side effects, making the decision whether continued use of the medication is appropriate.
- Texas Family Code § 107.003: Attorney ad litem is **required to review the medical care** provided to the child.

Resources for Trauma-Informed Practice

- **Texas Lawyers for Children Online Training Center**: online resource library with numerous articles; communication tools allowing attorneys to share questions with colleagues; low-cost CLE programs (CLE programs on trauma available July 2018) **www.texaslawyersforchildren.org**
- **Supreme Court Commission: Trauma-Informed Advocacy Training**
  - http://texaschildrenscommission.gov/basic-projects/trauma-informed-care.aspx
- **Karyn Purvis Institute of Child Development, TCU:** training for caseworkers, caregivers, educators, legal professionals
  - **https://child.tcu.edu/**
- **Child Trauma Academy:** training for mental health practitioners & educators
  - **www.childtrauma.org**
- **National Child Traumatic Stress Network**: online resource center
  - **www.nctsnet.org**
- **California Evidence-Based Clearinghouse for Child Welfare:** identifies interventions that have been proven to be effective for traumatized children
  - **http://www.cebc4cw.org/**

Helpful Organizations

Disability Rights Texas

www.DisabilityRightsTX.org

800-315-3876

TCU Institute of Child Development

www.child.tcu.edu

Karyn Purvis, Ph.D.

National Child Traumatic Stress Network

www.NCTSN.org

Helpful Organizations

Child Trauma Academy, www.ChildTrauma.org
Director: Bruce D. Perry, M.D., Ph.D.

American Professional Society on the Abuse of Children, www.APSAC.org

Department of State Health Services (Texas), Texas Children Recovering from Trauma, www.DSHS.state.tx.us
Contact: Marisol Acosta
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