Public Defender Services

e-Mitigation News

By Stephanne Thornton, Criminal Justice Specialist, Public Defender Corporation Resource Center

This is the first in a series of newsletters intended to address topics in mitigation relevant to criminal defense practice. Titled "*e*-Mitigation," the news will summarize research, ideas, and theories applicable for use in mitigation preparation. The goal is for topics to become relevant, tangible, and useful in planning for sentencing.

This first installment concerns the effects of trauma experienced in childhood and how these effects can shape our clients in adulthood. This can be critical to you in your efforts to develop mitigation for sentencing. The research overwhelmingly points to the fact that our clients have experienced trauma in childhood and this fact is useful in compelling the court to consider alternative sentences.

ACES Spells Trauma

Trauma is typically understood as an event that causes stress, distress, or disturbance. These disturbing or distressing events may have a lasting impact, or symptoms may be fleeting. The Centers for Disease Control (CDC) define a traumatic event in the following way: "When the event, or series of events, causes a lot of stress, it is called a traumatic event. Traumatic events are marked by a sense of horror, helplessness, serious injury, or the threat of serious injury or death. Traumatic events affect survivors, rescue workers, and the friends and relatives of victims who have been involved. They may also have an impact on people who have seen the event either firsthand or on television" (retrieved from: http://www.cdc.gov/masstrauma/factsheets/public/coping.pdf).

Not everyone experiences trauma in the same way. Some people might have a sleep disturbance, bad dreams, or feelings of fear or anxiety for weeks or even months after the traumatic event. Others might feel they return to normal a few weeks after the event. There is no right or wrong way to experience trauma. Typically, the hallmark of trauma is the lack of control over a distressing situation – for example, a child who sees his mother beaten violently by her boyfriend every day but has no ability to stop the beatings. To measure the trauma, then, is to measure the lasting impact that lack of control instills.

Trauma and its symptoms are not always apparent, as Dr. Vincent Felitti found. In the 1980's, Dr. Felitti, a physician and chief of Kaiser Permanente's Department of Preventive Medicine in San Diego, California, was working on obesity studies. To his astonishment, more than 50% of his patients dropped out of the obesity clinic in spite of being successful at losing weight. Dr. Felitti did not understand the attrition, so he called the patients back in, combed through their files, and began asking them more questions. Dr. Felitti quickly learned that his patients were born a normal weight, but were sexually abused in childhood or raped in adulthood, which is what caused their [nearly] instantaneous weight gain afterwards. For these patients, being overweight masked their anxiety and pain; not eating (and losing weight) caused them intolerable distress because they had few coping skills to deal with those emotions.

Dr. Felitti partnered with a doctor and researcher from the CDC to study 17,421 patients of Kaiser Permanente San Diego from 1995 to 1997, asking them ten questions about their childhood experiences. This became one of the largest studies into childhood abuse, neglect, and maltreatment, known as the Adverse Childhood Experiences Study or ACES. While meeting with patients and addressing other health needs, 10 ACES questions were posed inquiring about experiences of the

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patient before they reached 18 years of age. The questions included experiences of sexual, verbal and physical abuse, a mentally ill or alcoholic parent, a mother who was the victim of domestic violence, an incarcerated parent, divorce in the family, and later added emotional and physical neglect. The patients were initially followed over the two-year period, and then were followed for more than fifteen years after the initial study was completed.

This was the first time researchers looked at several types of trauma and the results were shocking. There was a direct link between childhood trauma and adult onset of chronic disease, mental illness, incarceration in prison, and work issues (such as absenteeism).Two-thirds of adults in the study had experienced one or more of the ACES and 87 percent experienced two or more. The higher the ACES score (the more ACES experienced in childhood) the more problems in adulthood. Tellingly, four or more ACES in childhood meant increased likelihood for chronic disease, addiction, incarceration, and violence in adulthood. (The preceding information can be found in detail at ACES Too High, and content is attributed to Jane Ellen Stevens, retrieved from https://acestoohigh.com/2012/10/03/the-adverse-childhood-experiences-study-the-largest-most-important-public-health-study-you-never-heard-of-began-in-an-obesity-clinic/).

What does this mean for your clients? Simply put, the majority of the clients in the West Virginia criminal justice system (and the criminal justice system nationwide) likely have experienced a high number of ACES in childhood (a 1998 U.S. Department of Justice report noted that 68 percent of inmates studied in a New York prison sample reported some form of childhood victimization, retrieved from https://www.ncjrs.gov/pdffiles/fs000204.pdf). This does not make our clients unique, then, as the Kaiser Permanente study found a high number of ACES in their [college-educated, middle class, employed with private insurance] patients. ACES should alter our thoughts on why our clients come into the criminal justice system. They are not ruined, but have experienced trauma that predictably has led them into the criminal justice system. In meeting with your client, when you ask and answer "Why this client, and why this crime?" you can likely look back to ACES. This client because the client experienced some form of trauma in childhood. This crime because the client lacked support to turn his or her life around. They may have been failed by a system who has never bothered to look into these issues, and has preferred to incarcerate rather than treat.

Why, then, did the Kaiser Permanente patients attend college and find jobs, when many of our clients dropped out of high school and landed in jail? The answer is the presence of protective factors. Protective factors are circumstances, situations, and events that can help make up for and ameliorate the impact of trauma in childhood. A mentor, a strong friendship, athletics, a parent/adult who emphasizes education – all of these factors and many more can help minimize the impact of adverse childhood experiences. Largely, our clients did not have protective factors in childhood that kept them out of the system. Therefore, it is not surprising to find that our clients landed on the trajectory that brought them to jail. However, it is not too late. Our clients – even with high ACES scores – can still develop coping skills and address the underlying circumstances that led to their criminal behavior.

Using ACES in Mitigation

Knowing the range and extent of childhood victimization is important for mitigation purposes, but also is key in determining the necessary treatment of criminal offenders. Since protective factors may be absent, preventing recidivism comes in the form of strategic treatment of childhood trauma and maltreatment in a client's adult life. Research in the Permanente Journal (Reavis, Loomis, Franco, Rojas, retrieved from http://dx.doi.org/10.7812/TPP/12-072) bluntly states, "treatment interventions must focus on the effects of early life experiences" where treatment focused only on crime, without addressing early life experiences, will fail.

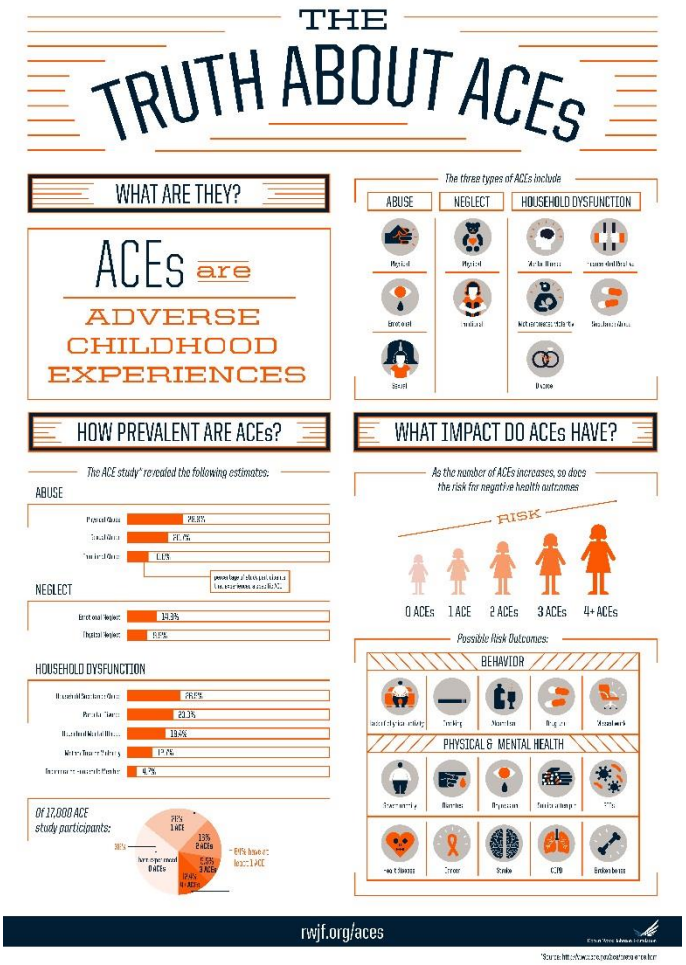
For over a year, West Virginia has had its own ACES Coalition but the ACES study has been piecemeal in this state. The mission of the Coalition is "[t]o improve the health and well-being of all West Virginians by reducing the impact of Adverse Childhood Experiences (ACEs)." The Coalition is working to grow awareness of ACES and determine the scope and impact in West Virginia.

Our clients will likely be low on the Coalition's study list, but that does not mean you cannot begin to study the impact of ACES yourself. The ACES quiz is a quick 10-question survey and the more "yes" answers result in the more issues into adulthood. A graph from the Robert Wood Johnson Foundation is at the conclusion of this

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newsletter and shows the impact of high ACES scores. Knowing your client's childhood trauma experiences helps you prepare for mitigation and sentencing. It also helps to fill in the gaps of the LS/CMI, which does not measure ACES but still seeks to address some treatment and service needs for your client. The LS/CMI looks at eight core areas of resource or detriment to the client, including mental illness, addiction, employment, education, and social support to name a few. While trauma may generally be lumped into mental illness, the questions on the LS/CMI do not target childhood experiences or childhood maltreatment. The LS/CMI also does not intentionally focus on therapeutic and strategic treatment of childhood trauma and maltreatment, so it is only one of the markers of a client's need – not comprehensive or holistic in determining a client's needs. In planning for sentencing, remember the guidance from the Permanente Journal: "treatment focused only on crime…will fail."

Timely and equally relevant, NAPD's webinar series includes the **August 30, 2016** webinar, "Defending Victims of Battering Charged with Crimes." Included in the description of the webinar is a summary that many public defender clients have experienced various forms of trauma and for some clients, their experiences of abuse may be directly related to their legal defense. The link to registration is here: https://www.eventbrite.com/e/webinar-defending-victims-of-battering-charged-with-crimes-tickets-26248635375?discount=Reentry



Resources:

Link to find your ACES Score:

https://acestoohigh.com/got-your-ace-score/

Link to the CDC ACES site:

https://www.cdc.gov/violenceprevention/acestudy/

App for ACES:

http://attcnetwork.org/resources/resource.aspx?prodID=905&rcID=2&regionalcenter=2&producttype=*&keywords=*

Link to the Robert Wood Johnson graphic (upper right):

http://www.rwjf.org/en/library/infographics/the-truth-about-aces.html#/download

For more information on this and any mitigation topic, please contact Stephanne Thornton, Criminal Justice Specialist, at Public Defender Services (304) 558-3905 Stephanne.c.thornton@wv.gov

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