

# TRAUMA-INFORMED COURTS

## BENCH GUIDE

*This Bench Guide has been created by the Administrative Office of the Court as a resource for judges. Bench Guides do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

### **PURPOSE**

To aid the courts in following trauma-informed practices. Trauma-informed judicial practice recognizes the role that trauma may play in how an individual perceives what the judge says and how it is said. Many judges have come to recognize that acknowledging and understanding the impact of trauma on parties, and integrating best practices, leads to more successful interactions and outcomes.

### **WHAT IS TRAUMA**

Substance Abuse and Mental Health Services Administration (SAMHSA) describes individual trauma as resulting from “an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social emotional or spiritual well-being”.

### **WHO IS IMPACTED BY TRAUMA** <sup>1</sup>

Studies show that most people who are involved in the criminal justice system have experienced at least one traumatic event. It is best practice to treat everyone who comes before the court with a trauma-informed approach.

### **WHAT TO SAY** <sup>2</sup>

Every interaction between a judge and a justice-involved individual is an opportunity for engagement. For a person who has experienced past trauma or may still be experiencing trauma in their lives, a judge’s words can be potentially hurtful or potentially healing. There are an infinite number of possible communications between a judge and an individual, and there is no script to follow to ensure that each communication is trauma informed. A trauma-informed judge watches for signs of trauma in individuals and responds rather than reacts. The table below provides some common examples of comments a judge might make, how a trauma survivor might hear or perceive that comment, and a trauma-informed way of expressing the judge’s concern.

JUDGE’S COMMENT	PERCEPTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
“Your drug screen is dirty.”	“ <i>I’m dirty.</i> There is something wrong with me.”	“Your drug screen shows the presence of drugs.”
“Did you take your pills today?”	“I’m a failure. I’m a bad person. No one cares how the drugs make me feel.”	“Are the medications your doctor prescribed working well for you?”
“You didn’t follow the contract; you’re going to jail; we’re done with you. There is nothing more we can do.”	“I’m hopeless. Why should I care how I behave in jail? They expect trouble anyway.”	“Maybe what we’ve been doing isn’t the best way for us to support you. I’m going to ask you not to give up on recovery. We’re not going to give up on you.”
“I’m sending you for a mental health evaluation.”	“I must be crazy. There is something wrong with me that can’t be fixed.”	“I’d like to refer you to a professional who can help us better understand how to support you.”

## WHAT TO DO <sup>3</sup>

The table below lists common courtroom experiences, how a trauma survivor might respond to or perceive them, and concrete suggestions for providing a more trauma-informed experience that is more likely to engage the individual. Note that many of these tools are effective not only in working with parties to the case, but with witnesses and other people who may come before the court. The goal is to promote physical and emotional safety for all trauma survivors who appear in your court.

COURTROOM EXPERIENCE	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
A court officer handcuffs an individual without warning to remand the individual to jail because they have not met the requirements of their agreement with the court.	Anxiety about being restrained; fear about what is going to happen.	Tell the court officer and the individual you intend to remand them. Explain why. Explain what is going to happen and when. <i>(The court officer will walk behind you; you will be handcuffed, etc.).</i>
A judge remands one individual to jail but not another when they both have done the same things (e.g., had a positive drug screen) and they are both in the courtroom at the same time.	Concern about fairness; feeling that someone else is getting special treatment.	Explain why you are doing this. For example, <i>“Both Sam and Meredith had positive drugs screens. Sam is new to drug court and this is the first time he had a positive screen. We are going to try again to see if the approach we’re using can be effective. Meredith has had multiple positive drug screens; I’m remanding her to jail because the approach we’ve been using here hasn’t been effective in supporting her recovery.”</i>
Individuals who are frightened and agitated are required to wait before appearing before the judge.	Increased agitation; anxiety; acting out.	Clearly provide scheduling information so individuals know what will be expected of them and when. To the greatest extent possible, prioritize who appears before you and when; those who are especially anxious may have the most trouble waiting and be more likely to act out.
A judge conducts a sidebar conversation with attorneys.	Suspicion, betrayal, shame, fear.	Explain what is happening and why. For example, <i>“We have to discuss some issues related to your case. We just need a minute to do it on the side.”</i>
An individual enters a plea that does not appear to be consistent with the evidence, the individual's own description of the event, or the individual's own best interests.	Memory impairment; confusion about courtroom procedures; inability to process implications of the plea.	Consider appointing counsel if none is present and allow time to confer with counsel and/or prosecutor before accepting the plea.

## HOW TO IMPROVE THE COURTROOM ENVIRONMENT

The table below highlights some aspects of the physical environment in a typical courtroom, how a trauma survivor might react to them, and how they can be modified. The goal is to promote physical and emotional safety for trauma survivors, as well as for victims, while not sacrificing the security or formality of the judicial proceedings.

PHYSICAL ENVIRONMENT	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
Multiple signs instruct individuals about what they are not allowed to do.	Feeling intimidated; lack of respect; untrustworthy; treated like a child.	Eliminate all but the most necessary of signs; word those that remain to indicate respect for everyone who reads them.
Individuals are required to address the court from their place at the counsel's table.	Fear of authority; inability to communicate clearly, especially if an abuser is in the courtroom.	When practical, ask the individual to come close; speak to them beside or right in front of the bench.
A court officer stands closely behind a person in court.	Anxiety; inability to pay attention to what the judge is saying; fear.	Eliminate this type of nonverbal intimidation, especially if you have no intention of remanding the person. Tell the court officers not to stand too close. Respect an individual's personal space.
A judge asks an individual to explain behavior or the impact of abuse without acknowledging the impact of others in the courtroom.	Intimidation or fear of abusers who may be in the courtroom; reluctance to share information in front of family members or others who do not believe them.	When sensitive issues arise, consider exercising discretion to either close hearings or seal records as per court rule.
The judge sits behind a desk (or "bench"), and participants sit at a table some distance from the bench.	Feeling separate; isolated; unworthy; afraid.	In some treatment court hearings, the judge may, on a limited basis, step down from behind the bench and meet with participants.

## OTHER CONSIDERATIONS

1. **Encourage Suggestions from Other Court Stakeholders.** As appropriate, encourage parties to cases, attorneys, family members, adult guardians and guardians ad litem to make specific requests for any possible and reasonable adjustment to the proceedings.
2. **Adjust the Lighting in the Courtroom.** Often courtrooms have multiple lighting options and decreasing the lighting may feel more comfortable to individuals who are light sensitive or have certain sensory limitations.
3. **Provide Simple Conveniences.** Consider offering a box of tissues or a bowl of snacks. Aside from providing an energy boost for anyone in the courtroom, a piece of candy or fruit can often help individuals, e.g., juveniles, children or victims, feel calmer and more welcome. <sup>4</sup>
4. **Limit Children in the Courtroom.** The court should exhaust all alternatives to avoid a child witnessing a family member's court proceedings, sentencing, and/or arrest, whenever possible. Children can exhibit increased anxiety and stress symptoms just by entering a courtroom. <sup>5</sup> These symptoms are compounded into an increase of maladaptive disruptive behaviors at home and school when the child witnesses a family member's court proceedings, sentencing, and/or arrest. <sup>6</sup>

## **SECONDARY TRAUMA**

Judges and court staff are susceptible to vicarious or secondary trauma due to the combination of working in a busy court, hearing repeated accounts of harrowing or traumatic events, and worrying about safety issues that may arise around volatile or emotionally charged cases. Today, evidence comes in many formats, including grisly photos and videos or frightening emails, voice mails, and text messages. Everyone is taking pictures and videos at crime scenes with dash cameras, body-worn cameras (in the case of law enforcement), and smart phones. This repeated exposure to traumatic details that judges and other court personnel face daily can lead to secondary or vicarious trauma.<sup>7</sup>

Part of having a trauma-informed court is nurturing a healthy and safe working environment. Training for court professionals on the impact of trauma must include secondary trauma. Creating a court culture that helps build resiliency and is supportive of self-care will lead to better job satisfaction and better outcomes for those who come in contact with the justice system.<sup>8</sup>

Individuals can reduce the risk of negative effects from secondary trauma by:

- Asking judges, clerks, interpreters and others if they need to debrief after a difficult case
- Focusing on and promoting self-care
- Learning coping strategies
- Asking for help and accessing peer support groups
- Connecting with a strong support system
- Monitoring stress levels and anxiety
- Seeking professional support

## **ENDNOTES**

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<sup>1</sup> Norris, F.H. and Hamblen, J.L. (2004). Standardized self-report measures of civilian trauma and PTSD. In J.P. Wilson, T.M. Keane and T. Martin (Eds.), *Assessing psychological trauma and PTSD* (pp. 63-102). New York: Guilford Press. Danielle Swerin and Thomas Strauss. (2018). *Characteristics and Outcomes of Justice-Involved Youth in Idaho*.

<sup>2</sup> Substance Abuse and Mental Health Services Administration, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: *Essential Components of Trauma-Informed Judicial Practice*. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Nathanson, R., & Saywitz, K. J. (2003). The effects of the courtroom context on children's memory and anxiety. *The Journal of Psychiatry & Law*, 31(1), 67-98.

<sup>6</sup> Dallaire, D.H., Wilson, L.C. The Relation of Exposure to Parental Criminal Activity, Arrest, and Sentencing to Children's Maladjustment. *J Child Fam Stud* 19, 404–418 (2010). <https://doi.org/10.1007/s10826-009-9311-9>.

<sup>7</sup> National Center for State Courts' "Report on Trends in State Courts" and "Future Trends in State Courts" series (April 2017). *Secondary and Vicarious Trauma Among Judges and Court Personnel*.

<sup>8</sup> National Center for State Courts (June 2022). *Behavioral Health State Court Leadership Brief. Secondary Trauma and the Courts*.