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Considering Child Trauma Issues in Juvenile Court Sentencing

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I. INTRODUCTION

Since 2005, the U.S. Supreme Court has issued several major decisions regarding the sentencing of juveniles. In each of these cases, *Roper v. Simmons* (2005),[1] *Graham v. Florida* (2010),[2] and *Miller v. Alabama* (2012),[3] the Court relied on neurological and social science research in determining that juveniles are still developing and, due to their immaturity, are capable of committing brutal crimes, but are less culpable than adults.[4] The *Miller* Court, in striking down a mandatory sentence of life without parole for juveniles,[5] went beyond research pertaining to all juveniles and instructed courts to look at individual mitigating issues when sentencing youth. Specifically, the Court noted several relevant factors, including the juvenile's history of family violence, parental substance abuse, child abuse, and mental health issues.[6] Though the Court never used the term "child trauma," all of the personal events noted in the opinion are, in fact, adverse childhood experiences that lead to child trauma.

This Article argues that in following *Miller v. Alabama* and recognizing the rehabilitative purpose of the juvenile justice system, juvenile courts should consider child trauma as a factor in sentencing. After reviewing the recent Supreme Court decisions in Part II, this Article, in Part III, will describe "child trauma," its prevalence in the juvenile justice system, and the impact child trauma has on children's development. Part IV will briefly review the history of other courts' reliance on one type of trauma, Posttraumatic Stress Disorder, for the purpose of demonstrating that trauma is not a novel concept to the court system. Lastly, Part V will note how child trauma might be relevant as both a mitigating and risk factor in sentencing, and describe how juvenile courts might incorporate such information into trauma-informed sentencing.

II. OPENING THE DOOR FOR CONSIDERING CHILD TRAUMA: A REVIEW OF RECENT SUPREME COURT DECISIONS

Within the past decade, the U.S. Supreme Court has issued rulings acknowledging what parents and individuals who work with children have known for years: that children are different than adults.[7] Relying on child and adolescent brain development and social science research, the landmark cases, *Roper v. Simmons*,[8] *Graham v. Florida*,[9] and *Miller v. Alabama*,[10] "emphasize

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[1] Roper v. Simmons, 543 U.S. 551 (2005).

[2] Graham v. Florida, 560 U.S. 48 (2010).

[3] Miller v. Alabama, 132 S. Ct. 2455 (2012).

[4] *See, e.g.*, *Graham*, 560 U.S. at 88 ("[O]ur cases acknowledging that juvenile offenders are *generally*—though not necessarily in every case—less morally culpable than adults who commit the same crimes."). "Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.' A juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" *Id.* at 68 (citation omitted).

[5] *Miller*, 132 S. Ct. at 2460.

[6] *Id.* at 2468-69.

[7] *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 569 (2005) (stating that "as any parent knows and as the scientific and sociological studies . . . tend to confirm," children are different than adults).

[8] *Id.* at 551.

[9] *Graham*, 560 U.S. 48.

that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."[11] Beginning with *Roper* in 2005, each of these seminal cases expanded upon its predecessor's finding that juveniles should be treated differently than adults at sentencing.[12] While much of the focus of these cases surrounds the issue of a juvenile defendant's diminished culpability,[13] the final message is that sentencing decisions for children should be made on a case-by-case basis.[14]

A. Roper v. Simmons – The End of the Death Penalty for Juveniles

Roper was the first significant case in which the U.S. Supreme Court recognized and embraced the legal relevance of new developmental research that explains the differences between juveniles and adults.[15] In *Roper*, the Supreme Court acknowledged three principal differences between juveniles and adults as a basis for declaring the death penalty unconstitutional for juvenile offenders who are under the age of eighteen at the time of the crime.[16] These differences included that juveniles, when compared to adults, 1) have a "lack of maturity and an underdeveloped sense of responsibility";[17] 2) "are more vulnerable or susceptible to negative influences and outside pressures";[18] and 3) have a less-developed character.[19] The Court grounded these differences in brain development and social science research explaining that adolescence is a period of growth and is characterized by risk-taking, impulsiveness, and a lack of consideration of future consequences.[20]

According to the research, juveniles make decisions differently than adults as a result of "psychosocial immaturity."[21] The scientific evidence relied upon in *Roper* revealed four relevant psychosocial factors—1) susceptibility to peer influence; 2) attitudes toward and perception of risk; 3) future orientation; and 4) the capacity for self-management— that "continue to develop

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[10] *Miller*, 132 S. Ct. 2455.

[11] *See id.* at 2464-65 (summarizing and agreeing with the reasoning in *Roper* and *Graham* that children are different from adults).

[12] *Id.* at 2464; Aryn Seiler, Note & Comment, *Buried Alive: The Constitutional Question of Life Without Parole for Juvenile Offenders Convicted of Homicide*, 17 LEWIS & CLARK L. REV. 293, 296 (2013).

[13] Seiler, *supra* note 12, at 295-96.

[14] Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J.L. & SOC. CHANGE 285, 305 (2012) ("[T]he [Supreme] Court's reluctance to impose adult sentences on juveniles derives from its growing belief that punishment for youth must be individualized.").

[15] *Id.* at 290-91; *see Miller*, 132 S. Ct. at 2464 (explaining that *Roper* and *Graham* were "the first set of cases . . . [that] establish that children are constitutionally different from adults for purposes of sentencing" by looking at youth development).

[16] Roper v. Simmons, 543 U.S. 551, 568-69 (2005); Robert G. Schwartz, *Age-Appropriate Charging and Sentencing*, CRIM. JUST., Fall 2012, at 49, 49.

[17] *Roper*, 543 U.S. at 569. "[A]dolescents are overrepresented statistically in virtually every category of reckless behavior." *Id.* (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 339 (1992)).

[18] *Id.* "This [difference between adults and juveniles] is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment." *Id.* (citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

[19] *Id.* at 570. The Court elaborated that character refers to the personality of juveniles, referring to the work of the psychologist Erik Erikson, which states "[t]he personality traits of juveniles are more transitory, less fixed." *Id.*

[20] *Id.* To explain the differences between adults and children, the Court in *Roper* cited Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 339 (1992) and Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003). *Roper*, 543 U.S. at 569-70.

[21] *See* Steinberg & Scott, *supra* note 20, at 1012 (commenting that "psychosocial immaturity" relates to judgment and decision making). The four major dimensions of "psychosocial immaturity" are: "(a) susceptibility to peer influence, (b) attitudes toward and perception of risk, (c) future orientation, and (d) the capacity for self management." *Id.* "[E]ven when teenagers' cognitive capacities come close to those of adults, adolescent judgment and their actual decisions may differ from that of adults as a result of psychosocial immaturity." *Id.* Psychosocial development is the theory by Erik Erikson of the stages of child development. *See Erikson's Stages of Psychosocial Development*, ALLPSYCH ONLINE, http://allpsych.com/psychology101/social_development.html (last updated Nov. 29, 2011).

during adolescent years."[22] As a result of these psychological and sociological studies coupled with common experience, the Court found that children are "categorically less culpable and more amenable to rehabilitation than adults."[23] Based on the evidence that juveniles have the ability to learn and grow, and aligned with the rehabilitative purpose of juvenile court, the Court in *Roper* emphasized that sentencing must be modified to account for inherent characteristics of adolescence.[24] In other words, factors affecting youth development are relevant considerations at sentencing.[25]

B. Graham v. Florida – Abolition of Juvenile Life Without Parole for Non-Homicidal Offenses.

Five years after *Roper*, the Supreme Court in *Graham* abolished the sentence of life without parole for juveniles charged with non-homicidal offenses.[26] The Court in *Graham* reiterated three distinguishing differences between youth and adults that were acknowledged in *Roper*, noting that while these differences are not an excuse absolving a juvenile from responsibility for wrongdoing, a juvenile's transgression "is not as morally reprehensible as that of an adult."[27] The Court expanded on the psychology and brain research relied upon in *Roper*, illustrating the fundamental differences between children and adults.[28]

The *Graham* Court referred to research provided by the American Medical Association, American Academy of Child and Adolescent Psychiatry, American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America.[29] This research further supported the conclusion that the brain continues to develop throughout adolescence, accounting for their risky behaviors.[30] Particularly, the brain science explained the significance of the prefrontal cortex area of the brain:

> The prefrontal cortex is associated with a variety of cognitive abilities, including those associated with voluntary behavior control and inhibition such as risk assessment, evaluation of reward and punishment, and impulse control. More generally, other functions associated with the prefrontal cortex include decision-making, the ability to judge and evaluate future consequences, recognizing deception, responses to positive and negative feedback, working memory, and making moral judgments.[31]

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[22] Steinberg & Scott, *supra* note 20, at 1012.
[23] Levick et al., *supra* note 14, at 304 (citing *Roper*, 543 U.S. at 567 (internal quotation marks omitted)) (summarizing the reasoning of *Roper*).
[24] *Roper*, 543 U.S. at 571.
[25] *Id.* at 572-73; Steinberg & Scott, *supra* note 20, at 1011.
[26] Graham v. Florida, 560 U.S. 48, 74-75 (2010).
[27] *Id.* at 68 (quoting Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) (plurality opinion)) (internal quotation marks omitted). The Court further stated, "Graham's age places him in a significantly different category from the defendants in *Rummel*, *Harmelin*, and *Ewing*, all of whom committed their crimes as adults." *Id.* at 91.
[28] *Id.* at 68, 91-92.
[29] *Id.* at 68.
[30] *See* Brief for the American Medical Ass'n et al. as Amici Curiae in Support of Neither Party at 16, Graham v. Florida, 130 S. Ct. 2011 (2010) (Nos. 08-7412, 08-7621) [hereinafter AMA Brief], *available at* http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_08_7412_PetitionerAmCu4HealthOrgs.authcheckdam.pdf (explaining that adolescent brains are structurally immature in areas of the brain associated with enhanced abilities of executive behavior control); Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners at 22, Graham v. Florida, 130 S. Ct. 2011 (2010) (Nos. 08-7412, 08-7621) [hereinafter APA Brief], *available at* http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_08_7412_PetitionerAmCu4HealthOrgs.authcheckdam.pdf (explaining that "[e]merging research shows that the brain is still developing during adolescence in ways consistent with adolescents' demonstrated psychosocial immaturity").
[31] AMA Brief, *supra* note 30, at 16-17 (citations omitted).

Significantly, the prefrontal cortex is one of the last areas of the brain to fully develop, and continues to develop through late adolescence and into adulthood.[32] In other words, the regulatory abilities—or lack of regulatory abilities—susceptibility to peer influence, and poor decision making capabilities displayed by and observed in adolescents are grounded in the fact that their brains are still developing.[33]

Based on this development research, the Court concluded that the differences between adults and juveniles are significant at the sentencing stage of the court process.[34] Recognizing that sentencing a juvenile to life without parole "improperly denies the juvenile offender a chance to demonstrate growth and maturity,"[35] demonstrates the Court's increasing belief that juvenile development must be considered at sentencing.[36] The *Graham* Court's ruling, that juveniles are amenable to treatment and capable of changing, is consistent with the long-standing juvenile court principle that youth, as a class, are "most in need of and receptive to rehabilitation."[37]

C. Miller v. Alabama – Declaring Mandatory Juvenile Life Without Parole Is Unconstitutional

Following in *Graham*'s footsteps, the Supreme Court in *Miller* held that a mandatory life without parole sentence for those under the age of eighteen at the time of the crime is unconstitutional.[38] In its analysis, the Court reaffirmed the conclusions in *Roper* and *Graham*, based on new brain and social science research, "that children are constitutionally different from adults for purposes of sentencing."[39]

Given the distinguishing characteristics of youth, the *Miller* Court concluded that theories of retribution, deterrence and incapacitation, as the purpose of adult sentencing, do not work within the juvenile context. Specifically, the Court found that retribution, based upon an offender's blameworthiness, is not a convincing sentencing theory for minors, who are inherently less culpable than adults.[40] Similarly, the theory of deterrence does not work in the juvenile court context because "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment."[41]

Lastly, lifetime incapacitation, which is based on the decision that a "juvenile offender forever will be a danger to society," requires a determination that the juvenile is "incorrigible," a concept that "is inconsistent with youth."[42] Rather, the sentencing rationale that works best in the context of juveniles is the theory of rehabilitation.[43] Grounded in the fundamental differences between adults and children, the *Miller* Court found that mandatory sentences of life without

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[32] *Id.* at 18, 23.
[33] APA Brief, *supra* note 30, at 27 ("In short, the part of the brain that is critical for control of impulses and emotions and mature, considered decision-making is still developing during adolescence, consistent with the demonstrated behavioral and psychosocial immaturity of juveniles."); AMA Brief, *supra* note 30, at 23-24.
[34] *See* Levick et al., *supra* note 14 ("Given the sharp differences between juvenile and adult offenders, rote application of adult sentences will fail to pass constitutional muster.").
[35] Graham v. Florida, 560 U.S. 48, 73 (2010).
[36] *See* Levick et al., *supra* note 14 ("The Court made clear that the juvenile must be given an opportunity to demonstrate the capacity to change—not only at the time of sentencing, but even over the course of time as he or she matures.").
[37] Andrea Wood, Comment, *Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller*, 61 EMORY L.J. 1445, 1481-82 (2012) (quoting *Graham*, 560 U.S. at 74); *see also* Miller v. Alabama, 132 S. Ct. 2455, 2463 (2012) (explaining that *Graham* and *Roper* added to the Supreme Court cases instituting "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty"). "Several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability." *Id.* (referring to *Roper* and *Graham*).
[38] *Miller*, 132 S. Ct. at 2460.
[39] *Id.* at 2464.
[40] *Id.* at 2465.
[41] *Id.* (citing *Graham*, 560 U.S. at 72) (internal quotation marks omitted).
[42] *Id.*
[43] *See id.* (finding that mandatory life without parole "forswears altogether the rehabilitative ideal" (quoting *Graham*, 560 U.S. at 74)).

parole for juveniles rejects the "rehabilitative ideal" of the juvenile court and is "at odds with a child's capacity for change."[44]

In holding that a mandatory sentence of life without parole for juveniles is unconstitutional, *Miller* went beyond *Roper* and *Graham* in two important ways. First, *Miller* recognized that the logic of developmental research applies regardless of the crime the juvenile commits.[45] *Miller* and *Roper* involved crimes of murder, while *Graham* did not.[46] The *Miller* Court argued, "none of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific."[47] Thus, *Miller*'s reasoning is applicable to all juvenile crimes.

Second, the *Miller* Court expanded upon *Roper* and *Graham* by concluding that sentencing for juvenile offenders must be individualized.[48] *Roper* and *Graham* relied on research that applied to all juveniles. Although all juvenile brains are still developing, *Miller* went beyond discussing all juveniles when it recognized that there are individual differences among children that might cause or result from individual issues these youth face, no matter what the crime. Recognizing the "special pertinence . . . that a sentencer have the ability to consider the 'mitigating qualities of youth,'"[49] the *Miller* Court emphasized the importance of a sentencer's ability to consider the juvenile offender's age and "the wealth of characteristics and circumstances attendant to it."[50] Specifically, the Court acknowledged that mandatory sentencing for juveniles treats all juveniles the same, regardless of age, and does not consider the juvenile's specific involvement in the crime or the juvenile's household environment.[51] In summarizing this finding, the Court addressed the many factors that should be considered at sentencing, stating:

> To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.[52]

In other words, the Court found that outside influences may affect juveniles differently and therefore should be considered at sentencing on a case-by-case basis.

The *Miller* Court acknowledged the particular adverse experiences of both juvenile defendants in the case. The Court mentioned the first defendant's "family background and immersion in violence: Both his mother and his grandmother had previously shot other individuals."[53] Regarding the second defendant, the Court noted:

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[44] *Id.* (citation omitted). "*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing." *Id.* at 2464.
[45] *Id.* at 2467.
[46] *Id.* at 2460; Roper v. Simmons, 543 U.S. 551, 556 (2005); *see* Graham v. Florida, 560 U.S. 48, 53 (2010) (indicating Graham was charged with armed burglary with assault or battery).
[47] *Miller*, 132 S. Ct. at 2465.
[48] *Id.* at 2468 ("So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties a sentencer misses too much if he treats every child as an adult.").
[49] *Id.* at 2467 (citation omitted).
[50] *Id.*
[51] *Id.* at 2467-68 ("Under these schemes, every juvenile will receive the same sentence as every other—the 17–year–old and the 14–year–old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14–year–olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater* sentence than those adults will serve.").
[52] *Id.* at 2468.
[53] *Id.* at 2468-69.

> And if ever a pathological background might have contributed to a 14-year-old's commission of a crime, it is here. [His] stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times, the first when he should have been in kindergarten.[54]

While not denying that the juvenile defendants were found to have committed a violent crime, the Court firmly held that a sentencer should look at such adverse experiences before making a final judgment.[55]

In sum, the *Miller* Court, like its predecessors in *Roper* and *Graham*, recognized the effects of development inherent in adolescence. The *Miller* Court, however, expanded upon this consideration to include outside influences as well—mainly, adverse childhood experiences. According to *Miller*, sentencing courts need to "consider the mitigation qualities of youth," including a youth's neglectful and violent family background as well as any emotional disturbances he or she may demonstrate.[56] With this finding, the Court directly opened the door to considering child trauma in juvenile sentencing.[57]

III. CHILD TRAUMA

There is not a single definition of child trauma, but rather many variations on a common framework. For example, the National Institute of Mental Health defined childhood trauma "as the emotionally painful or distressful experience of an event by a child that may result in lasting mental and physical effects,"[58] while the National Child Traumatic Stress Network explains that "trauma occurs when a child experiences an intense event that threatens or causes harm to his or her emotional and physical well-being."[59] Other definitions exist,[60] but what may be most useful is to consider a childhood trauma framework and understand how the various definitions address "The Three E's" that make up the essential components of trauma: the Event, the Experience and the Effects.[61]

A. The Event

The event is the objective action that happens to a child. There is not a finite list of events that can cause trauma. Objective events can include abuse (physical, sexual, emotional), neglect, violence (domestic and community), accidents, and acts of terrorism.[62] The event can be

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[54] *Id.* at 2469.
[55] *Id.*
[56] *Id.* at 2467.
[57] *Id.* at 2469.
[58] GENE GRIFFIN & ANNE STUDZINSKI, ILL. CHILDHOOD TRAUMA COAL., ILLINOIS CHILDHOOD TRAUMA COALITION WHITE PAPER: CHILD TRAUMA AS A LENS FOR THE PUBLIC SECTOR 4 (2010), http://www.law.uchicago.edu/files/file/ICTC%20White%20Paper%20120110.pdf.
[59] *What Is Child Traumatic Stress?*, NAT'L CHILD TRAUMATIC STRESS NETWORK 1 (2003), http://www.nctsnet.org/sites/default/files/assets/pdfs/what_is_child_traumatic_stress_0.pdf.
[60] SUSAN F. COLE ET AL., MASS. ADVOCATES FOR CHILDREN, HELPING TRAUMATIZED CHILDREN LEARN: SUPPORTIVE SCHOOL ENVIRONMENTS FOR CHILDREN TRAUMATIZED BY FAMILY VIOLENCE 18 (2005) [hereinafter HELPING TRAUMATIZED CHILDREN LEARN] (providing definitions of child trauma). "Experts explain that trauma is not an event itself, but rather a response to a stressful experience in which a person's ability to cope is dramatically undermined." *Id.*
[61] *See Part One: Defining Trauma*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx (last updated Dec. 10, 2012) [hereinafter *Defining Trauma*] (citing Gene Griffin, Presentation at the NIDA/ACYF Experts Meeting on Trauma and Child Maltreatment (2012)).
[62] *See* Frank E. Vandervort et al., *Building Resilience in Foster Children: The Role of the Child's Advocate*, CHILD. LEGAL RTS. J., Fall 2012, at 1, 1 ("Trauma in this sense generally refers to being a victim of violence, witnessing violence, or experiencing stressful life events.").

one extreme incident or a series of intense, but less extreme, incidents.[63] All of the individualized factors the *Miller* Court considered in regarding the juveniles (the "pathological background" which included family violence, physical abuse, and parental substance abuse)[64] were adverse childhood experiences that would qualify as potentially traumatic events.

The American Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (DSM-5), in its definition of one type of trauma, Posttraumatic Stress Disorder (PTSD), requires "[e]xposure to actual or threatened death, serious injury, or sexual violence."[65] The DSM-5 lists examples of traumatic events, such as first responders collecting human remains or police officers having been repeatedly exposed to details of child abuse.[66] Such exposure might also have an impact on those who work in juvenile courts and repeatedly face the details of child abuse.

B. The Experience

The second essential factor of trauma, the experience of the event, is a subjective factor. The child may have an intense, negative experience of the event at the time it occurs or find that it continues to be upsetting later.[67] Children can cope with many day-to-day problems.[68] In fact, learning to cope with daily stressors can actually make a child stronger and more resilient.[69] Some events, however, can be overwhelming. The emotional experience of an event will vary for two people facing the same event or for the same person over time. By way of example, a five-year-old reacts differently to an event than he will when he is fifteen or fifty years old.[70] This could include a person that is not immediately upset by an event at the time it occurs (for example, a young child who does not fully realize what happened), yet may become quite upset when he or she gets older and has a better understanding of what occurred.[71] Regardless of when it occurs, a key component of the traumatic experiences "is that they can overwhelm a person's capacity to cope, and elicit intense feelings such as fear, terror, helplessness, hopelessness, and despair."[72]

C. The Effects

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[63] JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 3 (BasicBooks 2d ed. 1997).

[64] Miller v. Alabama, 132 S. Ct. 2455, 2467-69 (2012).

[65] AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271 (5th ed. 2013) [hereinafter DSM-5].

[66] *Id.*

[67] *Id.* The DSM-5 definition of PTSD requires "[n]egative alterations in cognitions and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred." *Id.* It is unclear why some people are resilient and can tolerate extremely negative events while others go on to develop traumatic symptoms or effects.

[68] *See* Bruce E. Compas et al., *Coping with Stress During Childhood and Adolescence: Problems, Progress, and Potential in Theory and Research*, 127 PHYCHOL. BULL. 87, 91 (2001) (describing the development of coping abilities of children and adolescents); Karen Salmon & Richard A. Bryant, *Posttraumatic Stress Disorder in Children: The Influence of Developmental Factors*, 22 CLINICAL PSYCHOL. REV. 163, 171-72 (2002).

[69] "[R]esilience is the capacity to maintain or regain adaptive functioning in the face of adverse conditions." Mark W. Fraser & Mary A. Terzian, *Risk and Resilience in Child Development: Principles and Strategies of Practice, in* CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS 55, 55 (Gerald P. Mallon & Peg McCartt Hess eds., 2005).

[70] *See What Is Child Traumatic Stress?*, *supra* note 59, at 2 (explaining that "not every child who experiences a traumatic event will develop symptoms of child traumatic stress"); Vandervort et al., *supra* note 62, at 3 ("Each child experiences potentially traumatic events differently. Abuse or neglect that will traumatize one child, leaving him or her severely impacted, may not be trauma-inducing in another.").

[71] For example, at adoption, a baby will not understand the significance of the event at the time, but when that child reaches adolescence and is dealing with identity issues, the adoption may take on new significance.

[72] KRISTINE BUFFINGTON ET AL., NAT'L CHILD TRAUMATIC STRESS NETWORK, TEN THINGS EVERY JUVENILE COURT JUDGE SHOULD KNOW ABOUT TRAUMA AND DELINQUENCY 3 (2008), http://www.nctsn.org/sites/default/files/assets/pdfs/trauma_20bulletin.pdf; *see* Frank W. Putnam, *The Impact of Trauma on Child Development*, 57 JUV. & FAM. CT. J., no. 1, Winter 2006, at 1, 5-7.

The final factor in a child trauma framework is the effect of the event and its experience on the person.[73] "There are powerful effects that may be obvious within a short time of the event," such as an extreme emotional reaction.[74] Such reactions are often transitory and will dissipate over time.[75] Other effects may take longer to manifest, but will be sustained.[76]

1. Clinical effects

The clinical effects of trauma[77] are reflected in four DSM-5 symptoms: intrusions, avoidance, negative alterations in cognitions and mood, and marked alterations in arousal and reactivity.[78] Intrusions might include nightmares and flashbacks of the event.[79] Avoidance might include refusing to attend activities that trigger reminders of the event or feeling detached from significant others.[80] Negative alterations in cognition might include exaggerated beliefs (such as the world is always dangerous) while negative alterations in mood might include continually feeling estranged from others.[81] Altered arousal and reactivity might include the person having difficulty concentrating, becoming easily agitated, or remaining hyper-vigilant.[82] The DSM-5 PTSD definition requires that all these symptoms be present.[83]

There are other, more long-term effects of trauma that are not included within some diagnoses like PTSD. These other effects include the impact of trauma on the brain, the long-term impact on a person's health, and the impact of trauma on epigenetics.

2. Brain development

The *Roper*, *Graham*, and *Miller* Courts were all concerned with research on brain development. Research demonstrates how trauma can disrupt healthy brain development.[84] This

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[73] Cindy A. Crusto et al., *Posttraumatic Stress Among Young Urban Children Exposed to Family Violence and Other Potentially Traumatic Events*, 23 J. TRAUMATIC STRESS 716, 717 (2010). *See generally* Daniel S. Schecter & Erica Willheim, *The Effects of Violent Experiences on Infants and Young Children, in* HANDBOOK OF INFANT MENTAL HEALTH 197 (Charles H. Zeanah ed., 2009) (discussing studies demonstrating how exposure to violence effects children).

[74] GRIFFIN & STUDZINSKI, *supra* note 58.

[75] For this reason, the effect does not result in "trauma." *See id.* (explaining that lasting effects are an essential component of the definition of trauma).

[76] *Id.*

[77] *See* DSM-5, *supra* note 65, at 271-72 (describing PTSD symptoms). Clinical effects refer to those symptoms noted in Post-Traumatic Stress Disorder. Karen Appleyard & Joy D. Osofsky, *Parenting After Trauma: Supporting Parents and Caregivers in the Treatment of Children Impacted by Violence*, 24 INFANT MENTAL HEALTH J. 111, 114 (2003). This Article argues, however, for a more expansive view and definition of trauma. *See* HELPING TRAUMATIZED CHILDREN LEARN, *supra* note 60, at 21 ("Bessel van der Kolk [a leading trauma researcher] has proposed a new diagnosis for children with histories of complex trauma called 'developmental trauma disorder' that attempts to account for the emotional, behavioral, neurobiological, and developmental consequences of trauma.") (citation omitted).

[78] Appleyard & Osofsky, *supra* note 77; Schecter & Willheim, *supra* note 73, at 201; KATHRYN COLLINS ET AL., FAMILY-INFORMED TREATMENT CTR., UNDERSTANDING THE IMPACT OF TRAUMA AND URBAN POVERTY ON FAMILY SYSTEMS: RISKS, RESILIENCE AND INTERVENTIONS 11 (2010), http://nctsn.org/sites/default/files/assets/pdfs/understanding_the_impact_of_trauma.pdf.

[79] Appleyard & Osofsky, *supra* note 77; Michael D. De Bellis, *Developmental Traumatology: The Psychobiological Development of Maltreated Children and its Implications for Research, Treatment, and Policy*, 13 DEV. PSYCHOPATHOLOGY 537, 545 (2001).

[80] *See* DSM-5, *supra* note 65 (describing PTSD symptoms); Appleyard & Osofsky, *supra* note 77; CHILD WELFARE COMM., NAT'L CHILD TRAUMATIC STRESS NETWORK, CHILD WELFARE TRAUMA TRAINING TOOLKIT: COMPREHENSIVE GUIDE 12-13 (2d ed., 2008), http://www.nctsn.org/nctsn_assets/pdfs/CWT3_CompGuide.pdf.

[81] *See* DSM-5, *supra* note 65, at 271-72 (describing PTSD symptoms). This is a new criteria for PTSD that was not part of DSM-IV.

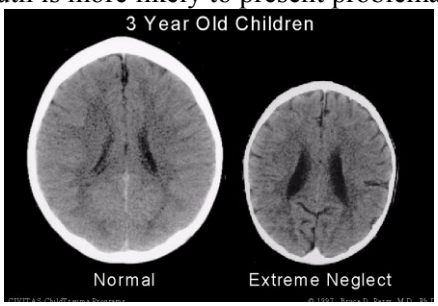
[82] De Bellis, *supra* note 79, at 546 (explaining that hyperarousal symptoms include "persistent symptoms of increased physiological arousal (difficulty falling or staying asleep, irritable mood or angry outbursts, difficulty concentrating, hypervigilance, and exaggerated startle response)"); Vandervort et al., *supra* note 62, at 4.

[83] DSM-5, *supra* note 65, at 271-72. PTSD is given the code number of 309.81, and requires, among other things, one or more intrusion symptoms; one or more avoidance symptoms; two or more negative alteration symptoms; and two or more marked arousal and reactivity symptoms. *Id.*

[84] *See generally* Patricia K. Kerig & Stephen P. Becker, *From Internalizing to Externalizing: Theoretical Models of the Processes Linking PTSD to Juvenile Delinquency*, *in* POSTTRAUMATIC STRESS DISORDER (PTSD): CAUSES, SYMPTOMS AND TREATMENT 6 (Sylvia J. Egan ed., 2010), *available at* http://www.psych.utah.edu/people/files/kerig188a7.pdf (synthesizing research connecting trauma and juvenile delinquency). There is more brain research available today because of technological advances, such as MRI and PET scans. *See* Charles A. Nelson et al., NEUROSCIENCE OF COGNITIVE DEVELOPMENT 44-57 (2006). These technologies were not

can happen in at least two ways. First, new brain cell connections are made when a child learns, which requires exposure to the appropriate stimuli during certain critical periods of development.[85] For example, young healthy children quickly learn the language they are exposed to and become emotionally attached to their familiar caregiver.[86] If a child is not exposed to the appropriate stimuli during these critical periods, that child may not acquire age-appropriate skills.[87]

Dr. Bruce Perry, a leading expert in the field of child trauma, offers a vivid comparison of the brain development of two children—both of whom are three years old, but one child has been extremely neglected while the other has had a healthy development.[88] The MRI scan shown below demonstrates how the head of the neglected child is physically smaller and the brain is less developed. That neglected youth is more likely to present problematic behavior at school.[89]



These images illustrate the impact of neglect on the developing brain.[90]

The second way in which trauma can disrupt normal brain development is through abuse. A person's brain possesses an alarm system that is triggered when the person senses danger.[91] The alarm system triggers certain response systems, including the release of adrenalin, which helps people cope with the crisis.[92] This crisis alarm system is a very useful survival mechanism.[93] If a crisis is too overwhelming, however, the brain's crisis response systems can be damaged.[94] Such damage can result in a youth remaining constantly in crisis mode, even when

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generally available forty years ago. *Id.* In the past, brains were studied after head injuries and autopsies. *Id.* Now, changes in the brain can be studied without opening the skull. *Id.*

[85] *See* Joseph LeDoux, SYNAPTIC SELF: HOW OUR BRAINS BECOME WHO WE ARE 9-12, 86 (2002); Bruce D. Perry, *Childhood Experience and the Expression of Genetic Potential: What Childhood Neglect Tells Us About Nature and Nurture*, 3 BRAIN & MIND 79, 87-88 (2002).

[86] *See Nelson et al.*, *supra* note 84, at 58-70 (regarding language); Putnam, *supra* note 72, at 5 (regarding attachment); CHILD WELFARE INFO. GETAWAY, UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT 10 (2009), https://www.childwelfare.gov/pubs/issue_briefs/brain_development/brain_development.pdf.

[87] Steinberg & Scott, *supra* note 20; *see* Putnam, *supra* note 72, at 7. "In *Graham* and *Miller*, which built on *Roper*, the Court similarly looked to developmental science for guidance. This was partly because much more relevant science was available in 2010 than had been available in 1989 (the last time the Court had considered the death penalty for a juvenile)…." Laurence Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions About Adolescents' Criminal Culpability*, 14 NATURE REVS. NEUROSCIENCE 513, 515 (2013); Perry, *supra* note 85, at 88.

[88] Perry, *supra* note 85, at 93.

[89] *See* HELPING TRAUMATIZED CHILDREN LEARN, *supra* note 60, at 4.

[90] Perry, *supra* note 85, at 93.

[91] LeDoux, *supra* note 85, at 86-87.

[92] *See id.* at 120-24, 200-34.

[93] *Id.* at 235-59.

[94] *See* CHILD WELFARE INFO. GETAWAY, *supra* note 86, at 9.

there is no threat.[95] Thus, the youth remains hyper-vigilant and overreacts to minor events.[96] Such a youth, feeling constantly threatened, can engage in frequent fight or flight behaviors.[97]

3. Long-term effects of adverse childhood experiences

Overall, traumatized youth are less prepared to start school, do not perform as well while they are in school, and are more apt to drop out of high school than non-traumatized youth.[98] Trauma often has a significant impact on a child's performance in school due to the fact that trauma robs the child of many of the skills necessary to be productive in a school setting.[99] Child trauma results in neurological changes that may diminish memory, concentration, and language—"abilities that children need to function well in school."[100] Research also reveals that exposure to domestic violence may actually lower a child's IQ score.[101]

A twenty-three year longitudinal study of the impact of intrafamilial sexual abuse on female development found that sexually abused females were more likely to experience:

> earlier onsets of puberty, cognitive deficits, depression, dissociative symptoms, maladaptive sexual development, hypothalamic-pituitary-adrenal attenuation, asymmetrical stress responses, high rates of obesity, more major illnesses and healthcare utilization, dropping out of high school, persistent posttraumatic stress disorder, self-mutilation, *Diagnostic and Statistical Manual of Mental Disorders* diagnoses, physical and sexual revictimization, premature deliveries, teen motherhood, drug and alcohol abuse, and domestic violence. Offspring born to abused mothers were at increased risk for child maltreatment and overall maldevelopment.[102]

The most striking research regarding the long-term effects of early childhood mistreatment involves the Adverse Childhood Experiences Study (ACES).[103] ACES focuses on early maltreatment—including a child living in a household where a member is incarcerated, doing drugs, mentally ill, or engaging in domestic violence.[104] The individual circumstances that *Miller* cites, specifically home and familial environment and experiences,[105] as relevant to sentencing, would all qualify as adverse experiences. The ACES research demonstrates that the number of adverse events a child experiences directly relates to the likelihood that the child will develop clinical problems later in life including psychiatric disorders (such as depression which leads to increased suicide attempts), high-risk health behaviors (smoking, alcoholism, drug use, or having multiple sexual partners), medical issues (heart disease, liver disease, obesity, or sexually

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[95] *Id.*
[96] *Id.*
[97] *See* BRUCE D. PERRY, CHILDTRAUMA ACAD., EFFECTS OF TRAUMATIC EVENTS ON CHILDREN 3 (2003), http://www.mentalhealthconnection.org/pdfs/perry-handout-effects-of-trauma.pdf.
[98] NAT'L CHILD TRAUMATIC STRESS NETWORK, TRAUMA FACTS FOR EDUCATORS 1 (2008), http://www.nctsn.org/sites/default/files/assets/pdfs/ctte_facts.pdf; Stacy Overstreet & Tara Mathews, *Challenges Associated with Exposure to Chronic Trauma: Using a Public Health Framework to Foster Resilient Outcomes Among Youth*, 48 PSYCHOL. SCHOOLS 738, 742-43 (2011); HELPING TRAUMATIZED CHILDREN LEARN, *supra* note 60, at 4.
[99] HELPING TRAUMATIZED CHILDREN LEARN, *supra* note 60, at 4.
[100] *Id.*
[101] Putnam, *supra* note 72, at 2. "In one study IQs decreased approximately 8 points, which is about twice the effect measured for significant exposure to environmental lead." *Id.* (citation omitted).
[102] Penelope K. Trickett et al., *The Impact of Sexual Abuse on Female Development: Lessons From a Multigenerational, Longitudinal Research Study*, 23 DEV. PSYCHOPATHOLOGY 453, 453 (2011).
[103] *See Linking Childhood Trauma to Long-Term Health and Social Consequences*, ADVERSE CHILDHOOD EXPERIENCES STUDY, www.acestudy.org [hereinafter *Linking Childhood Trauma*] (last visited Nov. 2, 2013) (study by Robert F. Anda & Vincent J. Felitti).
[104] *Id.*
[105] Miller v. Alabama, 132 S. Ct. 2455, 2468 (2012).

transmitted diseases), and a shortened lifespan.[106] As depicted below, research by the Centers for Disease Control demonstrates that early adverse childhood experiences influence the rest of a child's life.[107]

CDC Diagram of the long-term impact of ACES.[108]

There is also new research regarding the effects of trauma on children that goes beyond neurological issues to genetic ones, and beyond the individual to possible intergenerational transmission.[109]

4. Intergenerational trauma, community trauma, and epigenetics

It is not unusual to see families cycle through the court system.[110] Often, abused and neglected children in child protection cases grow into adolescents charged in juvenile justice cases, who next become adults charged in criminal cases.[111] These adults then have their own children that are abused and neglected, and brought into child protection courts to begin the cycle once more.[112] Thus, trauma and its impact can span across generations. For some families, this intergenerational trauma and series of adverse experiences may seem "normal," since both

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[106] *See Linking Childhood Trauma*, *supra* note 103; Bessel A. van der Kolk, *Developmental Trauma Disorder: Toward a Rational Diagnosis for Children with Complex Trauma Histories*, 35 PSYCHIATRIC ANNALS 401, 402 (2005) (reflecting on ACES).

> The [ACES] study confirmed earlier investigations that found a highly significant relationship between adverse childhood experiences and depression, suicide attempts, alcoholism, drug abuse, sexual promiscuity, domestic violence, cigarette smoking, obesity, physical inactivity, and sexually transmitted diseases. In addition, the more adverse childhood experiences reported, the more likely a person was to develop heart disease, cancer, stroke, diabetes, skeletal fractures, and liver disease.

Id.

[107] *Linking Childhood Trauma*, *supra* note 103; *see Adverse Childhood Experiences (ACE) Study: Pyramid*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/ace/pyramid.htm (last updated Jan. 18, 2013).

[108] *Adverse Childhood Experiences (ACE) Study: Pyramid*, *supra* note 107.

[109] Nat'l Scientific Council on the Developing Child, *Early Experiences Can Alter Gene Expression and Affect Long-Term Development* 4 (Harvard Univ.,Working Paper No. 10, 2010), *available at* http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp10/.

[110] Elizabeth M. Tracy & Pamela J. Johnson, *The Intergenerational Transmission of Family Violence, in* WORKING WITH TRAUMATIZED YOUTH IN CHILD WELFARE 113, 113-34 (Nancy Boyd Webb ed., 2005); CHILD WELFARE COMM., NAT'L CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR JUDGES AND ATTORNEYS 1 (2011), http://www.dcjs.virginia.gov/trainingevents/juvenile/casa/BirthParentswithTraumaHistoriesandtheChildWelfareSystem.pdf.

[111] *See supra* note 110 and accompanying text.

[112] *Id.*

happened to their parents when they were children, or trauma or adverse experiences (e.g., violence) happens regularly in their neighborhood.[113]

Moving beyond families, communities as a whole can experience trauma. As noted by the Substance Abuse and Mental Health Services Administration (SAMHSA):

> Just as with the trauma of an individual or family, a community may be subjected to a community-threatening *event*, have a shared *experience* of the event, and have an adverse, prolonged *effect*. Whether the result of a natural disaster (e.g., a flood, a hurricane or an earthquake) or an event or circumstances inflicted by one group on another (e.g., usurping homelands, forced relocation, servitude, or mass incarceration), the resulting trauma is often transmitted from one generation to the next in a pattern often referred to as historical, community, or intergenerational trauma.[114]

This does not mean that every person living in that community suffers from PTSD but it could affect how that community collectively raises its children. Youth might learn at a young age that the rest of society is threatening and not to be trusted.[115]

In addition, new research demonstrates that the intergenerational transmission of trauma may actually occur at a genetic level. While a discussion of epigenetics is beyond the scope of this article, the basic point is that extreme stress can affect an individual's genetic structure.[116] Epigenetics is the study of how certain genes are expressed (turned on or off).[117] The environment (particularly stress and trauma) affects when and how a particular gene is expressed.[118] Thus, stress directly affects the cellular functioning of an individual, and that individual can then pass this functioning on to his or her offspring.[119] Therefore, trauma can cause difficulties for generations of children and for the public sector agencies having to deal with them.[120]

5. The three E's summarized

Child trauma is a new and developing field of study. There are many definitions of child trauma but most can be understood within the framework of the 'Three E's," examining the events, the emotional experience of these events, and the lasting effects. The DSM-5 has an entire section on Trauma and Stressor-Related Disorders, including PTSD as well as several other

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[113] *See* CHILD WELFARE COMM., NAT'L CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR CHILD WELFARE STAFF 1 (2013), http://nctsn.org/sites/default/files/assets/pdfs/birth_parents_trauma_history_fact_sheet_final.pdf; CHILD WELFARE COMM., NAT'L CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR RESOURCE PARENTS 1 (2013), http://www.nctsn.org/sites/default/files/assets/pdfs/birth_parents_trauma_resource_parent_final.pdf.

[114] *Defining Trauma*, *supra* note 61.

[115] *See* Tracy & Johnson, *supra* note 110.

[116] *Epigenetics*, PBS ONLINE, http://www.pbs.org/wgbh/nova/education/body/epigenetics.html (last visited Sept. 3, 2013); *see* Divya Mehta et al., *Childhood Maltreatment is Associated with Distinct Genomic and Epigenetic Profiles in Posttraumatic Stress Disorder*, 110 PNAS 8203, 8304 (2012), *available at* www.pnas.org/cgi/doi/10.1073/pnas.1217750110; Joshua B. Johnson, *PTSD and Epigenetic Research: Decentering the Physical Body*, 21 J. AGGRESSION, MALTREATMENT & TRAUMA 45, 45-66 (2012); Karestan C. Koenen et al., *Gene-Environment Interaction in Posttraumatic Stress Disorder: Review, Strategy and New Directions for Future Research*, 258 EUR. ARCHIVES ON PSYCHIATRY & CLINICAL NEUROSCIENCE 82, 84 (2008), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2736096/.

[117] *See* Johnson, *supra* note 116, at 46 (describing the epigenetic process as "a process through which experience modifies physical makeup, such as the function of the central nervous system, manifested through changes in cellular, neural circuitry, DNA, molecular, and behavioral aspects").

[118] *See supra* note 116 and accompanying text.

[119] *Id.*

[120] Johnson, *supra* note 116; *see* Koenen et al., *supra* note 116, at 83-84.

types of trauma.[121] Some effects are clinical DSM trauma symptoms, such as re-experiencing, avoidance, and hyper-arousal. Other effects are just beginning to be understood, such as the impact on brain development, long-term consequences, and intergenerational transmission. Since a majority of youth in the juvenile justice system experienced traumatic events, this clinical concept is extremely relevant to these youth. Therefore, the *Miller* Court's instructions to consider adverse childhood experiences at sentencing take on particular significance, as it brings the concept of child trauma into the juvenile courtrooms.

D. Prevalence of Child Trauma in the Juvenile Justice System

Youth in the juvenile justice system report more exposure to traumatic events and more trauma effects than youth in the general population.[122] Moreover, studies have examined the relationship between an individual experiencing a traumatic event and later involvement in the juvenile justice system.[123] Using data from the National Child Traumatic Stress Network (NCTSN), a 2013 study found that up to ninety percent of youth in the juvenile justice system report experiencing a traumatic event; on average seventy percent of whom have mental health disorders and approximately thirty percent of whom suffer from PTSD.[124] In a study of juveniles ages ten to eighteen in a juvenile detention center, 92.5% of the sample experienced at least one traumatic event with a median of six adverse events, and 11.2% of those juveniles qualified for a PTSD diagnosis.[125] Similarly, another 2013 study found that 94% of youth in juvenile court reported experiencing at least one traumatic event with an average of 5.4 adverse events, but with a higher rate of over 45% screening positive for PTSD.[126] Thus, the findings of trauma for youth in juvenile justice are consistent across settings, place and time.

Studies have reported that females in the juvenile justice system are more likely than males to report sexual abuse and assault,[127] with females also developing more trauma symptoms.[128] Moreover, research reveals that sixty-two percent of youth experienced their first traumatic event by the time they were five years old, and approximately a third of the youth in the study reported exposure to other types of trauma every year after that into adolescence.[129] Thus the researchers conclude that

> [i]t is important for policymakers to acknowledge that justice-involved youth have strikingly high rates of trauma exposure and that this trauma typically

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[121] *See* DSM-5, *supra* note 65, at 3 (listing other trauma diagnoses besides PTSD, such as Reactive Attachment Disorder, Disinhibited Social Engagement Disorder, and Acute Stress Disorder).

[122] *See* JOSEPH J. COCOZZA & JENNIE L. SHUFELT, NAT'L CTR. FOR MENTAL HEALTH & JUV. JUST., JUVENILE MENTAL HEALTH COURTS: AN EMERGING STRATEGY 1 (2006), http://www.ncmhjj.com/pdfs/publications/JuvenileMentalHealthCourts.pdf (reviewing statistics regarding mental health and juvenile justice); JULIAN D. FORD ET AL., NAT'L CTR. FOR MENTAL HEALTH & JUV. JUST., TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEM: CRITICAL ISSUES AND NEW DIRECTIONS 1 (2007); ERICA J. ADAMS, JUST. POL'Y INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 5 (2010), http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf ("Many of the nation's most traumatized youth are found in the juvenile justice system . . . ."); Karen M. Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 ARCH. GEN. PSYCHIATRY 403, 407 (2004).

[123] *See* Beverly A. Brosky & Stephen J. Lally, *Prevalence of Trauma, PTSD, and Dissociation in Court-Referred Adolescents*, 19 J. INTERPERSONAL VIOLENCE 801, 802 (2004) (synthesizing studies on the possible link between trauma and delinquency).

[124] Carly B. Dierkhising et al., *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, 4 EUR J. PSYCHOTRAUMATOLOGY 1, 1-3 (2013), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/pdf/EJPT-4-20274.pdf.

[125] Abram et al., *supra* note 122, at 405-06.

[126] Harriet J. Rosenberg et al., *Trauma Exposure, Psychiatric Disorders, and Resiliency in Juvenile-Justice-Involved Youth*, PSYCHOL. TRAUMA: THEORY, RESEARCH, PRAC., & POL'Y, July 1, 2013, at 1, 4-5, http://psycnet.apa.org/index.cfm?fa=buy.optionToBuy&id=2013-23499-001.

[127] Dierkhising et al., *supra* note 124, at 2; FORD ET AL., *supra* note 122, at 2.

[128] Dierkhising et al., *supra* note 124, at 2.

[129] *Id.* at 6.

> begins early in life, is often in multiple contexts (e.g., home, community, school), and persists over time . . . . For youth who do come to the attention of the juvenile court, it is imperative that the system is prepared to meet the needs of chronically traumatized youth with significant mental health problems.[130]

E. Impact on Youth

Understanding that not one specific factor results in delinquency, research reveals trauma experience increases the likelihood of juvenile offending.[131] Researchers have found correlations between violence, traumatization, and misconduct among juveniles in detention.[132] Thus, an adolescent's overreactive and risky trauma behaviors can lead to direct contact with the juvenile justice system.[133]

These findings regarding child trauma are relevant in juvenile sentencing. In *Roper*, *Graham*, and *Miller*, the Court relied on research regarding adolescence and brain development in determining that juveniles should be treated differently than adults in regards to sentencing. That research applied to all youth.[134] While child trauma research also studies adolescence and brain development, these findings apply only to youth who have been traumatized. Combining the research shows that if all adolescents struggle with impulse control, peer pressure, and decision-making, then traumatized adolescents will struggle even more.[135] Under *Miller*'s instructions to consider the youth's adverse experiences, juvenile judges, in sentencing, should certainly take the additional limitations of child trauma into account. Though juvenile courts have not previously had to explicitly consider child trauma in sentencing, other courts have addressed a similar trauma issue. Some adult criminal, civil, and personal injury cases have considered one type of trauma, PTSD, as a defense and in sentencing. This precedence offers guidance to juvenile court judges.

IV. THE ADMISSIBILITY OF TRAUMA IN ADULT COURTS

The concept of trauma has slowly gained acceptance in the legal arena. In the wake of the recent tragedies of 9/11 and the return of American troops from overseas,[136] law professionals have increasingly raised the issue of trauma, specifically PTSD, in court.[137] Legal recognition of

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[130] *Id.* at 9.
[131] FORD ET AL., *supra* note 122, at 3.
[132] Matt DeLisi et al., *The Cycle of Violence Behind Bars: Traumatization and Institutional Misconduct Among Juvenile Delinquents in Confinement*, 8 YOUTH VIOLENCE & JUV. JUST. 107, 108, 115-16 (2010) (finding that juvenile "wards with greater lifetime exposure to traumatic events, such as experiencing a terrible event, experiencing intrusive memories of a terrible event, being in danger of serious injury or death, witnessing serious injury or death, and being in danger of rape or actual rape victimization were more noncompliant behind bars"). "The high trauma offenders engaged in nearly three times the suicidal activity, about 3.5 times the sexual misconduct, and 1.3 times the total misconduct." *Id.* at 114. *See* Kerig & Becker, *supra* note 84, at 2 (synthesizing research connecting trauma and juvenile delinquency).
[133] *See* BUFFINGTON ET AL., *supra* note 72; Bruce D. Perry & Erin P. Hambrick, *The Neurosequential Model of Therapeutics*, RECLAIMING CHILD. & YOUTH, Fall 2008, at 38, 40.
[134] *See* Steinberg, *supra* note 87, at 518.
[135] A similar argument was made by the American Medical Association, et al. in its *Roper* Amicus Brief, where it argued, "To the Extent That Adolescents . . . Suffer From Serious Psychological Disturbances That Substantially Exacerbate the Already Existing Vulnerabilities of Youth, *They Can Be Expected to Function at Sub-Standard Levels*." *See* Brief for the American Medical Ass'n et al. as Amici Curiae Supporting Respondent at 20, Roper v. Simmons 543 U.S. 551 (2005) (No. 03-633) (emphasis added), *available at* http://www.aacap.org/App_Themes/AACAP/docs/Advocacy/amicus_curiae/Roper_v_Simmons.pdf.
[136] Appleyard & Osofsky, *supra* note 77, at 113; *see* Schecter & Willheim, *supra* note 73 ("The World Trade Center Attack in 2001 and the start of the Iraq war in 2003 literally brought home the impact of terrorism and war . . . .").
[137] Laurence Miller, *Posttraumatic Stress Disorder and Criminal Violence: Basic Concepts and Clinical-Forensic Applications*, 27 AGGRESSION & VIOLENT BEHAV. 354, 355-56 (2012).

trauma disorders dates back to the 1860s, though the actual term "Posttraumatic Stress Disorder" was not coined until the 1970s and did not appear in the DSM until its third edition in 1980.[138] Originally, the term "traumatic neurosis" was developed to refer to symptoms of industrial accidents.[139] During the First World War, the concept "shell shock" —later replaced with "war neuroses" or "functional nervous disorders"[140] —described "a form of cognitive and emotional incapacitation first thought to be produced by the brain-concussive effects of exploding shells."[141] It was later clarified that proximity to an explosion was not relevant to the symptoms of "shell shock," rather it was the characteristics of the symptoms, mainly "emotions of extreme and sudden horror and fright."[142] The 1941 book *The Traumatic Neuroses of War* noted that the long-term psychological impact of war on veterans often did not occur until after they returned home.[143] After World War II, the "psychiatric casualties" were given the initial diagnosis of "combat fatigue."[144]

These trauma concepts first began to enter the legal realm in personal injury and criminal cases.[145] Early on, many of the criminal defense cases were unsuccessful because military veteran-defendants were often required—pursuant to most insanity standards—to "relat[e] the experience of traumatic stress to a recognized psychiatric disorder in order to fulfill the 'mental disease or defect' criteria."[146] Similarly, in the civil arena, recovery for psychological injuries was very limited.[147] In 1980, inclusion of PTSD in the third edition of the DSM provided veterans and others with a way to overcome the "diagnostic hurdle."[148] "PTSD provided psychiatry with a means to classify a psychological injury that developed 'in normal people . . . following an extremely traumatic event.'"[149] Though the clinical definition of PTSD evolved from DSM-III to DSM-5, the basic trauma concept remains a part of legal arguments.

Recognition of PTSD has significantly impacted civil and criminal law.[150] Although judicial skepticism still exists about "whether mental and emotional conditions actually exist,"[151] advances in neuroscience have produced more acceptance.[152] In civil cases, PTSD has been raised as a basis for tort claims for intentional or negligent infliction of emotional distress, health benefits and worker's compensation.[153]

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[138] Deirdre M. Smith, *Diagnosing Liability: The Legal History of Posttraumatic Stress Disorder*, 84 TEMP. L. REV. 1, 5 (2011) ("John Erichsen, a British surgeon and academic, is often credited with being the first to apply the term to psychiatric injuries in his book, *On Railway and Other Injuries of the Nervous System*, first published in 1866. Erichsen theorized that railway injuries from 'Jars, Shakes, Shocks, or Concussions' to the spinal cord could cause injuries (specifically, lesions) that could have several manifestations, including 'cerebral' changes affecting memories, thoughts, temper, and sleep.").
[139] *Id.* at 7.
[140] *Id.* at 11 (internal quotation marks omitted).
[141] Miller, *supra* note 137, at 355.
[142] Smith, *supra* note 138, at 11 (internal quotation marks omitted).
[143] *Id.* at 13 (referring to and citing ABRAM KARDINER, THE TRAUMATIC NEUROSES OF WAR (1941)).
[144] *Id.* at 14-15 (internal quotation marks omitted).
[145] *See* Miller, *supra* note 137 (summarizing cases in which veterans were using "shell shock" or "nervous disability," etc. to explain behavior); Smith, *supra* note 138, at 20 ("In practice, traumatic neurosis was not a clinical diagnosis per se, but rather a term generally reserved to describe psychological injuries in the context of personal injury litigation or claims for industrial and other occupational accidents.").
[146] Miller, *supra* note 137, at 356.
[147] Smith, *supra* note 138, at 21.
[148] Miller, *supra* note 137, at 356.
[149] Smith, *supra* note 138, at 29 (citation omitted).
[150] Betsy J. Grey, *Neuroscience, PTSD, and Sentencing Mitigation*, 34 CARDOZO L. REV. 53, 58-76 (2012); *see also* Miller, *supra* note 137, at 360 ("[I]t is vital that a defense psychological expert witness be able to credibly draw a clear, bright line connecting the effects of the disorder to the criminal behavior in question.") (citation omitted).
[151] Grey, *supra* note 150, at 63.
[152] *Id.* at 85.
[153] Smith, *supra* note 138, at 21, 43, 67.

In criminal cases, defendants have raised PTSD as a defense to criminal charges and as a mitigating factor[154] at sentencing.[155] The common defense claims relying on PTSD in criminal courts include:

> (1) *dissociative/flashback-related violence*, where the subject acts defensively in response to what is essentially a delusional re-enactment of a prior traumatic event; (2) *combat addiction/sensation-seeking syndrome*, where the subject has become dependent on the adrenalinized rush of combat and seeks, deliberately or unconsciously, to recreate that stimulation through dangerous and aggressive behavior; (3) *mood disorder-associated violence* which can range from manic agitation to suicidal depression; and (4) *sleep disorder-associated violence* which may involve either a lowered threshold to violence caused by insomnia and impaired sleep cycles, or, alternatively, the presence of specific *parasomnias*, such as sleepwalking or REM sleep behavior disorder.[156]

Regarding adult criminal sentencing and PTSD, Professor Grey, from the Center for Law, Science and Innovation at Arizona State University, argues that there are two major theories applied in adult criminal court: retribution and consequentialism.[157] "Retribution distributes punishment according to the blameworthiness of the offender; in particular, the more harm a defendant causes or the more culpable his mental state, the more punishment ought to be imposed."[158] "Consequentialism, on the other hand, distributes punishment on the basis of the consequences that punishment is likely to yield—that is, based on what is most likely to prevent future crimes."[159] As retribution focuses on culpability, PTSD is an argument for mitigation in sentencing based on the original act, similar to the defenses of insanity or duress.[160] Consequentialism, where the goal is to reduce recidivism and increase public safety, focuses on the desired post-sentencing outcome.[161] Under consequentialism, PTSD should be addressed in sentencing if addressing it would "produce better results—that is, better predictions about future offending and better treatment to promote rehabilitation."[162]

Given this recognition of trauma by adult civil and criminal courts, the consequentialist argument is most applicable when incorporating child trauma into juvenile court sentencing. The juvenile justice system was founded on the principle that children are fundamentally different from adults.[163] In contrast to the adult criminal justice system, the juvenile justice system is based on rehabilitation and an understanding that youth are still learning and malleable.[164] By such reasoning, sentencing in juvenile court can embrace a consequentialist approach. It would aim to reduce recidivism and increase public safety through offering treatment to a traumatized

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[154] "A mitigating sentencing factor is a reason for a judge to impose a lower than average sentence." Grey, *supra* note 150, at 77.
[155] *Id.* at 61.
[156] Miller, *supra* note 137, at 357-58.
[157] Grey, *supra* note 150, at 77.
[158] *Id.*
[159] *Id.* at 78. Consequentialism would include incapacitation, deterrence and rehabilitation, which the *Graham* Court discussed separately. *See* Graham v. Florida, 560 U.S. 48, 50 (2010).
[160] Grey, *supra* note 150, at 79. Historically, some courts would only allow this defense to those defendants who served in the military or who suffered from Battered Women Syndrome, though there is no clinical basis for limiting PTSD to these particular "events." *Id.* at 93-94.
[161] *Id.* at 83-84.
[162] *Id.* at 84.
[163] DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 978 (4th ed. 2010).
[164] *Id.*

youth, rather than just punishment. Thus, sentencing for juveniles should incorporate concepts of child trauma.

A significant issue that should be expanded beyond the adult court approach is that the juvenile courts need to address all child trauma, and not just PTSD. As discussed earlier, PTSD is just one type of trauma listed in the DSM-5. Other types of trauma exist as well. Additionally, child trauma moves beyond the narrower criteria of PTSD and incorporates research on brain development, similar to what the *Miller* Court relied upon in its decision.[165] Further, using the "Three E" framework, the *Miller* Court actually instructs judges to consider traumatic events (such as family violence, physical abuse, and parental substance abuse), rather than just PTSD. Researchers like Griffin et al. (2012a) quantify the difference between addressing youth who have experienced traumatic events and youth who are diagnosed with PTSD. In their study of over 14,000 youth in the custody of Illinois child welfare, over ninety-five percent of those youth were suspected to have experienced a traumatic event (by definition, the youth were in custody because they had been abused or neglected).[166] About thirty percent of these youth were identified as having experienced some trauma symptoms (re-experiencing, avoidance, hyperarousal, etc.).[167] However, only approximately three percent had the right symptom clusters to be eligible for a diagnosis of PTSD.[168] Clearly, there is a significant difference between saying juvenile courts, in sentencing, should consider the trauma history of ninety-five percent of the children versus just three percent. Arguably, *Miller* instructs judges to consider the ninety-five percent who have experienced adverse childhood experiences, and not just the three percent who might fit the categorical definition of PTSD. In sum, juvenile court sentencing should consider child trauma. The next issue to consider is what difference that would make in a juvenile's sentence.

V. CHILD TRAUMA IN JUVENILE SENTENCING

Given a juvenile court judge's wishes to consider child trauma in sentencing, there are several steps a court can take, including: (A) becoming a trauma-informed court; (B) incorporating trauma concepts into the sentencing factors; and (C) considering trauma in the actual juvenile sentence.

A. A Trauma-Informed Juvenile Court

A juvenile judge cannot do all that is required to implement a trauma-informed sentence. The judge needs assistance from clinicians, probation officers and attorneys. That requires a juvenile court, as a system, to become trauma-informed. SAMHSA recommends that a trauma-informed approach incorporate three key elements: Realization, Recognition and Response:

> A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for healing; recognizes the signs and symptoms of trauma in staff, clients, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, practices, and settings.[169]

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[165] Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012).
[166] Gene Griffin et al., *Addressing the Impact of Trauma Before Diagnosing Mental Illness in Child Welfare*, 90 CHILD WELFARE, no. 6, at 69, 84 (2012).
[167] *Id.* at 82.
[168] *Id.*
[169] *Part Two: A Trauma-Informed Approach*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., http://www.samhsa.gov/traumajustice/traumadefinition/approach.aspx (last updated Dec. 10, 2012).

Therefore, if child trauma can be defined by using the Three E's, then identifying what constitutes a trauma-informed juvenile court can be defined by the Three R's.

1. Realization

Realization of sentencing that is trauma-informed requires that all staff in juvenile court be trained to understand child trauma. Everyone in juvenile court should become trauma-informed, including the judges, attorneys, probation officers, clinicians, social service staff and administrators.[170] Formal training curricula for staff already exist, such as the MacArthur Foundation's curriculum, Models for Change, the Mental Health Juvenile Justice curriculum (that includes trauma modules),[171] and the NCTSN's curriculum for juvenile justice staff.[172] Trauma-informed concepts can be integrated with current staff training on de-escalation, suicide, and mental health. Ideally, a court system would also help educate the youth and families. Other resources include Psychological First Aid for crisis interventions and basic trauma information for youth and families.[173]

Understanding child trauma also requires realizing the need for cross-system responses. Appropriate trauma-informed system responses require a similar understanding and coordination between multiple child-serving systems, such as juvenile justice, child welfare, mental health and education.[174]

2. Recognition

Once a court system understands child trauma, the system must be able to recognize such trauma in the juveniles, families, and even in its own staff.[175] Minimally, this requires that all juvenile court pre-sentence investigations include screening and assessment of juveniles for a history of adverse experiences and the presence of trauma symptoms. Multiple standardized screening and assessment tools that incorporate some elements of trauma events and effects already exist, such as the ACES Questionnaire,[176] the Massachusetts Youth Screening Instrument (MAYSI-2),[177] the Trauma Symptom Checklist for Children (TSCC),[178] and the Child and

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[170] Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response,* JUV. & FAM. CT. J., Fall 2008, at 21, 32.

[171] *Projects*, NAT'L CTR. FOR MENTAL HEALTH & JUV. JUST., http://www.ncmhjj.com/projects/default.shtml (last visited Nov. 2, 2013)*; see also* MODELS FOR CHANGE, MENTAL HEALTH TRAINING CURRICULUM FOR JUVENILE JUSTICE, http://dev4.nextstepdigital.com/wp-content/uploads/2013/11/Overview-of-MHTC-JJ.pdf (last visited Nov. 17, 2013) (providing a thorough background, overview, and guide on the curriculum).

[172] *See Think Trauma: A Training for Staff in Juvenile Justice Residential Settings*, NAT'L CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/products/think-trauma-training-staff-juvenile-justice-residential-settings (last visited Nov. 2, 2013).

[173] *Psychological First Aid*, NAT'L CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/content/psychological-first-aid (last visited Nov. 2, 2013).

[174] DENISE HERZ ET AL., CTR. FOR JUV. JUST. REFORM, ADDRESSING THE NEEDS OF MULTI-SYSTEM YOUTH: STRENGTHENING THE CONNECTION BETWEEN CHILD WELFARE AND JUVENILE JUSTICE 3 (2012), http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf; Information Memorandum from the Admin for Child. & Families, U.S. Dep't of Health & Human Servs. 16 (Apr. 7, 2012), *available at* http://www.acf.hhs.gov/sites/default/files/cb/im1204.pdf (on social-emotional well-being).

[175] NAT'L CHILD TRAUMATIC STRESS NETWORK, JUDGES & CHILD TRAUMA 3 (2008), http://www.nctsn.org/sites/default/files/assets/pdfs/judicialbrief.pdf ("Just as there is a threat of burnout for mental health professionals who work with severely traumatized children, it is very stressful for judges to deal with child victims of trauma. One judge noted that often there is no process in place for talking about trauma with other judicial officers (e.g., when a child on probation is shot and killed). Judges related that they frequently are working nonstop and don't even have five minutes by themselves to deal with their emotions about a particularly difficult case.").

[176] *Got Your ACE Score?*, ACES TOO HIGH NEWS, http://acestoohigh.com/got-your-ace-score/ (last visited Nov. 2, 2013).

[177] *Massachusetts Youth Screening Instrument*, UNIV. MASS. MED. SCH., http://www.doc.state.mn.us/org/communityserv/juvenileserv/umbrellarule/pdf/What%20is%20it%20--%20MAYSI-2%20--%20National%20Youth%20Screening%20Assistance%20Project%20-%20UMass%20Medical%20School.htm (last visited Nov. 2, 2013).

[178] John Briere, *Trauma Symptom Checklist for Children (TSCC)*, PAR, http://www4.parinc.com/Products/Product.aspx?Productid=TSCC (last visited Nov. 2, 2013).

Adolescent Needs and Strengths (CANS) instruments.[179] A court could adopt the instrument that best fits with other clinical tools already being used by the court evaluators.

A cross-system, multi-agency approach to dealing with traumatized youth requires sharing the trauma screening and assessment findings. This is necessary for service planning, monitoring changes over time, and working with other child-serving agencies.

3. Response

Once a court understands child trauma and identifies the symptoms in a youth, the system must have the ability to respond to the needs of that youth. Minimally, this would require that trauma-informed treatments be available in the community and in juvenile justice institutions. Clinicians in juvenile justice settings can use evidence-based trauma treatments and promising practices.[180] Trauma-Focused Cognitive-Behavioral Therapy (TF-CBT) is an individual and family therapy that can be used in institutional and community settings.[181] Group therapies include Structured Psychotherapy for Adolescents Responding to Chronic Stress (SPARCS)[182] and Cognitive Behavioral Intervention for Trauma in Schools (CBITS).[183] Institutional interventions that work with staff and youth in juvenile justice settings include The Sanctuary Model[184] (used in some residential treatment facilities) and Trauma Affect Regulation: Guide for Education and Therapy (TARGET).[185] Once again, these services might best be accessed through cross-system work.

A trauma-informed juvenile court can follow its usual sentencing process. Presumably, after a youth is adjudicated delinquent, or guilty, the court will order probation to conduct a pre-sentencing investigation (PSI).[186] Thus, as an overall juvenile court system response, the trauma-informed process might start with a court clinic assessing the youth and the family for trauma (including intergenerational) issues. These assessments would be used by a probation officer and/or case worker in developing a treatment plan that could be incorporated into the PSI. This plan would identify available trauma-informed services and treatment providers. These reports

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[179] *Resources & Products*, CTR. FOR CHILD TRAUMA ASSESSMENT & SERV. PLANNING, http://cctasp.northwestern.edu/resources/ (last visited Nov. 2, 2013); *see About the CANS: CANS Executive Summary*, PRAED FOUND., http://www.praedfoundation.org/About%20the%20CANS.html (last visited Nov. 2, 2013); *see also Measures Review Database New*, NAT'L CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/resources/online-research/measures-review (last visited Nov. 2, 2013) (for a listing of other validated trauma measures).

[180] FORD ET AL., *supra* note 122. *See generally National Child Traumatic Stress Network Empirically Supported Treatments and Promising Practices*, NAT'L CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices (last visited Nov. 2, 2013) (providing a complete list of trauma therapies).

[181] *See* CHILD WELFARE INFO. GATEWAY, TRAUMA-FOCUSED COGNITIVE BEHAVIORAL THERAPY FOR CHILDREN AFFECTED BY SEXUAL ABUSE OR TRAUMA 4 (Aug. 2012), https://www.childwelfare.gov/pubs/trauma/trauma.pdf; *Trauma-Focused Cognitive Behavioral Therapy (TF-CBT)*, NAT'L REGISTRY OF EVIDENCE-BASED PROGRAMS & PRAC., http://www.nrepp.samhsa.gov/viewintervention.aspx?id=135 (last visited Nov. 2, 2013).

[182] SPARCS, http://sparcstraining.com/ (last visited Nov. 2, 2013).

[183] *CBITS At-a-Glance*, COGNITIVE BEHAV. INTERVENTION FOR TRAUMA IN SCH., http://cbitsprogram.org/ (last visited Nov 2, 2013).

[184] *The Sanctuary Model: An Integrated Theory*, SANCTUARY MODEL, http://www.sanctuaryweb.com/sanctuary-model.php (last visited Nov. 2, 2013).

[185] TRAUMA AFFECT REGULATION: GUIDE FOR EDUC. & THERAPY, http://www.ptsdfreedom.org/ (last visited Nov. 2, 2013).

[186] For more information on pre-sentencing investigations, see CTR. JUV. & CRIM. JUST., THE HISTORY OF THE PRE-SENTENCE INVESTIGATION REPORT, http://www.cjcj.org/uploads/cjcj/documents/the_history.pdf (last visited Nov. 17, 2013). Multiple trauma-informed approaches exist that could assist the probation officer in this integrative process. For example, ARC is a basic approach that could provide a theoretical framework, core principles of intervention, and a guiding structure for probation officers working with juveniles and their caregivers. *See Attachment, Self-Regulation and Competency (ARC) Clinical Services*, TRAUMA CTR. JUST. RES. INST., http://www.traumacenter.org/research/ascot.php (last visited Nov. 2, 2013). For a more brain development-related approach, Dr. Perry offers the Neurosequential Model of Therapeutics (NMT), which assesses a youth and his or her family, integrates trauma and brain development scores, and proposes a sequential treatment approach for working with youth. *See* Bruce D. Perry & Christine L. Dobson, *The Neurosequential Model of Therapeutics*, *in* TREATING COMPLEX TRAUMATIC STRESS DISORDERS IN CHILDREN AND ADOLESCENTS: SCIENTIFIC FOUNDATIONS AND THERAPEUTIC MODELS 249 (Julian D. Ford & Christine A. Courtois eds., 2013); *NMT*, CHILDTRAUMA ACAD., http://childtrauma.org/nmt-model/ (last visited Nov. 2, 2013).

would be used by the attorneys (and guardians or court-appointed special advocates, where relevant, such as in crossover cases of youth involved in child protection and juvenile justice) in presenting their sentencing arguments to the judge. The judge would incorporate the trauma concepts into the relevant sentencing factors and issue a sentence, as explained below.

B. Incorporating Trauma Concepts into Sentencing Factors: Mitigation and Risk

Traditional sentencing factors, such as mitigation or risk to the public, can incorporate trauma concepts. Understanding child trauma, like understanding normal adolescent development, requires the acknowledgement that both can be a double-edged sword when it comes to sentencing. The Supreme Court has been clear that youth are less culpable than adults,[187] which is a mitigating factor in sentencing. The research relied upon by the Court, however, makes it clear that youth can be impulsive, often poor decision makers when emotionally upset, and heavily influenced by peers, all of which can make them more of a public safety risk.[188] The same contrast exists with child trauma: many youth in the juvenile justice system had multiple adverse experiences during childhood, through no fault of their own, which, under *Miller*, are mitigating factors in sentencing. But knowing that the resulting trauma may make a youth more likely to overreact, fight, run away, be self-destructive, and abuse substances when faced with certain triggers may also make the youth more of a public safety risk to consider in sentencing. Thus, juvenile court judges may have to balance dealing with children who are in need of the state's intervention because they have been traumatized by mistreatment but are currently a risk to the public.

C. Considering Trauma in the Actual Juvenile Sentence.

Whether placing a convicted youth on probation or committing that youth to a juvenile institution, there are ways a juvenile court judge can make the sentence trauma-informed. Griffin et al. (2012b) proposed several principles to be used in trauma-informed juvenile justice institutions that are applicable at sentencing.[189] Judges, in issuing a trauma-informed sentence, should consider principles of safety, support, self-regulation, and strengths.[190] These four S's can help shape an appropriate court order.

All child trauma work must start with a focus on safety. Traumatized youth are more likely to be hyper-aroused and over-interpret signs of danger.[191] When they do not feel safe, they are much more likely to overreact and engage in negative behaviors, such as fight or flight.[192] A youth who has no safe place to live or no safe haven to go to, is more likely to remain hyper-aroused and at risk. Simple things, such as having a safe place to be (e.g., home, school, or job) and a regular schedule with some structure to a day can help increase a youth's feeling of safety.[193] Therefore, a judge, in considering the least restrictive placement for a youth, can factor in safety concerns.

Next, traumatized youth need the long-term support of a responsible adult. There needs to be a person that youth can reach out to when they are not feeling safe or in control. It is

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[187] *See supra* Part II (describing *Roper*, *Graham*, and *Miller*, in which the Supreme Court repeats that juveniles are different and less culpable than adults).
[188] *See* Steinberg, *supra* note 87, at 518.
[189] Gene Griffin et al., *Using a Trauma-Informed Approach in Juvenile Justice Institutions*, 5 J. CHILD & ADOLESCENT TRAUMA 271, 271-83 (2012).
[190] *Id.* at 279.
[191] *See supra* note 82.
[192] *See supra* notes 91–97 and accompanying text.
[193] *See* Julian D. Ford & Margaret E. Blaustein, *Systematic Self-Regulation: A Framework for Trauma-Informed Services in Residential Juvenile Justice Programs*, 28 J. FAM. VIOLENCE 665, 673 (2013); Michael Ungar & Bruce D. Perry, *Violence, Trauma, and Resilience, in* CRUEL BUT NOT UNUSUAL: VIOLENCE IN CANADIAN FAMILIES 11-15 (Ramona Alaggia & Cathy Vine eds., 2d ed. 2012), *available at* http://cctasp.northwestern.edu/wp-content/uploads/Trauma-Violence-and-Resilience.pdf.

essential to engage the family in the youth's recovery. Ideally, the family member would be an adult, such as a parent or grandparent that the child has bonded to since birth. When that is not feasible, other adults, such as relatives, neighbors, teachers, or coaches can also serve in a supportive family role. Knowing that an adult is available can be calming to a traumatized youth. A court sentence that couples a safe place with a supportive adult can be particularly stabilizing for a traumatized youth.

Once stabilized, traumatized youth need to work on their self-regulation skills. A trauma-informed sentencing recommendation is based on an understanding that traumatized youth overreact to external events and are not inherently bad or mentally ill. This is a crucial distinction that does not blame the victim for the initial conditions but still holds the youth accountable for future actions. It is not a youth's fault that he or she has been traumatized, but a youth is responsible for learning how to self-regulate when the trauma is triggered. Learning to recognize when one's alarm is being triggered, how to calm down, and how to problem solve are tremendous skills for a traumatized youth to learn. Some of these skills can be advanced through trauma-informed therapies, discussed in the Response section above.[194] Also, a person need not be a therapist to be therapeutic. Other supportive adults can be enormously helpful here as well. Many occasions will arise in the normal course of a day where a trauma-informed adult can work with a youth on calming down and problem solving. A juvenile court's sentence can require that the available trauma-informed services identified in the PSI be used. By offering these services to a youth in a safe place and with a supportive adult, the court can provide an optimal setting for the youth to learn how to self-regulate and be less of a risk to the public.

Finally, to assist a traumatized youth, the sentencing judge should also look at developing a youth's strengths through positive programs. It is not sufficient to simply tell a youth to stop behaving in negative ways, such as fighting or running away. A youth needs to learn positive alternative behaviors. And an adult needs to teach these in order to help the youth find some way to succeed. Learning positive alternative behaviors can not only help a youth deal with previous trauma, but can also be a protective factor in making a youth more resilient when facing future adverse experiences. Educational settings, afterschool programs, and job training could all be ideal places to learn positive skills, and might be included as part of sentencing.[195]

As an example, Griffin et al. (2012b) proposed the hypothetical of a sixteen-year-old male who does not sit still, does not pay attention, overreacts to slights, runs away, and repeatedly gets into fights. A classic justice approach might identify the youth as delinquent, based on his dangerous behaviors, and argue for punishment in sentencing. As a traditional alternative, some clinicians might identify this youth as mentally ill, based on his symptoms, and in need of medication.[196] Under a trauma-informed model, the youth could be identified as reacting to trauma based on adverse childhood experiences. This traumatized youth would still receive consequences; however, a trauma-informed court would also work with the youth to determine what is triggering his behaviors and focus on safety, support, self-regulation skills, and the development of positive, alternative responses. The punishment, mental health, and trauma-

[194] Dr. Perry points out that traumatized youth might also improve their self-regulation skills by engaging in simple, structured, rhythmic, movement activities such as music, dance, and martial arts training that focus on self-control. All of these options can be considered in sentencing a traumatized youth. Perry & Hambrick, *supra* note 133, at 42.

[195] Rosenberg et al., *supra* note 126, at 6*; see also*, Carl C. Bell, *Cultivating Resiliency in Youth*, 29 J. ADOLESCENT HEALTH 375, 376 (2001) ("[M]inimizing the effects of trauma can encourage resiliency. Essentially, the strategy involved here is to support the transformation of traumatic helpless into learned helpfulness …. If children can be identified immediately after suffering a traumatic stressor and helped to cope with that stressor, they will be less prone to engage in self-destructive behaviors such as drug abuse, school failure, unsafe sex, and violence.").

[196] Griffin et al., *supra* note 189, at 278.

informed responses to youth in juvenile justice institutions are very different from one another. Yet in the above example, the differences are not based on the behaviors of the youth (which do not vary). Instead, the three different responses are based on the court's decision of which model to apply. Arguably the new trauma-informed model fits best with *Miller*'s views of the adolescent brain and youth development.

VI. CONCLUSION

Juvenile courts should consider child trauma issues at sentencing consistent with the guidelines set forth by the *Miller* Court. After reviewing the recent Supreme Court decisions on juvenile sentencing, this Article described what is meant by child trauma, and identified its developmental impact and prevalence in the juvenile justice system. Given that adult criminal courts have considered one type of trauma, PTSD, in sentencing, juvenile courts should also be able to consider child trauma in sentencing. This Article described how the juvenile court system might conduct trauma-informed sentencing. Such use of a trauma-informed approach in juvenile court is consistent with *Miller* and would benefit the youth, their families, the juvenile justice system, and society.