

ACEs in the Criminal Justice System



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The author has no conflicts of interest to disclose.

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ACADEMIC PEDIATRICS 2017;17:S32–S33

FOR MORE THAN 20 years I have served as a psychological expert witness in murder cases across the United States. Many of these have been “death penalty” cases, but increasingly they have been resentencing hearings for adults who were given automatic life without the possibility of parole sentences for murders committed when they were juveniles. These resentencing hearings resulted from the US Supreme Court’s decisions in *Miller v Alabama* and *Montgomery v Alabama* that such sentences are unconstitutional and that this decision must be applied retroactively to the ≥ 2500 individuals that make up this class of inmates.

It should not come as a surprise that childhood adversity is common and prominent among individuals who kill people. Childhood adversity leads to trauma and toxic stress, and trauma and toxic stress lead to the kind of developmental damage that in turn can lead to violence (as one among many outcomes, or other outcomes such as substance abuse and mental health that could similarly have repercussions for incarceration either as juveniles or adults) in the United States. Over the past 20 years I have sat with more than 100 killers, many of them adolescents or young adults at the time they committed murder.¹ I ask questions. I listen to their stories. I read the records in the files that document their lives. And, I ask them the 10 adverse childhood experiences (ACEs) questions. Low scores are the exception; high scores are the rule.

I have come away from these experiences with the conviction that the best starting hypothesis in dealing with most killers is that they are “untreated traumatized children inhabiting and controlling the dangerous adolescents and adults that stand accused of murder.” Approximately only 0.01% of Americans (1 in 1000) report an ACEs score of 8, 9, or 10.² The scores reported by the last 10 killers I interviewed had an average score of 8.

Acknowledging that the cases on which I am asked to consult might well not be a random sample, these cases do affirm that the accumulation of childhood adversity is linked to criminal violence. Thus, the entire criminal justice system should be built upon a “trauma-informed” approach to understanding and responding to violent behavior. How does this relate to the national agenda? What does it tell us about intervention policies and programs?

There are at least 3 ways in which recognizing the high prevalence of ACEs in the criminal justice system and the

model underlying this approach suggests policy and practice recommendations for the criminal justice system. First, it grounds the discussions of “justice” in a developmental framework, and can move judicial consciousness to a more valid perspective on the concept of “choice.” It is one thing to say a killer has made “bad choices” (which is the foundation for the entire criminal justice system). But do the 10 ACEs items really represent “bad choices” on the part of a child? Do children “choose” to accumulate the risk factors, trauma, and toxic stress assessed by the 10 ACEs questions—for example, to have separated or divorced parents, substance-abusing parents, suicidal parents, parents with mental health problems, or to be sexually or physically abused, to witness domestic violence or be emotionally neglected, or to have a parent or sibling go to prison? The answer is a resounding “no,” and establishing this developmental context before any evaluation of individual culpability should be a requirement at every point in an individual’s path through the criminal justice system.

Second, using the ACEs scores helps to ground the entire courtroom discussion in social reality, and dispel gratuitous comparisons or mythical understandings of what is needed in sentencing. All too often, a prosecutor will attempt to dismiss the relevance of a defendant’s history of adversity and toxic stress with word to the effect of “lots of kids have bad childhoods; what’s wrong with this guy?” But if “this guy” has an ACEs score of 8, 9, or 10 he did not just have a generically “bad childhood.” He had a childhood worse than 999 of 1000 people in America! Indeed, it constitutes a compelling “mitigating factor” in a sentencing decision. In some states (eg, Florida) judicial training materials now include an emphasis on understanding the implications of emergent ACEs research for just this reason.

Third, focusing on the accumulation of childhood adversity grounds the criminal justice system in developmental psychology and public health. The fact that the ACEs score accounts for 65% of the variation in suicide attempts, 55% of the variation in substance abuse, 45% of the variation in depression, and 30% of the variation in violent behavior makes clear the developmental relevance of adversity and toxic stress.³ More importantly, it dictates that the court should adopt a “trauma-informed” perspective in sentencing decisions.

Juveniles particularly must first be given access to trauma-informed therapeutic interventions before any long-term decisions concerning their fate are made.

Sentencing juvenile murderers to life without the possibility of parole is an affront to the state of the art in developmental science. The severity of a juvenile's crime does not correlate necessarily with their prognosis for rehabilitation and transformation in the years that follow adolescence. The immaturity of the adolescent brain and the malleability of adult brains alone is grounds for keeping the possibility of opening a door to release in the adulthood that follows after a murder is committed by a teenager.

The developmental pathways of many adults being re-sentenced under the Miller and Montgomery decisions by the US Supreme Court demonstrated the truth of this assertion. The terrible nature of the crimes these individuals committed as adolescents, in some cases decades ago, belied the fact that they could and in many cases did go on to become exemplary human beings. My preliminary hypothesis about these individuals is that access to therapeutic intervention and a subsequent spiritual transformation in the years after they were incarcerated led to their remarkable "recovery" as they matured. This hypothesis demands systematic research so that the policies and practices of the criminal justice system can be brought into line

with the core principles of a "trauma-informed" response to the developmental effect of childhood accumulation of adversity, trauma, and toxic stress.

ACKNOWLEDGMENT

Financial disclosure: Publication of this article was supported by the Promoting Early and Lifelong Health: From the Challenge of Adverse Childhood Experiences (ACEs) to the Promise of Resilience and Achieving Child Wellbeing project, a partnership between the Child and Adolescent Health Measurement Initiative (CAHMI) and Academy-Health, with support from the Robert Wood Johnson Foundation (#72512).

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