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# SERVING-UP THE ACE: UNDERSTANDING ADVERSE CHILDHOOD EXPERIENCES (“ACE”) IN DEPENDENCY ADOPTION THROUGH THE LENS OF SOCIAL SCIENCE

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Cynthia G. Hawkins\* and Taylor Scribner\*\*

## I. INTRODUCTION

The damage done to us during our childhood cannot be undone, since we cannot change anything in our past. We can, however, change ourselves. We can repair ourselves and gain our lost integrity by choosing to look more closely at the knowledge that is stored inside our bodies and bringing this closer to our awareness. This path, although certainly not easy, is the only route by which we can leave behind the cruel, invisible prison of our childhood. We become free by transforming ourselves from unaware victims of the past into responsible individuals in the present, who are aware of our past and are thus able to live with it.<sup>1</sup>

It is no secret that the foster care system in America is overwhelmed.<sup>2</sup> Children usually enter the foster care system as a result of neglect, abandonment, or abuse.<sup>3</sup> Many of these children spend years or even the rest of their childhood in foster care separated from their parents and often their siblings without ever having a permanent home. There is a light at the end of the tunnel for some of these children when they are adopted.<sup>4</sup> However, adoption is just the beginning of the solution for children in foster care.

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1. ALICE MILLER, *THE DRAMA OF THE GIFTED CHILD* 1–2 (Basic Books 3d ed. 1997).

2. As of September 30, 2018, there were 437,283 children in foster care. Between October 1, 2017 through September 31, 2018, 687,345 children were “served” by the U.S. foster care system. U.S. DEP’T OF HEALTH & HUM. SERV., ADMIN. FOR CHILD. & FAM., *THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM REPORT NO. 26* (2019), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf> [hereinafter AFCARS REPORT NO. 26].

3. *Cf.* FLA. STAT. ANN. § 39.401(1)(b) (West 2020) (Florida statute outlining when a state agent is permitted to take an alleged dependent into custody).

4. Between October 1, 2017 through September 31, 2018, 63,123 children were adopted from the foster care system nationwide. AFCARS REPORT NO. 26, *supra* note 2. *See also The Nation’s Children 2019*, CHILD WELFARE LEAGUE OF AM. 1 (March 2019), <https://www.cwla.org/wp-content/uploads/2019/04/National-2019.pdf> (indicating that approximately 59,430 children were adopted from the foster care system in the prior year).

Almost certainly, every child who enters the foster care system has endured some sort of trauma.<sup>5</sup> It is unrefuted that childhood trauma correlates with mental, physical, and behavioral problems well into adulthood.<sup>6</sup> In 1998, one of the first major studies of the relationship between certain forms of childhood trauma and adult behavior and disease was reported.<sup>7</sup> Dr. Vincent Felitti, then-head of Kaiser Permanente's Department of Preventive Medicine, and his research team studied seven categories of childhood trauma: psychological abuse; physical abuse; sexual abuse; violence against their mother; and living with household members who were either substance abusers, mentally ill or suicidal, or ever imprisoned.<sup>8</sup> Collectively, these traumas are called "Adverse Childhood Experiences" (ACE).

Today ACE refers to ten common forms of trauma that individuals may have experienced as children.<sup>9</sup> To put this issue in perspective, it is currently estimated that 34.8 million children in the United States are affected by ACE, two out of three adults have one or more ACE, and one out of eight adults have four or more ACE.<sup>10</sup> Since the original study, several studies have been published linking ACE to detrimental lifelong effects relating to mental health, chronic health, and behavior patterns.<sup>11</sup> Despite this, the consideration of ACE in family law and child welfare-related cases is a relatively new concept in courts across the country.<sup>12</sup>

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5. *Understanding Trauma*, ADOPTUSKIDS, <https://www.adoptuskids.org/meet-the-children/children-in-foster-care/about-the-children/understanding-trauma> (last visited Jan. 22, 2020). See also *Parenting a Child Who Has Experienced Trauma*, CHILD WELFARE INFO. GATEWAY 2 (NOV. 2014) <https://www.childwelfare.gov/pubPDFs/child-trauma.pdf> [hereinafter *Parenting a Child Who Has Experienced Trauma*]. One in four children in foster care have experienced PTSD. *Id.* at 5.

6. See Vincent J. Felitti, Robert F. Anda, Dale Nodenberg, David F. Williamson, Alison M. Spitz, Valerie Edwards, Mary P. Koss & James S. Marks, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. OF PREVENTIVE MED. 245 (1998) [hereinafter *The ACE Study*].

7. *Id.*

8. *Id.*

9. See Laura Starecheski, *Take the ACE Quiz*, NPR WNYC (Mar. 2, 2015, 2:57 PM), <https://www.npr.org/sections/health-shots/2015/03/02/387007941/take-the-ace-quiz-and-learn-what-it-does-and-doesnt-mean>.

10. *ACEs & Toxic Stress*, CTR. FOR YOUTH WELLNESS, <https://centerforyouthwellness.org/ace-toxic-stress/> (last visited Aug. 10, 2020).

11. See Vincent J. Felitti, *The Relation Between Adverse Childhood Experiences and Adult Health: Turning Gold Into Lead*, 6 THE PERMANENTE J. 44 (2002); Jane Ellen Stevens, *The Adverse Childhood Experiences Study—The Largest, Most Important Public Health Study You Never Heard of—Began in an Obesity Clinic*, ACESTOOHIGH (Oct. 3, 2012), <https://ACEStoohigh.com/2012/10/03/the-adverse-childhood-experiences-study-the-largest-most-important-public-health-study-you-never-heard-of-began-in-an-obesity-clinic>.

12. See, e.g., Ed Finkel, *Trauma-Informed Judges Take Gentler Approach, Administer Problem-Solving Justice to Stop Cycle of ACEs*, ACES TOO HIGH (Sept. 24, 2014), <https://acestoohigh.com/2014/09/24/trauma-informed-judges-take-gentler-approach-administer-problem-solving-justice-to-stop-cycle-of-aces/>.

This Article summarizes the research on ACE and how this research has become integrated into the courtroom, using the Florida court system as an example. In addition, in a novel approach, this article will articulate how ACE research and findings can be utilized in foster care adoption.

## II. BRIEF OVERVIEW OF THE DEPENDENCY SYSTEM

### A. Dependency in General

Children enter the foster care system under many unfortunate home life circumstances including substance abuse, sexual abuse, neglect, abandonment, and other forms of abuse.<sup>13</sup> Every year, the Children's Bureau performs an assessment of the foster care system called the Adoption and Foster Care Analysis Reporting System (AFCARS).<sup>14</sup> As of September 30, 2018, there were 437,283 children in foster care for a mean of 19.7 months and with a mean age of 8.3 years old.<sup>15</sup> Of those children, 116,288 were waiting to be adopted.<sup>16</sup> A total of 61,901 (25% of discharges for the year) exited foster care as a result of adoption.<sup>17</sup> These statistics indicate the number of children affected by the dependency system and the percentage who were adopted in fiscal year 2018.

Children officially enter the dependency system when a judge finds them "dependent," meaning that they are put under the court's supervision out of concern for their safety and well-being.<sup>18</sup> During their time in the system, foster children can be placed in "family-foster homes, relative/kinship care, group homes, emergency shelters, residential facilities, child-care institutions, . . . pre-adoptive homes," and other placements.<sup>19</sup> Foster children remain in the system until they are reunified with their parents, adopted, or age-out.<sup>20</sup> In most

13. See generally *What Is Foster Care?*, THE ANNIE E. CASEY FOUND., <https://www.aecf.org/blog/what-is-foster-care/> (last updated Apr. 14, 2020) (explaining that children enter the foster care system "because they or their families are going through a crisis").

14. See *About AFCARS*, CHILD. BUREAU: AN OFF. OF THE ADMIN. FOR CHILD. & FAM. (July 2, 2012), <https://www.acf.hhs.gov/cb/resource/about-afcars>.

15. AFCARS REPORT No. 26, *supra* note 2, at 1.

16. *Id.*

17. *Id.* at 3.

18. See, e.g., *Court Processes*, OFFICE OF CHILD. AND FAM. IN THE CT., <http://www.ocfcpa.courts.us/parents-and-families/child-dependency-system/court-processes> (last visited July 6, 2020) (describing Pennsylvania's state court processes for parents involved with Children and Youth Services). See also FLA. STAT. ANN. § 39.621(1) (West 2020).

19. CYNTHIA HAWKINS DEBOSE, *MASTERING ADOPTION LAW AND POLICY* 18 (2015).

20. See THE ANNIE E. CASEY FOUND., *supra* note 13.

states, children are not eligible for adoption until there is a termination of parental rights.<sup>21</sup>

When determining whether a child should be reunified with their parent or eligible for adoption, courts apply the “best interest of the child” standard.<sup>22</sup> This standard does not have a specific definition but refers to how courts determine what action is the best for the child as well as who is most suitable to take care of the child.<sup>23</sup> As of 2016, twenty-two states and the District of Columbia have statutes listing specific factors to determine the best interest of the child.<sup>24</sup> Common factors include: the emotional ties a child has to their family, the caregiver’s capacity to create a safe home and meet the child’s basic needs, the mental and physical health needs of the child, and the presence of domestic violence or substance abuse in the home.<sup>25</sup>

Before 1997, the main goal for foster care children was reunification and family preservation.<sup>26</sup> This goal led to hundreds of thousands of children spending years in temporary foster care placements until the termination of parental rights finally occurred.<sup>27</sup> The Adoption and Safe Families Act of 1997 (“ASFA”) enacted by then-President Clinton shifted the focus instead to stability and permanency for children in the foster care system by promoting adoption.<sup>28</sup> As a result of this legislation, more children have become available for adoption from foster care than in the past.<sup>29</sup>

As a reform measure of the child welfare system and in response to the opioid drug crisis, the Family First Prevention Services Act of 2018 (“FFPSA”) (HR 5456) was enacted as part of the Bipartisan Budget Act of 2018 (HR 1892; Pub. L. 115-123).<sup>30</sup> With the goal of reducing the number of children removed from their families, FFPSA allows states to utilize Title IV-E funds for prevention (and intervention) services which allow children who would otherwise risk removal to foster care to remain with their parents or other relatives for up to twelve months.<sup>31</sup> In addition, FFPSA limits the use

21. HAWKINS DEBOSE, *supra* note 19, at 45.

22. *Id.* at 29.

23. *See Determining the Best Interests of the Child*, CHILD WELFARE INFO. GATEWAY 2 (Mar. 2016), [https://www.childwelfare.gov/pubPDFs/best\\_interest.pdf](https://www.childwelfare.gov/pubPDFs/best_interest.pdf).

24. *Id.* at 2.

25. *Id.*

26. *See* HAWKINS DEBOSE, *supra* note 19, at 44–45.

27. *Id.* at 45.

28. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

29. *See* AFCARS REPORT NO. 26, *supra* note 2, at 1 (showing the number of children waiting to be adopted for whom parental rights were terminated increasing steadily between 2014 through 2017).

30. Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64, 232–69 (2018).

31. *Id.* at 244.

of group homes for foster care.<sup>32</sup> However, to date, the FFPSA has not been fully implemented.<sup>33</sup>

### B. Dependency in Florida

In Florida, proceedings involving children are covered under Florida Statute Chapter 39, Proceedings Relating to Children.<sup>34</sup> Under Florida Statute § 39.001, the Florida courts act with the purpose and intent to

[P]rovide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.<sup>35</sup>

Dependency proceedings in Florida start with the Department of Children and Families removing the child from the home and placing them in a temporary “shelter.”<sup>36</sup> Following the “shelter” of the child, proceedings to determine the child’s dependency are initiated by a Department attorney filing a petition with the court.<sup>37</sup> The purpose of the petition is focused on protecting the child rather than punishing the actions of the responsible caregiver.<sup>38</sup>

Upon judicial approval of the petition, the court then devises a case plan.<sup>39</sup> The case plan is created to address (or reflect) the

32. See U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. ON CHILD., YOUTH & FAMS., ACYF-CB-IM-10-02, INFORMATION MEMORANDUM (2018), <https://www.acf.hhs.gov/sites/default/files/cb/im1802.pdf>.

33. See generally U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. ON CHILD., YOUTH & FAMS., ACYF-CB-PI-20-04, PROGRAM INSTRUCTION (2020), <https://www.acf.hhs.gov/sites/default/files/cb/pi2004.pdf> (“providing guidance to agencies . . . on the action required to apply for a one-time Family First Prevention Services Act Transition Grant”); U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. ON CHILD., YOUTH & FAMS., ACYF-CB-PI-1807, PROGRAM INSTRUCTION (2018), <https://www.acf.hhs.gov/sites/default/files/cb/pi1807.pdf> (providing instructions for “changes to the title IV-E plan requirements as a result of the Family First Prevention Services Act . . . and . . . delayed effective dates for title IV-B/E plan requirements.”).

34. See FLA. STAT. ANN. § 39 (West 2020).

35. FLA. STAT. ANN. § 39.001 (West 2020).

36. See *Chapter 39, Florida Statutes*, FLA. DEP’T OF CHILD. AND FAM. at 25, 72–78 (July 1, 2016), <https://www.dcf.state.fl.us/admin/publications/fsp/chapter39.pdf> (defining “shelter” as “a placement with a relative or nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.”).

37. See FLA. STAT. ANN. § 39.501(1) (West 2020).

38. See FLA. STAT. ANN. § 39.501(2) (West 2020).

39. See FLA. DEP’T OF CHILD. AND FAM., *supra* note 36, at 111.

circumstances that brought the child into the foster care system.<sup>40</sup> For example, in a dependency case involving domestic violence, the parents may be required to take a course on domestic violence or tasked with removing the abusive parent out of the household. The case plan expires no later than twelve months after the date the child was initially removed.<sup>41</sup> If the parent does not substantially comply with their case plan, then a petition for termination of parental rights may be filed by the Department of Children and Families or the child's court-appointed guardian.<sup>42</sup>

As mentioned in the previous section, Florida has a statute specifically addressing the “best interest of the child” standard. In a petition for the termination of parental rights hearing, Florida law states that the court will consider factors relating to the best interest of the child including (but not limited to):

- (1) Any suitable permanent custody arrangement with a relative of the child. However, the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights.
- (2) The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child.
- (3) The capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home.
- (4) The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child.
- (5) The love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that

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40. FLA. STAT. ANN. § 39.6011(2)(a) (West 2020).

41. FLA. STAT. ANN. § 39.6011(3)(a) (West 2020).

42. See FLA. STAT. ANN. § 39.802 (West 2020).

would arise from the termination of parental rights and duties.

(6) The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child.

(7) The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties.

(8) The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(9) The depth of the relationship existing between the child and the present custodian.

(10) The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(11) The recommendations for the child provided by the child's guardian ad litem or legal representative.<sup>43</sup>

These considerations ultimately determine whether parental rights will be terminated, and upon the termination, the eligibility of the child for adoption. As will be discussed in subsequent sections herein, children who are placed in the U.S. foster care system (whether subsequently adopted or not) statistically speaking have experienced varying levels of childhood trauma that may well be determinative of their future life-long success.

### III. ADVERSE CHILDHOOD EXPERIENCES (ACE)

#### A. History of ACE

In 1985, Vincent Felitti was working on a project at an obesity clinic.<sup>44</sup> Felitti was astounded when more than half of his participants dropped out, despite the fact that they were losing weight.<sup>45</sup> Seeking a rationale for the subjects' drop-out rate, Felitti conducted follow-up interviews.<sup>46</sup> During one of the interviews, a participant was accidentally asked, "How much did you weigh when you first became

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43. FLA. STAT. ANN. § 39.810 (West 2020).

44. Stevens, *supra* note 11.

45. *Id.*

46. *Id.*



sexually active?” to which the participant responded with “40lbs.”<sup>47</sup> The participant was four years old when her father raped her.<sup>48</sup> This was a turning point for Felitti, and as he questioned more participants, he found that the majority of the 286 drop-out participants interviewed were sexually abused as children.<sup>49</sup> After making these shocking revelations, Felitti teamed up with the Centers for Disease Control and Kaiser Permanente to investigate further. This led the research team to conduct a mega study on the effects of Adverse Childhood Experiences on adults.<sup>50</sup>

The 1998 ACE study used a questionnaire that measured eight-to-ten different childhood traumas among three main categories—namely, abuse, neglect, and household disfunction.<sup>51</sup> The abuse category included physical, psychological, and sexual abuse.<sup>52</sup> The abuse-related traumas were physical and emotional.<sup>53</sup> The household dysfunction category covered the most traumas including mental illness, incarcerated relative, violence of family members, substance abuse, and divorce.<sup>54</sup> Each of the ten traumas was measured through one question on the exam. For example, “Did a parent or other adult in the household often or very often. . . Push, grab, slap, or throw something at you? or Ever hit you so hard that you had marks or were injured?” measured physical abuse.<sup>55</sup> For each question to which the respondent answered “yes,” they were given a point.<sup>56</sup> All of the points received were totaled at the end to create the ACE score ranging from zero-to-ten.<sup>57</sup>

Of the 9,508 participants in the study, 36% reported zero ACE, 26% reported one ACE, 16% reported two ACE, 9.5% reported three ACE, and 12.5% reported four or more ACE.<sup>58</sup> Thus, the responses show that 64% of the sample reported at least one ACE, and 38% reported suffering from multiple ACE. The study also found a strong correlation

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47. *Id.*

48. *Id.*

49. *Id.*

50. *See The ACE Study, supra* note 6.

51. *Id.* at 247–48. *See infra* Appendix A: The ACE Survey.

52. *See The ACE Study, supra* note 6, at 248. Note that the terms “psychological” and “emotional” as related to “abuse” are used interchangeably by the Felitti et al. research teams throughout their various research studies. *Compare id., with* Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology*, 256 EUR. ARCH. PSYCHIATRY CLIN. NEUROSCI. 174, 176 (2006).

53. *The ACE Study, supra* note 6, at 248. Note that the Authors will use general term “neglect” interchangeably with the term “abuse.”

54. *Id.*

55. *Finding Your ACE Score*, NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES (Oct. 24, 2006), <https://www.ncjfcj.org/sites/default/files/Finding%20Your%20ACE%20Score.pdf>.

56. *Id.*

57. *See The ACE Study, supra* note 6, at 246–48.

58. *Id.*

between exposure to ACE and risk factors for chronic health, such as heart disease, cancer, lung disease, and poor self-rated health.<sup>59</sup> In addition, a correlation was found between ACE and engaging in adult health risk behaviors, such as smoking, alcohol or drug abuse, overeating, and risky sexual behavior.<sup>60</sup> Ultimately, the higher the participant's ACE score, the higher their risk for poor health and/or risky behaviors.<sup>61</sup>

The so-called "ACE pyramid" was created following the results of the study. The ACE pyramid demonstrates how Adverse Childhood Experiences (the bottom of the pyramid) could lead to early death (the top of the pyramid).<sup>62</sup> First, the individual experiences ACE, which in turn increases the likelihood of social, emotional, and cognitive impairment(s).<sup>63</sup> As a result of the impairment(s), the individual may adopt health-risk behavior(s) such as smoking, over-eating, and other coping mechanisms.<sup>64</sup> Following from the risky behavior(s) is disease, disability, and social problems which ultimately lead to the top of the pyramid—early death.<sup>65</sup>

The ACE study shed light on what makes the difference between life and death for many people—namely, childhood traumas. Since this study, countless reviews and subsequent studies have found additional implications from ACE.<sup>66</sup>

### B. Post-1998 ACE Studies

The original 1998 study demonstrated that ACE has a connection with health issues later in life, including alcohol misuse, mental health problems, substance abuse, chronic health issues, suicide, depression, sleep deprivation, risky sexual behavior, unwanted pregnancy, low fertility levels, poor dental health, and more.<sup>67</sup> Research has also suggested that individual ACE factors are related. The results indicate that the presence of one ACE increased the likelihood that an individual suffered from others.<sup>68</sup> The following is

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59. *Id.*

60. *Id.*

61. *Id.* at 251–56.

62. *The ACE Study*, *supra* note 6, at 256. *See infra* Appendix B: The ACE Pyramid.

63. *The ACE Study*, *supra* note 6, at 256.

64. *Id.*

65. *Id.*

66. *Got Your ACE Score*, ACES TOO HIGH, <https://ACESStoohigh.com/got-your-ace-score/> (last visited Sept. 13, 2020).

67. *The ACE Study*, *supra* note 6.

68. Maxia Dong, Robert F. Anda, Vincent J. Felitti, Shanta R. Dube, David F. Williamson, Theodore J. Thompson, Clifton M. Loo & Wayne H. Giles, *The Interrelatedness of Multiple Forms*

a review of some (not all) of the post-1998 research findings of the impact of ACE.<sup>69</sup>

### 1. Chronic Health Conditions

One of the largest components of the original ACE study was the correlation between ACE and chronic health conditions. Since the original study, other research has found similar results. One study found that almost 50% of adult patients who suffered from Type 2 diabetes had suffered from four or more ACE.<sup>70</sup> Liver disease and associated health risk behaviors also increased with the more ACE experienced by an individual.<sup>71</sup>

Ischemic heart disease has also been associated with ACE.<sup>72</sup> One study found that an increased risk of lung cancer may be associated with ACE, finding on average those lung cancer patients with six or more ACE lived thirteen years less than those without ACE.<sup>73</sup> Consistent with these other serious diseases, a link has been found between ACE and likelihood of hospitalization and diagnosis of an autoimmune disease.<sup>74</sup> ACE have even been associated with an increased prevalence and risk of headaches.<sup>75</sup>

In addition to the above-listed health problems, ACE also correlates with the health risks listed below.

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*of Childhood Abuse, Neglect, and Household Dysfunction*, 28 CHILD ABUSE & NEGLECT 771, 771 (2004).

69. See, e.g., *Adverse Childhood Experiences Resources*, CTNS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/ACEstudy/journal.html> (Apr. 10, 2020).

70. Laura Lynch, Roberta Waite & Maureen P. Davey, *Adverse Childhood Experiences and Diabetes in Adulthood: Support for a Collaborative Approach to Primary Care*, 35 CONTEMP. FAM. THERAPY 639–55 (2013).

71. Maxia Dong, Shanta R. Dube, Vincent J. Felitti, Wayne H. Giles & Robert F. Anda, *Adverse Childhood Experiences and Self-Reported Liver Disease*, 163 ARCH. INTERN. MED. 1949, 1949 (2003).

72. Maxia Dong, Wayne H. Giles, Vincent J. Felitti, Shanta R. Dube, Janice E. Williams, Daniel P. Chapman & Robert F. Anda, *Insights into the Causal Pathways for Ischemic Heart Disease*, 110 CIRCULATION 1761 (2004).

73. David W. Brown, Robert F. Anda, Vincent J. Felitti, Valerie J. Edwards, Ann Marie Malarcher, Janet B. Croft & Wayne H. Giles, *Adverse Childhood Experiences are Associated with the Risk of Lung Cancer: A Prospective Cohort Study*, BMC PUB. HEALTH, Jan. 19, 2010, at 1.

74. Shanta R. Dube, DeLisa Fairweather, William S. Pearson, Vincent J. Felitti, Robert F. Anda & Janet B. Croft, *Cumulative Childhood Stress and Autoimmune Diseases in Adults*, 71 PSYCHOSOMATIC MED. 243, 246–47, 249 (2009).

75. Robert Anda, Gretchen Tietjen, Elliott Schulman, Vincent Felitti & Janet Croft, *Adverse Childhood Experiences and Frequent Headaches in Adults*, 50 HEADACHE 1473, 1473 (2010).

### a. Alcohol Abuse

In general, individuals who have experienced ACE are more likely than those who have not to abuse alcohol.<sup>76</sup> A study found individuals who experienced particular ACE were more likely to use drinking to cope and more likely to engage in drinking earlier than those without ACE.<sup>77</sup> Increased risk of adult alcohol abuse and depression also correlates with increased ACE exposure.<sup>78</sup>

### b. Substance Abuse

In one study, each ACE increased the likelihood of early drug abuse two- to four-fold. The study also found a strong relationship between ACE and drug use, drug addiction, and parenteral drug use.<sup>79</sup>

### c. Smoking/Tobacco Use

One study found individuals with an ACE score of five or more were more likely to be current smokers and more likely to have smoked in their lifetime, compared to individuals with an ACE score of zero.<sup>80</sup> In another study, individuals who reported five or more ACE were at a substantially higher risk of early smoking, ever smoking, current smoking, and heavy smoking.<sup>81</sup>

### d. Mental Health Disorders

Studies have suggested a strong relationship between ACE and the probability of lifetime depression and recent depressive

76. See Shanta R. Dube, Robert F. Anda, Vincent J. Felitti, Valerie J. Edwards & Janet B. Croft, *Adverse Childhood Experiences and Personal Alcohol Abuse as an Adult*, 27 ADDICTIVE BEHAVS. 713, 713 (2002).

77. Emily F. Rothman, Erika M. Edwards, Timothy Heeren & Ralph W. Hingson, *Adverse Childhood Experiences Predict Earlier Age of Drinking Onset: Results from a Representative US Sample of Current or Former Drinkers*, 122 PEDIATRICS 298 (2008).

78. See Robert F. Anda, Charles L. Whitefield, Vincent J. Felitti, Daniel Chapman, Valerie J. Edwards, Shanta R. Dube & David F. Williamson, *Adverse Childhood Experiences, Alcoholic Parents, and Later Risk of Alcoholism and Depression*, 53 PSYCHIATRIC SERVS. 1001, 1001 (2002).

79. Shanta R. Dube, Vincent J. Felitti, Maxia Dong, Daniel P. Chapman, Wayne H. Giles & Robert F. Anda, *Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study*, 111 PEDIATRICS 564, 564 (2003).

80. Earl S. Ford, Robert F. Anda, Valerie J. Edwards, Geraldine S. Perry, Guixiang Zhao, Chaoyang Li & Janet B. Croft, *Adverse Childhood Experiences and Smoking Status in Five States*, PREVENTIVE MED., June 25, 2011, at 188, 188.

81. Robert F. Anda, Janet B. Croft, Vincent J. Felitti, Dale Nordenberg, Wayne H. Giles, David F. Williamson & Gary A. Giovino, *Adverse Childhood Experiences and Smoking During Adolescence and Adulthood*, 282 J. OF THE AM. MED. ASS'N 1652, 1652 (1999).

disorders.<sup>82</sup> This finding is not surprising considering the connection of ACE to depression. In addition, suicide has been linked to ACE, with one study finding that ACE in any category made a person's risk of suicide move from two- to five-fold.<sup>83</sup> A history of hallucinations is also indicative of a history of ACE.<sup>84</sup>

#### e. *Domestic Violence*

Research has shown that witnessing domestic violence as a child can predict physical violence (such as hitting) and psychological violence (such as cursing) in adulthood.<sup>85</sup> Additionally, being a victim of domestic violence can predict physical violence such as strangling and cursing to the extent that it results in psychological (as opposed to physical) violence or harm.<sup>86</sup> A similar study found a statistically significant relationship between the number of childhood violent experiences and intimate partner violence in the future.<sup>87</sup> When all three forms of violent childhood experiences in the study were present in an individual, the risk of being a victim or perpetrator of domestic violence increased 3.5 fold for women and 3.8 fold for men.<sup>88</sup> Another study found that men witnessing domestic violence as children predicts negative reactions to future relationships such as "cessation of relationship" and "reprisal."<sup>89</sup>

#### f. *Sexual Behavior*

Women who have experienced ACE reported more risky sexual behaviors such as intercourse before age fifteen, sex with thirty partners or more, and perceiving themselves at a higher risk for

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82. Daniel P. Chapman, Charles L. Whitfield, Vincent J. Felitti, Shanta R. Dube, Valerie J. Edwards & Robert F. Anda, *Adverse Childhood Experiences and the Risk of Depressive Disorders in Adulthood*, 82 J. OF AFFECTIVE DISORDERS 217, 217 (2004).

83. Shanta R. Dube, Robert F. Anda, Vincent J. Felitti, Daniel P. Chapman, David F. Williamson & Wayne H. Giles, *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span*, 286 J. OF THE AM. MED. ASS'N 3089, 3093 (2001).

84. Charles L. Whitfield, Shanta R. Dube, Vincent J. Felitti & Robert F. Anda, *Adverse Childhood Experiences and Hallucinations*, 29 CHILD ABUSE & NEGLECT 797, 801-06 (2005).

85. Said Pournaghash-Tehrani & Zahra Feizabadi, *Predictability of Physical and Psychological Violence by Early Adverse Childhood Experiences*, 24 J. OF FAM. VIOLENCE 417, 419 (2009).

86. *Id.*

87. Charles L. Whitfield, Robert F. Anda, Shanta R. Dube & Vincent J. Felitti, *Violent Childhood Experiences and the Risk of Intimate Partner Violence in Adults*, 18 J. INTERPERSONAL VIOLENCE 166, 172-76 (2003).

88. *Id.*

89. Said Pournaghash-Tehrani, *The Role of Beliefs, Attitudes and Adverse Childhood Experiences in Predicting Men's Reactions Towards Their Spouses' Violence*, 26 J. FAM. VIOLENCE 93, 95 (2010).

HIV/AIDS.<sup>90</sup> The likelihood of experiencing sexual violence as an adult has also been shown to increase with ACE score.<sup>91</sup>

#### g. Incarceration

In a study of incarcerated males, it was found that those who experienced ACE reported more depressive symptoms and a lower quality of life than incarcerated males without ACE.<sup>92</sup>

#### h. Fertility/Pregnancy

Studies have shown the trauma one experiences as a child can affect women when they try to have children of their own. A study in 2015 found a link between ACE and menstrual disruptions and fertility cycles.<sup>93</sup> The study found that as the number of ACE increased, the risk for fertility difficulties and an abnormal absence of menstruation increased.<sup>94</sup> Additionally, the probability of getting pregnant in a single menstrual cycle decreased.<sup>95</sup> Another study found that for each additional ACE, birth weight decreased by 13.79 grams and gestational age by 0.042 weeks.<sup>96</sup> Similarly, a separate study found a strong relationship between pregnancy and preterm birth when two or more ACE were present.<sup>97</sup> A different study found as one's ACE score increased, the likelihood of teen pregnancy and

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90. Susan D. Hillis, Robert F. Anda, Vincent J. Felitti & Polly A. Marchbanks, *Adverse Childhood Experiences and Sexual Risk Behaviors in Women: A Retrospective Cohort Study*, 33 *FAM. PLAN. PERSPS.* 206, 208–09 (2001).

91. Teresa Gil, *Adverse Childhood Experiences: The Impact on Re-Victimization*, *PSYCH. TODAY* (Jan. 29, 2020), <https://www.psychologytoday.com/us/blog/breaking-the-silence/202001/adverse-childhood-experiences>. See also Sujata Desai, Ileana Arias, Martie P. Thompson & Kathleen C. Basile, *Childhood Victimization and Subsequent Adult Revictimization Assessed in a Nationally Representative Sample of Women and Men*, 17 *VIOLENCE AND VICTIMS* 639, 640–41, 649 (2002) (finding that “child abuse victims are often at higher risk for adult physical or sexual victimization.”).

92. Kimberly A. Skarupski, Jeanine M. Parisi, Roland Thorpe, Elizabeth Tanner & Deborah Gross, *The Association of Adverse Childhood Experiences with Mid-Life Depressive Symptoms and Quality of Life Among Incarcerated Males: Exploring Multiple Mediation*, 20 *AGING & MENTAL HEALTH* 655, 659 (2015).

93. Marni B. Jacobs, Renee D. Boynton-Jarrett & Emily W. Harville, *Adverse Childhood Event Experiences, Fertility Difficulties and Menstrual Cycle Characteristics*, 36 *J. PSYCHOSOMATIC OBSTETRICS & GYNECOLOGY* 46, 46 (2015).

94. *Id.* at 50.

95. *Id.* at 51.

96. Megan V. Smith, Nathan Gotman & Kimberly A. Yonkers, *Early Childhood Adversity and Pregnancy Outcomes*, 20 *MATERNAL & CHILD HEALTH J.* 790, 794–95 (2016).

97. Inge Christiaens, Kathleen Hegadoren & David M. Olson, *Adverse Childhood Experiences are Associated with Spontaneous Preterm Birth: A Case–Control Study*, *BMC MED.*, June 11, 2015, at 1, 4–9.

fetal death increased as well.<sup>98</sup> Males with ACE are also more likely to impregnate a teenager.<sup>99</sup>

#### i. *Premature Death*

Studies have found ACE to be associated with an increased risk of premature death. In one study conducted by Felitti, individuals who experienced six or more ACE died nearly twenty years earlier than individuals who had an ACE score of zero.<sup>100</sup> This is not surprising based on the risky health behaviors that have been linked to ACE (detailed herein).

#### j. *Group Implications*

The continued ACE research has produced studies finding that ACE impacts different groups in different ways. The studies found different trends among those belonging to the same race, ethnicity, sexual preferences, and/or sex. For example, one study found lesbian, gay, and bisexual individuals have a higher prevalence of ACE than heterosexuals.<sup>101</sup> Another study found that childhood neglect and household dysfunction in American Indian populations were positively associated with depressive symptoms.<sup>102</sup>

#### k. *Toxic Stress*

ACE involve stressful and/or traumatic events.<sup>103</sup> In general, stress and stressors are a fact of life—for both children and adults.<sup>104</sup>

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98. Susan D. Hillis, Robert F. Anda, Shanta R. Dube, Vincent J. Felitti, Polly A. Marchbanks & James S. Marks, *The Association Between Adverse Childhood Experiences and Adolescent Pregnancy, Long-Term Psychosocial Consequences, and Fetal Death*, 113 *PEDIATRICS* 320, 322–24 (2004).

99. Robert F. Anda, Daniel P. Chapman, Vincent J. Felitti, Valerie Edwards, David F. Williamson, Janet B. Croft & Wayne H. Giles, *Adverse Childhood Experiences and Risk of Paternity in Teen Pregnancy*, 100 *OBSTETRICS & GYNECOLOGY* 37, 40–41 (2002).

100. David W. Brown, Robert F. Anda, Henning Tiemeier, Vincent J. Felitti, Valerie J. Edwards, Janet B. Croft & Wayne H. Giles, *Adverse Childhood Experiences and the Risk of Premature Mortality*, 37 *AM. J. PREVENTIVE MED.* 389, 393 (2009).

101. Anna Austin, Harry Herrick & Scott Proescholdbell, *Adverse Childhood Experiences Related to Poor Adult Health Among Lesbian, Gay, and Bisexual Individuals*, 106 *AM. J. PUB. HEALTH* 314, 315 (2016).

102. Soonhee Roh, Catherine E. Burnette, Kyoung Hag Lee, Yeon-Shim Lee, Scott D. Easton & Michael J. Lawler, *Risk and Protective Factors for Depressive Symptoms Among American Indian Older Adults: Adverse Childhood Experiences and Social Support*, 19 *AGING & MENTAL HEALTH* 371, 375 (2014).

103. See Part III *supra*.

104. Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 *CHILDREN* 390, 390–91 (2014).

Toxic stress, however, should not be. Children demonstrate toxic stress responses when they experience “severe, prolonged, and/or frequent stress,” such as that caused by “child abuse, caregiver substance abuse, emotional and physical neglect, caregiver mental illness, violence, and living in poverty.”<sup>105</sup> Toxic stress responses can increase “the risk of stress-related disease and cognitive impairment.”<sup>106</sup> Another definition of childhood toxic stress is “severe, prolonged, or repetitive adversity with a lack of the necessary nurturance or support of a caregiver to prevent an abnormal stress response.”<sup>107</sup> The issue of toxic stress is pervasive— “[u]p to 90% of children will experience at least one traumatic event [or ACE], which can lead to toxic stress.”<sup>108</sup>

## 2. Resilience

Having reviewed the impact of ACE, a discussion regarding how adversely-affected individuals can overcome their ACE is relevant.

Research has found the answer is resilience. Resilience is the ability to return to being healthy and hopeful after enduring trauma.<sup>109</sup> Research shows that the impact of ACE can be reduced by parents, teachers, and caregivers when they provide a safe environment and teach ACE survivors how to be resilient.<sup>110</sup>

ACE are serious childhood traumas that can result in toxic stress, which may lead to long term health and behavioral problems.<sup>111</sup> Stress can be categorized into three categories: (1) normal or “positive” stress, (2) tolerable stress, and (3) toxic stress.<sup>112</sup> Normal stress is what people deal with day-to-day, such as being stressed for an exam. Tolerable stress is defined as adversity that can be managed with the help of supportive adults. Toxic stress, however, is the result

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105. Amanda Perkins, *Toxic Stress in Children: Impact Over a Lifetime*, NURSING MADE INCREDIBLY EASY, March/April 2019, at 43, 45.

106. *Id.*

107. Franke, *supra* note 104, at 391.

108. Perkins, *supra* note 105, at 43. *See infra* Appendix C1, C2, and C3 (“Toxic Stress”).

109. *Stress and Early Brain Growth: Understanding Adverse Childhood Experiences (ACEs)*, MENOMEE INDIAN TRIBE OF WISCONSIN, <https://www.menominee-nsn.gov/CommunityPages/FosteringFutures/Documents/ACESHandoutForParents.pdf> (last visited Sept. 5, 2020).

110. *Id.*

111. *Id.*

112. *See* Franke, *supra* note 104, at 391–92; Perkins, *supra* note 105, at 45. *See also*, Judge Lynn Tepper, *Seeing Individuals Through a Trauma Lens: Getting from ACEs to Trauma-Informed Justice*, FLA. CTS. 6–7 (Mar. 30, 2016), <http://origin.flcourts.org/core/fileparse.php/531/urlt/SeeingIndividualsThroughATraumaLens.pdf>; Lisa S. Negrini, *Trauma Across the Lifespan*, UNIV. OF S. FLA. ST. PETERSBURG 7, 12–13 (Mar. 24, 2016), <https://docplayer.net/40575736-Trauma-across-the-lifespan.html>.



of tolerable stress without a buffer of protection from a supportive adult.<sup>113</sup> Children experiencing ACE are often experiencing toxic stress. The detrimental effects of ACE can be managed, however, if adults intervene and make the stress tolerable.

One study found that the presence of the following “resiliency factors” were linked to better outcomes for children: being treated fairly, having supportive childhood friends, being given the opportunity to use one’s abilities, and having a trusted adult/mentor.<sup>114</sup> The same study found that, for those with four ACE or more who also had the presence of all resilience factors, the prevalence of poor childhood health reduced from 59.8% to 21.3%.<sup>115</sup>

A major factor of resilience is trusted adult support.<sup>116</sup> One study found adult prevalence of poor diet, daily smoking, and heavier alcohol consumption increased with the number of ACE, but access to an always-available adult during childhood decreased this prevalence.<sup>117</sup> These studies show the interrelatedness of ACE and resilience by demonstrating the ability of resilience to mitigate the damage of ACE.

Trusted adults such as parents, caregivers, teachers, and judges can help children be resilient by (1) gaining an understanding of ACE, (2) creating physically and mentally safe environments, (3) helping children identify and manage their feelings and emotions, and (4) creating safe physical and emotional environments at home, school, and in the community.<sup>118</sup> Resiliency for children includes having resilient parents who have healthy relationships and can problem solve, building attachments and nurturing relationships, building social connections, having basic needs met, learning about parenting and child development, and building social and emotional skills.<sup>119</sup> Resiliency now has its own questionnaire modeled after ACE and assesses fourteen protective factors.<sup>120</sup> For each protective factor,

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113. Franke, *supra* note 104, at 392. *See infra* Appendix C1, C2, and C3 (Toxic Stress).

114. Mark A. Bellis, Karen Hughes, Kat Ford, Katie A. Hardcastle, Catherine A. Sharp, Sara Wood, Lucia Homolova & Alisha Davies, *Adverse Childhood Experiences and Sources of Resilience: A Retrospective Study of Their Combined Relationships with Child Health and Educational Attendance*, BMC PUB. HEALTH, June 26, 2018, at 1, 6.

115. *Id.* at 7.

116. MENOMEE INDIAN TRIBE OF WISCONSIN, *supra* note 109.

117. Mark A. Bellis, Katie Hardcastle, Kat Ford, Karen Hughes, Katheryn Ashton, Zara Quigg & Nadia Butler, *Does Continuous Trusted Adult Support in Childhood Impart Life-Course Resilience Against Adverse Childhood Experiences—A Retrospective Study on Adult Health-Harming Behaviours and Mental Well-Being*, BMC PSYCHIATRY, Mar. 9, 2017, at 7.

118. MENOMEE INDIAN TRIBE OF WISCONSIN, *supra* note 109.

119. *Id.*

120. *Resilience Questionnaire*, TRAUMA INFORMED CARE PROJECT, [http://www.traumainformedcareproject.org/resources/RESILIENCE\\_Questionnaire.pdf](http://www.traumainformedcareproject.org/resources/RESILIENCE_Questionnaire.pdf) (last updated Feb. 2013).

the effect of an ACE is weakened.<sup>121</sup> By combining and applying the research on ACE and resiliency, children will achieve better outcomes towards overcoming their childhood traumas and living healthy adult lives.

#### IV. INCORPORATING ADVERSE CHILDHOOD EXPERIENCES INTO THE LAW & THE COURTROOM

##### A. Background: ACE & the Law

Although ACE research has many important societal implications and is applicable to various aspects of life, it is minimally implemented into relevant settings, including the courtroom. The first article applying ACE research to the court system was published in 2008 and documented an Ohio case study (ten years after the 1998 ACE Study).<sup>122</sup>

For centuries, U.S. courts have taken the unilateral approach of punishing individuals for bad behavior.<sup>123</sup> Our instinctual societal view is that a wrong act necessarily begets punishment. However, ACE studies have shown that these bad behaviors may often be attributed to a trauma that occurred during early childhood. It is clear that children who experience trauma do not necessarily “get over it” or go on to live a healthy adult life. For these individuals, punishment is ineffective as it leaves the true root of the problem unaddressed. Thus, it is important to ensure that the courts in general and judges specifically are addressing these traumas when dealing with children in their court rooms.

Stark County Family Court in Cannon, Ohio was no different from other courts until they began educating themselves on trauma-informed court practices.<sup>124</sup> They incorporated their research—which included reviewing the ACE studies discussed above—into their work and published case studies on how they implemented their research into the courtroom.<sup>125</sup> In each of the discussed cases, rather than taking the traditional authoritative punishment approach, the judge took an alternative approach. For example, one

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121. *Id.*

122. Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response*, 59 NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES 21, 23–24 (2008).

123. See Benjamin L. Apt, *Do We Know How to Punish?*, 19 NEW CRIM. L. REV. 437 (2016); Sara Mayeux, *The Idea of “The Criminal Justice System,”* 45 AM. J. CRIM. L. 55 (2018).

124. Howard & Tener, *supra* note 122, at 21.

125. *Id.* at 22.

case involved a 17-year-old girl charged with domestic violence for throwing her phone at her mother.<sup>126</sup> The judge decided to give the typical “bratty teenager speech.”<sup>127</sup> A few days later on Christmas Eve, the girl refused to go home from the detention center and that was when the judge realized something was not right.<sup>128</sup> When probed, it was uncovered that the girl suffered from multiple ACE, including being raped by a relative and later date raped.<sup>129</sup> Judges Howard and Tener remarked that:

[B]ecause of our tendency to focus on accountability, we almost limited our attention to only the behavioral symptoms of much deeper problems. As hearing officers, we were on the verge of imposing consequences for behavior without inquiring about the factors underlying the behavior. Had we only made speeches, or changed placements, or incarcerated these children, we would never have given them the help they needed.<sup>130</sup>

After further reading the research on ACE, the Stark County judges were convinced that they needed be more educated about trauma to address it comprehensively through juvenile justice, child protective services, schools and mental health providers.<sup>131</sup>

The judges decided to make a positive intervention in the community. They arranged a presentation on trauma and post-traumatic stress for mental health professionals, social workers, school officials, criminal justice officials, and community activists.<sup>132</sup> As a result of the presentation, the Traumatized Child Task Force was formed.<sup>133</sup> The Task Force planned an all-day conference for the community and expected about 200 attendees.<sup>134</sup> However, the community outpouring of interest about the issue brought a total of 500 attendees.<sup>135</sup> Their project demonstrated the importance of the issue to the community as a whole.

Other courts have begun to understand the importance of ACE in the courtroom. The aptly-named “Trauma-Informed Court” has become a rising trend. The following subsections will address the

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126. *Id.* at 23–24

127. *Id.*

128. *Id.* at 23.

129. *Id.* at 23–24

130. Howard & Tener, *supra* note 122, at 24.

131. *Id.* at 29.

132. *Id.* at 30.

133. *Id.*

134. *Id.*

135. *Id.*

Trauma-Informed Court in Florida and provide insight from two judges in Florida's Sixth Judicial Circuit (serving Pasco and Pinellas Counties) using this technique in their courtrooms.

### B. The Trauma-Informed Court

Although most judges in the United States are unfamiliar with the ACE studies, this is beginning to change as a result of educational programs supporting the trauma-informed court model.<sup>136</sup> Trauma-informed law practices view the legal system vis-à-vis those with history of trauma by recognizing and understanding how pivotal childhood trauma has been in the life of an individual.<sup>137</sup> As a result, trauma-informed judges are: (1) modifying the court system to be safer and more comfortable for children who suffer from trauma related to ACE; (2) recognizing trauma is intergenerational; and (3) taking a solutions-oriented approach in the courtroom, given the likelihood that traditional approaches further traumatize ACE victims.<sup>138</sup>

In response, the Florida Courts have created a trauma toolkit including their "Big 10" approaches to a trauma-informed court.<sup>139</sup> The Big 10 include: (1) understanding trauma and child development; (2) presuming trauma in all parties involved in the case; (3) coordinating all cases involving one family; (4) setting an expectation for trauma and child development information; (5) reading the case file with a trauma lens; (6) ordering screening, assessment, and treatment to address trauma; (7) holding all parties accountable; (8) becoming a convener; (9) continuing to monitor the data, and (10) taking care of oneself as the trauma of others can in turn cause trauma for judges and attorneys.<sup>140</sup>

Even before the entrance of ACE into the courtroom, Florida courts had underlying policies supporting a trauma-informed court—namely, therapeutic justice. The idea of therapeutic justice comes from the 2001 Report of the Family Steering Committee.<sup>141</sup> The report defines therapeutic justice as:

136. Finkel, *supra* note 12.

137. Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, 24 CLINICAL L. REV. 201, 232 (2018).

138. Finkel, *supra* note 12.

139. *Family Court Tool Kit: Trauma and Child Development Court Implications*, FLORIDA COURTS, <https://www.flcourts.org/Resources-Services/Court-Improvement/Family-Courts/Family-Court-Basics/Family-Court-Tool-Kit-Trauma-and-Child-Development/Court-Implications> (last visited Sept. 5, 2020) [hereinafter *Family Court Tool Kit*].

140. *Id.*

141. See *In re Report of Fam. Ct. Steering Comm.*, 794 So.2d 518, 519 (Fla. 2001) ("Through this petition, the Committee asks this Court to adopt its recommendations for a

[A] process that attempts to address the family’s interrelated legal and nonlegal problems to produce a result that improves the family’s functioning. The process should empower families through skills development, assist them to resolve their own disputes, provide access to appropriate services, and offer a variety of dispute resolution forums where the family can resolve problems without additional emotional trauma.<sup>142</sup>

The trauma-informed court model moves towards achieving that goal by making court less intimidating and more oriented towards problem solving while being aware of the implications of trauma.

Since the development of the trauma-informed court, multiple resources are available to judges and attorneys to help them work with parties in these delicate situations.<sup>143</sup> For example, a judge’s and/or attorney’s tone of voice can serve as a trigger for children and adults who have endured one or more ACE. A trauma-informed tone is key.<sup>144</sup> The following types of phrases are recommended:

Sometimes bad things happen to children when they’re younger. Those are crimes. That shouldn’t have happened. It’s not your fault. There is nothing you could have done to stop it. You deserve to be happy. You can heal from bad things in the past. I can get you someone to talk to who could help. Do you think that might be helpful?<sup>145</sup>

The National Child Traumatic Stress Network has created “bench cards” for judges outlining trauma-informed questions, past events that may indicate trauma, trauma considerations when deciding

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model family court for Florida. These recommendations represent several years of work by the Committee members, who have given their unanimous support and approval to the model family court proposal.”).

142. *Id.* at 522.

143. See generally *Family Court Tool Kit*, *supra* note 139; *Trauma Lens Exercise*, TRAUMA INFORMED OREGON, <https://traumainformedoregon.org/wp-content/uploads/2016/01/Trauma-Lens-Exercise.pdf> (last visited July 12, 2020).

144. *Trauma-Informed Justice (March 2017)*, FLA. CTS., <https://www.flcourts.org/content/download/216162/1962918/17-Trauma-Informed-Justice-2017.pdf> (last visited July 12, 2020).

145. *Trauma-Responsive Practices: Attorneys*, FLA. CTS., <https://www.flcourts.org/content/download/430678/4676920/practical-trauma-tips-for-attorneys.pdf> (last visited Sept. 13, 2020). See also *Communicating in a Trauma-Informed Tone and Manner*, FLA. CTS., <https://www.flcourts.org/content/download/215862/1961118/Quick-refresher-for-trauma-informed-communication.pdf> (last visited Sept. 27, 2020).

where a child will live, and information on trauma assessments.<sup>146</sup> Additionally, there are lists available for judges detailing the “red flags of trauma,” demonstrating how trauma/ACE “red flags” can appear in various aspects of someone’s life including case circumstances, living circumstances, status (“runaway, jail, prison, mental health or substance abuse facility”), reported hotline history, unfounded reports, school history, mental health history, multi-sexual partners, appearance and emotion, drug use, and men with significant attachments to dogs.<sup>147</sup>

These tools foster open and clear communication in the courtroom which in turn allow the judge to identify the underlying ACE—the ultimate root of the issue.

### 1. Insights from ACE-Informed Judges

To better understand how ACE applies in the courtroom, co-author Taylor Scribner contacted two Florida Sixth Judicial Circuit judges who have implemented ACE into their everyday courtroom practices: Judge Lynn Tepper (Pasco County) and Judge Jack Helinger (Pinellas County).

#### a. Judge Lynn Tepper (Retired)

Judge Lynn Tepper (Pasco County) is one of the leading advocates for the integration of ACE into Florida courts and all over the country.<sup>148</sup> Judge Tepper was elected to the bench in 1988. Judge Tepper recently retired from Florida’s Sixth Judicial Circuit, where she presided over family court cases.<sup>149</sup> She heard about ACE in 2011 from Dr. Mimi Graham (Florida State University, Early Childhood Center) while they were co-teaching a national program on “Parenting Time” for dependent children.<sup>150</sup> Since learning about ACE, Judge Tepper has integrated this knowledge into her courtroom

146. *NCTSN Bench Cards for the Trauma Informed Judge*, THE NAT’L CHILD TRAUMATIC STRESS NETWORK (2013), <https://www.nctsn.org/resources/nctsn-bench-cards-trauma-informed-judge>.

147. See Judge Lynn Tepper, *Red Flags of Trauma/ACEs*, FLA. CTS., [https://www.flcourts.org/content/download/216233/file/Judicial\\_Toolkit\\_Judge\\_Tepper\\_RED\\_FLAGS\\_OF\\_TRAUMA.pdf](https://www.flcourts.org/content/download/216233/file/Judicial_Toolkit_Judge_Tepper_RED_FLAGS_OF_TRAUMA.pdf) (last visited Sept. 5, 2020).

148. See Judge Lynn Tepper, *Turning Gold into Lead: Understanding the Role of ACEs to Our Work as Judges* (Nov. 16, 2018), <https://www.acesconnection.com/blog/turning-gold-into-lead-understanding-the-role-of-aces-to-our-work>.

149. *Lynn Tepper*, BALLOTPEdia, [https://ballotpedia.org/Lynn\\_Tepper](https://ballotpedia.org/Lynn_Tepper) (last visited Sept. 5, 2020).

150. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018).

by: (1) creating a trauma-responsive environment both inside and outside her courtroom; (2) focusing on relationships; and (3) ordering evidence-based, trauma-informed assessments and counseling.<sup>151</sup>

When creating a trauma-responsive environment, Judge Tepper looks to all relevant aspects and indicia, from the staff to the physical appearance of her courtroom.<sup>152</sup> She makes sure all parties in her courtroom are treated with respect and kindness while reducing fear by assuring their physical and emotional safety in court.<sup>153</sup> She attunes herself to the parties' past to avoid re-traumatization and makes sure others do not trigger undesired responses or reactions.<sup>154</sup> Her courtroom is very family friendly, filled with stuffed animals, books, and healthy snacks to give to children.<sup>155</sup> The focus of Judge Tepper's courtroom is on "what happened to the traumatized party" as opposed to "what they did wrong."<sup>156</sup>

Judge Tepper also focuses on the current and future relationships between the parties for all cases involving a particular family. This Unified Family Court format ensures consistency and avoids unnecessary court appearances. When dealing with families, Judge Tepper strives to be transparent, consistent, clear, and an active listener. These communication goals build trust and encourage candor.<sup>157</sup> To achieve additional case-related accomplishments, Judge Tepper takes a positive approach by commending accomplishments and problem-solving efforts of the parties.<sup>158</sup> Lastly, Judge Tepper uses only evidence-based, trauma-informed assessments. She requires counseling by properly credentialed experts.<sup>159</sup> Judge Tepper regularly checks in on parties to ensure they are making reasonable efforts to comply with her orders, modifying court orders where necessary.<sup>160</sup> As stated by Judge Tepper, the key is to inspire hope.<sup>161</sup>

As a result of her implementation of ACE into her courtroom, Judge Tepper has observed that parties, attorneys, and staff are significantly

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151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

less stressed. Staff members and attorneys appear more satisfied with their jobs, and parties appear to be more responsive, relaxed, and engaged, openly discussing their struggles and accomplishments.<sup>162</sup> She finds that parents are truly changing the path of and for their children by embracing the trauma-informed court.<sup>163</sup>

When asked to recall an example of how implementing ACE understanding had helped a case, she replied:

Just this week, a mother who had lost [seven] prior children to ‘the system’ in another jurisdiction, was reunified with her baby. She had been receiving intensive trauma-informed services, all collaborated to assist her in being able to access all services and truly embrace and apply them to her parenting. As a result, her child is thriving and has a healthy attachment to her mother. She told me that if she had been in another courtroom, she would never had [sic] regained custody or learned how to meet the needs of her daughter.<sup>164</sup>

Since using a trauma-informed lens, Judge Tepper has authored many of the materials now used by the Florida Courts for trauma-informed education.<sup>165</sup> Judge Tepper’s insights show the power of using a trauma-informed court system to change lives and make the juvenile system more effective overall.

#### b. Judge Jack Helinger

Co-author Taylor Scribner also interviewed Judge Jack Helinger (Pinellas County), the Family Law Administrative Judge of the Sixth Judicial Circuit of Florida. Judge Helinger has served as a family law judge for ten years. He primarily handles divorce cases (all aspects), child custody and support, the issuance of protective injunctions for domestic violence, and paternity cases.<sup>166</sup> “The longer I have spent in family law, the more I have realized how important it is to be aware of the psychology of people. If we do not understand the root of the problem, the ability to fix it is greatly diminished,” stated Judge

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162. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018).

163. *Id.*

164. *Id.*

165. See *Family Court Tool Kit*, *supra* note 139.

166. Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).



Helinger.<sup>167</sup> When Judge Helinger learned about ACE, he immediately understood its relevance to adult psychology and behavior.<sup>168</sup>

Judge Helinger has since tried to recognize ACE issues in his court and works to stop or prevent parental adverse behavior by giving parents the tools to succeed.<sup>169</sup> He has found that the majority of people—if given the tools to do so—will act responsibly by putting their child’s interests first above their own.<sup>170</sup>

Judge Helinger compared using ACE in the courtroom to being a firefighter.<sup>171</sup> First, the firefighter must identify the root of the fire, just as the judge must first identify the root of the problem.<sup>172</sup> Second, steps must be taken to put out the fire.<sup>173</sup> Third, the firefighter must make sure the fire does not reoccur.<sup>174</sup> For example, once a substance abusing parent is “clean,” a judge may order continuous treatment or support groups to ensure the parent remains healthy.<sup>175</sup> Finally, the firefighter must help with the damage from the fire.<sup>176</sup> In this case, the judge works to help mitigate the effects of the ACE on the affected party.<sup>177</sup>

Seeing the beneficial effects of applying ACE in his courtroom, Judge Helinger has advocated for increased ACE understanding by disseminating information from his experiences to the community. In 2016, in his capacity as the Family Law Administrative Judge for the Sixth Judicial Circuit, Judge Helinger arranged a training called “Adverse Childhood Experiences: Recognized and Addressed in Family Court.”<sup>178</sup> Judge Helinger closed the Circuit for a day to make sure the entire family law division attended the event along with judges, general magistrates, child support hearing officers, family law attorneys, members of the mental health and medical community, and others. The conference provided general training on ACE and resiliency as well as specific resources for judges, attorneys, and

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167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *See Adverse Childhood Experiences: Recognized and Addressed in Family Court (Save the Date)*, USFSP FAM. STUDY CTR., <https://nextgenerationdivorce.wildapricot.org/resources/Documents/Family%20Law%20Division%20Training-Save%20The%20Date!.pdf>; “Adverse Childhood Experiences: Recognized and Addressed in Family Court” Conference Materials from USFSP Fam. Study Ctr. and The 6th Cir. Fam. Law Div. to Conference Attendees (Sept. 16, 2016) (on file with author).

parents/caregivers.<sup>179</sup> In 2018, Judge Helinger spearheaded a follow-up program entitled “The Pair of ACE: Adverse Childhood Experiences and Adverse Community Environments.”<sup>180</sup> This program disseminated information about ACE and devised ACE-related problem solving for the community at large.<sup>181</sup>

Although neither Judge Tepper nor Judge Helinger specifically deal with dependency adoption, both saw great potential in applying ACE into this specific field of family law. Both judges agreed foster homes, prospective adoptive parents, and the courts need to implement ACE trauma-informed training into their processes.<sup>182</sup> Judge Helinger has found most if not all dependency cases involve multiple ACE and hopes adoptive parents would be attuned to these issues.<sup>183</sup> When asking Judge Tepper on the application of ACE to dependency adoption, she stated:

Bottom line, we have been treating symptoms and not root causes ([like] trauma [and] ACEs [sic]) for decades upon decades. Sadly, a massive number of [adopted youths] had significant exposure to Adverse Childhood Experiences and resulting behavior issues. Adoptive parents turned to the Mental Health community for assistance, often to repeat “Baker Acts” that did nothing more than ‘catch, diagnose, medicate, and release’ [the child patient]. Review of a decade of intakes and discharge summaries reveal such children were never asked a single question about the trauma they experienced and no ACEs [sic] survey was ever completed let alone trauma informed therapy or connection to such services. Consequently, children who were adopted end up back in Dependency court because the adoptive parents were never given trauma informed methods to address the significant needs of the child they adopted. Out of fear, frustration or limited known options, these children are then TPR’d<sup>184</sup> once again, and re-traumatized.<sup>185</sup>

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179. “Adverse Childhood Experiences: Recognized and Addressed in Family Court” Conference Materials from USFSP Fam. Study Ctr. and The 6th Cir. Fam. Law Div. to Conference Attendees (Sept. 16, 2016) (on file with author).

180. See *Adverse Childhood Experiences ~ A Pair of ACES*, St. Petersburg Bar Ass’n, [https://www.stpetebar.com/m/event\\_details.asp?id=1071795](https://www.stpetebar.com/m/event_details.asp?id=1071795).

181. *Id.*

182. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018); Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).

183. Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).

184. Referring to the termination of parental rights.

185. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018).

From the insights of these judges, it is clear that a trauma-informed and ACE-aware process would greatly benefit children and adult(s) seeking a dependency adoption.

### C. *Applying Adverse Childhood Experiences to Dependency Adoption*

Children who exit the foster care system experience higher rates of mental health problems compared to those with no foster care histories.<sup>186</sup> One study found that 42% of young adults aged eighteen-to-nineteen were depressed six-to-twelve months after leaving foster care.<sup>187</sup> Another study found that more than 50% of post-foster care adults aged twenty-to-thirty met the criteria for at least one mental health disorder, which was more than double the rate for the general population (namely 54.4% versus 22.1%).<sup>188</sup>

This research indicates that leaving the foster care system is not enough to resolve the underlying problems these children face. Although overall, adoption may improve the life of a child, children who have suffered from traumatic experiences need their psychological wounds addressed. Adopting a child and never addressing their ACE is tantamount to putting a bandage over a wound without ever treating the underlying wound. By applying ACE through a trauma-informed adoption process, the court system can work with the adoptive parents to give their children the tools to become resilient.

The fact that ACE is applicable to children in the dependency system should come as no surprise. Most—if not all—children in the dependency system are survivors of ACE.<sup>189</sup> The reason(s) they are taken from their homes is a direct result of abuse, neglect, or abandonment—the core bases of the ACE analysis.<sup>190</sup> Given the breadth and depth of research on childhood trauma, there is no excuse for courts to be ignorant of the ACE-related care owed to these children.<sup>191</sup> When a child is removed from their parents, the state assumes the responsibility to achieve the optimum outcomes for

186. Tina M. Anctil, Laurie D. McCubbin, Kirk O'Brien & Peter Pecora, *An Evaluation of Recovery Factors for Foster Care Alumni with Physical or Psychiatric Impairments: Predictors of Psychological Outcomes*, 29 CHILD. AND YOUTH SERVS. REV., 1021, 1022 (2007).

187. *Id.* at 1022 (citation omitted).

188. THE FOSTER CARE ALUMNI STUDIES, *IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY* 32 (2005), [https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudies\\_NW\\_Report\\_FR.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudies_NW_Report_FR.pdf).

189. Susanne Babbel, *The Foster Care System and Its Victims: Part I*, PSYCH.TODAY (Oct. 27, 2011), <https://www.psychologytoday.com/us/blog/somatic-psychology/201110/the-foster-care-system-and-its-victims-part-i>.

190. FLA. STAT. ANN. § 39.401(1)(b)(1) (West 2020).

191. *Family Court Tool Kit*, *supra* note 139.

these children. Regardless of their circumstances, each and every child in the foster care system is entitled to a successful life.

Unfortunately, in many cases the damage from ACE continues and may worsen in foster care. As mentioned previously, the AFCARS statistics report that on average foster children spend almost twenty months in foster care.<sup>192</sup> Twenty months is almost two years, which is quite significant for a developing child.<sup>193</sup> In most scenarios, these children are moved from placement to placement and separated from their siblings and family.<sup>194</sup> This only further creates or exacerbates ACE-related trauma. Foster parents are not trained in ACE and thus, are unaware about the need to create an environment of resiliency to help decrease the negative effects of trauma.<sup>195</sup> In the worst cases, some foster homes are a source of abuse and neglect. This increases ACE scores, leaving these children more susceptible to the negative long-term effects of ACE trauma.<sup>196</sup>

Sadly, some children are not placed in a foster home. Most of the time there are more children in the system than there are homes available, and many children end up placed in “group homes” with multiple foster children.<sup>197</sup> Group homes are usually overrun with children that have not experienced a nurturing and stable home life, making them less likely to provide an environment that encourages resiliency.<sup>198</sup> This often means that courts and future adoptive parents are the last resources available to help children cultivate resiliency.

During the foster-to-adoption process, the effect of the termination of parental rights must also be taken into consideration.<sup>199</sup> Despite how terrible a child’s home life with their biological parents may have been, they still formed early attachments to their parents and a child is likely to be traumatized from losing

192. See AFCARS REPORT NO. 26, *supra* note 2.

193. See generally *Child Development Basics*, CTDS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/ncbddd/childdevelopment/facts.html> (Mar. 5, 2020) (explaining that “the early years of a child’s life are very important for his or her health and development”).

194. See *What Impacts Placement Stability?*, CASEY FAM. PROGRAMS (Oct. 3, 2018), <https://www.casey.org/placement-stability-impacts/>.

195. See *Parenting a Child Who Has Experienced Trauma*, *supra* note 5.

196. Susanne Babbel, *The Foster Care System and Its Victims: Part 2*, PSYCH.TODAY (Jan. 3, 2012), <https://www.psychologytoday.com/us/blog/somatic-psychology/201201/the-foster-care-system-and-its-victims-part-2>.

197. Lita Jordan, *Lack of Foster Parents Creating a National Crisis*, ADOPTION.COM (May 26, 2019), <https://adoption.com/lack-of-foster-parents-creating-a-national-crisis>.

198. See Babbel, *supra* note 189; Susanne Babbel, *The Foster Care System and Its Victims: Part 3*, PSYCH. TODAY (Jan. 11, 2012), <https://www.psychologytoday.com/us/blog/somatic-psychology/201201/the-foster-care-system-and-its-victims-part-3>.

199. Kerri M. Schneider & Vicky Phares, *Coping with Parental Loss Because of Termination of Parental Rights*, 84 CHILD WELFARE 819, 820 (2005).

their parent(s).<sup>200</sup> The loss of a parent through abandonment or other reasons is an ACE, thus when parental rights are terminated a child's ACE score will increase.<sup>201</sup>

In many cases, the effects of ACE begin before adulthood with many foster children lashing out as a result of their earlier experiences. The juvenile justice system is split into dependency and delinquency.<sup>202</sup> Dependency refers to children who are removed from their parents' care. Delinquency refers to children who have committed an act in violation of law or in contempt of court.<sup>203</sup> There is a substantial overlap between the children that enter both systems, as many dependent children act out, in part, as a result of their separation from their parents, their life in foster care, and other life circumstances.<sup>204</sup>

Several studies have demonstrated that maltreatment could predispose youth to the delinquency system.<sup>205</sup> Children in the foster care system are more likely to be in the delinquency system because maltreatment (abuse and/or neglect) is an ACE.<sup>206</sup> Experts refer to these children as "crossover youth, defined as young people who have experienced maltreatment (for example, abuse, neglect) and have

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200. See Beth Trautman, *Effects of Foster Care Placement on Young Children's Mental Health: Risks and Opportunities* (2011), <https://fddocuments.us/document/effects-of-foster-care-placement-on-young-childrens-mental-health-.html>; Alice Boyes, *How to Raise a Securely Attached Child*, PSYCH. TODAY (Mar. 22, 2017), <https://www.psychologytoday.com/us/blog/in-practice/201703/how-raise-securely-attached-child>; CTRS. FOR DISEASE CONTROL & PREVENTION, *ESSENTIALS FOR CHILDHOOD: CREATING SAFE, STABLE, NURTURING RELATIONSHIPS AND ENVIRONMENTS FOR ALL CHILDREN* (2019), <https://www.cdc.gov/violenceprevention/pdf/essentials-for-childhood-framework508.pdf>.

201. See *Got Your ACE Score?*, ACES TOO HIGH, <https://acestoohigh.com/got-your-ace-score/> (last visited Sept. 6, 2020).

202. See PANEL ON JUV. CRIME: PREVENTION, TREATMENT, AND CONTROL, *JUVENILE CRIME, JUVENILE JUSTICE* 162 (Joan McCord, Cathy Spatz Widom & Nancy A. Crowell, eds., 2001).

203. See FLA. STAT. ANN. § 985.03(9) (West 2020).

204. Eva Klain, *Understanding Trauma and its Impact on Child Clients*, 33 ABA CHILD LAW PRAC. 177 (2014).

205. See, e.g., Denise C. Herz, Joseph P. Ryan & Shay Bilchik, *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*, 48 FAM. CT. REV. 305 (2010); Wendy Ellis & William Dietz, *A New Framework for Addressing Adverse Childhood and Community Experiences: The Building Community Resilience Model*, ACAD. PEDIATRICS, Sept. 1, 2017, no. 7 supp., at S88. See also Wendy Ellis & William Dietz, *An American Public Health Crisis – the 'Pair of ACEs'*, HUFFPOST, [https://www.huffpost.com/entry/addressing-an-american-public-health-crisis-the-pair\\_b\\_58aca9f6e4b0acc17645d844](https://www.huffpost.com/entry/addressing-an-american-public-health-crisis-the-pair_b_58aca9f6e4b0acc17645d844) (Feb. 24, 2017). See *infra* Appendix D: A Pair of ACEs [sic] Tree.

206. See Hannah Lantos, Andra Wilkinson, Hannah Winslow & Tyler McDaniel, *Describing Associations Between Child Maltreatment Frequency and the Frequency and Timing of Subsequent Delinquent or Criminal Behaviors Across Development: Variation by Sex, Sexual Orientation, and Race*, BMC PUB. HEALTH, Nov. 12, 2019, at 1. Cf. Magda Stouthamer-Loeber, Evelyn H. Wei, D. Lynn Homish & Rolf Loeber, *Which Family and Demographic Factors are Related to Both Maltreatment and Persistent Serious Juvenile Delinquency?*, 5 CHILD.'S SERVS. 261, 261 (2002) (study finding that "certain family interaction and demographic handicaps were related to maltreatment as well as to persistent serious delinquency.").

also exhibited delinquent behavior.”<sup>207</sup> The purpose of the juvenile justice system is to rehabilitate these offenders before reaching adulthood.<sup>208</sup> More often than not, delinquency courts employ a strict punishment approach with these “bad kids.”<sup>209</sup> Yet, studies show that the behaviors that bring children to delinquency courts are likely the result of childhood trauma. The application of ACE and resilience would not only benefit these children but is more in line with the goals of the juvenile justice system. Both Judge Tepper and Judge Helinger have attested to the monumental impact ACE research has had in actually bettering the lives of children and families.<sup>210</sup>

Not only does this research affect the future of children currently in the foster care system, but it will affect children in future generations. ACE can lead to a vicious cycle.<sup>211</sup> All adults were once children. If trauma is not addressed properly in these children before adulthood, there is a high probability that these individuals will experience the juvenile justice system again as parents. For example, victims and observers of domestic violence are more likely to be a victim or abuser as an adult.<sup>212</sup> Additionally, children who experience ACE are more likely to consume alcohol and become substance abusers—a common reason for child removal.<sup>213</sup> If the courts do not take this opportunity to intervene, it could negatively impact generations to come.<sup>214</sup> Courts that do take the time to become trauma-informed will better serve their community and potentially

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207. Karen M. Kolivoski, Sara Goodkind & Jeffrey J. Shook, *Social Justice for Crossover Youth: The Intersection of the Child Welfare and Juvenile Justice Systems*, 62 SOC. WORK 313, 314 (2017) (internal citation omitted).

208. See, e.g., FLA. STAT. ANN. § 985.01(2) (West 2020); *Youth in the Justice System: An Overview*, JUV. L. CTR., <https://jlc.org/youth-justice-system-overview> (last visited Sept. 6, 2020).

209. See generally Judge Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response*, 59 JUV. AND FAM. CT. J. 21 (2008) (“We have traditionally responded to delinquent children by providing consequences for bad behavior, assuming that negative consequences would deter future bad behavior.”).

210. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018); Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).

211. Cf. Resmiye Oral, Marizen Ramirez, Carol Coohy, Stephanie Nakada, Amy Walz, Angela Kuntz, Jenna Benoit & Corinne Peek-Asa, *Adverse Childhood Experiences and Trauma Informed Care: The Future of Health Care*, 79 PEDIATRIC RSCH. 227, 229 (2016) (explaining that one approach to reducing the negative impact of ACE “includes efforts to prevent ACEs [sic] so that children grow up with less exposure to adversity and are less likely to have children of their own who experience ACEs [sic].”).

212. Pournaghash-Tehrani & Feizabadi, *supra* note 85, at 419–20.

213. See Rothman et al., *supra* note 77, at 303.

214. Cf. CTRS. FOR DISEASE CONTROL & PREVENTION, PREVENTING ADVERSE CHILDHOOD EXPERIENCES (ACES): LEVERAGING THE BEST AVAILABLE EVIDENCE 7–8 (2019), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf> (explaining the effects of ACE and how they influence health and opportunity).

decrease the number of children entering the foster care system in the future.<sup>215</sup>

This research is not solely incumbent upon judges and court personnel.<sup>216</sup> Adoptive parents should be informed of this research in order to provide the best life possible for their children. ACE should be integrated into the adoption process so that parents are fully informed of any trauma their children have experienced and better understand how to treat these sensitive situations.<sup>217</sup> Managing the effects of childhood trauma is not intuitive for parents.<sup>218</sup> Without proper training, parents may believe the common misconception that ignoring the trauma is an effective coping strategy.<sup>219</sup> Courts should provide adoptive parents with tools to give their children a chance to achieve resilience.<sup>220</sup> As Judge Tepper noted, many of these children may end up back in the dependency system if they act out and misbehave after adoption.<sup>221</sup> Providing parents with tools to help them create supportive home environments is essential to overcoming childhood trauma, and ultimately reducing the rate of children reentering the system post-adoption. Not only will this be useful to the children involved, but this process may enlighten the adoptive parents as to any ACE they have experienced themselves that may affect them in their ability to parent.

Using trauma-informed tools in the courtroom and informing adoptive parents on the implications of ACE could drastically improve outcomes for children who have experienced the foster care system.<sup>222</sup>

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215. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018); Interview by Taylor Scribner with Hon. Jack Helinger, Judge, Florida Sixth Judicial Circuit, in St. Petersburg, Fla. (Oct. 26, 2018).

216. See *Family Court Tool Kit*, *supra* note 139.

217. See *Parenting a Child Who has Experienced Trauma*, *supra* note 5. See also *Trauma-Informed Parenting: What You Should Know*, FOSTERING PERSPS., Nov. 2013, at 1, <https://fosteringperspectives.org/fpv18n1/know.htm>.

218. See *Trauma-Informed Parenting: What You Should Know*, FOSTERING PERSPS., Nov. 2013, at 1, <https://fosteringperspectives.org/fpv18n1/know.htm>.

219. *Id.*

220. Cf. *Parenting After Trauma: Understanding Your Child's Needs*, AM. ACAD. OF PEDIATRICS (Nov. 21, 2015), <https://www.healthychildren.org/English/family-life/family-dynamics/adoption-and-foster-care/Pages/Parenting-Foster-Adoptive-Children-After-Trauma.aspx> (explaining how "some children who have been adopted or placed into foster care need help to cope" with past trauma, and how "knowing what experts say about early trauma can help [parents] work with [their children]").

221. E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018).

222. Cf. PARENTING AFTER TRAUMA: UNDERSTANDING YOUR CHILD'S NEEDS – A GUIDE FOR FOSTER AND ADOPTIVE PARENTS, AM. ACAD. OF PEDIATRICS & DAVE THOMAS FOUND. FOR ADOPTION, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Documents/FamilyHandout.pdf> (last visited Sept. 6, 2020) (explaining childhood trauma and its impacts, and what adoptive parents can do to support their children).

## V. CONCLUSION

For decades, courts have failed children in the juvenile court system by their lack of therapeutic justice.<sup>223</sup> Today, research shows that traditional punishment-oriented approaches are not always effective. Some courts are beginning to implement trauma-informed practices into their courtrooms. These systems recognize what is becoming increasingly clear—the effects of trauma on individuals can no longer be ignored by our justice system.<sup>224</sup>

ACE have serious implications for the court system. In particular, because of structural confines, foster children are essentially guaranteed to have experienced at least one ACE.<sup>225</sup> For the lucky ones, adoption is the beginning of a better life. However, adoption is not necessarily a panacea. Throughout the adoption process, the court should be attuned to the potential ACE suffered by the child to ensure the best interests of the child are being met. This requires providing tools to foster and adoptive parents to encourage resilience of the child post-adoption.

The following additions to dependency adoptions are proposed:

1. All dependency court officials should be educated on ACE and how to create and conduct a trauma-informed court.
2. Foster parents and group home employees should be educated in ACE to help mitigate the effects of ACE before court intervention during adoption.
3. Adoptive parents should be provided with an online course on trauma and ACE before the finalized adoption of their child.
4. Foster children should be provided with an age-appropriate ACE questionnaire to inform the court and adoptive parents of any ACE.

Implementing these proposals will increase former foster children's chances of overcoming any adverse consequences of ACE. Additionally, these proposals will help judges and attorneys become better problem solvers. Children will have more opportunity to thrive

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223. See E-mail Interview by Taylor Scribner with Hon. Lynn Tepper, Retired Judge, Florida Sixth Judicial Circuit (Nov. 19, 2018). See generally Peter Johnsen & Elia Robertson, *Protecting, Restoring, Improving: Incorporating Therapeutic Jurisprudence and Restorative Justice Concepts into Civil Domestic Violence Cases*, 164 U. PENN. L. REV. 1557, 1571–73 (2016) (explaining the legal concept of “therapeutic jurisprudence” and how it has—and has not—been incorporated into our legal systems).

224. *Family Court Tool Kit*, *supra* note 139.

225. Cf. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 214, at 7 (explaining how instability and other conditions common to the foster care experience can lead to ACE).



when foster parents and adoptive parents are better equipped to nurture ACE-impacted children. As studies clearly show, the effects of ACE are real. If the juvenile justice system does not begin to address these issues, the foster care system will continue to be overloaded. Children are the future and they deserve every chance to become flourishing adults.

## Appendix A: The ACE Survey

### Adverse Childhood Experience (ACE) Questionnaire

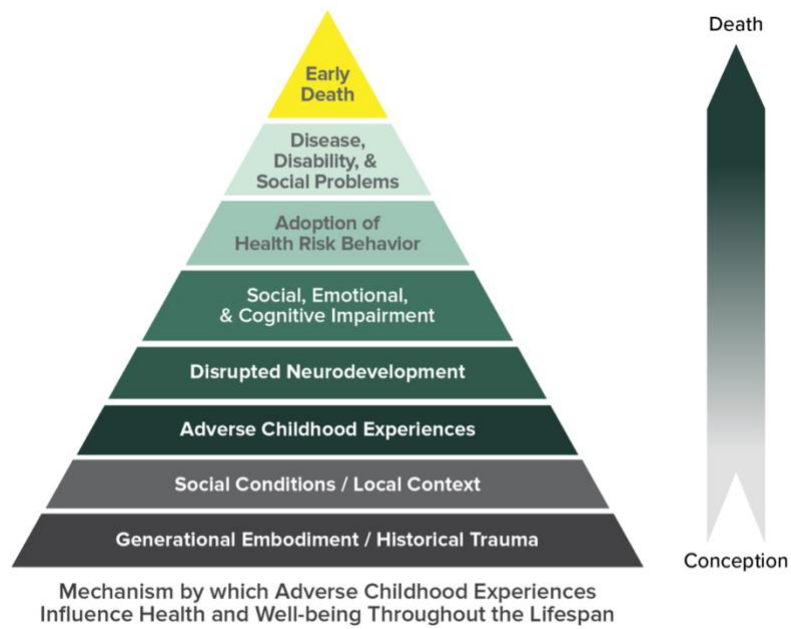
Finding your ACE Score ra hbr 10 24 06

While you were growing up, during your first 18 years of life:

1. Did a parent or other adult in the household **often** ...  
Swear at you, insult you, put you down, or humiliate you?  
**or**  
Act in a way that made you afraid that you might be physically hurt?  
Yes No If yes enter 1 \_\_\_\_\_
2. Did a parent or other adult in the household **often** ...  
Push, grab, slap, or throw something at you?  
**or**  
Ever hit you so hard that you had marks or were injured?  
Yes No If yes enter 1 \_\_\_\_\_
3. Did an adult or person at least 5 years older than you ever...  
Touch or fondle you or have you touch their body in a sexual way?  
**or**  
Try to or actually have oral, anal, or vaginal sex with you?  
Yes No If yes enter 1 \_\_\_\_\_
4. Did you **often** feel that ...  
No one in your family loved you or thought you were important or special?  
**or**  
Your family didn't look out for each other, feel close to each other, or support each other?  
Yes No If yes enter 1 \_\_\_\_\_
5. Did you **often** feel that ...  
You didn't have enough to eat, had to wear dirty clothes, and had no one to protect you?  
**or**  
Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?  
Yes No If yes enter 1 \_\_\_\_\_
6. Were your parents **ever** separated or divorced?  
Yes No If yes enter 1 \_\_\_\_\_
7. Was your mother or stepmother:  
**Often** pushed, grabbed, slapped, or had something thrown at her?  
**or**  
**Sometimes or often** kicked, bitten, hit with a fist, or hit with something hard?  
**or**  
Ever repeatedly hit over at least a few minutes or threatened with a gun or knife?  
Yes No If yes enter 1 \_\_\_\_\_
8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?  
Yes No If yes enter 1 \_\_\_\_\_
9. Was a household member depressed or mentally ill or did a household member attempt suicide?  
Yes No If yes enter 1 \_\_\_\_\_
10. Did a household member go to prison?  
Yes No If yes enter 1 \_\_\_\_\_

Now add up your "Yes" answers: \_\_\_\_\_ This is your ACE Score

*Finding Your ACE Score, THE ANNA INST.,*  
<https://www.theannainstitute.org/ACE%20Study/Finding%20Your%20ACE%20Score.pdf> (last visited Sept. 27, 2020).

**Appendix B: The ACE Pyramid**

*About the CDC-Kaiser ACE Study, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/acestudy/about.html> (last visited Aug. 3, 2020).*

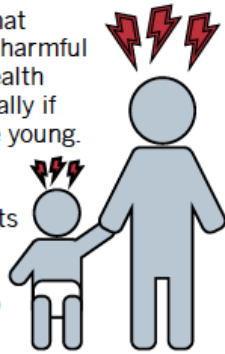
## Appendix C1: What We Can Do About Toxic Stress

# WHAT WE CAN DO ABOUT TOXIC STRESS

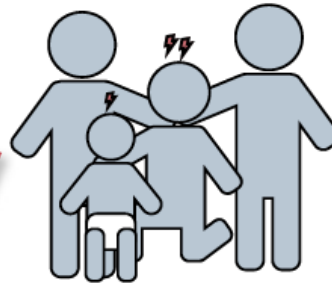
## FROM SURVIVING TO COPING TO RESILIENCE

Building resilience and strength in families and communities is one of the most important investments we can make as a society. But what does that mean?

Experiencing stress that doesn't let up can be harmful to people's lifelong health and wellbeing, especially if it begins when they're young. Without supportive relationships, it can become what scientists call "toxic stress." Nobody knows this better than those who have experienced it.



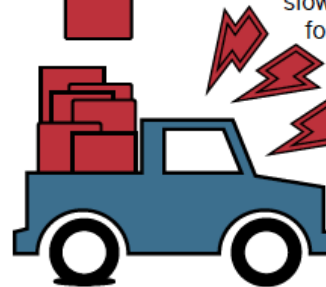
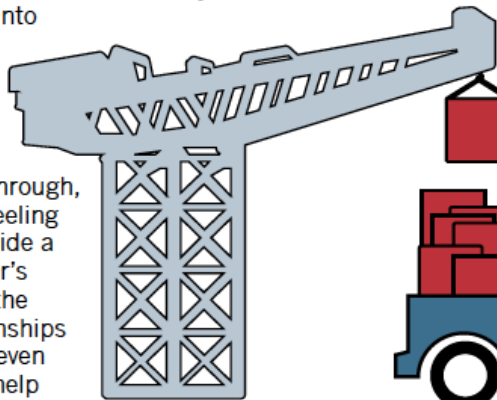
**But that's not the whole story.** With the right supports, toxic stress doesn't have to lead to bad outcomes. We all know that everyone copes with stress differently—even children.



Understanding how stress affects each of us is the first step toward making changes in our communities and our own lives that can help everyone thrive.

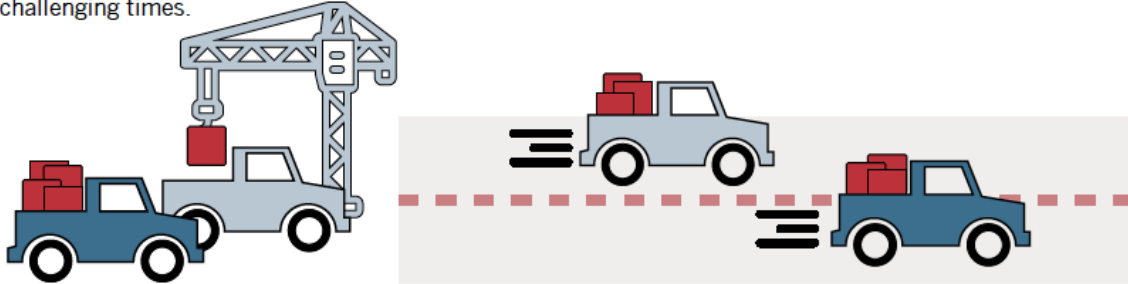
## TOXIC STRESS CAN FEEL LIKE A HEAVY WEIGHT, BUT COMMUNITIES CAN SHARE THE LOAD.

As adults, the effects of stress caused by things like experiencing violence, or not having enough food or a place to live, can feel heavy, like a burden that makes it hard to get through life. This stress can put a person into a constant state of "fight or flight" response, which makes it unusually difficult to plan or follow through, or to stay calm. Feeling this way can override a parent or caregiver's ability to provide the supportive relationships children need, or even to do things that help relieve the burden.



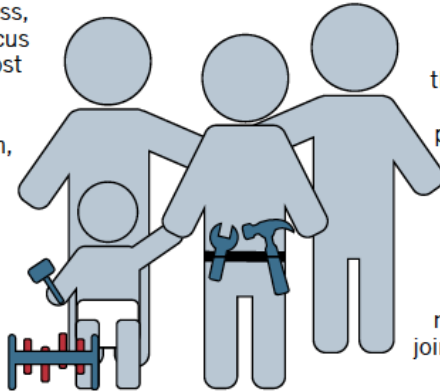
Just as a truck can only bear so much weight before it slows down or stops moving forward, challenging life circumstances can weigh caregivers down and make it hard to do the things they need and want to do. And just as carrying too much for too long can cause a truck to break down, people can wear down from being overburdened without support.

But just as we can remove cargo from an overloaded truck, we can provide supports and services that allow caregivers to focus on caring for themselves and their children. And just as we can do regular maintenance to keep a truck in good shape, regular access to these services can help families manage the load during challenging times.



## SUPPORTING EACH OTHER, BUILDING RESILIENCE

Under this kind of stress, it can be difficult to focus on the fact that the most important thing your children need is love, affection, and attention, along with clear limit-setting. Spending more time playing and snuggling with them, talking to them, or taking walks and exploring together are tools you can use to help connect.



If your stress is making it hard to do these things—if your truck is just too overloaded—reach out for help. Resources like food pantries or free activities can help lift stress. Connect with parents, friends, or family who care, or seek help from a professional so you can get back to nurturing your kids. And when you're out of crisis, you can help others in your community, by letting other parents know that their loving attention can make the biggest difference for their kids, or joining in advocacy to expand family supports.

The threads that connect us all can grow stronger when taking on difficult challenges, and those ties can lessen the burden of toxic stress. No person is an island; everyone needs the help of others in difficult times. And toxic stress is not the end of anyone's story.

Center on the Developing Child  HARVARD UNIVERSITY  
 For more information: <https://developingchild.harvard.edu/toxic-stress>


*What We Can Do About Toxic Stress*, HARVARD UNIV. CTR. ON THE DEVELOPING CHILD,  
<https://developingchild.harvard.edu/resources/what-we-can-do-about-toxic-stress/> (last visited Sept. 27, 2020).

**Appendix C2: How Toxic Stress in Childhood Alters the Brain**

## HOW TOXIC STRESS IN CHILDHOOD ALTERS THE BRAIN

Exposure to major adversity in early childhood can weaken brain development. This can permanently set the body's stress response system on high alert. A stable, nurturing environment can prevent these responses and outcomes for learning, behavior and health.


**NORMAL**



A typical neuron with many connections looks like this.

SOURCES: J.J. Radley Neuroscience 2004

**TOXIC STRESS**



A neuron damaged by toxic stress has fewer connections.

MARTHA THIERRY/DETROIT FREE PRESS

*Free Press Special Report: Could These Solutions Help Detroit's Kids?*,  
DETROIT FREE PRESS,  
<https://www.freep.com/story/news/local/michigan/detroit/2016/11/19/detroit-crime-children-violence-trauma/93969996/> (Dec. 17, 2016, 11:43 PM).

### Appendix C3: Stress in Childhood

## Stress in Childhood

Stress is a natural & inevitable part of childhood, but the TYPE of stress can make a difference in the impact on a child's brain & body.

“STRESS is a mental, physical or biochemical response to a perceived threat or demand”

### Positive Stress

Mild stress in the context of good attachment



Temporary, mild elevation in stress hormones & brief increase in heart rate

No buffering support necessary

Increased RESILIENCE and confidence  
Development of coping skills



www.70-30.org.uk  
@7030Campaign

### Tolerable Stress

Serious, temporary stress, buffered by supportive relationships



More severe, continuing cardiovascular and hormonal response

Presence of buffering caring adult

Adaption and recovery with some possibility for physical/emotional damage

### Toxic Stress

Prolonged activation of stress response system without protection

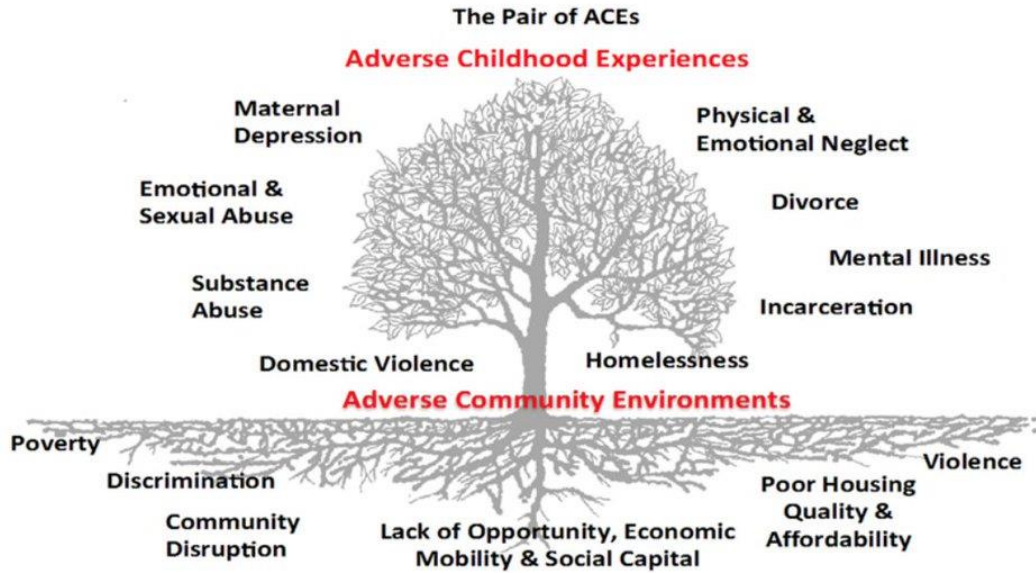
Prolonged activation of stress response system & disrupted development of brain and immune system

No adult buffers

Lifelong consequences:  
- Heart disease  
- Alcoholism  
- Memory & learning difficulties  
- Anxiety/depression  
- Cancer

Stress in Childhood, WAVE TRUST 70/30 CAMPAIGN,  
<https://www.wavetrust.org/stress-in-childhood> (last visited Sept. 27, 2020).

## Appendix D: The Pair of ACEs Tree



Ellis, W., Dietz, W. (2017) A New Framework for Addressing Adverse Childhood and Community Experiences: The Building Community Resilience (BCR) Model. *Academic Pediatrics*. 17 (2017) pp. S86-S93. DOI information: 10.1016/j.acap.2016.12.011

“The Pair of ACEs [sic] Tree” graphic above was created by Building Community Resilience to demonstrate the “interconnectedness” of Adverse *Community* Environments (represented by the soil) and Adverse *Childhood* Experiences (ACE) (represented by the tree branches) and their impact on children and families.

See BLDG. CMTY. RESILIENCE, BUILDING COMMUNITY RESILIENCE: COALITION BUILDING AND COMMUNICATIONS GUIDE 8 (2018), <https://publichealth.gwu.edu/sites/default/files/downloads/Redstone-Center/BCR%20Coalition%20Building%20and%20Communications%20Guide.pdf>; Ctr. for Cmty. Resilience, *BCR Webinar: How to Use the ‘Pair of ACEs’ to Build Community Resilience*, YOUTUBE (Sept. 19, 2018), <https://www.youtube.com/watch?v=f7X9fnRRJ6Y>.