

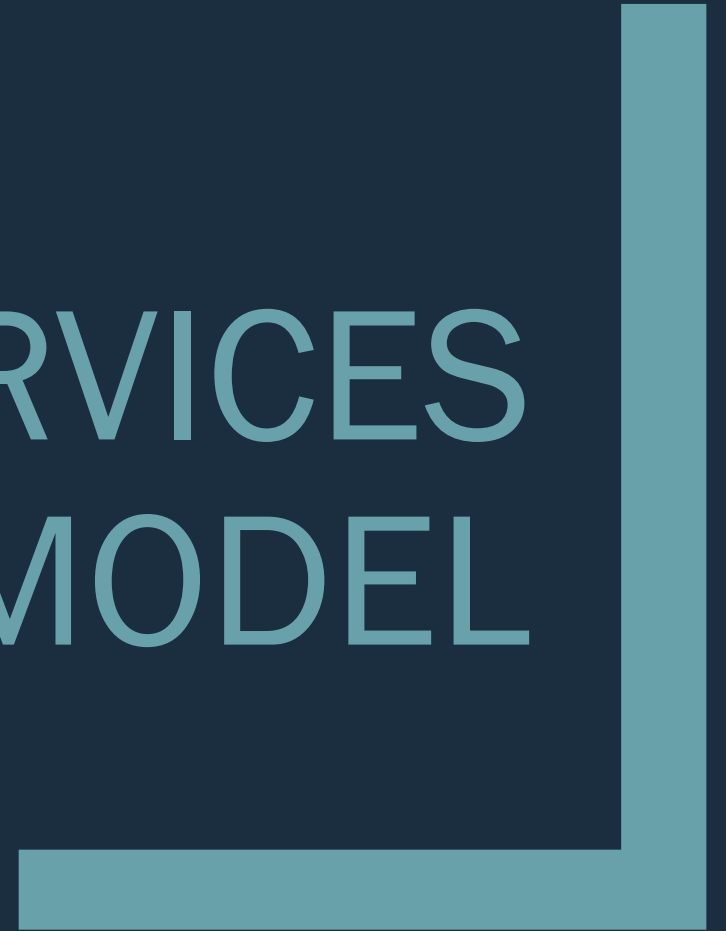
UNCOVERING TRAUMA: LEGAL ADVOCACY FOR VICTIMS OF CRIME

OBJECTIVES

- Learn about RMvIc Services
- Understand the basics of the neurobiology of trauma
- Recognize the complex legal needs of DV survivors
- Understand how trauma impacts participation and engagement in the legal system
- Learn advocacy tips for working with survivors



RMVLC SERVICES AND MODEL





ROCKY MOUNTAIN
victim law center

Victim Rights Act Program:

Provides direct representation to victims of VRA crimes in criminal cases to ensure their rights and privacy are maintained.

Legal Information Network of Colorado (LINC):

Provides confidential, no-cost comprehensive legal information services for crime victims through a helpline (720.583.2929), website (www.ColoradoLINC.org), and specially trained navigators.

Civil Legal Services for Crime Victims Statewide Project:

A project funded by the Colorado Division of Criminal Justice, Office for Victims aiming to create and implement a plan to increase the continuum of services for a variety of civil legal needs of the crime victim resulting from their victimization.

Direct Representation in Criminal Cases

- **Goal:** To make rights meaningful in the moment
 - *Help victims clearly assert and articulate their rights & voice in the process*
 - *Mend fences & support the relationship between DA and victim*
 - *Provide clarification, validation, and explanation for what's happening*
 - *Assist in addressing the wholistic needs of the victim*



Direct Representation in Criminal Cases

- Collaboration!
- Strategic motions practice
- Visible presence on behalf of victim(s)
- Additional legal supported case management
- Privilege and act as a barrier to defense



Technical Assistance

(to DA's, VA's, LE, and Service Providers)

- Case Consultation
 - *Specific case issues*
 - *General jurisdictional issues*
- Motions
 - *Motions Bank*
 - *Research and Support*
- Amicus Curiae
- Assistance in addressing the holistic needs of the victim so that they can actually focus on the criminal case itself

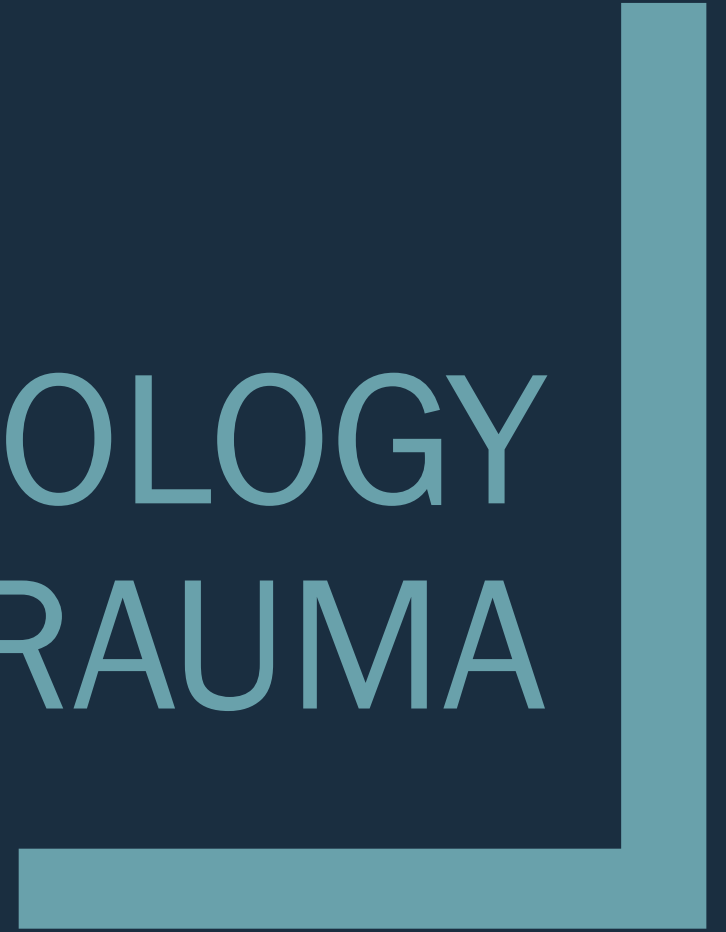


Legal Information Network of Colorado

- Demonstration project funded by Office for Victims of Crime (OVC)
- Needs Assessment & Findings
- Research-based program development
- Program includes
 - Helpline (720-583-2929)
 - Website (www.ColoradoLINC.org)
 - Navigators
- Online Navigator
<http://www.coloradolinc.org/navigator/>



NEUROBIOLOGY OF TRAUMA



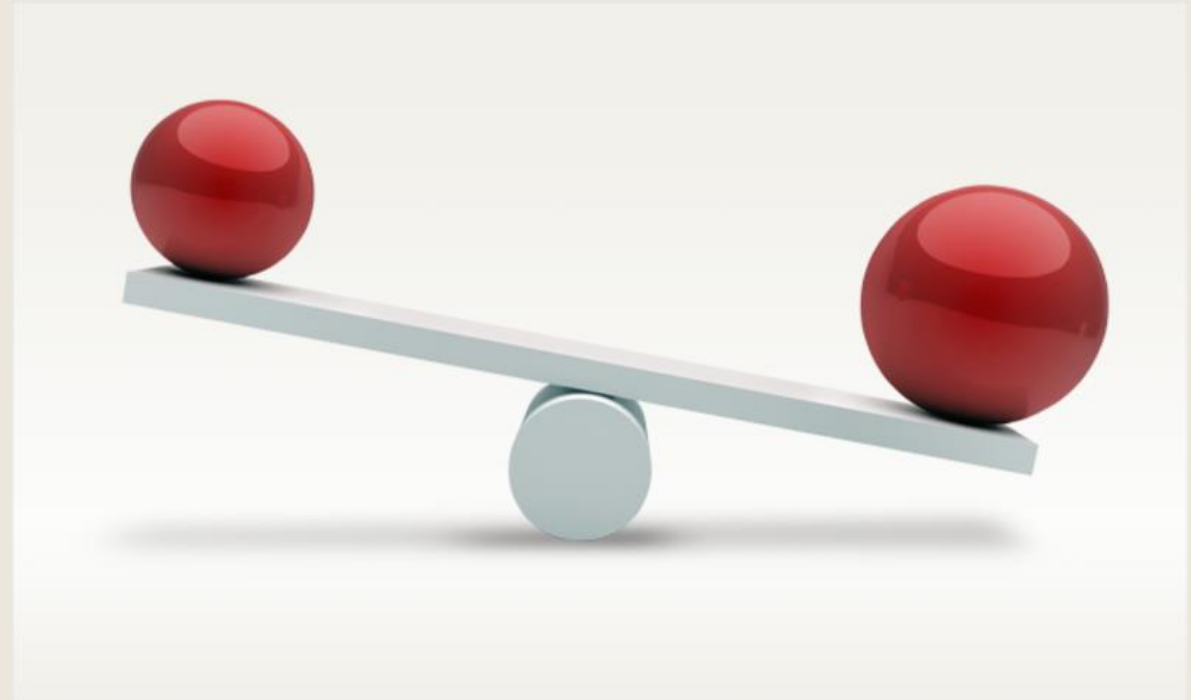
Trauma Defined



- A traumatic event is one in which a person experiences or witnesses (in-person or not):
- Actual or threatened death
- Serious injury
- Threat to the physical integrity of self or another
- (Marcenich, 2009)

Trauma and the Brain

- Two major systems at play
 - *Sympathetic Nervous System*
 - *Parasympathetic Nervous System*



Memory and Trauma

- Pre-frontal cortex
- Hippocampus
- Amygdala

Common Reactions to Trauma

Trauma affects the entire person:

- Emotional
- Physical/Chemical
- Intellectual
- Spiritual

Thoughts:

- Unwanted thoughts
- Nightmares
- Poor concentration
- Memory

Emotions:

- Fear, anxiety
- Anger, irritability
- Guilt, shame
- Grief, sadness

Behaviours:

- Effortful avoidance
- Withdrawal
- Alcohol or substance use
- Checking / vigilance

Physical symptoms:

- Insomnia
- Changes in appetite
- Fatigue
- Tension
- Headache

COMPLEX LEGAL NEEDS



Criminal vs. Civil Legal Systems

- The legal system has two main parts: criminal and civil. A single event may involve either, or both.
- The criminal system involves crimes that have involved law enforcement, including traffic violations, assault, homicide.
- The civil system involves most other cases, including family law, probate, housing, employment, contract disputes.

Criminal system

- Parties:
 - *Prosecutor*
 - *Defendant*
- Burden of Proof:
 - *Beyond a Reasonable Doubt*
- Outcome:
 - *Plea agreement*
 - *Verdict (judge or jury)*
 - Guilty/not-guilty/acquittal
- Specific Discovery Rules
- Statutes of Limitation

Civil system

- Parties:
 - *Plaintiff/Petitioner*
 - *Respondent/Defendant*
- Burden of Proof:
 - *Preponderance of Evidence*
- Outcome:
 - *Settlement agreement*
 - *Verdict (judge or jury)*
 - For/against Plaintiff/Petitioner
- Specific Discovery Rules
- Statutes of Limitation

Intersection of Civil and Criminal Cases

- Testimony and evidence in any legal proceeding could be brought in as evidence in to any other legal proceeding
- Inconsistent information may be used against people
- If a civil and criminal case have the same or similar facts, the civil case may be stayed until the criminal case is resolved



Privacy as a Victim/Survivor

- Crime victims may be reluctant to share personal information
 - *Often feel embarrassed and ashamed*
 - *Concerns about sharing and safeguarding personal information*
 - *Real and overwhelming fear for their safety*
- Following an assault, victims may be repeatedly asked to disclose their histories to numerous professionals as they navigate their way through the criminal justice system



TRAUMA AND THE LEGAL SYSTEM



Common Symptoms That Can Impact Representation

- Self sabotage & disengagement
- Memory and thinking impairments
- Confusion about how the criminal justice system or civil system work
- Inability to track progress or contacts
- Fixation on issues or solutions
- Highly emotional
- Generalized distrust

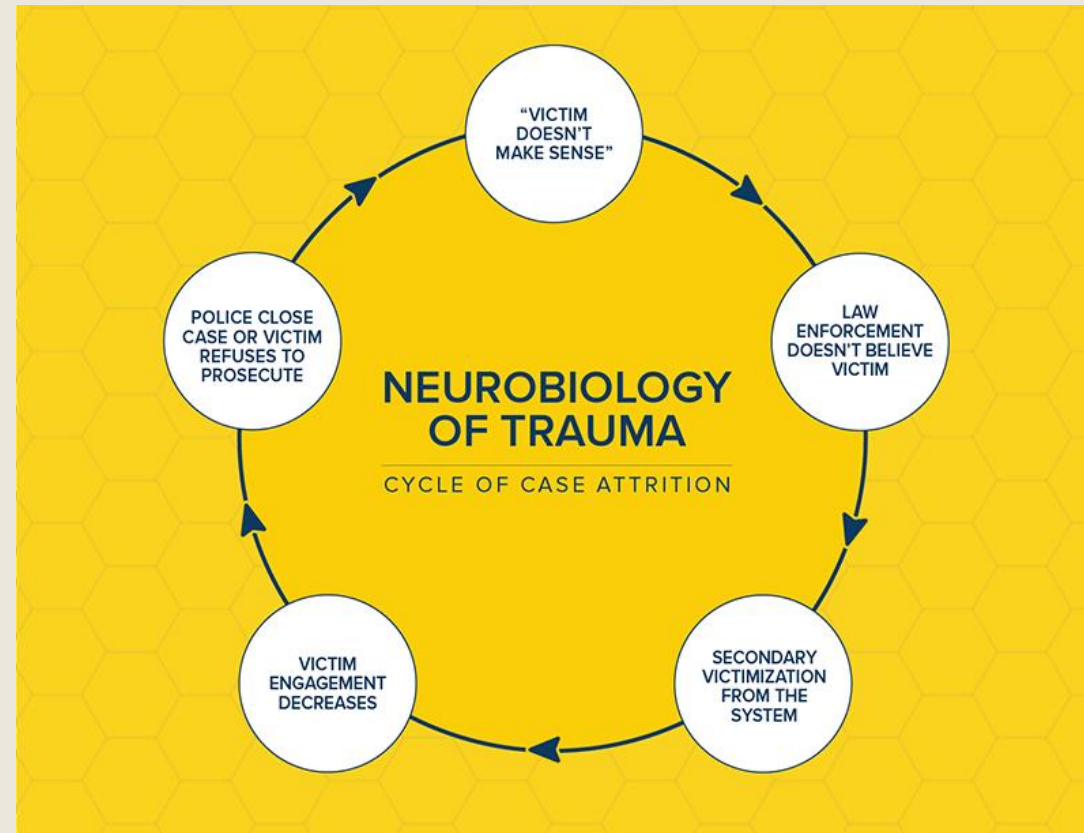


Image retrieved September 11, 2017 at:
<https://nij.gov/unsubmitted-kits/Pages/default.aspx>

Case Examples

- Victim leaves the witness stand in the middle of testimony
- Victim fixation on outcome of case – to detriment of case
- Increase of calls around anniversary dates
- Lapses in memories and different details during recall
- Missing calls and missing deadlines
- Dissociation and/or strong reactions during and after testimony (mistrial)



PRACTICAL TIPS FOR ADVOCATES



Practical Tips

1

Provide
Information

2

Strategize

3

Be Flexible

Different Advocacy Roles

- Community Based Advocate(s)
- System Based Advocates
 - *Law Enforcement Advocate(s)*
 - *District Attorney's Advocate(s)*
- Attorneys
 - *District Attorney*
 - *Defense Attorney*
 - *Victim Rights Attorney*
 - *Civil Attorney*



Building Relationships

- Community-based Advocates
- Victim Rights Attorneys
- System-based Advocates
- District Attorneys
- Law Enforcement



Victim Privacy Considerations

- It's important to understand what information a *victim considers to be private*
- And to be able to explain what information is *private under the law*
- Discuss with victim upfront!
- Get to know the confidentiality practices of other local organizations or systems-based advocates. Don't rely on other organizations to disclose – share before you refer!
- Lists that help victims track who they've spoken to should include a column or place to note the confidentiality level of that person.
- Don't share information that could be used against a victim or hurt their civil/criminal case.

Release of Information (ROI)

- Best Practice
 - *Informed consent*
 - *Time limited*
 - *Issue specific*
 - *Clear way to rescind release*
- Legal reminder: document, document, document!
- Write and use limited waivers that include the 5 W's (and 1 H)!



Practical Tip

It's not just about *what* you get, but *how* you get it (and send it)! Recognize that different forms of communication are more and less safe and chose the level that best protects your client!

Unauthorized Practice of Law

- “An unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another's use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action.” People v. Shell, 148 P.3d 162
- Legal advice is applying the law to a specific case or set of facts.
- Legal information is a statement about what the law is that is not specific to any situation.





Secondary Trauma

- Support yourself/Support your client
- What is secondary/vicarious trauma
 - *Service provider is effected due to regular contact with traumatized individual(s)*
 - *Accumulation of memories of clients' traumatic material that affects and is affected by the service providers' perspective of the world*
- Manifestations
 - *They are often the same as the experiences of first-hand trauma experiencers, but also*
 - Lack of empathy for clients
 - Anxiety or stress both in and out of work
 - Compassion fatigue/burn out

QUESTIONS?



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