

Importance of Trauma-Informed Prosecutorial Decisions

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ABSTRACT

This research examines the prosecutorial decision-making process and whether or not trauma plays a role in this process. The research focuses on the factors that play a role in prosecutors' decisions, and how trauma fits into these decisions. Current research suggests that there is a correlation between childhood trauma and criminal behavior, which serves as the foundation of this research and why it is important to understand the prosecutorial side of the criminal justice system. Because prosecutors have a great deal of discretion in criminal cases, they were the focus of this research. Semi-structured interviews were conducted with Boulder County District Attorneys discussing the prosecutorial decision-making process, including sentencing recommendations, plea deals, diversion programs, and how childhood trauma plays a role in these decisions. These interviews focused on the contributing factors to prosecutors' decisions, and their opinions about trauma being taken into account in decisions regarding criminal cases. This research fills a gap in current literature regarding the prosecutorial process and examines the factors that go into prosecutors' decisions with an emphasis on trauma.

TABLE OF CONTENTS

I.	Introduction	5
II.	Literature Review	8
	A. Childhood trauma and its effect on the brain	9
	B. Adverse childhood experiences (ACEs)	11
	C. Childhood trauma and its involvement in the criminal justice system	12
	D. Prosecutorial decision-making process	14
	E. Trauma-informed law	18
III.	Methods	20
	A. Recruitment	20
	B. Target Population	20
	C. Interviews	21
	D. Data Analysis	23
IV.	Results	24
	A. Factors that play a role in the decision-making process	24
	B. Severity of the crime affects trauma consideration	28
	C. Difference in assessments for juvenile versus adult cases	29
	D. Responsibility of defense attorneys	35
V.	Discussion	38
VI.	Conclusion	43
VII.	Appendices	45
	A. IRB Approved Informed Consent Form	45
	B. IRB Approved Interview Guide	47
	C. IRB Approved Recruitment Email	50
	D. ACE test example	51
VIII.	References	53

I. INTRODUCTION

The prosecutorial decision-making process is an important component of our criminal justice system. Despite the power prosecutors hold in our criminal justice system, little is known about the factors that go into their sentencing decisions, and which factors weigh more heavily than others depending on violent or nonviolent crimes. There is a connection between childhood trauma and involvement in the criminal justice system due to the adverse effects that trauma has on brain development, coping skills, and stress response (Putnam 2006). Although there is extensive research regarding this connection between childhood trauma and criminal behavior, there is not much research regarding how childhood trauma is taken into account in a prosecutor's decision-making process, and if trauma plays a role in those decisions (Randall and Haskell 2013). The purpose of this study is to help fill this gap by examining the extent to which childhood trauma is taken into account in prosecutors' decisions regarding criminal cases.

In the United States criminal justice system, prosecutors hold great amounts of discretion regarding criminal cases. A prosecutor makes decisions regarding which charges will be filed, what if any plea deals are offered, recommendations for sentencing, and diversion programs. While some research has been conducted on the legal and extralegal factors that go into prosecutorial decisions, not much is known about how, or if, trauma is taken into account in addition to a defendant's social history and criminal background. Mitigating factors that prosecutors consider when deciding sentencing recommendations include any evidence or prior behavior that is relevant to the defendant's character. Other facts of the case, combined with mitigating factors, are often taken into account to either reduce the severity of the punishment, or understand the defendant's behavior and background (Travis and De 1996). Some of these

factors may include a defendant's age, mental illness, the extent of their role in the crime, ability to understand they did something wrong, and/or support of their community (Cornell Law 2022). Childhood trauma could be a mitigating factor as well, given its ability to affect criminality, and could be taken into account similarly to these other factors when deciding sentencing recommendations.

Because there are several cognitive and developmental effects from childhood trauma, this trauma could be considered a mitigating factor in prosecutors' decisions. Childhood trauma can alter brain development and coping mechanisms, leading to more criminal behavior (Kirouac and McBride 2009). Childhood trauma is inherently more detrimental to the brain than adult trauma due to the significant amount of brain development that occurs during childhood (Kirouac and McBride 2009). Experiencing abuse or neglect in childhood affects the development of a child's stress response, impulse control, and increases the likelihood of using substances in the future (Kirouac and McBride 2009). Childhood trauma negatively affects life outcomes, brain development, and increases criminal behavior, thus, it could be a mitigating factor in prosecutors' decisions (Sinha and Easton 1999). This thesis will not be arguing that one's trauma justifies criminal behavior; however, the thesis will be arguing that significant research displays a correlation between childhood trauma and criminal behavior, and thus could be taken into account in a prosecutor's decision-making process.

In this research, semi-structured interviews will be conducted with Boulder County District Attorneys to determine how trauma plays a role in sentencing decisions, and if trauma is discussed in pretrial assessments, sentencing recommendations, and/or diversion programs where prosecutors have discretion. Although there is prior research regarding the steps of a trial and the prosecutor's role in that trial, there is little research regarding what factors prosecutors consider

when making sentencing recommendations and other decisions regarding cases. These interviews seek to examine this decision-making process specifically. Interviews will be conducted with these prosecutors to find out how they are informed about a defendant's trauma, if they are informed about a defendant's trauma, and how this past trauma affects their decisions regarding the case. These interviews will dive into the details of their decision-making process and their opinions regarding trauma being taken into account in criminal cases.

II. LITERATURE REVIEW

There is a well-established link between childhood trauma and negative life outcomes, including criminal justice involvement (Kowalski 2019). Research has shown that in the United States, one in seven children were abused or neglected in the past year (Center for Disease Control and Prevention 2022). Given the prevalence that childhood trauma has in our society, it is important to understand how this trauma manifests into involvement in the United States' criminal justice system. There is a correlation between childhood trauma and criminal behavior, which is why it is important to understand the role trauma plays in the criminal justice system and how trauma can affect criminality (Reavis et al. 2013). Negative life outcomes such as depression, anxiety, substance abuse, and/or serious medical conditions are common in people who have experienced childhood trauma (Putnam 2006). Studies have shown that physically abused adolescents are "6 to 12 times more likely to have alcohol and drug problems" (Dube et al. 2005). Childhood trauma in the form of maltreatment or abuse nearly doubles the probability that an individual will engage in crime (Currie and Tekin 2006).

A. Childhood trauma and its effect on the brain

In order to understand the correlation between childhood trauma and criminal behavior, the concept of trauma must be understood. Trauma is the result of an incident or series of events that are emotionally disturbing, possibly life-threatening, and have lasting adverse effects on an individual's mental, physical, emotional, and social well-being (*American Psychological Association* 2023). There are many experiences that can be considered traumatic: physical, sexual or emotional abuse, childhood neglect, having a family member with mental health or

substance abuse disorders, unexplained separation from a loved one, neglect, poverty, racism and discrimination, and violence in the community (Van Der Kolk 2003). Trauma can occur at any stage of life, but trauma that occurs during childhood can have adverse effects on one's development.

There are several reasons that childhood trauma increases the risk of criminal behavior. Childhood trauma can have negative consequences on brain development, such as impairing impulse control and stress responses that can increase the likelihood of criminal behavior (Kirouac and McBride 2009). Due to these negative effects on the brain, trauma can impair one's coping mechanisms and ability to deal with stress, oftentimes leading to substance abuse (Kirouac and McBride 2009). While substance abuse does not necessarily cause crime itself, an individual who has childhood trauma and is using substances may be more likely to commit a crime (Sinha and Easton 1999). The link between childhood trauma and substance abuse is one of the factors that correlates trauma with criminal behavior (D'Amico et al. 2008).

Research has also shown that the "timing of abuse (particularly in childhood) and the type of abuse (physical, sexual, emotional) differentially predict psychopathological symptoms in adulthood" (Wolff and Shi 2012). Childhood trauma, compared to adult trauma, can have more detrimental effects on brain development and well-being of a person. Because the brain is not fully developed until our mid-twenties, childhood trauma can alter the development of the brain (Kirouac and McBride 2009). This interrupted brain development can lead to impaired decision-making skills and coping skills. Although an individual has all the necessary brain structures when they are born, the proper development of the brain relies on environmental factors to help form synaptic connections and proper neural networks. Children who grew up in stressful, traumatic environments were often in a state of stress, thus, many of these children

grow up to have impaired coping skills and turn to substances to cope with stress. When the child experiences traumatic life events or prolonged trauma, these environmental factors can be detrimental to the brain's development.

Environmental factors such as abuse, violence, or neglect can lead to heightened sensitivity and threatened behavior in an individual (Kirouac and McBride 2009). Because of this, if a child feels threatened in a situation, the feelings may escalate into a hyper-arousal response, potentially leading to violence. Minor stressors or events that would not normally seem threatening to someone else may threaten a child with previous trauma leading them to act impulsively and enabling a fight or flight response (Kirouac and McBride 2009). Someone who was previously traumatized may act upon impulse when they feel threatened, and may commit an act of violence or crime as a reaction to that trauma response. Given the prominent effect trauma can have on one's behaviors, the psychological damage from trauma could be a mitigating factor when taking into account these crimes.

In a study by Wolff and Shi regarding trauma and criminal behavior, researchers studied the effects of different types of trauma on the lives of incarcerated adults. Past exposure to trauma in these incarcerated people elevated the likelihood of mental health problems such as depression and anxiety (Wolff and Shi 2012). A general trend in their data was that childhood physical trauma "positively predicted depression and anxiety treatment and substance abuse problems" (Wolff and Shi 2012). One of the key takeaways of this study was that "childhood trauma, in particular, had strong predictive power" in mental illness and substance abuse of the researched incarcerated adults (Wolff and Shi 2012). Not only does the type of trauma matter, but the timing of trauma matters just as much. Childhood trauma has detrimental effects on the brain's functioning and development, and plays a large role in people's involvement in the

criminal justice system. One way of examining trauma in the criminal justice system is by understanding Adverse Childhood Experiences.

B. Adverse Childhood Experiences (ACEs)

Criminal behavior is correlated with Adverse Childhood Experiences, also known as ACEs (Meldrum 2020). The term “Adverse Childhood Experience“ refers to “experiences of abuse, neglect, parental divorce, mental health, substance abuse, incarceration and death of a parent or guardian, by children and adolescents” (Manian 2021). Higher numbers of adverse childhood experiences are associated with adult criminality (Reavis et al. 2013). An adverse childhood experience could be physical, emotional or sexual abuse, neglect, parental criminality, poverty, and/or suicide in the family, and the number of ACEs a person has is determined by ten questions that include these topics (Reavis et al. 2013). A study examining ACE tests and recidivism in juveniles found that more violent and serious offending in youth is correlated with higher number of ACEs (Kowalski 2019). Another study that gave ACE tests to offenders after their conviction in court also concluded a connection between ACEs and criminal behavior: “3 adverse experiences (physical abuse, sexual abuse, growing up with a battered mother) were significantly associated with the perpetration of intimate partner violence later in life” and also found that experiencing any one of these traumatic events increased their risk of perpetration later in life by 60% to 70% (Reavis et al. 2013). Although intimate partner violence is only one type of crime, this study displayed a strong connection between ACEs and criminal behavior. In a study that also examined criminality and ACE tests, the group of criminal offenders reported four times as many ACEs as the normative, non-offending group, demonstrating that childhood

adversity can be correlated with criminal activity (Reavis et al. 2013). Because this connection exists, there should be an understanding of how trauma is a factor in the criminal justice system.

C. Childhood trauma and involvement in the criminal justice system

Extensive research has shown that there is a connection between trauma and criminal behavior (Randall and Haskell 2013). Research on this connection does not try to justify criminal behavior or allow an offender to blame their crime on their past trauma, but it does however show the complexity of traumatic life experiences and the role trauma plays in the likelihood of someone committing a crime. Research has shown that childhood trauma is a contributing factor to criminal behavior and violent acts (Randall and Haskell 2013). In a study discussing this topic, the authors concluded that “criminal behavior increases not only with the incidence of maltreatment but also with the severity of maltreatment” (Currie and Tekin 2022). Although it is not the case that every child who was maltreated engages in criminal activity, there is clearly a substantial connection that exists between childhood trauma and criminal behavior (Reavis et al. 2013).

This connection was displayed in a different study that conducted interviews of incarcerated adults in Australia and found that a common link to violent offending in prisoners was “childhood/adolescent trauma; a lack of support or treatment for trauma experiences; substance abuse to mask the pain; and a ‘brain snap’ precipitating a violent offense” (Honorato 2016). Admittedly, Australia represents a different population than the United States, but the trend that this data shows represents the strength of the trauma and criminality connection. An important result from this study is the prominence of substance abuse to cope with childhood trauma. Many participants in this study described using alcohol and drugs to mask the pain of

their trauma, and admitted that they believed these substances were a contributing factor of their violent offending (Honorato 2016).

In another study that conducted research with incarcerated people in the United States, a survey was given to men in 10 different adult prisons to research their abuse and family background, and their personal well-being (Wolff and Shi 2012). This study concluded a high prevalence of childhood trauma among incarcerated men: “trauma exposure rates were higher before the age of 18 than in adulthood” (Wolff and Shi 2012). This finding shows the effects that childhood trauma has on criminal behavior, and the strong predictive power that childhood trauma, rather than adult trauma, has on incarceration. It was more common for the incarcerated men in this study to have childhood trauma than adulthood trauma, thus showing how childhood trauma plays a role in one’s future incarceration, and displays the connection between childhood trauma and incarceration.

In the previously mentioned study of Australian inmates, many participants who experienced trauma also shared that they lacked the support they needed to get better (Honorato 2016). Due to a lack of familial and therapeutic support, many of the incarcerated individuals explained that they turned to substances to cope with the pain of their childhood traumas (Honorato 2016). Substance abuse is a common response to childhood trauma, and also a large risk factor for criminal behavior (Cusack et al. 2013). Studies regarding substance abuse have shown an increased risk of drug use disorders and substance abuse among individuals who were exposed to trauma (Cusack et al. 2013). Although substances cannot be blamed for a person’s criminal behavior, research shows a strong correlation between these substances and criminal behavior. Given this connection, and the connection between trauma and criminal behavior in general, it is important to understand how trauma plays a role in prosecutorial decisions.

D. Prosecutorial decision-making process

Because prosecutors play a crucial role in our criminal justice system, their decision-making process is important to understand. Prosecutors have discretion when it comes to criminal cases and sentencing recommendations. In order to understand the role that trauma plays in the criminal justice system, it is crucial to understand how trauma plays a role in a prosecutor's sentencing recommendations, and possible plea deal, probation and diversion decisions as well. Prosecutors have discretion in deciding the length and type of a sentencing recommendation, therefore, they are the ones who would be able to take trauma into account in this decision or not. Given the research regarding childhood trauma and criminal behavior, it is important to understand the role that trauma plays in a prosecutor's decision, and if a prosecutor views trauma as a mitigating factor.

Prior research has shown that prosecutors may consider various mitigating factors at each of the stages of the trial process. These mitigating factors may include background information relative to the offender, rather than the offense (Jacobson and Hough 2007). The defendant's criminal history, family history, medical history, age and gender, ability to take accountability, and/or the extent of their role in the crime, are several of the factors prosecutors take into account when deciding to move forward with cases and sentencing recommendations (Amirault and Beauregard 2014). Prosecutors may take into account the defendant's personal history and even psychological assessments that have been provided by the Public Defender or private defense attorney (Copp et al. 2022). These mitigating factors are used to reduce the severity of a sentence, and to encourage prosecutors to be more lenient in their punishment. By taking into account personal factors of the offender and offender's history, prosecutors are open to learning about the offender and how the offender's past may have impacted the crime. Given the effects

on one's brain development, impulse control, and behavior, childhood trauma falls in the category of mitigating factors because it can be a potential mediator in a case if that trauma is taken into account similarly to other mitigating factors, such as family or criminal history of the defendant. The level of impact that mitigating factors have on prosecutors' decisions is relatively unknown.

Understanding the prosecutorial decision-making process and the discretion that prosecutors have in the criminal justice system, is crucial to understand how trauma would play a role in these decisions. The prosecutorial process includes screening, plea offers, sentencing recommendations, diversion programs and dismissals. Prosecutors have discretion in whether or not they file charges, dismiss charges, issue plea bargains, and in some cases, offer diversion programs as a possible non-traditional option (Cornell Law 2022). Another way a case can be resolved is if the defendant pleads guilty by entering into a plea agreement. The plea bargaining stage is another stage in which the prosecutor has discretion depending on the case, and could be a stage in which trauma is taken into account in the longevity or seriousness of the sentence. In terms of the sentencing decision, this decision is ultimately up to the judge, but prosecutors are able to give sentencing recommendations that they believe fit the case. The facts of the case are important in deciding which sentencing recommendation to give, in addition to the prosecutor's ability to prove the case (Amirault and Beauregard 2014). Many prosecutors' decisions are guided by their ability to get a guilty verdict. The determining factor in deciding what route to take for each case is the strength of the evidence presented. Other factors that influence a prosecutor's decision are the severity of the crime, the defendant's criminal history, and the victims' characteristics and wishes (Frederick et al. 2012).

Legal and extra legal factors play a role in these decisions as well. Legal factors refer to the facts of the case, such as the seriousness of the crime, type of crime, prior criminal records, and strength of evidence (Travis and De 1996). Extralegal factors refer to the characteristics of the suspect, such as the suspect's age, race, and sex, and are considered mitigating factors (Travis and De 1996). There are also extra legal factors that play a role in a prosecutor's decision such as the race and gender of the perpetrator. Extensive research has examined the racial disparities in our criminal justice system, displaying the disparities in sentencing and prison time between white and black offenders (Kovera 2019). There are many causes of this racial disparity, some being implicit racial bias at the pretrial process, plea bargaining, and sentencing (Kovera 2019). All of these mitigating factors may influence a prosecutor's decision regarding a case, and prosecutors may use their discretion to decide which factors they deem more serious or relevant to the crime. Given that there are several stages where a prosecutor can use their discretion, there is not much research to show how that discretion incorporates trauma, and what role trauma may play in these discretionary decisions. While all of these factors may play a role in a prosecutor's decision, prior work has largely neglected the adverse experiences of the offenders. Research should be focused on how prosecutors take the offender's trauma into account when considering sentencing decisions.

There are many ways that a prosecutor could take trauma into account in their decisions, and one example of a trauma assessment used in the criminal justice system is a presentence investigation (PSI). A presentence investigation is an assessment of the defendant's criminal history, family history, and life experience (Fiftal and Montemayor 2010). This assessment is done by the probation department to give prosecutors personal information about the defendant, and help prosecutors determine appropriate sentencing (Fiftal and Montemayor 2010). While a

PSI can discuss mental health history, it is not necessarily geared towards childhood trauma specifically, and may focus more on criminal and family history.

Another way of taking trauma into account in prosecutorial decisions is through ACE tests. ACE tests could be given to an offender in the early stages of prosecutorial action to determine the level of trauma that the offender may have experienced in the past. Higher numbers of ACEs can predict negative outcomes later in life, so by taking an ACE test one can quantify past traumas and see how these traumas have affected their life. Overall, ACEs are experiences that hinder a child's emotional well-being and possibly threaten their physical development as well (Manian 2021). Data in this category shows that "between 49% and 61% of children in America experience at least one ACE" (Manian 2021). This data further shows how prevalent childhood trauma is in our society, and why it would be plausible for trauma to be taken into account in the prosecutorial decision-making process. An individual's experience of trauma that is reflected in an ACE test can inhibit that individual's coping skills, stress response, and physical, social, and emotional well-being; all of which are factors that can lead to criminal behavior and involvement in the criminal justice system. Although certain prosecutors may use other forms of assessments of the offender, an ACE test is a researched way to get a baseline report of one's trauma, and thus, determine how that may play a role in the sentencing recommendations or diversion programs. Given the connection between trauma and criminality, the utilization of ACE tests in the criminal justice system would be a step towards more trauma-informed prosecutorial decisions.

E. Trauma-informed law

It is important for a prosecutor's decision-making process to take into account a defendant's trauma given the impacts trauma can have on behavior. This idea falls in the category of trauma-informed law. Trauma-informed law is approaching programs and services with an acknowledgment of trauma and the effects traumatic experiences can have on individuals (Randall and Haskell 2013). Trauma-informed approaches to law understand that trauma can have adverse effects on people's stress response and ability to cope with challenging situations. Understanding trauma and its effects on individuals' development and cognitive skills is important for legal agents and community members to better understand people who have committed crimes and have endured childhood trauma. Although this does not excuse the behavior of individuals who have committed crimes, trauma-informed approaches focus on appreciating the complexities of trauma and how trauma may have played a role in the defendant's decisions.

In the juvenile justice system specifically, between 75-93% of the individuals have experienced trauma (Randall and Haskell 2013). Trauma need not be overlooked as a systemic issue in the criminal justice system, especially the juvenile justice system. To be trauma-informed implies that there is a commitment to providing services, individual context and understanding to each defendant. Given the large numbers of people who experience childhood trauma, being trauma-informed seeks to understand the complexities of trauma responses and take into consideration the effects of trauma on behavior. In terms of prosecutors, being trauma-informed means bringing up questions regarding trauma to better understand the defendant, and encouraging assessments of the defendant to determine levels of trauma. Because trauma has such a profound effect on one's behavior, it should be taken into account when it

comes to criminal behavior. Trauma could fall under the category of mitigating factors, but little research has been done to learn about if/how trauma plays a role as a mitigating factor for prosecutors.

The extent to which trauma influences a prosecutor's decision-making process regarding sentencing recommendations, plea deals, and diversion programs is the focus of my research. Prosecutors have a unique position in the criminal justice system and hold a great amount of discretion when it comes to the defendant. Because extensive research has shown the correlation between trauma and criminal behavior, the interviews that will be conducted will explore that connection from a prosecutor's point of view. The factors that play a role in prosecutors' decisions and the way in which trauma impacts a prosecutor's decision-making process will be examined through semi-structured interviews of District Attorneys.

III. METHODS

A. Recruitment

The data for this thesis comes from semi-structured interviews with Boulder County District Attorneys. A paralegal and Administrative Deputy of the Boulder County District Attorney's Office helped coordinate interviews and recruit attorneys to participate via email. The paralegal, with the Administrative Deputy's approval, emailed the attorneys in the office a recruitment email drafted by me. This recruitment email was approved by IRB, and included the purpose of the study, the confidential nature of the study, and the general topics that would be discussed in the interviews. Interested attorneys emailed me directly to schedule interviews.

B. Target Population

The target population for this study was Boulder County District Attorneys. I am interested in the prosecutor's perspective on trauma because of the discretion that prosecutors have in our criminal justice system. Because I am interested in how trauma may affect sentencing decisions, I wanted to interview those at the source of the sentencing recommendations. Prosecutors have discretion about whether or not they take trauma into account, and I wanted to focus on that element of their decision-making process. Boulder County District Attorneys provide useful information for this study because they can share their insight about how they make sentencing recommendation decisions, and what factors play a role in their decisions regarding criminal cases. Boulder County itself is more trauma-focused in the criminal justice system than other counties. Due to these reasons, this population of prosecutors were best suited for this research.

C. Interviews

The interviews occurred virtually over Zoom, and the primary investigator was the only one who conducted the interviews with the participating attorney. The IRB approved interview guide used for this study is included in the appendix. This interview guide consisted of 18 questions, ranging from topics regarding the sentencing recommendation and decision-making process to how trauma plays a role in prosecutorial decisions. Because these interviews were semi-structured, not all of these questions were asked in every interview, but they served as a framework to structure the interviews (DeJonckheere and Vaughn 2019). Depending on the interview, some responses prompted additional questions and responses. There were six interviews conducted, and the interviews ranged from 30 minutes to one hour. This sample size was realistic given the attorney availability and participation in the Boulder County office.

Each participant was given the IRB approved Informed Consent form to read over. This Informed Consent form is included in the appendix. Verbal consent was received from the participants at the beginning of the interview indicating that they consented to being interviewed, and consented to the interview being recorded via Zoom software for future notes. Participants were made aware that their personal information would not be shared, and that their answers would be confidential. Participants were asked how long they have been a District Attorney for purposes of credibility. Personal information, other than the number of years they have been a District Attorney, was not collected because this was a small sample size and it would be easy to identify interviewees in this population with any other personal information.

Table 1 Years of Experience of Interviewees

	Years of being a District Attorney
Interviewee 1	6
Interviewee 2	6.5
Interviewee 3	5.5
Interviewee 4	5
Interviewee 5	6
Interviewee 6	5

Questions in these interviews were designed to be open-ended to allow participants to give as much or as little information regarding the topic as they would like. The open-ended nature of these interviews was important to allow the attorney to provide their opinion and give as much information as they wanted about the decision-making process and the involvement of trauma in those decisions. The answers to these questions were complex and varied depending on the crime, therefore, interviews were the best form of data collection for this topic. The questions in each interview followed the interview guide, but varied depending on the flow of each interview. Not all questions were asked in every interview, but the two questions that were consistent for every interview were, “How long have you been a District Attorney?” and “Can you tell me a little about the decision-making process?” Some interviews spent more time on certain topics, and follow-up questions were asked depending on the responses given. The questions were designed to better understand the sentencing decision-making process, and how trauma may influence that decision. Some of the questions regarding trauma that were asked included, “Does childhood trauma play a role in your sentencing decision?” “Does the victim’s

trauma from the crime outweigh the defendant's past trauma?" and "Do you think trauma is a mitigating factor?" Topics that were also important to discuss in these interviews were assessments given to defendants, involvement of the probation department, the difference between adult and juvenile cases, and diversion programs depending on the crime.

D. Data Analysis

In order to analyze the data, it was important to find themes from the interviews. I approached my data using an inductive coding process (Saldana 2009). Through this inductive process, I developed codes/themes from the raw data. I did not go into the interviews with preconceived notions of what I thought the themes may be; rather, I let the interview responses guide my themes and results. After conducting the interviews, I developed four themes to organize my interview responses: sentencing decision-making process, assessments of the defendant, diversion programs and discretion, and juvenile versus adult cases. To analyze the data, I created a spreadsheet to organize and code the important quotes. Each theme had a column, and interview quotes were placed under each column. For each interview, I read through the interview transcript provided by Zoom. I then placed quotes into their respective columns/themes to be easily found when writing my results section. Using my discretion, I decided which quotes would be important to represent the themes I was analyzing.

IV. RESULTS

The data from the interviews displayed several themes regarding the criminal justice system and prosecutorial decisions more specifically. A commonality from the interview responses was prosecutors recognized that many defendants they deal with have experienced childhood trauma, but that childhood trauma generally does not play a large role in their sentencing recommendation compared to other factors. Across several of these interviews, prosecutors regularly stated that other factors are more important in their decisions, such as the victim's wishes and expectations, the severity of the crime, the defendant's willingness to accept responsibility for the crime, and the state legislation. This does not mean that they do not consider trauma at all in their decisions. The interview data presented four main themes about the prosecutorial decision-making process: other factors besides trauma play a role in decisions, the amount that trauma plays a role in decisions depends on the severity of the crime, there is a large difference between juvenile and adult cases, and the responsibility falls on the defense to provide trauma assessments.

A. Factors that play a role in the decision-making process

For many District Attorneys interviewed, other factors of a case played a stronger role in their decisions than the defendant's childhood trauma. The responses did not discount the fact that trauma is prevalent in many defendants, but responses displayed the importance of other aspects of a case in their decision-making process. Many explained that the harm done to victim/s and the impact on the victim/s played a very strong role in the seriousness of the crime, and how they perceived the case going forward. About 70% of respondents shared that the harm

to the victim is one of the first things they consider when making decisions regarding a case. One respondent explained that they try to speak with the victim and understand what the victim's expectations are in terms of punishment for the offender. In terms of diversion decisions, one respondent shared that they "want to get the victims' opinion about whether or not they're comfortable with diversion." Although not all victim's wishes can be granted, this respondent took the victim's perspective into account when thinking about decisions regarding the case.

In terms of plea deals and settlement decisions, respondents shared that these decisions take into account personal information regarding the offender, and the severity of the crime. One respondent explained that plea deal decisions involve both the District Attorney and the defense attorney, and they try to understand the defendant's criminal history, family history, and the harm done to the victim. She further explained that presentence investigations, PSIs, that assess a defendant's mental health history, substance abuse, criminal history, and family history "are incredibly helpful, but those, unfortunately, we typically get after the plea, which means it didn't inform my decision." These plea decisions do not necessarily take into account childhood trauma given that District Attorneys do not receive thorough mental health assessments until after the plea stage. PSIs are helpful assessments done by trained mental health professionals, but District Attorneys are unable to use this tool as a factor in their plea deal decision.

Another factor that respondents explained plays a large role in their decision-making process is the nature of the offense, whether it was aggravated or not, and included a victim or not. One respondent explained that if it was a very violent case, then trauma was not considered unless it was directly related to the facts. For instance, this respondent further explained that in some sex crime cases, certain sexual trauma is directly related to the type of sex crime, and that would be a situation in which trauma would relate to the case. When asked a question about the

sentencing recommendation process and what factors go into this decision, one response was, “What are the facts of the case? What’s the harm that’s been done?” Because a District Attorney is representing the people of the jurisdiction in which they work, a main focus is on the victim and the severity of harm done to the victim. One respondent shared their position on taking trauma into account and explained that there are some cases that are serious enough where they do not care about the defendant’s background. While there is an acknowledgment of the defendant’s trauma, the victim’s trauma from the crime is the focus of many prosecutors’ decision-making process.

Another factor of the decision-making process that several respondents addressed was the ability of the defendant to take responsibility for the crime. Depending on the seriousness of the crime, many prosecutors described that they are more likely to consider any form of rehabilitation or diversion programs if the defendant can admit responsibility for the crime and if the defendant seems amenable to treatment. One respondent shared that they look at what steps a defendant has taken in their life since the offense to try and correct their actions, and if these actions represent a willingness to take accountability. Another respondent described that a defendant taking ownership of the harm they have caused and “taking accountability of what happened, and understanding the impact, was always the most impactful to me in considering diversion.”

When asked about their sentencing and plea deal process, and discretion when it comes to diversion, the criminal history of a defendant played a role in the decision-making process for half of the respondents. Relevant criminal history was considered in terms of first-time offenders, repeat offenders, and the pattern of criminal behavior. For one respondent, if the crime was a “one off” behavior then they might view the offense as less serious than if it was a repeated

criminal behavior. However, another respondent explained that they sometimes consider trauma above someone's criminal history because "there's any number of things that can explain someone's criminal history." Past criminal behavior does not necessarily represent the defendant as a whole, only as a person made up solely of their previous crimes. This respondent explained that what the defendant was willing to do with their trauma mattered more to them than the fact that they have been traumatized.

Multiple prosecutors discussed that some of their decisions were based upon the legislation that has been passed about what constitutes a crime, and what constitutes different types of crime. District Attorneys follow guidelines for sentencing recommendations depending on the type of crime. Although they have discretion in terms of diversion programs and the ultimate sentencing recommendation, there are guidelines they must follow depending on the facts of the case (Colorado General Assembly 2017). In the state of Colorado there are sentencing categories and different classes of crimes. For instance, felonies are categorized into classes one through six, with a class one felony being the most serious (Colorado General Assembly 2017). For a crime within each of these classes, Colorado state law provides a sentencing range that District Attorneys follow. One interview respondent described that if a certain crime is a mandatory prison case, then trauma does not weigh into their decision because they are not allowed to consider it. Certain crimes are serious enough that trauma does not play a role in their sentencing recommendation or consideration of probation or diversion programs because state legislation does not allow these forms of sentencing for crimes of serious nature.

B. Severity of the crime affects trauma consideration

A theme across all interviews was that whether or not trauma was taken into account, and the degree in which it was taken into account, depends on the severity of the crime. The severity of the crime refers to the level of harm done, and whether or not it was a victimless crime. One respondent described that sex crimes specifically make it hard to take trauma into account because most offenders have past sexual trauma, but by committing a sex crime, they victimized someone else and gave that person sexual trauma. This respondent explained a scenario in which the sex crime that occurred was so serious that it affected how they viewed trauma: "It's still mitigating, but maybe not as impactful, I guess, as it would have been, because now we have four other folks that have been subjected to a childhood trauma that they're going to have to live with." Another respondent shared that it does not matter to them if "somebody had a terrible upbringing if they are sexually abusing kids." When children are victims in sex crimes, there is little to no opportunity for trauma to play a role in decision-making. While this aligns with societal values of justice, and what society views as just outcomes for heinous crimes, it brings up a question about what the leading reason for incarceration is in our society. True incarceration for rehabilitative desires would challenge this way of thinking given the fact that oftentimes the most traumatized individuals go on to commit the most traumatizing crimes. The idea of a cycle of childhood trauma is prevalent in the sex crimes department because oftentimes offenders who were sexually abused during childhood are the ones to sexually abuse victims and further the cycle of violence.

Contrary to sex crimes, District Attorneys are more likely to consider childhood trauma in crimes where no one was physically injured. One respondent explained that they are "much more likely to consider childhood trauma" if the victim was not physically injured in the case.

This could be a case of drug abuse, property crime, or any other type of nonviolent crime. This District Attorney explained that nonviolent, less serious felonies, are situations in which trauma would be more significantly considered, especially with juveniles. Because District Attorneys represent the victims and the victims' wishes, there is more opportunity for the defendant's childhood trauma to play a role as a mitigating factor in cases where a victim was not seriously injured. When discussing juvenile cases, one respondent explained that not every fight is a serious offense, and therefore, childhood trauma would be considered more for these juveniles.

C. Difference in assessments for juvenile versus adult cases

When discussing juvenile versus adult cases in the interviews, it was clear that juvenile offenders were treated differently than adult offenders in the criminal justice system. The juvenile department at Boulder County only consists of two District Attorneys currently, but I was only able to speak with one of them due to a lack of response to my inquiry. A theme in their responses when it came to juvenile offenders was that childhood trauma affected the decisions of those cases significantly more than cases with adult offenders. There was an understanding that juveniles should be treated differently than adults due to their age and life experience. This respondent explained that they are intimately aware of the juvenile's trauma because they understood that the offender was "not born committing crimes," and because of this, they thoroughly look at the juvenile's life situation. This respondent also explained that the people working in the juvenile department are intimately familiar with trauma, and understand that a significant amount of criminal behavior is the result of neglect, abuse, and other types of trauma. The respondent explained that there has been a shift in the juvenile justice system to focus on rehabilitation, rather than punishment. When asked the best way to approach juvenile crime, this

respondent shared, “If I want to reduce crime and protect the community, I have to know how to rehabilitate the juvenile.” It was clear from the responses that trauma was seriously considered in juvenile cases, and the assessments for juveniles were much more thorough than assessments for adult offenders.

Assessments for juvenile offenders include various mental health assessments by mental health professionals and probation officers. The respondent described that there was a Community Re-entry Team, CRT, that was meant to assess the juvenile and provide recommendations going further. This respondent described the CRT as the “juvenile justice ecosystem,” which consists of a team of community members such as a representative from the school district, from child welfare if applicable, the juvenile’s guardian if applicable, public or private defense attorney, probation officer, therapists, and the District Attorney themselves. This is a multidisciplinary team meant to assess the juvenile and discuss what happened to get the juvenile to the point of offending. The mental health professionals or therapists would give the juvenile an interview to discuss their previous trauma and life situation. This interview would discuss the juvenile’s background, homelife, and trauma, as well as conducting a risk assessment for the juvenile. The respondent explained that these interviews are initial assessments to describe to them what was going on with the juvenile, if they were experiencing substance abuse, physical abuse, trauma, neglect, and if that juvenile was at a high risk for committing additional crimes.

If it was a sex crime by a juvenile, the respondent explained that there would be a psychosexual evaluation that would be conducted by a certified evaluator to assess past sexual trauma and risk of reoffending based on sexual preferences or sexual behavior. This assessment is only as thorough as the defendant allows it to be because answers are voluntary and the depth

of answers are often limited. For non sex crimes, there is a state-mandated Juvenile Assessment Summary Review (JASR) that would be conducted in every sentencing that would involve the possibility of probation. The respondent explained that this would be an assessment done by the probation department to assess the current risks to the juvenile and risks of future offending, the needs of the juvenile depending on their life situation, and what the responsibility is of the District Attorney's Office to help the juvenile based on their risk. The purpose of these assessments are to figure out "What kids are dangerous, and what are these dangerous kids' needs?" The JASR is a set of recommendations based on the assessments that the District Attorney would take into account when it comes to sentencing recommendations.

In regards to ACE tests for juveniles, the respondent described that ACE tests are an important part of the assessments for juveniles. This respondent explained that ACE tests are given to the District Attorney's Office from the defense attorney. They also explained that the number of ACEs a juvenile has plays a role in the decision-making, specifically, the decision regarding how to treat the case. The decision to treat the case like an adult or like a juvenile is partially determined by the ACE test given to the juvenile. This respondent shared that ACE tests are one part of a "very large web of possible assessments" that they do for juveniles. ACE tests are an important assessment for District Attorneys to quantify a juvenile's past trauma and decide how that trauma would influence their decisions. However, ACE tests are only one of the assessments that a District Attorney would take into account when deciding a sentencing recommendation. The recommendations of the mental health assessments, probation department assessments, CRT evaluations, and ACE tests all play a role in the sentencing recommendation. In nine out of ten juvenile cases, they note that they closely follow these recommendations and assessments. More serious felonies may be treated differently, for example, murder cases would

not allow probation, but for all cases where probation is an option, these assessments affect the sentencing recommendations. Based on the assessments from the mental health professionals, probation officers, and CRT members, the District Attorney creates the sentencing recommendation that may include “probation, therapy, taking classes, or even providing the parents/guardians with more resources in the home to prevent reoffending.”

Assessments for adults look different than assessments for juveniles given the distinction between adults and juveniles in the criminal justice system. The focus for adult offenders is less about rehabilitation, and more about punishment. In regards to ACE tests, adults are not given an ACE test as part of their assessments. While childhood trauma may be part of other assessments they are given, an ACE test specifically is not given to adults. When asked about ACE tests in adult cases, respondents shared that they did not recall seeing ACE tests as one of the assessments that adults go through. This reinforces the distinction between juveniles and adults because childhood trauma, quantified as ACEs, is important to juvenile cases and less important to adult cases.

Adult cases do however have assessments to evaluate the person’s background, mental health, and childhood, but they are not as much of an integral part of the process as they are for juveniles. A presentence investigation (PSI) is conducted by the probation department that helps District Attorneys when deciding sentencing recommendations. One respondent shared that presentence investigations “give us a greater insight into what's going on with the person, which is a really helpful tool.” She further explained that probation conducts this assessment and “they'll go through their childhood, and they'll go through the background” of the defendant. This investigation is an interview discussing criminal history, family background, life experience, mental health history, and experience relevant to the case. Offenders can choose to

disclose as little or as much information in these interviews, making some PSIs more helpful than others in determining mitigating factors. The probation officer conducting the PSI writes a summary report of the assessment and gives that report to the defense attorney and District Attorney. However, PSIs are not done for every case. One respondent explained that PSIs “take a long time” for the probation department, and “it’s a lot of work, so I try not to ask for them unless I really feel like I need them.” He also shared that he asks for a PSI only in situations where he is “not comfortable agreeing to probation, and doesn’t necessarily know the right sentence.” This respondent shared that a PSI tends to include childhood trauma only in the more serious cases because that is when the defense attorney is trying to mitigate potential prison sentences. Childhood trauma, in those cases, could be used as a mitigating factor if it is relevant to the crime.

Another assessment for adult cases is a Level of Supervision Inventory (LSI) assessment. When asked about assessments for offenders, one respondent explained that an LSI measures recidivism and stability factors. They described that an LSI assesses a person’s criminal history, prosocial behavior, such as engagements in the community, family support, financial support, and housing stability. Although many criminogenic factors are evaluated with an LSI, the assessment does not explicitly discuss childhood trauma. Based on the results of the assessment, studies regarding LSIs have shown “8 big factors that determine someone’s risk of recidivism,” according to one respondent. This is an important assessment for a District Attorney to determine a sentencing recommendation that takes into account all of these risk factors. One respondent shared that “an individual will be assigned what we call an LSI score” and that score “is meant to gauge their recidivism.” Based on the responses from the LSI test, a score ranging from 0 to 54 is given to the offender (Casey et al. 2013). Offenders with scores from 0-18 are considered low

risk, scores from 19-28 are considered medium risk, and scores from 29-54 are considered high risk. The LSI score is a helpful tool for District Attorneys to gauge the risk of recidivism and how that risk may affect their sentencing.

For adult sex crimes, psychosexual evaluations of the offender are given before sentencing, and are used in the settlement phase to decide plea deals. In this psychosexual evaluation, the offender sits down with a psychologist and is asked a series of questions about their childhood, family dynamics, sexual preferences and behaviors, risk factors, and the crime itself. One respondent explained that this evaluation is a thorough report that helps them determine mitigating factors and come up with an appropriate plea offer. Another District Attorney shared that the evaluator will provide a recommendation for the sentencing, and will present whether or not the person is a high, medium, or low risk given the crime and the assessment. The evaluator will share if they think the offender is amenable to treatment or not, and whether or not their past sexual trauma or behavior makes them likely to reoffend. One District Attorney shared that in many cases, people who commit sex crimes have had previous sexual trauma and “certain offenders were abused when they were children, or even as adults by family members or strangers.” This respondent explained that the psychosexual evaluation is done when there is an individual with significant sexual trauma that the defense attorney believes is important for the District Attorney to know. She also shared that it is up to the defense attorney whether or not a presentence psychosexual evaluation is conducted. This respondent explained that these evaluations are expensive and time-consuming, therefore, they usually only receive them from private defense attorneys rather than public defenders. There is a socioeconomic disparity between private and public defense attorneys because public defenders are often given to people who cannot hire an attorney, and public defenders are often overworked and do not

have the resources to conduct psychosexual evaluations for every case. Depending on the severity of the crime, one respondent shared that the psychosexual evaluation might lessen a sentence but would not seriously change the sentencing she had in mind.

D. Responsibility of defense attorneys

Given the roles of a District Attorney versus a defense attorney, the responsibility of presenting offender-focused information falls on the defense attorney. It is in the defense attorney's best interest to provide any mitigating factors regarding the offender that might influence the sentencing outcome. Based on the interviews, it was clear that if defense attorneys did not provide certain assessments or mitigation regarding the offender, then this information would not play a role in the trial. In terms of information about the defendant's mental health records and childhood, one respondent shared that she gets this information "from defense attorneys that do their due diligence," which falls more on private defense attorneys who have more time and money to do this due diligence. They shared that these assessments often come from private attorneys because if "it's a public defender, you know, with the client that doesn't have the funds to pay for an attorney," it is less likely that the public defender has the resources to conduct these assessments.

The socioeconomic issue with the way this is set up in our criminal justice system is that people who cannot afford an attorney are assigned a public defender who is often overworked and underpaid. The assessments and evaluations discussed previously are expensive, time-consuming, and require the proper resources, therefore, many public defenders are unable to provide their clients with the mitigation they might need based on their trauma. One respondent shared that these evaluations are expensive so they often get them from "private

defense attorneys and someone that can pay for a private defense attorney.” They receive less assessments from those who are given a public defender. People who are able to hire a private defense attorney are often the ones who receive these assessments and evaluations that serve as mitigation in their case. This is not an issue of public defenders not working hard enough or being zealous advocates for their clients; this is a systemic issue of resource allocation in our criminal justice system and a lack of prioritization of trauma-informed practices.

District Attorneys who were asked about the defendant’s background information said that this information only comes from the defense, and they do not have access to the background, childhood information, or medical records of the defendant. In terms of sex cases, it is the defense attorney’s responsibility to provide a psychosexual evaluation and present it to the prosecution. One respondent shared that they often get psychosexual evaluations from private defense attorneys, but the public defenders typically do not provide formal evaluations. This respondent shared that “it really is up to the defense, whether or not to complete those pre sentence psychosexual evaluations.” This respondent also explained that she may receive similar information from the public defender regarding sexual trauma or background information as the psychosexual evaluation, but generally, it will not be in the form of a formal evaluation with a formal interview. Another respondent shared that he likes to receive more information than not about an offender because the more he has to consider, the more he can think about possible alternative sentencing options. He shared that having a presentence investigation is a “really helpful tool to provide information about the defendant’s childhood”; however, a PSI takes time and resources and is not always conducted.

The importance of the formal assessments, rather than just casual information shared about the defendant, was shared by one District Attorney when asked about the information they

receive from the defense. This respondent shared that they might receive “a couple sentences like, ‘oh, my client told me this about their childhood,’ but that is less persuasive than a full report from the probation department.” In more serious cases is also when District Attorneys tend to receive trauma information about the defendant because the defense is trying to mitigate potential prison sentences. Childhood trauma can serve as a mitigating factor if it is provided to the District Attorneys in a persuasive way, oftentimes as a formal assessment rather than informal context about the offender’s past.

V. DISCUSSION

The findings from these interviews fill a gap in the research about the prosecutorial decision-making process. These interviews discussed the factors that play a role in prosecutors' decisions and how trauma plays a role in these decisions. Prior research has not considered how traumatic childhood experience impacts the decisions of prosecutors, and this research is important because many offenders have experienced childhood trauma. Because of this, it is important to understand how this impacts prosecutorial decisions in our criminal justice system. Data from the interviews supports the literature suggesting that childhood trauma plays a role in criminal behavior. All prosecutors that were interviewed discussed their experience with defendants' trauma. There was a recognition that trauma is embedded in these defendants' lives, but the level in which that trauma plays a role in prosecutorial decisions was what was researched. The interviews outlined the differences between juvenile and adult cases, and displayed how rehabilitation is a focus for juveniles and punishment is more of a focus for adults. This data revealed themes about the prosecutorial process, how trauma plays a role in this process, and what factors play large roles in prosecutors' decisions.

Based on the interview responses about the assessments conducted for juveniles versus adults, it is clear that childhood trauma specifically plays a larger role in sentencing for juveniles than adults. While adult cases evaluate upbringing and trauma, they do not specifically dive into childhood trauma and how that trauma may have affected the criminal behavior. There is a recognition in juvenile cases that trauma and life experience play a large role in the crime itself due to the idea that juveniles are more strongly influenced by their surroundings and life situation than adults. Due to the status of being an adult, and what that title holds in our society

in terms of maturity and legal accountability, there is a notion that adults succumb less to their surroundings and life experience than juveniles. The fact that ACE tests are given to juveniles and not adults displays the prominence of childhood trauma in juvenile cases and not adult cases. This is not unexpected given the differing stated purposes and goals of the two systems. The juvenile justice system explicitly focuses on rehabilitation, while the adult system is more focused on punishment. Society often views adults as not as “fixable” or amenable to rehabilitation as juveniles. However, one could argue that adults are in need of as much or more rehabilitation as juveniles because they have gone longer without developing healthy coping skills for their past trauma, and thus, will continue to offend without proper treatment (Kowalski 2019). The question of recidivism plays a large role in how trauma is treated in the criminal justice system, and how much focus there is on treatment for past traumas.

Without a true focus on rehabilitation for adult offenders, reoffending is more likely after incarceration because they were not given correct tools to cope with past trauma, and were oftentimes traumatized further by serving their sentence. In many cases, however, punishment is necessary when victims are harmed, and many prosecutors noted that harm to victims was one of the most important factors in their decisions. There are victims involved in many crimes, and harm done to another person should not go unpunished. However, there can be a balance between punishment and rehabilitation in our criminal justice system. While there is a special distinction between juveniles and adults in terms of life experience and brain development, more focus on rehabilitation for adults, in addition to juveniles, would benefit the individuals within the system, and the system as a whole.

One possibility to make trauma considerations more equal across juveniles and adults could be mandatory ACE tests for adult cases, in addition to juvenile cases, to receive a baseline

childhood trauma evaluation that District Attorneys could then decide how to use that trauma information in their decision. The decision District Attorneys have to take childhood trauma into account in their decisions depends on each District Attorney and the case they are presented with, but a baseline trauma assessment does not have to be discretionary. Providing District Attorneys with ACE tests would possibly encourage more trauma-informed decisions. Allocating funds and resources to allow for more presentence investigations and psychosexual evaluations to be done for defendants would be important for the prosecution. Based on the interview responses, PSIs and PSEs are helpful assessments in the decision-making process, but they are often provided by private defense attorneys rather than public defenders because they are expensive and time-consuming. If more resources were put towards making these assessments more accessible, District Attorneys could receive these thorough evaluations for a greater number of their cases, rather than a select group of cases in which the defense attorney has the means to provide such assessments. It is difficult to say for a fact that these steps in the pre-trial process would make a significant difference in prosecutors' decisions, but it is worth trying if our criminal justice system aims to focus more on rehabilitation.

Along the lines of rehabilitation, one socioeconomic issue touched upon in the interviews was a lack of resources for people to learn how to cope with their past trauma. In one interview, the District Attorney shared that what the defendant did with their trauma and learned from their trauma mattered more to them than the trauma itself. However, the ability to learn how to cope with trauma is a privilege. For many people who cannot afford treatment, their trauma stays with them throughout their lives, and they often do not learn healthy ways to cope with their trauma, and that can lead to substance abuse and/or criminal activity (International Society for Traumatic Stress Studies 2022).

Despite the knowledge that many juveniles in the criminal justice system have childhood trauma, there is a lack of resources in our justice system to help treat these traumas and rehabilitate these juveniles. When asked about what suggestions he might have to improve the current system, one District Attorney explained that there is a lack of secure facilities for juveniles to be sent for rehabilitation instead of jail. He regretfully shared that they oftentimes “have to choose between locking them [juveniles] up or putting them on the streets where they’re at a risk of dying in a ditch.” This respondent did not use the phrase “dying in a ditch” lightly. He shared that there are many instances where a juvenile has nowhere else to go, and often resorts back to criminal activity or substance abuse, which can lead to death in some circumstances. When it comes to substance abuse specifically, this respondent explained that he has seen many juveniles cope with their past trauma with substances, and then become addicted and find themselves in dangerous situations. Because there is a lack of secure facilities and resources to help rehabilitate juveniles, there are often limited options for the District Attorneys to help the juvenile. This is a pressing issue in our criminal justice system because untreated, traumatized juveniles are likely to reoffend, creating a cycle of trauma and violence. Rehabilitation facilities and forms of treatment can help stop recidivism in juveniles by treating the problem at the source, rather than punishing the juvenile for their crimes (Raia and Hirschfield 2014).

Many adults in the criminal justice system have faced childhood trauma as well, but do not receive proper treatment. When asked about the possibility of therapy in prisons, prosecutors explained that it is unlikely for someone to receive therapy in prison because there are not enough resources. One respondent shared that someone could be put on a waitlist for treatment in prison and might be waiting months or even years before they get therapy. There are not enough mental health resources for people in prison, and dealing with being in prison oftentimes worsens

previous traumas. Interview responses highlighted this idea as they explained that it is not helpful for offenders to sit in a jail cell all day without any form of treatment or rehabilitation, because they will eventually re-enter society. Obviously for cases where someone is sentenced to life in prison, this statement would not apply, but even someone who was sentenced to serve 30 years might get out of prison when they are still capable of reoffending. Without having any form of rehabilitation or treatment while in prison, the cycle of trauma and violence could continue once someone is out of prison (Alper 2018).

While these findings add to the body of literature about the prosecutorial decision-making process, this study is limited by the sample size of participants and the fact that only prosecutors from a single jurisdiction were interviewed. If further research were to be conducted on this topic, it would be preferable to hear from more prosecutors and possibly prosecutors from other jurisdictions or counties to study how the consideration of trauma in decisions may differ across types of courts and location. The level of jurisdiction may impact how trauma is taken into account given the more serious nature of crimes in certain jurisdictions. In terms of different counties, trauma may be viewed as more or less influential in different locations depending on the political and social atmosphere regarding trauma and mental health. Although this research consists of a small sample size of District Attorneys from a single jurisdiction, it lays the groundwork for further research to be conducted into the prosecutorial decision-making process.

VI. CONCLUSION

Overall, the results of this study in conjunction with the current literature regarding childhood trauma and criminal behavior demonstrate that trauma plays a role in our criminal justice system in many ways. The correlation between trauma and criminal behavior demonstrates why trauma should be considered a mitigating factor. Childhood trauma impacts one's brain development, coping skills, stress response, and likelihood of substance abuse; all of which are factors that influence one's criminality, and could be taken into account in prosecutorial decisions. These interviews demonstrated that factors other than trauma play a larger role in prosecutors' decisions, and the consideration of trauma in criminal cases depends on the severity of the crime, if it is a juvenile or adult case, and if the defense has provided sufficient trauma assessments.

In terms of the other factors that play a role in prosecutors' decisions, the interview responses highlighted that victim harm plays a large role in decisions. The severity of the crime and how much harm was caused to the victim/s impacts prosecutors' decisions greatly. In addition to the severity of the crime, the ability of the defendant to take accountability for the crime was a large factor in prosecutors' decisions. Past criminal history was important to respondents when deciding sentencing recommendations, plea deals, and possible diversion programs. While prosecutors did not disregard the fact that trauma plays a role in these criminal cases, respondents shared that the previously mentioned factors played a larger role than trauma in many cases.

According to the majority of interview responses, the severity of the crime was a factor that played a large role in prosecutors' decision-making process. Most respondents were more

likely to take trauma into account as a mitigating factor if the crime was less severe, and harm was not done to victims. In more serious crimes, it was less likely that prosecutors would take trauma into account in their decisions. Nonviolent crimes, especially for juveniles, are likely to focus more on rehabilitation and diversion programs which often take into account a defendant's history and focus on lowering recidivism.

A main theme from the interview responses was the difference between juvenile and adult cases. Juvenile cases tend to focus on rehabilitation, while adult cases focus more on punishment. Because adult crimes are treated differently than juvenile cases, victim harm and the severity of the crime were larger factors than defendant history and childhood trauma. In juvenile cases, family history and the defendant's trauma played a larger role partly because prosecutors want to rehabilitate these juveniles and correct their life trajectory to the best of their ability. ACE tests and more trauma-focused assessments are done for juveniles than adults, which shows that trauma is more of a focus because juveniles are treated differently. Adult offenders, however, are not given ACE tests, and the prosecutors tend to focus less on rehabilitation because these crimes tend to be more serious.

This thesis provides information that fills the gap in current research about prosecutorial decisions. Interview findings displayed what factors play a role in prosecutorial decisions, and how childhood trauma influences these decisions given the connection between trauma and criminal behavior. Hopefully more research will be done in the future regarding prosecutorial decisions, and how the prosecutorial decision-making process may differ across jurisdictions and geographical locations. Due to the crucial role that prosecutors play in our criminal justice system, it is important to continue to learn about their decisions and how childhood trauma impacts these decisions.

VII. APPENDICES

A. IRB Approved Informed Consent Form



University of Colorado
Boulder

Permission to Take Part in a Human Research Study

Title of research study: Importance of Trauma-informed Sentencing Decisions

IRB Protocol Number: 22-0501

Investigator: Aniel Bokota, CU Student

Purpose of the Study

The purpose of this research is to better understand the prosecutorial decision-making process and evaluate whether or not trauma is taken into account when making prosecutorial decisions. I will research how trauma plays a role in prosecutorial decisions, and if trauma is discussed in pretrial sentencing and sentencing recommendations. Given the strong correlation between childhood trauma and criminal behavior, this research will analyze if and how trauma plays a role in sentencing decisions. This research project will involve about 30 interviews of Boulder County District Attorneys.

Explanation of Procedures

Participating in this study involves a short interview where I will ask you a list of questions from my interview guide. These interviews will take place in a private room at the Boulder District Attorney's Office to ensure privacy. These interviews will be confidential and I will give you a pseudonym when taking notes to achieve confidentiality. If at any point you do not want to answer a question, I will move on and ask if you wish to continue.

In these interviews, I will ask you about career experience, juvenile experience, sentencing recommendations, and various questions regarding the prosecutorial decision making process.

Voluntary Participation and Withdrawal

Whether or not you take part in this research is your choice. You can leave the research at any time and it will not be held against you. You may also skip or refuse to answer any questions in the interview.

Taking part in this research is not part of your job requirements. You can refuse to be interviewed, or stop at any time, with no effect on your job. You will not be offered or receive any special consideration if you take part in this research.

Risks and Discomforts

There are no direct risks associated with participating in these interviews, but some of the questions may be uncomfortable or difficult to answer. If any questions do make you uncomfortable, you may refuse to answer the question being asked or choose to leave the interview.

Anonymity and Confidentiality

All interviews will be confidential – you will not be asked to provide your name or any other information that could identify you. As such, your responses cannot be traced back to you after completion of the interview. If you agree to have the interview recorded on my laptop, that recording will be stored on a secure computer. The transcribed interview, and any notes, will be kept in a locked file on my computer. I will also delete the recording of the interviews and my notes immediately after the interviews are transcribed. In my writing I will use pseudonyms to disguise the identity of my subjects.

Do you consent to being interviewed?

Yes _____

No _____

Questions

If you have questions, concerns, or complaints, or think the research has hurt you, contact the principal investigator at:

Aniela Bokota, University of Colorado Boulder
949-433-3095
aniela.bokota@colorado.edu

If you have questions for the Faculty Advisor of this research project, contact the advisor at:

Professor Kyle Thomas, PhD
303-495-6662
kyle.thomas@colorado.edu

This research has been reviewed and approved by an IRB. You may talk to them at (303) 735-3702 or irbadmin@colorado.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research subject.
- You want to get information or provide input about this research.

B. IRB Approved Interview Guide

Interview Guide

- Hello, thank you for participating in this study. I really appreciate you being here.
- I am a senior at CU Boulder majoring in Sociology and minoring in Philosophy and History. I am conducting an honors thesis that I will defend in March of 2023.
- The purpose of this research is to better understand the prosecutorial decision-making process and evaluate whether or not trauma is taken into account when deciding sentencing recommendations. I seek to research how trauma plays a role in sentencing and prosecutorial decisions, and if trauma is discussed in pretrial sentencing and sentencing recommendations.
- These interviews will be confidential and I will give you a pseudonym when taking notes to achieve confidentiality. If at any point you do not want to answer a question, I will move on and ask if you wish to continue with the interview. This research is completely voluntary and there is no reward for participating. Also, there are no known direct risks or benefits associated with this interview.
- Do you consent to having the interview recorded for me to listen back and use quotes later in my research? I am using Zoom to record just the audio, not the video, for transcription purposes.
- Please read over the consent form which includes some information I have already stated, and when you are done reading it please check “yes” or “no.”
- Now that you have consented to this interview I am going to start asking questions and taking notes.

Interview questions:

1. How long have you been a District Attorney?
2. Approximately how many cases would you say you have taken on in your career?
 - a. How many have included juveniles?
3. Can you tell me a little about the sentencing decision-making process? What steps occur after a case has been brought to you?

4. What power do you have to decide if you send someone to a diversion program versus traditional sentencing?
5. Do you think this assessment process is specific to Boulder county?
6. Does the type of crime affect whether you divert a juvenile or not? Does trauma affect this?
7. Do you know what an ACE (adverse childhood experience) test is? (If yes, move on, if not tell them what it is)
8. Are you given ACE tests results prior to sentencing, or at what point would an ACE test be given to a juvenile offender, if at all?
9. Do you believe ACE tests should be given to assess the juvenile's childhood trauma?
10. Do you have sentencing guidelines to follow? How often do you use your own discretion versus following the sentencing guidelines?
11. Does juvenile trauma play a role in your sentencing decision? How do you come to a better understanding of someone's trauma in reviewing a case? Would understanding someone's trauma impact the sentencing decision?
 - a. Might only need to ask first question, but these are here as rephrases of the same questions
 - b. Do you use a mitigation specialist?
12. Do you treat childhood trauma differently than adult trauma? If so, how?
13. What is the likelihood that you sentence juveniles to restorative justice/diversion options rather than traditional sentences? Does this depend on the type of crime (violent or nonviolent)?
14. Does the victim's trauma from the crime itself outweigh the option of taking into account the defendant's past trauma? Are some crimes too horrific/violent to even consider taking into account the defendant's trauma and in turn, diversion options?
15. Does discretion, in terms of restorative justice being an option for the juvenile, go away when the crimes become more serious?
16. How does a prosecutor balance the defendant's past traumas with the wishes of the victim, given that we know research shows childhood trauma has a strong connection to criminal behavior?
17. Do you think trauma is a mitigating factor?
18. Is there anything else I should know about the sentencing decision-making process?

Thank you so much for your time and participation in my research. This thesis could not be done without your willingness to share your responses, and I greatly appreciate it. If you have any questions about the study please don't hesitate to reach out. My email is Aniela.Bokota@colorado.edu, or my phone number is (949) 433-3095. You may take a copy of the consent form that also has my information listed.

C. IRB Approved Recruitment Email

Recruitment Email

This email will be sent to the District Attorneys from the paralegal's email:

Hello, My name is Aniela Bokota and I am a CU student majoring in Sociology. I am conducting research for my thesis project to better understand the prosecutorial decision-making process and evaluate whether or not trauma is taken into account when making prosecutorial decisions. After interning at the DA's office this past summer, I further developed my interest in the prosecutorial decision-making process. Through this research I would like to learn more about how trauma plays a role in juvenile sentencing, and if juveniles' trauma is discussed in pretrial sentencing and sentencing recommendations. For this research project I am looking for District Attorneys who would like to participate in interviews to help me better understand this topic.

Taking part in this study would involve participating in about a 30-45 minute interview. The interview is completely confidential and I will not take note of your name or personal information at any point. Therefore, if you agree to be interviewed, your answers can not be traced back to you.

In this interview I will ask questions regarding your familiarity with ACE tests, how juvenile trauma is taken into account in sentencing recommendations, if you treat juvenile trauma differently than adult trauma, and other questions regarding your experience with juvenile trauma and sentencing recommendations.

If you are willing to participate in this research, please reach out to me via email and I will work with you to find availability. I am willing to conduct these interviews in person or via Zoom, depending on what you prefer. My schedule is fairly flexible, so I can work around your availability if you would like to participate in an interview.

Thank you in advance for your time and consideration,

Aniela Bokota

(949) 433-3095

aniela.bokota@colorado.edu

D. ACE test example

Find out your ACE score (Pine Tree Institute)

Did a parent or other adult in the household often or very 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?*

No

Yes

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?*

No

Yes

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 Attempt or actually have oral, anal, or vaginal intercourse with you?*

No

Yes

Did you often or very 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?*

No

Yes

Did you often or very 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?*

No

Yes

Were your parents ever separated or divorced?*

No

Yes

Was your mother or stepmother: Often or very often pushed, grabbed, slapped, or had something thrown at her? or Sometimes, often, or very 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?*

No

Yes

Did you live with anyone who was a problem drinker or alcoholic, or who used street drugs?*

No

Yes

Was a household member depressed or mentally ill, or did a household member attempt suicide?*

No

Yes

Did a household member go to prison?*

No

Yes

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