Kansas
Judicial Branch

Mental Health and Well-Being in Family Court

October 4, 2023

Introductions

- Alicia Davis. as been a Principal Court Management Consultant with the National Center for State Courts since 2010. Since 2017, Alicia has directed the Mark S. Cady Initiative for Family Justice Reform, a partnership with IAALS, NCJFCJ and AFCC, to guide courts towards improved outcomes for families while managing costs and controlling delays. She currently oversees *Automating Family Justice Triage,* a special initiative supported by the State Justice Institute. This project brings together experts in family law, domestic violence and dispute resolution to innovate working prototypes to assist courts across the country. Alicia oversaw CCJ/COSCA's Rapid Response Team Committee on Children, Families and Elders, the Domestic Violence Implementation Lab, the Case Management Lab, and the Build-a-(Backlog)-Dashboard Series to provide guidance to courts post-pandemic and beyond. Alicia was a child and family law attorney before entering court administration.
- Mark S. Cady Initiative for Family Justice Reform, National Project Director
- Technical Assistance Provider, Capacity Building Center for Courts (Children's Bureau)
- Judicial Trainer, International Framework for Court Excellence (Malaysia, Colombia, Costa Rica)
- Trainer and Facilitator, the High-Performance Court Framework: Arizona, Idaho, Michigan, Missouri, and USVI.
- Fellow, Colombia Corporation for Excellence in Justice (State Department)
- Consultant, Puerto Rico Case Management Process Review
- Privacy and Information-Sharing in Juvenile Justice
- National Information Exchange Model, Child, Youth and Family Services Domain
- Judicial Leadership in Child Welfare, Casey Family Programs

Introductions

Carole Warshaw, M.D. a nationally recognized expert on the intersection of domestic violence, trauma, substance use, and mental health. For over 40 years, she has led the development of innovative models for providing accessible, culturally responsive, trauma-, and DV-informed services; building cross-sector collaboration; and improving system capacities to address the health, mental health, substance use, and advocacy concerns of DV survivors and their families. She has been instrumental in the formulation of a trauma-informed social justice approach. Dr. Warshaw speaks and publishes extensively on these topics and has served as an advisor to numerous health, mental health, substance use, and DV advocacy organizations, as well as federal agencies.

Dr. Warshaw founded the National Center on Domestic Violence, Trauma, and Mental Health in 2005 and its precursor, the Chicago-based Domestic Violence and Mental Health Policy Initiative in 1999. Previously, Dr. Warshaw spent over 30 years at John H. Stroger Jr. (formerly Cook County) Hospital as an internist, emergency room physician, and Director of Behavioral Science for the Primary Care Internal Medicine Residency. There, she co-founded the Hospital Crisis Intervention Project, which trains healthcare providers on domestic violence and provides on-site advocacy for survivors and their families.

Dr. Warshaw has maintained a part-time private practice in psychiatry since 1989 and is currently a faculty member in the Department of Psychiatry at the University of Illinois. She is board certified in psychiatry and internal medicine.

- Hon. Keven M. P. O'Grady (moderator). District Court Judge, Olathe.

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DOMESTIC VIOLENCE,
TRAUMA, AND
MENTAL HEALTH

Agenda

Understanding the concept of well-being in family courts

- **Court personnel experience**
- **Litigant experience and procedural justice**

Framework for considering mental health in family court

- **Recognizing trauma in Family Court**
- **Understanding and responding to people experiencing mental health conditions**
- **Recognizing distortion and weaponization of mental health diagnoses**

What do I do? Mitigating the risks of children's adverse experiences during and following family court proceedings. Finding and engaging resources.

- **Understanding the benefits of early case intervention.**
- **Case by case interventions**
- **Systemic resources**
- **Ancillary responses**

Understanding the Concept of Well-Being in Family Court

Litigant Experience and Procedural Justice

Well-Being in Family Courts

- Divorce
- Parentage
- Civil Protection
- How does it manifest?
- Recognizing signs of trauma
- What is a court to do?

Court Personnel Experience

Domestic relations cases are a small portion of my workload (or, I'm only on this assignment for two years) and I rely on attorneys and parties to bring issues before me. Why do I need more in-depth knowledge of such these concepts?

- The Domestic Relations assignment may be the most challenging calendar assignment that a judge faces. Research shows that the rate of trauma and mental health conditions is high among participants in Domestic Relations Court.
- Judges and court staff are generally under-equipped or under-staffed to deal effectively and helpfully with such circumstances.
- The judge remains responsible for the effective, fair, and efficient disposition of the case, and for safeguarding the well-being of the family.
- Not having the necessary knowledge, tools, and resources when holding such great responsibility also impacts judges and court personnel

In Family Court, there may be trauma, mental health, and/or substance use issues present in a case, affecting party behavior.

The sooner that issues can be recognized and understood, the sooner appropriate court processes and interventions can be instituted, increasing the likelihood that children will have better outcomes.

Begin to construct some actionable strategies in your jurisdiction for working with families.

What outcomes are reasonable?

- Reducing risk to children
- Goals
- Monitoring
- Cooperation
- Resources

A framework for considering mental health in family court

CCJ/COSCA Resolution 4

Equal resources with other Courts

Aggressively **triage** cases at the first opportunity

Self-Help

Simplify

Continuum of Dispute Resolution Services **(ADR)**

Well-being as a primary case outcome

Promoting Well-Being Committee

To promote the well-being of families, including implementation of trauma responsive practices for families and staff, throughout the life of their case and as the primary desired case outcome

- Chairs: Kent Batty (AZ AOC)
- Hon. Bruce R. Cohen

- Hon. Gayl Branum Carr
- Hon. Amy McFarland
- Hon. Keven O'Grady

- Dr. Joi Hollis
- Gene Valentini

- Andrea Jones
- Mindy Mitnick
- Dr. Michael Saini

- Dr. Carole Warshaw
- Anadelle M. Martinez-Mullen
- Dawn Stover

- Janice Garceau

- Alicia Davis
- Miguel Trujillo

We encounter people who have been traumatized

We exacerbate trauma for people who have been traumatized

We often experience trauma, ourselves when we bear witness to the experiences of people who have been traumatized

Parallel Process

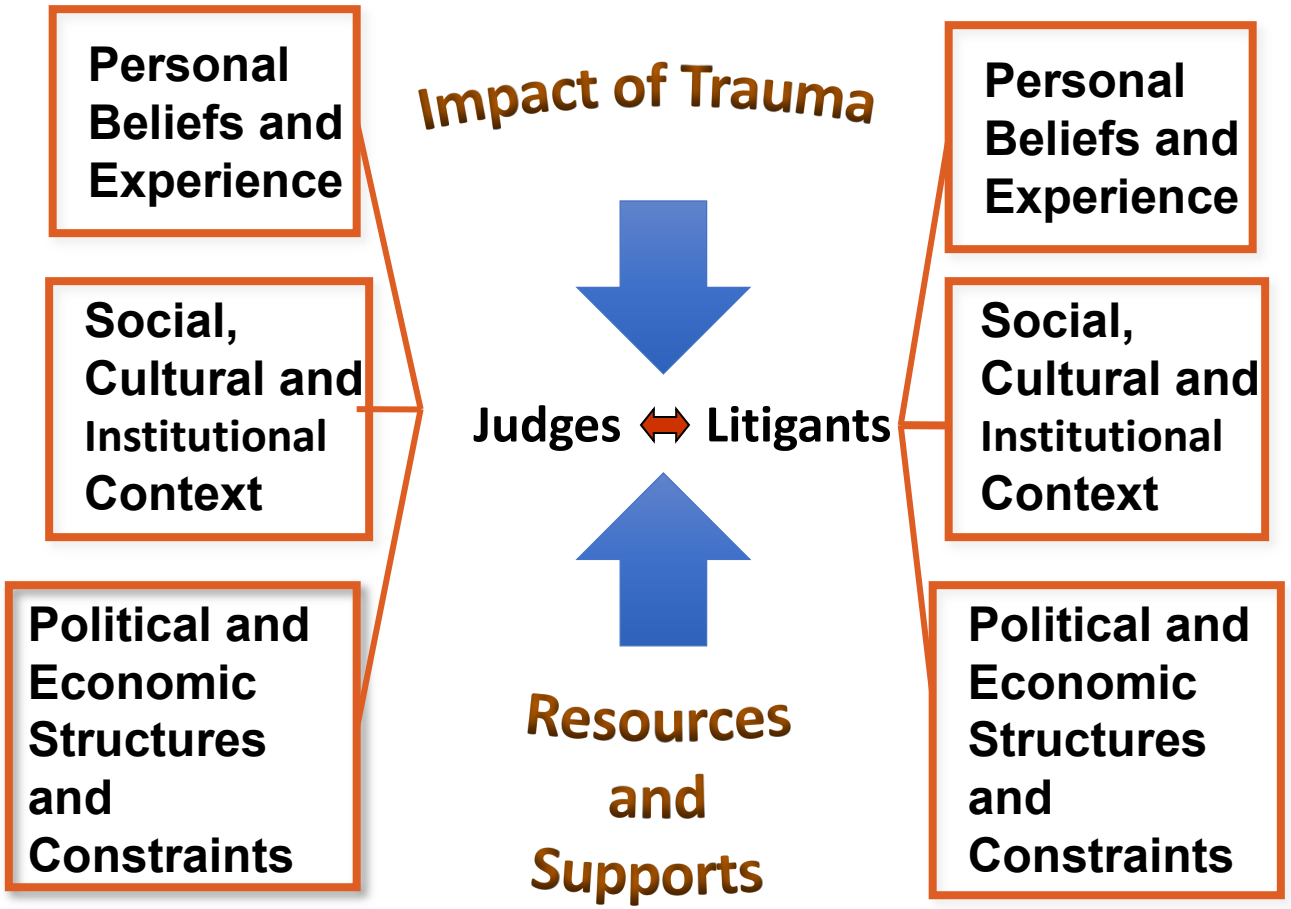
- **Impact of stress and trauma on courts**

- **Impact of stress and trauma on court personnel**

- **Impact of stress and trauma on litigants**

Bloom, S. SAGE for Organizations, Warshaw 2013

In a Trauma-Informed Court, We Are All Part of the Equation



Warshaw 2013

Being Aware of Our Own Responses

- **Fear** of making bad decisions
- **Helplessness** and inadequacy if can't "fix" or predict outcomes
- **Frustration** with parties for not responding to our needs to do a good job
- **Attention** to personal experiences and secondary trauma not valued
- **Competence** tied to mastery and control

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Notice your response

How Can Courts Address These Issues?

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When examining an individual case, how can you take into account the mental health and well-being of parties? (all that apply)

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https://www.ncsc.org/consulting-and-research/areas-of-expertise/children-and-families/fji-update/well-being

Overview of Chapters

1. **Introduction**
2. **Trauma-Informed Courts**
3. **Mental Health**
4. **Parenting Capacity**
5. **Child Voice and Impact on Children**
6. **Early Screening and Triage**

Responding to Mental Health and Substance Use in the Context of Family Court:

Factoring in the Impact of Trauma and Other Contextual Factors

People Come to Us With a Range of Mental Health Experiences and Challenges

- Situational or trauma-related mental health symptoms and/or emotional distress
- Complex, chronic mental health conditions
- Acute symptoms or distress
- Substance use and Substance Use Disorders
- Personality Disorders

What is a court to do?

Responding to Mental Health and Substance Use: What Courts Can Do

1. Be mindful of stigma.
2. Recognize that mental health diagnoses represent symptom constellations, NOT parenting capacities.
3. View mental health conditions in a fuller context (impact, efforts to address, strengths and supports, contributing factors, etc.)
4. Remember that treatment and medication are helpful to some people but there is no “one-size fits” all approach

Responding to Mental Health and Substance Use: What Courts Can Do

5. Consider whether a person's MH condition is impacting their ability to participate in their legal case or court proceedings, and if so, what can help
6. Know how to respond to emotional distress and crisis
7. Get support from your mental health and substance use communities
8. Be aware of the ways that people who perpetrate IPV deliberately undermine and weaponize their partner's MH as a tactic of control

Understanding and Addressing Mental Health and Substance Use in Family Court:

Factoring in the Impact of Intimate Partner Violence

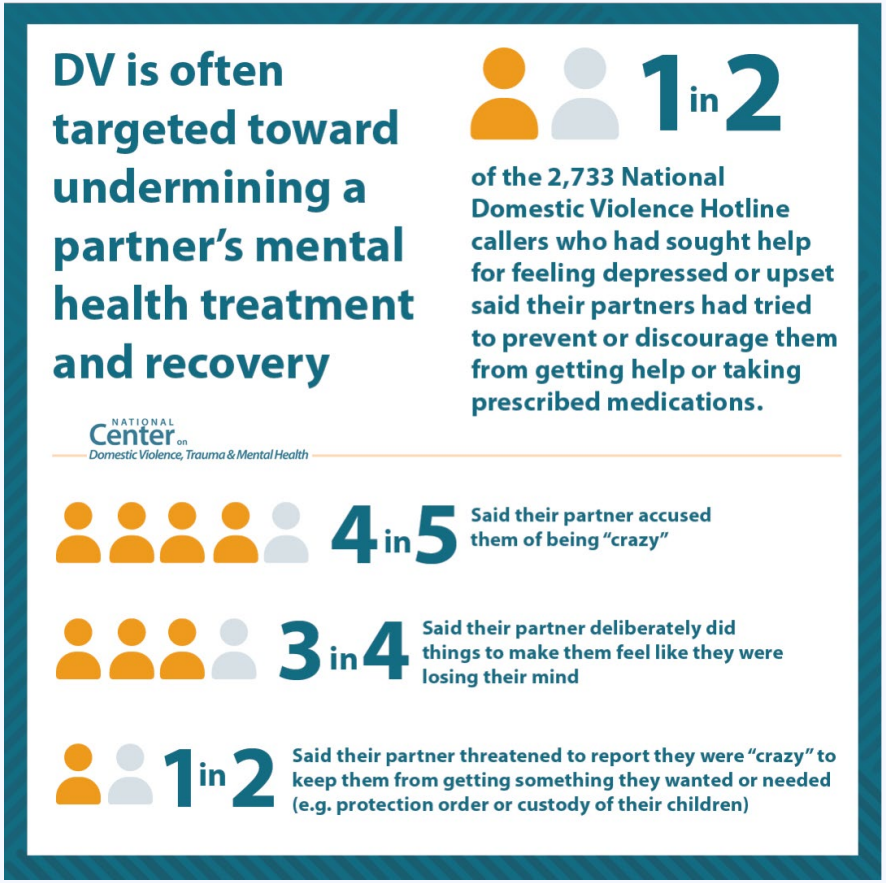
Intimate Partner Violence (IPV) Has Significant Mental Health and Substance Use Effects

- **Women**: Increased PTSD, depression, suicidality, chronic pain, insomnia, and substance/opioid use; High rates of IPV among women dx with a psychiatric disability
- **LGBTQ individuals:** Higher rates of depression and substance use among gay men; Incr. SU associated with gender abuse of transgender women

Wagner et al., 2009; Bennett et al.,1994; Hemsing et al., 2015; Smith et. al., 2012; Ogle et al.,2003; Eby, 2004; LaFlair, et al., 2012; Bueller et al., 2014; Nuttrock et al., 2014; Nathanson et al., 2012; Lipsky et al., 2008; Breiding et al., 2014; Bonomi et al., 2009; Gonzalez, et al., 2014; Khalifeh, et al., 2015; Friedman et al., 2007

Less well recognized are the ways people who abuse their partners engage in coercive tactics targeted toward a partner's mental health or use of substances...

Mental Health and Substance Use Coercion Surveys



Warshaw et al., 2014 NDVH/NCDVTMH

Mental Health Coercion Survey: Qualitative Findings

- **Undermine Sanity**: Call pathologizing names; "diagnose" partner; attempt to convince others that partner is unstable/mentally ill; gaslighting; blaming the abuse on partner's mental health
- **Treatment Interference:** Attempt to influence diagnosis; coerce partner to overdose and then try to have partner committed
- **Control of Medications:** Prevent from taking, force to take (wrong dose/overdose), steal meds, call partner an addict for taking meds
- **Threats to Report or Discredit**: Report meds/treatment to influence custody; Use MH diagnoses to make false allegations and obtain protective order

Substance Use Coercion Survey: Qualitative Findings

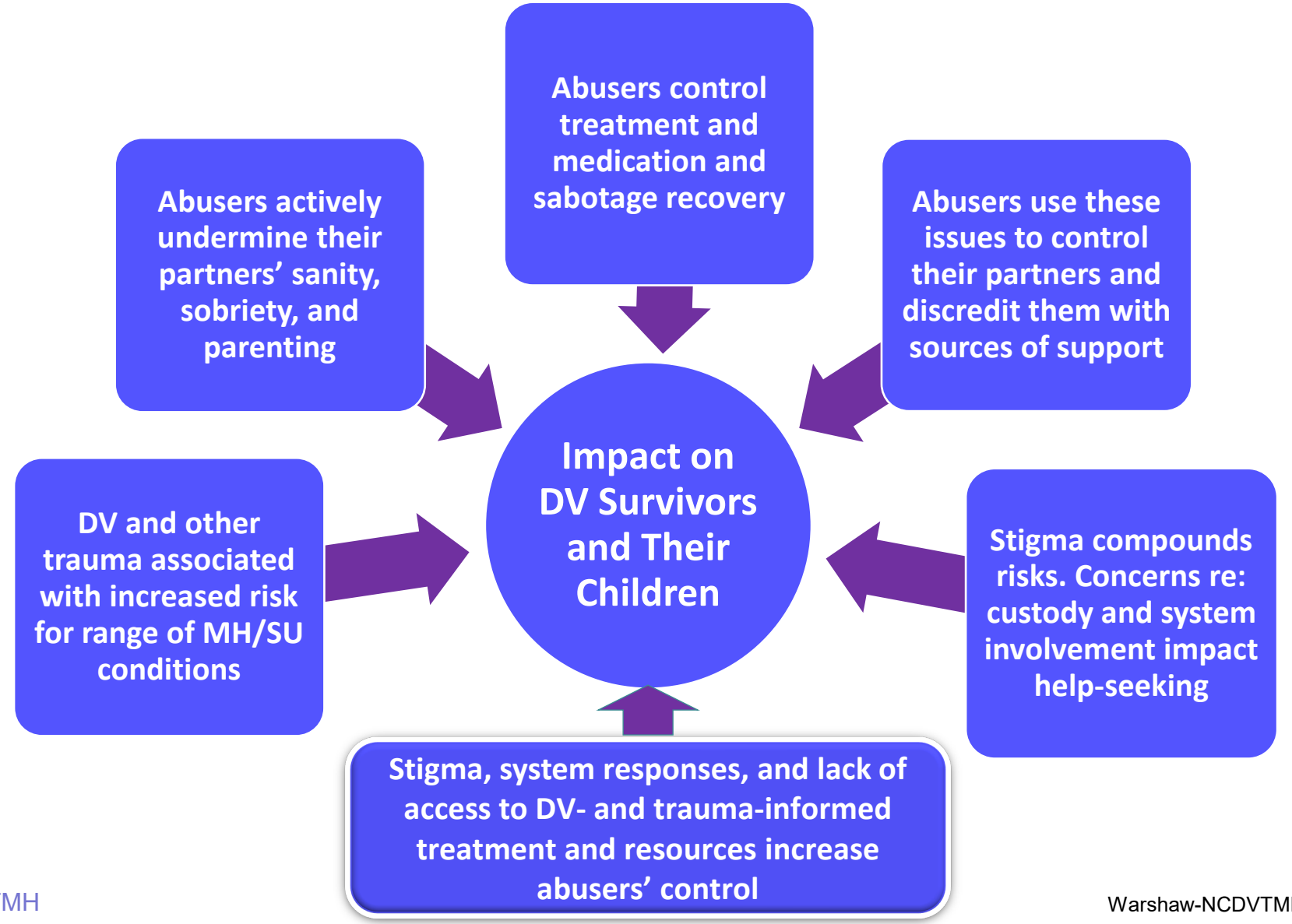
- **Coerced use:** Initiated into using; pressured to use with partner, unable to refuse; Manipulated or threatened into using; Drugged by partner
- **Treatment Interference or Recovery Sabotage**: Prevented from attending meetings/treatment; Transportation/childcare withheld; Harassed into leaving; Medications controlled; Substances kept in home after treatment; Forced to watch partner use; Escalating violence if tried to cut down or stop
- **Substance Use-Related Sexual Coercion:** Coerced/forced sex; Pressure to use
- **Blaming Abuse on Partner's Use** and benefiting from lack of services; Stigma re: women and substance use
- **Threats to Report or Discredit:** Reported to judges, CPS, police, probation officers, employers; Made false allegations

Warshaw, et al., 2014

Experiencing a mental health or substance use disorder places individuals at greater risk for being controlled by an abusive partner

Stigma associated with mental health and substance use conditions contributes to the effectiveness of abusive tactics and can create barriers for survivors when they seek help. This is further exacerbated by structural violence.

Trauma, DV, and MH/SU Coercion: Complex Picture



In addition, people who abuse their partners actively try to undermine their partners' relationships with their children, creating risks for their children's health, mental health and well-being.

Yet, research consistently shows that attachment to the non-abusive caregiver is what is most protective of children's resilience and development.

Custody and Permanency: Relevant Data

50% (MH coercion survey) and 37.5% (SU coercion survey) said partners threatened to report MH/SU to authorities, including:

- 72% of callers whose partners prevented or discouraged them from getting mental health treatment
- 94% of callers whose partners had prevented or discouraged them from getting SUD treatment

Warshaw et al., 2014

Implications for Family Courts

Custody:

- **Is the MH/SUD issue a genuine concern?**
- **Red flags / Things to consider:**
  - The party raising the issue (abusive partner) did things to exacerbate the condition or interfere with treatment
  - The party raising the issue (abusive partner) never indicated concern about the children's safety prior to litigation

CHAPTER 4
Understanding the Impact of Mental Health Conditions on Parenting Capacity

1. Stigma around mental health conditions persists
2. Parties know this. It is not uncommon for parties to use weaponize mental health diagnoses to influence custody determinations.
3. In a parenting-time dispute where a condition is raised to question parental capacity, suggestions and questions are offered to assist the judge in determining the parent's ability to meet the child's needs.

What Do I Do?

"My parents have joint custody which means I have equal time listening to them complain about each other."

Some families need minimal services while others need intense case management.

The failure to properly identify case needs wastes judicial resources and contributes to litigant dissatisfaction and conflict.

There are known case characteristics that help identify family needs and triage cases for more effective case management.

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Within your court community, which initiatives or strategies are currently in place to enhance well-being and trauma responsiveness?

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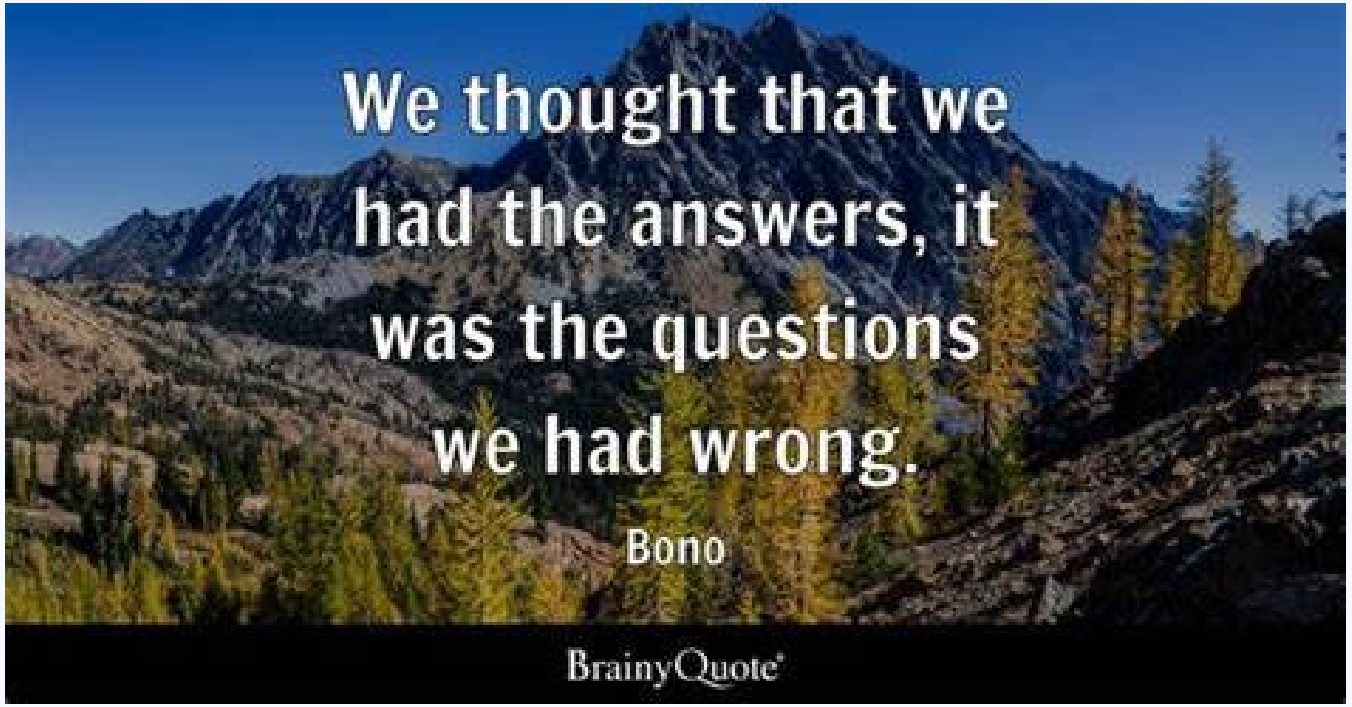
Next Steps


We thought that we had the answers, it was the questions we had wrong.
Bono
BrainyQuote

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Based on today's discussion, which of the following steps are you most likely to prioritize and implement in your court community to foster well-being in your court?

ⓘ Start presenting to display the poll results on this slide.

Conclusion

- Materials and Resources: www.NationalCenterDVTraumaMH.org
- Suggestions of more information
- Please respond to survey
  - Gauge interest for further training
- Contact information
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  - CWarshaw@ncdvtmh.org
  - Keven.OGrady@kscourts.org