

Trauma-Informed Prosecution Workbook

Produced by the Institute for Innovation in Prosecution

About the Institute for Innovation in Prosecution

The Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) provides a collaborative national platform that brings together prosecutors, policy experts, and the communities they serve to promote data-driven strategies, cutting-edge scholarship, and innovative thinking. The IIP is dedicated to criminal justice that promotes community-centered standards of safety, fairness, and dignity. Learn more at www.prosecution.org

The Trauma-Informed Prosecution Training was inspired by an IIP roundtable discussion on trauma and prosecution in February 2020. The discussion highlighted the urgency for trauma-informed practices to become a standard in prosecutors offices around the country. The criminal justice system has played a major role in creating and exacerbating trauma in our most vulnerable communities. Prosecutors have an obligation to uphold justice and promote public safety. The IIP believes that public safety should be all encompassing, especially when it comes to upholding the safety and wellbeing of individuals involved in a case. The Trauma-Informed Prosecution training works to give prosecutors a foundation in trauma-informed practices that can be employed throughout a case.

The training includes:

1. **A slide-show presentation.**
2. **Presentation script:** The script is meant to be used to guide the presentation. As procedures vary amongst jurisdictions, we encourage offices to make appropriate amendments to suit their offices.
3. **Workbook:** The workbook provides tools, exercises, and discussion prompts to use throughout the presentation.

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Section 1: Bias During Intake

Discuss/write how biases may manifest when a prosecutor is doing an initial intake of a case. Take each listed factor/influence and discuss or write about the role trauma may play in a case based off the factor. How does each factor/influence impact the bias of the prosecutor, individual accused of a crime, witness, or crime survivor?

History:

For example: Personal experience with a particular type of case. If a prosecutor has dealt with many crimes of that nature, they may be quick to draw general conclusions based on prior cases. This could be both good and bad. Experience with the case can help a prosecutor handle a case better after learning from previous mistakes. On the other hand, this can cause a prosecutor to approach a case with the same perspective.

Race/Ethnicity:

Gender and Sexuality:

Socio-economic status:

Immigration status:

Other factors:

Section 2: Looking Beyond The Police Report

CAMBRIDGE POLICE DEPARTMENT
CAMBRIDGE, MA
Incident Report #9005127
Report Entered: 07/16/2009 13:21:34

Case Title: _____ Location: **WARE ST** Apt/Unit #: _____
Date/Time Reported: 07/14/2009 12:44:00 Date/Time Occurred: _____
Incident Type/Offense: 1.) DISORDERLY CONDUCT c272 563 --
Reporting Officer: CROWLEY, JAMES (467) Approving Officer: WILSON IL, JOSEPH (213)

Persons

Role	Name	Sex	Race	Age	DOB	Phone	Address
WITNESS	WHALEN, LUCIA	F	W	40	03/11/69	781-452-1111	100 WARE ST, CAMBRIDGE, MA 02139

Offenders

Status	Name	Sex	Race	Age	DOB	Phone	Address
DEFENDANT	GATES, HENRY	MALE	BLACK	58	01/23/51	781-452-1111	WARE ST, CAMBRIDGE, MA 02139

Vehicles

Class	Description	Make	Model	Serial #	Value
1	RESIST WITHOUT VIOLENCE				843.02
2	DUI				316.193
3	EXPIRED DL > 6 MONTHS				322.03(5)

Property

Class	Description	Make	Model	Serial #	Value
4	EXPIRED DL > 6 MONTHS				322.03(5)

Narrative

On Thursday July 16, 2009, Henry Gates, Jr. [redacted] of [redacted] Ware Street, Cambridge, MA) was placed under arrest at [redacted] Ware Street, after being observed exhibiting loud and tumultuous behavior, in a public place, directed at a uniformed police officer who was present investigating a report of a crime in progress. These actions on the behalf of Gates served no legitimate purpose and caused citizens passing by the location to stop and take notice while appearing surprised and alarmed.

On the above time and date, I was on uniformed duty in an unmarked police cruiser assigned to the Administration Section, working from 7:00 AM-3:30 PM. At approximately 12:44 PM, I was operating my cruiser on Harvard Street near Ware Street. At that time, I overheard an ECC broadcast for a possible break in progress at [redacted] Ware Street. Due to my proximity, I responded.

When I arrived at [redacted] Ware Street I radioed ECC and asked that they have the caller meet me at the front door to this residence. I was told that the caller was already outside. As I was getting this information, I climbed the porch stairs toward the front door. As I reached the door, a female voice called out to me. I turned and looked in the direction of the voice and observed a white female, later identified as Lucia Whalen. Whalen, who was standing on the sidewalk in front of the residence, held a wireless telephone in her hand and told me that it was she who called. She went on to tell me that she observed what appeared to be two black males with backpacks on the porch of [redacted] Ware Street. She told me that her suspicions were aroused when she observed one of the men wedging his shoulder into the door as if he was trying to force entry. Since I was the only police officer on location and had my back to the front door as I spoke with her, I asked that she wait for other responding officers while I investigated further.

COMPLAINT/ARREST AFFIDAVIT POLICE CASE NO: 2014-00008582

DEFENDANT'S NAME (LAST, FIRST, MIDDLE): **BIEBER, JUSTIN, DREW**

DOB (MM/DD/YYYY): 03/01/1994 AGE: 19 SEX: M ETHNICITY: ANGL0 HEIGHT: 59 WEIGHT: 140 HAIR COLOR: BRO EYES: STR GLASSES: BRO FACIAL HAIR: CLN TEETH: NOR

LOCAL ADDRESS (Street, Apt. Number): 25202 PRADO DEL GRANDISO CALABASAS, CA

PERMANENT ADDRESS (Street, Apt. Number): _____

ARREST DATE (MM/DD/YYYY): 01/23/2014 ARREST TIME (HH:MM): 04:13 ARREST LOCATION (include name of business): 300 41ST ST BLK CITY OF MIAMI BEACH, FL 33140

CHARGES:

CHARGE AS	COUNTS	FI STATUTE NUMBER	VIOL OF SECT	CODE OF	UCR	WARRANT TYPE OR TRAFFIC CITATION
1 RESIST WITHOUT VIOLENCE	1	843.02				IN CUSTODY
2 DUI	1	316.193				IN CUSTODY
3 EXPIRED DL > 6 MONTHS	1	322.03(5)				IN CUSTODY

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COMPLAINT/ARREST AFFIDAVIT

Imagine you are looking over the police reports on intake. Discuss the reports and what is missing?

- » Events that led up to an incident
- » Reasoning behind why each person was there
- » Relationship history of each person
- » What an officer might have asked or did not ask based off the report (possible assumptions officers have made)

Section 3: Reluctant Witnesses: What To Do? How To Do It.

The first step in handling a reluctant witness is to understand as best you can why the individual does not want to participate. This will make you better able to speak with him or her about the process and the possibilities.

- » Have an open, compassionate and straightforward conversation with the witness.
- » Frame the discussion in the positive, as if the survivor will be cooperating.
- » Discuss the consequences of cooperating or not cooperating.
- » Explain the process, including the grand jury, trial and the possibility of subpoena.
- » Explain the consequences of failure to comply with a subpoena .
- » For example, in a sexual assault case, “The (accused) has been held in on bail and there is an order of protection that prevents him from contacting you. The next step is to present evidence in the grand jury, which will include your testimony. I know this can be intimidating, and I am going to explain the process to you (explain you will be there, it is secret, etc.). If we do not present evidence to a grand jury, he will be released and the order of protection may be dismissed. On the other hand, once you testify and other evidence is presented to the grand jury, they can vote to indict him, which will ensure that he remains incarcerated until trial, assuming he cannot make the bail that was set.”
- » Mitigate safety concerns with an actionable plan.
- » Consider whether the witness needs counsel.
- » Listen to the concerns of the witness with an open mind.
- » Remain supportive and compassionate if the individual no longer wants to participate.
- » Offer services - counseling, housing, childcare - while it is important to have clinical staff available to support the witness, do not abdicate responsibility for the conversation to counselors. Your relationship with the witness is paramount to his/her cooperation and you are responsible for establishing that relationship. If the witness is not responsive to you, discuss working with a different ADA (your charge is to do what is best for the case).

The second step is to decide if you are going to attempt to convince the individual to testify and issue a grand jury subpoena if he refuses. This should be a collective office decision, made with input from supervisors and/or prosecutors with more experience in the type of case you are handling.

- » If you decide that the interests of justice demand dismissal of the case because of lack of witness participation, dismiss the case or work with defense counsel to find alternatives that promote justice. Offer the victim services. Consider restorative justice.
- » If you decide that the interests of justice demand moving forward with a case, whether the survivor initially wants to or not, you must have the difficult conversation with the victim.

The third step is having the difficult conversation with the victim in which you tell him that you believe that the interests of justice demand moving forward in the case, despite his disinterest in participation.

- » The conversation may be relatively easy if it involves mitigating fears you can help control, like safety and scheduling considerations. Work with officers to find creative and effective alternatives to mitigate concerns. Do not promise more than you can deliver. For example, a public housing resident may fear for her safety and request a housing transfer to mitigate the concern. Immediate transfer in such a situation may simply not be available because of bureaucratic constraints. If you cannot offer an alternative solution (for example, paying for a hotel until the transfer comes through), be very direct with the victim about what you can help with, and weigh your ability to protect the physical safety of such an individual against your decision to proceed with the case.
- » The conversation is more difficult if it involves lack of desire to participate because of factors you cannot control, like the emotional or financial consequences of coming forward. This will involve being firm yet fair and compassionate to a survivor who is dealing not only with the trauma of the incident, but also the trauma of having to go forward with the prosecution.
- » Express respect and understanding of their desire not to cooperate.
- » Respectfully remind them that you also have to do your job, which is to serve the interests of justice.
- » Explain why you think they must testify - are you afraid for their safety? Safety of their children? Safety of the community?
- » Try to empower the victim. Part of the trauma of sexual or intimate partner assault relates to self-worth. Suggest that going forward with the case will allow them to tell their story and stand up to the abuse that they have suffered.
- » Consider giving the survivor time to think about it but do not just “kick the can down the road”; set a date in which the victim will return to your office to discuss; consider giving them a grand jury subpoena for the same date.
- » Re-explain your role. You are not the victim’s lawyer; you are a prosecutor, and you are charged with protecting the community.

Read the case example below and discuss how you would apply the steps to respond.

Case Example:

Mary, age 20, reported to police that Joe, the father of her two children, strangled her until she passed out. There are no visible injuries. This is the fourth complaint Mary has made against Joe in the last two years, and the incidents are escalating. Mary has never testified against Joe, refusing to follow through with the complaints after police intervention. Mary and Joe live together, and Joe’s mother has been calling Mary non-stop since Joe was arrested begging her to “drop the case.” When you meet Mary, she tells you that she is pregnant, and during the course of your interview she excuses herself to the bathroom, where she reports she vomited because of morning sickness.

Mary has a host of other health issues and is scheduled to have a procedure in the next few weeks. She also reports that the latest “fight” with Joe began because he found out she was cheating on him, which she had been. Mary says that Joe is an alcoholic who blacks out when he drinks. Mary also tells you that she has an open charge against her for assault (she got into a bar fight with a woman who she thought was flirting with Joe). During your interview, Mary’s behavior varies from seemingly dissociated to combative. Her account is credible, but she refuses to testify in the grand jury.

For Example

Step 1: Considerations for the initial conversation

- » There is no other evidence - you need Mary to charge the case.
- » Given that Mary has never gone forward, she will likely not go forward this time.
- » Mary has an open case - she has counsel in that case.
- » Beyond the legal ramifications, there may be other issues because of her open case, including distrust of law enforcement.
- » Mary is pregnant and ill - you must help her feel physically comfortable and safe to have the first conversation.
- » Mary is facing a medical procedure that may make her unavailable.
- » Joe is an “alcoholic” per Mary - you must find out what that means, how it affected the incident and what impact, if any it has on charges.
- » Mary/Joe living + childcare situation.
- » Joe’s mother - Possible violations of the order of protection or aggravated harassment.
- » You must explain the process to her, with compassion, including the consequences of not cooperating.

Step 2: Considerations for issuing a grand jury subpoena

- » This is not the first report.
- » The conduct is escalating.
- » On credibility - Mary has an open case related to the relationship.
- » On scheduling - Mary may be physically unable to attend because of her procedure.
- » On case follow through - Mary is going to have a child during the pendency of the case.
- » Housing/Safety/Childcare - How can you keep Mary safe/housed/with her children.

Step 3: Having the difficult decision with Mary

- » Remind Mary of her initial report
- » Remind her of the violence she has experienced.
- » Communicate your concern and desire that she not be harmed again.
- » Communicate your concern for her children and their safety, given Joe’s behavior.
- » Reiterate consequences of failure to comply with the subpoena.

- » Encourage her and try to allay fears by reminding her of the process, that it will not take a long time, that you will be there to guide her, that she can take breaks when she needs to
- » Be respectful of her schedule and do everything to work with her to make the scheduling work
- » Offer childcare during the testimony. If she cannot come to the office without her children, enlist a coworker to help watch the children outside of the grand jury while she testifies

Section 4: Should You Bring Charges?

Using the case example, analyze your decision to bring charges with the question prompts from

Example One

Mia and Lisa have been dating and living together for 4 years. During that time, there have been no reported incidents of violence. On the night in question, Lisa calls the police and reports that Mia came home very drunk, and the two began to argue. During the argument, Mia got physical, punching Lisa in the face, causing redness. Officers who responded to the scene confirm to you that they observed redness to Lisa's face and that Mia was very drunk when they responded. Photographs confirm the redness. When you interview Lisa, she does not want to proceed with the case. She tells you that this was a blip in behavior when Mia was drunk and begs you not to prosecute.

Example Two

Lucia has been married to Duncan for 15 years. During that time, the police have been called to the house 40 times with reports by Lucia of violence by Duncan including punching, kicking, verbal abuse and choking. The couple has four children under the age of 14, and Lucia is a stay-at-home mom. She is completely financially dependent on Duncan, and the two live together. In the past, Duncan has been convicted of a violation of an order of protection and assault of a stranger in a bar. Last year, Lucia's 13-year-old daughter called the police to report Duncan was about to kill Lucia by strangling her. Duncan was arrested but Lucia did not go forward, and the charges were dropped. On the night in question, neighbors call the police to report screaming and commotion in Lucia and Duncan's house. When the police arrive, the children are home and Lucia appears badly battered about the face and bleeding from her lip. The house is in disarray, and Duncan is not there. Lucia is hysterically crying and reports, through tears, that Duncan just left the house and describes how he beat her up. Duncan is arrested. When you meet Lucia, with still visible injuries, she says nothing happened.

Questions to think about:

Would prosecuting this case cause more harm than good? Who in the community may experience collateral damage because of prosecution?

Would another dispute resolution tool mitigate damage to the community? Is prosecution going to help the individual in the long run? What trauma may the community/crime survivor/witness experience if you choose to prosecute or not prosecute? --Work with clinically informed staff to explore additional programs.

What role may trauma have played in the accused persons life that might have led to them committing a crime? If convicted, how would the system ensure the individual would successfully re-enter society?

Would incarcerating the accused person create traumatic collateral consequences for

their family and community?

Does the crime survivor or complainant feel that charging the accused person with a crime is an effective response? How does a crime survivor or complainant's own experience with trauma implicate their views on a prosecutorial outcome? Is the crime survivor aware of the traumatization of the criminal legal process?

Has law enforcement acted out of bias? Has law enforcement exacerbated the trauma of the accused person, crime survivors, or witnesses?

Questions to consider:

Is the prospective prison sentence a proportional response to the person accused of a crime? If not, are there other ways to hold the individual accountable? Does the case qualify for a diversion program?

Has the person accused of the crime made efforts to repair their harm or seek rehabilitative services? Has defense counsel asked for a diversion program?

What are the various plea possibilities that can be used to reach the best holistic outcome?

Section 5: Responding to Traumatic Reactions in Interviews

Interview Exercise

Below is a sample of facts about an interviewee. Separate into pairs, one partner is the ADA and the other partner is the interviewee. One partner will be the prosecutor in the first scenario and the other partner will be the prosecutor in the second scenario.

Interviewee:

Michael, Age 35. Victim of a robbery meeting with an ADA.

Michael reports that he was standing outside of his home when he was approached by an individual who pointed a gun at him and demanded property. Michael initially refused to give up his property, and the assailant pistol-whipped him. The assailant took Michael's watch and wallet.

Michael has a poor opinion of law enforcement after a history of negative interactions with police officers in his community. He does not trust you or the criminal system and does not want to cooperate. Michael is angry because he believes that the system did not respond to the incident appropriately. Michael is fearful of retaliation from the assailant and worried the assailant knows where he lives. He lives with his mother in the same place he has lived for his entire life and does not want to move.

You begin your interview with Michael and the following scenarios occur:

Scenario 1: Interviewee shuts down and refuses to speak.

Scenario 2: Interviewee is aggressive and begins to scream at you.

How would you respond to each scenario?

Section 6: Grounding Exercises

- » **4-7-8 Breathing**
 - » Breathe in for four seconds, hold for 7 seconds, and exhale for 8 seconds. Repeat 5x.
- » **Move your body: When trauma is triggered, your body returns to danger mode and you are no longer present.**
 - » Ask them to stand up and stretch with you.
 - » Ask them if they would like to go for a walk.
- » **5 step sensory activity:**
 - » Name 5 things you see in the room.
 - » Name 4 things you can touch around you.
 - » Name 3 things you can hear.
 - » Name 2 things you can smell.
 - » Name one thing you can taste.
- » **Tactile grounding tools:**
 - » Touch is a powerful tool to keep people present. Offer them something to hold while you interview them. In your office, you can give them a pen or a piece of paper. You can give them a cotton ball to rub between their hands.
 - » You can purchase certain gadgets, such as stress balls or acupressure rings.