

PHYSICIAN PARTNERS IN SAFE BABY COURTS

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The judicial system has seen an alarming increase in the number of young children rotating in and out of home placements due to unstable and often abusive biological home environments.¹ Often, young children are caught in a lengthy legal process to decide their permanent placement. Those professionals charged with the responsibility to represent children often receive very little education regarding early childhood development and the harmful, often permanent, negative impact caused by a disruption in developmental processes during early years. This Article provides information regarding the dynamic and continuous interaction between biology and experience that can negatively alter the developmental trajectory of a child in the absence of appropriate supportive measures.

The science of early childhood development provides a distinct picture of the dynamic nature of early childhood brain development. As a baby's brain architecture forms, important neuronal connections are laid down for the developmental tasks of hearing, language, and cognition, as well as social and emotional development.² Early childhood experiences shape later cognitive and personality traits of a child.³ These experiences will strengthen or weaken a child's ability to face challenges later in life.⁴ Neuronal connections work as scaffolds upon which an individual's later higher functions will be built.⁵

The growth of self-regulation is a foundation of early childhood development and influences all domains of development.⁶ Self-regulation is an expression of

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1. See U.S. DEP'T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT 1 (2015), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>.

2. See *Brain Architecture*, HARV. U. CTR. ON DEVELOPING CHILD, <http://developingchild.harvard.edu/science/key-concepts/brain-architecture/> (last visited Apr. 4, 2016).

3. See *id.*

4. See *id.*

5. See Ross A. Thompson, *Stress and Child Development*, THE FUTURE OF CHILD., Spring 2014, at 41, 50.

6. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 93–94 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000) (stating that self-regulation “refers to the mastery of tasks that were accomplished by the mother’s body or in concert with the mother’s body when the child was in the womb, but now must be accomplished by the child’s body and through signaling

healthy socio-emotional development. Socio-emotional development tasks include: emotional regulation, relational security, capacity for empathy and relatedness, socio-emotional wellbeing, and mental health.⁷ Self-regulatory skills and early learning competencies develop in the context of a child's relationships with adults who support the child's learning.⁸ Executive functions are based in the brain regions that have a long maturational course, but even these functions develop more rapidly between three and five years of age.⁹

The learning process begins early, is rapid, and is cumulative; therefore, children benefit from continuity in their learning experiences.¹⁰ A one-year-old knows that people's actions are goal orientated (for example: when a one-year-old sees a person reaching for a glass full of water, the child understands that person is going to pick up the glass, carry it to his or her mouth, and drink the water).¹¹ Even a young infant understands that facial expressions tell others how a person feels.¹² This demonstrates the importance of nurturing human relationships—the active ingredient of healthy development.

When families lack key ingredients for providing a nurturing environment for a young child, a child's early years become a time of vulnerability and fragility rather than a promise for optimal developmental outcome.¹³ Children experiencing environmental stress from an unstable home, chronic neglect, parental stress, or mental health issues, are prone to lifelong impact on physical, emotional, and

needs to responsive adults”).

7. JULIE COHEN, NGOZI ONUNAKU, STEFFANIE CLOTHIER, & JULIE POPPE, HELPING YOUNG CHILDREN SUCCEED: STRATEGIES TO PROMOTE EARLY CHILDHOOD SOCIAL AND EMOTIONAL DEVELOPMENT 2 (2005), http://main.zerotothree.org/site/DocServer/helping_young_children_succeed_final.pdf?docID=1725.

8. JACK P. SHONKOFF & ANDREW S. GARNER, THE LIFELONG EFFECTS OF EARLY CHILDHOOD ADVERSITY AND TOXIC STRESS e240 (2016), <http://pediatrics.aappublications.org/content/early/2011/12/21/peds.2011-2663.full-text.pdf>.

9. John R. Best & Patricia H. Miller, *A Developmental Prospective on Executive Function*, 81 CHILD DEV. 1641, 1643–45 (2010).

10. COMM. ON THE SCIENCE OF CHILDREN BIRTH TO AGE 8: DEEPENING & BROADENING THE FOUNDATION FOR SUCCESS, TRANSFORMING THE WORKFORCE FOR CHILDREN BIRTH THROUGH AGE 8: A UNIFYING FOUNDATION 209–211 (2015), http://www.ncbi.nlm.nih.gov/books/NBK310532/pdf/Bookshelf_NBK310532.pdf.

11. See Annette M. E. Henderson, Sarah Gerson, & Amanda L. Woodward, *The Birth of Social Intelligence*, ZERO TO THREE, May 2008, at 13, 14.

12. See Charles A. Nelson, *The Recognition of Facial Expressions in the First Two Years of Life: Mechanisms of Development*, 58 CHILD DEV. 889, 890 (1987).

13. See Bruce D. Perry, *Childhood Experience and the Expression of Genetic Potential*, 3 BRAIN AND MIND 79, 90–92 (2002).

intellectual well-being.¹⁴

Disproportionately large numbers of children live in low-income families. In 2013, almost half of the children under the age of 18 in the United States lived in low-income families or poverty, with limited resources to access quality early childhood programs that will benefit the children.¹⁵ Such children tend to lag behind their peers who have more resources in developing language, early math, and social emotional indicators by two years of age.¹⁶ Demographic changes indicate that the majority of infants in the United States are now of ethnic minority parents.¹⁷ This increases the odds against these children of reaching up to white affluent children and underscores the need for equity of opportunity.¹⁸ Professionals know that a “higher skill base at age three enhances the productivity of later investment.”¹⁹ When the foundation of learning is compromised, so are the later chances of success.²⁰ Preschool children growing up in poverty have a smaller volume of grey matter (the cognitive function area of brain).²¹ Economic disadvantage is among the most potent risks for behavioral and emotional problems due to increased exposure to environmental, familial, and psychosocial risks.²²

14. SHONKOFF & GARNER, *supra* note 8, at e243.

15. See YANG JIANG, MERCEDES EKONO, CURTIS SKINNER, BASIC FACTS ABOUT LOW-INCOME CHILDREN: CHILDREN UNDER 18 YEARS, 2013, at 1 (2015).

16. See R. Gabriela Barajas, Nina Philipsen, & Jeanee Brooks-Gunn, *Cognitive and Emotional Outcomes for Children in Poverty*, in HANDBOOK FOR FAMILIES AND POVERTY 315 (D. Russell Crane & Tim B. Heaton eds., 2008); Ashlee Loughan & Robert Perna, *Neurocognitive Impacts for Children of Poverty and Neglect*, AM. PSYCHOL. ASS'N (July 2012), <https://apa.org/pi/families/resources/newsletter/2012/07/neurocognitive-impacts.aspx>.

17. See *Most Children Younger than Age 1 are Minorities*, Census Bureau Reports, U.S. CENSUS BUREAU (May 17, 2012), <http://www.census.gov/newsroom/releases/archives/population/cb12-90.html>.

18. See *Ethnic and Racial Minorities & Socioeconomic Status*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/pi/ses/resources/publications/factsheet-erm.aspx> (last visited Apr. 20, 2016).

19. James J. Heckman, *The Case for Investing in Disadvantaged Young Children*, in BIG IDEAS FOR CHILDREN: INVESTING IN OUR NATION'S FUTURE 54 (2008), <https://firstfocus.org/resources/report/big-ideas-investing-nations-future/>.

20. See Loughan & Perna, *supra* note 16.

21. Michelle Castillo, *Children Who Grow Up Poor Shown to Have Smaller Brain Volume*, CBS NEWS (Oct. 28, 2013), <http://www.cbsnews.com/news/children-who-grow-up-poor-shown-to-have-smaller-brain-volume/>.

22. Margaret J. Briggs-Gowan, Alice S. Carter, Emily Moyer Skuban, & Sarah McCue Horwitz, *Prevalence of Social-Emotional and Behavioral Problems in a Community Sample of 1- and 2-Year-Old Children*, 40 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 811, 817–18

Ongoing stress and instability in the environment will result in a multitude of mental health and physical health problems for young children.²³ The Adverse Childhood Experience Study (ACE Study) surveyed adults about early traumatic and stressful experiences.²⁴ Adverse early experiences were related to increased rate of health problems in adulthood, including obesity, cardiovascular disease, substance abuse, and mental health problems.²⁵ As the ACE score increased, so did the number of risk factors for the leading causes of death (high blood pressure, stroke, diabetes).²⁶ High cumulative psychosocial risk in the absence of supportive caregiving (toxic stress) results in long-term structural and functional changes in the developing brain and elsewhere in the body causing physical and mental health impairment for the affected child.²⁷ Even very young children exposed to toxic stress show evidence of anxious and depressive symptoms, behavior and conduct problems, traumatization and post-traumatic stress disorder, and other serious psychological problems.²⁸

Because many young children entering the welfare and judicial system have complex and prolonged psychosocial risk factors, pediatricians and other health professionals providing care for young children are in an optimal position to serve as an important resource for advising and guiding parents, child care givers, and professionals involved in providing a safe and secure environment with opportunities for a child to reach his or her full developmental potential.²⁹ In addition, pediatricians, and other health professionals can implement early interventions to prevent long lasting negative effects of adverse childhood experiences.³⁰ A “pediatrician participates at the community level in preventing or solving problems in child healthcare and publicly advocates for children.”³¹

(2001).

23. See Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTATIVE MED. 245, 251 (1998).

24. *Id.* at 246–47.

25. *Id.* at 251.

26. *Id.* at 251, 254.

27. SHONKOFF & GARNER, *supra* note 8, at e236.

28. *Id.* at e237–38.

29. See Comm. on Early Childhood, Adoption and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145, 1145 (2000).

30. *See id.*

31. Comm. on Pediatric Work Force, *Definition of a Pediatrician*, 135 PEDIATRICS 780, 780 (2015).

A visit to physician's office during early childhood is an opportunity to establish routine screening, not only for physical health and disease prevention, but also for developmental surveillance.³² The doctor and parents, or designated caregiver for the child, can partner in developing a plan for more frequent surveillance for family psychosocial risks and identifying appropriate resources to meet the needs of an at-risk child and family.³³ With the establishment of the Safe Babies Court Teams to meet needs of children and families involved with the child protection system, the medical consultant has become an essential resource to provide guidance and consultation on addressing multiple psychosocial issues for counselors and judges within the juvenile court system.

The Safe Babies Court Team program was started in 2004 through the National Center for Infants and Toddlers (also called ZERO TO THREE) to address the needs of families and young children involved in child welfare system.³⁴ The Safe Babies Court Teams incorporate a developmental approach into child welfare cases by having multidisciplinary professionals and community stakeholder members who are actively involved in each phase of reunification and permanency planning.³⁵ Families are informed of case plans, encouraged to participate actively, and connected to needed treatment services for their mental health or substance abuse issues.³⁶ Monthly meetings with all service providers help address any systemic concerns.³⁷ The Child Abuse Prevention and Treatment Act of 2010 (CAPTA) includes in the state plan training in early childhood, child, and adolescent development for guardians ad litem appointed to victims of child abuse or neglect in cases that result in a judicial proceeding.³⁸

Children do better when both legal and medical advocates team up to assess the unique developmental needs of a young child in the judicial system. Pediatricians can evaluate the general health status of adjudicated children and assess the developmental needs for such children who are at increased risk for

32. *See id.*

33. *See id.*

34. *Safe Babies Court Teams*, ZERO TO THREE, www.zerotothree.org/maltreatment/safe-babies-court-team (last visited Apr. 4, 2016).

35. *See A Brief History of the Safe Babies Court Teams Project*, ZERO TO THREE, <http://www.zerotothree.org/maltreatment/safe-babies-court-team/a-brief-history-of-the-safe-babies-court-teams.html> (last visited Apr. 4, 2016).

36. *See Safe Babies Court Teams: 10 Core Components Full*, ZERO TO THREE, <http://www.zerotothree.org/maltreatment/safe-babies-court-team/safe-babies-court-teams-10-core-components-full.html> (last visited Apr. 4, 2016).

37. *See id.*

38. Pub. L. No. 111-320, § 114, 124 Stat. 3466 (2010).

developmental delays and behavioral disorders including depression and other mental health issues.³⁹ A pediatrician is an important resource for lawyers and judges to increase their understanding of the developmental needs of early childhood, as well as of how genetics and the environment play an equally important role in an individual development.⁴⁰ A team approach between a pediatrician, who addresses the developmental needs of a young child with multiple risk factors, and a lawyer, who advocates to maximize protective factors and eliminate negative factors, will result in a developmentally-focused, effective representation of young children within the legal system. Without such collaboration, young children will miss an opportunity to benefit from early identification and appropriate interventions to overcoming the tragic outcome of adverse childhood experiences.

39. See Comm. on Early Childhood, Adoption and Dependent Care, *supra* note 29.

40. See *id.*