



Advancing Justice: Interviewing and Presenting Testimony of Victims of Violent Crimes

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Patricia D. Powers

Patti Powers joined AEquitas after serving as a Senior Deputy Prosecuting Attorney in Washington State for 27 years, bringing extensive litigation expertise as a well-respected trial attorney. She supervised the Sexual Assault-Domestic Violence Unit and prosecuted and tried a high volume of violent crimes—specializing in adult sexual assault, child sexual assault and abuse, sexual exploitation of minors, domestic violence, and related homicides (including complex litigation of high-profile, as well as cold and current cases). Patti served on the domestic violence and child fatality review committees and was a member of the Washington State Technical Assistance Committee for Child Death Review Guidelines. For five years, she was appointed as a Highly Qualified Expert for the United States Army, Criminal Investigation Division; in this role, she provided training for army criminal investigation agents and prosecutors at Fort Leonard Wood, Missouri, and in Germany. Patti is the lead Attorney Advisor on the SAKI project.

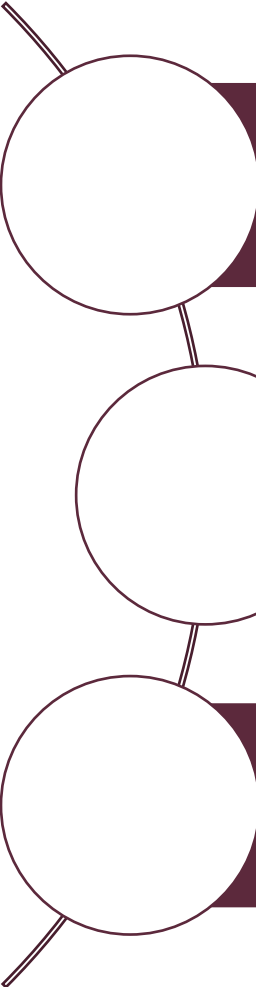


Rebecca Campbell, Ph.D.

Dr. Rebecca Campbell is a Professor of Psychology and Presidential Advisor on Relationship Violence & Sexual Misconduct at Michigan State University. Dr. Campbell's research examines how contact with the legal and medical systems affects adult, adolescent, and pediatric victims' psychological and physical health. She was the lead researcher for the National Institute of Justice-funded Detroit Sexual Assault Kit Action Research Project, which was designated as an Exemplary Project by the Association of Public & Land Grant Universities (APLU) and the W.K. Kellogg Foundation. Dr. Campbell received the 2015 Crime Victim Research Award from the U.S. Department of Justice. Dr. Campbell also conducts training on sexual assault for law enforcement and multidisciplinary practitioners in civilian, military, and campus community settings.



Objectives



Identify ways in which trauma and the COVID-19 pandemic affect victim engagement

Apply trauma-informed techniques to interview victims and prepare them for trial testimony

Conduct impactful examination of victims at trial

Foundational Issues in Cold and Current Case Sexual Assaults:

Understanding How Trauma Affects Victim Engagement

Understanding the Neurobiology of Trauma

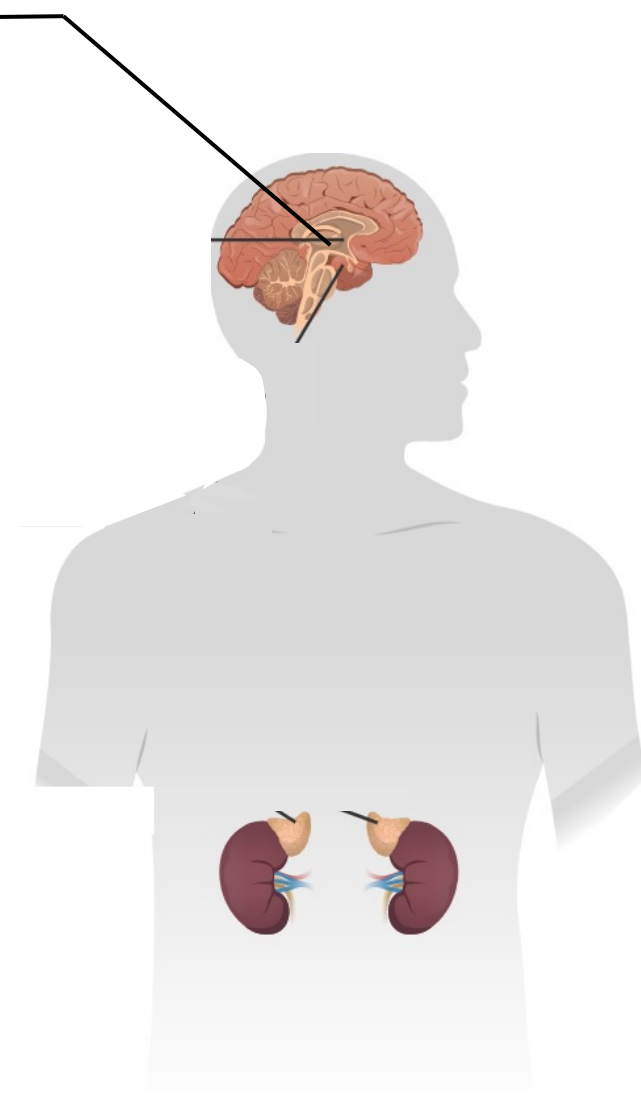
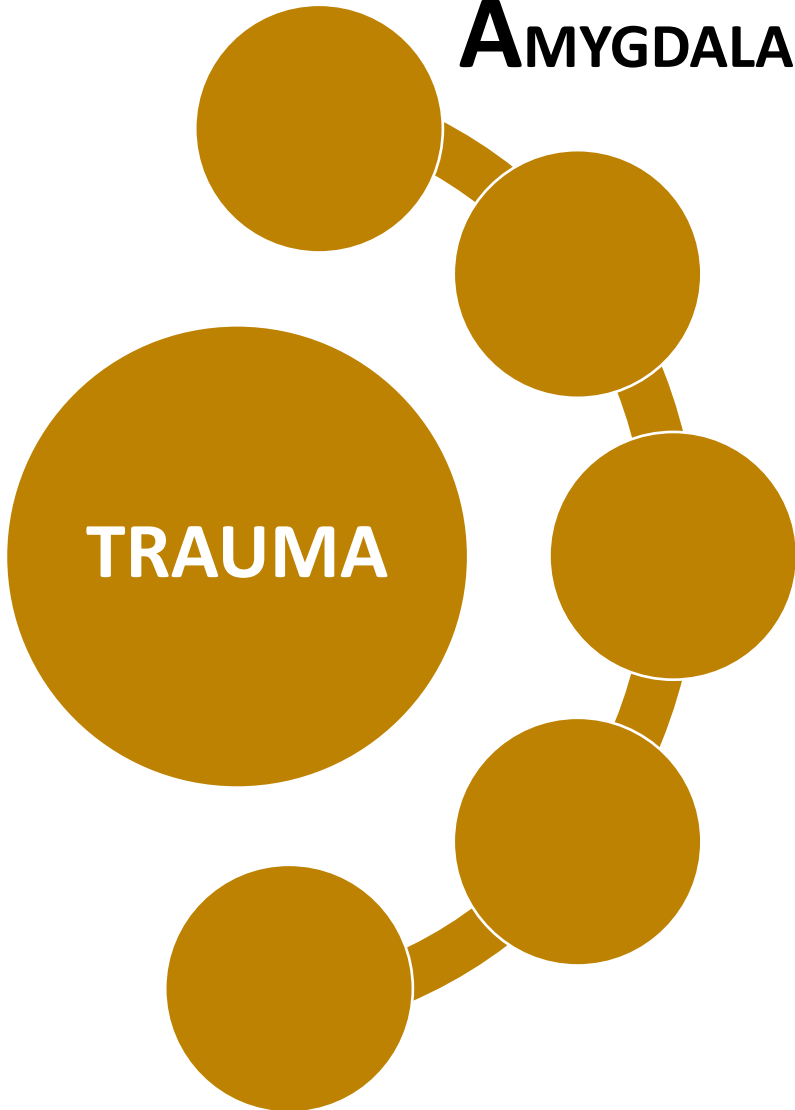
Context for how trauma affects victims' emotions & behaviors

Context for how trauma affects victims' memories

For cold cases, guidance on how to re-engage survivors

For current cases, guidance on creating trauma-informed response

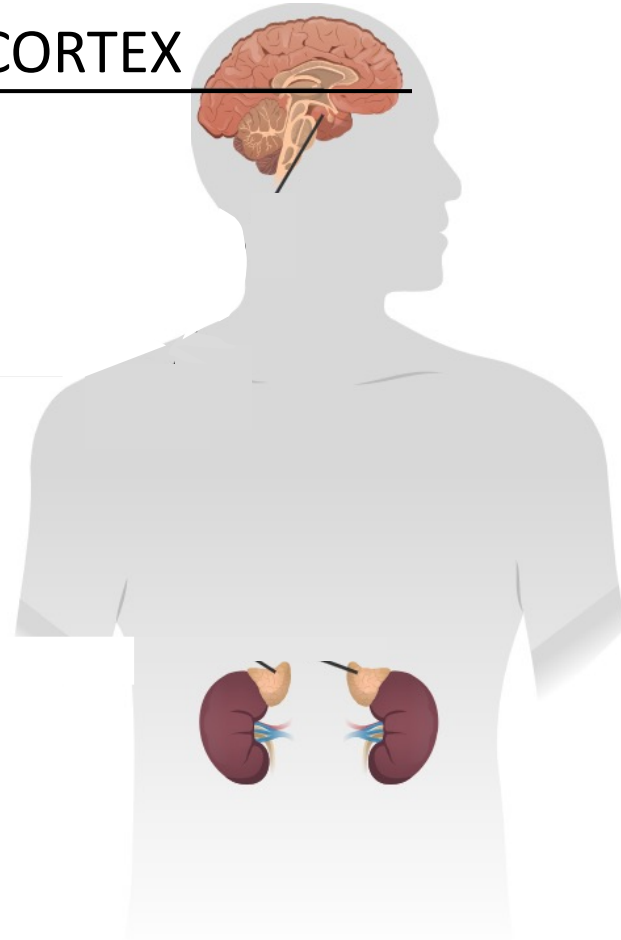
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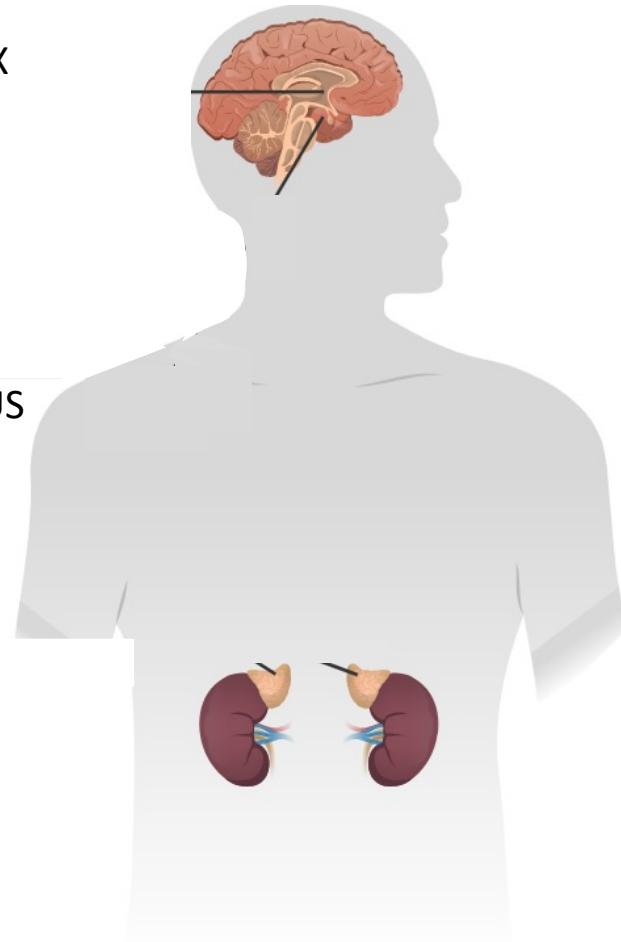
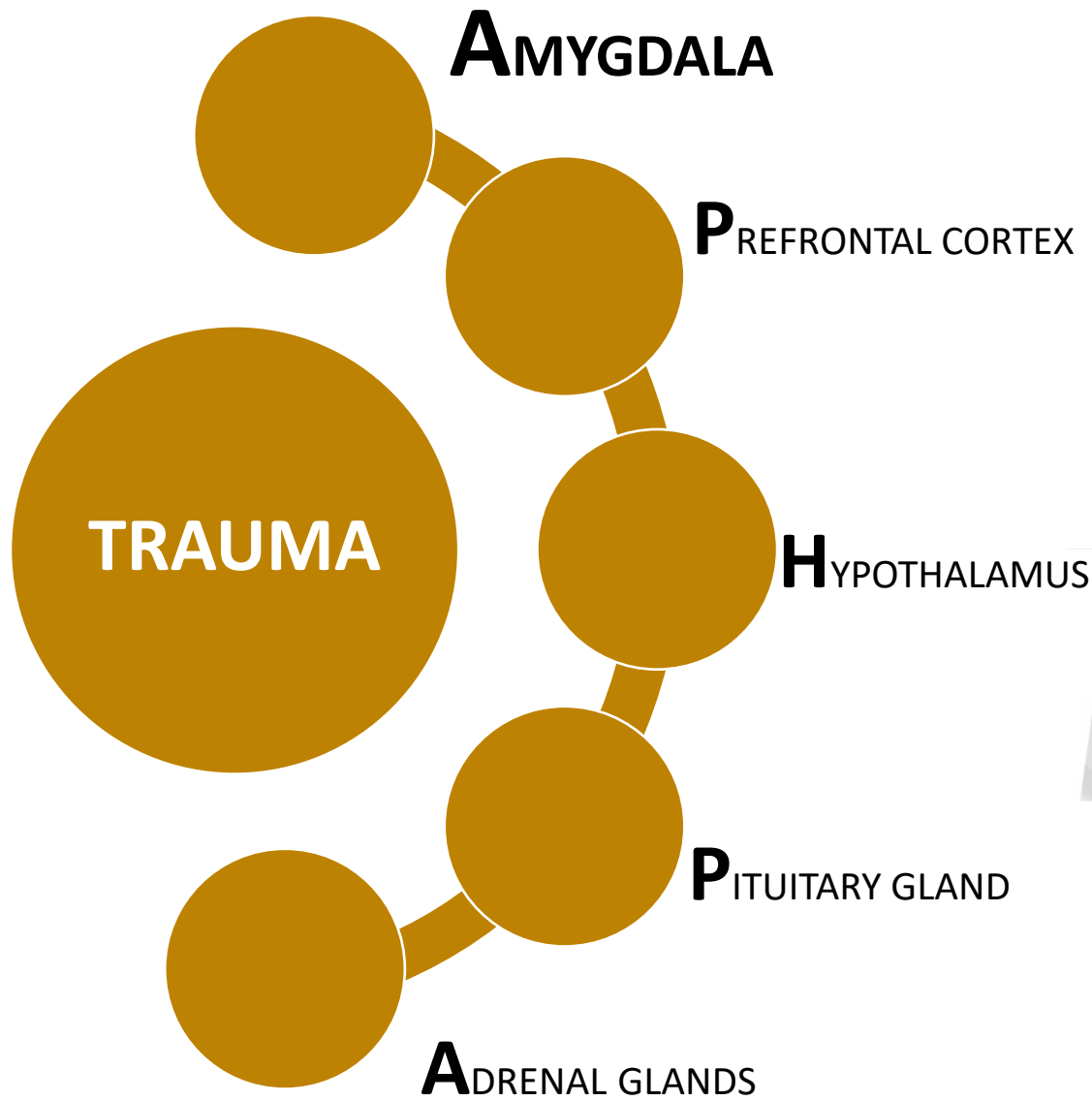


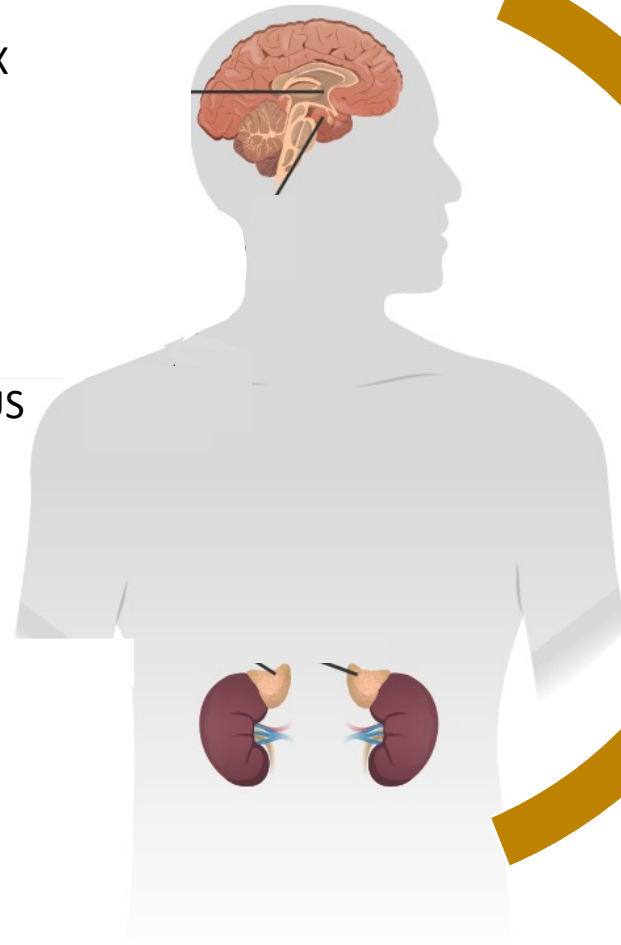
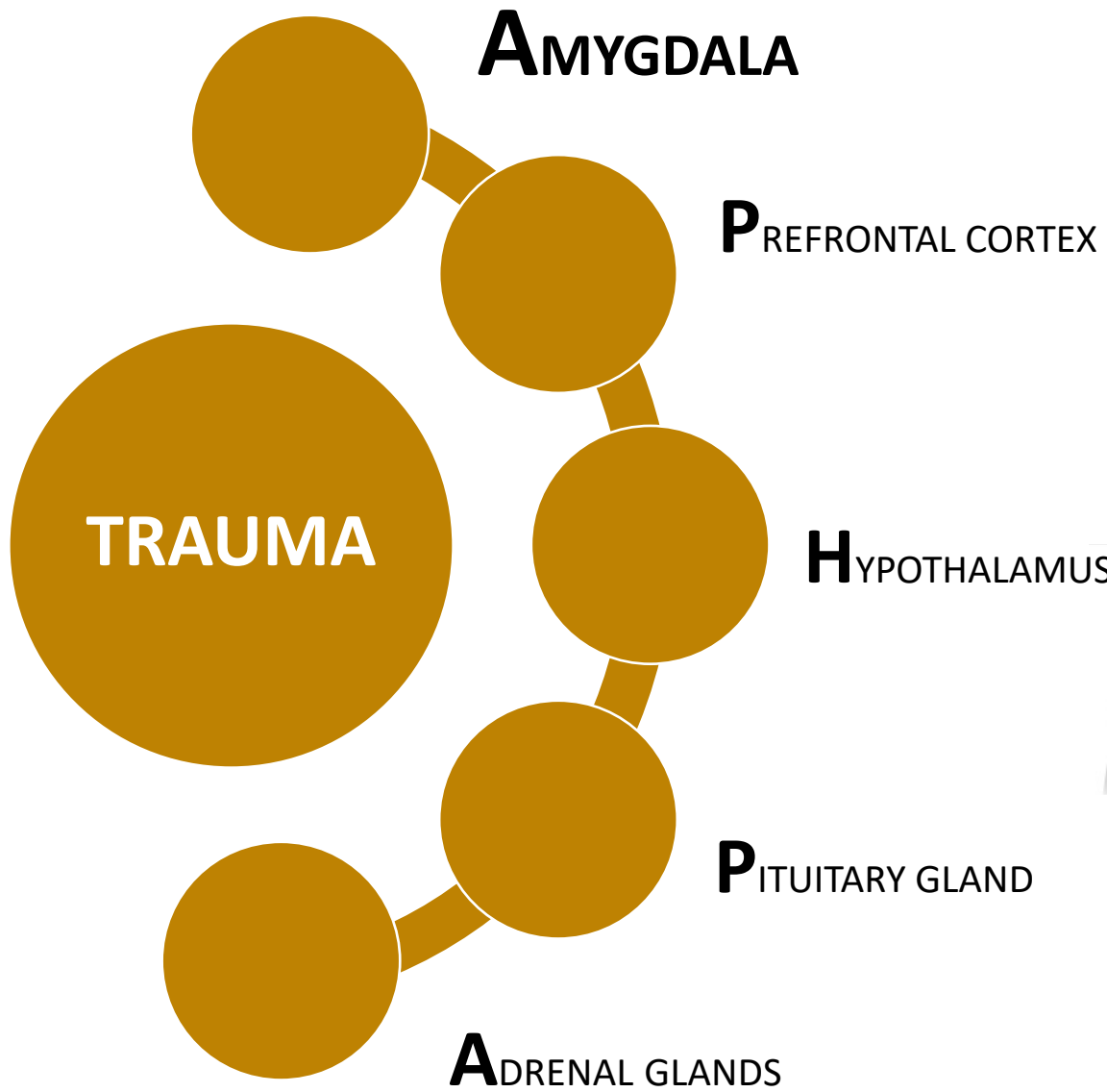
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PREFRONTAL CORTEX

TRAUMA





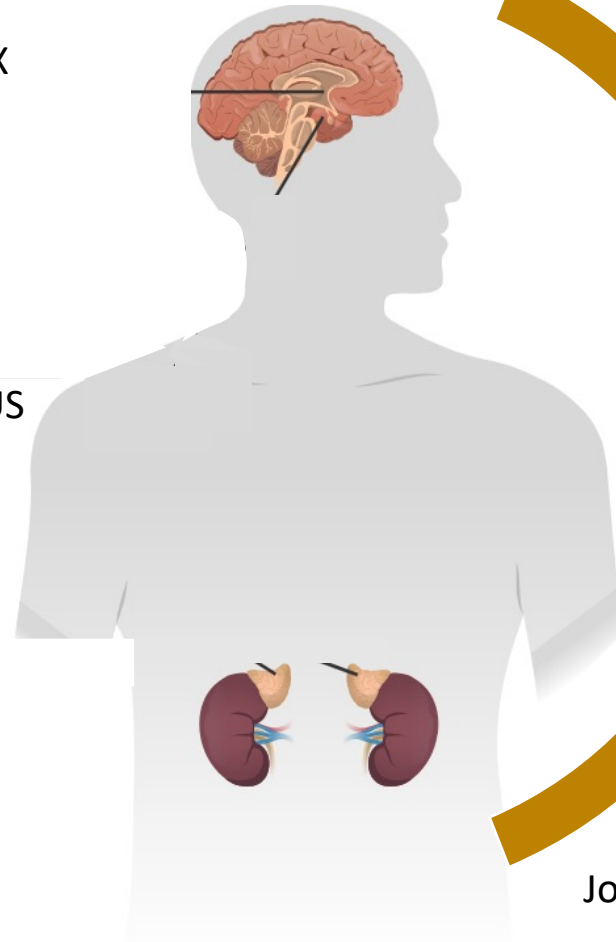
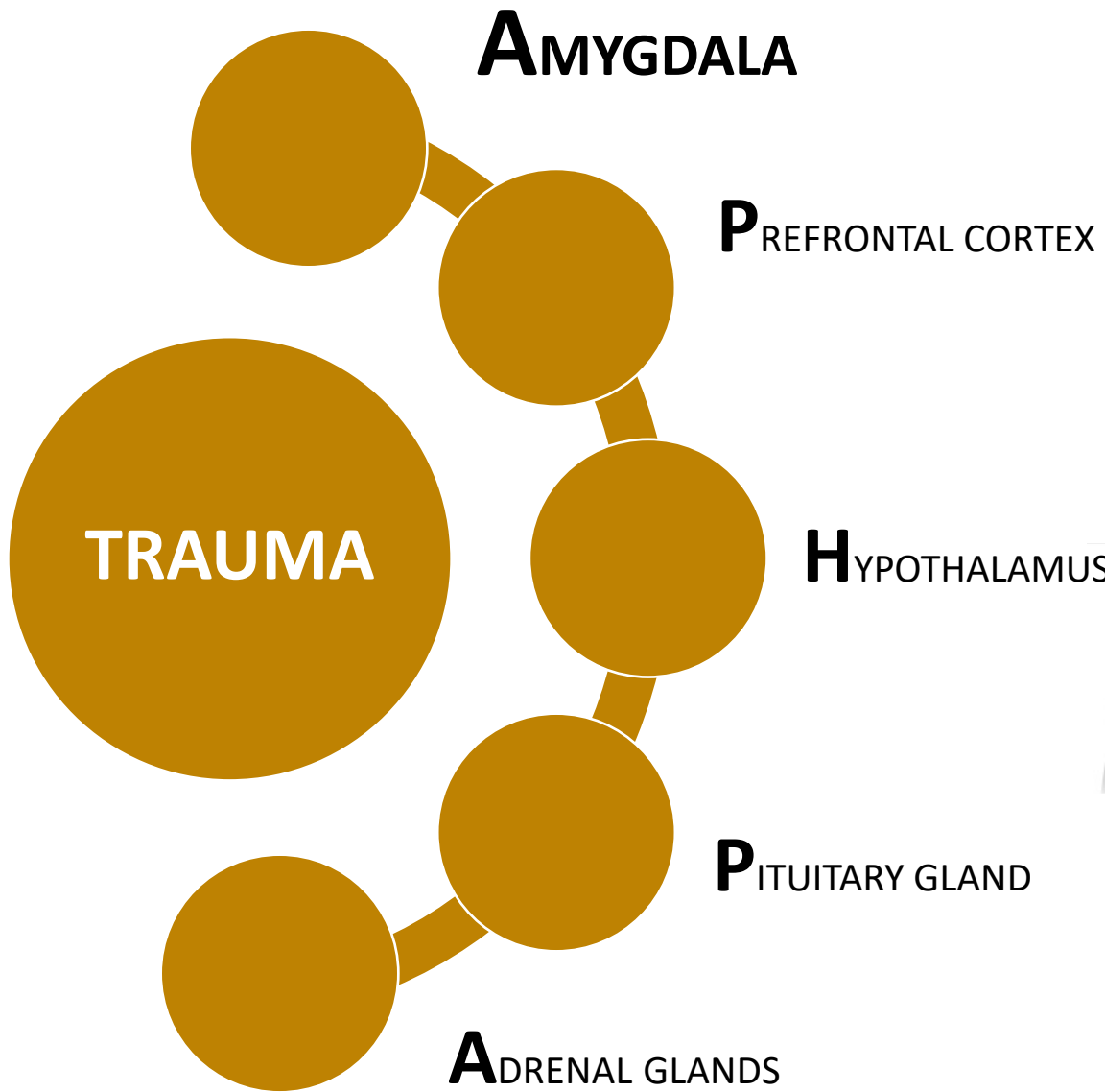


IMMEDIATE

Fight, Flight, Freeze

Memory Fragmentation

Blunt Affect & Mood Swings



IMMEDIATE

Fight, Flight, Freeze

Memory Fragmentation

Blunt Affect & Mood Swings

ENDURING

Triggers & Flashbacks

Social Isolation & Withdrawal

Severe Depression & Anxiety

Posttraumatic Stress Disorder

Suicidal Behaviors & Addictions

Chronic Pain & Health Problems

Job/Academic Transitions & Dropout

Implications for Cold & Current Cases

Long-term
serious health
consequences

Connecting with
advocacy
mitigates impact

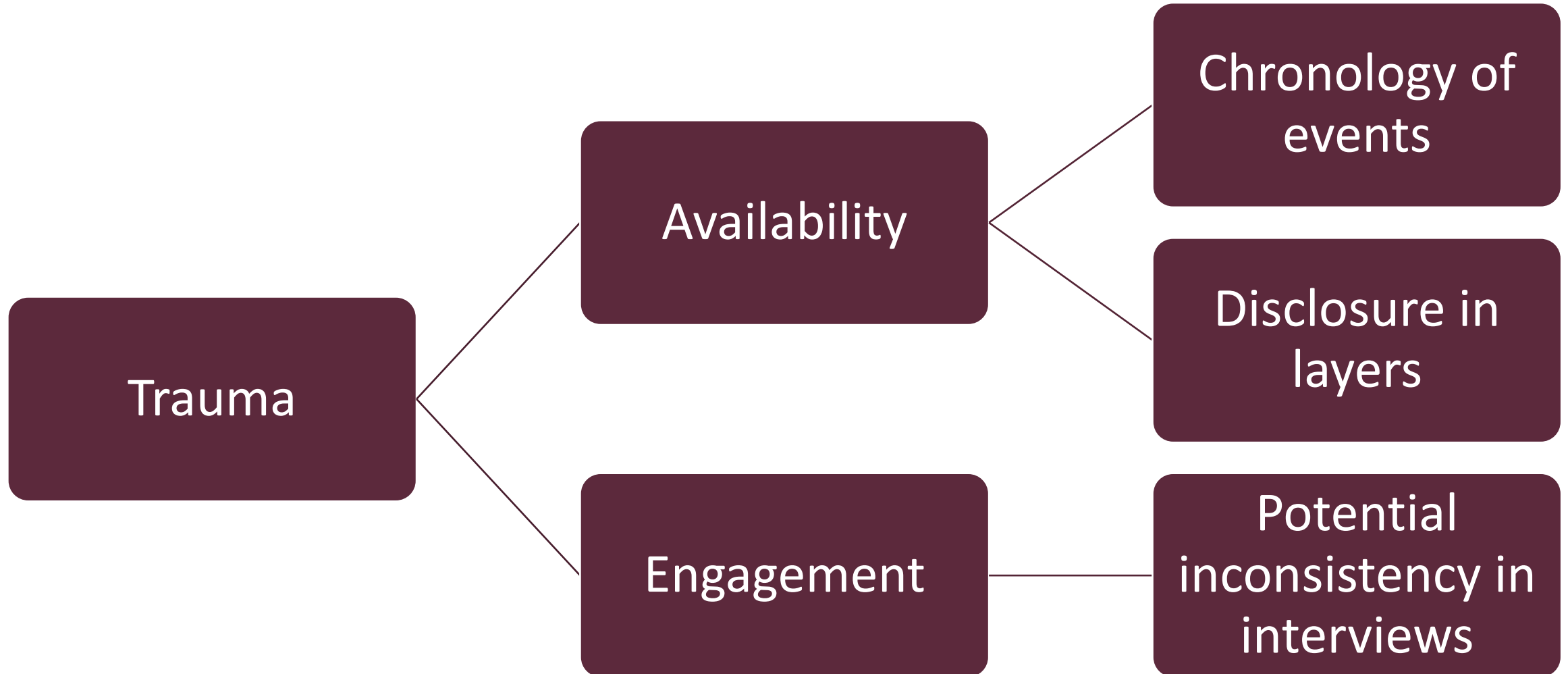
Connecting with
mental health
services mitigates
impact

Memories of
CENTRAL details
stable over time

Memories of
PERIPHERAL
details might be
stable over time

Open-ended
questions facilitate
accurate recall

Consider Impact of Trauma on Victim



Considerations for Cold and Current Cases of Sexual Assault

Apply trauma-informed practices to all interactions

Provide availability of advocacy support

Ensure notification has been made/victim is advised of arrest

Review extant interview(s) in cold case/initial report in current case

Consider how events may have impacted victim trauma during interview

Identify sources of possible corroboration

Plan next interview in cold case or as necessary in current case

Develop Context for the Victim's Statement

What led to the crime: *res gestae*

Behavioral and physical evidence of offender and planning

Secondary witnesses for corroboration

Identify other victims

Identify other acts prior to and after crime

Focus on premeditation and impact on victim

Offender Focus

Most offenders are known to the victim

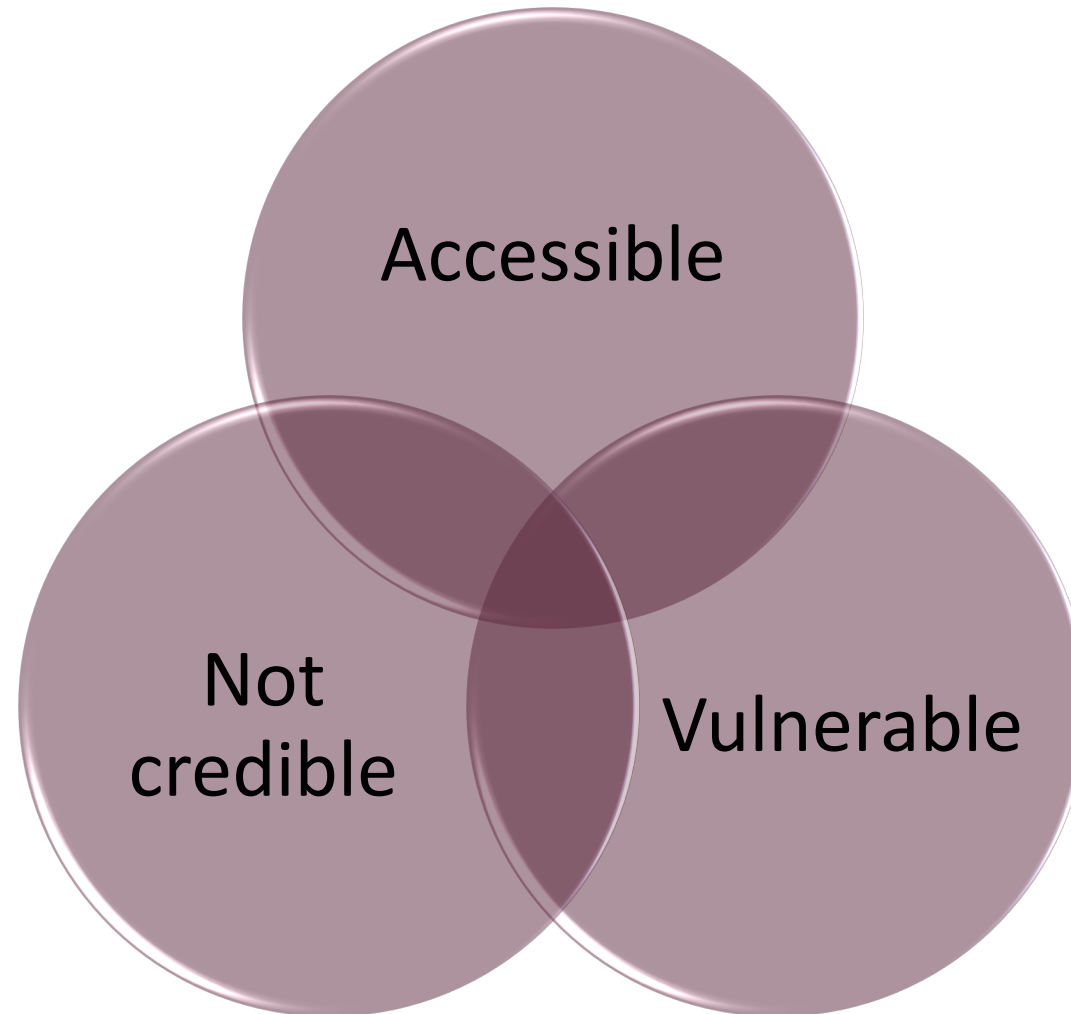
Use of deadly weapons and physical injury is not typical and is unnecessary

Offenders may have multiple victims

Offenders may commit a crime against victims they know and also victims they do not know

Offenders plan and employ tactics to facilitate the crime

Offender's Perception of Victim



Remember

Offenders' strategies create in victims the symptoms later used against them

Deception

Emotional
instability

Memory
problems

Substance
abuse

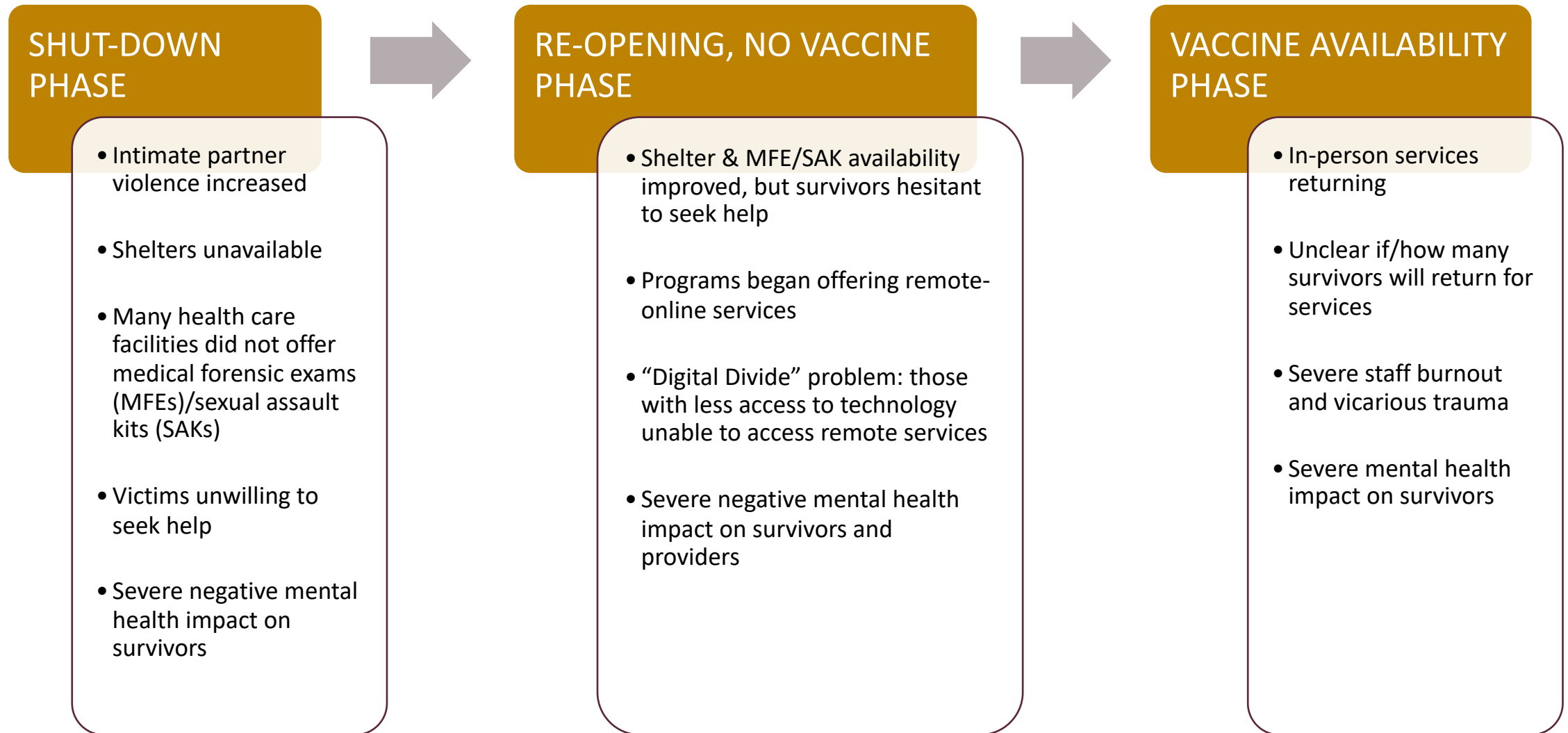
Synthesize Analysis

- Victim was accessible to the defendant
- He had control
- He planned the scenario: isolation, coercion, use of alcohol
- Victim's vulnerability was clearly known to defendant
- Defendant used vulnerability to create issues of credibility

COVID-19 Pandemic:

Recognizing How COVID Affects Victim Engagement

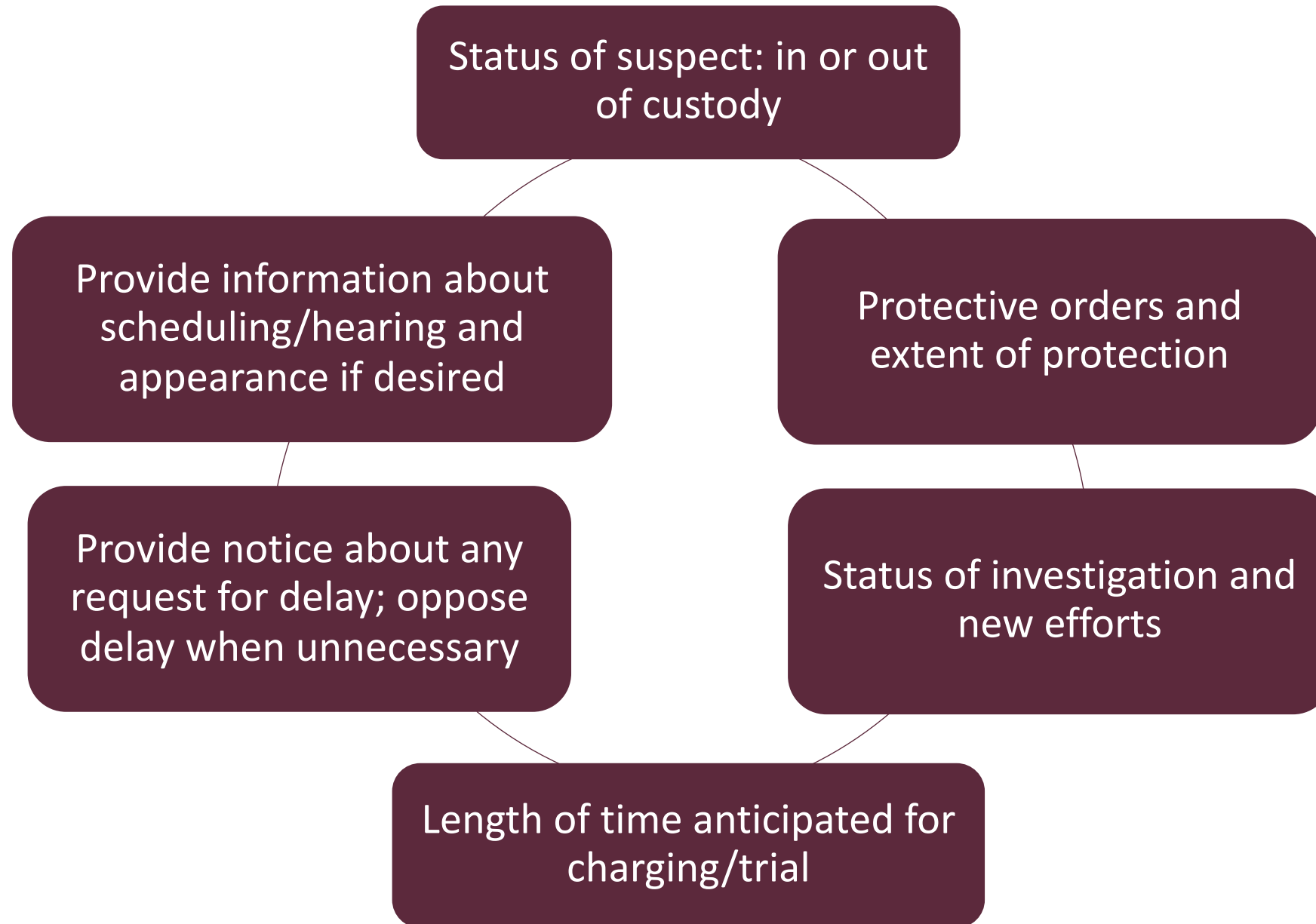
How COVID-19 Affected Survivors & Victim Services



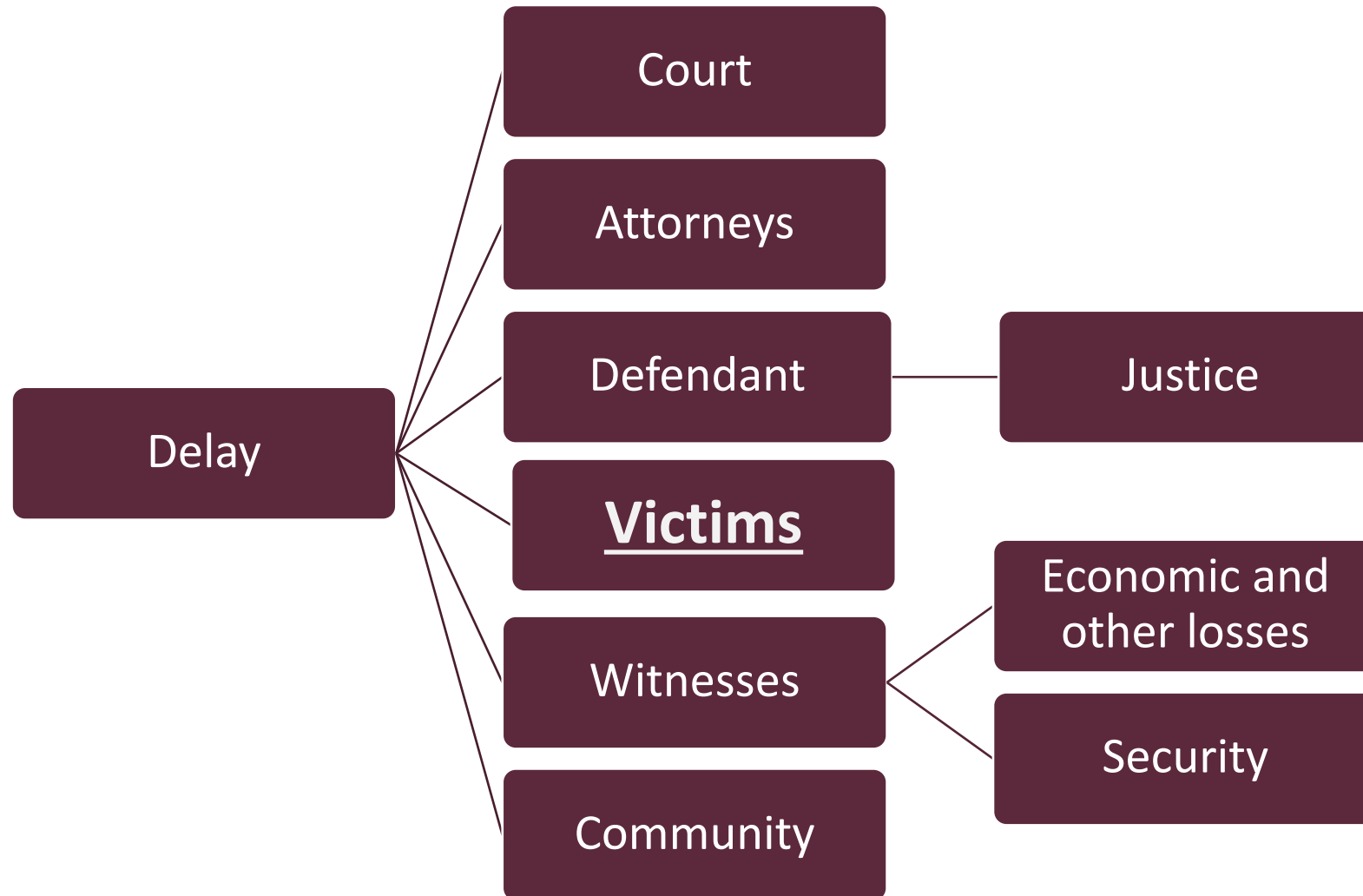
Re-Engaging Survivors During COVID-19 Pandemic



Key Initial Information



Impact of Backlogged Cases from COVID-19: Delay



Adapting to Victim's Needs

Interviewing and providing support resources to victims

Accommodating victim presence/participation in Court

ENSURING ACCESS
Physically/Virtually

Working with systemic delay

Closed-circuit camera or teleconferencing

Sustainable Practices: Working with Victims

Ensure timely response(s): Anticipate and respond to questions

Incorporate
trauma-
informed
practices
into
physical
and virtual
settings

Recognize impact of pandemic on support systems

Minimize
delay to
extent
possible

Provide availability of advocacy support
Recognize that victims may perceive
limitation of medical / forensic
services

Courthouse and Virtual Safety and Privacy

Assume victim concerns and provide information

Address COVID-19 health precautions

Detail courthouse and courtroom security

Recognize any concerns with Defendant's custodial status

Explain parameters of platform and security precautions

Request issuance of warning regarding dissemination

Monitor any attempts in courtroom to impact victim testimony

Be aware of cell recording or videos

Address the Court immediately with any substantiated concerns

Plan for effective response if any breach

First, Do No Harm:

Applying Trauma-Informed Practices For
Interviewing And Preparing Victims for Trial Testimony

Interviewing Is Re-Activation of a Traumatic Memory

LOGISTICS

- Lack of engagement often due to life stresses
- Stress and trauma compromise problem-solving skills
- Address childcare, transportation, technology needs
- Make it easy to meet with you

EXPECTATIONS

- What will this be like?
- What will you ask about?
- Why will you ask about those topics?
- What is the purpose of this interview?
- What will you do with this information?
- What will happen next and when?

SAFETY

- Physical safety needs related to where and when you conduct the interview
- Emotional safety needs during and after the interview
- Engage survivor in pre-planning for support during and after the interview
- Engage advocacy services

Interviewing Is Re-Activation of a Traumatic Memory

OPEN-ENDED

- Memories are fragmented
- Create a calm, safe space for finding all the fragments
- Open-ended questions allow victims to provide context and details
- Open-ended questions help establish trust and rapport



GO WITH THE FLOW

- Allow survivors to tell story in their own order
- Later, you can prepare order of questions at trial
- Do not interrupt
- Make a note of follow-up questions to cycle back to later
- Pay attention to details and experiences victims repeat during their narrative
- Pay attention to places where they seem to 'stall' and use sensory cues to prompt



SENSORY CUES

- What did you see?
- What did you hear?
- What did you smell?
- What did you feel?
- What did you taste?

Questions...and Answers




- Why did this take so long?



- Are there other victims?



- Will I have to see him again?



- What if I don't recognize him?



- What if I can't remember everything?



- After all this time, do we have a chance?

Planning for the Interview

Victim's experience of the crime

Offender's planning and role throughout

Impact of trauma
on the victim

Short-term
aftermath of the
crime

Subsequent period
of time

Any further
contact from
offender

Investigation Follow-up from Victim Interview

- Follow up with corroboration of details from victim's statement
- Review statements or interview summaries of secondary witnesses
- Determine the extent of corroboration from prior investigation to present
- Ensure victim has an opportunity to provide information they may have recalled subsequent to the first interview
- Determine whether the offender made contact with the victim over this period of time.

Corroborate Disclosure and Victim's Testimony

Excited Utterance

- FRE 803(2)

Statement for Purpose of Medical Diagnosis or Treatment

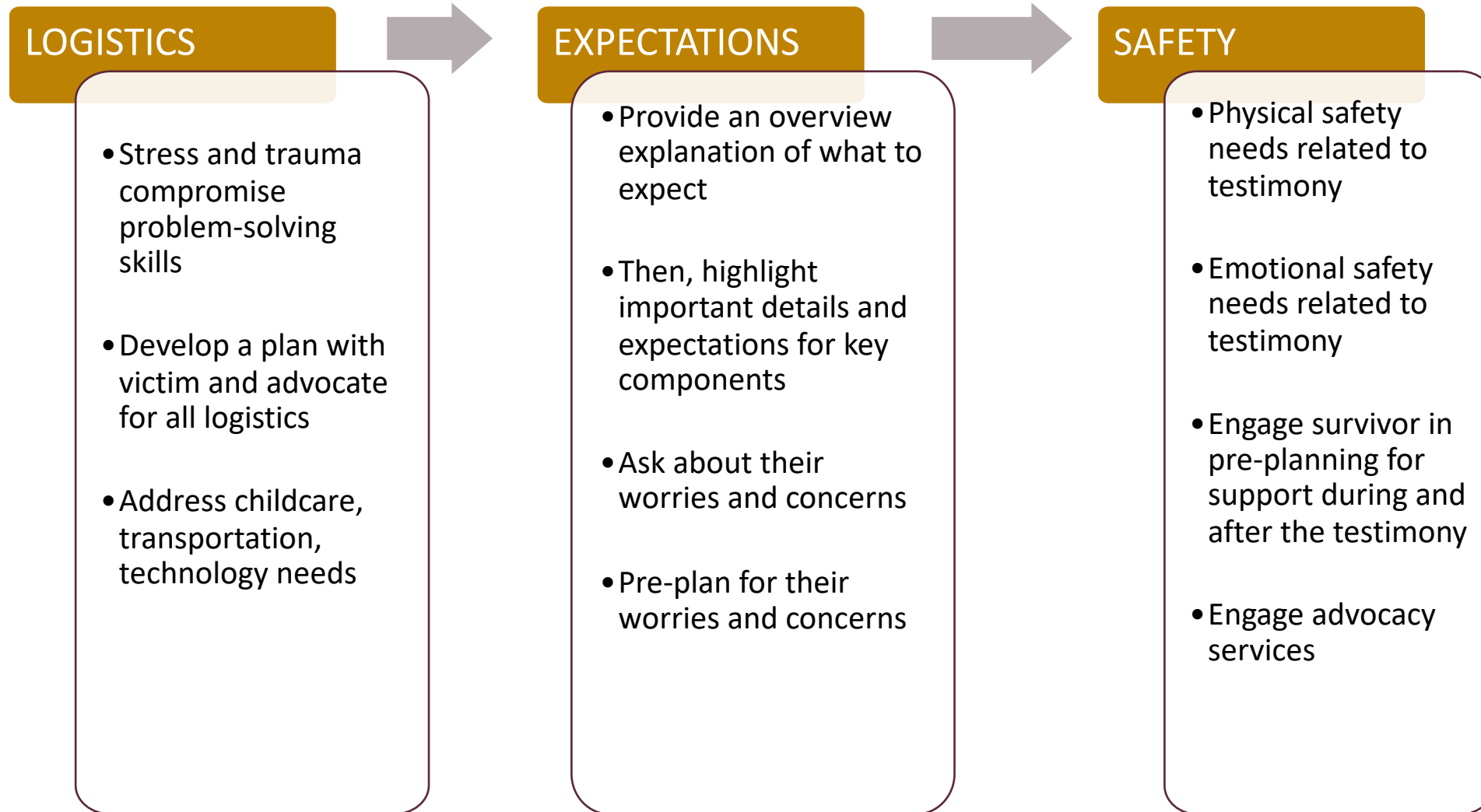
- FRE 803(4)

Recorded Recollection

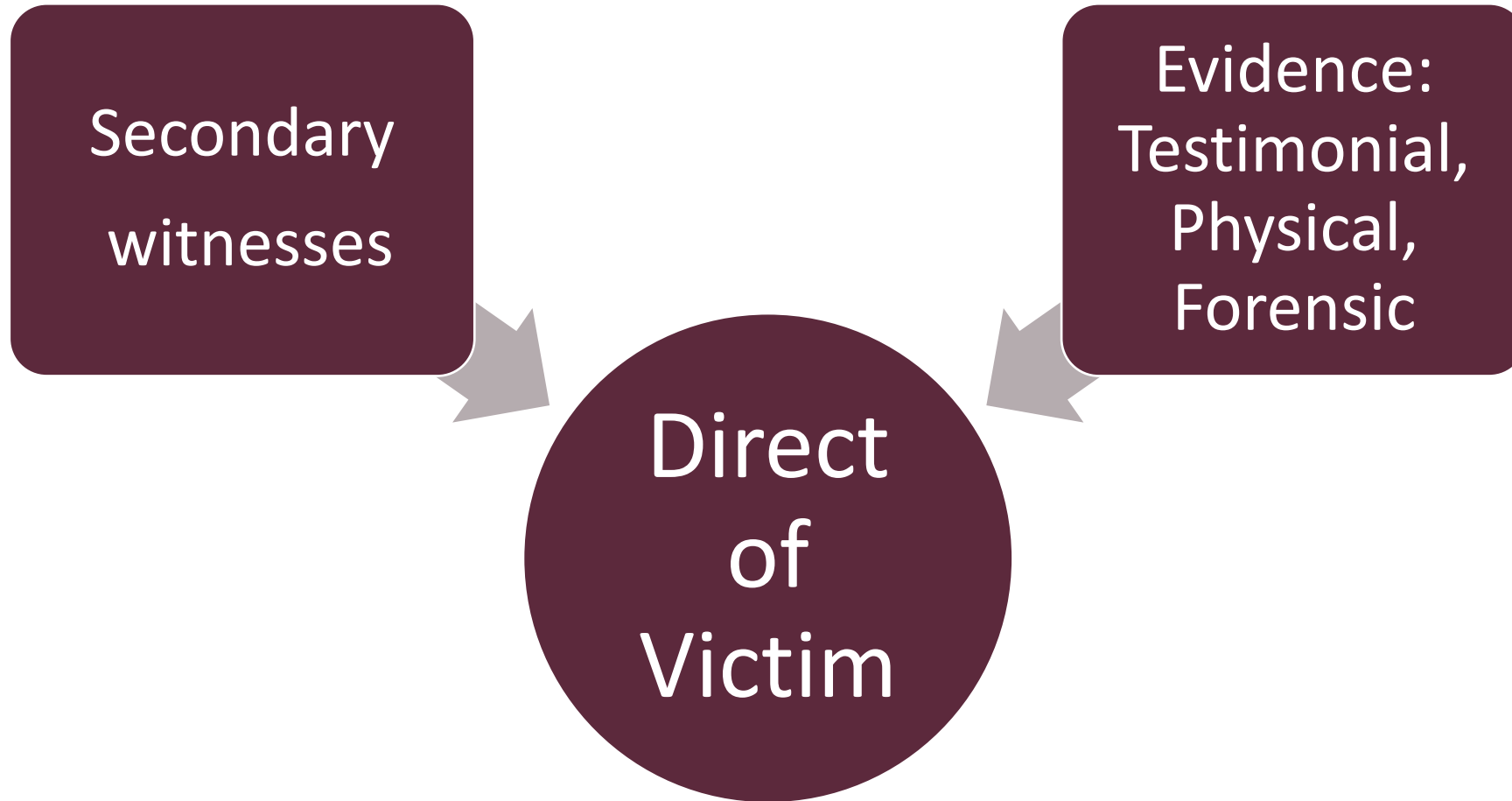
- FRE 803(5)

Re-Creating the Reality of the Crime:
Victim's Testimony at Trial

Testifying Is Re-Activation of a Traumatic Memory



Direct Examination is the Heartbeat of the Case



Recognize Implications of Trauma

Victim may be fearful and need to avoid painful memories and further trauma

Victims frequently disclose in layers and over time

Memory is impacted by trauma and may be fragmented

Chronological recall of memory may not be possible

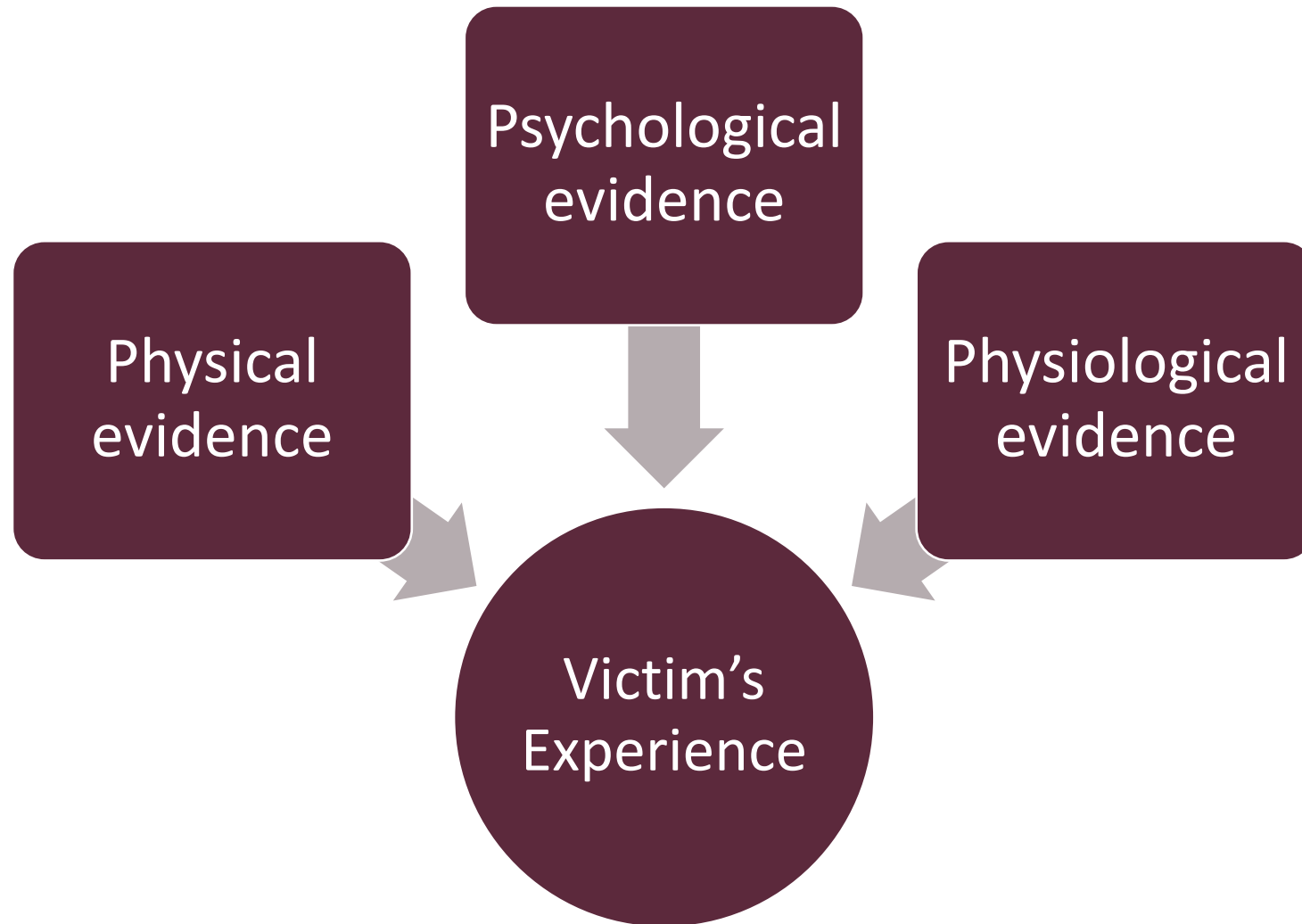
Applying Trauma-Informed Techniques

- Allow victim time to answer questions that are difficult and painful
- Thoroughly prepare to ask victim questions about information not initially disclosed
 - When she remembered
 - How she was impacted by memory when recalled
 - Whether she was asked for this information
- Ask questions following lead of victim and avoid inquiry calling for specific order
- Incorporate “able” into questions

Introducing Victim

- Age at present; reference to age when crime occurred, if applicable
- Identify photograph from earlier time
- History, including relevant evidence of vulnerability
- Educational opportunity
- Length of time in community; inquire about absence following crime
- Occupation/jobs and descriptions over the years, and at time of sexual assault
- Family status; any changes
- Where relevant, ask about changes after sexual assault

Corroboration of the Victim's Testimony



Recreate the Reality of the Crime

- Questions about sensory, emotional, physiological detail of sexual assault
- Questions about memory of peripheral details, which may be corroborated by secondary witnesses
- Focus on conduct of the offender
- Follow the narrative of the victim

Trauma-Informed Questioning

Sensory Details

Sight

Sound

Touch

Taste

Smell

Emotional Response

Are you able
to tell us how
you felt then?

What did you
think then?

Physiological Effects

How did that
affect you?

Eliciting Memory of Peripheral Details

Was anyone else
around?

Time of day/night

Experience of
passage of time/time
standing still

Contextual
sounds/sights/smells

Presence/absence of
peripheral detail may
provide evidence of
trauma

Questions about Identification

- Questions about identification are important whether or not there is DNA
- Offer photographic montage if used by law enforcement earlier and there was an initial identification
- Offer photograph of defendant at earlier time if obtained/ authenticated by law enforcement
- If victim cannot identify, DNA provides ultimate identification
- There may also be secondary corroboration

Identification Evidence: Considerations

- Ensure the availability of a photo of the offender during the earlier period of time, whether offender is known or unknown to victim
- Determine whether there are photo montages or line-up information
- Recognize identification in or out of court may be traumatic for victim
- Identification of a known offender may also be traumatic for a victim

Clarifying Inconsistency of Victim Statements

Establish when
interview took
place

Focus on timeline
and context

Consider impact of
trauma on victim
during the time of
the interview

Review which
questions were
asked and not
asked

Questions should
be asked of both
law enforcement
and victim

Offender Focus: Planning and Premeditation

- Whose idea was it for you to ride home with the defendant?
- When was the plan first mentioned?
- Who decided on having another drink?
- Who opened the door to your home?
- Do you know how the key was obtained?
- Whose decision was it for you to leave the party?

Offender Focus: Consent Defense

Phrase questions with focus on offender's conduct/ behavior

- When he took your keys, how did you feel?

Establish victim was without control in the circumstances

Elicit information about trauma

- What did you think when you saw him in your doorway?

Even with alcohol involved, key memory of crime remains

Going Forward

Identify ways in which trauma and the COVID-19 pandemic affect victim engagement

Apply trauma-informed techniques to interview victims and prepare them for trial testimony

Conduct impactful examination of victims at trial

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