FASD and the Criminal Justice System: From Arrest to Community Supervision

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Presenter’s Biography
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- FASD and the Criminal Justice System: Arrest through Community Supervision
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- Screening and Assessment Considerations
- Intervention and Treatment Considerations
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My Experience

- Attachment-Related Disorders
- Autism Spectrum Disorder (ASD)
- Criminal Justice-Involved Populations
- Fetal Alcohol Spectrum Disorder (FASD)
- Learning Disorders
- Personality Disorders
- Serious and Persistent Mental Illness (SPMI)
- Substance Abuse Disorders
- Sleep Disorders
- Traumatic Brain Injury (TBI)
- Trauma-Related Disorders

FASD: A Basic Review

Fetal Alcohol Spectrum Disorder (FASD) is a life-course persistent disorder resulting from prenatal alcohol exposure. This disorder is characterized by a diverse array of deficits.

- Cognitive (e.g., intelligence, attention, and short- and long-term memory)
- Social (e.g., communication skills, social pressure, and social cues)
- Adaptive (e.g., problem-solving and decision-making abilities) symptoms

FASD: A Brief Overview

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### FASD: Primary Domains Impacted by Prenatal Alcohol Exposure

- Achievement (learning disabilities, specific math deficit)
- Adaptive Behavior (communication, social skills)
- Attention/Hyperactivity (ADD/ADHD)
- Cognition (abstract/sequential thinking)
- Language (receptive/expressive skills)
- Memory (encoding, working memory)
- Motor Skills (coordination, balance, control)
- Sensory Integration (visual-spatial learning)
- Social Skills (social perception, boundaries)
- Executive Skills (judgment, reasoning, impulse control)

### Common Problem Areas

- Disordered Attachment
- Infrequent or superficial relationships due to lack of social skills
- Maladaptive coping skills
- Emotion regulation; impulse control
- Financial management
- Inappropriate displays of sexual behavior
- Navigation (i.e. using public transportation)
- Organization
- Problem-solving
- Substance misuse
- Vulnerability/Victimization
- Sleep problems

### Possible Red Flag Indicators

- Special Education Involvement/Learning Problems
- Child Protection Involvement
- History of Adoption/Removal from Birth Parents
- Multiple Childhood Mental Health Diagnoses (e.g. Attention Deficit/Hyperactivity Disorder (ADHD), Conduct Disorder (CD), Oppositional Defiant Disorder (ODD), Reactive Attachment Disorder (RAD), etc.)
- Rage Control/Impulse Control Problems
- Sexually Inappropriate Behaviors
- Social Boundary Limitations/Violations
- Memory Problems/Confabulation
- Suggestibility/Easily Influenced/Manipulated/Inability to Say No
- Substance Misuse
Common Behavioral/Psychological Symptom Overlap

- Autism Spectrum Disorders (ASD)
- Attention Deficit/Hyperactivity Disorder (ADHD)
- Bipolar Disorder
- Conduct Disorder (CD)
- Intellectual Disability/Developmental Disability (ID/DD)
- Learning Disorder
- Oppositional Defiant Disorder (ODD)
- Personality Disorders
- Post-Traumatic Stress Disorder (PTSD)
- Reactive Attachment Disorder (RAD)
- Traumatic Brain Injury (TBI)

FASD and the Criminal Justice System: Arrest through Community Supervision

From Arrest to Community Supervision
FASD: Key Forensic Findings

• 23.3% for FASD in a sample of youthful forensic inpatients. Further, less than 1% of this sample had been previously diagnosed with such a disorder (Fast and colleagues, 1999)
• 60% lifetime involvement in the CJS (Streissguth et al. 1996)
• 10% among adult prisoners for FASD with another 18% of prisoners exhibiting cognitive and neurological symptoms that may be indicative of FASD (MacPherson and Chudley, 2007)
• In a study of Canadian youth, FASD was observed to increase the likelihood of incarceration by 19 times (Popova et al., 2011)

Possible Risk Factors for Criminal Justice Involvement

• Intellectual Disability (ID)
• Voter ineligibility
• Predatory offender registration requirements
• Terroristic threats
• Misinterpretation of intent by professionals
• Stranger danger
• Prostitution
• Living instability
• Financial exploitation
• Homelessness
• Bullying
• Loss of disability benefits
• Over disclosure of personal information

Other Forensic Considerations
CJS-Significant Disadvantages

Challenges and Problems in Forensic Populations

- Varied dysmorphology and neuropsychological profiles
- Lack of valid and reliable screening tests
- Birth mother’s self-report of alcohol exposure is often not available
- Poor awareness among forensic professionals
- Differential diagnosis
- Under-identification
- Infrequent referral for specialist assessment
- Lack of appropriate FASD-based treatment options
- Lack of forensic-based FASD trainings
- Few FASD forensic experts

Miranda Rights Considerations
**Miranda Rights Considerations**

At least 400,000 suspects with developmental disabilities waive their Miranda rights annually (Rogers and Shuman, 2005).

An estimated 695,000 suspects with mental health problems waive their Miranda rights annually (Rogers, Harrison, Hazelwood, & Sewell, 2007).

**FASD and Miranda Rights**

Suspects with FASD may not be equipped to waive their Miranda rights because of their auditory processing deficits, which limit their ability to understand verbal communication, and reading difficulties, which limit reading comprehension (Brown, Gudjonsson, & Connor, 2011).

**Post-Arrest Behaviors**

After being arrested, individuals with FASD can display a number of behaviors including:

- (a) eagerness to waive rights and agree with interrogators
- (b) poor and inconsistent memory
- (c) difficulty in creating a clear and coherent narrative
- (d) a failure to make a direct link between the cause and effect of a behavior
- (e) a lack of maturity
- (f) grandiose behavior and posturing
- (g) a limited ability to alter one’s own views or opinions
- (h) an inability to recognize the risk of consequences and punishment
- (i) an unreasonable faith in one’s attorney in obtaining the desired disposition

Brown, Gudjonsson, Connor, & Adler, 2010
False Confessions

Defining False Confessions

“any detailed admission to a criminal act that the confessor did not commit”

Kassin and Gudjonsson, 2004, p. 48

FASD and False Confessions

• Confabulation
• Suggestibility
• Difficulties in understanding legal terminology, interview and interrogation questions, and legal proceedings
• Avoid embarrassment
• An attempt to please an interviewee, interrogator, or attorney
• An attempt to get out of the office/room

Conry & Fast, 2000; Millman, 2006
Vulnerability to Acquiescence, Suggestibility, and Confabulation

FASD impairments include a vulnerability to acquiescence, suggestibility, and confabulation. As such, the resulting unreliability of information obtained from individuals with FASD often threatens the legitimacy of entire legal cases.

Suggestibility

- Suspects and witnesses with FASD may be prone to suggestibility during police interviews and interrogations. This proneness could be the result of cognitive and social deficits where individuals with FASD provide answers that they believe the authorities want and acquiesce to authority to avoid further trouble (Brown, Gudjonsson, & Connor, 2011)

- Suspects and witnesses with FASD appear to acquiesce to suggestions from interrogators, even without the application of pressure. Suggestibility is particularly likely in response to repeated questions, which can result in a suspect and witness incorporating new details into their own version of the event (Conry & Fast, 2000)

Testimony
FASD & CST Abilities

The deficits of FASD can severely hinder a defendant’s competency to stand trial.
- Cognitive processing deficits (e.g., information processing speed, sensory processing, abstract thinking, and communication)
- Short- and long-term memory issues (e.g., encoding, maintenance, and retrieval of information)
- Behavioral (e.g., disinhibition, attention), and broader developmental immaturity.

In combination, these symptoms can result in difficulties with comprehending and following basic directions and poor or inconsistent courtroom performance.

Important Reminder about FASD Expert Testimony

Effective expert testimony on the topic of FASD likely requires a detailed PowerPoint presentation.

Brown, Warish, Creasey, & Saha, 2018

Important Reminder about Sentencing

FASD can be used to mitigate the severity of a sentence in light of criminal responsibility considerations or increase the severity of a sentence due to concerns of future dangerousness.

Fouqué & Bailey, 2009
Offender Reentry

- Adaptive Behavior
- Cognitive Deficits
- Educational Limitations
- Memory Deficits
- Housing Supports
- Social Skills
- Attachment Problems
- Trauma Histories
- Employment Supports
- Housing Supports
- Parenting Concerns
- Registration Requirements
- Probation/Parole Requirements
- Suggestibility
- Confabulation
- Victimization
- Impulsivity
- Diagnostic Comorbidity
- Sleep-Related Problems
- Suicide Risk
- Substance Misuse

Offender Reentry: Suggested References


Important Reminders for Criminal Justice, Forensic, and Legal Professionals
Concerning, Problematic, and Criminal Behaviors

FASD and Sexually Inappropriate Behaviors

Variables to take into account when someone with FASD engages in inappropriate sexual behavior:
- Inability to learn from mistakes
- Difficulty with abstract reasoning
- Lack of understanding personal boundaries
- Impulsivity
- Being unable to grasp the concept of consequences
- Developmental immaturity
- Perseveration

Baumback, 2001; Fast & Gonye, 2000; McMurtrie, 2011; Novick, 1997; Popova et al., 2011; Streissguth et al., 1996

Firesetting Behaviors
Theft

The cognitive deficits (i.e., executive control, attention, impulsivity, inability to link behaviors to consequences) of FASD may predispose these individuals to theft.

Brown, Wartell, Connor, & Adler, 2010

Runaway Behaviors

Youth with FASD may engage in runaway behaviors without proper guidance and supports, thus increasing the likelihood of the individual being placed in vulnerable situations.

Brown, Connor, & Adler, 2012

Aggressive and Antisocial Behaviors

Aggressive and antisocial behaviors by individuals with FASD are likely the result of the complex interplay of affective dysregulation, impulsivity, and executive control deficits.

Brown, Connor, & Adler, 2012
Victimization

• Common
• Completing victim impact statements
• Diminished ability to detect dangerous people and situations
• Victimization within correctional settings
• Sexually Transmitted Diseases (STDs)
• Tarnished reputation
• Easily manipulated
• Suggestibility
• close monitoring and supervision

Some researchers estimate that as many as 75% of youths and adults with FASD have been subjected to some type of abuse (e.g., physical, emotional, and sexual).

Conry et al., 1997; Streissguth et al., 1996
Compounding factors
In addition to suffering from FASD, these individuals are disproportionately likely to be afflicted with:

- Unstable home lives
- Neglect
- Abuse
- Exposure to substance use
- Mental illness
- Criminal justice involvement in household members

Conry et al., 1997; Conry & Lane, 2009

Screening and Assessment Considerations

ND-PAE

Most recently in the new Diagnostic and Statistical Manual of Mental Health Disorders (DSM-5)

- Other Specified Neurodevelopmental Disorder-315.8 (F88)-specified using the "other specified" designation-Neurodevelopmental disorder associated with prenatal alcohol exposure (page 86)
- Neurobehavioral Disorder-Associated with Prenatal Alcohol Exposure (ND-PAE)-Condition for further study (pages 798-801)

American Psychiatric Association, 2013
Forensic Assessment of FASD Difficulties

Forensic assessment of FASD can be difficult due to a lack of understanding of the disorder including:
(a) intelligence levels can fluctuate from low to good levels
(b) verbal intelligence deficits are not required
(c) facial malformations are not necessary and do not dictate severity level
(d) maternal self-report of alcohol use during pregnancy can be inaccurate
(e) a lack of evidence of alcohol use during pregnancy does not rule out FASD
(f) prenatal alcohol exposure alone cannot account for antisocial and criminal behavior
(g) evidence of criminal planning does not preclude the presence of cognitive deficits

Brown, Tiplani, Connor, & Adler, 2010

Executive Functioning Deficits

Defendants with FASD are often plagued by executive functioning deficits
• Inattention
• Impulsivity
• Memory issues
• Poor decision making

All of these executive functioning issues make it difficult to perform basic tasks required of competent defendants

Adaptive functioning

Adaptive functioning is defined by an individual's ability to care for one's self and meet the demands of social responsibilities

A person's adaptive functioning is composed of practical, social, and mental capacities to deal with everyday challenges and problems

Harrison & Oakland, 2002
Other Diagnostic Considerations

- Attention Deficit
- Behavioral Control Issues
- Decision-Making Impairments
- Language Impairments
- Memory Impairment

Diagnostic Difficulties: Traumatic Brain Injury

Identification and diagnosis of FASD is complicated by the ongoing developmental changes of the disorder along with the role of comorbid issues including traumatic brain injury.

Fast & Conry, 2006

Underdeveloped Written Skills
Self-Regulation Deficits

Fear Response

Some individuals with FASD may lack a fear response

Diagnostic Difficulties: An Important Reminder

Diagnosis of prenatal alcohol exposure (PAE) becomes more difficult as children grow into adolescence and adulthood. Specifically, many of the physical features of PAE fade as children physically grow and birth mothers and records may not be accessible.
Confabulation: A Basic Review

• Confabulation refers to the production or creation of false or erroneous memories without the intent to deceive, sometimes called "honest lying" (Moscovitch, 1989).

• Confabulation can be regarded as false memories unintentionally invented to fill in gaps in memory recall (Macleod et al., 2016; Shingaki et al., 2016).

• By virtue of being false, confabulated memories can range from slight inflations or exaggerations of reality to entirely inaccurate or imagined creations of complicated events (Castelli & Ghetti, 2014).

• Confabulation may simply be the result of an individual attempting to compensate for memory deficits (Berlyne, 1972).

Recognition Difficulties

The recognition and assessment of FASD becomes more difficult as a function of co-occurring psychiatric (e.g., mood, anxiety, and behavioral) and substance use disorders.

Verbal Abilities: An Important Reminder

The presence of average to good verbal skills can result in inaccurate assessments of the defendant's true developmental level.
Misidentification

“One result of the failure to accurately identify FASD is the fact that individuals with FASD who present with no physical symptoms or facial feature abnormalities may be viewed negatively (e.g., lazy, manipulative, or malicious) or held to a higher standard of behavior in treatment and legal settings than those who exhibit the physical symptoms of the disorder.”

Brown et al., in press

Interventions, Supports, and Services

Learning from Mistakes

A diminished ability to learn from past mistakes and connect their actions to consequences makes individuals with FASD disproportionately likely to have issues adapting to their environments and become involved in the legal system.

Bred, Arthor, & Marshall, 2001; Chapman, 2008
Terminology Use among Professionals

FASD symptoms may lead to difficulties in understanding legal terminology, interview and interrogation questions, and legal proceedings. In fact, individuals with FASD may be more likely to provide false information in an effort to avoid embarrassment or please an interviewer, interrogator, or attorney.

Conry & Fast, 2000; Williams, 2006

Adjusting Expectations

Expectations of conduct by individuals with FASD should be recalibrated in light of the cognitive, social, and adaptive deficits of the disorder.

Wartnik & Carlson, 2011

An Important Reminder about Structured Settings

Individuals with FASD can perform reasonably well in very structured settings, but have difficulty adapting to more dynamic and stressful settings.

Brown, Wartnik, Connor, & Liden, 2016; Streissguth, 1997; Streissguth et al., 2006
The Importance of Long-Term Supports

The likelihood of offending increases as adolescents with FASD transition out of treatment facilities without a long-term case management plan that includes the provision of continuous treatment and social services

Brown, Carter, & Adler, 2011; Paley & O’Connor, 2009

Transitioning

Individuals with FASD struggle with transitioning from task to task or location to location

Supervision and Case Management

The cognitive, neurological, and social deficits of FASD often necessitate intense supervision and case management

There are several roadblocks that impede individuals with FASD from receiving the appropriate treatment and case management

Conry & Fast, 2011
**Intervention & Treatment Strategies**

- Screening and assessment
- Early intervention
- Developmentally appropriate
- Social skill training
- Intensive case management
- Sleep-improvement strategies
- Treat secondary symptoms and disorders
- Multidisciplinary approach

**Suggested Approach-D.E.A.R. Model**

- Direct Language
- Engage Support Systems
- Accommodate Needs
- Remain Patient

**Important Final Reminders**

- Individuals with FASD commonly experience profound memory deficits.
- Individuals with FASD may accept blame for illegal activities and behavioral misconducts they did not commit.
- Individuals with FASD may become easily overwhelmed and lack the ability to manage stressful situations appropriately.
- Individuals with FASD frequently experience sensory integration problems and may become overly stimulated by sirens and loud noises.
- Individuals with FASD may be at a greater likelihood to not recognize personal space and boundaries of others because of social boundary and interpersonal functioning deficits often observed in individuals with this disorder.
Important Final Reminders

- Professionals should be encouraged to give one directive at a time.
- Professionals should avoid asking the FASD-impacted individuals complex and multiple questions at any given time.
- Professionals need to be aware that many individuals with FASD have slow processing speeds and may require additional time to respond to a directive.
- Individuals with FASD may be at an increased likelihood to provide professionals with erroneous information and a greater propensity to confabulate.
- Professionals should recognize that a high percentage of individuals with FASD may have developmental functioning levels much younger than their chronological age.

Questions

Thank You...
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  • Forensic Scholars Today (http://online.csp.edu/forensic-scholars-today)
  • Adult FASD Provider Network (https://www.facebook.com/AdultFASDPRENEUDNetwork)

Supplemental Resources

Correctional Treatment

Treatment-as-usual in corrections settings will not address the nuanced needs of adolescents with FASD

Brown, Gannon, & Saltet, 2012
Affective Withdrawal

Affective withdrawal could be an early marker of the socio-emotional issues of FASD, particularly in light of the relationship between prenatal alcohol exposure and withdrawal during infancy.

Molteno, Landman, Carter, Dodge, & Jacobson, 2014

Hostile Attribution Bias

Keil and colleagues (2010) postulated that a hostile attribution bias may contribute to aggression and outbursts in children with FASD.

Working Memory Deficits

Working memory deficits could be a defining impairment in both executive functioning issues and FASD.

Kodituwakku, 2009; Rasmussen, 2005
Working Memory: Suggested Resources


Correctional Staff: A Need for Increased Awareness

A greater knowledge of FASD among corrections staff and increased screening are necessary to ensure that the appropriate referrals are made early in an offender’s contact with the criminal justice system.

Child Welfare

A Call on the Child Welfare System to Become FASD-Informed

"Child welfare professionals will likely come into contact with youth who show signs of exposure to alcohol prenatally. However, exact prevalence rates as to the number of children with FASD involved in the child protection system is currently unknown. There is an immediate need for professionals working within child protection agencies to become FASD-informed. In theory, by becoming FASD-informed, child protection personnel may be in a better position to optimize resources and adapt methods to help improve long-term outcomes for children living with the everyday challenges of FASD. Equally important is the need to increase screening capabilities for FASD within child protection arenas. Having the ability to identify children who were potentially exposed to alcohol in utero, early on in the child protection process, enables professionals to tailor interviewing and intervention approaches to the unique adaptive functioning and developmental needs of the child."

Jerrod Brown

Foster Care System

Carpenter (2011) estimated that more than 80% of children with FASD may pass through the foster care system.

FASD is an estimated 10 to 15 times more prevalent in adoption settings than the general population (Astley et al., 2002). Similar observations have been made about the foster care system (Streissguth, Xiong, & Jones, 2000).
Credibility Issues

Witnesses and defendants with FASD often have difficulty with the retrieval and communication of memories as well as cross-examination during trials. As such, credibility of testimony may be called into question without proper background knowledge of FASD.

Trauma: A Suggested Resource


Victimization: A Suggested Resource


Response Inhibition Deficits

Individuals with FASD have exhibited response inhibition deficits on cognitive tasks administered in laboratory settings. Specifically, individuals with FASD take less time to consider previous experiences before responding to a stimulus. (Barkley, 1997)

Response Inhibition: Suggested Resources


Academic Difficulties

Memory (e.g., working, short- and long-term) and visuospatial processing (e.g., eye movement control) deficits of children with FASD could contribute to academic difficulties (e.g., reading, math). (Paolozza et al., 2014)
Transitioning to Adulthood

Many of FASD’s comorbid conditions can result in worry over a youth’s ability to successfully transition from adolescence into adulthood.

Morrissette, 2001

Manipulation

Individuals with FASD may fall victim to manipulation because they have difficulty gauging the appropriateness and depth of social relationships.

Manipulation: A Suggested Resource

Vulnerability: An Important Consideration

Adolescents with FASD may try to obtain peer approval via the fabrication of stories and inflation of talents, but adolescents without FASD may recognize these as false attempts that indicate an underlying vulnerability.

Brown, Connor, & Adler, 2012

An Important Reminder about Planning

Individuals with FASD have the ability to execute a simple plan with a singular goal in mind, but may have difficulty informing such planning with memories of previous experiences and consequences for themselves and others.

Brown, Wartnik, Connor, & Adler, 2010

Emotional Age

With global functioning that is sometimes comparable to a child, individuals with FASD have difficulty adapting to custodial criminal justice settings and complying with the requirements of community supervision (e.g., pretrial, probation, parole).

Gralton, 2014
**Financial Supports**

Individuals with FASD often cannot support themselves financially, but may not meet the requirements for government support (e.g., healthcare, welfare)  

Fryer et al., 2007

**Information Processing Deficits**

Information processing deficits are common among individuals with FASD  

Kodituwakku, 2009

**Academic Achievement Deficits**

Academic achievement deficits are common among individuals with FASD  

Brown, Conner, & Jakse, 2012
**Substance Misuse: Suggested References**


**Psychiatric Comorbidity: Suggested References**


Self-Regulation: A Suggested Resource


Poor Attachment Patterns

Insecure parental and caregiver attachment could be present in the vast majority (80%) of youth with FASD (O'Connor, Kogan, & Findlay, 2002)

Poor attachment with the primary caregiver in children with FASD can be caused by the disorder’s cognitive deficits, even in spite of stable and caring homes (Page, 2002)

The presence of a secure attachment with a primary caregiver in children with prenatal alcohol exposure may decrease the likelihood of succumbing to comorbid conditions, and vice-versa (O'Connor, Kogan, & Findlay, 2002)

Brain Abnormalities

Brain abnormalities that characterize FASD can result in impulsivity, deficits in decision-making and long-term planning, poor understanding of cause-and-effect and consequences, low levels of empathy, high levels of reactivity, and a vulnerability to social influences such as peers or interrogators.
IQ Scores: An Important Reminder

Many legal professionals do not recognize that FASD’s deficits in understanding cause-and-effect, relating behaviors to consequences, and recognition of a behavior as a crime can all occur relatively independently of IQ scores.


Suicide & Self-Injury

Assessing for risk of suicide and self-injurious behaviors in individuals suspected of having FASD can be a challenging and complicated process.

Suicide: A Suggested Reference


False Impressions

The symptoms of FASD may result in false impressions of the defendant by the judge, attorneys, and jury members.

Specifically, the presence of inattention, impulsivity, immaturity, and affective dysregulation can be very problematic.

For example, inappropriate outbursts of emotion may lead the judge and jury to believe that the defendant is callous.

Wartnik, Brown, & Herrick, 2015

Expert Evaluation

Because FASD can have a profound impact on the legal proceedings (i.e., incompetency to consent to a search, incompetency to waive Miranda rights, incompetency to stand trial) and sentencing (e.g., criminal responsibility, sentence mitigation) of a defendant, a thorough mental health evaluation by an expert is essential.

Wartnik & Carlson, 2011

Expert Testimony

In recent years, expert witnesses have been increasingly asked to testify about FASD during criminal trials
Constitutional Rights

Individuals with FASD often have a tenuous grasp of their constitutional rights.

Implications for Memory Impairment in the CJS

- Defense-related information
- Forgotten appointments
- Investigative interviews
- Cross-examination
- Eyewitness testimony
- Miranda Rights Waiver
- Police line-ups
- Competency to Stand Trial
- Probation requirements
- Court-ordered treatment

Suggestibility: Recommended References

