

# FETAL ALCOHOL SPECTRUM DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

*There was a part of me that was angry, but I also knew that the police department and the justice system were uninformed about how vulnerable and easily swayed people [with an FASD] are.*

—Mother whose son with an FASD was wrongly convicted of a crime



WHAT YOU NEED TO KNOW



## FETAL ALCOHOL SPECTRUM DISORDERS

FASD is an umbrella term describing the range of effects that can occur in an individual prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

### REASONS PEOPLE WITH AN FASD GET IN TROUBLE WITH THE LAW

Studies show that people with an FASD have specific types of brain damage that may cause them to get involved in criminal activity. These individuals show:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends).

Persons with an FASD may break the law without intending to do so. For example, they may touch people when it is unwanted and think they are just being friendly. They may take things that do not belong to them because they like them.

People can take advantage of individuals with an FASD. They may talk them into committing crimes. Females with an FASD may be involved with destructive men for food, shelter, attention, or drugs.<sup>3</sup> These relationships put them at risk for arrest.

### NUMBER OF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM WITH AN FASD

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems screen for FASD or conduct a full diagnostic assessment. Researchers

at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.<sup>1</sup>

The number of people with an FASD in the criminal justice system is assumed to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.<sup>2</sup>

### ISSUES RELATED TO FASD IN THE CRIMINAL JUSTICE SYSTEM

Laws vary by State and case law is binding only in the State or circuit where the case was decided. Only Supreme Court cases are binding nationally. However, several general issues can arise for attorneys and judges dealing with persons with an FASD:

- **Competency to stand trial**, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.<sup>4-6</sup>
- **Validity of expert testimony** regarding diagnosis. Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?<sup>7,8</sup>
- **Diminished capacity**. Capacity refers to the ability to understand right and wrong and to understand the



likely outcome at the time of the act. Some crimes require evidence of intent for the person to be found guilty. Defense lawyers may argue that persons with an FASD cannot form the intent to commit crimes because they cannot foresee the likely outcome.<sup>9</sup>

- **Effect of FASD on sentencing.** Lawyers have appealed the death penalty by arguing that FASD was not introduced as evidence to support a lesser sentence.<sup>10–12</sup>
- **Ability to testify.** Persons with an FASD are highly suggestible and may not be able to give accurate testimony. They are prone to making false confessions.<sup>13</sup>
- **Recidivism.** Offenses do not appear to get worse, such as from auto theft to robbery. However, persons with an FASD tend to repeat crimes of opportunity, such as shoplifting. Their thought process seems to be, “I want. I take.”<sup>14</sup>

## WAYS THE CRIMINAL JUSTICE SYSTEM CAN ADDRESS THE NEEDS OF PERSONS WITH AN FASD

Because of their disabilities, persons with an FASD may repeat the same mistakes many times. Thus, support to improve functioning might be more appropriate than rehabilitation. This approach focuses on education, job training, and family support, rather than punishment. Medication may also help. In some cases, adults with an FASD who had multiple jail stints for petty, impulsive acts avoided jail when given appropriate medical treatment.<sup>3</sup>

Understanding how persons with an FASD respond to certain situations can help. Due to sensory issues, they can become overwhelmed by bright lights, causing them to panic and run from the police or resist arrest. Because they are eager to please,

many unknowingly waive their rights by signing forms that they do not understand. In addition, they may consent to being searched or take responsibility for the crimes of others to win favor.

Sentencing is also an issue. Some persons with an FASD respond well to the intense structure and rules of prison. Others are vulnerable to attack, exploitation, and manipulation by other inmates. Some do not understand prison rules and break them. Because corrections officers may not understand FASD, they may punish inmates with an FASD for failing to follow directions. It is critical to offer training on FASD to all corrections staff so they can learn strategies to respond to inmates with an FASD.

Once on probation, persons with an FASD may have trouble meeting probation requirements. They can have problems managing time, recalling appointments, and making plans. Therefore, they may need a greater level of supervision. A relative or support person may need to be assigned to follow up on probation requirements. Highly structured probation that includes supervised living, life skills education, and drug and alcohol treatment can be very effective.<sup>15</sup> In fact, supervision can help prevent crime. Many clients with an FASD can remain crime free with intense supervision.<sup>14</sup>

Other effective alternatives to prison include halfway houses, group home treatment centers, or electronic monitoring at home. In such cases, emphasis must be placed on creating a well-structured environment with predictable rules and consequences. In these settings, persons with an FASD can continue to participate in the community but their behavior will be more closely monitored.<sup>16</sup>

## REFERENCES

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**Stop and think. If you're pregnant, don't drink.**

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