



Fetal Alcohol Spectrum Disorder and the Criminal Justice System: A Poor Fit

Fetal Alcohol Spectrum Disorder (FASD) is the most common type of developmental delay in Canada. There is increasing data to suggest that a disproportionate number of people in conflict with the law have FASD: research suggests that the rate of FASD in prisons may be ten times higher than in the general population.

- FASD is a brain-based physical disability. As such, FASD is permanent and cannot be cured.
- FASD is an umbrella term used to describe *any* neurological, physical and behavioural effects that result from exposure to alcohol *in utero*.
- The Public Health Agency of Canada asserts that there is no known safe time or amount to drink when pregnant.
- FASD cannot be inherited from either parents; it is not genetic.
- FASD is significantly under-diagnosed among the Canadian population.
- The neurological and behavioural effects of FASD create challenges at all stages of the criminal justice process for those affected by it.

300,000 (or 1 out of every 100) - The number of Canadians affected by FASD. Since FASD often goes undiagnosed, the actual prevalence is likely much higher.

More than 80% - Percentage of people with FASD who are raised by someone other than their parents

95% - The number of people with FASD who are also diagnosed with a mental illness

60% - Percentage of people with FASD over the age of 12 who have been charged with, or convicted of, a crime

\$1.5 Million - The direct cost associated with supporting a person with FASD over a lifetime

23% - The number of youth in the inpatient assessment unit of Youth Court Burnaby Services diagnosed with FASD

More than 70% - Percentage of people with FASD who have been victims of violence

Given the characteristics of FASD, it is no surprise that sufferers face challenges at all stages of the criminal justice system. The difficulties of those with FASD must be better understood and accommodated in view of their human rights as well as the goal of a just and effective criminal justice system.

Trouble with Judgment and Reasoning:

It is difficult for people with FASD to consider long-term goals or consequences, and this can result in conflict with the law. FASD also increases vulnerability to manipulation and coercion because they want to please those they perceive to be in positions of authority.

Poor Memory:

Poor memory can make a person extremely vulnerable when trying to recall events during a criminal investigation. People with FASD may be at risk of unintentionally incriminating themselves during a police interrogation or court hearing.

Misunderstanding of Cause and Effect:

This inability undermines the possibility of deterrence. Punishment is unlikely to have any impact on deterring future criminal behaviour in people with FASD. A person with FASD may commit a crime and be convicted, but they might not be able to draw a connection between the two events.

Inability to Generalize:

People with FASD might have difficulties drawing a connection between two similar but different events. For example, a woman with FASD may learn she will go to jail for cocaine possession. However, unable to apply this fact to other situations, she may not understand that she will also go to jail for heroin possession.

Undiagnosed FASD:

FASD is not always easy to diagnose. Not only are those undiagnosed not receiving support to negotiate their daily lives, but are also unable to account for the difficulties they face.

Inability to Think Abstractly:

People with FASD generally have problems understanding abstract concepts such as money or law. Theft of money is different to a person who is able to understand the value of money. This difficulty with

abstraction means that many persons with FASD cannot adequately imagine or consider the future. This places them at risk during stages of court processing, such as plea bargaining, sentencing or parole hearings, not to mention in their regular life.

Difficulty Planning:

This inability can lead to highly impulsive behaviour and makes it difficult for people with FASD to be deterred from committing a crime. Recidivism rates are consequently very high.

Trouble in School:

Over 60% of people with FASD between the ages of 12-51 will have disrupted school experiences. Research shows that education is strongly correlated with preventing criminal behaviour and recidivism.

Self-Medicating:

In order to alleviate or cope with problems stemming from being misunderstood, including depression, some people with FASD self-medicate with illegal drugs. This may lead to addiction and conflict with the law.



FASD can affect:

- cognition
- motor skills
- communication
- attention level
- memory
- activity level
- social skills
- adaptive behaviour
- academic achievement
- executive functioning

Common Myths about FASD

Myth: FASD is apparent from a person's looks.

Fact: The majority of people with FASD have no physical characteristics of the disability. Research shows that there is only a small period during pregnancy when alcohol use can affect a child's facial features.

Myth: FASD only occurs when mothers binge drink or are alcoholics. Drinking in moderation won't cause FASD.

Fact: There is no known safe amount of alcohol during pregnancy. There is no "safe time" to drink alcohol during pregnancy.

Myth: Behaviour is a choice. People with FASD just need to try harder!

Fact: The brain damage associated with FASD often makes it extremely difficult for individuals to control their behaviour. It is not a choice.

Myth: FASD affects children and adolescents. Adults don't have it.

Fact: FASD is a permanent, lifelong disability. Rather than being able to "outgrow" FASD, many adults face greater challenges as they get older because their behaviour becomes less acceptable as adults.

Myth: FASD is an Aboriginal disease. All Aboriginals have FASD.

Fact: FASD is solely and directly the result of prenatal exposure to alcohol. Therefore, FASD can affect people of all races, ages, cultures, classes, genders and sexualities.

Myth: FASD is just the latest trendy disability.

Fact: There have always been people affected by FASD, but only recently has the enormous prevalence of this developmental delay become recognized.

Ways to Make the Environment Work for People with FASD

FASD experts talk of modifying the external world to work for the FASD brain. The field of Disability Studies provides a useful model, demanding that we recognize the ways in which society conceptualizes disabilities. A prominent advocate for FASD, Diane Malbin, explains that "people with FASD are not broken and do not need fixing, they require those in society to accommodate their different ways of viewing the world." This includes:

- **Reframing Behaviours:**
It is vital to distinguish between what someone with FASD will not do and what he or she cannot do. Often, people confuse the two and assume that the person with FASD is choosing to act a certain way. It may be helpful to remember that FASD is a form of physical brain damage and has little to do with personal choice.
- **Setting up an "External Brain":**
A person with FASD will likely benefit from the support of someone able to assist with decision-making as well as advocating for their rights and well-being. One excellent service of this kind is the Gateway Mentoring Program at the John Howard Society of



Central and South Okanagan in B.C. The Gateway Mentoring Program is a one-to-one mentorship for those who have FASD, and are involved in, or at risk of involvement in, the criminal justice system.

- **Early Diagnosis/Any Diagnosis:**
Living without a proper diagnosis can be confusing for affected individuals and the people in their lives trying to understand their behaviour. Often, not being diagnosed will increase a person's likelihood of developing secondary disabilities that stem from the frustration and confusion of not being understood.

Eight Effective Ways to Communicate with people with FASD

1. Be Concrete

Talk in concrete, clear terms. Avoid sarcasm, figurative language, abstract terms and metaphors. Be sensitive to the possibility that someone with FASD may not understand you at first, and you may need to repeat your message with different words.

2. Be Consistent

People with FASD function best in stable environments. Consistency helps reduce anxiety over having to “guess” what is going to happen next.

3. Repeat

Memory loss is an ongoing challenge for those with FASD. Remind people multiple times, in order to make it more likely that they will remember.

4. Establish Routine

Stable routines coincide with consistency and repetition. It is important for people with FASD to have a set routine that rarely changes.

5. Keep it Simple

Many people with FASD can be over-stimulated. It is important to keep one’s interactions as simple as possible to help them understand what is relevant.

6. Be Specific

People with FASD require others to say exactly what they mean. It is best to give step-by-step directions, removing the need to fill in the blanks.

7. Provide Structure

Like routine, structure is extremely important for people with FASD. Structure often lowers the anxiety of these individuals by allowing them to better predict and understand what to expect

from their environment.

8. Provide Supervision

It is difficult to offer supervision to adults with FASD without feeling patronizing. However, it is important to reach a cautious balance between respecting the person as an individual, and recognizing his or her challenges and capacity.



The John Howard Society of BC position:

Prevention of prenatal alcohol consumption through awareness and education is the best way to address Fetal Alcohol Spectrum Disorder. This approach involves social and cultural changes. It further suggests that all of us have a responsibility to support the abstinence of alcohol consumption during pregnancy as a spouse, parent, sibling, other relation or friend.

For those suffering from FASD, awareness and the establishment of an “external brain” are essential for success.

Both planning and communication must be concrete, consistent, reinforced through practice, simple, specific, follow a structured routine and supported by intrinsic and extrinsic motivation.

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