Any social worker employed in a court or a criminal justice environment is almost certain to encounter individuals with fetal alcohol spectrum disorders (FASDs) regularly. This is especially true of individuals who are repeatedly in mental health court, family court, drug court, delinquent court, criminal court, and other justice settings. One of the most common disabilities, FASD predisposes sufferers to involvement in all types of courts because prenatal alcohol exposure alters brain function.

An article in the Journal of the American Medical Association estimates FASDs to affect 2 to 5 percent of people in the United States, but less than 1 percent of actual cases have been diagnosed. (May et al, 2018). FASD is an umbrella term used to describe the range of effects that can occur in an individual who was exposed to alcohol while in the womb. Diagnoses that fall under that umbrella include fetal alcohol syndrome, partial fetal alcohol syndrome, alcohol-related neurodevelopmental disability, alcohol-related birth defects, and neurobehavioral disability associated with prenatal alcohol exposure. These conditions can cause one of several characteristics, such as intellectual disabilities, learning disabilities, and neurodevelopmental disabilities. Individuals with an FASD may have difficulty predicting the consequences of their actions and controlling impulses; they may be easily persuaded to take improper actions and find it hard to understand rules. Some persons with an FASD also do not recognize dangerous people and situations. These challenges make certain individuals with an FASD more likely to be involved in juvenile or adult court processes.

**Due to the brain damage caused by prenatal alcohol exposure, some individuals with an FASD exhibit several social and behavioral deficits that can result in legal concerns:**

- impulsivity, which can lead to actions like shoplifting;
- social ineptness (trouble recognizing and interpreting verbal and nonverbal social cues and difficulty learning social conventions);
- no understanding of rules and/or the concept of ownership, which can lead to taking things that don’t belong to them;
- poor judgment (inability to reason and choose right from wrong);
- overreacting to minor incidents due to an overrelease of cortisol (explosive behavior episodes);
- problems understanding the consequences of behavior;
- vulnerability to negative peer pressure and bullies;
- difficulty following verbal instructions, resulting in appearing not to care about what is being said;
- naïveté and gullibility, which can lead to becoming an accomplice;
- running from police out of fear; and
- confessing to crimes that they didn’t commit because they are saying what they think is expected.

Often offenders with FASD typically commit unreasonable crimes—that is, those with a high risk for little reward—engage in minor offenses with little to no escalation, repeat the same crime multiple times and are always surprised when they get in trouble, and commit crimes with little to no planning. They struggle to follow probation and parole and may have trouble linking unlawful behavior to the punishment; this means that the unlawful behavior generally continues despite imprisonment, fines, or other punishments.

Many families enter the child welfare system through the dependency and delinquency courts due to drug and alcohol abuse. Studies found that 16.9 percent of children in the child welfare system have FASDs.
(Lange, Shields, Rehm, & Popova, 2013) and that youths with FASDs are 19 times more likely to be incarcerated than youths without FASDs (Popova, Lange, Bekmuradov, Mihic, & Rehm, 2011). Children entering those systems should be routinely screened for FASDs and evaluated when indicated, even if concerns are not easily apparent.

In 2012, the American Bar Association passed a resolution advocating for “training to enhance awareness of FASD and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems and the value of collaboration with medical, mental health, and disability experts.” The resolution further urges “the passage of laws and adoption of policies at all levels of government that acknowledge and treat the effects of prenatal alcohol exposure and better assist individuals with FASD” (ABA, 2012, para 1). The resolution discusses why people with an FASD should receive services from developmental disability organizations. On September 19, 2012, a state law went into effect in Alaska that provides for the consideration of an FASD as a mitigating factor in criminal case sentencing.

Children who are prenatally exposed to alcohol are more likely to experience a negative early environment, including:

- developmental delays;
- abuse and neglect;
- exposure to trauma;
- disrupted attachment;
- parental loss; and
- frequent hospitalizations, suicide attempts, and foster care placements.

Such children also show deficits in communication, daily living skills, and socialization. These deficits are not necessarily attributable to deficits in IQ and can last a lifetime; therefore, it is crucial that these children have early identification, diagnosis, and intervention, including services from the state department of developmental disabilities.

Without an understanding of the physically based cognitive challenges faced by individuals with an FASD, behaviors can be misinterpreted as willful misconduct, deliberate disobedience, or malicious intent—when they are often just the opposite. Individuals with an FASD can be impulsive. They may have information-processing deficits that impair learning, remembering, and demonstrating skills. Individuals, regardless of age, may have learning difficulties in some or all academic areas as well as behavior challenges.

Unless they are diagnosed (preferably early in life) and receive supportive services through special education, individuals with an FASD may not succeed academically and may be labeled as lazy, bad, or unmotivated. Once diagnosed with an FASD, individuals should be referred for disability services; however, many disability agencies do not recognize FASDs, especially in people with an IQ higher than 70, a trait commonly found in those with an FASD. Attorneys representing clients with an FASD should argue that they were born with a developmental disability and have permanent brain damage that often results in reduced adaptive behavioral skills. Without proper services, many people with an FASD will...
end up in the criminal justice system or in psychiatric institutions. Social workers with clients who have an FASD might also apply for Supplemental Security Income (SSI) to help clients with their financial needs.

The socio-emotional and communication development of those with an FASD is often delayed; therefore, when questioning and giving instructions, it is important to adjust expectations to match those of persons who are much younger. Individuals with an FASD often have expressive language skills that are far more developed than their receptive language, causing others to assume they understand more than they do. Because of this unusual communication profile, it may be useful to:

- use simple, short sentences and clear, literal terms;
- keep questions short and calmly prompt for answers;
- provide one instruction at a time;
- speak slowly and repeat often;
- avoid legalese and acronyms;
- use visual aids wherever possible;
- confirm personally that the individual understands key concepts and his or her rights;
- be attentive to the fact that individuals affected by an FASD have a desire to please and fit in and may pretend to understand when they don’t; and
- be attentive to nonverbal cues as well as cues that you, as a social worker, may be giving, such as frustration.

- Some other activities that can increase the likelihood of success in working with persons with an FASD include the following.
- Advocate for legislation that includes FASD as a developmental disability so that children and adults will qualify for state services.
- Collaborate with medical, mental health, and disability experts to promote appropriate legal representation and advocacy for individuals with an FASD.
- Convey to the judicial and larger community the need for screening, diagnosis, and treatment for FASDs.
- Educate families on how best to support their loved ones with an FASD.
- Become informed on existing resources and advocate for resources to fill in the gaps within the context of judicial ethics.
- Identify those who have interests and abilities to lead both in the courtroom and in the community on FASD issues.
- Advocate for legislation like that in Alaska, which recognizes FASD as a mitigating factor for juveniles and adults during sentencing.
- Docket for a one-family-one-judge model across case types, which will provide consistency for persons with an FASD.

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REFERENCES


RESOURCES

Resources for social workers in court settings

- Substance Abuse and Mental Health Services Administration treatment locator Web site: https://findtreatment.samhsa.gov/
- National Organization for Fetal Alcohol Syndrome Web site: www.nofas.org

• FAS/FAE Legal Issues Resource Center: Sentencing and Supervising Offenders With an FASD: www.americanbar.org/content/dam/aba/administrative/child_law/sentencing.authcheckdam.pdf

• FASD Legal Experts, Forensic Experts: This site is intended to educate legal and medical professionals about FASD standards of care. The site’s creators also advise prosecutors and defense attorneys in cases involving FASDs: www.fasdexperts.com/

• FASD and the Justice System, Canada-focus: This site walks you through all steps of the legal system, from investigation to trial to sentencing, to give you a better understanding of how FASDs and criminal justice interact in Canada: www.fasdjustice.ca/

• A Judge’s Perspective on a Hidden Challenge of FASD in the Justice System: https://ici.umn.edu/products/impact/301/FASD-Courts/#FASD-Courts

• Fact sheet from The Arc: FASD: Pathways to Justice: www.thearc.org/file/documents_initiatives_nccjd/NCCJDFactSheet_FASD-Copyright-BJA.pdf


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