

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

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What is Fetal Alcohol Spectrum Disorder?

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. Some researchers estimate the rate of FASD to be ten times higher inside Canadian prisons than in the general population.

Given this high rate, it is clearly important for service providers to be knowledgeable about this issue. When working with people with FASD, it is important to be aware of the following facts:

- 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 key characteristics of FASD are: difficulty with assessment, judgment and reasoning; poor memory; misunderstanding cause and effect; inability to generalize or think abstractly; difficulty planning; trouble at school; self-

medicating.

- Often the effects of FASD do not present themselves in a person until they are several years old.
- Numerous aspects of fetal development can be affected depending on when the mother drank alcohol, how much and what she drank during pregnancy.
- 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 parent; it is not genetic. A child cannot get FASD from his or her mother who has been diagnosed with FASD, unless she drinks during her pregnancy.

“Some researchers estimate the rate of FASD to be 10 times higher inside Canadian prisons”

- Despite being so widespread, 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.

FASD | Fetal Alcohol Spectrum Disorder

FAS	Fetal Alcohol Syndrome
pFAS	Partial Fetal Alcohol Syndrome
ARND	Alcohol-Related Neuro-developmental Disorder
ARBD	Alcohol Related Birth Defect

FASD by the Numbers

The statistics show that FASD is one of the most common and expensive types of developmental delays. Estimates are:

300,000 (or 1:100)

The number of Canadians affected by FASD. Since FASD often goes undiagnosed, the actual prevalence is likely much greater.

>80%

Percentage of people with FASD who are raised by someone other than their parents.

95%

Percentage of people with FASD who also have a mental illness.

60%

Percentage of people with FASD over 12 years old who have been charged with, or convicted of, a crime.

55%

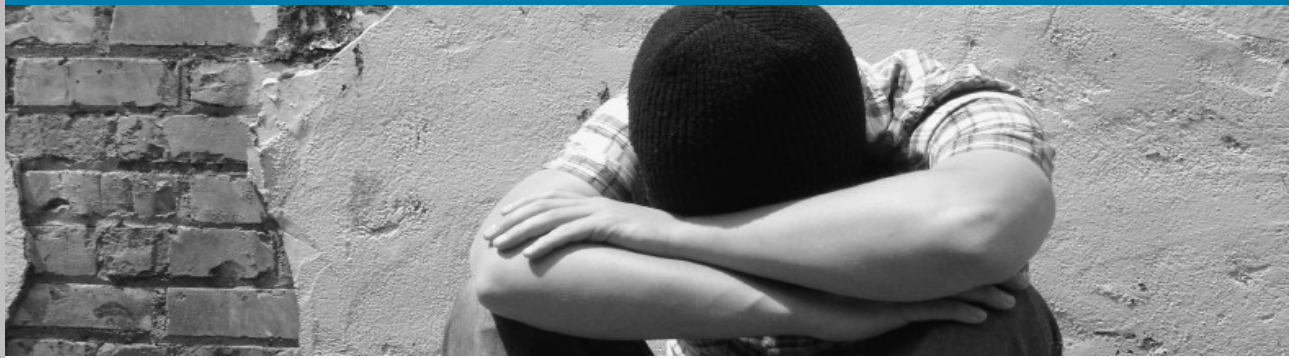
Percentage of people with ARND who will be confined in prison, drug/alcohol treatment centres, or psychiatric institutions.

\$21,642

The total annual adjusted costs associated with each person with FASD.

\$5.3 billion

The annual cost to the country of those with FASD from day of birth to age 53.



FASD and the Criminal Justice System: A Poor Fit

Given the characteristics of FASD, it is no surprise that affected people face challenges at all stages of the criminal justice system.

The differences of those with FASD must be better understood and accommodated, both in terms of human rights as well as the goal of a just and effective criminal justice system.

Trouble with Assessment, Judgment and Reasoning: These characteristics make it difficult for people with FASD to make choices that seem 'smart' or consider long-term goals, and can result in conflict with the law. FASD also makes affected individuals more vulnerable to manipulation and coercion, placing them at higher risk of giving false confessions.

Poor Memory: Many people with FASD struggle with memory challenges. It can be difficult for others to understand that a person with FASD may not merely be choosing to forget certain events, but are truly unable to recall what happened. Poor memory can make a person extremely vulnerable when trying to recall events during a criminal investigation. Therefore, people with FASD may be at risk of incriminating themselves during a police interrogation or court hearing.

Misunderstanding of Cause & Effect: People with FASD generally have significant challenges connecting cause and effect. This skill is, of course, central to the concept of deterrence. Thus, punishments are unlikely to have any impact on deterring future similar behaviour. As such, if a person with FASD commits a crime and is later convicted, they may not be able to draw a connection between the two events.

Inability to Generalize: Most adults are able to draw connections between two similar but separate events. This requires somewhat sophisticated executive functioning, namely being able to apply knowledge gained from one situation to a new situation that may have some key differences. Individuals with FASD frequently struggle with this skill. 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.

Inability to Think Abstractly: Because individuals with FASD usually have difficulty understanding abstract concepts, they generally struggle to understand basic concepts in math, money, and time. Also, all rules and laws are inherently abstract, and as such, are difficult for individuals with FASD to understand and internalize.

"People with FASD face challenges at all stages of the criminal justice system"

As a result, the meaning behind stealing someone's money is different than it is to a person who is able to understand the meaning and value of money. This difficulty with abstraction means that many persons with FASD cannot imagine or consider the future. This disability places them at risk during stages of court processing, such as plea bargaining, sentencing or parole hearings.

Difficulty Planning: Often people with FASD struggle with planning, as it requires the ability to envision an abstract view of the future, and achieve goals through a series of complex steps. This disability 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: Due to no diagnosis or misdiagnosis, people with FASD frequently struggle in school. Over 60% of people with ARND between the ages of 12-51 will have disrupted school experiences. The research shows that education is strongly correlated with preventing criminal behaviour and recidivism.

Self-Medicating: Since FASD is often improperly diagnosed or missed entirely, many individuals with FASD develop secondary behaviour problems due to a chronic "poor fit" with their environment. In order to alleviate or cope with these secondary problems, such as depression, some people with FASD self-medicate with illegal drugs. Rarely successful, self-medication may lead to addiction and conflict with the law.

Six Common Myths about FASD

1. Myth: You can tell if someone has FASD by the way they look.

The majority of people with FASD have no physical characteristics of the disability. FASD and other such “invisible disabilities” that affect behaviour are often under-diagnosed because behaviour is frequently assumed to be a choice.

Research shows that there is a small period during a pregnancy when alcohol use can affect the child’s facial features. This is very unlike the brain, which develops throughout the entire pregnancy and can therefore be affected at any point.

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

The Public Health Agency of Canada makes it very clear that, “*There is no known safe amount of alcohol during pregnancy. There is no safe time to drink alcohol during pregnancy.*”

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

Most healthy adults can control their own behaviour and follow societal norms. This is not true for many people with FASD. Experts stress that the brain damage associated with FASD often prevents people from being capable of controlling their behaviour. For that reason, it is important to change the assumption that “they won’t behave” to the understanding that “they can’t.”

4. Myth: FASD only affects children and adolescents. Adults don’t have it.

Although the majority of resources and information about FASD are directed to those under 18, 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. As a person ages, the FAS-related facial features they may have can become less apparent, making

it even harder for people to receive proper diagnosis.

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

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.

6. Myth: FASD is just the latest trendy disability.

Although there have always been people affected by FASD, only recently have we been able to recognize the enormous prevalence of this developmental delay. FASD is frequently misdiagnosed as one of its secondary characteristics (e.g. Oppositional Defiance Disorder). FASD has been routinely absent from criminal justice discourse, despite the high prevalence of people with FASD in conflict with the law.

Ways to Make the Environment Work for People with FASD

FASD challenges the ways that service providers, whether inside or outside the criminal justice system, work with their clients. Many of the ways we practice, and the things that workers say they “know works,” simply do not apply to those with FASD.

What then? FASD experts talk of **modifying the external world** to work for the FASD brain. The field of Disability Studies similarly provides a useful model, demanding that we recognize the ways in which society constructs 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.

The FASD Ontario Justice Committee suggests several techniques one can adopt to successfully accomplish this, including:

Reframing Behaviours: It is vital to distinguish between what someone with FASD *won’t do* and what he or she *can’t 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 very little to do with personal choice.

Setting up an External Brain: Depending on the level of damage to the brain, a person with FASD will likely benefit from the support of someone able to assist with decision-making as well

as advocating for his or her 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 British Columbia. The Gateway Mentoring Program is a one-to-one mentorship to those who have – or have symptoms of – FASD, and are involved in, or at risk of involvement in, the Criminal Justice System.

Early Diagnosis/Any Diagnosis: The earlier an individual receives a proper diagnosis of FASD, the better he or she will fare. Living without a 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. As well, many of the services, treatments and medications can only be offered after a formal diagnosis.

Further Readings on FASD

- “Damaged Angels” by Bonnie Buxton
- “Trying Differently, Not Harder” by Diane Malbin
- “The Broken Cord” by Michael Dorris
- “It Takes a Community” by the First Nations and Inuit FASD Initiative
- “The Canadian FASD Training Online Database” found at www.ccsa.ca
- “Fetal Alcohol Syndrome and the Criminal Justice System” by Julianne Conry and Diane Fast
- “Fetal Alcohol Spectrum Disorder (FASD): A Framework for Action” by the Public Health Agency of Canada
- www.fasdontario.ca
- www.fasjustice.on.ca
- www.faslink.org
- www.fasalaska.com

Eight Ways Clients with FASD Need You to Respond

Fact Sheets are a publication of the John Howard Society of Ontario on a variety of social and criminal justice issues, intended for our Affiliate staff and community partners. All Fact Sheets are available on our website.

Deb Evensen, Director of Fetal Alcohol Consultation and Training Services, identifies eight strategies to adopt when working with people with FASD. By using these techniques, service providers can limit feelings of anxiety, frustration and misunderstanding, and can modify the external world to work for the FASD brain.

- 1. 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. Consistency.** People with FASD function best in stable environments. Consistency helps reduce anxiety over having to “guess” what is going to happen next. When working with someone with FASD, it is important that your behaviour and interactions are predictable and consistent.
- 3. Repetition.** Memory loss is an ongoing challenge for those with FASD. It’s common for people with FASD to forget things they’ve learned and known for some time. Remind people multiple times, in order to make it more likely that they will remember.
- 4. Routine.** Stable routines coincide with consistency and repetition. It is important for people with FASD to have a set routine that rarely changes. This way, people with FASD can feel more secure as they know what to expect from each day and are not anxious of the unknown.

5. Simplicity. Many people with FASD can be over-stimulated. As a result, they may have difficulty sorting through their environment and selecting what is relevant and important at any given moment. For that reason it is important to keep one’s interactions as simple as possible.

6. Specific. People with FASD require others to say exactly what they mean. Subtlety in language can often be mistaken or missed. It is best to give step by step directions, removing the need to fill in the blanks. Instead of saying “That judge doesn’t like when people are late,” say: “At 12:30, take Bus 15A to the court house, go through security and sit inside the court room, don’t take any breaks along the way. I’ll meet you there at 1:20, please don’t be late.” In some cases, you may need to simplify instructions even further, or write them down. Having clients with FASD carry an emergency contact number, so they can seek assistance if needed, could also be helpful.

7. 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. 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.

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The John Howard Society Position

The John Howard Society’s mission statement calls for “effective, just and humane responses to crime and its causes.” The John Howard Society supports the idea that “*it is fundamentally unjust to imprison an individual in response to acts committed as a result of brain-based physical disability.*” We strongly believe that the criminal justice system must recognize and respond effectively to people with FASD.

The estimated rate of people in our correctional system and the disproportionate rates of recidivism amongst people with FASD suggest that the current approach of the criminal justice system is inadequate. From policing through to prisons, the system fails those with FASD. Specialized courts,

diversion programs and prison services, which exist for other groups, would be highly beneficial in accommodating the unique needs of those with FASD.

The John Howard Society argues that comprehensive programs that can demonstrate their success in meeting the specific needs of people with FASD must be available. Such services must be broadly and consistently accessible, supported through stable funding and staffed by trained service providers. Education is imperative. A thorough understanding of the complexities of FASD would assist all service providers to recognize possible signs that their client may have FASD. Once identified, service providers can modify their own interactions, advocate for a formal

diagnosis, and encourage others to use more appropriate techniques.

Meaningful governmental responsibility must be taken to prevent FASD in Canada.

Only through these changes can we reduce the frequency and prevalence of criminal justice system involvement for people with Fetal Alcohol Spectrum Disorder.

