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Fetal Alcohol Spectrum Disorder (FASD) in the Criminal Justice System: More Common Than You Think

By Jerrod Brown, Anne Russell, Tina Andrews, and Janina Cich

Introduction

Few disabilities succeed in flying completely under the radar more than Fetal Alcohol Spectrum Disorder (FASD). This disorder, not regularly identified, creates many difficulties for individuals with FASD, their families, and society as a whole. Because of the nature of this condition (i.e., adaptive functioning, cognitive, and social issues), individuals with FASD are disproportionately likely to encounter the criminal justice system. Unfortunately, individuals with FASD are not likely to be identified even when apprehended, charged, and incarcerated. Instead, jail and prison become a common place of residence for many individuals with FASD.

Despite higher crime rates for individuals with FASD than the general population, many continue to go unrecognized, undiagnosed, and untreated in the criminal justice system. Complicating matters, the deficits of FASD often negatively impact how these individuals are treated. For example, individuals with FASD may feel considerable remorse, but have difficulty expressing it due to deficits in communication and social cues. As a result, individuals with FASD may receive harsher sentences because they appear callous or indifferent about their crime. This punishment is often ineffective because the cognitive deficits of FASD limit the capacity of individuals to mentally link their actions, consequences, and later

punishment. This characterization highlights why it is paramount to remember that rudimentary brain differences may exacerbate criminal justice outcomes for individuals with FASD. As such, it is imperative for all professionals working within the criminal justice and legal systems to have an understanding of FASD and its related consequences.

What Is Fetal Alcohol Spectrum Disorder?

Although the word “fetal” may conjure up visions of developmentally impaired babies, FASD is a lifelong condition that involves a wide spectrum of structural and chemical brain differences caused by in utero exposure to alcohol. These differences can include impaired cognition, profound lack of self-control, impaired ability to reason or to learn from experience, and great difficulty linking cause and consequence. Available evidence points to a prevalence rate of as many as 5% of all children born in the United States as having some degree of FASD. Significantly higher rates have been found in at-risk and offender populations.

Individuals with less identifiable symptoms may be the most harmed by this condition. Such individuals go undiagnosed and are often misunderstood by family, significant others, teachers, colleagues, friends, and employers. Often contributing to these difficulties are secondary disabilities, which frequently include a host of behavior, emotional, learning, psychiatric, physical, and social consequences. Nonetheless, early diagnosis and appropriate interventions have the potential to limit the impact of FASD and such secondary disabilities.

FASD in the Criminal Justice System

Children, adolescents, and adults with FASD share our roads, attend our schools, and, like most of us, experience pressure from peers to deviate from socially acceptable behavior. People with FASD are highly vulnerable to suggestion or manipulation by others, exacerbated by limited capacity to control impulsive actions that characterize FASD. As a result, children with FASD often become involved in the juvenile justice system as gullible followers when undiagnosed without the appropriate support and treatment.

Once individuals with FASD encounter the criminal justice system, they are particularly prone to long-term entanglement because they have difficulty anticipating the consequences of their actions and learning from their past mistakes. Specific deficits related to FASD (e.g., adaptive, cognitive, emotional, and social) often prevent first-time offenders from successfully meeting the conditions of their probation, commonly resulting in incarceration. These same deficits can then decrease the likelihood of successfully completing parole. As such, a single contact with the criminal justice system can lead to an individual with FASD becoming caught in a revolving door of subsequent incarcerations.

Legal System

The pervasive impairments of FASD can impede an individual’s capacity to navigate the legal system (i.e., capacity to waive Miranda rights, assist legal defense counsel, enter a plea, or stand trial). Complicating matters, individuals with FASD may present well with communication skills that may mask much poorer language comprehension. Thorough screening will most likely reveal that individuals with FASD have a diminished ability to comprehend their legal situation, the etiology of which stems from a permanent brain injury caused by alcohol exposure prior to birth. In such circumstances, a police officer

may Mirandize them, but individuals may not comprehend the true meaning of their rights and responsibilities. In a worst-case scenario, people in this population will waive their rights and willingly implicate themselves in a crime — even a crime they did not commit.

Confinement Settings

Prolonged incarceration is especially detrimental for individuals with FASD because they often view those who are close to them as role models. When combined with the fact that those with FASD cognitively and emotionally mature at a slower rate, the prospect of spending a great deal of time with antisocial role models can have long-term consequences. Moreover, individuals with FASD tend to be malleable, easily influenced, and vulnerable to victimization. Therefore, correctional professionals should receive regular training in the identification of FASD within offender populations.

Conclusion

Criminal justice professionals should be aware of typical FASD behavior, such as immaturity, impulse control issues, extreme gullibility, suggestibility, and overreaction to confrontations, serving as red flags that “all is not right here.” Untrained criminal justice personnel will find it difficult to identify these signposts as a potential disability instead of deliberate behavior, which contributes to a vicious cycle of legal misinterpretation, repetitive crimes, and societal costs. The general absence of obvious physical markers only increases the challenge of identifying FASD. To prevent further miscarriages of justice for individuals with FASD, criminal justice professionals need:

1. Training to identify typical FASD behaviors
2. Guidelines regarding best practices for communication with individuals who may have FASD
3. A means of referring individuals with FASD to effective treatment

In addition to advanced training for criminal justice professionals, there are two other key areas to target innovation and improvement. First, because there are very few FASD diagnostic centers across the United States, especially for adults and criminal justice populations, a valid screening tool for FASD would be invaluable across an array of settings (e.g., correctional, forensic, legal, and psychiatric). Second, greater education services are needed for family members, social workers, and medical professionals to help prevent criminal justice involvement. This is especially important for targeting youth with FASD who are at-risk of becoming involved in the criminal justice system. Unless changes are made, a high percentage of individuals affected by prenatal alcohol exposure will remain undiagnosed, untreated, and over-represented in the criminal justice system. Only by urging competence among professionals in identifying and treating FASD will there be any chance of success in breaking this alarming cycle.

Biographies

Jerrold Brown, M.A., M.S., M.S., M.S., is the Treatment Director for Pathways Counseling Center, Inc. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions. Jerrod is also the founder and CEO of the American Institute for the Advancement of Forensic Studies (AIAFS), and the lead developer and program director of an online graduate degree program in Forensic Mental Health from Concordia University, St. Paul, Minnesota. Jerrod is currently pursuing a doctoral degree in psychology.

Anne Russell is the birth mother of two adult children with FASD. She has been working on FASD for the past 15 years and has established the Russell Family Fetal Alcohol Disorders Association in Australia to support her work.

Tina Andrews is the adoptive mother and foster sister of young men affected by FASD. She is the co-founder and a board member for Families Affected by Fetal Alcohol Spectrum Disorder. She authors the blog Ten Second Kids in a Two Second World.

Janina (Wresh) Cich, M.A., has two decades of criminal justice experience. She is a retired Law Enforcement Officer, Domestic Abuse Response Specialist, Crisis Intervention Specialist, Crime Scene Technician, and Emergency Medical Technician (EMT). She is an adjunct instructor and lecturer, COO of the American Institute for the Advancement of Forensic Studies, Board Member of the Midwest Alliance on Shaken Baby Syndrome (MASBS), and co-author of multiple forensic mental health articles.