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Jerrold Brown

Julie Martindale

Nikki Freeman

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The Impact of FASD in the Criminal Justice System: An Introduction to a Complex Topic

By Jerrod Brown, Julie Martindale, and Nikki Freeman

Fetal Alcohol Spectrum Disorder (FASD) results in a host of impairments that frequently brings impacted individuals into contact with the criminal justice system. An under-recognized disorder, FASD is an umbrella term for the medical and neurobehavioral disorders caused when a mother consumes alcohol during pregnancy. The symptoms of FASD have long-term impacts that cause significant difficulties for affected individuals, their caregivers, and society. Its effects can range from minor to severe physical, mental, behavioral, and learning disabilities that can follow a person throughout his or her lifetime.

While many disabilities have external physical signs, FASD is largely invisible; as such, its presence is only known to those willing to look for it. A lack of focus, decreased ability to understand actions and consequences, memory difficulties, lack of social skills and common sense, and difficulty completing day-to-day tasks are just a few of the indications that a person may be impacted by FASD. These signs are often misidentified or completely overlooked as “behavior problems” or “poor choices” because professionals and caregivers do not consider the person’s background and the fact that a mother’s drinking at any time during pregnancy can cause changes in the brain that affect the person’s behavior and ability to function.

An often unrecognized impact of FASD is the fact that many—not all, but many— individuals with the disorder may find themselves involved with the criminal justice system. Without proper support, guidance, and treatment, people with FASD may have poor decision-making processes or a lack of ability to fully understand the repercussions of their actions. This can lead to illegal activities that launch them into the criminal justice system. Because of the invisibility of FASD and society’s lack of awareness, many individuals with FASD find themselves caught in the revolving door of repeated interaction with the legal system without having the ability to know how to stop this cycle.

The criminal justice system can be intimidating to anyone. To people with FASD, it can be completely overwhelming. Fear, apprehension, and confusion can cause them to spiral and become further entangled within the court systems. From something as seemingly simple as understanding their Miranda rights to being able to effectively communicate with their own legal teams, people impacted by FASD may be in over their heads from the moment they enter the system. Behaviors that may come across as combative or disinterested may be a coping skill they learned to cover up their deficits so that they can survive socially and emotionally. Authority

figures may misinterpret their actions and cause increased punishment to those that lack the ability to fully navigate the system and comply with what is expected of them (i.e., terms of probation).

Since FASD has few external and physically visible symptoms, it is critical that police officers and legal professionals have proper training to identify the disability. Improved awareness, education, and training should help identify individuals who may be better served with supportive services and treatment rather than incarceration and traditional probation. Until the system fully embraces the reality of FASD, our jails and prisons will continue to be filled with those who would be better suited to alternative paths through the criminal justice system.

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 Editor-in-Chief of Forensic Scholars Today (FST). Jerrod is currently in the dissertation phase of his doctorate degree program in psychology.

Julie Martindale, B.A., has spent 25 years working in the field of foster care and adoption and has worked extensively with individuals who have FASD. As a mental health advocate and disability educator, she has worked with many families and professionals to better understand the impact of FASD on our communities. In addition, she is currently working toward a national certification as a Peer Support Specialist. She and her husband are parents to 11 children, most adopted through the foster care system, five of whom live with FASD and its challenges.

Nikki Freeman, LPCC, is a therapist at Hardy and Stephens Counseling Associates, PLLC, and the parent of two children with FASD. Her practice is dedicated to serving families affected by FASD.