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# **Fetal Alcohol Spectrum Disorders (FASD) and Sexually Inappropriate Behaviors: Important Reminders for Criminal Justice and Forensic Mental Health Professionals**

## **Authors**

Jerrod Brown, Cody Charette, Jodee Kulp, Diane Neal, Anne Russell, Aaron Trnka, and Ryan Chukuske



# Fetal Alcohol Spectrum Disorders (FASD) and Sexually Inappropriate Behaviors: Important Reminders for Criminal Justice and Forensic Mental Health Professionals

By Jerrod Brown, Cody Charette, Jodee Kulp, Diane Neal, Anne Russell, Aaron Trnka, and Ryan Chukuske

## FASD and Sexually Inappropriate Behaviors

Fetal alcohol spectrum disorder (FASD) is a lifelong condition resulting from prenatal alcohol exposure (PAE). The consequences associated with FASD are many and varied, resulting in a host of deficits that can increase the risk of becoming involved in the criminal justice system. Disorders associated with prenatal alcohol exposure are estimated to impact between 3% and 5% of the general population (May et al., 2009) with significantly higher rates observed among criminal justice-involved populations. In fact, up to 60% of individuals with FASD end up in trouble with the law at some point in their life (Streissguth, Barr, Kogan, & Bookstein, 1996). In some instances, involvement in the criminal justice system stems from crimes associated with sexual misconduct (Graham, 2014; Novick, 1997). The likelihood of involvement in the criminal justice system for crimes associated with sexual misconduct may be increased by deficits in executive function (Brown, Connor, & Adler, 2012). Individuals with FASD almost always experience a host of executive function deficits. Executive function (i.e., memory, ability to learn from punishment and consequences, lack of inhibitions and impulsivity, and short- and long-term planning) impairments are believed to play an important part in why some individuals with FASD engage in inappropriate sexual acts (Boland, Chudley, & Grant, 2002; Clark, Lutke, Minnes, & Ouellette-Kuntz,

2004; Kodituwakku, Kalberg, & May, 2001). It is crucial for criminal justice and forensic mental health professionals to acquire a solid understanding of FASD and the various deficits and limitations that contribute to instances of sexual misconduct among this population.

The following 10 key points are provided to criminal justice and forensic mental health professionals to take into consideration when discussing the topic of FASD and sexually inappropriate behaviors:

**Under-diagnosis.** Baumbach (2002) argued that the combination of under-diagnosis of prenatal alcohol exposure and perceived prevalence of sexual improprieties in individuals with prenatal alcohol exposure means that treatment programs for sexual offenders will likely have high numbers of patients with FASD. FASD, if not identified by early adolescence, may be overlooked as an adult diagnosis associated with criminal behaviors. Co-occurring diagnoses may exist; however, their impact on sexual offending behaviors may not be correlated. With the omission of a diagnosis of FASD, targeted treatment goals may be missed when addressing sexual offending behaviors. Early diagnosis and provision of appropriate supports, services, and interventions may reduce the impact of FASD-associated deficits and lead to avoidance of involvement in the criminal justice system for sexually related offenses.

**Diminished ability to appropriately express and exhibit empathy.** FASD is characterized by cognitive and neurological deficits that can lead to affective dysregulation and deficits in empathy (Page, 2002). As such, some individuals with FASD have difficulty recognizing the consequences of their actions (Rogers, McLachlan, & Roesch, 2013) and exhibiting appropriate forms of remorse and guilt. Criminal justice and forensic mental health professionals should keep in mind that this lack of expression of emotion and empathy when a crime has been committed may be the direct result of damage caused by prenatal alcohol exposure and therefore outside of their conscious control.

**Confabulation and suggestibility.** Individuals with FASD and other disorders characterized by memory deficits have exhibited the related issues of suggestibility and confabulation, characterized as the production of fabricated, distorted, or misinterpreted memories, without conscious intention to deceive (Baumbach, 2002; Brown, Gudjonsson, & Connor, 2011; Gathercole, 1998). In some instances, those impacted by FASD may associate with negative peer influences. These negative influences may contribute to activity including sexual assault due to their susceptibility to suggestions and coercion. Criminal justice and forensic mental health professionals must carefully consider the potential for suggestibility and confabulation in sexual offenders with FASD when important decisions must be made such as determining competency or during sentencing. It can be difficult to tell if the client is deliberately lying (malingering), confabulating (unintentionally lying), or suffering from memory deficits (Baumbach, 2002).

**Diminished ability to understand consequences of their actions.** FASD causes difficulty learning from personal experiences. Some individuals with FASD have a diminished capacity to foresee the consequences of their actions, resulting in judgment deficiencies that present as a lack of common sense (Mela & Luther, 2013). This may manifest in overlooking “good manners” and lacking awareness of risky situations. Such deficits are often coupled with impulsivity and an inability to think strategically.

**Developmental immaturity.** Many individuals with FASD function significantly below their chronological age emotionally, intellectually, and behaviorally. Their particular set of symptoms may increase the likelihood of “thoughtless” actions, poor decision-making, and a failure to link an initial act to subsequent consequences or damage (Greenspan & Driscoll, 2015; Mela & Luther, 2013; Verbrugge, 2003). Often they are much more naïve than peers and lack judgment in regards to personal safety. This can be

particularly difficult when functional age is that of a mid- to early adolescent or younger, but chronologically the individual is significantly over age of majority.

**Difficulty with abstract reasoning.** Individuals with FASD often think more concretely and experience great difficulty in generalizing something learned in one setting to a similar setting in the future. Such difficulties profoundly impact the ability of the individual to determine appropriate behaviors for a given situation (Brown, Connor, & Adler, 2012). These problems can be exacerbated by receptive language deficits (Brown, Gudjonsson, & Connor, 2011; Fast & Conry, 2009). For example, a group of students with FASD were told, "You must use condoms to practice safe sex." That group of students believed this was a class assignment.

**Impulsivity.** Individuals with FASD often possess a limited capacity of impulse control (Verbrugge, 2003). A lack of inhibitions often causes individuals with FASD to engage in impulsive acts without a requisite intentionality and consideration of consequences (Fast & Conry, 2009; Rasmussen, 2005). As such, youth impacted by FASD may be particularly vulnerable to repeating behaviors seen in the media or role-modeled by other youth. This is particularly troubling for youth with FASD because managing impulsivity is often a lifetime struggle. Managing impulsivity can be a difficult task for the individual with FASD, impacting moods and drives (Malbin, 2004). This may lead to increased aggressive and sexually inappropriate behaviors. As adults, the impulsivity in these clients may be misperceived as intentional acts versus an impulsive response to a feeling, thought, or motivation (Brown, Wartnik, Connor, & Adler, 2010).

**Lack of understanding personal boundaries.** Individuals with FASD commonly experience problems with boundary awareness that can result in inappropriate sexual behaviors (Brown, Wartnik, Connor, & Adler, 2010). Some individuals with FASD experience difficulties with establishing healthy boundaries with people in their community. In other instances, individuals with FASD may be overly friendly with strangers or with persons known to them who may not wish to maintain contact (Malbin, 2004; Thiel et al., 2011). These problems can escalate to violations of a non-contact order or repeated unwanted sexual advances, as the comprehension of both verbal and nonverbal cues is often lost on the individual with FASD.

**Perseveration.** Some individuals with FASD experience perseveration. This may be the direct result of damages caused by prenatal alcohol exposure. Perseveration may be particularly rooted in diminished executive ability. When perseveration involves thoughts and urges involving sexual behaviors, this can become problematic when proper checks and balances are not put into place (Brown, Wartnik, Connor, & Adler, 2010). Perseveration may also impact the ability to respond to feedback and redirection, potentially impacting the ability to get "unstuck" on thoughts or behaviors. In some cases, adults with FASD who experience perseveration may appear resistant and unwilling to accept treatment interventions or directives in a correctional setting.

**Misinterpretation of intent/consent.** Some individuals with FASD may be unable to recognize when another person does not want to engage in sexual activity. It is also not uncommon for some adults with FASD to participate in sexual encounters with a minor. Inappropriate encounters of this nature may be partially the result of the individual failing to recognize appropriate social boundaries, impairments in executive function, and earlier traumatic life events (Edwards & Greenspan, 2011; Streissguth, Bookstein, Barr, Sampson, O'Malley, & Young, 2004; Thiel et al., 2011).

## Conclusion

The consequences of FASD deficits impact a host of adaptive and cognitive capacities and are lifelong for the individual. Deficits associated with FASD may include confabulation, poor decision-making, impulsivity, inability to link behaviors to consequences, lack of comprehension, inability to plan long term, memory issues, and suggestibility, all of which may predispose individuals with this disorder to come into contact with the criminal justice system. Nonetheless, there is a dearth of empirical studies on the role that FASD plays in the behavior of individuals who sexually offend. Such behavior may simply be the result of brain damage rather than purposeful deviance (Brown, Wartnik, Connor, & Adler, 2010). As such, advanced and innovative research is essential to improving the field's understanding of the relationship between prenatal alcohol exposure and inappropriate sexual behavior. Additionally, it is important to develop the ability to accurately assess culpability of those with FASD who have engaged in inappropriate sexual behavior (McMurtrie, 2011). The need for such research is essential given the growing awareness of this pervasive issue.

## Biographies

**Jerrod 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), lead developer of an online Master of Arts in Human Services with an emphasis in Forensic Behavioral Health from Concordia University, St. Paul, Minnesota, and the Editor-in-Chief of Forensic Scholars Today (FST) and the Journal of Special Populations (JSP). Jerrod is currently in the dissertation phase of his doctorate degree program in psychology.

**Cody Charette** holds an M.A. and Ph.D. from the Psychology, Policy, and Law program of the California School of Forensic Studies at Alliant International University located in Fresno, California. He specializes in threat assessment, deception detection, intelligence analysis, and the use of technology for indirect assessment of offenders. In addition to his degrees in psychology, Cody holds a Bachelor of Science in business information systems with a mathematics minor and an MBA in marketing, both from California State University, Fresno.

**Jodee Kulp** has spent 40 years working in the field of foster care, kinship care, and adoptive care. Since 1997, she has dedicated her research and advocacy to the field of FASD and today specializes in working with the adult population. She is the author, co-author, and contributing author of 12 books in supporting professionals, families, and other caregiving when working with persons prenatally exposed to alcohol. She publishes and reviews articles and presents for national and international audiences. Since 2007, her work has been in animal behavior science and the development of enhancing executive functioning capabilities in persons through the use of canines. She is the co-founder of the international effort RealMindz and founder of FASD Think Tank.

**Diane Neal, M.S., LPCC**, is currently the Executive Director of Project Pathfinder, Inc., an outpatient sex offender treatment program. With 30 years in the mental health field, she focuses on varying degrees of special needs, abuse, and high-risk mental health issues, and since 2007, has directed programs specializing in problematic sexual behaviors (adults and juveniles). She is a member of the Association for the Treatment of Sexual Abusers (ATSA), an executive board member and treasurer for MN-ATSA and an advisory council member for the Protection and Advocacy for Individuals with Mental Illness (PAIMI).

**Elizabeth [Anne] Russell** is the founder and CEO of the Russell Family Fetal Alcohol Disorders Association [rffada], which supports parents and caregivers throughout Australia. The rffada not only supports parents and caregivers but also prepares submissions to the government, provides information supporting teachers and educators, and delivers training around Australia. The rffada has been in operation since 2007, and Anne has been working in FASD since 2000.

**Aaron Trnka, M.A., LMFT**, is the Clinical Director and CEO of Lighthouse Psychological Services, Inc., a sexual offender program for special needs adult males. Aaron has practiced in the field since 2004. He has specialized in trauma-informed care, is certified in EMDR, and currently directs an adult day treatment program for maladaptive sexual behaviors. Aaron has experience working with children, adults, families, and couples.

**Ryan Chukuske, M.A.**, is the Director of Staff Learning and Development at a forensic facility in Minnesota. Prior to this appointment, he was a Clinical Program Therapist for 10 years, working specifically with sex offenders diagnosed with various developmental disorders. Ryan is also an adjunct professor with Concordia University, St. Paul.

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