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Fetal Alcohol Spectrum Disorder (FASD) and Suggestibility: A Beginner's Guide for Criminal Justice, Forensic Mental Health, and Legal Interviewers

By Jerrod Brown, Ph.D., Vanessa Spiller, Ph.D., Megan N. Carter, Psy.D., ABPP, & Nicole Kimberley-Staeheli, MATS

Fetal Alcohol Spectrum Disorder (FASD) is a serious, though relatively unknown, public health issue which affects millions of individuals in North America. FASD occurs far more frequently than the better-known Autism Spectrum Disorder (ASD) and is a life course persistent disorder associated with significant rates of disability and impaired functioning. Arising as a result of prenatal exposure to alcohol, individuals with FASD face a wide range of challenges including deficits in cognitive and adaptive functioning and self-regulation skills. Unfortunately, many individuals impacted by FASD also become involved in the criminal justice system for a variety of reasons. In fact, research has found that as many as 60% of those with FASD will have contact with the criminal justice at some point in their lifetime (Streissguth, Barr, Kogan, & Bookstein, 1996). Furthermore, a disproportionate percentage of the incarcerated population meet diagnostic criteria for FASD (Fast, Conry, & Looock, 1999). The reasons for this elevated rate of criminal justice system involvement are many and varied. However, one area of significant concern common to this population is proneness to suggestibility (Brown, Gudjonsson, & Connor, 2011). As such, it is essential for professionals working in the criminal justice system or other legal arenas to have a sound working knowledge of these issues. This article aims to summarize the areas of functioning that are impacted in FASD, the issues this disorder may cause in psycho-legal settings with a focus on suggestibility, and provide some key suggestions for working with individuals diagnosed with this disorder.

SUGGESTIBILITY

Suggestibility refers to the process that occurs when a person's recollection of an experience is influenced by internal and external influences and/or stressors that can occur in the criminal justice and other legal processes (Brown, Gudjonsson, & Connor, 2011; Brown et al., 2016). Specifically, this includes accepting information provided by others as fact and unintentionally incorporating that information into recollections. Interrogative suggestibility is a specific subtype of suggestibility elicited by the employment of repetitive and leading questions, negative feedback, and demands for the truth by criminal justice professionals during interrogations (Gudjonsson, 1984). Proneness to suggestibility may result in some individuals falsely confessing to criminal activity of which they are innocent (Brown et al., 2016). Individuals with impairments in cognition, memory, impulsivity, language, and social skills are particularly

susceptible to suggestibility. These deficits are common among individuals diagnosed with FASD.

SUGGESTIBILITY AND CONFABULATION

Suggestibility coupled with the deficits described above may lead to the manifestation of confabulation, another phenomenon common among individuals diagnosed with FASD.

Confabulation refers to the unintentional creation of false memories that the individual believes to be correct (Kopelman, 1987) and can occur spontaneously or be provoked by certain interrogation or investigative interviewing techniques or by undue pressure being placed on an individual. Confabulation is believed to arise from an unconscious and unintentional effort to fill in gaps in memory, rather than the desire to be untruthful or to mislead others (Moscovitch & Melo, 1997; Schnider & Ptak, 1999; Schnider, Von Daniken, & Gutbrod, 1996). The combination of suggestibility and confabulation are prominent issues for individuals with FASD and may result in these individuals providing inaccurate information as witnesses or false confessions of criminal activity when arrested or questioned by authorities. The presence of both suggestibility and/or confabulation severely limit an individuals' ability to successfully navigate the criminal justice system (Brown, 2017).

COGNITIVE, SELF-REGULATION, AND ADAPTIVE FUNCTION DEFICITS ASSOCIATED WITH FASD

As described above, for individuals with FASD, the impact of brain injury caused by prenatal alcohol exposure manifest in cognitive, self-regulation, and adaptive dysfunction, as well as a number of physical health complaints. These deficits can vary widely from individual to individual but commonly include some combination of the following cognitive, self-regulatory, and adaptive functioning deficits:

COGNITIVE DEFICITS:

- slowed information processing
- poor comprehension and understanding
- difficulties understanding and using language
- mental inflexibility
- learning impairments
- memory difficulties
- difficulties with problem-solving
- difficulties with organization and planning
- academic difficulties
- difficulties understanding cause and effect relationships

SELF-REGULATION DEFICITS:

- behavioral regulation impairment
- affective dysregulation
- attention deficit/ hyperactivity
- impulse control deficit

ADAPTIVE FUNCTIONING DEFICITS:

- poor social skills
- poor interpersonal functioning
- social neediness
- poor social judgment
- vulnerability to manipulation
- overall dysmaturity
- poor communication
- verbal and non-verbal communication deficits
- difficulties with daily living skills (e.g., self-care)
- poor conceptual skills in the management of money, time, etc.

These symptoms are permanent and ongoing and do not typically remit with age, unless properly identified, managed, and supported. This will likely involve the services offered through a multi-disciplinary approach. The type of deficits that present and the severity of symptoms vary widely from individual to individual as a result of:

- differences in the timing and dosage of prenatal alcohol exposure
- genetics and epigenetics
- antenatal care
- nutrition
- exposure to other toxins
- presence of other adverse life experiences such as trauma
- occurrence of a co-occurring traumatic brain injury (TBI)

For those with FASD, some areas of functioning may be in the normal range, others may be mildly affected, but at least three areas of functioning (i.e., cognitive, self-regulation, adaptive functioning) will be impaired. Although FASD may be best known by the general public for specific facial features, only a small percentage of those with FASD actually demonstrate these specific facial features and/or growth deficiencies. Additionally, these distinctive facial features and growth deficiencies tend to become less noticeable as a person ages, and consequently, do not serve as a reliable indicator of FASD by the time an individual would be more likely to come into contact with the criminal justice and legal systems (Chudley, Conry, Cook, Looock, Rosales, & LeBlanc, 2005; Streissguth, Aase, Clarren, Randels, LaDue, & Smith, 1991).

Due to the variety of possible deficits and the lack of recognizable physical features, identification of FASD can be extremely challenging and complex. Unfortunately, many

individuals with this condition go undiagnosed or are misdiagnosed with another condition. Additionally, those with FASD also have a very high rate of having one or more additional diagnoses such as ADHD, major depressive disorder, trauma and stressor related disorders, and sleep disorders, to name a few. This makes it particularly challenging for those in criminal justice settings to identify the issue and appropriately accommodate individual needs. Most individuals with FASD who come into contact with the criminal justice system will not be diagnosed and may not be easily identified unless those working with them are aware of what to look for.

IMPACT OF SUGGESTIBILITY ON PSYCHO-LEGAL SETTINGS

Many individuals impacted by FASD encounter the criminal justice system as either witnesses, victims, suspects, or defendants (Streissguth, Barr, Kogan, & Bookstein, 1996). Once involved in the criminal justice system, persons with FASD are at significant disadvantage at every stage of this process (e.g., arrest, trial testimony, confinement, community supervision, and court-ordered treatment) as a result of their underlying cognitive, self-regulatory, and adaptive functioning deficits. The proneness to suggestibility discussed above further impairs the ability of individuals with FASD to be fairly represented throughout the criminal justice process.

For example, difficulties with problem solving, an inability to link cause and effect, and memory and social skill deficits likely combine to manifest as a person who has significant cognitive deficits, doesn't recall things well, but really wants to please people in authority. Suggestibility has the potential to taint the entire information gathering process, contributing to miscarriages of justice in some instances.

When heightened suggestibility and cognitive deficits are introduced into criminal justice processes, particular difficulties can be easily anticipated. Specifically, suggestibility may lead to the following difficulties in the criminal justice process including giving inaccurate eyewitness testimony or false confessions which may lead to wrongful prosecutions and convictions or being recruited knowingly or unknowingly into additional criminal activity by associates which may lead to probation or parole violations.

REDUCING THE IMPACT OF SUGGESTIBILITY IN CRIMINAL JUSTICE SETTINGS

The information contained in this article can be condensed and summarized as follows. These are the key take-away points regarding FASD, suggestibility, and how to manage these issues in psycho-legal settings for professionals working in criminal justice, forensic mental health, and legal settings.

FASD Key Facts

- FASD is caused by prenatal alcohol exposure.

- FASD results in a number of cognitive, self-regulation, and adaptive functioning deficits.
- In a minority of cases, the impacted individual also presents with abnormal facial features or other physical differences.
- Cognitive deficits caused by prenatal alcohol exposure can include impairments in information processing, comprehension, problem-solving, linking cause and effect, and memory.
- Self-regulation deficits related to FASD can include impulsivity, mood and behavioral regulation deficits, and hyperactivity.
- Adaptive functioning deficits associated with FASD include significant difficulties with social skills, interpersonal relationships, problem-solving and planning, communication deficits, and vulnerability to social pressure.
- FASD typically co-occurs with a wide range of mental health and psychiatric disorders (e.g., mood and anxiety), attachment problems, trauma histories, sleep disturbances, and intellectual functioning deficits.

Impact of FASD in Psycho-Legal Settings

- FASD is chronically under- and mis-diagnosed in the criminal justice, forensic mental health, and legal systems.
- FASD prevalence rates are disproportionately higher in criminal justice populations relative to the general population.
- Criminal justice, forensic mental health, and legal professionals often do not possess an adequate understanding of FASD or suggestibility.
- Improved screening for both FASD and suggestibility is imperative in criminal justice, forensic mental health, and legal settings.
- Individuals with FASD are prone to providing unreliable and inaccurate confessions and testimony.
- FASD increases the risk of suggestibility.
- Suggestibility is a predisposition to accept and maintain inaccurate information from an external source as fact.
- Individual-level causes of suggestibility can include cognitive (i.e., intelligence and memory impairments), personality (e.g., timidity, gullibility, and impulsivity), and developmental (e.g., attachment styles and maturity) factors.
- Situation-level causes of suggestibility can include the combination of social pressure, exposure to repetitive and leading questions, and misleading and inaccurate information.
- Interrogative suggestibility is a subtype of suggestibility elicited by the employment of repetitive and leading questions, negative feedback, and demands for the truth by criminal justice professionals during interrogations.
- The risk of interrogative suggestibility is increased by the social isolation and stressful conditions that characterize police interrogations.
- Individuals with FASD are prone to confabulation.
- Confabulation occurs when an individual unintentionally creates a memory without any malicious intentions to deceive others.

- Individuals with FASD may not be legally competent enough to make important legal decisions like waiving legal rights (e.g., Miranda) or confessing to a crime.

STRATEGIES AND APPROACHES THAT CAN DECREASE THE IMPACT OF FASD IN MEDICO-LEGAL SETTINGS

- Evidence-based interview and interrogation techniques need to be employed by criminal justice, forensic mental health, and legal interviewers.
- Criminal justice, forensic mental health, and legal interviewers can decrease the risk of suggestibility by exercising control over the setting and style of the interview. For example, interviewers should be mindful that the types of questions asked by criminal justice, forensic mental health, and legal professionals during interviews can influence the risk of suggestibility.
- Interview settings characterized by calmness (i.e., quiet) and minimal sensory stimulation (e.g., softly lit) may reduce the likelihood of suggestibility among those with FASD.
- Individuals with FASD benefit from structured and predictable conditions during the interviewing process.
- Criminal justice, forensic mental health, and legal professionals should discuss the format of the interaction, types of questions to expect, and timeline prior to beginning an interview.
- Criminal justice, forensic mental health, and legal interviewers should avoid interpreting volatile or withdrawn behaviors (i.e., self-regulation deficits) as markers of guilt among those with FASD.
- Criminal justice, forensic mental health, and legal professionals should employ simple, concrete, and precise language during the interview.
- Confusing language, convoluted questioning, and the manipulative presentation of false information should be avoided during the interview.
- Individuals with FASD benefit from the use of open-ended questions, which enable them to explain their experiences with minimal influence by others.
- Allowing individuals with FASD the option to communicate via non-verbal communications (e.g., written word, drawing, or other art) may increase the quality of information.
- The accuracy of information reported by individuals with FASD can be improved by allowing frequent breaks and the opportunity to stand and move around during the interview.
- Whenever possible, criminal justice, forensic mental health, and legal interviewers should obtain concrete evidence and other corroborating evidence when an individual with FASD reports information that could be harmful to someone.

IMPROVED OUTCOMES

- Seeking out trainings about FASD and suggestibility and confabulation is advised for any professional working in a criminal justice, forensic mental health, or legal setting.

- Expertise in FASD and suggestibility should be sought when the professionals involved have minimal expertise in these areas. This is particularly important when working with someone exhibiting any of the above described deficits.
- Improved identification and accommodations of individuals with FASD in criminal justice, forensic mental health, and legal settings have the potential to reduce miscarriages of justice.

CONCLUSION

FASD is a brain-based disability that severely impairs cognitive, self-regulation, and adaptive functioning. Unfortunately, it continues to be grossly undiagnosed both in the general community, but more importantly in the criminal justice system, where people with FASD are over-represented. The consequences of FASD include deficits in many of the skills and abilities essential for navigating the various stages of criminal justice and legal systems. Individuals with FASD are also particularly at risk of suggestibility and confabulation, both of which can have devastating consequences for the individual and the justice process. This is especially the case when FASD goes unrecognized by professionals in these settings. Further awareness and education of justice professionals about FASD, its impacts, and how these issues can be minimized in the interviewing and questioning processes, is essential if we are to improve outcomes for those with FASD and maintain the overall integrity of the legal system.

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Megan N. Carter, Psy.D., ABPP graduated with her master's degree in applied social psychology from Portland State University before completing another master's degree and a doctorate in clinical psychology, with an emphasis on forensics, at Pacific University in Forest Grove, Oregon. In 2014, Dr. Carter became board certified with the American Board of Professional Psychology (ABPP) in forensic psychology, and in 2018 she received the designation of Fellow from the Association for the Treatment of Sexual Abusers (ATSA). She has worked as a forensic evaluator, completing annual review evaluations of sexually violent predators at the Special Commitment Center (SCC), Washington's sexually violent predator facility, since 2008. She also maintains a small private practice focusing on forensic evaluations and child welfare issues.

Nicole Kimberley-Staeheli, MATS, is the lead consultant for Nicole Ranae Consulting, LLC and has over 25 years of experience in field of Corrections. The primary focus for much of her career has been in the training, facilitation, and implementation of evidence-based practices. Ms. Kimberley-Staeheli is a certified Motivational Interviewing trainer and has personally facilitated and trained hundreds of cognitive behavioral, trauma responsive, and gender responsive interventions including, Thinking for a Change, Aggression Replacement Training, the Domestic Violence Education Program, Decision Points, Moving On, Beyond Trauma, Healing Trauma, VOICES, and Beyond Violence, and has been privileged to witness first-hand their life changing effects. Ms. Kimberley-Staeheli serves as an independent consultant for county and community-based agencies serving criminal justice involved individuals and the communities they live in with a focus on cognitive behavioral and trauma responsive interventions. She has also worked as an independent contractor with both the Decision Points Authors, LLC and Dr. Stephanie Covington, LLC and has trained facilitators in Connecticut, Idaho, Wisconsin, and Minnesota. Ms. Kimberley-Staeheli received her undergraduate degree from Hamline University and her graduate degree from Bethel University in St. Paul, MN. Ms. Kimberley-Staeheli currently chairs the Minnesota Cognitive Behavioral Network, a professional association dedicated to supporting the implementation of evidence-based practices. She has presented at numerous state wide conferences on the importance of cognitive behavioral and trauma-responsive interventions in facilitating long-term change for criminal justice involved individuals and their communities.