



What Forensic Professionals Need to Know About FASD

By Jerrod Brown and Jay P. Singh

Fetal alcohol spectrum disorder (FASD) is a permanent, lifelong condition, resulting from exposure to alcohol in utero. Affecting between 2-5% of the population of the United States, FASD is a public health issue that results in impaired social, educational, vocational, and cognitive functioning. These impairments sometimes result in difficulty functioning in accordance with the standards set forth by the United States criminal justice system. Not only are individuals with FASD significantly more likely to come into contact with law enforcement at some point in their lives, but most individuals with FASD are not diagnosed prior to their entrance into the criminal justice system. There is currently no consensus as to whether FASD should be treated as a mitigating factor in sentencing or as an aggravating factor related to future dangerousness and the need for incapacitation or long-term supervision. Accurate and reliable screening of this population is, hence, a clinical and research priority.

The following are 12 key points that you are advised to take into consideration when discussing the topic of FASD in the criminal justice system.

1. **Difficult to Detect:** Individuals with FASD may be difficult to identify, as morphological signs are not always present and cognitive deficits are difficult to detect using even standardized intelligence measures.
2. **Communication Deficits:** Individuals with FASD may have difficulties cooperating with law enforcement officials due to receptive issues that could interfere with interviewing and their understanding of Miranda rights. Further, they may have difficulties assisting legal counsel in the development of a viable defense, resulting in a lack of competency to stand trial and/or understand their sentence.
3. **Superficial Talkativeness:** The propensity for individuals diagnosed with FASD to be charming and talkative may lead law enforcement officials, lawyers, and judges to overestimate their level of competence and understanding of proceedings.

4. **Misinterpretation of Callousness:** In some cases, behaviors resulting from FASD symptoms can be mistaken as a choice rather than a result of the disorder. The social and cognitive deficits of individuals with FASD may contribute to the misinterpretation of their alleged criminal behavior as premeditated or manipulative.
5. **Learning Problems:** Individuals with FASD experience decision-making deficits that make it difficult for them to learn from past experiences and prospectively avoid dangerous people and situations. Such deficits are coupled with impulsivity and an inability to think strategically about decisions. Hence, FASD affects an individual's ability to understand society's norms and to behave within those norms.
6. **Inappropriate Sexual Boundaries:** Individuals with FASD commonly experience problems with boundary awareness that result in inappropriate sexual encounters.
7. **Poor Memory:** Individuals with FASD have significant problems in retrieving and communicating their memories, contributing to issues such as confabulation, false testimony, and false confession. The characteristic suggestibility of these individuals combined with a wish to please others may result in fabricating stories or overrepresenting abilities.
8. **Executive Functioning Deficits:** Individuals with FASD have significant problems with attention, planning, and following social rules, resulting in a higher likelihood of contact with the criminal justice system and difficulties in complying with the requirements of community supervision (e.g., probation and parole).
9. **False Confession:** Individuals with FASD experience social and cognitive deficits that result in disproportionately higher risk of false confession during interrogation and mistaken pleas during trial.
10. **Importance of Structure:** Individuals with FASD perform better in well-structured settings with established schedules and behavioral norms. However, dynamic settings with less structure tend to result in considerable stress.
11. **Importance of Simplicity:** Individuals with FASD perform better when tackling one task at a time, especially when tasks do not involve reliance on previous experience to complete.
12. **Problems With Treatment Adherence:** Individuals with FASD may require specialized treatment given their social and cognitive deficits. However, treatment may be discontinued if not legally mandated.

As a permanent form of brain injury, FASD cannot be cured, only managed. And an essential first step in the management of FASD is its accurate and reliable measurement. This said, there is currently a lack of validated FASD screening instruments for use with forensic populations, especially adult offenders. Law enforcement, forensic mental health, correctional, and legal professionals are encouraged to work with researchers in this regard to help collect data that may aid to fill this important void.

Biographies

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