

What Judges and Attorneys Should Know About FASD

FASD in the Justice System

Fetal alcohol spectrum disorders (FASD) are a group of diagnosable medical conditions that can occur in a person who was exposed to alcohol before birth. Effects associated with FASD – such as poor impulse control, emotional dysregulation, and neurocognitive and neurobehavioral deficits including low adaptive and executive functioning – may increase the risk for contact with the legal system.¹ Compared to their neurotypical peers, people with FASD are up to 30 times more likely to have had contact with the justice system.² Because FASD is often under- and misdiagnosed,³ legal professionals are encouraged to request an FASD evaluation and consider the need for targeted interventions when there is the possibility of prenatal alcohol exposure. Be aware that there is no simple test for FASD; it requires a trained team to perform various types of testing. The FASD United Family Navigator program can help you identify options for FASD assessments and resources in your area.

Legal Competency & FASD

Brain injuries associated with FASD create significant hurdles for meeting the standard requirements of legal competency. The American Bar Association states that, “since individuals with FASD cannot always form the requisite intent required for certain crimes and do not fully understand the consequences of their actions, defendants with FASD may face diminished capacity issues.”⁴ If FASD is a possibility, attorneys should order a competency evaluation by an FASD-informed provider. Consider the following:

- **Understanding of Rights and Charges:** Due to deficits in abstract reasoning, individuals may struggle to understand complex concepts such as Miranda rights, legal consequences, or the specific nature of their charges.
- **Suggestibility and False Confessions:** A strong desire to please authority figures, combined with memory impairments, makes individuals with FASD highly susceptible to confabulation—unintentionally providing inaccurate information—and making false confessions.
- **Information Processing Speed:** People with FASD often have slower receptive language skills. They may only comprehend a fraction of what is being said in real-time, which can be mistaken for lack of cooperation or competence during court proceedings.
- **Memory and Consistency:** Challenges in storing and recalling information can lead to inconsistent testimony. An individual might understand a concept one day but have no recall of it the next, affecting their ability to assist in their own defense.
- **Executive Functioning Deficits:** Competency requires the ability to plan and understand steps toward a goal. A defendant with FASD may be unable to comprehend the various steps of a legal proceeding or the order in which they occur.

People with FASD are disproportionately overrepresented in the legal system, yet the symptoms of FASD often go unrecognized, undiagnosed, and misunderstood by professionals working in the legal arena.⁵

Additional Recommendations

When supporting individuals with FASD, keep the following in mind:⁶

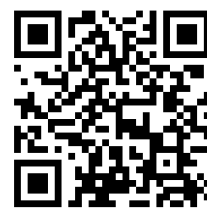
- FASD should be considered as a mitigating factor during sentencing.
- Standard disciplinary techniques are not typically effective for people with FASD.
 - Alternatives to incarceration such as therapy, community-based programs, and other noncustodial measures may be more meaningful.
- Sensory sensitivities to light, touch, and sound can agitate individuals, which might lead to dysregulation in high-stress environments like a courtroom or jail.
- Because people with FASD may struggle to apply knowledge from one setting to another, a defendant may understand a rule in a lawyer's office but fail to apply it in the community, courtroom, and other places.
- A combination of inconsistent memory and a desire to please others may result in individuals with FASD answering questions according to what they think the questioner wants to hear, rather than the facts.
- People with FASD may also display dysmaturity, impulsivity, and confabulation.
- Consider whether actions are purposeful misbehavior or are symptoms of a brain injury where the individual can't (rather than won't) comply.
- Court orders and treatment plans should be written as well as explained verbally in simple, concrete language.
- Identifying a support person who understands FASD to assist throughout the process is recommended.



American Bar Association
FASD Resolution



NCJFCJ Guide



FASD United
Family Navigator Program

1. Lynch, M. E., Kable, J. A., & Coles, C. D. (2017). Effects of prenatal alcohol exposure in a prospective sample of young adults: Mental health, substance use, and difficulties with the legal system. *Neurotoxicology and teratology*, 64, 50–62. [Body](#)

2. McLachlan, K., McNeil, A., Pei, J., Brain, U., Andrew, G., & Oberlander, T. F. (2019). Prevalence and characteristics of adults with fetal alcohol spectrum disorder in corrections: a Canadian case ascertainment study. *BMC public health*, 19(1), 43. [Body](#)

3. Chasnoff, I. J., Wells, A. M., & King, L. (2015). Misdiagnosis and missed diagnoses in foster and adopted children with prenatal alcohol exposure. *Pediatrics*, 135(2), 264–270. [Body](#)

4. American Bar Association. (2018). FASD Resolution. https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/fasd-resolution/

5. Brown, J., Lewis, D. S., Kivisalu, T., Wartnik, A. P., Carter, M. N., Harr, D., Jozan, A., & Gilbert, D. J. (2024). Fetal alcohol spectrum disorder (FASD) and the criminal justice system: A guide for legal professionals. *International journal of law and psychiatry*, 97, 102029. [Body](#)

6. Brown, J., Asp, E., Carter, M. N., Spiller, V., & Bishop-Deaton, D. (2020). Suggestibility and confabulation among individuals with Fetal Alcohol Spectrum Disorder: A review for criminal justice, forensic mental health, and legal interviewers. *International journal of law and psychiatry*, 73, 101646. <https://doi.org/10.1016/j.ijlp.2020.101646>