

Fetal Alcohol Spectrum Disorder (FASD) and the Law

February 15, 2023



P-HSJCC Webinar Series: FASD & the Law

Moderator: Candace Vena, Director of Justice Policy

HSJCC Secretariat Support Staff: Erin Paquette, Andrew Fairbairn and Snehal Jambhale

About today's webinar:

- The webinar will begin at 12:00pm and conclude at 1:00pm.
- We will have a Q&A period at the end of our webinar; however, you may also ask a question using the Q&A box during the discussion.
- This webinar will be recorded. The recording, slides and resources will be emailed to participants following the webinar. They will also be posted to the HSJCC website in the coming days.
- We will be launching a poll before beginning the webinar.

About the HSJCC Network:

The Human Services and Justice Coordinating Committee (HSJCC) Network is comprised of: 38 Local Committees, 14 Regional Committees, and one Provincial HSJCC. Each HSJCC is a voluntary collaboration between health and social service organizations, community mental health and addictions organizations and partners from the justice sector including crown attorneys, judges, police services and correctional service providers.

Introduction

David Boulding, lawyer, extensive experience in working with clients who have FASD.

David completed his law degree in 1987 at the University of British Columbia. He completed his articling with environmental and criminal lawyer Greg McDade.

In 1988, David started his own law practice with a focus on legal aid, criminal, immigration, and family law. In 2000, Judge C. Truman of the British Columbia Provincial Court in Vancouver asked David to present at a conference on the topic of fetal alcohol and the law.

Since then, David has spoken domestically and internationally on the topic of fetal alcohol spectrum disorder and the law to judges, lawyers, social workers and probation officers.



Agenda

- A. Brief background on Fetal Alcohol Spectrum Disorder (FASD) and its permanent nature
- B. The experiences of individuals with FASD and why they may come into contact with the justice system
- C. Strategies and steps that service providers can take to support individuals with FASD
- D. Lessons learned

A. Background: Fetal Alcohol Spectrum Disorder

- FASD is an invisible brain-based birth defect. It is permanent and can result in primary and secondary disabilities.
- FASD is poorly understood and only recently became a formal diagnosis.
- Early assessment for FASD is crucial to treatment and setting the individual up with the supports that they may need.
- Person-to-person approaches are key in supporting individuals with FASD.

A. Background: Fetal Alcohol Spectrum Disorder

- Important to remember that FASD is a multi-sector challenge. It impacts the individual's:
 - Schooling
 - Their physical and mental health
 - Their social life
 - Their family life
 - The likelihood that they may come into contact with police
 - Their ability to participate in legal proceedings.
- Impact of alcohol on the brain while in utero.
- The circumstances that may lead to a pregnant woman consuming alcohol are complex. These circumstances can include:
 - Family violence
 - Poverty
 - Lack of education
 - Addiction.
 - Exposure to alcohol can occur before a woman knows that she is pregnant.

Resources:

A General Theory of Love, Thomas Lewis, M.d., Fari Amini, M.D., Richard Lannon, M.D. (2001).

Wozniak, JR, Riley EP, Charness ME. Clinical presentation, diagnosis and management of fetal alcohol spectrum disorder. Lancet Neurol. 2019 Aug; 18 (8):760-770.
doi:10.1016/S1474-4422(19)30150-4.

A. Background: Fetal Alcohol Spectrum Disorder

- The “external brain” concept, coined by Dr. Sterling Clarren:
- Designing appropriate structures to create opportunities for individuals with FASD to be successful.
- The health, human service and justice systems need to be able to create structures for these individuals to support them.
- As a legal concept, refers to a duty of care. It is our duty to care for these individuals and to create appropriate accommodations, as per *Charter* protections (equality before the law).

B. Fetal Alcohol Spectrum Disorder and the Justice System

Why do individuals with FASD come into contact with the justice system?

- Crimes of opportunity
- Primarily low-level offences
(breaches of probation, thefts under \$5,000, etc.)
- Primary and secondary disabilities could be a factor in these offences.

FASD and the justice system

- Justice system needs to ensure that individuals with FASD can be successful in completing their rehabilitation (probation) and reintegration (release).

Resource: David H. Bayley, *Police for the Future*.

C. Strategies & Resources for Service Providers working with individuals with FASD

C. Resources, strategies for supporting individuals with FASD

Primary characteristics:

- Dysmaturity – socially or developmentally younger than their chronological age
- Slower processing pace
- Impulsivity and distractibility
- Memory problems, non-consistent memory performance
- Strengths in areas that include art, music, interpersonal skills, computer skills, and others

Secondary characteristics:

- Poor fit within their environment causes emotional pain; leads to defensive secondary behaviors.
- Fatigue, frustration
- Anxious, fearful
- Overwhelmed or shuts down (flat affect, may appear not to care)
- Poor self-concept, feelings of failure and low-self esteem
- Isolated, bullied
- Acts out, aggression
- Family and/or school challenges, suspensions or expulsion
- Truancy, running away, other forms of avoidance, contact with the criminal justice system
- Depression, self-destructive behaviors, suicidal
- Sexual problems (may be complicated by early emotional and sexual abuse)

C. Strategies & Resources for Service Providers working with individuals with FASD

Common Misinterpretations of Normal Functions:

Function	Misinterpretation	Accurate Interpretation
Intrusive in conversation	<ul style="list-style-type: none"> • Self-centered • Aggressive nature • Poor values • Insensitive • Rude 	<ul style="list-style-type: none"> • Challenges with memory • Audible thinkers • Comprehension delay • Impulsive
Manipulative	<ul style="list-style-type: none"> • Deliberate • Lack of conscience • Self-centered • Sneaky • Lack of respect for others 	<ul style="list-style-type: none"> • Sees the superficial or concrete level of social behaviors • Social and emotional developmental delays

Resource: Diane Malbin, *Alcohol Spectrum Disorders: Trying Differently Rather than Harder*.

C. Strategies & Resources for Service Providers working with individuals with FASD

Common Misinterpretations of Normal Functions:

Function	Misinterpretation	Accurate Interpretation
Volatile	<ul style="list-style-type: none">• Aggressive nature• Bad kid• Short-tempered	<ul style="list-style-type: none">• Exhausted from the stress of keeping up• Over-stimulation
Inconsistent performance	<ul style="list-style-type: none">• Manipulative• Sneaky• Not trying hard enough• Lazy• Careless	<ul style="list-style-type: none">• Chronic memory issues• Inability to generalize learning from one situation to another

Resource: Diane Malbin, *Alcohol Spectrum Disorders: Trying Differently Rather than Harder*.

C. Strategies & Resources for Service Providers working with individuals with FASD

Common Misinterpretations of Normal Functions:

Function	Misinterpretation	Accurate Interpretation
Uninhibited	<ul style="list-style-type: none">• Deviancy• Carelessness	<ul style="list-style-type: none">• Does not understand social cues regarding boundaries• Does not link cause and effect• Developmental delay (acts younger)
Stealing	<ul style="list-style-type: none">• Deliberate dishonesty• Lack of conscience• Lack of respect for others	<ul style="list-style-type: none">• Does not understand the concept of ownership over time and space• Thinking not necessarily at level of chronological age (“finders' keepers”)

Resource: Diane Malbin, *Alcohol Spectrum Disorders: Trying Differently Rather than Harder*.

C. Strategies & Resources for Service Providers working with individuals with FASD

Common Misinterpretations of Normal Functions:

Function	Misinterpretation	Accurate Interpretation
Lying	<ul style="list-style-type: none"> • Deliberate • Lack of conscience • Lack of respect for others 	<ul style="list-style-type: none"> • Problems with memory and/or sequencing • Unable to accurately recall events • Trying to please you by telling you what you want to hear • Filling in the blanks
Non-compliance	<ul style="list-style-type: none"> • Willful misconduct • Attention-seeking • Stubborn 	<ul style="list-style-type: none"> • Difficulty translating verbal directions into actions • Does not understand

Resource: Diane Malbin, *Alcohol Spectrum Disorders: Trying Differently Rather than Harder*.

C. Strategies & Resources for Service Providers working with individuals with FASD

General advice:

- Speak more slowly and clearly
- Use concrete words and examples, not abstract concepts
- Relationship-building is crucial
- Early assessments for FASD helps to set the individual up with the supports they need so that they can be successful.

D. Lessons Learned

- Relationship-building can make all the difference to an individual with FASD.
- The importance of individuals from all areas of their life providing support.
- In the criminal justice system, it can be difficult to recognize the signs of FASD. Resourcing at all levels is important.
- Need for early intervention
- Information-sharing with colleagues

D. Lessons Learned

- Information-sharing with colleagues – no need to “reinvent the wheel”
- If a strategy is not working, please do not give up. Trying something else!
- Resources available through [The Asante Centre](#)