

FASD in the Justice system



WHAT IS FASD?

Fetal Alcohol Spectrum Disorder (FASD) is a neurodevelopmental disability caused by prenatal alcohol exposure. FASD is a lifelong and often invisible disability that may affect growth, coordination, behaviour, attention span, memory, learning, speech, IQ, reasoning and judgment. FASD may also affect vision and hearing, and can cause cardiac, renal and skeletal problems. Rarely people with FASD may have characteristic facial features, such as a smooth philtrum, small eyes and a thin upper lipⁱ.

FASD AND THE JUSTICE SYSTEM: STATISTICS

The Banksia Hill Youth Detention Centre Study in Western Australia found that 36% of young people detained had FASD, while 89% were found to have at least one form of severe neurodevelopmental impairmentⁱⁱ.

International research has reported a high prevalence FASD in young people and adults in prison and correctional facilities – 60% of youth with FASD become involved with the justice systemⁱⁱⁱ and people with FASD are 19 times more likely to be jailed compared to those without FASD^{iv}.

WHAT CHALLENGES MIGHT INDIVIDUALS WITH FASD ENCOUNTER IN THE JUSTICE SYSTEM?

Learning and behavioural difficulties associated with FASD may make young people more susceptible to involvement in the justice system because they may:

- Be persuaded to admit to crimes which they did not commit.
- Take responsibility for crimes committed by others in order to win their favour or to please the police.
- Not understand that some behaviours are wrong.
- Say they understand their legal rights when in fact they do not.
- Make a potentially incriminating statement.
- Panic during encounters with police, running away or resisting arrest.
- Not understand what it means to be a victim or the importance of testifying^{v,vi}.

In the context of an offence young people with FASD may:

- Act inappropriately when touched due to sensory integration problems.
- Become aggressive due to sensory overload from noise, flashing lights and activity at the scene or the inability to read non-verbal gestures.
- Respond inappropriately to what is being asked because of difficulty processing language.
- Be unable to organise thoughts, process information or understand written language.

During the court process young people with FASD may:

- Find themselves in custody or have bail refused as they may have trouble understanding court process and bail conditions (adjournments, disclosure etc.).
- Say they understand or agree to the conditions to please others.
- Have difficulty perceiving similarities and differences; generalising information; translating information between contexts and from hearing to action; or have difficulty understanding cause and effect.
- Be unable to follow through as they are unable to translate verbal instructions into actions.
- Have difficulty remembering the explanations given to them.
- Be unable to concentrate and pay attention, and be perceived in court as “lacking empathy”^{vii,viii}.

SOME STRATEGIES FOR SUPPORTING THE NEEDS OF PEOPLE WITH FASD

- Avoid assumptions about the accused's ability to understand and respond appropriately.
- Avoid questions containing complex wording.
- Avoid pronouns – use the names of people to whom you are referring.
- Avoid double negatives such as “Did you not see...?”
- Avoid using abstract terms.
- Avoid asking complex multi-step questions.
- Avoid using metaphors.
- Use screening for FASD or other cognitive disabilities.
- Create effective re-entry plans to maximise the likelihood of individuals with FASD being able to adhere to the conditions of release; use strengths and interests to create a plan^{vii,viii}.



Table 1: Common behaviours, misinterpretations and characteristics of young people with FASD^{ix}.

What behaviour may look like	What behaviour actually represents	Strategies to support the young person
<ul style="list-style-type: none"> • Non-compliance with order 	<ul style="list-style-type: none"> • May not understand or remember what is expected. 	<ul style="list-style-type: none"> • Provide instructions one step at a time, explain rules using simple language.
<ul style="list-style-type: none"> • Repeatedly making the same mistake 	<ul style="list-style-type: none"> • May not link cause and effect. • May not understand or remember. 	<ul style="list-style-type: none"> • Provide clear instructions.
<ul style="list-style-type: none"> • Often late 	<ul style="list-style-type: none"> • Difficulties understanding the concept of time. • May not remember appointments. 	<ul style="list-style-type: none"> • Provide assistance with organising tasks. • Visual cues and auditory reminders are useful.
<ul style="list-style-type: none"> • Not sitting still 	<ul style="list-style-type: none"> • Sensory overload. 	<ul style="list-style-type: none"> • Provide opportunities for movement frequently.
<ul style="list-style-type: none"> • Poor social Judgement 	<ul style="list-style-type: none"> • Difficulties interpreting social cues and understanding social conventions. 	<ul style="list-style-type: none"> • Use simple language and provide clear instructions • Role model positive interactions.
<ul style="list-style-type: none"> • Overly physical 	<ul style="list-style-type: none"> • May not understand social cues about boundaries. • Hyper or hypo sensitive to touch. 	<ul style="list-style-type: none"> • Provide clear instructions about appropriate behaviours. • Role model positive interactions and encourage good behaviour.
<ul style="list-style-type: none"> • Does not work independently 	<ul style="list-style-type: none"> • May not translate verbal instructions into actions. • May have problems with memory. 	<ul style="list-style-type: none"> • Provide clear, simple instructions, and always check their understanding by getting them to repeat back in their own words.
<ul style="list-style-type: none"> • Stealing 	<ul style="list-style-type: none"> • Does not understand concept of ownership. 	<ul style="list-style-type: none"> • Explain rules and expectations using simple language and visual cues. • Provide frequent supervision.
<ul style="list-style-type: none"> • Lying 	<ul style="list-style-type: none"> • May not link cause and effect. • Difficulties accurately recalling events. 	<ul style="list-style-type: none"> • Provide clear instructions and talk through what is expected.
<ul style="list-style-type: none"> • Self - centred 	<ul style="list-style-type: none"> • May not link cause and effect. 	<ul style="list-style-type: none"> • Talk through different scenarios using visual supports, role play positive interactions.
<ul style="list-style-type: none"> • Volatile 	<ul style="list-style-type: none"> • Difficulties verbalising feelings. • Feeling overwhelmed or over-stimulated. 	<ul style="list-style-type: none"> • Provide opportunities and appropriate space for them to calm down.
<ul style="list-style-type: none"> • Inconsistent performance 	<ul style="list-style-type: none"> • Difficulties with memory. • Difficulties carrying through learning from one situation to the next. 	<ul style="list-style-type: none"> • Use visual supports as reminders, provide frequent verbal reminders.

FOR MORE INFORMATION

Telethon Kids Institute, FASD & Justice Professional Development Videos:

<https://alcoholpregnancy.telethonkids.org.au/our-research/fasd-justice/professional-development/>

Telethon Kids Institute:

<https://www.telethonkids.org.au/our-research/research-topics/fetal-alcohol-spectrum-disorder-fasd>

NOFASD Australia:

<https://www.nofasd.org.au/>

FASD HUB Australia:

<https://www.fasdhub.org.au/>

Fetal Alcohol Spectrum Disorder & Justice:

<https://fasdjustice.ca/>

The External Brain:

<https://www.fasdwaterlooregion.ca/strategies-tools/sub-page-test-2/the-external-brain>

ABOUT US

Telethon Kids Institute is working with Mercy Services and the Newcastle Local Drug Action Team to help make FASD History in Newcastle.

If you'd like to know more about the project:

Email: Helena.Hodgson@mercyservices.org.au (Project Coordinator)

Online: <https://alcoholpregnancy.telethonkids.org.au/our-research/research-projects/making-fasd-history-multi-sites/>

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ⁱBower, C., & Elliott, E. (2016). Australian Guide to the Diagnosis of FASD. Retrieved from https://www.fasdhub.org.au/siteassets/pdfs/australian-guide-to-diagnosis-of-fasd_all-appendices.pdf.

ⁱⁱBower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N.R., ... Giglia, R. (2018). Fetal alcohol spectrum disorder and youth justice: a prevalence study amongst young people sentenced to detention in Western Australia. *BMJ Open*, 8:e019605. doi:10.1136/bmjopen-2017-019605 <https://bmjopen.bmj.com/content/bmjopen/8/2/e019605.full.pdf>

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^vAlley, C.S., & Gebbia, P. (2016). Studies investigating FASD in the criminal justice system: a systematic PRISMA review. *SOJ Psychol* 3(1): 1-11. doi: <http://dx.doi.org/10.15226/2374-6874/3/1/00123>. <https://symbiosisonlinepublishing.com/psychology/psychology23.php>

^{vi}Burd, L., Fast, D. K., Conry, J., & Williams, A. (2010). Fetal Alcohol Spectrum Disorder as a Marker for Increased Risk in Involvement with Correction Systems. *The Journal of Psychiatry & Law*, 38(4), 24. doi:<https://doi.org/10.1177/009318531003800408>

^{vii}Green, C. R., Cook, J. L., Stewart, M., & Salmon, A. (n.d.). FASD and the Criminal Justice System. Retrieved from <https://canfasd.ca/wp-content/uploads/sites/35/2017/02/FASD-and-the-Criminal-Justice-System.pdf>

^{viii}Malbin, D., Boulding, D., & Brooks, S. (2010). Trying Differently: Rethinking Juvenile Justice Using a Neuro-Behavioral Model. Australian Bar Association Member Newsletter. Retrieved from http://fascets.org/images/uploads/docs/ABA_JJ_newsletter_Trying_Differently_july_2010.pdf

^{ix}Alton, H. & Evensen, D. (2006). Making a Difference Working with students who have Fetal Alcohol Spectrum Disorders, p. 6.5. Government of Yukon, Yukon. Retrieved from http://www.education.gov.yk.ca/pdf/publications/fasd_manual_2007.pdf