



Policy and Legal Recommendations to the Understanding of FASD, its challenges and potential solutions.

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Training and Education about FASD, the need for services

Q. Who must have training about dealing with FASD?

A. Everybody!

A. Judges

B. Prosecutors

C. Defense Attorneys

D. Probation Officers

E. Correctional Officers

F. and Educators.

The Paradigm Shift

All professionals must change their approach to individuals with FASD.

DO – Accommodate the cognitive and physical disability through adequate support systems.

DON'T – Attempt to obtain compliance by intermediate sanctions.

Accessing Support Systems

- A. Supports *should* be in place as soon as a diagnosis of FASD is completed.
- B. Many children are denied services because they have IQs higher than 70.
- C. Despite being born with brain damage and having very low adaptive behavior skills they continue to be denied services for the disabled by organizations throughout the world.

Accessing Support Systems, cont.

- D. Example: Edwards & Greenspan, *Adaptive Behavior and FASD*, Journal of Psychiatry & Law.
- E. Only two states in the U.S. include FASD in their definition of what constitutes a developmental disability and allows them to receive services from organizations serving individuals with disabilities.

Accessing Support Systems, cont.

- F. Support systems need to be instituted during the prosecutorial process and with regard to post-sentencing conditions of supervision (probation), counseling and treatment.
- G. Canadian Bar Association Resolution 13-12-A mentions that a Judge should be authorized to make an order approving an external support plan recommended by an FASD person's probation officer that could be in effect after probation expires.

Specialized Courts

FAS/FASD COURT

- A. It's recommended that each province establish a specialized court to handle children and adults with FASD.
- B. If your town has a drug court, Veterans court or mental health court then FAS is something that could be included in that court.

Example of Specialized Court for FAS/FASD

An Alaskan judge has created special conditions of probation for individuals with FASD.

- A. Probation Officers are trained to understand the learning and memory problems, impulse control and psychiatric disorders common to individuals with FASD.
 1. Probation officers who work with this court don't automatically violate someone for not reporting.
 2. Probation officers understand that FAS is not an excuse but it is an explanation for the behavior.

Diversion of Defendants with Cognitive or Developmental Disabilities

- A. The term diversion can be deployed very broadly or very narrowly.
- B. The narrow term can include minimizing contact with the criminal justice system for people who have an intellectual disability (including cognitive deficits like FAS).
- C. The broader term would include diverting the offender out of the criminal justice system and into treatment and rehabilitation.

Diversion of Defendants with Cognitive or Developmental Disabilities, Cont.

- D. The focus is on treatment rather than punishment.
- E. A Diversion program would work to identify the underlying causes of the offender's criminal behavior and seek to redress them.
- F. Diversion would be seen as a process rather than just an outcome.
- G. People with FAS who commit misdemeanors and low level felonies (like drug offenses) should be placed on diversion.

Diversion Conditions

- A. The court focuses on the offenders individual needs, psychological functioning and emotional well being.
- B. This could include providing supported services, drug and alcohol counseling and mental health treatment.
- C. The diversion could last one year or longer. Once the offender has completed everything that the court has ordered the case could be dismissed.

Why Diversion?

The whole idea behind diversion is to help people with FAS develop more skills that will enable them to act differently in future situations where they find themselves at risk for committing another crime or becoming a victim of crime.

Diversion is Just

- A. There are many reasons that people with FAS should be diverted from the criminal justice system:
- B. A person with FAS will have impairments which may reduce the level of culpability making the application of traditional criminal law process and penalties for punishment inappropriate or unfair.

Reduces Risk of Re-offending

- A. People with FAS will not learn from their mistakes and may get caught up in a cycle of re-offending which leads to incarceration. Diversion can help break this cycle.
- B. Diversion helps with reduction of the time spent in jail or prison.

Therapeutic

- A. Diversion may have a therapeutic benefit for offenders with FAS.
- B. Diversion would help link a person with supported services that can help address the problems such as drug addiction, homelessness, mental health problems, etc.
- C. Diversion can help the person with FAS make improvements in independent living skills.

Mitigating Evidence

- A. The state of Alaska may be the only state in the US to include FAS into the definition of what constitutes a mitigating factor for sentencing. See Alaska Statute 12:55.155.
- B. In that state one judge wanted to give a defendant with FAS a lesser sentence (in prison) than requested by the prosecution and could not because FAS was not one of the factors listed.
- C. Now judges in that state may impose a sentence below the presumptive range if FAS is a factor.

Mandate

- A. Every state and province in the US and CANADA must allow judges to consider FASD as a mitigating factor.
- B. Without these statutes prosecutors are allowed to argue to the courts that FASD is actually an aggravating circumstance warranting a stiffer sentence than someone without FASD. See *United States v. McQuade* 403 F.3d 717 (2005).

Mandate, Cont.

- A. Canadian Legislature should consider amending the criminal sentencing statutes that allow the Judge to consider FASD as a mitigating factor at sentencing.
- B. For example, Canadian Bar Association Resolution 13-12-A states that "if an accused is found to have FASD, this should be a mitigating factor in sentencing the accused".

Lisa



Early History

- A. Born premature to a mother abusing alcohol and other drugs.
- B. Removed from mother at age 4 because of complaints of physical and sexual abuse and neglect.
 - 1. Records document father's sexual abuse and punishment of Lisa and siblings by confining them in animal cages without diapers or clothes.
- C. Placements include orphanage, 7 foster care placements and 15 psychiatric hospitalizations since the age of four.

Childhood

- D. Age Four: Developmental delay, sleeping disorder, jitteriness/fidgeting and aggression.
- E. Age Six: first psychiatric hospitalization for threatening to commit suicide and breaking windows. Placed in special education classes for severely emotionally disturbed.
- F. At age Seven: treating psychiatrist wrote: "Lisa regresses to a baby under any amount of pressure."
- G. And at age Ten: Lisa would take a baby bottle, curl up like an infant, cooing and with baby talk.

Adolescence

- A. Age 14: Auditory and visual hallucinations. Behavior deteriorated to walking on all fours, growling and acting like a dog. Reported she used airplane glue, hair spray and white-out to get "high". Used self-mutilation to get attention and wrote: "when I get angry I need to scratch myself, bite myself, (bang) my head and pull my hair out." Ran away from placement with older peers and turned to prostitution and other drugs.

Adolescence

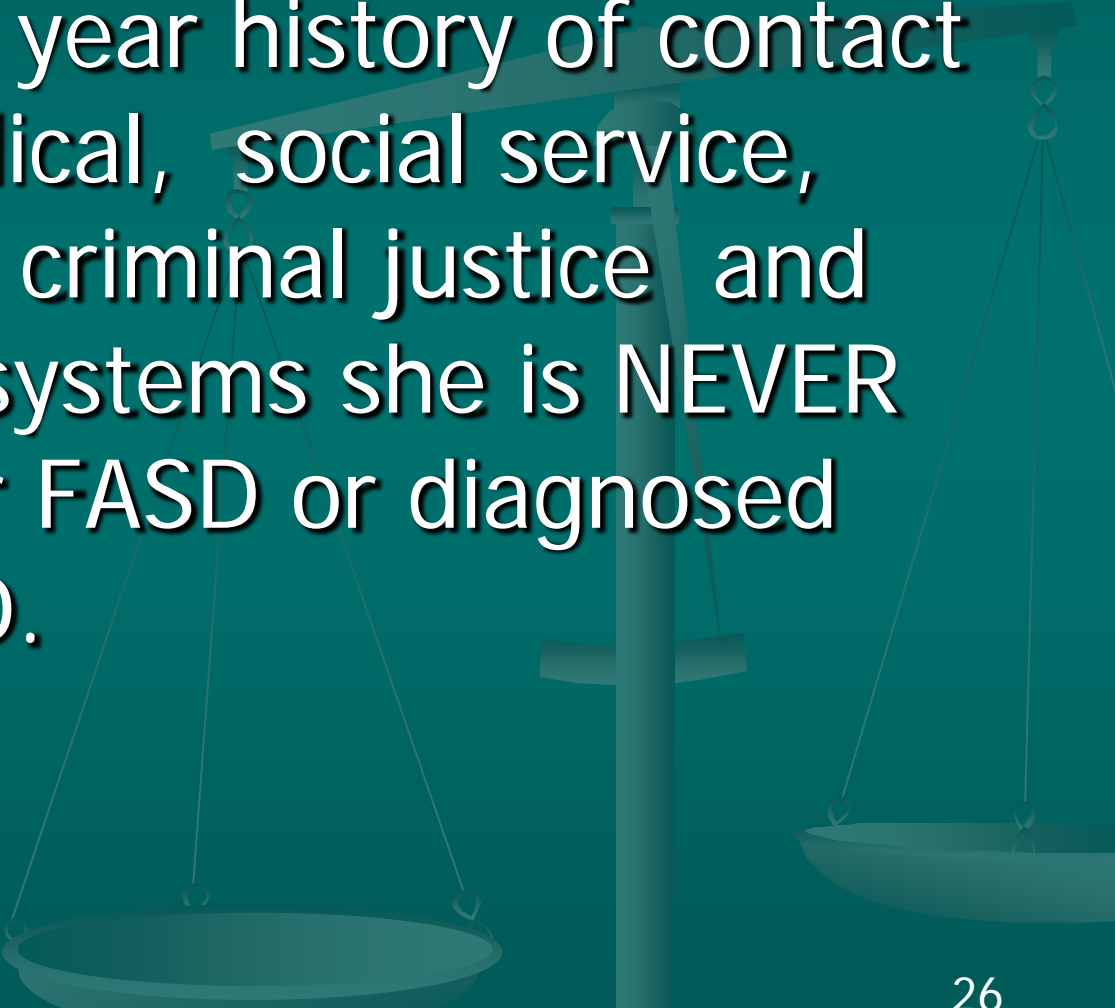
- B. Age 17: Attempted to strangle herself with vacuum cleaner hose, threatened to kill staff at group home, bit and attacked police officers, was arrested and taken to juvenile hall.
- C. Age 18: Swallowed safety pins and screws. Admitted to the psychiatric hospital she told the treating doctor she wanted to kill her and burn her group home to the ground.

Adulthood

- A. Age 22: kicked out of group home, living on the streets with no money or medication, she returned and set the occupied group home on fire. Arrested, charged with arson and advised by court appointed attorney to take a three year sentence in state prison, Lisa is sent to state prison instead of a state hospital.

Prison

- A. Age 23: In prison Lisa made her most serious suicide attempt with deep cuts that required sutures and a cast. She then pulled off the cast, bit through the sutures and bled so much she required a transfusion.
- B. After hospitalization she is returned to state prison labeled a "mentally disordered offender" and was placed in a state hospital where she sits for years.

A faint, stylized image of a balance scale is visible in the background, centered behind the text. The scale has two pans hanging from a horizontal beam, which is supported by a vertical pillar. The pans are empty and the scale is perfectly balanced.

In her entire 27 year history of contact with the medical, social service, educational, criminal justice and correctional systems she is NEVER evaluated for FASD or diagnosed with an FASD.

FASD

- A. At age 28, her current court appointed attorney has Lisa assessed and diagnosed with FASD and applied for services for her through the Department of Developmental Services.
- B. Denied services, without funding, the counsel sought out advocacy organizations to advocate on Lisa's behalf and was told: "you will never get your client services. She has an IQ of 98."

Lisa

- A. Finally, counsel finds an attorney from Disability Rights Organization in California to advocate for Lisa.
- B. Under the California "fifth category," we argued that Lisa needed services "similar to a person with an intellectual disability."
- C. After two years of litigation and limited funding we finally secured services for Lisa.