

THE CRIMINAL JUSTICE SYSTEM AND FAS

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Professionals in the criminal justice system are just beginning to learn about Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE). Even in the most current editions, popular texts used in courses in criminal justice¹, criminal law² and corrections³ do not even mention FAS. A recent literature search on FAS and criminal justice conducted by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) found only one citation that dealt directly with the relationship and that excused on the California execution of Robert Harris, whose attorneys argued was affected by FAS.⁴

Of course, the single event that may have had the most impact on public awareness of FAS was the 1989 publication of Michael Dorris' *The Broken Cord*, which provides a poignant account of the author's adoption of a four-year-old Native American boy who he later discovered suffered from FAS.⁵ Yet many people—counselors included—still don't realize the widespread implication of FAS and its impact on the criminal justice system.

We frequently tend to think of individuals with FAS/FAE as likely offenders. However, a more comprehensive approach to considering the potential involvement of individuals affected with FAS/FAE in the criminal and juvenile justice systems would be to focus on at least six major roles which these people may fill. They include victims of crime, especially given social deficits and needs which make them vulnerable to be taken advantage of by others; witnesses to criminal acts; suspects; defendants; retrial detainees in jails and juvenile detention facilities; and offenders in the juvenile or adult correctional system who may be placed on probation in the community, in total confinement in a jail, prison, juvenile detention or state training school or on pa-

role supervision being transitioned back to the community. The implications for law enforcement officers, detention-intake workers, prosecutors, defense attorneys, judges, correctional officials and counselors come into play throughout this continuum.

Special recognition deserves to be given to the components of the correctional system that encounter clients affected with FAS/FAE. Although medical diagnoses rarely are available, screening individuals for FAS/FAE may have significant implications at the pre-trial level (jails and juvenile detention, pre-trial diversion programs and pre-sentence investigation reports); in determining alternatives to confinement (probation, intensive supervision, restitution/victim compensation, substance abuse treatment and monitoring, day reporting centers, community service/work crews, home detention/electronic monitoring and work release); within total confinement settings at the local, state and federal levels (including diagnostic/evaluation, classification and protective custody, program services, work/correctional industries, parole planning and female offender services); and transition back to the community (parole supervision, case management, pre-release facilities and services).

The implications of FAS/FAE on the criminal justice system are wide-ranging. The major decision points and actions within the justice system—including arrest, charges, awaiting trial, determining competency, sentencing and providing appropriate correctional services—are only beginning to be considered in relation to individuals with FAS/FAE. Lawyers increasingly will need to consider issues of competency, insanity and related defenses⁶. Judges will need to consider these legal issues as well as appropriate diversion, treatment and sanctions for those who are convicted of crimes. (In the

most extreme case of death penalty sentencing, the U.S. Supreme Court has said that mental retardation, which frequently can be caused by FAS, does not by itself preclude execution.⁷) Correctional workers increasingly will need sophisticated in screening for FAS/FAE and designing appropriate services and facilities, especially in light of the Americans with Disabilities Act of 1990,⁸ which requires correctional agencies to take remedial action to allow persons with disabilities to have an equal opportunity to participate in programs, services and activities. And counselors increasingly will need to be able to identify FAS/FAE in clients and refer these individuals to appropriate and necessary resources.

FAS still may be misunderstood and under-identified. But this will change if those who work with individuals affected with FAS/FAE—whether in the courts or in counseling—learn about FAS, share this information with their colleagues and push for necessary resources in their communities.

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