

# Fetal Alcohol Spectrum Disorders (FASD): *A Hidden Disability*

*Eileen Bisgard, J.D.  
Dawnmarie Bisgard*



National Center on  
Criminal Justice & Disability

*Achieve with us.®*

# Welcome!

- First time using webex?
  - You can communicate with other attendees or the host in the **Chat Box** and seek technical assistance if needed.
  - You can type questions about the material presented in the **Q&A** section.
- Today's webinar will be **recorded and archived** on the NCCJD website. Please keep this in mind when sharing information and experiences during the webinar.

# Polling Question

**TRUE OR FALSE:**

**FASD is a diagnosis given by an MD.**



**The Arc**

National Center on  
Criminal Justice & Disability

*Achieve with us.*

# Polling Question

**TRUE OR FALSE:**  
**Specific facial features are required for diagnosis of an FASD.**



**The Arc**

National Center on  
Criminal Justice & Disability

*Achieve with us.*

# Polling Question

**TRUE OR FALSE:  
50% of adults with FASD will be in  
trouble with the law.**



**The Arc**

National Center on  
Criminal Justice & Disability

*Achieve with us.*

# Polling Question

**TRUE OR FALSE:**

**Individuals with FASDs may not understand why they are being arrested.**



**The Arc**

*National Center on  
Criminal Justice & Disability*

*Achieve with us.*

# Polling Question

**TRUE OR FALSE:**

**Probation is more effective than incarceration in changing the behavior of an individual with FASD**



**The Arc**

National Center on  
Criminal Justice & Disability

*Achieve with us.*

# Summary of the Class

- **Impact of FASD**
- **The Basics**
- **Physical, Cognitive, Behavioral Effects**
- **Legal Issues**
- **The Defendant's Perspective**
- **Arrest and Basic Screening**
- **Diagnosis**
- **Sentencing Issues**
- **Intervention Basics**



# American Bar Association

Urges attorneys and judges, . . . bar associations, and law school clinical programs to help identify and respond effectively to Fetal Alcohol Spectrum Disorders (FASD) in children and adults, through training to enhance awareness of FASD and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems and the value of collaboration with medical, mental health, and disability experts.

# American Bar Association

FURTHER. . .urges the passage of laws, and adoption of policies at all levels of government, that acknowledge and treat the effects of prenatal alcohol exposure and better assist individuals with FASD

# The Impact of FASD

- At least 1 in 100 children born in America have an FASD
- Studies estimate that each individual born with an FASD will average well over \$2,000,000 in services over a lifetime.
  - These costs do NOT count the cost of incarceration

# Individuals With FASDs Have Higher Odds of Being Arrested

- University of Washington study:
  - **35%** of Individuals with FASD have been in jail at some point
  - **50%** of adults with an FASD have been in trouble with the law
  - In California jails they studied, **2/3** of adult male prisoners had FASDs

# Fetal Alcohol Spectrum Disorders (FASD): The Basics



**The Arc.**

National Center on  
Criminal Justice & Disability

*Achieve with us.®*

# Fetal Alcohol Syndrome (FAS)

- **A medical diagnosis that requires:**
  - Small size or slow growth
  - Specific facial features
  - Cognitive deficits in multiple areas
  - Proof of prenatal alcohol exposure
- **10 times as many people have cognitive deficits without the physical features**

# Descriptive Term for the Whole Spectrum

*(FASD)*

## *Fetal Alcohol Spectrum Disorders*

*Describes the whole range of disorders caused  
by maternal alcohol used during gestation.*

*FASD is not a diagnosis.*

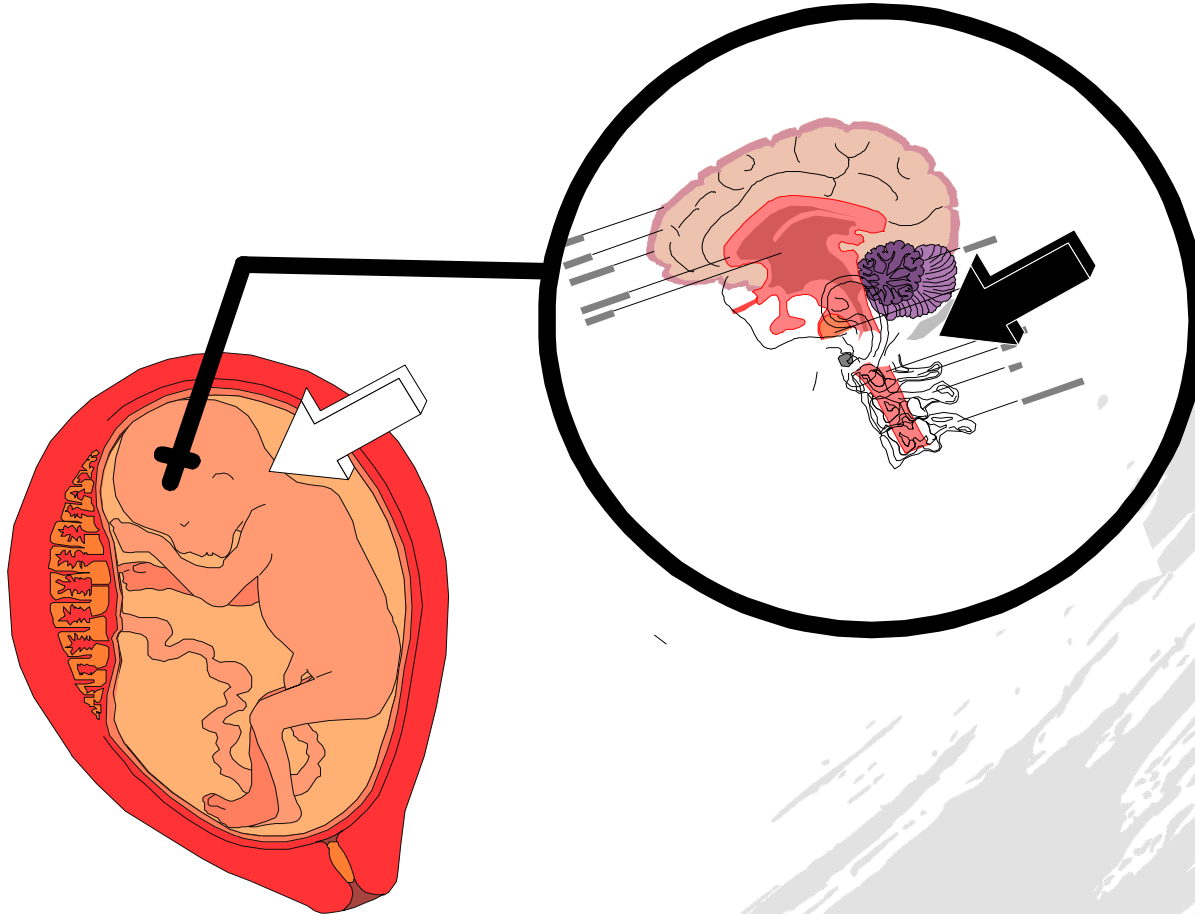
**DSM-V**

**NDPAE**

**Neurobehavioral Disorder Associated  
with Prenatal Alcohol Exposure**



# Cause of the Problem

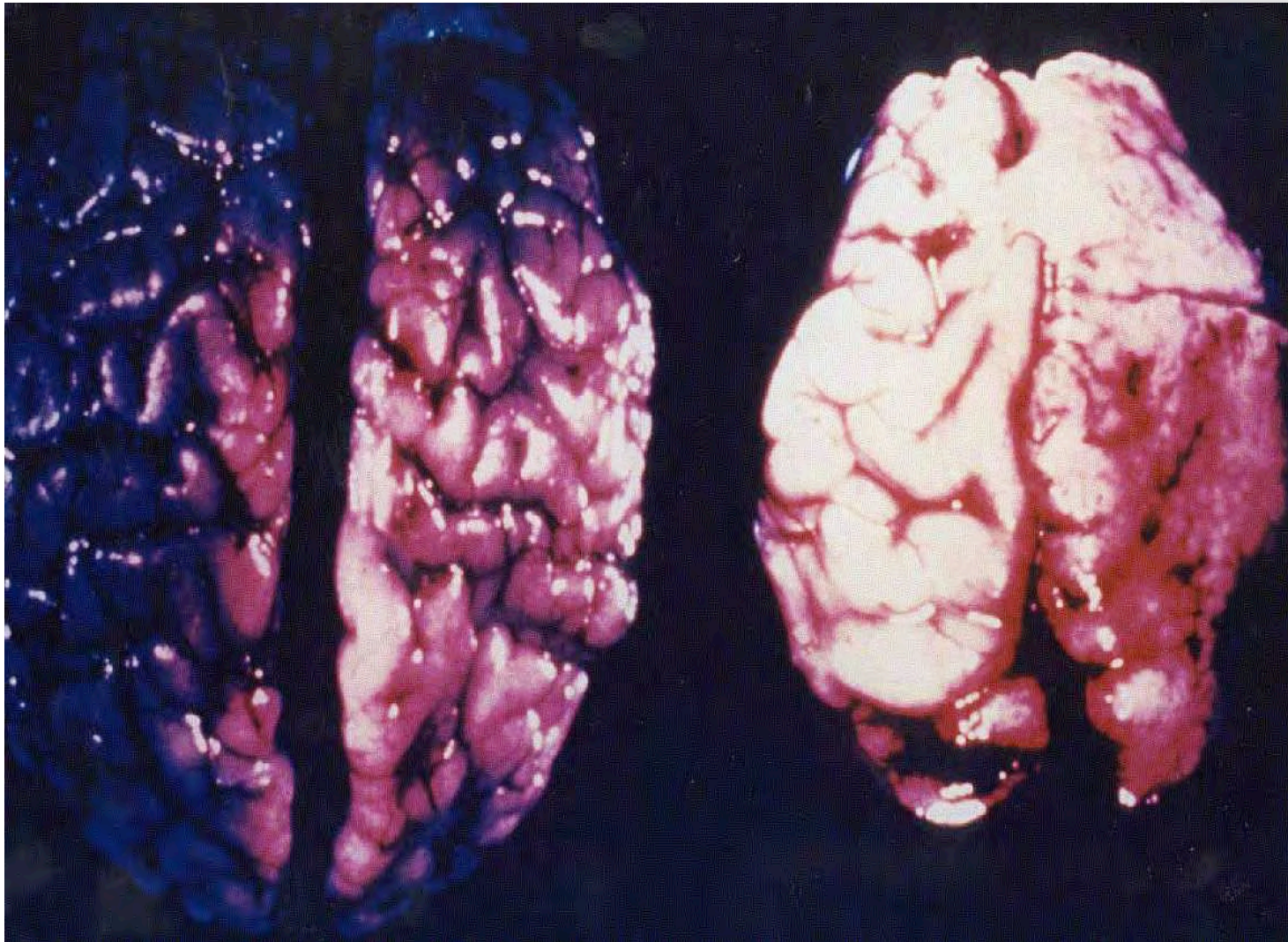


*Achieve with us.®*

# Effect on the Brain


Typical (or Affected)  
Infant

Infant with FAS



# Every Individual is Different

Some Have Many Effects,  
Some Have Fewer or None



**Alcohol Can Cause Irreversible  
Damage Before the Mother  
Knows She is Pregnant**

# Physical Effects

- Premature birth
- Small size/slow growth
- Vision, hearing deficits
- Heart problems
- Problems with other organs
- Improper bone development
- Dyslexia
- Lower IQ



# Cognitive Effects

- **Difficulty Making Decisions**
  - Don't understand cause and effect or behavior and consequences
  - Impulsive
- **Memory Problems**
  - Poor short-term memory
  - Memory comes and goes
  - Can't follow directions



# Cognitive Effects

- **Can't Think Abstractly**
  - Don't understand time
  - Can't handle money
- **Wide Differences in Abilities**
  - May say more than they understand
  - May know things that they can't express
  - May think slowly and therefore miss part of what is said - mis-interpret

# Cognitive Effects

- **Disorganized Mind**
  - Therefore can't organize their life
- **Distractible - may have trouble paying attention**
- **Have a difficult time with any kind of change**
- **Even more difficulty understanding when stressed**

# Sensory Issues

- **Over or Under Sensitive to:**
  - Touch
  - Things they see
  - Things they hear
  - Smells
  - Taste/food texture
  - Gravity/their space in the world

# Learned Behaviors Because of the Way They See the World

- **Angry/Violent**
- **Avoidance**
  - Shut people out
  - Isolate/Run away
  - Drug & alcohol use
- **Bossiness/bullying**
- **Anxiety, fear, somatic complaints**
- **Depression**

# Mental Health Diagnoses

- **ADHD/ADD**
- **Reactive Attachment Disorder**
- **Depression**
- **Sensory Integration Disorder**
- **Conduct Disorder**
- **Bi-Polar Disorder**

# FASD - Legal Issues

- Confessions - suggestible, eager to please authority figures - may admit to things they didn't do
- Poor witnesses - don't understand, can't remember, inconsistent stories
- Competency to consent to search, waive Miranda rights, plead guilty
- Competency to stand trial
- Lack of Capacity for pre-meditation

# The Defendant's Perspective

- Offender or Victim?
- Why calling the police may be welcome
- The feeling of being arrested
- Police response to lack of understanding
- Sensory issues
- What could police do rather than arrest?

# Incorporating FASD Awareness in Arrest Situations

- Does the individual seem to understand the crime that's charged and why it's being charged?
- Does the person expect to be charged or see you as someone to help him/her?
- If there's a confession, was it valid?
- Are the suspect and other witnesses telling a consistent story?
- Ask if there's a support person the suspect would like you to call.



# Screening The Suspect

- Try to determine whether the suspect is from a family with alcohol abuse issues
- Is the suspect in disability services?
- Was the suspect in foster care or adopted?
- Listen to family and other support people

# Screening The Suspect

- **Typical Crimes related to FASD**
  - Impulsive behavior, such as shoplifting something for immediate consumption
  - Stealing from a friend or neighbor something for personal use
  - Getting into a fight from over-reacting to a seemingly mild provocation
  - Behavior precipitated by panic or flight
  - Secondary involvement in crimes of more sophisticated people (i.e. delivering drugs)

University of Washington

# Screening The Suspect

- **Other indicators of FASD**
  - Only one apprehended in a crime with multiple, more sophisticated, perpetrators
  - Repeated minor offenses with no escalation of severity of crimes
  - Absence of offenses that require significant planning or premeditation
  - History of minor offenses before age 18

# Screening The Suspect

- **Other indicators of FASD**
  - Behavior that indicates lack of boundaries or understanding appropriate behavior, such as touching
  - Past failure of probation or parole based upon not following directions or attending appointments
  - Lack of remorse based upon failure to understand the seriousness of the crime
  - Lack of understanding of the connection between the crime and punishment

University of Washington

# Diagnosis

- A diagnosis is required in order to know if an individual is affected by an FASD - but prenatal exposure and/or neuro-behavioral deficits are indicators
- Neuropsychological evaluation shows the neuro-behavioral deficits
- National diagnostic team is available for serious crimes - contact Univ. of Washington Fetal Alcohol & Drug Unit

# Diagnosis

- **Some courts will accept factors that indicate likelihood of FASD if sufficient evidence is presented:**
  - Family history of substance use
  - Adoption or foster care
  - Siblings who were diagnosed with FASDs
  - Multiple mental health diagnoses
  - Evidence of cognitive or functional deficits
  - History of criminal behaviors that make no sense or provide no gain

# Sentencing

- **May be less culpable**
  - Impulsive crimes
  - Tend not to take a leadership role in an offense
- **May not understand why they're being punished - don't learn from incarceration**
- **Easily victimized in prison**

# Sentencing

- Benefit from a structured, community based sentence, not incarceration
- Extra support can make Probation successful
  - Clear, concrete Terms and Conditions
  - Appointment and Curfew reminders
- Adolescent sex offenders should be treated individually and in a concrete manner
- Substance abuse treatment needs to be concrete



# Juvenile Probation Statistics

- **6 years of screening all juveniles on probation (or at PSI) in the 17<sup>th</sup> Judicial District of Colorado:**
  - Nearly 16% of all those on probation diagnosed with cognitive deficits and mother acknowledged prenatal exposure to Probation Officer
- **Similar Study in Minneapolis, MN:**
  - Screened juveniles who were positive on the MAYSI-2 - 32% had identifiable FASDs.

# Juvenile Probation Statistics

- **17<sup>th</sup> Judicial District of Colorado:**
- **Baseline recidivism rate of 50% in first year after completion of Probation**
- **Youth with modification of Terms and Conditions and services based upon FASD - recidivism rate of 15% in 1-3 years after completion of Probation**

# Basics of FASD Behavior Management

*Distinguish Between*

*CAN'T and WON'T*

*If the person CAN'T do what's asked,*

*Modify the Environment*

*Work with what he/she*

*CAN DO*

*Modify Expectations*

# Intervention Basics

- *Break down required tasks into simple steps - concrete and in writing*
- *Talk slowly and give time for response*
- *Understand that the individual may be able to say things that they can't do*
- *Double check to try to assure understanding*
- *Be specific - say exactly what you want*
  - *Avoid saying “Don’t”*

***Remember:  
The Person's Brain Is  
Different***

***Behavior Management  
Cannot Remove Brain  
Differences***

# Summary for the Criminal Court

- Probation will be more effective in rehabilitation, rather than incarceration
- Terms and Conditions of Probation should fit individual's abilities and be written simply and concretely
- Try to get as much supervision and structure as possible
- If the structure is removed, the individual may re-offend
- Revocation and reinstatement of Probation may be positive

# Prognosis for the Offender

- Can continue the structure of Probation for a life free of crime
- May always need support to be successful
- Will be a follower - needs positive peers
- Can overcome addiction with intensive, concrete treatment and environmental change
- May continue to mature into the 30s and move into a more positive life

# Resources

**NOFAS - [www.nofas.org](http://www.nofas.org)**

**FASD Legal Issues Resource Center -  
[www.depts.washington.edu/fadu/resources/fas-and-the-law](http://www.depts.washington.edu/fadu/resources/fas-and-the-law)**

**FASD Center for Excellence -  
[www.fasdcenter.samhsa.gov](http://www.fasdcenter.samhsa.gov)**



# Next Webinar

- Attend the next webinar on **October 30, at 1:30PM EST “Day employment opportunities for individuals with I/DD and forensic/sexual offending behaviors.”**
- Sign up to receive email alerts
- Use I&R/TA service, and refer others
- Share your story and raise awareness

**Contact us at:**

**[NCCJInfo@thearc.org](mailto:NCCJInfo@thearc.org)**

# Questions?

## Survey:

- <http://fs8.formsite.com/thearcwebinar/form49/index.html>

## Next Webinar:

- October 30: Day employment opportunities for individuals with I/DD and forensic/sexual offending behaviors

## Contact us at:

- [NCCJDInfo@thearc.org](mailto:NCCJDInfo@thearc.org)



National Center on  
Criminal Justice & Disability

*Achieve with us.*