



## **Fetal Alcohol Spectrum Disorder (FASD) A Review for Criminal Justice and Legal Educators**

By Jerrod Brown, Erv Weinkauf, and Janina Wresh

Fetal alcohol spectrum disorder (FASD) is a result of prenatal exposure to alcohol, which can lead to varying levels of brain damage for the unborn child and a host of secondary mental health conditions later in life. The majority of FASD-impacted individuals do not exhibit visible signs of impairment, which makes accurate diagnosis difficult. Problematic behaviors and consequences may be difficult to overcome when services and supports are lacking or insufficiently address the specific needs.

Few studies have been published on the prevalence rates of FASD in criminal justice settings, but all available evidence suggests that a disproportionately high number of individuals with FASD are involved in the justice arena as either suspects, defendants, offenders, victims, or witnesses. This may be because the disorder's cognitive and social functioning issues leave those with the diagnosis particularly vulnerable to both victimization and criminal behavior. FASD symptoms complicate investigations at an individual's earliest interactions with law enforcement. For example, social and cognitive issues, especially in the realm of memory, draw into question the testimony of victims and witnesses with FASD, as well as the capability of suspects with FASD to make legal decisions. As these suspects become defendants, legal professionals must consider the impact of FASD on competency to stand trial. That is, FASD may inhibit defendants with a diminished capacity from comprehending and participating in their legal proceedings in several ways, including entering a plea and providing sufficient assistance to their attorney in the development of a defense. Even if a defendant is found competent, a diagnosis of FASD should be considered during sentencing and may warrant at least partial mitigation of punishment.

Another area of the legal system that commonly deals with FASD is the family court system. Here, FASD can play an important role in cases of custody and child welfare where parental rights could be terminated. A final growing area of concern in the legal system is determining if cases of FASD warrant disability benefits and/or individualized education programs (IEPs) as stipulated by the federal Individuals with Disabilities Education Act (IDEA). Taken together, the nuanced interactions between

FASD and the legal system emphasize the need to recognize an individual's right to in-person diagnosis by qualified expert witnesses. In summary, numerous studies on FASD have provided evidence that supports the seriousness of this condition and the critical importance for criminal justice and legal professionals to receive education and training related to the complexities of FASD.

## Biographies

**Jerrod Brown, M.A., M.S., M.S., M.S.**, is the Treatment Director at Pathways Counseling Center, Inc. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions. Jerrod is also the founder and CEO of the American Institute for the Advancement of Forensic Studies (AIAFS), and the lead developer and program director of an online graduate degree program in Forensic Mental Health from Concordia University, St. Paul, Minnesota. Jerrod is currently pursuing a doctoral degree in psychology.

**Erv Weinkauff** is a 39-year law enforcement veteran who served as an Army airborne military police sergeant, deputy sheriff, and police officer. Erv retired as a police chief in 2009 and began his duties as Concordia University's criminal justice program coordinator in 2010 and currently serves in that position. He has been a police trainer and educator for more than 20 years, has served as an advisory board member of the Minnesota Chiefs of Police Association, board member and past president of the Association of Training Officers of Minnesota (ATOM), and guest instructor for the Minnesota Chiefs' Association Leadership and CLEO and Command academies.

**Janina Wresh** has 19 years of experience in the Criminal Justice System to include, but not limited to: Forensic Crime Laboratory; 4th Judicial Courts and Adult Detention Center affiliation; Deputy Sheriff and Police Officer; Crime Scene Technician; Domestic Abuse Response and Crisis Intervention Specialist; AIAFS COO; Adjunct CJ & FMH Professor and lecturer; Co-author of forensic mental health articles; Board Member of the Midwest Alliance on Shaken Baby Syndrome (MASBS).