Fetal Alcohol Spectrum Disorders (FASD) and the Criminal Justice System: Causes, Consequences, and Suggested Communication Approaches

By Anthony P. Wartnik and Jerrod Brown

Abstract

Afflicting 2% to 5% of the U.S. population (May et al., 2009), fetal alcohol spectrum disorders (FASD) are lifelong disorders caused by prenatal alcohol exposure (PAE). The range of deficits include cognitive (e.g., executive functioning), social (e.g., communication skills), and adaptive dysfunction (e.g., problem-solving ability). The likelihood of involvement in the criminal justice system can be increased by: (a) difficulty thinking in an abstract manner, (b) communication skill deficits, (c) a diminished ability to appropriately express and exhibit empathy, and (d) impulsivity. The cognitive difficulties outlined in this article can result in repeated fights, thefts, thrill-seeking behaviors, and even more severe criminal behavior. In combination with FASD-informed communication tactics, extended care and strong social supports, the accurate assessment and successful treatment of FASD, these considerations and approaches have the potential to limit the likelihood of future criminal behavior in this population.

Introduction

Fetal alcohol spectrum disorders (FASD) is an umbrella term for lifelong disorders caused by prenatal alcohol exposure (PAE). The prevalence rate of FASD is 2% to 5% in the United States (May et al., 2009). The range of deficits include cognitive (e.g., executive functioning, short- and long-term memory, attention, and intelligence; Brown, Connor, & Adler, 2012; Connor, Sampson, Bookstein, Barr, & Streissguth, 2000), social (e.g., awkwardness, immaturity, and verbal/non-verbal communication; Fast & Conry, 2009), and adaptive dysfunction (e.g., problem-solving ability, abstract thinking, and learning from...
Individuals with FASD exhibit a number of cognitive symptoms and behaviors (e.g., intellectual deficits, executive functioning issues, and learning disabilities). As a result, many individuals with FASD function significantly below chronological age emotionally, intellectually, and behaviorally (Wartnik, Brown, & Herrick, 2015). This set of symptoms may increase the likelihood of actions without recognition of consequences, poor decision making, and a failure to link an initial act to subsequent consequences or damage.

Cognitive deficits can increase the likelihood of criminal behaviors in several ways. First, a key issue in FASD is difficulty thinking in an abstract manner (Brown, Connor, & Adler, 2012). FASD causes difficulty learning from personal experiences and the consequences of actions. Individuals with FASD often think more concretely and experience great difficulty in generalizing something learned in one setting to another setting (Burnside & Fuchs, 2013; Jeffery, 2010). Such difficulties could profoundly impact the ability to distinguish between situations where a behavior is and is not appropriate. For example, in children with FASD, the ability to generalize knowledge from one situation to another is highly problematic due to limited comprehension of perilous and criminal acts. Rather than malicious in nature, dangerous or criminal acts may be the result of forgetting how, when, and if something is appropriate.

Second, the communication difficulties of FASD could result in trouble conveying how one feels about what one is experiencing. A difficult, stressful school day may result in an inability to express feelings into words. This, combined with emotional problems, can cause frustration and lashing out in inappropriate ways such as angry outbursts and assault, which is complicated by the lack of impulse control and peer pressure. Children with FASD may understand that an action is dangerous or wrong and should be avoided, but are unable to control their actions, particularly in response to peer pressure. These dangers emphasize the importance of helping children with FASD to find ways to express their troubles in pro-social ways.

Third, the reduced ability to exhibit compassion or empathy is common among some individuals with FASD (Fernandes, Rampersad, & Gerlai, 2015). Empathy deficits may contribute to a lack of moral conflict or concern over potentially harming others. This is further complicated by limited understanding of ownership and personal property. Empathy and principles of ownership may not register, risking property destruction and hurting other people.

Fourth, youth with FASD often possess a limited capacity to control impulses and an inability to appropriately consider predictable cause and effect outcomes (Mela & Luther, 2013). As such, youth impacted by FASD may be particularly vulnerable to repeating behaviors seen in the media or role-modeled by other youth. Further, they are highly suggestible (Brown, Gudjonsson, & Connor, 2011). This is particularly troubling for youth with FASD because managing impulsivity and suggestibility are often lifetime struggles. Later on, adults with FASD often have greater difficulty obtaining/maintaining employment, especially when appropriate supports and services are not in place. This may limit their ability to pay court costs, restitution, and any other financial assessments.

The cognitive difficulties outlined in this article may result in repeated fights, thefts, thrill-seeking behaviors, and even more severe criminal behavior for some individuals with FASD. This risk is exacerbated when the individual does not receive an appropriate diagnosis, supports and services are not in place or available, and caregivers and professionals lack a sufficient awareness and understanding of FASD. The first step to limit such criminal behaviors is FASD-based screening and assessment.
approaches. Assessments and screening practices should take into account the tips outlined in Table 1. Moreover, professionals need to be certain to look for the presence of comorbid disabilities (e.g., Attention-Deficit/Hyperactivity-Disorder (ADHD), Conduct Disorder (CD), anxiety, depression, attachment disorders, and substance misuse conditions) as part of any FASD-based screening and assessment protocol. Before initiating treatment, the development of a treatment plan must incorporate considerations of development (i.e., mental versus chronological age), communication ability (i.e., receptive and expressive language), and learning and memory disabilities, which can impede successful treatment efforts if not adequately addressed in the intervention plan. In combination with extended care and strong social supports, the accurate assessment and successful treatment of FASD have the potential to limit the likelihood of future criminal behavior in the population.

<table>
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<tr>
<th>Table 1: Ten Tips For Communicating With An Individual Who May Have FASD</th>
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<tbody>
<tr>
<td>1. Use simple, concrete and direct language</td>
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<td>2. Avoid leading questions</td>
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<td>3. Explain things slowly to allow more time to process the information</td>
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<td>4. Ask the individual to explain what you said in their own words to ensure understanding of the direction or question</td>
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<td>5. Inquire about contacting a mentor, advocate, or case worker who can offer support and/or act as interpreter</td>
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<td>6. Conduct the conversation in a quiet setting free of distractions</td>
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<td>7. Give the individual space and avoid physical confrontation</td>
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<td>8. Maintain a calm and collected demeanor at all times</td>
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<td>9. Gather corroborating evidence or statements</td>
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<td>10. Provide frequent breaks to protect against distraction and mental fatigue</td>
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Biographies

Anthony P. Wartnik served as a trial judge for 34 years, chairing his court’s task force on protocols for determining competency of youth with organic brain damage and the Governor’s Advisory Panel on Fetal Alcohol Syndrome/Fetal Alcohol Effects. He presided over Involuntary Mental Illness Treatment Court, is Legal Director/Liaison for FASD Experts, a multi-disciplinary FASD Forensic Assessment team, is a SAMHSA certified trainer, and a nationally and internationally recognized author and speaker on FASD and the law as well as Child Welfare, Juvenile Offender, Adult Criminal, and related issues, most recently presenting at the 2015 International Congress on the Law and Mental Health in Vienna, Austria, on issues involving FASD and the Law. In addition, Tony is an adjunct professor at Concordia University, St. Paul, Minnesota.

Jerrod Brown, M.A., M.S., M.S., M.S., is the Treatment Director for 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 (AIABS), and the Editor-in-Chief of Forensic Scholars Today (FST). Jerrod is currently in the dissertation phase of his doctorate degree program in psychology.

References


