

FETAL ALCOHOL SPECTRUM DISORDERS: WHEN YOUR CHILD FACES THE JUVENILE JUSTICE SYSTEM

*Cherishing children is the mark of a civilized society.*¹

—Joan Ganz Cooney, Chair, Children’s Television Workshop

Youth with fetal alcohol spectrum disorders (FASD) are at high risk of getting into trouble with the law.² They face many challenges that make them vulnerable to criminal activity,³ such as:

- Being easily influenced by peer pressure
- Lacking impulse control
- Not understanding cause and effect
- Not learning from mistakes
- Making poor decisions
- Having memory problems
- Difficulty understanding future consequences



WHAT ARE FETAL ALCOHOL SPECTRUM DISORDERS?

“FASD” is an umbrella term describing the range of effects that can occur in an individual who was prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

HOW DOES FASD AFFECT MY CHILD’S EXPERIENCE WITH THE JUVENILE SYSTEM?

Youth with an FASD have a high desire to please people in authority. Your child may confess to an offense in order to stay on the good side of police. They may add things they’ve heard elsewhere. This is why it is important to have an attorney present during questioning, and a family member or professional familiar with FASD.

WHAT IS COMPETENCY?

Competency refers to a person’s ability to understand the charges and to aid in his or her defense. A competency evaluation, by a professional familiar with FASD, may be needed to determine whether the youth with an FASD can face an adjudication hearing. State laws vary, but in most States, children under the age of 12 are usually presumed not to be competent.⁴ Competency evaluations should examine maternal drinking and include information such as the youth’s:

- Medical and family history
- Home environment

- School records
- History of services received (e.g., therapy)
- Prior involvement in the juvenile system

A diagnosis of an FASD does not mean that your child will not be tried or will not be tried as an adult.⁵ However, it may be considered in the judicial decision making process and could result in a lighter sentence, especially if the offense is minor.⁶

A history of problems with the law can provide clues regarding your child’s cognitive, social, and adaptive functioning. If your child’s offenses are minor and/or involved responses to peer pressure, the court may use a diagnosis of an FASD as a basis for a lighter sentence.

WHAT HAPPENS WHEN MY CHILD GETS IN TROUBLE WITH THE LAW?

Procedures vary by State. It is best to consult an attorney familiar with the juvenile justice system in your area. Make the attorney aware of your child’s FASD and how it affects his or her capacity to participate in the legal process.

In general, procedures in the juvenile justice system include:

- **Police contact.** Kids with an FASD are more likely to be arrested for an offense because they don’t know how to respond to the police.
- **Arrest.** A youth can be arrested, brought to a police station, or summoned to appear in court, any of which can be terrifying for someone with an FASD. It helps for a parent to be present to keep the child calm.
- **Police questioning.** If a minor is questioned without parental consent, the information collected might not



WHAT YOU NEED TO KNOW



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention
www.samhsa.gov

be usable as evidence. Teach your child to request an attorney or parent if questioned by the police.

- **Case disposition.** Your child may be ordered to attend hearings. If the court finds your child guilty, he or she will be sentenced. The judge usually gets recommendations from probation officers or defense attorneys before sentencing. In some cases, the accused can agree to plead guilty to a lesser offense. A plea agreement is not binding on the court but may influence the judge. Possible dispositions are community service, restitution, or mediation. These allow the youth to make up for the offense without facing detention.
- **Decisions to decline or retain.** In some cases, the prosecution may try to have your child tried as an adult. This is known as declining the case because the juvenile court declines to handle it. A decision to retain means the case stays in the juvenile system. An FASD diagnosis can be used to argue that your child should remain in juvenile court.⁷
- **Aftercare.** Parents may want to seek an appropriate aftercare program to provide supervision, monitoring, and services when the child returns from a residential or correctional facility.

WHAT ARE MY CHILD'S RIGHTS?

Your child has the right to:

- Have a lawyer, regardless of ability to pay
- Refuse to talk to police, sign any papers, or share information until he or she has spoken to a lawyer
- Understand the charges
- Plead not guilty and be given a hearing
- Appeal the court's decision on the case
- Offer ideas for consequences if found guilty

Youth with an FASD might not understand their rights or remember what they hear. It is important to talk to the police and to the attorney about what happened during arrest and questioning to make sure the child's rights have not been violated.

HOW CAN I HELP MY CHILD?

You can advocate for your child by being available at any police questioning and advising your child's attorney about FASD. If your child is sent to a juvenile facility, you can speak with the staff about FASD. You can work with your child's school and the facility to make sure that your child's educational needs are met. You may need to provide a copy of your child's Individual Education Plan.

You might want to have your child carry an information card to give to police. (You can find a sample card at www.depts.washington.edu/fadu/legalissues/policecard.html.) The card describes FASD and alerts the police that the child is not waiving any rights and is not capable of waiving any rights.

You can also ensure that your child receives an adaptive functioning evaluation. This can help lawyers and judges figure out the best way to handle your child's case.

The most important thing you can do is to be there for your child and help attorneys, judges, and others in the juvenile justice system understand FASD.

RESOURCES

SAMHSA FASD Center for Excellence. 2005. **What You Need To Know: Understanding Fetal Alcohol Spectrum Disorders: Getting a Diagnosis.** Rockville, MD: fasdcenter.samhsa.gov

Minnesota Organization on Fetal Alcohol Syndrome, 2004. **Tools for Success: Working With Youth with Fetal Alcohol Spectrum Disorders in the Juvenile Justice System. A Guide for Parents and Caregivers.**

REFERENCES

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3. LaDue, R., and Dunne, T. 1995. Legal issues and the fetal alcohol syndrome. *The FEN Pen* 3(4):6-7.
4. LaDue, R., and Dunne, T. 1996. Capacity concerns and fetal alcohol syndrome. *The FEN Pen* 4(1):2-3.
5. *State v. E.A.J.*, 67 P.3d 518 (Wa. Ct. App.2003).
6. In the Matter of the Welfare of G.A.R.B. 2004 WL 51814 (Minn. App.)
7. LaDue, R., and Dunne, T. 1996. Issues in the legal realm: Fetal alcohol syndrome and the decision to decline or retain. *The FEN Pen* 4(2):2-6.

Stop and think. If you're pregnant, don't drink.
For more information, visit fasdcenter.samhsa.gov or call 866-STOPFAS.
www.stopalcoholabuse.gov



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