

Fetal Alcohol Spectrum Disorder And Youth Justice in NZ

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FASD is a lifelong disability

- FASD can be likened to a head injury (i.e. brain damage) of the developing foetus
- Where the brain is damaged depends on what stage of development it is exposed to alcohol
- How much of the brain is damaged depends on exposure (dose) and vulnerability

**Prenatal
Alcohol**



**Primary
Disability**



**Brain
Damage**



**Dysfunctional
Behaviors**



**Secondary
Disabilities**



**Trouble with the Law,
School Disruption, Etc.**

Secondary Disabilities in FASD

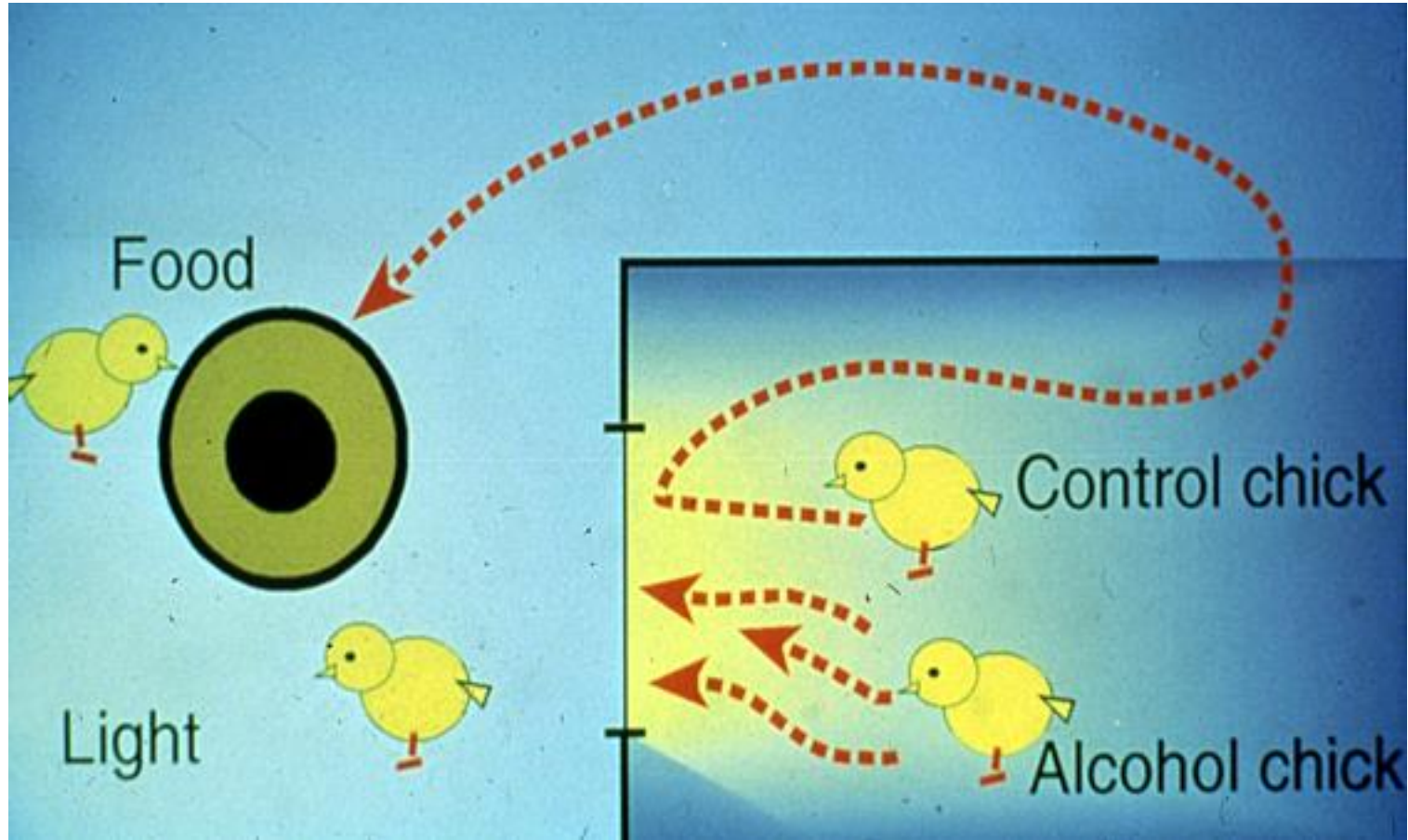
- Mental Health Problems 90%
- Disrupted schooling 60%
- **TROUBLE WITH THE LAW** 60%
- Incarceration or inpatient MH/AOD treatment 50%
- Inappropriate sexual behaviour 50%
- AOD problems 45%

(Streissguth et al, 1996)

Why so much “Trouble with the Law?”



Alcohol Chicks Fail Detour Learning Test



Judge O' Driscoll – NZLJ May 2011

- Judges wonder why some offenders:
 - don't seem to learn from their previous appearances in Court;
 - seem unable to complete community work sentences;
 - have little appreciation of risk of harm to themselves;
 - have little appreciation of harm caused to their victims.
- FAS may be one explanation

FAS brain effects

- Tend to be lower IQ
- Poor common sense, reasoning, problem-solving
- Impulsive
- Poor judgment and decision-making
- Inability to anticipate consequences
- Poor awareness of cause and effect
- Memory deficits
- Slow to learn from mistakes
- Lack appreciation of magnitude of offense
- Gullible
- Poor emotional self-regulation

So: FASD offenders

- Opportunistic, impulsive offenses
- Easily influenced by peers
- Poorly planned offenses
- Multiple offenses
- Unreliable confession
- Don't learn from mistakes
- Waive rights
- Fail to comprehend impact of offence on self and others

- may claim innocence even if caught in the act
- may plead guilty if actually innocent
- may not run away from the crime scene with accomplices but resist arrest
- may commit 'broad daylight' offense
- may 'over-react' to being touched when apprehended

FAS and victimisation

- 72% individuals with FASD have been victims of physical, sexual and/or emotional abuse
- Easily used by gang leaders

Offences

- Property offences
 - Shoplifting most common, also burglary
 - Property damage; possession/selling; and vehicular crimes.
- Violent offences
 - assault, murder, domestic violence, sexual offences

Criminal Justice system presumes

Offenders have the ability:

- to learn from the consequences of their antisocial behaviour;
- and to be deterred by sentences imposed on other offenders.

But...

What if someone with brain damage (that is not always obvious) has problems with:

- Understanding cause and effect;
- Understanding social norms of behaviour
- Learning

FASD offender in court

- Restless, impulsive, distractible
- Problems understanding legal terms
- Can't understand multi-step instructions
- Unable to comprehend abstract concepts
- Easily frustrated and overwhelmed
- Difficulty distinguishing truth from fantasy
- Easily lead during questioning

Issues that arise

- Competency to stand trial
- False confession
- Diminished capacity (mens rea)
- Testimonial capacity
- Mitigation
- Sentencing
- Treatment
- Appeal
- Ineffective assistance of counsel
- Risk of future offences

FASD Youth Offender in detention

- May copy deviant behaviour of others
- Risk of victimisation in adult facility
- Most have not previously been diagnosed with FAS
- Or may have been misdiagnosed
 - ADHD, oppositional defiant disorder, conduct disorder, bipolar disorder, personality disorder

How many youth offenders have FAS?

- British Columbia: 67 (23%) of 287 youth offenders (12-18yrs). Only 3 had previous diagnosis of FAS.
- 10-40 times higher than expected prevalence.

– Fast et al 1999

Criminals from the bottle

BY THE VANCOUVER PROVINCE July 30 2006

“The effect of alcohol abuse by pregnant women is a growing source of criminality in B.C., according to a survey that found that as many as 30 per cent of young offenders are victims of the disorder. Most worrying? That figure appears to be rising.”

FAS Youth Offenders in NZ

- No proper NZ studies
- ~ 20% of youth offenders are prosecuted
- Those with FAS may have higher rates of prosecution
- Guestimate 100-200/year in Youth Court (using conservative 1% international prevalence rate)

New Zealand trial

- 11 cases (possible prenatal alcohol exposure)
- Referred to project by Psychiatrists (Youth Court, AOD rehab), Paediatrician or Parent
- Auckland, Taranaki, Nelson, Northland
- Assessed by various combinations: Psychiatrist, Neuropsychologist, Paediatrician, Speech Language Therapist
- Outcomes and process evaluated

Diagnoses

- 3 No FASD
- 8 FASD
 - 2 Partial FAS
 - 2 Static Encephalopathy
 - 4 Alcohol Related Neurodevelopment Disorder

Individual Outcomes

“if only someone had told us about this
earlier”

- Information and advice to patient/parent
- Awareness of cognitive deficits, maximise strengths
- Teacher aide, vocational guidance
- Access to funding, HCN package
- Individual & family psychotherapy
- Education/CYFS/Health working together

Individual Outcomes (2)

- Speech Language therapy
- Occupational therapy
- Treatment of comorbid ADHD, anxiety etc
- Advice to Court re disposition

Project Outcomes

- Replication of Vancouver and Seattle ‘best practice’ multidisciplinary diagnostic team models on a small scale
- Each assessment required a minimum of two clinicians: 1 medical & 1 neuropsychological
- Speech Language Therapist valuable but rare resource

Project Outcomes

- Up-skilling of NZ based clinicians required
- Cross sector issues
- Issue of future funding

Importance of recognition of FAS offender

- Reduce recidivism
- Assess culpability
- Fitness to stand trial
- Consideration in sentencing, disposition, treatment

Council of the Canadian Bar Association

Resolution August 2010

- Recognised FAS and its disabilities, and the frequency of contact with the law
- Recognised the justice system is based on “normative assumptions that a person acts in a voluntary manner, makes informed choices with respect to the decision to commit crimes, and learns from their own behavior”
- And that these as well as sentencing principles such as specific and general deterrence are not valid for those with FASD”

Resolved to:

- support/advocate for access to justice and resources as an alternative to criminalizing those with FASD
- Advocate for policies to assist those with FASD and reduce over-representation in the Justice system.
- Advocate for amendment of sentencing laws to accommodate FASD disability.

Progress is being made ...

- That FASD is a serious and debilitating disorder yet it has received little recognition in the youth justice and criminal justice system in NZ
- That FASD can be relevant to an offender's mental capacity, culpability and sentencing
- Medical reports requesting an assessment for FASD can be sought under s 333 of CYP&F Act 1989
- The needs of a young person with FASD will differ from those without brain impairment

Source: O'Driscoll 2010

Need

- To bring this to the attention of the judiciary
- Educated and proactive legal counsel
- Availability of trained diagnosticians (neuropsychological, medical)
- Multisectorial management plans (justice, health, education, community)
- NZ standardised rating scales

- The FASD Legal Issues Resource Center, operated jointly by the University of Washington School of Law and the Fetal Alcohol Drug Unit of the University of Washington School of Medicine, is an excellent resource for:
 - Information on the adult and juvenile criminal justice systems
 - Court cases
 - Appellate decisions
 - How to access help in securing public disability benefits
 - FASD resources
- The website is: <http://depts.washington.edu/fadu/legalissues>

More information

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Questions, comments?