

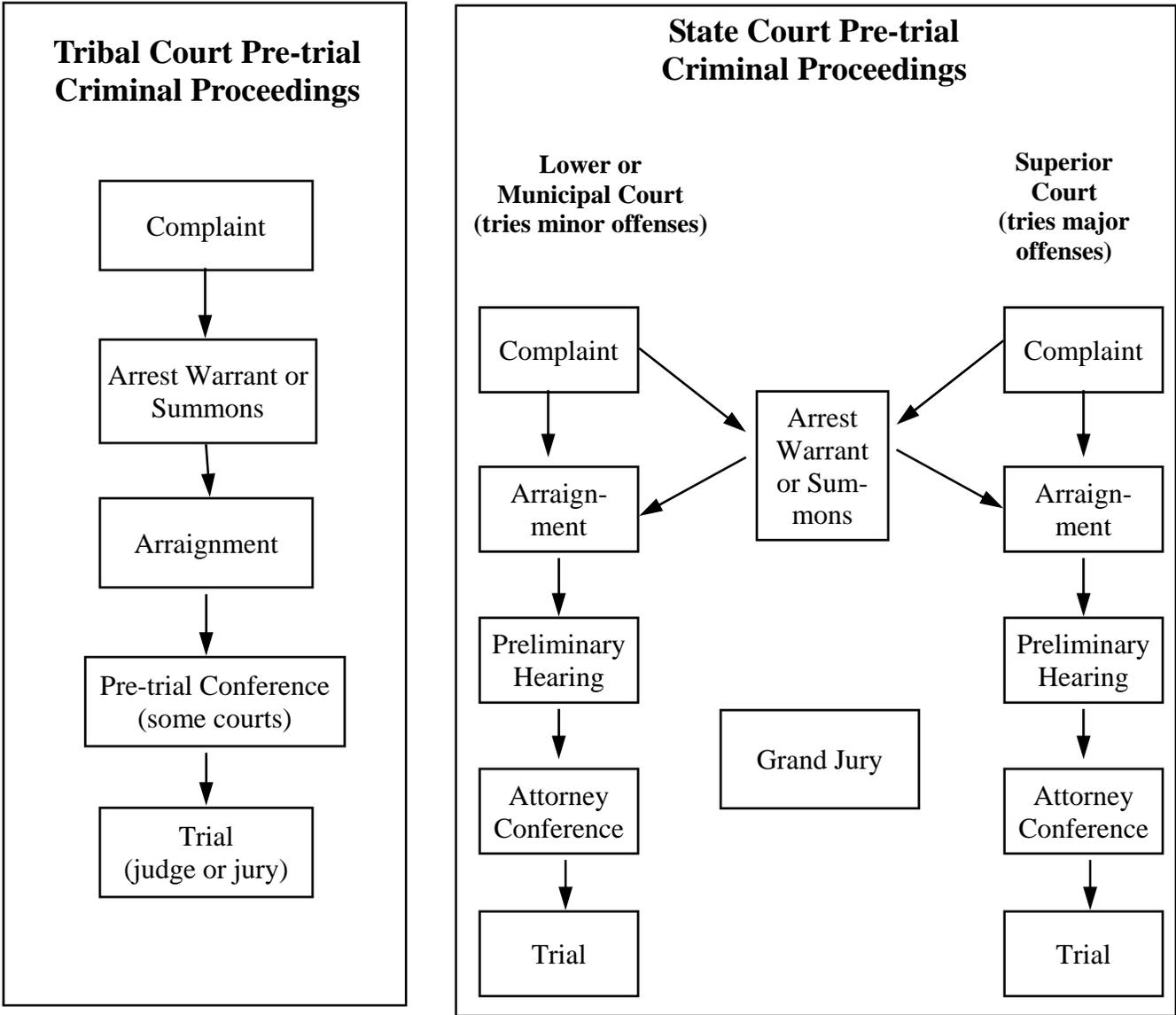
## V. Responses to FAS/ARND by the Tribal Justice System

<i>Learning Objectives and Activities</i>
<ul style="list-style-type: none"><li>• <i>Describe justice system processes and individual rights guaranteed by the ICRA</i></li><li>• <i>Identify obstacles for individuals suffering from FAS/ARND involved in the justice system</i></li><li>• <i>Review recommended steps for advocates, judges and law enforcement to minimize obstacles for individuals suffering from FAS/ARND who are involved in the justice system</i></li></ul>
<i>Presenters and Materials</i>
<ul style="list-style-type: none"><li>• <i>Curriculum, chapter V.</i></li><li>• <i>“Obstacles Courts” video segment and worksheet</i></li><li>• <i>FAS/ARND Case Scenarios</i></li></ul>

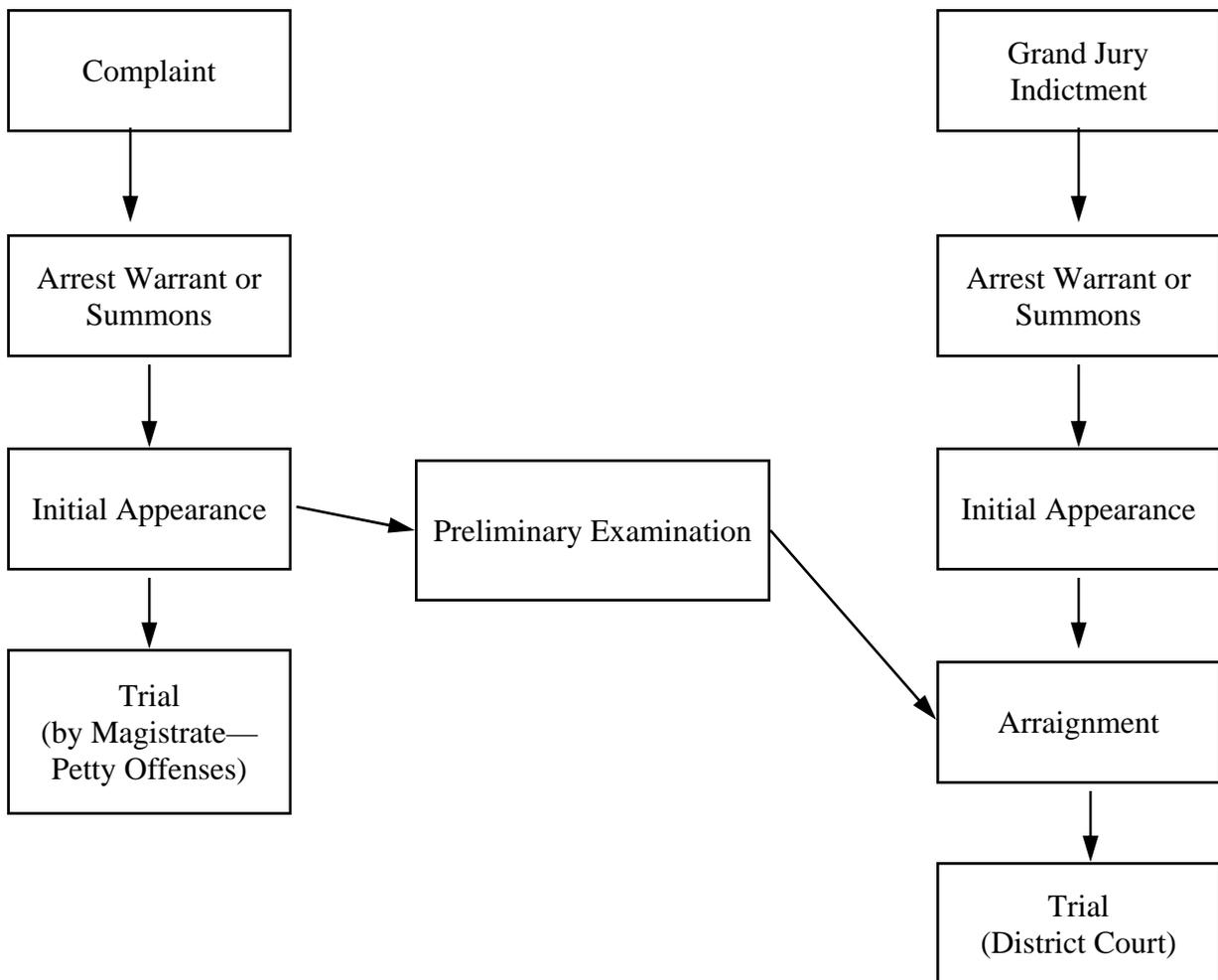
The response to persons with FAS/ARND will depend upon whether FAS/ARND is characterized as a disability by justice system personnel and the community. While many justice agencies attempt to accommodate persons with physical disabilities such as blindness or deafness, those same agencies may not recognize disabilities associated with FAS/ARND nor have procedures in place to accommodate persons with FAS/ARND. Consequently, some persons with FAS/ARND may be prevented from accessing the justice system or asserting their rights.

This portion of the curriculum reviews the structure of justice systems and explores case scenarios involving individuals with FAS/ARND who become involved with the justice system. Participants will be asked to work in teams that will review a scenario and develop questions and/or procedures that could be asked or followed to maximize the effectiveness of the justice system agency involved in the scenario.

The following charts reflect basic steps in pre-trial criminal proceedings for tribal, state and federal jurisdictions. Courts may follow these or other steps in pre-trial criminal proceedings. The purpose of the charts is to illustrate the various major steps in criminal proceedings that a person with FAS/ARND will be facing.



## Federal Court Pre-trial Criminal Proceedings



## INDIAN CIVIL RIGHTS ACT OF 1968 -- 25 USC §1301 - §1303

### §1301. Definitions

For purposes of this subchapter, the term:

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and **means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;**
3. "Indian court" means any Indian tribal court or court of Indian offense, and:
4. **"Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies."**

### §1302. Constitutional Rights

No Indian tribe in exercising powers of self-government shall:

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000 or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

### §1303. Habeas corpus

The privilege of the writ of *habeas corpus* shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

## **Tribal Law Enforcement and Individuals with FAS/ARND**

The first step for successful interaction between tribal law enforcement and offenders with FAS/ARND is for the police to understand the nature and scope of the disability. Tribal police must premise their expectations by measuring the functional abilities of a person. Issues regarding accountability, social development, communication and criminal victimization must be addressed.<sup>57</sup> Concerning accountability, the police must appreciate the fact that persons with FAS/ARND have organic brain damage. They have very little impulse control and experience difficulty associating actions with consequences.<sup>58</sup> They are unable to think through circumstances. Thus, they will not likely respond to deterrent or punitive measures. If they do respond, the response may not be deliberate. The individual's social development is another factor for law enforcement to consider. FAS/ARND individuals often have poor social skills. They do not understand the social rules of conduct, nor do they care to abide by them.<sup>59</sup> It is important for tribal law enforcement to remember that even though the individual's age, physical stature and IQ indicate a certain level of maturity, many individuals with FAS/ARND have the social development equivalent of a 4 to 6 year old child.<sup>60</sup> Concerning communication, many persons will not understand why they are in trouble. Their ability to process information is erratic and unpredictable. It is important that the criminal justice system assign a special advocate to the person. This advocate should be familiar with the disorder and have the ability to convey and repeat facts in simple terms.<sup>61</sup> Tribal law enforcement should also seek to protect FAS/ARND persons from further victimization. Many are at high risk for being drawn into anti-social behavior. De-

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57. Fetal Alcohol Syndrome Disorders, Fact Sheet for Personnel in Law Enforcement, Teresa Kellerman, Family Resource Center.

58. Advocacy for Individuals with FAS/FAE in the Criminal Justice System, Family Resource Institute, 1995, revised 2001.

59. Id.

60. Fetal Alcohol Syndrome Disorders, Fact Sheet for Personnel in Law Enforcement, Teresa Kellerman, Family Resource Center.

61. Id.

pression, drug and alcohol addiction, poor judgment and social naivety may make them vulnerable to exploitation by others. Many will be drawn into co-dependent and abusive relationships as adults. Others will engage in rage and violent outbursts themselves.<sup>62</sup> Some individuals with FAS/ARND may be sexually abused victims and/or perpetrators of sexual abuse. Lack of impulse control and emotional immaturity leads to their development of relationships with younger children.<sup>63</sup> Tribal police should evaluate interaction and assess risk. Individuals with FAS/ARND need structured, secure and supportive environments. Tribal law enforcement must work with parents, caregivers, educators and key members of the community in developing long-term support services.<sup>64</sup> There are no simple answers or quick solutions.

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62. Advocacy for Individuals with FAS/FAE in the Criminal Justice System, Family Resource Institute, 1995, revised 2001.

63. Fetal Alcohol Syndrome Disorders, Fact Sheet for Personnel in Law Enforcement, Teresa Kellerman, Family Resource Center.

64. Id.

# Introduction to the Medical Information for Police Card

Fetal Alcohol And Drug Unit  
Department of Psychiatry and Behavioral Sciences  
University of Washington School of Medicine

&

University of Washington School of Law

*[Http://depts.washington.edu/fadu/legalissues/cardintro.html](http://depts.washington.edu/fadu/legalissues/cardintro.html)*

## Contacts Between FAS/FAE Individuals and the Police

More than half of all individuals with FAS/FAE get in trouble with the law. This is particularly likely to happen when those individuals are adolescents or young adults.

Individuals with FAS/FAE can do themselves considerable harm if they respond to police officers in an inappropriate manner. What individuals with FAS/FAE say or do in the presence of the police can affect whether they are arrested and/or whether they go to prison.

Many of the basic things that non-disabled persons understand about dealing with the police are not grasped by individuals with FAS/FAE.

### The problems that can arise include the following:

- Individuals with FAS/FAE may make potentially incriminating statements to the police. These statements may be about whether they committed a crime, or may be about how serious any misconduct may have been.
- Individuals with FAS/FAE may be persuaded by the police (even inadvertently) to admit to crimes which they did not in fact commit.
- Individuals with FAS/FAE, in order to win the favor of more sophisticated companions or to please the police, may take responsibility for crimes committed by others.
- Individuals with FAS/FAE may consent to searches of themselves or their possessions in circumstances in which non-disabled sophisticated individuals would not.
- Individuals with FAS/FAE may panic during encounters with the police, running away or resisting arrest--thus creating a basis for additional criminal charges and risking harm to themselves and/or to others.
- Individuals with FAS/FAE may say that they understand their legal rights when in fact they do not.

# Text of Medical Information Card

Fetal Alcohol And Drug Unit  
Department of Psychiatry and Behavioral Sciences  
University of Washington School of Medicine  
&  
University of Washington School of Law

## Front of Card:

### MEDICAL INFORMATION FOR POLICE

I have the birth defect Fetal Alcohol Syndrome/Fetal Alcohol Effects, which causes brain damage. If I need assistance, or if you need my cooperation, you should contact the person listed on the back of this card.

Because of this birth defect, I do not understand abstract concepts like legal rights. I could be persuaded to admit to acts that I did not actually commit. I am unable to knowingly waive any of my constitutional rights, including my Miranda rights.

Because of my disability, I do not wish to talk with law enforcement officials except in the presence of and after consulting with an attorney. I do not consent to any search of my person or property.

## Back of Card:

For information or assistance regarding:

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Please contact:

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Doctor or diagnostician:

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faslaw@u.washington.edu  
<http://depts.washington.edu/fadu/legalissues/>

# **Guidance for Individuals with FAS/FAE Regarding Dealing with the Police**

**Fetal Alcohol And Drug Unit  
Department of Psychiatry and Behavioral Sciences  
University of Washington School of Medicine  
&  
University of Washington School of Law**

The type of guidance that should be given to a particular individual with FAS/FAE depends on the severity of his or her disability, as well as on his or her age and general level of functioning.

## **Carry the Card**

All individuals with FAS/FAE should be advised to carry the "Medical Information for Police" cards, and to hand one to any law enforcement official with whom they speak. The most effective way of assuring that the individual with FAS/FAE will do so will vary. In some instances it may be sufficient to repeatedly remind him or her of what to do. Daily inquiries about whether he or she has the cards may be helpful. For other individuals one time or repeated role-playing may be most effective.

## **Hand Card to the Police**

It would not be appropriate to tell all individuals with FAS/FAE that they should never talk to the police. In some situations they need, and should ask for, assistance from the police. On the other hand, in situations in which they may be suspected of a crime, individuals with FAS/FAE should not talk with the police other than to give their names, but instead should calmly request that the police reach the appropriate family member, advocate, or other contact person.

Some individuals with FAS/FAE may not be able to understand the distinction between these two types of situations, or may be unable in practice to evaluate why a police officer is talking to them. If a particular individual is able to understand and act on this distinction, an effort should be made to explain it.

For individuals who cannot draw such a distinction, the parent or other advocate may have to decide whether on balance that particular individual should be advised simply not to talk to the police. That judgment should turn in part on whether, given the individual and local police practice, encounters with the police are more likely to be investigatory or friendly.

It is also important that individuals with FAS/FAE understand that the decision not to respond to police questioning has nothing to do with whether or not they are guilty, or whether or not they need to explain what they have been doing. It is simply to delay the police questioning until a family member or lawyer can be there with them when they are questioned.

## **Stay Calm**

It is important that an individual with FAS/FAE be warned not to panic or overreact in a seemingly frightening encounter with the police. The need for such guidance may depend on the temperament of the individual and on the circumstances in which they are likely to encounter the police.

There are a number of things that individuals should not do when approached by the police: Do not run away, hit the police, resist arrest, or threaten the police.

### **No Searches**

Individuals with FAS/FAE should be advised not to consent to searches of their persons, possessions or homes. Let that decision be made when the family member, advocate, or attorney is present.

### **Diagnosis First**

The determination of whether an individual has FAS or FAE is a difficult one, and should be made by an experienced medical professional. A reliable diagnosis should be obtained before utilizing the "Medical Information for Police" card. The name of the treating or diagnosing physician should be written on the back of the "Medical Information for Police" card.

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September 17, 2001

**MISTAKES I HAVE MADE WITH  
FAS CLIENTS**

**Fetal Alcohol Syndrome and Fetal Alcohol Effects  
In the Criminal Justice System**

*My remarks are tentative and personal. There are probably more mistakes I have made and perhaps I am unaware of them or I choose to remain unaware.*

**IT IS EMBARRASSING TO ADMIT**

It is embarrassing to admit my mistakes. I encourage you to tell me what your experience has been with lawyers' mistakes because you can help me learn even more

My intention here is not just to confess, although this paper clearly is a confession by one lawyer who believes that the Canadian legal system has failed FAS clients. I hope to show in this article that there is hope. We can change how lawyers, clients, police, judges, probation officers, prison guards, and family members work with FAS clients.

**THE LIST OF MY MISTAKES AS A LAWYER**

1. I assumed that both my young offender FAS clients and my adult FAS clients could be helped by using standard terms of Probation Orders in the Provincial Court.
2. I assumed that my FAS clients could tell the Judge what happened in a way that would make sense.
3. I assumed that my FAS clients would be able to demonstrate remorse to the Sentencing Judge.
4. I assumed that after my clients were caught for the third or fourth time for the same offence and in the same set of circumstances that at least they would learn to get caught for either another offence, wear gloves, or not be surprised that they were caught.
5. I assumed that my FAS clients understood the notion of consequences: if you

steal from cars and are caught, you will go to jail.

6. I assumed that my FAS clients understood the notion of time - three days in jail is not the same as three months in jail.
7. I failed to tell my FAS clients the same important lawyer/client advice over and over again. Perhaps I should have handed my FAS clients a typed handout setting out what a guilty plea means and the specific short and long term consequences. I assumed that because we had been to Court many times that my clients would know that they should not interrupt the Crown Prosecutor during a "Show Cause Hearing", correct the Crown Prosecutor's facts and therefore admit that they were there and that they did it.
8. Although I knew the parents of my clients, I failed to discuss with the parents the apparently "crazy" situation. I knew that the parents had had severe drinking problems for years, but I never asked anyone about the home life and I never asked my client about his/her parents' drinking. I never directly confronted the parents about maternal drinking during pregnancy.
9. I was always puzzled and failed to understand that there is a good reason why, in the Pre-Sentence Reports of the Probation Officers, my FAS clients seemed to "shoot themselves in the foot." My FAS clients participated completely and without guile in their Pre-Sentence Reports. I failed to understand that the reason they were so candid, up front, and straight with the Probation Officers was that they did not know how to play the "Pre-Sentence Report" game. My FAS clients were impressionable, suggestible and easily misled and misunderstood. It was easy for the Probation Officers to get them to give the answers that the Crown oriented Probation Officers wanted. My FAS clients did not understand the vocabulary that lawyers, judges and probation officers use everyday. My FAS clients were eager to please. I failed to see that they were speaking against their own interests. A common example was a client's admitting to either drug or alcohol use but failing to mention frequency or context.
10. I failed to consider that there were some offences, in some situations, where I should have considered a Not Criminally Responsible By Reason of a Mental Disease (NCRMD) application. At least I might have begun to gather some neuro-psychological data years ago.
11. I failed to consider breaches of the Canadian Charter of Rights and Freedoms, although I found that most Crown Prosecutors were helpful in reducing the number of the charges. Often there were 13 or 14 separate counts. I never noticed that my clients had long Criminal Records and almost always pleaded guilty. I did not realize that there was a behavior problem at the brain level. I failed to look past the standard phrase "antisocial disorder." I failed to see that my clients were not learning by experience and that a Charter breach from Section 15 Equality Before the Law was something I should have considered. These clients were not

being treated equally and the system had failed to accommodate their special needs. A brain injury by definition makes you a “special needs” person. FAS clients suffer a lifetime of brain injury inflicted by a mother who drank alcohol during prenatal fetal development.

12. I failed to consider a psychological or neurological assessment at any time because my clients seemed so pleasant. My clients did not seem to have any outward signs of psychological difficulties. They did not have any drug or alcohol problems. I failed to consider that there might be something wrong with their brain.
13. I failed to see that behind my clients’ cheery, positive presentation of self lurked another problem. To most judges, police officers, probation people, and other lawyers, my clients did not present themselves as really bad kids. My clients tended to present themselves as first-time offenders who had made some silly one-time “mistake.” The problem was they actually had long Criminal Records for those same “mistakes.”
14. I failed to ask Social Services for records about the family. I never looked at any early medical records for my clients. I never considered looking at any medical records.
15. I failed to note that my FAS clients were usually the number two or number three person involved in the offense, but that it was always my FAS clients that were caught. I did not recognize that there must be a reason that other people initiated the offences and were rarely arrested while my clients were always caught.
16. I failed to see that there was no real escalation in the offenses. The marijuana-to-heroin jump never happened. The auto theft-to-robbing jewelry stores jump never happened. I failed to see that this lack of escalation indicated the lack of a professional criminal element or what I call “real criminality,” characterized by mean, nasty, and cruel behavior. I believe the offenses involved an absolute moment-by-moment “I want, I take” mechanism as opposed to some deeply ingrained refusal to follow rules. My FAS clients did not present as outlaws, but as serial opportunistic criminals - repeaters of first-time offender behavior.
17. I failed to notice that when my clients were telling their story, there were blanks in their memories or parts of the story were just not available. My clients did not remember important facts. My clients did not know the answers to some of my “and then what?” questions. I failed to take detailed written instructions for the offenses because they were so similar and were almost always repetitions of the same facts. Had I asked the clients to write out, in detail, what happened, I might have eventually seen the need for neurological help.
18. I failed to understand the nature of my client’s impulsive activity because they told their stories in an amusing and funny way to both the police officers and me. I failed to look past the client’s rather humorous and engaging presentation of

self.

19. I failed to get written instructions and keep a running file on my Fetal Alcohol Syndrome clients' criminal activity. If I had sat down with them and had them write out their instructions, I might have seen a chance or found some way of getting the message "Don't do this again" to sink in. Nevertheless, I may still be in denial in terms of not understanding the scope of the brain injury. I failed to see that my clients did not understand while they were doing it, that stealing from cars is wrong.
20. I failed to see that jail had no effect on my clients' behavior. The main reason they didn't want to go to jail was that they couldn't be with their friends. If they did go to jail with friends, the experience did not seem to have any impact. On two occasions, one FAS client escaped with his cousin; my client was caught - his cousin remained at large for months.
21. I failed to talk to other lawyers and other probation officers about the particular set of facts that kept reappearing.
22. I never asked one of my FAS clients' mothers directly about alcohol consumption, perhaps out of some sort of misinformed political correctness or perhaps because I was too shy. I didn't want to embarrass the mothers, as many of these women were aboriginal women, who clearly had too many difficulties to begin with. I never asked about alcohol consumption patterns in the home. Quite often, these mothers were in tears when their sons were in jail. I simply did not fully understand the family circumstances.
23. Although I acted for most of the family members, I never sat down and drew out a family tree and tried to figure out who was who and what family member had what particular problem. I never put into place structures that would help my client with follow-through, such as giving the Probation Officer the telephone number of the most dependable relative or putting into place some type of back-up or support system to check on the client in an ongoing way.
24. My FAS clients often did not follow through with basics, like showing up for appointments, being on time, going to the right places, or conducting themselves appropriately. I tried to simplify Probation Orders to make it as easy as possible because I thought my client just could not handle complex orders. My assumption that my clients were not interested or did not care was wrong: they could not structure the pieces of the puzzle together in a logical and meaningful way.
25. I did not understand that this inability to handle complex notions of responsibility and consequences was something I needed to consider. I should have asked myself, "Is he getting a fair trial?" I failed to ask, "Why all the guilty pleas?" I failed to consider "fitness for trial," because to the outside world, they seemed okay. For example, although one client had only an eighth-grade education, he played basketball, and he seemed to be one of those kids who just did not like school. I

failed to look at the whole person in the context of Fetal Alcohol Syndrome and criminal Courts.

26. I failed to sit down and write out all of the various excuses my FAS clients gave for the various offences. Had I taken the time to write down and study the 10 or 15 excuses, I would have recognized the need for professional help. Instead, I kept treating each offense in isolation, not understanding that it was the same crazy offense over and over again, with outlandish rationalizations, or simple-minded explanations.
27. I failed to see that often within the aboriginal community, aunts distantly related to my FAS clients understood there was a problem and instinctively took care of my clients for various periods of their lives. It was during those periods of intense supervision that my FAS clients were crime-free. However, as soon as that supervision went away, leaving my clients alone, it was predictable that they would return to familiar criminal behavior.
28. I did not notice that constant supervision by an appropriate parental authority corresponded to a lack of crime. I never understood that there was an impulse control problem, even though almost all of the crimes were related to acquiring household goods or getting immediate pleasures, as opposed to crime requiring any sophisticated planning or violence. There were, of course, some exceptions.
29. I failed to see that my clients were not competent thieves. They did not plan. They were opportunistic and impulsive. For example one client spent ten minutes breaking into a car, while being observed by the police.

### **THE BIGGEST MISTAKE**

The biggest mistake I have made as a lawyer regarding dealing with clients who suffer from Fetal Alcohol Syndrome was my lack of political awareness.

I am now aware that the list of my mistakes is going to cost my clients time - time spent in jail. My clients are paying for my mistakes.

It is my opinion that the Government of British Columbia is complicit in my clients' criminalization. The British Columbia Government is criminalizing the mentally compromised. My clients are as brain-injured as victims of Strokes or Alzheimer's Disease.

The Government refuses to recognize Fetal Alcohol Syndrome as the single biggest cause for jail overcrowding and overloaded probation officers, overworked judges, and overworked prosecutors.

### **THEY ARE LABELED ANTI-SOCIAL**

I failed to see that if my clients were old, with Alzheimer's Disease, instead of 20 years old, male and with a long Criminal Record, they would be getting many services. Instead they are

labeled as “anti-social” and sent to jail.

### **THE FIRST STEP**

This paper argues for systemic change. This paper hopes to persuade you, the reader, that the first step in preparing for Court is securing an Assessment for Fetal Alcohol Syndrome by doctors trained in assessing Fetal Alcohol Syndrome. This is available, at present, only at the Asante Centre in Maple Ridge, British Columbia, which specializes in Fetal Alcohol Syndrome Assessments. Fetal Alcohol Syndrome Assessments are not available anywhere else in British Columbia, although they are readily available in Seattle, Calgary and Edmonton.

### **I AM NOW APPLYING**

As a lawyer, I am now applying to the Provincial Court for an Order pursuant to Section 723(3) of the Criminal Code of Canada that the British Columbia Government, specifically the Minister of Health or the Attorney General to pay for the Asante Centre to prepare a Fetal Alcohol Syndrome Assessment.

### **EVERYONE NEEDS TO KNOW**

My client is going to jail. Lawyers, police, corrections officials, probation officers, the family, and, most of all, the clients need to know about Fetal Alcohol Syndrome and how Fetal Alcohol Syndrome has affected my client. The B.C. Government refuses to pay for a Fetal Alcohol Syndrome Assessment. The Legal Services Society also refuses to pay for a Fetal Alcohol Syndrome Assessment. This is wrong. I hope a Judge will order that the Attorney General pay for such a needed procedure. Forensic Psychiatric Services admits that its medical staff have no specialized expertise in the area of Fetal Alcohol Syndrome.

### **THE PROCESS OF MY EDUCATION**

The process of my education has been an accelerated and sad learning curve. Unfortunately, my clients suffered because I had to learn the hard way. My clients did not have a proper Fetal Alcohol Syndrome Assessment because I failed to consider it some six years ago.

Will I see these clients again? I am certain of it. It is my hope that a routine assessment for Fetal Alcohol Syndrome is made for each new client who enters the criminal justice system. An assessment done today will cut down on repeat crime, save money for the judicial system, and save years of heartbreak for the families.

*David Boulding*

Presiding Superior Court Judge Michael L. Jeffery  
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### **Suggestions for more user-friendly court hearings**

Barrow has about 4,500 people. It's the farthest north community in the United States. The Barrow court serves an area about half the size of California, with a population of about 10,000 people. Most of the population is Inupiaq Eskimo, but there are a large number of other racial and cultural groups, too. These suggestions are offered in a spirit of humility, knowing that there are many different kinds of courts, different types of cases and different amounts of time available for each case. These thoughts are personal to me: they are not an official position of the Alaska Court System.

- Realize that a person who appears to understand everything, and even says they understand, may not. There may be language problems and cultural misunderstandings about the justice system. There may be mental conditions like Fetal Alcohol Spectrum Disorder in which (for example) a young adult in his or her 20's actually has the ability to understand of an elementary school student.
- Slow down and check in with a person during an explanation of rights or similar hearing to make sure that the person knows what is going on. Pauses are probably necessary between different major points just to make sure the concepts sink in. When questions are being asked, pauses may be necessary for the person to respond in a manner that is comfortable and that will allow sharing of information that the person wants to say.
- Consider using visual aids, such a writing on large sheets of paper or on a wipe on/wipe off board. I don't use this system in every hearing, but when it seems important, I don't hesitate to do so. I stand up, move around, and write symbols or subject headings. I notice that the person involved in the hearing seems to focus really well on what's going on. I also notice putting some things in writing does not lengthen the hearing.
- Be sensitive to your own cultural biases. Someone may not look at you directly. It may be the person is ignoring you. But, in that person's culture, it may be a sign of respect. Some shy persons dealing with justice system personnel in this part of Alaska may raise their eyebrows to indicate "yes." Though not saying anything, they are responding to the question. Saying "he let me do something" might mean the other person allowed it to happen or it might mean that the other person forced it to happen.

- Do not assume that the attorneys involved have had the time to explain what is needed to their clients in a way that the client can understand. There may have been a lack of time or a lack of understanding of a client's mental conditions (such as FASD). I believe that it's the judge's responsibility to make sure the persons involved in the hearing understand what happened.
- Where possible, use plain English in what is said and what is written. Written forms should have places for a defendant or juvenile to initial so that the person focuses on each portion of the form. Concrete language is best. Having "white space" and easy to read type is helpful, even if it uses more paper! We need to avoid having the whole experience being a "blur" of words.
- When appropriate, check in with the lawyer's client about their personal schedule when setting a court hearing. The convenience of the judge and attorneys may not coincide with other factors like making sure that a child's hearing occurs after the school day.

Bottom line: the goal of timely judicial decision making ("moving cases") must not displace having respect for the individual needs of people involved in the justice system to understand what is happening.



**Bottom line:**  
*the goal of timely judicial decision making ("moving cases")  
must not displace having respect for the individual needs  
of people involved in the justice system  
to understand what is happening.*

# **FAS in the Court System—What works?**

Prepared by Teresa Kellerman, Fasstar Enterprises <http://www.fasstar.com>

## **1. ASSESSMENT**

- Recognition of FAS/ARND as the core problem, before alcohol or other substance abuse.
- 90% of these individuals have not yet been diagnosed with FAS/ARND. Symptoms are sometimes subtle.
- Evaluation tools - ones that reveal true functional abilities (Vineland, Woodcock Johnson, etc.)

## **2. EDUCATION**

- All persons on the team need to be trained in FAS/ARND issues.
- The individuals benefit from understanding the nature of their disabilities. "I'm not a bad person, it's just my brain that can't work right."
- Educate the community for added external support
- FAS is not an excuse, it's an explanation.

## **3. PROBATION**

- Intense supervision.
- House arrest
- Structure and routine
- Concrete, simple rules.
- Reasonable expectations based on social development (6 yrs old)
- Accountability and responsibility - might not be capable without help
- Frequent contact from P.O.
- Involvement with family (if not using)
- Surrogate family, if necessary

## **4. THERAPY**

- Need parent figures
- One-on-one
- Mentor/coach
- Extended family (if not using)

## **5. SANCTIONS/INCENTIVES**

- Sanctions might actually be incentives (provides structure and routine and security)
- Need to be immediate and relevant (next week is too late)
- Don't expect them to learn from sanctions
- Incentives might not be motivating
- Be creative

## **6. SUCCESS**

- Removal of supports will invite failure
- Ongoing support is needed - indefinitely
- Close follow-up
- Find talents and build on these for success

## SCREAMS - Seven Secrets to Success with FAS in the Court System

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**Structure:** Daily routine; Unchanging schedule; Concrete rules; Simple step directions. Kids and adults with FAS often do well in prison, because of the structure and routine. They can cope with this much better than the responsibility of probation and independence, which they can't handle.

**Cues:** Memory deficits indicate a need for constant reminders, especially for rules, appointments, and medications. Rules need to be reviewed daily. Strategies for problem may require repeated rehearsals. Visual cues such as charts and picture signs are helpful.

**Role models:** 1) Parents and siblings; 2) "Peers"; 3) Media personalities. What doesn't work: Telling them what to do; Insight therapy once a week. What works: Mentors; Coaches; One-on-one staff; Role playing healthy situations; Re-programming through practice and repetition.

**Environment:** Arrest feels like physical assault; Push-shove = might fight back; Shuffled off in crowded wagon; Handcuffs feel painful; No meds = withdrawal; Lights and noises = overload

**Attitude of others:** We need to think in terms of "brain damage" - They are victims before they are perpetrators. Adjust your expectations to developmental level of 6-year-old. Try to work differently rather than harder. If they keep repeating the same crime, and you keep putting him back in jail, it's not working. Be sure everyone on the team receives training in FAS/ARND.

**Medication:** With "simple" FAS/ARND, a combination of a stimulant plus an SSRI may work best. Often there are other mental health issues that require different meds. There are hundreds of combinations that might work. It takes time (2-3 months) and patience to find what works for each individual. The right meds can restore limited control over behavior.

**Supervision:** Goal for our children: Independence and Freedom to follow their dreams. For people with FAS/ARND, their freedom and independence leads to making decisions that place themselves and others in danger. Freedom for FAS can lead to mental institution, prison, homeless on the streets, hospital, morgue. Where is the freedom?

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*ARND is more serious than FAS. The adolescent who looks normal and appears to be bright may be the child at highest risk. 90% of the time, the disability goes unrecognized, undiagnosed, and untreated. Of all adults with FAS/ARND, 23% have attempted suicide; almost half of them contemplate suicide. Most suffer from clinical depression. Many have dual diagnoses. The buzz word in the disabilities community is "Self Determination." For people with FAS/ARND this actually becomes "Self Termination."*

## FAS/ARND Screening Checklist for Tribal Justice System Personnel\*

- |                          |   |                          |  |
|--------------------------|---|--------------------------|--|
| <input type="checkbox"/> | Superficial bonding to family members/caregivers  | <input type="checkbox"/> | Consistent discipline does not work, disregards consequences of discipline   |
| <input type="checkbox"/> | Lies to family members/caregivers, tries to manipulate family members caregivers                | <input type="checkbox"/> | Takes actions that are unsafe for self and/or others   |
| <input type="checkbox"/> | Minimal impulse control   | <input type="checkbox"/> | Denies responsibility for inappropriate and/or illegal behavior  |
| <input type="checkbox"/> | Lives in the moment, seeks immediate gratification<br>Ignoring long-term impacts                | <input type="checkbox"/> | Exhibits childlike innocence despite repeated offenses   |
| <input type="checkbox"/> | Difficulty associating behavior with consequence  | <input type="checkbox"/> | Poor social skills; few, if any long-term friends  |
| <input type="checkbox"/> | Hyperactive in non-goal directed activities   | <input type="checkbox"/> | Requires constant supervision  |
| <input type="checkbox"/> | Exhibits rage, volatile behavior, and/or violent outbursts                                      | <input type="checkbox"/> | Seriously impaired executive function, or impaired higher-order processes of the brain enabling planning, and sustaining behavior towards a goal |
| <input type="checkbox"/> | Long-term intangible rewards (grades) do not motivate toward improvement                        | <input type="checkbox"/> | Erratic performance in same situation/circumstances  |
| <input type="checkbox"/> | Extreme vulnerability to peer pressure  | <input type="checkbox"/> | Thinks of self first and foremost, egocentric  |
| <input type="checkbox"/> | Does not understand the need for rules, believes that there is always an exception to the rules |                          |  |

\* Adapted from *Advocacy for Individuals with FAS/E in the Criminal Justice System*, Family Resource Institute, 1995, revised 2001.