



# Fetal Alcohol Spectrum Disorder and the criminal justice system: A systematic literature review☆



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## 1. Introduction

### 1.1. Fetal Alcohol Spectrum Disorder

Fetal Alcohol Spectrum Disorder (FASD) is a term used to describe a range of neurodevelopmental deficits that can occur as a result of prenatal alcohol exposure (PAE) (Chudley et al., 2005). Individuals with FASD may

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present with a wide range of difficulties including impairments in memory, attention, visual–spatial abilities, executive functioning, processing speed, intelligence, academic achievement, language, and social-emotional and behavioural functioning (Mattson, Crocker, & Nguyen, 2011; Mattson & Riley, 1998; Olson, Feldman, Streissguth, Sampson, & Bookstein, 1998). Prevalence estimates range from 1 to 5% in North America and the Western world (May et al., 2009; Stadel et al., 2009), and even higher in other parts of the world (Lange et al., 2017).

FASD is often associated with significant postnatal environmental adversity. For instance, children with FASD and PAE are overrepresented in the foster care system (Lange, Shield, Rehm, & Popova, 2013) and are at risk for living in multiple placements (Smith, Johnson, Pears, Fisher, & DeGarmo, 2007). These children are also at risk for experiencing maltreatment such as physical and sexual abuse, neglect before the age of 6 years (Smith et al., 2007), as well as malnutrition (Fuglestad et al., 2013). Possibly reflecting the dual impact of the cognitive impairment and environmental adversity faced by individuals with FASD, high rates of negative outcomes are reported for this population. Specifically, disruptions in education, substance use problems, inappropriate behaviours, trouble with the law, and incarceration are reported for this population in numbers much greater than typically expected (Streissguth et al., 2004). Individuals with FASD may also experience elevated rates of addiction, difficulty maintaining stable living arrangements and employment, and mental health disorders (Pei, Denys, Hughes, & Rasmussen, 2011; Streissguth, Barr, Kogan, & Bookstein, 1996).

FASD is a lifelong condition, and can have a large economic impact. The estimated cost associated with caring for one individual with FASD across the lifespan is \$1.1 million in Canada (Thanh & Jonsson, 2009), attributable in large part to health and justice system contact (Popova, Lange, Burd, & Rehm, 2016). Although it is believed that intervention research can provide answers for treating specific challenges and ameliorating negative outcomes for individuals with FASD, the literature examining the effectiveness of interventions with this population is limited (Burd, 2007; Premji, Benzies, Serrett, & Hayden, 2007).

## 1.2. FASD and the justice system

Involvement in the criminal justice system has increasingly emerged as a negative outcome for some individuals with FASD, garnering public, policy, and academic attention. To address this issue, several countries have begun to examine ways in which legislation or policy development can be shaped to better respond to this complex group. In 2010 and 2013, the Canadian Bar Association (CBA) passed resolutions calling on all levels of government to “allocate additional resources for alternatives to the current practice of criminalizing individuals with FASD,” (CBA, 2010) and to “improve access to justice” and accommodate FASD (CBA, 2013). The American Bar Association (ABA, 2012) also passed a resolution in 2012 to support the “passage of laws, and adoption of policies at all levels of government” to better address the needs of those with FASD.

A Consensus Development Conference held in Canada in 2013 brought together hundreds of participants and expert witnesses to focus on legal issues associated with FASD. The expert jury heard testimony, deliberated, and generated dozens of recommendations for reforms in policy and practice, and established the consensus that further evidence is needed (Institute of Health Economics, 2013). Efforts to change the Canadian justice system have also been pursued in the form of amending the Criminal Code, although no bills have been successfully passed to date. The most recent, Bill C-235, was introduced in 2016 to establish FASD as a mitigating factor in sentencing and also grant power to judges to order assessments of individuals suspected to have FASD through expedited processes. Extending beyond these initiatives, the *Truth and Reconciliation Commission of Canada* (2015) released numerous calls to action related to the ongoing impacts of

colonialism and residential schools on Indigenous populations, two of which focused specifically on FASD: one on prevention and the other on justice reform.

## 2. Current study

### 2.1. Rationale

Offenders with FASD and PAE are believed to be overrepresented in correctional settings, however consistent national prevalence rates of FASD in the criminal justice system are currently not available. Research interest has fostered efforts to shape judicial responses, treatment, and policy development to more closely examine this population and to best reflect their needs, but it is not known whether or how strongly interventions and reforms are grounded in empirical evidence. Whether seeking to amend laws or improve our capacity to meet the needs of clients with FASD, one thing is clear: the global interest in addressing the issues of FASD in the justice system is steadily on the rise. With this heightened attention comes further need to understand the existing evidence to support changes in policy and practice, and to have a clear evidence-based platform on which to guide these changes. In the absence of such evidence, it is possible that changes could not only prove to be ineffective, but may even lead to unanticipated negative outcomes.

### 2.2. Objectives

The objective of this article was to provide a systematic global overview of the available evidence relevant to individuals with FASD or PAE who are involved in the criminal justice system. A further aim was to support discussion of ways in which moving forward can incorporate an evidence-based foundation and to demonstrate how evidence in this area might help direct effective programming to best support individuals with FASD, with impacts extending across sectors. The specific goals were to gather, review, and summarize peer-reviewed research; integrate key findings and themes; discuss the implications of research for policy-makers and practitioners; and identify gaps and limitations in the research. Although there are many important issues related to FASD in the broader context of the justice system (e.g., criminalization of drinking during pregnancy, FASD and family law, litigation against liquor companies, etc.), the scope of the current review was limited specifically to evidence about individuals with FASD and PAE engaged in the criminal justice system.

## 3. Method

To conduct this review, we followed the guidelines described by the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) (Moher, Liberati, Tetzlaff, & Altman, 2009), and registered this study with the PROSPERO international prospective register of systematic reviews (CRD42016053827).

### 3.1. Eligibility criteria

Our preliminary review identified articles that included:

1. human research related to FASD or PAE, and
2. research related to formal criminal justice system involvement

Articles were excluded if they focused on the criminalization of drinking during pregnancy, family law, or child welfare/custody. Articles related to delinquent behaviour rather than formal justice involvement were also excluded. Articles were then reviewed in more detail to determine whether they:

3. had undergone formal academic peer review, and
4. offered new empirical data to the state of the evidence.

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