THE ADVOCATE'S GATEWAY

TOOLKIT 22

Planning to Question Someone with Fetal Alcohol Spectrum Disorder FASD

August 2026

The Advocate's Gateway toolkits provide practical, evidence-based guidance for communicating with vulnerable witnesses and defendants. This toolkit is guidance, not legal advice.

Contents

1 Introduction

1. This Toolkit brings together policy, research and guidance relating to definitions of Fetal Alcohol Spectrum Disorder (FASD), how FASD can affect communication, and what should be done to facilitate effective participation of an individual with FASD in the court process. It also includes examples of good practice.
2. FASD refers to a spectrum of closely related neurodevelopmental conditions resulting from prenatal alcohol exposure (PAE). When a foetus is exposed to alcohol, it can lead to irreversible damage to the brain and body of the impacted individual, leading to FASD.
3. FASD can cover a wide spectrum of impairments, and many individuals with FASD may also have co-occurring conditions, and, in these cases, reference should be made to other relevant toolkits alongside this one.
4. The current Toolkit provides a range of guidance which can support those with FASD in the courtroom. Information about an individual's specific capabilities or condition is essential and, if not supplied, should be requested.
5. As noted, the guidance in this Toolkit is not intended to replace a communication assessment by a Registered Intermediary (see Toolkit 16: Intermediaries: Step by Step). In this Toolkit, the term 'Registered Intermediary' is used, although other intermediary roles, such as Approved Intermediaries, also exist. This Toolkit consolidates current policy, research and guidance on how FASD may affect communication in court. It offers general recommendations for mitigating the challenges to participation - including understanding, communication and interaction - that individuals with FASD may experience in legal contexts.

2. SUMMARY

6. FASD is a 'spectrum' of impairments, and no two individuals will have the same profile. An individual may have a high IQ and be articulate and live independently, but still have no grasp of planning and consequences of behaviour, resulting in problems with the law; while another may have a low IQ, sensory issues and be unable to live independently. Others may have a combination of strengths and impairments, often described as a 'spiky profile.'
7. Despite significant impairments, individuals with FASD frequently appear capable, informed, and competent and do not always show outward signs of impairment. In fact, those with FASD may display what is referred to as 'superficial talkativeness.' On a superficial level, they can engage in conversation; however, when asked more in-depth or abstract questions, it becomes obvious that they do not really understand what is being asked or happening.
8. A lack of obvious symptoms can result in professionals misconstruing individuals with FASD as lazy, manipulative, or non-compliant. Conduct may be viewed as deliberate and malicious rather than recognising that FASD-related brain impairments can directly contribute to such behaviours.
9. Despite growing awareness of FASD, witnesses and defendants living with FASD may not always be recognised as having the disorder, potentially putting them at a substantial disadvantage in the criminal justice system (CJS). FASD is often underdiagnosed or misdiagnosed (Popova et al., 2016).
10. There is limited understanding among professionals of how FASD can contribute to offending behaviour (Gilbert et al., 2021). Research has shown that the difficulties experienced by people with FASD in justice systems can be exacerbated when legal, judicial and forensic professionals fail to recognise and accommodate the complexities of the disorder (Flannigan et al., 2018).
11. Research has shown that 60% of individuals born with FASD could experience problems with the law at some point during their life due to complications of FASD (Streissguth et al., 1996). Individuals with FASD are 19 times more likely to encounter the CJS. International research shows that the prevalence of individuals within the CJS may be as high as 46% (Mela et al., 2022).
12. Legal and justice professionals are in a unique position to identify individuals living with FASD and to protect their legal rights (Brown et al., 2024).
13. Individuals with FASD have many strengths. They may be talented musicians, artists or sports people, proficient public speakers with wide vocabularies, and are often said to be highly resilient, good-natured, determined, and hard-working (Flannigan et al., 2021). With the right kind of support, especially from a young age, outcomes for individuals with FASD can be positive.

3. WHAT IS FETAL ALCOHOL SPECTRUM DISORDER?

Definition

14. Fetal Alcohol Spectrum Disorder (FASD) is a diagnostic term which refers to a spectrum of disorders resulting from brain and central nervous system damage caused by prenatal alcohol exposure.
15. It is a lifelong disorder that can cause a range of difficulties including:
    a. cognition (intelligence, attention, short- and long-term memory),
    b. executive function (inhibition, working memory, sustaining attention, ability to adapt to changing situations and decision making),
    c. adaptive function (social communication, personal independence and daily living skills), and
    d. self-regulation (ability to regulate mood and emotions).

Diagnosis

16. The United Kingdom (UK) follows the Scottish Intercollegiate Guidance Network (SIGN) Guidelines adopted by the National Institute of Health and Care Excellence in England in 2022 (SIGN, 2019).
17. Assessments are made of ten neurodevelopmental areas noted below:
    - Affect regulation
    - Brain structure
    - Academic achievement
    - Cognition
    - Adaptive function
    - Social communication
    - Executive function
    - Attention, language
    - Memory
    - Motor skill
18. A diagnosis is made using one of the three outcomes below:

Table 1: UK Diagnostic Guidelines (SIGN, 2019)

Diagnosis of FASD with sentinel facial features • Simultaneous presentation of the three sentinel facial features (short palpebral fissures, smooth philtrum and thin upper lip) • PAE confirmed or unknown • Evidence of severe impairment in three or more of the ten neurodevelopmental areas of assessment, or microcephaly in infants and young children
Diagnosis of FASD without sentinel facial features • Confirmation of PAE • Evidence of severe impairment in three or more of the ten neurodevelopmental areas of assessment
At risk for neurodevelopmental disorder and FASD associated with prenatal alcohol exposure • Confirmation of PAE • The criteria for severe impairment in three or more neurodevelopmental areas are not met, but there is evidence of a neurodevelopmental disorder and a plausible reason why assessment did not establish significant impairment (for example, because the person was too young or the assessment was incomplete)

19. Advocates should be aware that some individuals may have been diagnosed using older terms such as:
    - Fetal Alcohol Syndrome (FAS)
    - Alcohol-Related Neurodevelopmental Disorder (ARND)
20. Whilst every person with FASD will have a unique profile of both strengths and challenges, Figure 1 below indicates some of the possible outcomes resulting from PAE.

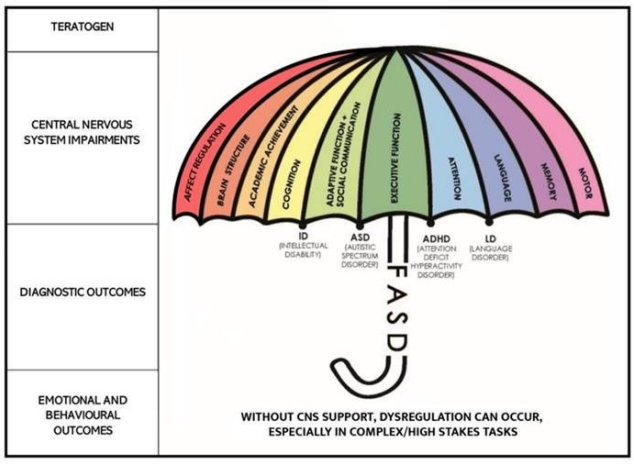

Figure 1: Possible diagnostic outcomes resulting from PAE

21. Despite the recent NICE quality standard 2022, rates of diagnosis remain low and advocates may well be acting on behalf of many clients with FASD who do not have a formal diagnosis.
22. Advocates should also be aware that FASD is often considered an 'invisible' disorder as many children do not exhibit physical differences and even where present, features can lose their distinctiveness as an individual grows older (Spohr et al., 1993; Streissguth et al., 1991).

Prevalence of FASD

23. The average global prevalence of FASD is estimated to be around 1%. In some countries such as the UK, Canada, the United States and Australia, the prevalence rate may be closer to 5% or one in 20. The UK is estimated to have the fourth-highest rate of alcohol consumption in pregnancy in the world at over 41%.
24. FASD may be more common in the UK than Autism Spectrum Disorder (ASD) (Schölin et al., 2021). A study in Greater Manchester by the University of Salford estimated FASD prevalence at 1.8–3.6% of the population, equating to 1.2–2.4 million people in the UK (McQuire et al., 2019).
25. FASD can be more common in certain parts of the population. International evidence reviews place the prevalence of FASD in children's social care settings, such as foster care, higher than the general population (Popova et al., 2019).
26. Studies in the UK have reported prevalence amongst looked after children to be 34% (Gregory et al., 2015) with one study reporting 58% of its cohort of looked after children at a moderate or high risk of PAE (Dawson et al., 2025).
27. Recent research has also reported that FASD occurs among children involved in the juvenile justice system up to 40 times more than the general population (Flannigan et al., 2018).
28. Further, a global systematic review suggests that those with FASD are 19 times more likely to have formal involvement as defendants in the CJS (Popova et al., 2019). Studies have reported prevalence rates in forensic settings of up to 31% in Canada (McLachlan et al., 2019), and 36% in Australia (Bower et al., 2018).
29. Given these prevalence rates, legal and justice professionals are likely to encounter youths and adults impacted by FASD on a regular basis.

Co-occurring Conditions

30. FASD is often not the primary diagnosis given to a defendant or witness because historically there has been no clear and accessible diagnostic pathway. As an aetiological condition, FASD is associated with approximately 428 co-occurring conditions (Popova et al., 2016) and can be both underdiagnosed and commonly misdiagnosed as other conditions, further contributing to its 'invisibility'.
31. The advocate is more likely to act on behalf of a client with FASD whose formal diagnosis is ASD, ADHD or a learning disability or learning difficulty (or a combination of these). This does not mean the person does not have FASD; rather FASD may have been simply overlooked or misdiagnosed.
32. Compared to the general population, an individual with FASD is 10 times more likely to have ADHD, 20 times more likely to engage in substance misuse, and 25 times more likely to be diagnosed with a psychotic disorder (Popova et al., 2016; Weyrauch et al., 2017).
33. Higher rates of co-occurring mental health disorders, suicide and addiction have been reported among individuals with FASD (Flannigan et al., 2022; Popova et al., 2016). Generally, compared with ADHD, FASD is associated with more severe and complex impairments (Greenspan et al., 2021) and is less likely to respond to conventional behavioural interventions.
34. Should an advocate or Registered Intermediary be concerned that a person has any of the following conditions, the following toolkits are relevant:
    - Toolkit 3 (Planning to question someone with Autism)
    - Toolkit 4 (Planning to question someone with a learning disability)
    - Toolkit 5 (Planning to question someone with a Hidden Disability)
    - Toolkit 10 (Identifying Vulnerability in Witnesses)
    - Toolkit 12 (Planning to Question Someone with a Suspected or Diagnosed Mental Health Disorder)
    - Toolkit 15 (Witnesses and Defendants with Autism); and
    - Toolkit 17 (Vulnerable witnesses in Civil Courts).
35. In addition, advocates and Registered Intermediaries should refer to and draw upon the 20 Principles of Questioning (Cahill, Lamb, & Wheatcroft, 2022), as well as the Equal Treatment Bench Book, July 2024 (February 2026 update).

Environmental Adversity

36. Individuals with FASD experience extremely high rates of both pre- and post-natal adversity from early on in life, including poor prenatal care, exposure to other substances, and pre-term birth (Price et al., 2017; Tan et al., 2022).

37. There is considerable evidence that youth with FASD are more likely to experience numerous adverse childhood experiences as well as early life adversity (Flannigan et al., 2021; Price et al., 2017) in addition to lack of family support, a known protective factor against justice system involvement (Pei et al., 2016).

FASD Awareness

38. Despite the over-representation of individuals living with FASD in the CJS, the symptoms of FASD often remain undetected, undiagnosed and misunderstood by professionals in the legal system, leaving those with FASD extremely vulnerable in justice system settings.
39. The vast majority of defendants with FASD have not been formally recognised by the CJS (Allely & Gebbia, 2016). Burd et al. (2004) reported that only one out of 3,080,904 imprisoned individuals in their study had been previously diagnosed as living with FASD. Similarly, McLachlan et al. (2019) found that 86% of justice-involved participants in their study had not been previously diagnosed with FASD.
40. It is increasingly recognised that there is a need for greater knowledge and awareness of FASD amongst professionals (Gilbert et al., 2021) as well as better identification of systems-level barriers, including delayed diagnosis and lack of services.
41. Research has shown a significant lack of understanding and awareness of FASD amongst legal professionals, judicial officers, as well as forensic mental health clinicians (McLachlan et al., 2020). Failure to accurately identify and support an individual with FASD can lead to a range of legal issues, including miscarriages of justice (such as false confessions and wrongful convictions), inappropriate sentences and difficulties in complying with probation orders. Research has shown the increased vulnerability of individuals with FASD in prison to victimisation (Weir, 2023) and difficulties in complying with prison rules and routines (Day, 2022).
42. Early and accurate diagnosis can improve the accuracy of fitness to plead and culpability decisions and contribute to fairer sentencing outcomes.

Summary of Indicators of FASD

43. The following is a summary of possible indicators of FASD. These are only possible indicators, and not all need to be present for FASD to be suspected.

Table 2: Indicators of FASD derived from the Centers for Disease Control and Prevention

Physical indicators • Challenges with memory and attention • Low birthweight, smaller head size, shorter stature and/or lower body weight • Medical problems affecting, for example, the heart, kidneys or bones • Language and speech delay • Limited comprehension, learning disability, lower IQ, intellectual disability or developmental disability • Motor deficits or poor coordination • Facial-feature differences, including a smooth philtrum and small eyes • Sight and/or hearing impairments • Unusual sleeping patterns or disturbances
Behavioural and psychological indicators • Limited adaptive functioning • Sensory differences • Co-occurring psychological diagnosis, often ADHD, anxiety, depression or conduct disorder • Hyperactivity • Impulsivity, difficulty linking cause and effect, and/or poor judgement • Difficulty with school or work performance and managing appointments • Easily manipulated and poor social skills • Sexualised or otherwise inappropriate sexual behaviour • Attachment difficulties
Environmental indicators • Raised by someone other than biological parents • A biological parent who is deceased • School failure • Criminal justice involvement • A history of physical and/or sexual abuse or victimisation • A history of neglect or maltreatment • Poverty or lower socioeconomic status • Dependent living • A history of psychiatric institutionalisation • A history of alcohol or substance use, or a biological caregiver with an alcohol or substance use disorder

Table 2 is reproduced with kind permission from Dr Jerrod Brown (Brown et al., 2024, p. 7).

44. Within the context of a court setting, some possible indicators of FASD are listed overleaf (Table 3).

Table 3: Indicators of FASD in a court setting

Indicator	Description
Desire to please	Predisposed to chattiness, compliance, and gullibility

Decision-making	Impulsive and inconsistent decision-making (e.g., waiving of legal rights)
Memory problems	Proneness to short- and long-term memory deficits, suggestibility, confabulation, and false confessions
Social awkwardness	Social inappropriateness (e.g., laughing or smiling at unseemly topics), poor interpersonal boundaries, perceived immaturity, and verbal and nonverbal communication skills deficits
Sensory sensitivities	Exacerbated negative behaviours in response to sensory perception issues
Affect	Flat affect, no remorse, or lack of understanding the severity of offence
No perceived gain from crime	Illogical, offensive behaviour or conduct

Table 3 is reproduced with kind permission from Jerrod Brown, Amy Jozan and Megan Carter (Brown et al., 2024).

45. Relative to the general population, individuals living with FASD, diagnosed or undiagnosed, are more likely to experience impairments affecting abilities needed to successfully navigate legal processes. These may include a lack of legal knowledge and understanding as well as ability to assist in their defence.

46. Once involved in the justice system, individuals living with FASD may appear to act unpredictably or recklessly during legal proceedings, seem unwilling to meet probation requirements, or be unable to follow rules whilst imprisoned. The acronym ALARM can help practitioners check for prominent signs of vulnerability in people with FASD.

A	daptive behaviour
L	anguage
A	ttention
R	easoning
M	emory

Screening Tools

47. FASD screening can help professionals across the CJS to improve recognition and awareness of individuals with FASD. It can offer a resource-efficient way to identify individuals who may benefit from further diagnostic assessment as well as supports and adjustments (Jewell et al., 2024).

48. Advocates should keep in mind that an IQ assessment or measurement of facial features (defined in Table 1 above) is not sufficient to identify the capacity to adequately participate in a legal process, and expert assessment should be sought where FASD is suspected.

49. Where an advocate suspects an individual may have FASD, a number of screening tools are available. Some assessment tools require minimum qualification requirements to administer and interpret; it is the responsibility of the professional to ensure that they are suitably qualified to administer a tool.

50. A number of tools are noted below.

- The Life History Screening Tool is useful to identify the presence of background history factors that may be 'red flags' for FASD (Grant et al., 2013).
- The Brief Screen Checklist and its revised version designed for incarcerated adults may flag potential FASD cases (MacPherson et al., 2011).

- For youth probation contexts, the Screening and Referral Tool includes a 10-item checklist to guide referrals for diagnostic assessment (Conry & Asante, 2010).
- Additional instruments include the Fetal Alcohol Behavior Scale, which demonstrated alignment with FAS/FAE profiles among adult inmates (Streissguth et al., 1998), and the Functional Screening Tool and Quick Functional Screening Tool, which show promising sensitivity but limited specificity in correctional settings (Kerodal et al., 2021).
- The Brief Screen Index has been piloted but revealed minimal differentiation between diagnosed and non-diagnosed individuals (Kerodal et al., 2021).
- Other approaches, such as the FASD Risk Assessment Questions, have yielded high specificity but low sensitivity (McLachlan et al., 2020).
- Tools like the Risk Factor Matrix and Expert Panel Screening Tool have demonstrated moderate predictive utility in youth justice programs (Chudley et al., 2018).

4. THE IMPACT OF FASD IN THE COURTROOM

51. The following section discusses potential impairments in more detail and provides recommendations and good practice examples.
52. A brief overview is provided in Table 4 below.

Table 4: Overview of affected neurobehavioral functioning

Area	Possible effects
Intellectual functioning	IQ may range from low to high; developmental maturity may be below chronological age.
Executive functioning	Difficulties with planning, organisation, daily living, impulse control, inhibition, risk awareness, judgement, cause and effect, abstract thinking, visual-spatial reasoning, chronology and timescales.
Memory, attention and processing	Difficulties with visual and verbal memory, short-term recall, working memory, attention and processing information.
Adaptive functioning	Difficulties with social communication, participation and perspective; emotional immaturity.
Self-regulation	Difficulties regulating mood and behaviour; aggression, anxiety and sensory-processing impairments.
Communication	Expressive ability may mask impaired receptive understanding; vulnerability to confabulation, suggestibility, compliance and acquiescence.

Intellectual Disability

53. FASD is the largest known cause of intellectual disability in the world (Greenspan & Novick Brown, 2022) and those with FASD may function at the intellectual and developmental capacity of someone much younger than their chronological age.
54. The FASD population is an exceptionally heterogeneous and complex group, with varying life experiences, clinical profiles, and levels of functional ability (Flannigan et al., 2018).
55. Many individuals with FASD have an IQ in the low-average range (70–85) and some have a higher IQ. This means that individuals with FASD often do not meet the formal (clinically defined) criteria of 'learning disability' in the UK where, according to the NICE Guideline 2015, IQ must be lower than 70 (see also Toolkit 4: Planning to Question Someone with a Learning Disability).

56. An individual who does not meet the medical definition of disability under NICE guidelines may still have a disability under the Equality Act 2010 (EA 2010), because the legal definition is much broader. Advocates, courts and judges must comply with their equality duties and make reasonable adjustments as set out above.
57. Even if an individual has an IQ in the 'normal' range, individuals with FASD often have profoundly impaired adaptive and executive functioning and may operate at a level much lower than their IQ indicates. The diagnostic criteria of learning disability/intellectual disability are slowly changing in recognition of this.
58. The DSM-5-TR (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision) (American Psychiatric Association, 2022), the official diagnostic standard used in the United States, has moved away from a rigid IQ cut-off and defines intellectual disability primarily by deficits in adaptive functioning, with IQ scores as supporting evidence.
59. The World Health Organization's International Classification of Diseases, Eleventh Revision (ICD-11) (World Health Organization, 2019), is the official diagnostic system used by the NHS in the UK and also emphasises adaptive functioning over IQ alone.
60. Recognition that FASD can be a severe disorder that may not meet the strict IQ-based medical definition of a learning disability, but nonetheless produces comparable impairments and support needs, has led to it being described as an 'intellectual disability equivalent' (Greenspan et al., 2016).
61. The key takeaway for those representing individuals in the CJS is that individuals with FASD may have significant difficulties comprehending and following court procedures without additional support, even if their IQ is in the normal or higher range.

Difficulties with Executive Functioning

62. Executive functioning is a set of cognitive mental processes, located in the brain's prefrontal cortex, that enables focusing, organising and controlling behaviour and helps an individual to successfully complete daily tasks, problem solve, make decisions, and adapt to new situations.
63. It includes the following:
    - Planning, focus and attention, organising and daily living skills: Research has found that adults with FASD continue to experience difficulties and can require high levels of support. In one study of 415 individuals with FASD over the age of 21, 83% were unable to live independently (Streissguth et al., 1996). Individuals with FASD may struggle to remember rules and requirements and have difficulties in dealing with abstract reasoning (e.g., understanding concepts like time, consequences, or hypothetical situations). As a result, individuals with FASD may have difficulty complying with legal and courtroom rules as well as with the requirements of criminal justice supervision in custodial and community settings. This could include difficulties attending appointments on time, meeting reporting requirements, bringing required documentation and following instructions. Individuals with FASD usually communicate and understand information more clearly when it is concrete, literal, and specific.
    - Inhibition, impulse control, risk awareness and judgement: Individuals with FASD struggle with impulse control, judgement, and adequately weighing consequences before acting. They can have longer-term cognitive deficits in reasoning, insight, and the capacity to understand the implications or consequences of their words or actions, making them more vulnerable to committing a criminal act. Studies have shown that those with FASD can find it difficult to assess information and situations and exercise appropriate judgement. The inability to learn from past behaviour and weigh consequences has been cited as one of the most devastating effects of FASD (Novick Brown & Greenspan, 2022). This is crucial in the forensic context, particularly in relation to repeat offences as learning cannot take place when everything is constantly experienced as a new situation.

- Impulsivity, paired with communication impairments, processing challenges, and language deficits, may result in risky behaviour including rash decision-making against one's own interests (Novick Brown & Greenspan, 2022). Acting or speaking impulsively, without a considered understanding of consequences, may also make an individual with FASD more susceptible to incriminating themselves for a crime they have not actually committed, especially when under pressure or during cross-examination in court. Further, studies have shown that during interrogative questioning, those with FASD were significantly more impulsive and more easily susceptible to interrogative pressure, changing their responses to questions (Gilbert et al., 2022, 2024).

64. Gillick competence (Gillick v West Norfolk and Wisbech Area Health Authority [1985] 3 WLR 830; [1986] 1 AC 112) - 'a sufficient understanding and intelligence to enable him or her to understand fully what is proposed' - is a legal test developed in relation to medical treatment. Nevertheless, Gillick has since been used more widely to help assess whether a child has the maturity to make decisions and understand their implications.
65. In this regard, 'the child should be able to:

- Understand the nature and implications of the decision and the process of implementing that decision.
- Understand the implications of not pursuing the decision.
- Retain the information long enough for the decision-making process to take place.
- Weigh up the information and arrive at a decision.
- Communicate that decision.'

66. It is important, therefore, to consider if the individual can:
    - Understand the problem or issue, and what it involves.
    - Understand the risks, implications and any consequences, that may arise from their decision.
    - Understand the advantages and disadvantages of the issue they face.
    - Understand any advice or information they have been given.
    - Understand any alternative options (should these be available).
    - Articulate a rationale around their reasoning and decision making.

Difficulties with Adaptive Functioning

67. Adaptive dysfunction is defined as a failure to meet standards in one or more aspects of daily life, including communication, social participation and personal independence.
68. Impairments have been reported in individuals with FASD across these domains, even when intellectual functioning is high and can become more apparent and severe as a child enters adolescence and adulthood, and as demands for independence increase.
69. In particular, individuals with FASD may face challenges in the following:
    - Social communication and perspective: Individuals with FASD have been shown to have poor social judgment and understanding of the social consequences of their decision-making. They may fail to demonstrate 'street-wise' avoidance of public situations that might put themselves or others at risk. In addition, they may show blunted emotional responses and reduced ability to understand others' perspectives or feel empathy. They may lack an appropriate understanding of social cues and rules of different situations. This can manifest in various ways, including impaired insight into others' thoughts and intentions and the potential consequences of their own actions. During questioning, they may fail to 'read between the lines' or understand social gestures or abstract questioning, interpreting questions literally. These impairments can affect ability to understand questioning and court procedures.
    - Developmental immaturity: Individuals with FASD may have a different developmental age in some areas from their chronological age. As Figure 2 shows, at age 18, for example, an individual with FASD may have the social skills of a 7-year-old and the living skills of an 11-year-old. This mismatch can leave them vulnerable. Developmental immaturity can result in poor and uninformed legal decision-making. For example, a suspect living with FASD may believe that they will be released from custody quickly if they confess to a crime, even if they were not involved, or may waive their legal rights without properly understanding the implications.

Figure 2: Chronological and developmental profile in an individual with FASD

Reproduced with kind permission from Malbin, D. (2017).

GOOD PRACTICE EXAMPLE

The Manitoba FASD Court, established as part of the FASD Youth Justice Programme in Canada in 2004 as the world's first dedicated FASD Court, made a number of environmental accommodations for those with FASD, including: using a smaller courtroom, slower pace of proceedings, non-fluorescent lighting, silent keyboards for clerks, and using symbols as explanations for probation conditions.

Anxiety and Stress

70. Individuals living with FASD are prone to anxiety, fear, stress and confusion when exposed to highly stressful situations. Such challenges may propel those with FASD further into the CJS because they may make choices based on removing themselves from these situations - for example, choosing the quickest way to end a police interview or court testimony - rather than on understanding the need to tell the truth.
71. Aggression, inappropriate actions, impulsivity, noncompliance and withdrawal are typical behaviours that become increasingly likely when a person with FASD is experiencing anxiety or stress.
72. Questioning someone with FASD about a traumatic event may produce even greater anxiety than the already elevated levels associated with FASD. Anxiety in the courtroom can affect an individual's ability to understand and process what is said and to make themselves understood. Memory can also be negatively affected during periods of high stress.
73. Individuals may not, themselves, recognise they are feeling anxious and thus signs may not be immediately obvious (e.g., coughing, picking at skin, yawning, looking down). Anxiety may be heightened by:
    - Being in an unfamiliar situation and environment
    - Being surrounded by unfamiliar people
    - Changes to regular routines
    - Changes to what is scheduled (such as change of trial location or time)

GOOD PRACTICE EXAMPLE

It may prove useful to create a 'feelings' scale or thermometer for a witness or defendant with FASD (e.g., 1=calm/okay, to 5=scared/upset) and to regularly ask how they are feeling in relation to the scale. Providing a scale can help to actively monitor their emotional state, identify if a line of questioning is causing particular anxiety (e.g., to help rethink the approach to questioning), and to decide when breaks are required.

See also Toolkit 14: Using Communication Aids in the Criminal Justice System.

74. If someone with FASD also exhibits anxiety then assessment and support should be considered, such as the appointment of a Registered Intermediary.

Sensory Issues

75. Difficulties with processing sensory information can quickly overwhelm those with FASD and affect mood, irritability and behaviour. Individuals with FASD may have sensitivity to loud noises (e.g., sirens, doors closing, loud voices, computer tapping), bright lights, unfamiliar odours, and other sources of enhanced stimulation. Such difficulties with sensory stimulation can have a profound effect on the person's ability to give evidence as a witness or defendant. These difficulties may include:
    - Sensory overload may leave the individual unable to pay attention or may lead them to provide incorrect or unreliable testimony in an effort to leave the environment as quickly as possible, as can occur in false-confession behaviour.

- When individuals with FASD struggle to cope with sensory information in the environment, they may become stressed or anxious. Stress responses may include fight (for example, becoming verbally or physically aggressive), flight (putting distance between themselves and danger), freeze (becoming tense, still or silent), or flop (an involuntary loss of muscle tone or mental shutdown).
    - Individuals with FASD may become verbally abusive or physically aggressive because of difficulties remaining calm in highly stressful situations. This may indicate a 'meltdown': a temporary loss of behavioural control in response to an overwhelming situation (see National FASD's Blast Off). Meltdowns can take different forms, including screaming, crying, biting or complete withdrawal. If this occurs, the individual may need considerable time to recover before questioning can continue and, in more severe cases, may be unable to continue at all.

76. It can sometimes be difficult to identify that sensory difficulties are the reason for a person's behaviour. Individuals with FASD may develop masking or coping strategies to deal with their sensory problems, and their reactions may be seen as the 'problem behaviours' that need to be addressed - rather than the underlying sensory difficulty.

77. If the jury is not provided with expert evidence concerning an FASD diagnosis, its perception of a defendant's demeanour or apparent lack of remorse may be particularly damaging.

GOOD PRACTICE EXAMPLE

It is good practice to obtain evidence from an expert by experience by asking the witness or defendant with FASD, and their caregiver, whether they are aware of any difficulties and whether adaptations are needed. A Registered Intermediary can undertake an assessment and provide useful information.

Memory and Confabulation

78. FASD has been strongly linked to memory impairments in both adults and children including causing gaps in recall; difficulties with visual and verbal memory involving encoding and retrieving information; as well as with working memory. Difficulties with many aspects of memory will impact on how those with FASD can manage in a courtroom environment.

79. These may include:
    - Difficulties in recalling events and dates, which can lead to confusion and inconsistency when giving testimony in court.
    - Difficulties with short-term memory which is particularly affected.
    - Difficulties in remembering courtroom rules and how to follow proceedings adequately.
    - Recollections of the exact sequencing of an event may not be consistent or match the actual sequence of what happened. The sequence could be all jumbled, and the answers given to repeated questions may be different.

80. An individual may experience a specific type of memory difficulty called 'confabulation', described as 'the act of honestly lying or providing information based on inaccurate memories' (Allely & Gebbia, 2016), due to damage to the frontal lobe (Gilbert et al., 2025). This is not the same as lying because there is no wilful intention to deceive.

81. In particular, advocates should be aware that:
    - Individuals may produce false memories and give false information. These may be exaggerations of actual events, inserting memories of one event into another time or place, recalling an older event but believing it took place more recently, 'filling in' gaps in memory or creating a new memory that never occurred.

- Individuals may fabricate or distort facts to 'fill in' memory gaps, which may result in them providing inconsistent evidence or becoming confused during testimony, perhaps presenting as a 'dishonest' witness.

82. Confabulation does not mean that individuals with FASD are incapable of providing reliable evidence; it indicates a potential vulnerability that may affect their testimony. With appropriate precautions during interviewing and questioning, corroboration of accounts, and the guidance included in this Toolkit, individuals with FASD can provide reliable evidence.

Attention

83. Attention difficulties are common in individuals with FASD particularly in more complex situations and these can combine with sensory processing difficulties discussed earlier and present significant challenges in court for those with FASD.

84. In particular:

- Individuals who struggle with impulsivity, attention regulation, and sensory overload may struggle to behave in a manner consistent with courtroom standards (e.g., the requirement to sit quietly during lengthy court proceedings).
- Individuals may be easily distracted which could impair that person's ability to effectively follow proceedings and assist in their defence during lengthy and complicated court proceedings.

Information Processing

85. Individuals with FASD have been shown to process information much more slowly than those without FASD of the same chronological age. Combined with communication impairments and language difficulties, this may affect the ability of witnesses and defendants to participate effectively in several ways.

86. For example:

- It may impair their ability to understand legal rights and follow complex, fast-paced legal and courtroom situations, leading to poor and uninformed legal decision-making.
- It may also lead those with FASD to be unable to fully comprehend the process of instructing counsel, appropriately navigate legal strategies and make considered decisions, or appropriately comply with legal conditions placing them at considerable disadvantage in the legal process (Allely & Mukherjee, 2019; Gilbert et al., 2022, 2024).

Language

87. Research has found a correlation between language disorders and FASD (Kippin et al., 2018). Communication is multidimensional and relies on cognitive, social and behavioural functioning. Individuals living with FASD have been shown to experience impairments across these three domains, raising significant concerns about their ability to participate adequately in a criminal justice process that often relies heavily on verbal communication.

88. In particular, advocates should be aware that:

Receptive language

- Individuals without a learning disability may have significant difficulty in understanding and processing language and can struggle to absorb and process what is being said to them, including charges against them, particularly if they are not given time to process that information.
- Receptive language impairments may reduce a defendant's ability to communicate with legal representatives or follow proceedings. Individuals with FASD may have difficulty understanding abstract concepts and organising language to describe events sequentially. This can create difficulties when navigating interactions with the police - including arrest, interview and detention - and court procedures as witnesses, defendants or suspects (Brown et al., 2024).
- Difficulties with understanding spoken language can include the following:

• Understanding non-literal language and taking what is said literally (for example, 'hitting the sheets' or 'breaking a leg')

• Understanding the actual sentence structure

• Keeping a sentence in mind for long enough to analyse it for meaning (sometimes referred to as 'short-term auditory memory difficulties')

• Inferring what is meant, when language is not clear

• Understanding what the interviewer is interested in hearing, including what is and what is not relevant

• Becoming 'overloaded' with spoken (verbal) information

Expressive Language

- Despite difficulties with receptive language, people with FASD may appear expressive and articulate because of their expressive verbal language skills. This is termed the 'frontal lobe paradox' (Fisher-Hicks et al., 2021; Newstead et al., 2022): below-average comprehension is masked, and individuals may be expected to meet intellectual and behavioural standards consistent with their age or may otherwise be seen as unmotivated, lazy or confrontational. During police interviews and court proceedings, an individual may appear articulate and seem to understand questions when, in fact, they do not understand the motives or consequences underlying decisions. This is particularly problematic where information is presented and managed verbally.
- It will be important for a Registered Intermediary to assess the individual's communication skills and report recommendations for the Achieving Best Evidence (ABE) interview.

89. Individuals with FASD may have developed strategies (e.g., by rote learning, modelling or copying) that may conceal their difficulties.

Suggestibility

90. Suggestibility is the extent to which individuals come to accept messages that are (implicitly or explicitly) communicated to them and subsequently interpret these messages as their own thoughts (Gilbert et al., 2024).

91. This can have a number of negative consequences:

- Individuals with FASD tend to be suggestible, gullible and easily led by others and can be more inclined to get involved in criminal acts, often as accessories, where, although they may be deemed perpetrators, they have been duped into acting (Greenspan & Woods, 2018).
- Impairments in social functioning, working memory and cognition, together with naivety, may contribute to suggestibility among individuals with FASD. This can be exacerbated in criminal justice settings, where external stressors heighten pre-existing vulnerabilities (Allely & Mukherjee, 2019).
- Poor memory combined with a desire to please authority can also contribute to interrogative suggestibility (Gilbert et al., 2022, 2024).
- Individuals with FASD are vulnerable to leading questions during forensic interviews, which can lead to false admissions or false confessions.

92. Legal professionals must fact-check and verify information provided by defendants living with FASD (e.g., through corroboration).

Acquiescence and Compliance

93. Acquiescence is the tendency to agree with statements or questions, particularly leading or suggestive ones, regardless of whether the answer is accurate. Compliance is the tendency to follow requests or instructions from others, even when doing so is not in the individual's best interests.

- Individuals with FASD are prone to acquiescence, including changing responses even when faced with subtle pressure, especially in the context of high anxiety situations such as interrogative interviews by police or court proceedings (Gilbert et al., 2022).
- Individuals may consciously comply with suggestions even though privately they do not agree with them. This may be for several reasons, including difficulties with memory or processing or a desire to please others or avoid conflict or confrontation.

GOOD PRACTICE EXAMPLE

The Manitoba FASD Court made a number of professional accommodations for those with FASD, including ensuring everyone in court is not only knowledgeable about FASD but they are each provided, in advance, with the diagnostic information and other pertinent reports to consider a sentence responsive to the individual's needs.

If the client is eligible, the FASD Justice Program is always available for consultation and debriefing upon request to help lawyers interpret psychological testing and level of functioning. The coordinators of the FASD Justice Program attend court to provide support to youth, young adults and family and can answer any questions surrounding diagnosis, brain functioning, and the community support plan.

- Acquiescence and compliance are particularly significant in the criminal justice context, and can manifest as: agreeing to participate in offending behaviours at the request of others, falsely confessing or providing inaccurate statements or failing to assert one's own account of events under pressure.
- Higher levels of compliance might prevent an individual with FASD from asking for help or alerting the court to the fact that they have lost concentration and need a break.

5. RELEVANT LAW

Equality Act 2010

94. Individuals with FASD (even those without a diagnosis) are likely to have a 'disability' under the Equality Act 2010 (the 'EA 2010').

95. An individual with FASD will have a disability under the EA 2010 if that individual has a physical or mental impairment that has a substantial and long-term adverse effect on the individual's ability to carry out normal day-to-day activities.

96. Criminal practitioners must adhere to their professional codes, uphold equality law and comply with the EA 2010 so that they do not discriminate in the course of their work. Courts, the CPS and judges are also bound by the Public Sector Equality Duty under section 149 of the EA 2010 and must have due regard to the need to eliminate unlawful discrimination.

97. In practice, this means that courts, the CPS, Judges and legal representatives must consider whether an individual (suspected or diagnosed) with FASD is being placed at a substantial disadvantage compared to those who are not disabled and must take reasonable steps to avoid substantial disadvantage to that individual by making reasonable adjustments. Case law has determined that 'substantial' simply means 'more than minor or trivial' and the threshold is low.

98. For example, an individual with FASD may experience substantial disadvantage in:

- Accessing information (e.g., speaking too fast to allow an individual with FASD to process information or receiving only dense written directions if reading is difficult).
- Participating effectively in proceedings (for example, where a witness with FASD struggles with complex questioning or an advocate cross-examines a client with FASD about the timing of an event without appreciating that the client does not understand the concept of time).
- Dealing with physical and environmental barriers (for example, a lack of quiet spaces or a cramped jury box that causes a defendant with FASD to become dysregulated and unable to participate).

99. The purpose of a reasonable adjustment is to remove or reduce the disadvantage that a disabled person would otherwise face compared with a non-disabled person. Adjustments are not merely 'nice to have'; they are a legal requirement. Nor do they amount to 'special treatment'. They level the playing field so that disabled people can receive a fair trial and participate in proceedings. Court staff and advocates should be trained to recognise when someone may need reasonable adjustments and to work with that person to identify appropriate measures.

100. The reasonableness of an adjustment depends on the effectiveness of that adjustment, how easy it is to implement, the cost and resources required, the availability of external support and the impact on others. This requires a balancing exercise, but most adjustments that remove or reduce disadvantage are simple and cost-effective.

101. Examples of support and reasonable adjustments for an individual with FASD are set out in the relevant sections below, but they may include, amongst others:

- Regular breaks to manage concentration and stress
- Modifying communication in a manner that matches the individual's communication skills and understanding
- Use of easy-read versions of court documents
- Changing the phrasing of questions and instructions to use simple, short, clear and concrete sentences
- Use plain language and slower speech, avoid idioms
- Reduce sensory stimulation, including through the use of screens, quieter or smaller courtrooms, video links, non-fluorescent lighting, silent keyboards and the removal of strong odours.
- Visual icons to represent instructions, orders and conditions
- Flexible seating
- Use of intermediaries
- Use of support individuals
- Permitting special measures for vulnerable witnesses (this overlaps with the Youth Justice and Criminal Evidence Act 1999)
- Pre-recorded video interviews as evidence
- Use of s.28 Hearings under the Youth Justice and Criminal Evidence Act 1999
- In an investigative interview, use a non-court location where appropriate.

Criminal Procedure Rules 2025

102. An individual with FASD is also likely to be a vulnerable person. FASD is often described as a 'hidden' disability because good expressive skills can mask significant vulnerability. Individuals with FASD are at particular risk of being overlooked as a vulnerable person because of the lack of diagnostic pathways and knowledge of the condition within all services. It should not therefore be assumed that a person's vulnerability will have been identified prior to their first appearance in court.

103. It is important to remember not to make assumptions about an individual's capabilities based on a 'label'. Because an individual appears to be articulate and intelligent does not mean they do not need help and support. Equally, it should not be assumed that individuals who have a range of impairments and/or intellectual disabilities cannot provide instructions/evidence.

104. The Criminal Procedure Rules (CrimPR) 2025 explicitly recognise the need to make reasonable adjustments for vulnerable parties, such as defendants and witnesses with disabilities and provide the procedural framework to apply the statutory duties under EA 2010 and to ensure the right to a fair trial under Article 6 ECHR.

105. The right to a fair trial means that an individual with FASD must be able to:

- follow and understand court proceedings
- participate in those court proceedings and instruct counsel effectively and
- give reliable evidence without being unfairly disadvantaged.

106. The court is required to take 'every reasonable step' to encourage and facilitate the attendance of witnesses and to facilitate the participation of any person, including the defendant. This includes enabling a witness or defendant to give their best evidence to comprehend the proceedings and engage fully with his or her defence (CrimPR 3.9(3)(a) and (b)).

107. CrimPR Part 3 sets out the court's duties to actively manage cases to ensure fair participation, including:

- Early identification of vulnerable witnesses or defendants
- Ground rules hearings (GRH) to set parameters for questioning.
- Special measures (e.g., video links, screens, intermediaries) to support vulnerable individuals.

Equal Treatment Bench Book

108. The Equal Treatment Bench Book – July 2024 (February 2026 update) now includes a section on reasonable adjustments for individuals with FASD in Appendix B.

109. These adjustments are covered in sections 6 (Recommendations) and 7 (Questioning Someone Who Has FASD).

Youth Justice and Criminal Evidence Act 1999

110. Someone with FASD falls within the definition of a vulnerable witness. Section 16(1) and 16(2) of the Youth Justice and Criminal Evidence Act 1999 cover those whose quality of evidence is likely to be diminished (and thereby need support to give their best evidence):

(1) (a) if under the age of 18 at the time of the hearing; or

(b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection

(2)

(2) (a) that the witness:

(i) suffers from a mental disorder within the meaning of the Mental Health Act 1983, or

(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the witness has a physical disability or is suffering from a physical disorder.

111. When determining whether the quality of evidence is likely to be diminished, the court must consider its likely completeness, coherence and accuracy (section 16(5)). As with other difficulties, individuals may appear more able than they are because they have learned strategies to mask their disability.

112. A vulnerable witness is entitled to a communication assessment undertaken by a Registered Intermediary, who can make recommendations to the court. An individual does not need a formal diagnosis for a Registered Intermediary to identify and report their communication needs.

6. RECOMMENDATIONS

In Advance of Trial

113. Individuals with FASD are capable of giving high-quality evidence, particularly when adaptations are made to support them. Professionals are encouraged to consult the DEAR model (see Appendix 1), which highlights practical ways to reduce the risk of miscarriages of justice, including false confessions and wrongful convictions (Brown et al., 2024).

114. It is recommended that, in advance of a trial, the following measures be considered to support individuals:

- Identify the individual's needs early. Do not rely solely on self-reported information because of potential difficulties with memory. Obtain supporting information from family members, official records and professionals familiar with the individual.
- Advocates should find out how sensory difficulties may impact a person with FASD by asking parents, professionals and individuals with FASD themselves regarding difficulties and how these may manifest themselves to find strategies to manage them before they are encountered.
- It will be necessary to obtain background information about a person's ability to pay attention, including what strategies would help (for example, whether a physical 'movement break' would be needed during break times).
- Registered Intermediaries working with individuals with FASD should address these concerns with witnesses and defendants and make recommendations in advance so that appropriate adaptations are made. Obtain background information about triggers for particular behaviours. These can be discussed at a ground rules hearing, and plans can be agreed to prevent and respond to them.
- Ensure provisions are made to ensure that the mood is continually monitored throughout court proceedings. A Registered Intermediary will support the identification and assessment of relevant mood indicators; they will also conduct communication assessments.
- At a ground rules hearing, the Registered Intermediary should discuss with the judge and advocates how the jury can be informed of the individual's communication difficulties and how those difficulties may affect their presentation in court. This information should be tailored to the individual - for example, difficulty recalling time-based information, taking a long time to answer, or extreme sensitivity to sound. It may not be necessary to call an expert witness where the prosecution and defence can agree a simple and clear set of facts, tailored to the individual, to be read to the jury.
- Where possible, plan for the judge and the advocates to meet the individual in advance of questioning.
- Consider the environment and ensure that it is as familiar as possible. Where possible, a visit to the court should be arranged in advance for a witness or defendant with FASD to identify potential sensory problems and reduce anxiety and stress. Individuals can be introduced to the witness area/back entrance. They will need to see the actual rooms that they will use; if these rooms change, they should be offered the chance to visit again.
- Consider the use of a remote live link if the court building is likely to be overwhelming (see Toolkit 9: Planning to Question Someone using a Remote Link). At the pre-trial visit, an individual can attend the live-link room and practice answering questions (unrelated to the case at hand) over live link so that the environment becomes familiar. This may indicate that a person attends better to questioning when communication is 'face-to-face' rather than 'face-to-screen' via a live link, and this adaptation can then be planned, in advance.
- Subject to court permission, suggest that photographs of courtrooms/live link rooms are taken. This is likely to help with trial preparation because the individual can later be reminded of what they saw on the familiarisation visit.
- Ensure that effective planning occurs to minimise unexpected last-minute changes to timings. 'Fixed date' trials should always be seen as preferential.
- Individuals living with FASD need to be told about each phase of the courtroom routine in language appropriate to their level of understanding. Give clear timings and explain any changes. Consider visual aids, such as visual timetables or a cue card (see Toolkit 14: Using Communication Aids in the Criminal Justice System). A Registered Intermediary can advise on their suitability.
- Plan adaptations to the courtroom environment to ensure that it is quiet, calm and free of sensory distractions, for example, by minimising individuals coming in and out of the courtroom, using soft lighting, removing unnecessary clutter from a live link room. The use of silent keyboards and silent clocks should be considered.
- For an individual who has sleep difficulties, consider the most suitable time of day for questioning. They may benefit from being questioned later in the morning or early in the afternoon.
- Individuals with FASD will need regular reminders about appointments and attendance. Advocates should ensure that someone can provide these, ideally through face-to-face or telephone conversations several times before the appointment.
- Check that the individual is able to travel to court and how that will happen (e.g., will the police bring them to court, will they arrive by taxi, etc.).

At Trial

115. It is recommended that at trial the following measures be considered to support individuals:

- Ensure the presence of a social worker or other support person to help the person understand what is happening in court and/or review information during breaks and to reduce anxiety.
- Do not assume that someone with FASD has understood explanations of matters, even if they nod or repeat statements made. Comprehension should always be verified at every stage to ensure that the individual with or suspected of having FASD understands what is going on.
- Ensure concentration is continually assessed, and strategies for maintaining attention are enabled. Use attention aids such as bullet point notes for review, simple written language and signs and flow charts if needed (see Toolkit 14: Using Communication Aids in the Criminal Justice System).
- Ensure that the person's concentration span is reflected in the number and type of breaks. What works on one day may be ineffective on another. Breaks can be scheduled - for example, every 20 minutes - and taken additionally when needed. Where a live-link room is used, breaks can be called more easily without clearing the courtroom. Unscheduled breaks should be accommodated.
- When tired or over-stimulated, individuals with FASD may become 'non-responsive' or repeat 'I don't know' even if they might know the answer.

• Provide a quiet environment for questioning and limit the length of each questioning period.

- Make a quiet room available during recesses to allow for sensory breaks. A vulnerable witness may need their own quiet place.
- Ask questions about a single topic at a time.
- Slow the pace of proceedings by allowing time for transitions from one activity/place to another. They can be assisted by being given clear instructions and giving some time after a transition before asking them to do something. Signposting will be helpful (e.g., first we will have a short break, then we will talk).
- Individuals with FASD may use coping strategies to remain regulated, such as rocking or using a comfort object or fiddle toy. Establish before trial which strategies help the individual remain calm and how they can use them appropriately during the proceedings.
- Adapt questioning to the communication needs of the individual (see below: Questioning Someone Who Has FASD).
- Where an intermediary is involved, they should alert the judge if the arrangements agreed at the ground rules hearing are not followed.

7. QUESTIONING SOMEONE WHO HAS FASD

20 Principles of Questioning

116. When questioning someone with FASD, it is important to follow the 20 Principles of Questioning. The principles form an essential part of teaching and developing appropriate questioning techniques for vulnerable people, including children.

117. The key elements consist of principles for preparation, principles for conduct and principles for questioning.

Planning Questions in Advance

- Ask questions in chronological order and structure them logically.
- Write out draft questions in advance because this will help to identify potential problems. In R v Lubemba, R v JP [2014] EWCA Crim 2064 the Court of Appeal (para 43) stated that: 'So as to avoid any unfortunate misunderstanding at trial, it would be an entirely reasonable step for a judge at the GRH to invite defence advocates to reduce their questions to writing in advance.'
- Where a Registered Intermediary is involved, the questions must be forwarded to them in advance of the GRH (see Toolkit 16: Intermediaries: Step by Step).
- Agree any necessary amendments at the ground rules hearing.
- Allow additional time for questions and responses.

Using Communication Aids

- A Registered Intermediary should do an assessment 'to make recommendations as to special measures and other adjustments to enable the best communication' (Registered Intermediary Procedural Guidance Manual, 2024). With this in mind, the appropriateness of using a range of communication aids should be considered during the RI's assessment process (see Toolkit 14: Using Communication Aids in the Criminal Justice System and Toolkit 16: Intermediaries: Step by Step).
- Individuals should be supplied with comprehension and attention aids that are deemed necessary (e.g., video recording, pictorial instructions, bullet-point notes, flow charts and summary documents) to help with processing of information provided during court proceedings.
- A person should be permitted to use pictures/visuals to tell you something if needed.

• Although communication aids - such as drawings, sticky notes or props - may help, too many used together may confuse the witness or defendant. Identify which aids work best for the individual and introduce them early so that the person becomes comfortable with them.

• Test all communication aids and props with the person before an interview or before they give evidence.

• A Registered Intermediary can identify which aids work best for the individual.

• Pictures or photographs can help obtain information. Use follow-up prompts, such as pointing to the picture and saying, 'Tell me more about that part.'

• During cross-examination, more specific questions - such as 'What colour was X?' or 'How big was X?' - should also be tested during assessment.

Using Appropriate Cues and Prompts

• Use the person's preferred name at the start of a question, rather than at the end, to signal that they are being addressed.

• Look directly at the witness when asking questions, while recognising that this may be difficult for some individuals.

• Use a neutral tone of voice.

• Signpost topics and explain what you will ask about; for example: 'I am going to ask you questions about...'.

• Use the names of people and places and avoid pronouns. Rather than asking, 'Did you see her?', ask, 'Did you see Melanie?'

• Drawings may help the witness or defendant provide detail or cue a memory. A Registered Intermediary can test their use during assessment. Some witnesses may prefer the intermediary to draw and label an image. Check its accuracy at each stage.

Checking Understanding

• Receptive-language processing difficulties are common in people with FASD, especially in high-pressure environments. Repeating or rephrasing a question too quickly can interrupt processing and force the person to begin again. Allow sufficient time to respond, assessed case by case.

• Provide additional processing and response time, slowing the pace to suit the person's ability.

• Remind the witness that they may take their time to answer.

• Check understanding throughout. Avoid asking only, 'Do you understand?' The person may believe that they understand or may be reluctant to admit that they do not. Instead, ask a short, direct question about what you have just explained.

• Consider in advance whether visual support is needed. A Registered Intermediary can tailor timelines or topic cards to the individual. See also Toolkit 14: Using Communication Aids in the Criminal Justice System.

- A card containing a symbol or words indicating 'I don't understand' can be used for the vulnerable person to point to if speaking becomes difficult. See also Toolkit 14: Using Communication Aids in the Criminal Justice System.

Question Types and Responses (also refer to 20 Principles of Questioning)

The use of 'when' and 'how long' type questions

- Because of the potential difficulties with memory and recall described earlier, 'when' questions can be particularly difficult for individuals with FASD. They may struggle to recall details of events in context, including time-based information, unless specifically prompted. Questions about how long events lasted can also be problematic because FASD may affect the individual's perception of time.
- Link questions about timing to concrete events, such as: 'Was it light or dark outside?'

- It may prove useful to provide the witness or defendant with a timeline with different points labelled. Rather than saying, 'What time did you go there?', ask them to point on the timeline: 'Was it before/after breakfast?'; 'Was it before/after your holiday?'
- The use of a timeline or other visual aid should be part of the Registered Intermediary recommendations and discussed during the GRH.
- Individuals with FASD may struggle with time concepts, so avoid questions in the present tense. For example, 'So, now are you at the party and talking to Melissa?'
- Use the past tense for events that have already happened, for example: 'Did you speak to Melissa at the party?'

Avoid 'why' type questions

- Individuals with FASD may be impulsive and may lack insight into why they behaved in a particular way, especially during a crisis. Avoid asking why they did something where the response may be unreliable.

Avoid open-ended questions

- Questions such as 'Tell me about the party?' should be avoided. Questions should be precise or narrow (but non-leading) to reduce ambiguity, e.g. 'Who did you meet at the party?'

Avoid compound questions and legal jargon, which may confuse

- Avoid stacked and multi-part questions, e.g. 'Was Melissa at the party when you arrived and did she stay at the party until it ended?' Ask one point per question, e.g. 'Was Melissa at the party?'
- Avoid double negatives, e.g. 'You wouldn't disagree that Melissa was shouting, would you?' and ask direct questions, e.g. 'Was Melissa shouting?'
- Avoid legal or management jargon.
- Examples of complex questions and recommendations for simplifying them are outlined in Toolkit 2: General Principles from Research, Policy and Guidance; Toolkit 4: Planning to Question Someone with a Learning Disability; Toolkit 15: Witnesses and Defendants with Autism; and the 20 Principles of Questioning.

Avoid statements posed as questions

- The question, 'So, you saw her enter the house?' may not be recognised as something that can be disagreed with. Rephrase it clearly, for example: 'Did you see Melissa go into the house?'

Avoid 'forced choice' questions

- Given a person with FASD may be suggestible and more likely to acquiesce or comply with statements, forced choice questions should be avoided as these create opportunities for error when the correct alternative may be missing.
- Choice questions should always include an open option - for example, 'What colour was the jumper?' - to reduce the risk of misunderstanding or error.

Avoid 'tag' or directive-leading questions

- Ensure there are no 'tag' or directive-leading questions (Gous & Wheatcroft, 2020). For example, avoid 'You went to the party, didn't you?' and ask the question directly without a tag, e.g., 'Did you go to the party?'

Avoid non-literal language

- Abstract concepts can be difficult for a person with FASD to understand. For example, instead of asking, 'When you spoke with Melissa, did you see eye to eye?', use plain English: 'Did you and Melissa disagree about anything?'
- Ask direct, literal questions. Avoid questions such as 'Do you remember the day you went to the party?' (a witness may think you mean which day was it, e.g. Monday), instead ask 'Did you go to the party?' or 'What time did you leave the house?'
- Do not use metaphors such as 'I want to run something by you'; instead, ask 'I am going to ask you a question about…'.

Avoid 'do you remember' questions

- 'Do you remember?' questions require complex processing, which may be difficult for individuals with FASD who struggle with working memory and time concepts (see Memory and Confabulation above).
- When combined with multi-part questions, 'Do you remember?' questions may be particularly confusing. For example, 'Do you remember you had a bruise near your left eye?' An answer of 'No' may have several meanings: 'No, I don't remember'; 'Yes, I remember I had a bruise, but it was not near my left eye'; or 'No, I didn't have a bruise there.' It is better to ask: 'Did you have a bruise?' and then 'Where was the bruise?'

Avoid 'repeat' questions

- Repeating questions may result in a person with FASD (who may be suggestible and eager to please those in authority) changing answers as they may feel their first answer was unsatisfactory.
- Where it is necessary to repeat information or a question - even using different wording - signpost the repetition and explain that you are checking your understanding of what the person said; for example: 'I didn't hear that. Can you say it again, please?' A Registered Intermediary can be asked to repeat back what the person has said.

Avoid 'inconsistent' language use

- It is easier for a person to process questions when words are used consistently. For example, always refer to a person by the same name, rather than 'your teacher', 'Mrs Smith' or 'Jane Smith'.
- Avoid use of pronouns. For example, instead of 'Did you see her?' ask, 'Did you see Melissa?'
- Use the name that the witness/defendant uses to refer to the relevant person.

Non-Verbal Communication

118. Questions about the intentions, emotional states or behaviour of others can also be problematic as FASD impacts a person's ability to see things from another person's perspective. Social and emotional immaturity has also been reported in this population (see above: Difficulties with Adaptive Functioning).
119. A person with FASD may not understand facial expressions or intonation. For example, they may mistakenly perceive the questioner as upset, affecting their response. A statement accompanied by a disapproving expression - such as, 'But you still followed her at the party' - may also affect the response because individuals with FASD can be suggestible and eager to please.
120. Advocates should be aware of their own facial expressions and body language, and use 'neutral' facial expressions and body language. They should avoid, for example, nodding or shaking their head as this may create conditions for compliance or acquiescence.

8. ACKNOWLEDGEMENTS AND REFERENCES

Chair

- Uzma Naseem, LLB, LLM, Solicitor (Law Society of England and Wales), PhD Candidate, School of Health and Society, University of Salford, Manchester, United Kingdom

Contributors

- Professor Clare S. Allely, Professor of Forensic Psychology, School of Health and Society, University of Salford, Manchester, United Kingdom; Affiliate Member, Gillberg Neuropsychiatry Centre, Sahlgrenska Academy, University of Gothenburg, Gothenburg, Sweden
- Joanna Buckard, National FASD, United Kingdom
- Sandra Butcher, National FASD, United Kingdom
- Maria Catterick, FASD Network UK, United Kingdom
- Velma Eyre, Solicitor (England and Wales), Founder of FASD Legal Rights Hub UK, United Kingdom
- Dr David J. Gilbert, University Research Fellow, School of Health and Society, University of Salford, Manchester, United Kingdom
- Andrew Keeping, CEO, FASD Awareness, United Kingdom
- Tania Goddard, Solicitor (Law Society of England and Wales), PhD Candidate, University of Salford, Manchester, United Kingdom; Graduate Member of the British Psychological Society
- Professor Raja A. S. Mukherjee, Honorary Professor, University of Salford, Manchester, United Kingdom; Consultant Psychiatrist, FASD Specialist Behaviour Clinic, Surrey and Borders Partnership NHS Foundation Trust, Redhill, United Kingdom
- Dr Alan Price, Lecturer in Psychology, School of Health and Society, University of Salford, Manchester, United Kingdom
- Marisa Sedgwick, SpLD APC (PATOSS), Registered Intermediary, HMCTS Approved Intermediary
- Professor Jacqueline Wheatcroft, Professor of Forensic Psychology, Liverpool John Moores University; HCPC-registered forensic practitioner; Registered Intermediary

We are indebted to them for their contributions and years of experience in the field of vulnerability in legal settings.

References

Allely, C. S., & Gebbia, P. (2016). **Studies investigating fetal alcohol spectrum disorders in the criminal justice system: A systematic PRISMA review**. SOJ Psychology, 3(1), 1-11. https://doi.org/10.15226/2374-6874/3/1/00123

Allely, C. S., & Mukherjee, R. (2019). **Suggestibility, false confessions and competency to stand trial in individuals with fetal alcohol spectrum disorders: Current concerns and recommendations**. Journal of Criminal Psychology, 9(4), 166-172. https://doi.org/10.1108/JCP-11-2019-050

American Psychiatric Association. (2022). **Diagnostic and statistical manual of mental disorders**. (5th ed., text rev.). American Psychiatric Association Publishing. https://doi.org/10.1176/appi.books.9780890425787

Bower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N. R., Safe, B., Pestell, C., Cheung, C. S. C., Shield, H., Tarratt, L., Springall, A., Taylor, J., Walker, N., Argiro, E., Leitao, S., Hamilton, S., Condon, C., Passmore, H. M., & Giglia, R. (2018). **Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia**. BMJ Open, 8(2), e019605. https://doi.org/10.1136/bmjopen-2017-019605

Brown, J., Lewis, D. S., Kivisalu, T., Wartnik, A. P., Carter, M. N., Harr, D., Jozan, A., & Gilbert, D. J. (2024). **Fetal alcohol spectrum disorder (FASD) and the criminal justice system: A guide for legal professionals**. International Journal of Law and Psychiatry, 97, 102029. https://doi.org/10.1016/j.ijlp.2024.102029

Burd, L., Selfridge, R., Klug, M., & Bakko, S. (2004). **Fetal alcohol syndrome in the United States corrections system**. Addiction Biology, 9(2), 169-176. https://doi.org/10.1080/13556210410001717060

Cahill, S., Lamb, M., & Wheatcroft, J. M. (2022). **Advocacy and the vulnerable: 20 principles of questioning**. Inns of Court College of Advocacy.

Chudley, A. E., Markesteyn, T., Harvie, M. K., Longstaffe, S., Brown, T., & Singal, D. (2018). **Screening and assessment of FASD in a youth justice system: Comparing different methodologies**. In E. Jonsson, S. Clarren, & I. Binnie (Eds.), Ethical and legal perspectives in fetal alcohol spectrum disorders (FASD): Foundational issues (pp. 95-124). Springer. https://doi.org/10.1007/978-3-319-71755-5_4

Conry, J., & Asante, K. O. (2010). **Youth probation officers' guide to FASD screening and referral**. Asante Centre for Fetal Alcohol Syndrome. http://www.asantecentre.org/_Library/docs/Youth_Probation_Officers_Guide_to_FASD_Screening_and_Referral_Printer-Friendly_Format_.pdf

Dawson, H., Khurana, S., McNally, M., Waldman, A., & Samuel, R. (2025). **Identification and diagnosis of fetal alcohol spectrum disorder (FASD) in children at high risk of prenatal alcohol exposure: A service evaluation**. BJPsych Open, 11(S1), S185. https://doi.org/10.1192/bjo.2025.10480

Day, A.-M. (2022). **Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England**. Forensic Science International: Mind and Law, 3, 100102. https://doi.org/10.1016/j.fsiml.2022.100102

Fisher-Hicks, S., Wood, R. Ll., & Braithwaite, B. (2021). **The frontal lobe paradox**. In P. S. Moore, S. Brifcani, & A. Worthington (Eds.), Neuropsychological aspects of brain injury litigation: A medicolegal handbook for lawyers and clinicians (pp. 140-157). Routledge. https://doi.org/10.4324/9781003105763-10

Flannigan, K., Kapasi, A., Pei, J., Murdoch, I., Andrew, G., & Rasmussen, C. (2021). **Characterizing adverse childhood experiences among children and adolescents with prenatal alcohol exposure and fetal alcohol spectrum disorder**. Child Abuse & Neglect, 112, 104888. https://doi.org/10.1016/j.chiabu.2020.104888

Flannigan, K., McMorris, C., Ewasiuk, A., Badry, D., Mela, M., Ben Gibbard, W., Unsworth, K., Cook, J., & Harding, K. D. (2022). **Suicidality and associated factors among individuals assessed for fetal alcohol spectrum disorder across the lifespan in Canada**. The Canadian Journal of Psychiatry, 67(5), 361-370. https://doi.org/10.1177/07067437211053288

Flannigan, K., Pei, J., Stewart, M., & Johnson, A. (2018). **Fetal alcohol spectrum disorder and the criminal justice system: A systematic literature review**. International Journal of Law and Psychiatry, 57, 42-52. https://doi.org/10.1016/j.ijlp.2017.12.008

Flannigan, K., Wrath, A., Ritter, C., McLachlan, K., Harding, K. D., Campbell, A., Reid, D., & Pei, J. (2021). **Balancing the story of fetal alcohol spectrum disorder: A narrative review of the literature on strengths**. Alcoholism: Clinical and Experimental Research, 45(12), 2448-2464. https://doi.org/10.1111/acer.14733

Gilbert, D. J., Allely, C. S., Gudjonsson, G., Mukherjee, R. A. S., & Cook, P. A. (2023). **Immediate and repeat interrogative suggestibility in a sample of adolescents with fetal alcohol spectrum disorder**. Diversity & Inclusion Research, 1(1), e12007. https://doi.org/10.1002/dvr2.12007

Gilbert, D. J., Allely, C. S., Mukherjee, R. A. S., & Cook, P. A. (2022). **Foetal alcohol spectrum disorder and investigative interviewing: A systematic review highlighting clinical and legal implications and recommendations**. Behavioral Sciences & the Law, 40(1), 170-185. https://doi.org/10.1002/bsl.2552

Gilbert, D. J., Allely, C. S., Mukherjee, R. A. S., Gudjonsson, G., Novick Brown, N., Brown, J., McGinn, V., & Cook, P. A. (2025). **An empirical examination of confabulation in adolescents with fetal alcohol spectrum disorder (FASD)**. Journal of Pediatric Neuropsychology. https://psycnet.apa.org/record/2026-45739-001

Gilbert, D. J., Mukherjee, R. A., Kassam, N., & Cook, P. A. (2021). **Exploring the experiences of social workers in working with children suspected to have fetal alcohol spectrum disorders**. Adoption & Fostering, 45(2), 155-172. https://doi.org/10.1177/03085759211011735

Gous, G., & Wheatcroft, J. M. (2020). **Directive leading questions and preparation technique effects on witness accuracy**. SAGE Open, 10(1), Article 2158244019899053. https://doi.org/10.1177/2158244019899053

Grant, T. M., Novick Brown, N. N., Graham, J. C., Whitney, N., Dubovsky, D., & Nelson, L. A. (2013). **Screening in treatment programs for fetal alcohol spectrum disorders that could affect therapeutic progress**. International Journal of Alcohol and Drug Research, 2(3), 37-49. https://doi.org/10.7895/ijadr.v2i3.116

Greenspan, S., Novick Brown, N. N., & Edwards, W. (2016). **FASD and the concept of 'intellectual disability equivalence'**. In M. Nelson & M. Trussler (Eds.), Fetal alcohol spectrum disorders in adults: Ethical and legal perspectives (pp. 241-266). Springer. https://doi.org/10.1007/978-3-319-20866-4_15

Greenspan, S., Novick Brown, N. N., & Edwards, W. J. (2021). **Determining disability severity level for fetal alcohol spectrum disorder: Assessing the extent of impairment**. In N. Novick Brown (Ed.), Evaluating fetal alcohol spectrum disorders in the forensic context: A manual for mental health practice (pp. 255-283). Springer. https://doi.org/10.1007/978-3-030-73628-6_10

Greenspan, S., & Woods, G. (2018). **Social incompetence of FASD offenders: Risk awareness as a factor in criminal culpability**. In E. Jonsson, S. Clarren, & I. Binnie (Eds.), Ethical and legal perspectives in fetal alcohol spectrum disorders (FASD): Foundational issues (pp. 127-143). Springer. https://doi.org/10.1007/978-3-319-71755-5_8

Gregory, G., Reddy, V., & Young, C. (2015). **Identifying children who are at risk of FASD in Peterborough: Working in a community clinic without access to gold standard diagnosis**. Adoption & Fostering, 39(3), 225-234. https://doi.org/10.1177/0308575915594985

Jewell, E., Dunleavy, B., Faitakis, M., Pun, J. W., Moss, S., Pei, J., Mela, M., Flannigan, K., Tremblay, M., & McLachlan, K. (2024). **Screening and identification of fetal alcohol spectrum disorder in criminal legal settings: A realist review**. Criminal Behaviour and Mental Health, 34(2), 208-270. https://doi.org/10.1002/cbm.2336

Kerodal, A. G., Akca, D., Jewell, L. M., & Wormith, J. S. (2021). **A process evaluation of the Regional Psychiatric Centre's Fetal Alcohol Spectrum Disorder pilot project: Year 1 (July 2018-June 2019)**. Centre for Forensic Behavioural Science and Justice Studies, University of Saskatchewan. https://www.researchgate.net/publication/350889822_A_Process_Evaluation_of_the_Regional_Psychiatric_Centre's_Fetal_Alcohol_Spectrum_Disorder_Pilot_Project

Kippin, N., Leitao, S., Watkins, R., Finlay-Jones, A., Condon, C., Marriott, R., Mutch, R., & Bower, C. (2018). **Language diversity, language disorder, and fetal alcohol spectrum disorder among youth sentenced to detention in Western Australia**. International Journal of Law and Psychiatry, 61, 40-49. https://doi.org/10.1016/j.ijlp.2018.09.004

MacPherson, D. W., Sinha, S. S., & O'Connor, M. (2011). **The Brief Screen Checklist: A tool for identifying inmates with mental health needs**. International Journal of Forensic Mental Health, 10(1), 65-73. https://doi.org/10.1080/14999013.2011.567439

McLachlan, K., Amlung, M., Vedelago, L., & Chaimowitz, G. (2020). **Screening for fetal alcohol spectrum disorder in forensic mental health settings**. The Journal of Forensic Psychiatry & Psychology, 31(5), 643-666. https://doi.org/10.1080/14789949.2020.1781911

McLachlan, K., McNeil, A., Pei, J., Brain, U., Andrew, G., & Oberlander, T. F. (2019). **Prevalence and characteristics of adults with fetal alcohol spectrum disorder in corrections: A Canadian case ascertainment study**. BMC Public Health, 19(1), 43. https://doi.org/10.1186/s12889-018-6292-x

McQuire, C., Mukherjee, R., Hurt, L., Higgins, A., Greene, G., Farewell, D., Kemp, A., & Paranjothy, S. (2019). **Screening prevalence of fetal alcohol spectrum disorders in a region of the United Kingdom: A population-based birth-cohort study**. Preventive Medicine, 118, 344-351. https://doi.org/10.1016/j.ypmed.2018.10.013

Mela, M., Wall, L., Buttinger, P., DesRoches, A., & Wrath, A. J. (2022). **Rates and implications of fetal alcohol spectrum disorder among released offenders with mental disorder in Canada**. Behavioral Sciences & the Law, 40(1), 144-158. https://doi.org/10.1002/bsl.2557

Newstead, S., Lewis, J., Roderique-Davies, G., Heirene, R. M., & John, B. (2022). **The paradox of the frontal lobe paradox: A scoping review**. Frontiers in Psychiatry, 13, 913230. https://doi.org/10.3389/fpsyt.2022.913230

Novick Brown, N., & Greenspan, S. (2022). **Diminished culpability in fetal alcohol spectrum disorders (FASD)**. Behavioral Sciences & the Law, 40(1), 1-13. https://doi.org/10.1002/bsl.2535

Pei, J., Leung, W. S. W., Jampolsky, F., & Alsbury, B. (2016). **Experiences in the Canadian criminal justice system for individuals with fetal alcohol spectrum disorders: Double jeopardy?**. Canadian Journal of Criminology and Criminal Justice, 58(1), 56-86. https://doi.org/10.3138/cjccj.2014.E25

Popova, S., Lange, S., Shield, K., Burd, L., & Rehm, J. (2019). **Prevalence of fetal alcohol spectrum disorder among special subpopulations: A systematic review and meta-analysis**. Addiction, 114(7), 1150-1172. https://doi.org/10.1111/add.14598

Popova, S., Lange, S., Shield, K., Mihic, A., Chudley, A. E., Mukherjee, R. A. S., Bekmuradov, D., & Rehm, J. (2016). **Comorbidity of fetal alcohol spectrum disorder: A systematic review and meta-analysis**. The Lancet, 387(10022), 978-987. https://doi.org/10.1016/S0140-6736(15)01345-8

Price, A., Cook, P. A., Norgate, S., & Mukherjee, R. (2017). **Prenatal alcohol exposure and traumatic childhood experiences: A systematic review**. Neuroscience & Biobehavioral Reviews, 80, 89-98. https://doi.org/10.1016/j.neubiorev.2017.05.018

Schölin, L., Mukherjee, R. A. S., Aiton, N., Blackburn, C., Brown, S., Flemming, K. M., Gard, P. R., Howlett, H., Plant, M., Price, A. D., Shields, J., Smith, L. A., Suttie, M., Zammitt, D. C., & Cook, P. A. (2021). **Fetal alcohol spectrum disorders: An overview of current evidence and activities in the UK**. Archives of Disease in Childhood, 106(7), 636-640. https://doi.org/10.1136/archdischild-2020-320435

SIGN. (2019). **Children and young people exposed prenatally to alcohol: A national clinical guideline**. (SIGN Publication No. 156). https://www.sign.ac.uk/our-guidelines/children-and-young-people-exposed-prenatally-to-alcohol/

Spohr, H.-L., Willms, J., & Steinhausen, H.-C. (1993). **Prenatal alcohol exposure and long-term developmental consequences**. The Lancet, 341(8850), 907-910. https://doi.org/10.1016/0140-6736(93)91207-3

Streissguth, A. P., Aase, J. M., Clarren, S. K., Randels, S. P., LaDue, R. A., & Smith, D. F. (1991). **Fetal alcohol syndrome in adolescents and adults**. JAMA, 265(15), 1961-1967. https://doi.org/10.1001/jama.1991.03460150065025

Streissguth, A. P., Barr, H. M., Kogan, J., & Bookstein, F. L. (1996). **Understanding the occurrence of secondary disabilities in clients with fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE)**. (Tech. Rep. No. 96-06). University of Washington, Fetal Alcohol & Drug Unit. https://accessiblelaw.org/Documents/CDC%201996%20Study.pdf

Streissguth, A. P., Bookstein, F. L., Barr, H. M., Press, S., & Sampson, P. D. (1998). **A fetal alcohol behavior scale**. Alcoholism: Clinical and Experimental Research, 22(2), 325-333. https://doi.org/10.1111/j.1530-0277.1998.tb03656.x

Tan, G. K. Y., Symons, M., Fitzpatrick, J., Connor, S. G., Cross, D., & Pestell, C. F. (2022). **Adverse childhood experiences, associated stressors and comorbidities in children and youth with fetal alcohol spectrum disorder across the justice and child protection settings in Western Australia**. BMC Pediatrics, 22(1), 1-12. https://doi.org/10.1186/s12887-022-03654-y

Weir, V. (2023). **Carceral abolition as disability justice for incarcerated people with fetal alcohol spectrum disorder (FASD)**. [Master's thesis, University of Manitoba]. MSpace. https://hdl.handle.net/1993/37339

Weyrauch, D., Schwartz, M., Hart, B., Klug, M. G., & Burd, L. (2017). **Comorbid mental disorders in fetal alcohol spectrum disorders: A systematic review**. Journal of Developmental & Behavioral Pediatrics, 38(4), 283-291. https://doi.org/10.1097/DBP.0000000000000440

World Health Organization. (2019). **International classification of diseases, eleventh revision (ICD-11)**. World Health Organization. https://icd.who.int/

Further Work from The Advocate's Gateway

Visit www.theadvocatesgateway.org for further resources, internationally recognised toolkits and guidance on intermediaries.

- Toolkit 1 Ground Rules Hearings
- Toolkit 1A Case Management in Criminal Cases
- Toolkit 2 General Principles from Research Policy and Guidance
- Toolkit 3 Planning to Question Someone with Autism
- Toolkit 4 Planning to Question Someone with a Learning Disability
- Toolkit 5 Planning to Question Someone with Hidden Disabilities
- Toolkit 6 Planning to Question a Child or Young Person
- Toolkit 7 Additional Factors Concerning Children under Seven
- Toolkit 8 Effective Participation of Young Defendants
- Toolkit 9 Planning to Question Someone Using a Remote Link
- Toolkit 10 Identifying Vulnerability in Witnesses
- Toolkit 11 Planning to Question Someone Who Is Deaf
- Toolkit 12 Planning to Question Someone with a Suspected or Diagnosed Mental Health Disorder
- Toolkit 13 Vulnerable Witnesses in the Family Courts
- Toolkit 13A Family Court Crib Sheet
- Toolkit 14 Using Communication Aids
- Toolkit 15 Witnesses and Defendants with Autism
- Toolkit 16 Intermediaries Step by Step
- Toolkit 17 Vulnerable Witnesses in the Civil Courts
- Toolkit 18 Working with Traumatised Witnesses Defendants and Parties
- Toolkit 19 Supporting Participation in Courts and Tribunals
- Toolkit 20 Court of Protection
- Toolkit 21 Planning to Question People Who Stammer

Appendix 1 The DEAR Model

The DEAR model provides a guided approach to communication.

Description	Rationale	Guidelines
D - Direct language	Individuals living with FASD may experience communication difficulties and varying challenges with comprehension.	• Use direct communication • Avoid jargon and sarcasm • Allow additional processing time • Keep communication simple and easy to follow • Avoid multi-step directions • Check comprehension • Use open-ended questions where assessment indicates that they will support accurate and productive communication
E - Engage support systems	People living with FASD may be suggestible under pressure or may not fully understand their rights in a legal context.	• Help the person feel safe with an appropriate supporter present • Ensure adequate legal representation • Where appropriate, involve a familiar and trusted support person who can help explain processes and procedures
A - Accommodate needs	People living with FASD may have sensory differences, attention difficulties, impulse-control issues or physical needs that increase stress in an intimidating environment.	• Limit sensory input in communication spaces • Remain alert to sleep deprivation or blood-sugar dysregulation; allow breaks or stop if executive functioning deteriorates • Maintain a safe distance and avoid unnecessary physical contact
R - Remain calm	Regulating emotions may be more difficult for people living with FASD. Higher-than-average exposure to trauma may also increase sensitivity to stressors.	• Remain calm in tone and behaviour • Avoid showing frustration • Guide the conversation calmly • Be patient and allow adequate response time

Reproduced with kind permission from Dr Jerrod Brown (Brown et al., 2024).