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A 1996 study conducted by the Fetal Alcohol and Drug Unit at the University of Washington¹ for the Centers for Disease Control and Prevention concluded that a majority of individuals with FASD have been in trouble with the law. Both that study and anecdotal experience have indicated that there are some distinctive patterns in the types of conduct involved, and in the manner in which individuals with FASD respond to the criminal justice system. It is possible that those very patterns could be useful in identifying criminal defendants who may have FASD. Such a screening method would not be conclusive (it would certainly be both under and over-inclusive), but it could nonetheless serve to prompt lawyers, judges or others to seek further investigation or diagnosis.

This memorandum identifies the patterns of behavior which the literature or anecdotal experience suggest may correlate with FASD. Some relate to the circumstances of the offense itself, while others concern additional circumstances that would likely be known to the lawyers, government officials or judges.

Offender Patterns

(1) Many of the underlying offenses fall into one or more of five categories:

- (a) impulsive behavior, such as shoplifting, particularly for some item (possibly of no great value) for immediate consumption (e.g. a pack of cigarettes),

¹Understanding The Occurrence of Secondary Disabilities in Clients With Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE), Ann P. Streissguth, Helen M. Barr, Julia Kogan and Fred Bookstein, Final Report to the Centers for Disease control and Prevention, Grant No. R04/CCR08515, August 1996.

- (b) stealing from a friend or neighbor some item (or a few) for personal use,
- (c) getting into a fight because the offender overreacted with a very short fuse to some mild provocation or teasing,
- (d) behavior precipitated by panic or excessive fright, such as running in fear or lashing out when cornered or overwhelmed by noise and contact, and
- (e) participating as a secondary figure at the behest of more sophisticated criminals who were exploiting the offender, e.g. delivering a package as a favor for a "friend" who turns out to be a drug dealer. Involvement with others in a crime clearly beyond the skill level of the offender.

(2) Committing inexplicably stupid crimes involving an obvious risk of apprehension that most offenders would avoid. Engaging after the crime in activity with an irrationally high risk of apprehension (e.g. wearing, when visiting a friend, a piece of jewelry stolen from the friend).

(3) Where the offender took part as a secondary participant with other more sophisticated offenders, the individual with FASD is often the only one apprehended.

(4) Repeatedly engaging in relatively minor offenses without escalating (absent encouragement by more sophisticated offenders) into more serious offenses, e.g. repeated shoplifting that does not lead to armed robbery. A pattern of what would usually be regarded as first offenses, where the offender seems not to learn anything from the experience of apprehension and punishment.

(5) An absence of offenses that involve significant planning or premeditation.

(6) A history of minor offenses before the offender reached the age of 18.

(7) Behaving in a manner which reflects a failure to grasp the boundaries of permissible behavior, such as standing too close or inappropriate touching.

Other Patterns

(1) Naive cooperation with and confession to friendly law enforcement officials; fulsome and guileless confessions that most offenders would never make.

(2) Equally guileless confessions to offenses of which the too-eager-to-please individual is actually innocent, or which may never have occurred at all.

(3) A past failure on probation or parole, stemming from an inability to understand or adhere to supervision conditions or to keep appointments.

(4) An apparent lack of remorse, deriving from a failure to understand that the underlying conduct was wrong.

(5) A failure to grasp the causal connection between unlawful conduct and the resulting incarceration or other punishment.

(6) Viewing incarceration as undesirable only insofar as it results in removing the offender from the company of his friends (or the people he naively thinks are his friends).

(7) Attempts to explain away the offending conduct with implausible stories that are outlandish or simple-minded.

(8) An inability to grasp the seriousness of the distinction between different periods of possible incarceration, e.g. 3 days versus 3 months.

(9) Associating with individuals who are significantly younger than the offender, in part because they may be closer to his or her level of maturity. The younger "friends" may be more sophisticated offenders who are exploiting the relative unsophistication of the individual with FASD.

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