

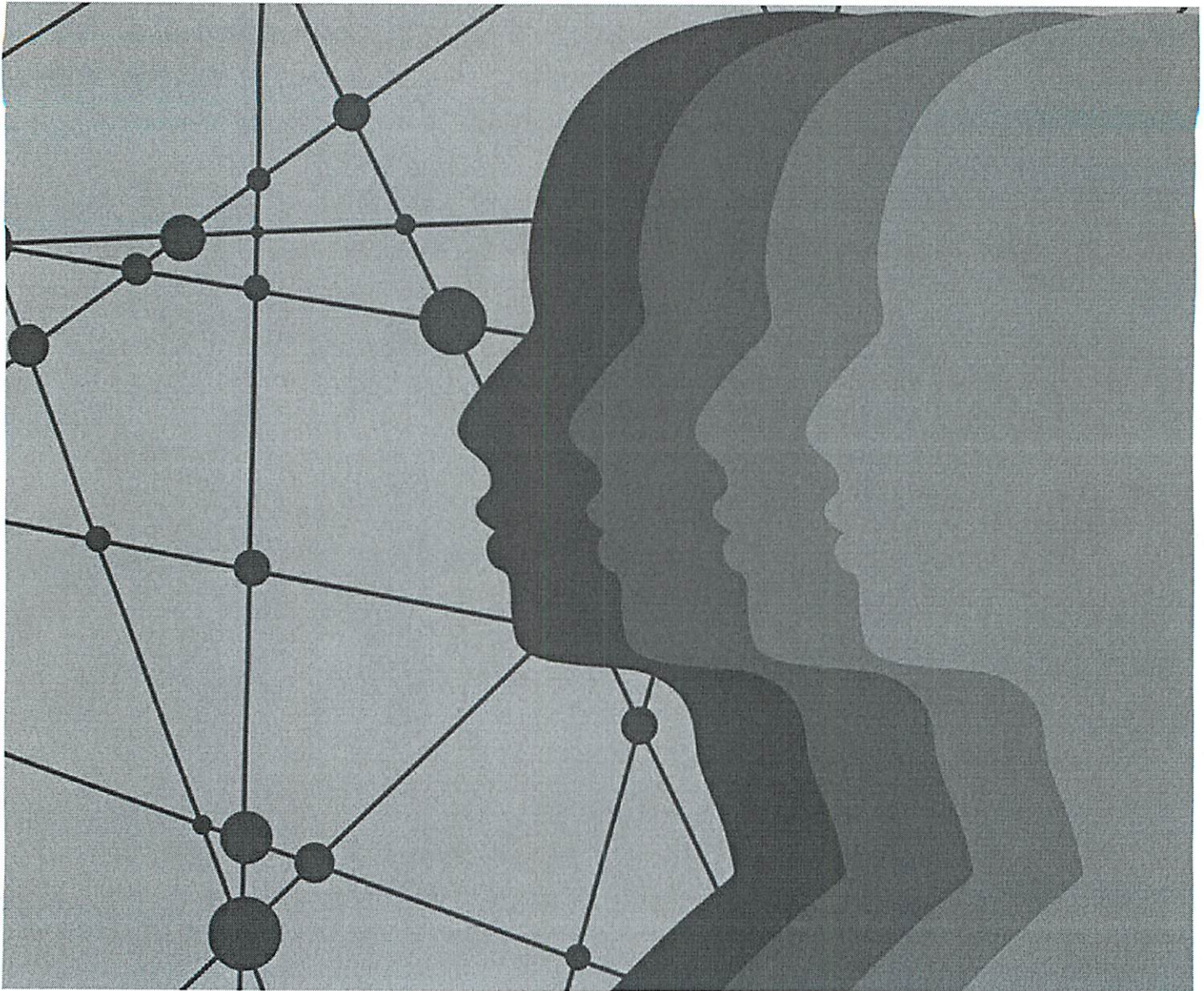
[Click to print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/newyorklawjournal/2021/09/23/bringing-awareness-to-fas-and-fasd-in-the-legal-system/>

## Bringing Awareness to FAS and FASD in the Legal System

Those facts alone suggest that attorneys and judges are regularly encountering individuals whose brain was damaged by prenatal exposure to alcohol.

By **Hon. Rachel L. Kretser (Ret.)** | September 23, 2021





New York's judges and attorneys are literally staring in the face of a worrisome medical, sociological, psychological and legal problem every single day: Fetal Alcohol Syndrome (FAS)/Fetal Alcohol Spectrum Disorder (FASD). Unfortunately, those of us in the courts, like most of us in society, have no idea what we are seeing.

While the Centers for Disease Control and Prevention cannot pinpoint how many people suffer from alcohol-induced prenatal brain damage, we do know that individuals with FASD have a higher rate of *incarceration* and arrest, with approximately half of all people with FASD facing legal trouble at some point. Furthermore, the prison population has much higher rates of FASD than the general population, and roughly 70% of the children in foster care are affected by prenatal alcohol exposure.

Those facts alone suggest that attorneys and judges are regularly encountering individuals whose brain was damaged by prenatal exposure to alcohol.

Although the American Bar Association passed a resolution back in 2012 urging all attorneys and judges to receive training to help identify and respond effectively to individuals on the fetal alcohol spectrum, it remains a below-the-radar and often overlooked problem in our courts. Our attorneys and judges are generally unaware of both the incidence and characteristics of FAS and FASD in the legal system. That needs to change, and change starts with awareness and training.

In roughly 10% of the cases, individuals with FAS have telltale facial features—thin upper lip, upturned nose, flat nasal bridge, small head circumference. They may have a relatively high IQ, counterintuitively coupled with poor math and language skills. Imaging will routinely show smaller than normal brains with obvious defects in the frontal lobe and damage to the parts of the brain that regulate muscle activity and memory.

Experts tell us that individuals with FAS/ FASD often have terrible impulse control and their adaptive behavior skills are exceedingly poor. They tend to confess to crimes they did not commit because they want to please. They're easily manipulated, exploited as drug "mules" and are often the one caught "holding the bag" because they are blindly loyal and naïve.

They simply don't understand consequences, do not learn from their mistakes and cannot be "taught a lesson." As adults, they are highly susceptible to abuse, including domestic violence, and equally likely to engage in violence (domestic and otherwise), partially because of a "startle reaction" that may prompt them to suddenly lash out. It's not malice or anger; it's more akin to the knee-jerk when a doctor taps the patellar tendon.

Since the part of their brain that makes connections is typically deficient, their thoughts don't run linearly from A to B to C to D to E. Rather, they may go from A to G to E to C. But since the narrative then doesn't make sense their brain tends to fill in the blanks.

Hence, their stories are shredded during an interrogation or in court because their mind tends to make up easily disprovable narratives to connect A to C and E and G and put things in an intelligible order. They are not lying per se; rather, their damaged brains are straining to network because, as a CT or MRI will often show, the corpus callosum—the information sharing highway between the right and left hemispheres—is damaged and dysfunctional.

Many FAS/FASD cases fall through the cracks long before they become a legal issue. But once it does become a legal issue—and individuals FAS/FASD end up in the New York courts as both victims and perpetrators, as foster children and as juvenile delinquents—it's vital that those of us in the justice system address the issue squarely and knowledgeably.

There are no easy answers to this problem, but it begins with awareness—awareness of attorneys *who* represent children or individuals who may well be inflicted with FAS/FASD and awareness of judges who, in appropriate cases, can push the issue by asking: Has this individual before me been screened for possible FAS/FASD?

On October 26th, the Gender Fairness Committee of the Third Judicial District, along with the Permanent Judicial Commission on Justice for Children, is sponsoring a half-day program exploring the medical, psychological and legal implications of FAS/FASD in the courts. The program will conclude with a panel discussion including one of our judges, Justice Lisa Fisher, who is the adoptive mother of a child with fetal alcohol syndrome. Registration information is available at <https://conta.cc/2W67pEX>  
(<https://conta.cc/2W67pEX>)

**Hon. Rachel L. Kretser (Ret.)** *is chair of the Third Judicial District Gender Fairness Committee. Both are participating in the October 26th, 3.5 credit free CLE: Fetal Alcohol Syndrome and the Courts.*

---

Copyright 2021. ALM Media Properties, LLC. All rights reserved.