

Victimization in People with FASD

^aKrystal Glowatski, MA, and ^{b,c}Michelle Stewart, PhD

^aSimon Fraser University; ^bUniversity of Regina; ^cCanada FASD Research Network

Issue:

Fetal Alcohol Spectrum Disorder (FASD) is a disability that affects the body and brain, causing life-long impacts on physical and cognitive development, social and emotional functioning, and behaviour.¹ Individuals with FASD are also at increased risk for negative life outcomes, including trouble with school and work, mental health and substance use issues, inappropriate behaviours, as well as involvement with the legal system.² In the context of criminal justice, most researchers mention the increased risk of individuals with FASD coming into contact with the system as offenders, witnesses, and/or *victims*,³ however, very little attention is paid to the complexities of the victimization of those with FASD. Thus, the goal of the current paper is to explore the issue of victimization in FASD and make recommendations for improving the justice process for these individuals.

Background:

Victimization may be defined as an individual being harmed through the commission of a crime (e.g., physically, mentally, emotionally, or financially). A victim may be thought of as someone who is vulnerable, innocent, and unable to have prevented a conflict.⁴ Victims have been a largely overlooked and neglected group,⁵ and have traditionally had their conflicts stolen from them,⁶ meaning that even though they are directly impacted by a crime, the victim actually plays a small role in the resolution of conflict. Unfortunately, many of the characteristics associated with FASD – such as difficulties with social skills, adaptive functioning, language comprehension, attention, judgment, and memory – increase the vulnerability of these individuals in the justice system.⁷ Indeed, researchers have shown that individuals with FASD who are involved in the justice system experience a high degree of victimization.⁸

Mental health, cognitive functioning, and FASD have typically been neglected in the literature on victimization. Researchers have extensively explored the issues of rape, domestic violence, ethnic and racial groups, LGBTQ, and the abuse of the elderly, as well as the international rights provided to these groups and available services and approaches to dealing with victimization.⁹ However, nowhere in this work is mental health addressed, nor are the complications that can arise from cognitive impairments, let alone the specific challenges that might arise when someone with FASD is victimized.

The legal system itself is already very complicated to the average person. For those with FASD, problems with switching from one idea to another, keeping a timeline, and repeated transitions (e.g., being out of the courthouse, into the courthouse, onto the witness stand, etc.), justice

processes can be outright overwhelming. Researchers have shown that individuals with FASD have a compromised ability to understand legal proceedings.¹⁰ Individuals with FASD may also become *re-victimized* through the justice process. For instance, the courtroom is a setting in which the victim becomes a ‘witness’, which can be demeaning in terms of personalized experiences of trauma. If the individual who was victimized is asked to take the stand, there is a risk of ridicule, embarrassment, and shame, which can be traumatizing even to someone who does not have a disability. When a ‘witness’ cannot keep a timeline of events, is highly susceptible to leading questioning, or has a tendency toward misremembering real or imagined events, the possible impacts of ridicule are magnified. Unfortunately, these difficulties may be more common for individuals with FASD given their specific impairments. When this occurs, it is unlikely that justice is served. However, emerging research tells us that legal professionals are using specific strategies to try to overcome these obstacles of re-victimization.

Victim Rights. *The Canadian Victims Bill of Rights* provides many stipulations to ensure the protection of victims including: providing information about the justice process, access to victim services, restricting contact against the offender, the right to be notified and shown a picture of the offender upon release, the right to hear a tape recording of the trial if the victim cannot attend court, and information regarding the offender’s progress while in prison.¹¹ Similarly, the Department of Justice Canada (Policy Centre for Victim Issues),¹² declares a number of goals, including considering the perspectives of victims in crafting policy, increasing awareness of victim needs and appropriate approaches to those needs, researching emergent issues regarding victims, and supplying legal education about the victim’s role in justice. However, neither of these resources consider how to provide services when the victim has FASD.

Not unlike when someone with FASD becomes an offender, there are several concerns that can arise when victimization occurs in this population, including ensuring victim rights and maintaining a rigorous and robust justice process. Given the abundance of attention, both socially and politically, that has been paid to victim rights in the recent past, it is essential to consider the issues associated with FASD and victim rights. Although there are various resources in Canada for victims of crime, there are also considerable complications with using and distributing those resources when the victim has a disability like FASD. In light of the absence of policies surrounding victims with FASD in Canada, there is a need to work toward greater protection of victim rights, as small changes in the courtroom can significantly impact lives. Indeed, all people, including those with FASD, need to have agency, and the way this agency plays out will vary depending on the individual.

Insights from the Front Line

In 2014, we conducted interviews across Saskatchewan with justice professionals, including legal aid, Crown attorneys, judges, Aboriginal court workers, and victim service workers. In these interviews, imperative insights were shared on how to improve the justice process for people with FASD. The insights of our research participants are incorporated into the recommendations below to ensure that suggestions are practical and relatable to professionals in the courtroom. We aim to draw attention to the unique needs of victims with FASD and offer strategies to attend to those needs and simplify a complex system so people with FASD are able

to experience justice and have their rights upheld when they fall victim to crime. Although FASD is not the only disability that is over-represented in the justice system, our suggestions may lead to improvements in the process that extend beyond this specific disability and better address the needs of all of these vulnerable groups.

Recommendations:

1. Create standardized and mandatory FASD legal training

- Training levels and understandings of FASD vary widely across the legal field, and even within the same profession. In order to provide services in which victims are best served, justice professionals should be trained in the unique needs of someone with FASD, as well as how to understand and work with clients with the disability. Such training should be specific and comprehensive, so professionals know how to tailor their approach when working with someone with FASD as a victim, offender, and/or witness.
- A broad-based understanding of FASD among legal professionals would allow for people with FASD to be acknowledged beyond the stereotypical role of offender. This recognition would also help to foster compassion and dignity for people who have been victimized and need support to navigate an already complicated system.
- Increased training could result in an environment where people with FASD are less stigmatized, and professionals are more willing to discuss the topic, ask questions, and expand their capacities.
- Open dialogue could lead to respectful information sharing about clients that is essential to victim rights, and that could improve the strategies employed to assist in meeting client needs.

2. Craft flexible strategies for working with clients with FASD

- Clients with FASD may require more time, effort, and extra support to understand the legal process, as well as their options and obligations.
- Specialized personnel support should be offered, such as FASD-informed legal representatives and systems navigators so that victims with FASD can make best informed choices related to their testimony and the criminal justice system. These supports should assist the victim and their families in navigating the system as well as advocate on the part of the client.
- Court workers should be engaged as a point person to work with clients with FASD, streamline information, establish a relationship of familiarity, and ensure consistent communication.
- Other resources and opportunities should be provided to guide victims and their families through the court process such as: visiting the courtroom before the proceedings, allowing time to practice in the courtroom if it is available, and providing assistance with completing and filing paperwork to avoid unnecessary delays of justice.
- People with FASD have varied communication styles which should be accommodated for. One strategy may be to have the client write things down. It will also be beneficial to individually tailor messages, use simplified language, and/or supplement with visual images so the client best understands the information they need to have.

- Seeking advice from people with FASD, or seasoned experts experienced in working with these clients, would assist professionals to better understand the disability.
- Always practice patience when working with clients with FASD and their families.

3. Notifications to the court and consideration of modified testimony

- When an FASD diagnosis is known among one or more parties in the legal system, it may be beneficial to disclose this information to all relevant parties, as long as informed consent for disclosure is explicitly provided by the client with FASD.
- For some clients with FASD, a closed-chambers discussion to protect their privacy and dignity may be warranted, and modifications considered to assist them in court.
- Upon establishing rapport with a client, it might be recommended that they give alternative testimony such as the use of a screen, video testimony, testimony from another location, or testimony with the support of a person or therapy animal.

Summary:

For individuals with FASD, assistance in the courtroom should be viewed as not just necessary, but as a fundamental right. Supports, such as the ones discussed in this issue paper, may help to ensure that meaningful and accurate justice is achieved on both an individual and social level. People with FASD who have become victimized are exponentially vulnerable and need extra precautions to ensure their rights as victims are respected. If someone with FASD enters a courtroom without accommodations or proper and detailed preparation, the prosecution and defense will be facing an unprepared witness, the judge will be facing issues of ethicality and frustration, the offender will be facing ill justice, and the victim may very likely be re-victimized. The suggestions outlined here are meant to make justice more robust, and certainly not to undermine the legal system. A few small changes in practice can indeed create a monumental change in ensuring justice.

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