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The Rights of Children in the Australian Juvenile Justice System Prenatally Affected by Alcohol

Sue Miers¹ and Anne Russell² - NOFASARD³

*"At a time in history when many people with disabilities are demanding the right to be fully participating members of their community, there is another group of people with disabilities who are crying out to be identified. At a time when people with disabilities are desperately trying to rise above their impairment and be recognised for their basic humanity, people with Fetal Alcohol Spectrum Disorder (FASD) are still struggling to be identified and understood. The disabilities associated with FASD are seldom recognised; seldom treated effectively and seldom connected to service dollars."*⁴

Alcohol is a teratogen, an agent that adversely effects normal fetal formation and in particular alcohol is known to have its greatest effect on the structure and function of the developing brain. Individuals with Fetal Alcohol Spectrum Disorder (FASD) have hidden brain damage that is permanent, long-lasting and has far reaching effects.

Unfortunately FASD has received very little attention by health authorities in Australia. There are no specially trained multidisciplinary teams to diagnose this disability and the Australian medical profession has received very little information about the disorder in their medical school training. In contrast, North America has over 70 specially trained FASD diagnostic teams and in Canada, FASD training is being implemented into their police service, corrections system and to lawyers and judges because they have realized that prevention and appropriate intervention and management is a far less costly alternative than serving them in jails.

So, in Australia, the disorder is poorly understood and affected children and adolescents are slipping through the system. Many affected children are not diagnosed with a disability because they either have IQs that

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fall within the 'normal' range; they are misdiagnosed with ADD, ADHD or one of the autism spectrum of disorders; or they are branded 'delinquent'.

*"Delinquency is increasing in Australia.....the presumed origin of certain delinquent and antisocial behaviour in Australia needs to be urgently revised because we are sending people with disabilities to prison for behaving in a manner that is consistent with every expert opinion on that disability. Would we punish a person with depression because they were sad?"*⁵⁵

Children and adolescents with FASD are unable to learn from their mistakes; make changes in their behaviour or understand the consequences of their actions. They are impulsive; have poor personal boundaries; impaired judgment; easily manipulated; and often have far better expressive language skills than receptive language so they appear to understand more than they actually do.

Affected children have difficulty distinguishing between strangers and friends and have trouble structuring their own lives and their behaviours. They also require the consequences of their actions to be immediate and relevant. Without FASD competent therapists, psychologists and psychiatrists to help manage mental health, affected children experience problems with day to day life that they might otherwise avoid.

Children with FASD require external positive, consistent supervision and structure and unfortunately because of inadequate screening and diagnosis most find this through the legal system and juvenile detention facilities so in effect we are incarcerating these children/adolescents and punishing them for their disability.

Traditional interventions in juvenile detention facilities are usually based on principles of learning theory that expect individuals to learn from consequences either natural or imposed and take responsibility for their actions. There is an expectation that they can understand and process information, understand ideas and concepts, make links and form associations, interpret, store and remember information and take what is learnt in one situation

and apply it in another. In actual fact this is exactly what is missing when a person has FASD.

*"Psychological and social services have been put in place for people who are likely to respond to abstract concepts and who can independently work on their thoughts and behaviours keeping an ultimate goal in mind. Considering that FASD is a recognised diagnosis of prenatal alcohol exposure causing brain damage, imprisoning people with FASD seems counterproductive if the aim is to promote rehabilitation."*⁶

These interventions do not meet the needs of affected young people and their rights **will** be compromised unless their disability is diagnosed, understood and appropriately managed.

In financial terms, the cost of someone with FASD to society has been assessed as around \$US5m. A good proportion of this figure belongs to the cost of incarceration of the individual; attempted rehabilitation, which because of the rationale cited above is unlikely to be effective; and then the highly probable recidivism. When we are looking at the cost of this condition, we must also look beyond the financial to the cost to the friends, family, employers, youth services, educational institutions and above all, to the individual whose human rights has been compromised in the worst possible way. Not only is that individual incarcerated because they are behaving in a way that is considered 'normal' for their disability, but it is compromised by the victimisation, wrongful sentencing, misunderstandings, discrimination and oppression of them **because** of their disability.

A young person with Down Syndrome would not be treated in the same way as a young person who has normal genetics; it would be unfair, definitely damaging and probably illegal, a contravention of his or her human rights and yet the human rights of people with FASD are being compromised daily. Amnesty International tells us that human rights are universal, they are inherent, they are inalienable and they are essential, but they **can be** violated, and in the instance of young people with FASD and the juvenile justice system in Australia – they are!

References

The FASD Canadian Guidelines for Diagnosis and Identifying Fetal Alcohol Spectrum Disorders in Primary Care <http://www.cmaj.ca/cgi/content/full/172/5/628>

Streissguth, A. (1997). *The Challenge of Fetal Alcohol Syndrome: Overcoming Secondary Disabilities*. University of Washington Press.

Endnotes

¹ Sue Miers is the foster parent of a 26 year old daughter who has partial fetal alcohol syndrome. (pFAS) She has lobbied extensively on both a state and national level to raise awareness about FAS issues and is a founding member of NOFASARD (National Organisation for Fetal Alcohol Syndrome and Related Disorders) She has been invited to be a member of, and has reported to, various national and state government agencies in Australia, as a recognised parent authority in this area. In June 2006 she was awarded the Member of the General Division of the Order of Australia for service to the community through the establishment of the National Organisation for Foetal Alcohol Syndrome and Related Disorders, to community education and reconciliation.

² Elizabeth Russell is a recovering alcoholic who in 2001 found that her addiction had physically harmed her two sons. Her eldest son, who is 25 years old, was diagnosed with Neurodevelopmental Disorder – Alcohol Exposed and her youngest son who is 22 years of age has full Fetal Alcohol Syndrome. Elizabeth has resolved to devote the rest of her life to the prevention, education and support of sufferers of fetal alcohol spectrum disorder and their carers ensuring a positive consequence of her sons' suffering and to this end has written two books on FASD. They are *Alcohol and Pregnancy – A Mother's Responsible Disturbance* and *Alcohol and Pregnancy – No Shame No Blame*. These are the first two books on FASD written from the Australian perspective.

³The National Organisation for Foetal Alcohol Syndrome and Related Disorders Inc. (NOFASARD) was established and incorporated in Adelaide in 1998. It is Australia's peak body representing parents, carers and others interested in or affected by Fetal Alcohol Spectrum Disorder (FASD). NOFASARD is a registered charity and is staffed totally by volunteers. Through education and advocacy NOFASARD aims to improve the lives of children/adults with FASD and representatives from the organization present at seminars and workshops for both government and non-government agencies throughout Australia www.nofasard.org

⁴ From: *Attaining Human Rights, Civil Rights, and Criminal Justice for People with Fetal Alcohol Syndrome*; by Ann Streissguth, and published in TASH Newsletter, Sept. 1998. For more information on the work of TASH, visit www.tash.org.

⁶ *Alcohol and Pregnancy: No blame No shame!* Elizabeth Russell (2007)

Alcohol and Pregnancy: No Blame No Shame A Case Study

This case study about a young lad with Fetal Alcohol Spectrum Disorder (FASD) appears in the book “Alcohol and Pregnancy: No blame No shame!” and it is reprinted here with permission of the author Elizabeth Russell. Whilst this story is about a young Aboriginal youth, it is important to understand that Fetal Alcohol Spectrum Disorder does not just affect Aboriginal children and will be found wherever alcohol is part of the culture.

The narrator of this story ‘adopted’ Jack, a young Indigenous youth; or as Jack would tell it, he quite determinedly ‘adopted’ her. Regardless of who adopted whom, Dr Janet Hammill not only willingly took Jack in and stayed by his side throughout challenging times with the Queensland juvenile justice system, but also chose to advocate for him and the disability from which he suffers. Dr Hammill is an academic with a doctoral degree in Indigenous family violence and is a descendant of the Gamilaray people of the NSW Pilliga forest. She hoped that by providing Jack with a stable home and ‘mother’ figure that it would give him a chance to turn his life around. Unfortunately both Dr Hammill and Jack were to find that very few interventions, even those of a loving, generous and knowledgeable ‘mother’ can stop a young person with FASD from spiraling down the path of petty crime into the waiting arms of the justice system.

Introduction

To describe Jack's story as tragic would create a depiction of a child born into only sadness and deny the happiness of early years being nurtured and secure within an extended family that chose to embrace him. Jack's awful misfortunes relate to his origins as an Aboriginal child with unrecognised neurodevelopmental birth disabilities in a country not conversant with the teratogenic effects of alcohol or the complexities of intergenerational exposure to poverty, racism and discrimination. Jack's circumstances of birth were beyond his choosing and he was destined to follow a pubertal pathway through to adulthood bereft of valid interventions by those in authority. His experience as