

# Fetal Alcohol: You and Your Child's Lawyer

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These few sentences are intended for parents and caregivers of persons with the brain based birth defect often called Fetal Alcohol Spectrum Disorder (FASD). Social services staff, probation officers, teachers, and like-minded folks might also find some comfort here.

I have some 15 years experience as a Canadian criminal lawyer, both prosecution and defense. Like many lawyers, I have made many mistakes as a lawyer when dealing with clients with fetal alcohol issues, and I intend here to suggest ways you and your lawyer can avoid some of the mistakes I have made.

I have shaped this paper in a question and answer format, with short paragraphs on simple topics, because it seems an easier way for me to simplify complex subjects. I am writing as if I was speaking personally to a client (and their caregiver/parent) across the desk in my law office.

## **1. How to Choose a Criminal Lawyer for Your Child/Person With FASD?**

This can be difficult, because most people touch the law when they sell or buy their house or have a will made or interpreted. Most members of any public audience have formed their impressions of what a lawyer does and is from these mild encounters ---- or from Hollywood.

I trust you know that neither Hollywood, nor the million-channel TV universe, has much reality when it comes to law and lawyers.

Criminal lawyers are special because they form part of the bedrock of democracy. This is not a trivial statement, as you will soon find out when your son or daughter with a brain-based birth defect is in court, the powers of the State are set against you, and all you have is a criminal lawyer. Criminal lawyers take this heavy social responsibility easily in stride and nothing pleases us more than to beat the state and to help the little person.

Criminal lawyers tend to be odd. They also tend to be loners. They may have a partner or two, but most operate by themselves partly because of who they are and partly because it is the nature of the job: alone against the police, the prosecution, the prison system, and, of course, against the government.

A criminal defense lawyer usually only does criminal work. He or she may have a few side areas of law, but the focus is always on defending people who have criminal problems. Thus, ALWAYS avoid a lawyer who says he has a general practice of real estate, family, and corporate law.

Start looking in the yellow pages of the phone book.... a quick scan will reveal that most lawyers that advertise indicate that their practice is restricted to personal injury work. Then notice that a few say their work is restricted to criminal defense. This is the beginning of your list.

If you have friends who have contacts in the police department or at courthouse, ask them....it is a universal truth, quietly acknowledged, that the police always know who are the good lawyers. When police, lawyers, court staff, probation officers, by-law enforcement staff, and other such ordinary people get in trouble they seem to use the same lawyers....good defense lawyers. Asking your local police officer is always a good start. And take the advice carefully remembering how much you paid for it.

From the short list, you have gathered from the yellow pages phone a few. Choosing a lawyer for your son or daughter should consume more time and energy than buying a new car / truck. So phoning five or six lawyers is a good start, but probably not enough to make an informed decision. You may have to speak to ten and you may have to ask probation officers or friends at work...especially those who have occasion to use a criminal lawyer for drinking and driving problems.

Rarely will lawyers over the phone tell you much about themselves or their practice. After you have tried the above methods, you need to interview lawyers in their offices.

The trick is to find a competent criminal defense lawyer you like and trust.... LIKE AND TRUST. These words must be your guide. If you like, her, your communication will be excellent.

If you trust him, you will have the sense of being heard, of being seen in your problem and you will understand what is happening to your son.

Do not worry if your lawyer knows nothing about Fetal Alcohol Spectrum Disorder (FASD). You can educate a criminal lawyer quickly. No one learns as quickly as a criminal lawyer does with a file in hand.

Do not gauge criminal lawyers by the furniture in the waiting room. Do not expect her to be gushing emotional welcomes or to use fluffy social language at your arrival in the office like a commissioned sales clerk. The business of criminal law is deadly serious and your lawyer will get immediately to business.

Money matters need quick clarification and agreement. Lawyers are expensive, and few and fewer are accepting legal aid. Here you will be guided by your income. If you cannot pay for the one you have selected, she will gladly suggest one suitable to your ability to pay.

While your lawyer might have a prompt answer to your question, as most criminal problems are as clear as the nose on your face, she might want to get back to you. This is a sign of a competent lawyer. She may need to research a point or make a few calls before giving an opinion.

Your chosen lawyer will tell you what the case looks like from the point of view of the prosecution. She will set out each of the elements of the charge and tell you that the prosecution must prove each and every element of the charge beyond a reasonable doubt. Your lawyer will tell you how local judges see such cases. Your lawyer will give you a range of sentences should “guilty” be the outcome.

Two practical timesaving things you can do in advance will assist your lawyer.

First, prepare a typed chronology.... one or two pages.... a brief history of your son. Starting with birth date, adoption details, and any significant medical issues. Catalogue and describe by date and place, the behavior difficulties, perhaps using the various grades in school as a guide. Mention if he was ever arrested but not charged, list the past criminal charges and criminal record (if any), the various sentences imposed by the courts, and any names of helpful doctors, psychologists, teachers, and if possible, any police members who might assist.

Second, assemble all the court papers, including a list of criminal charges, and reasons for judgment, and probation orders... anything from the court with your son’s name on it. Sometimes lawyers need to search old files and if you have the original documents with the file numbers, it makes his job easier.

Include here any letters of reprimand from schools, or any other documents that describe some of the behavior difficulties of your son. If you have a written diagnosis of Fetal Alcohol Spectrum Disorder (FASD) include it, as well any other psychological reports, or medical reports that seem important. Put in everything because it is quicker for your lawyer to edit out the unnecessary paper than find new documents he does not know exist.

Make two copies of all these papers and put them into separate black three ring binders: one for you and one for the lawyer.

Update these binders as time goes on. Carry them with you for all visits to the probation office, and if your son is in prison or jail make a copy for the director of the institution.

Learn to distribute this information, especially if you have a written FASD diagnosis or have helpful psychological reports that contain the names and phone numbers/ email addresses of professionals who assisted you and your son in the past.

## **2. How to Learn to See Your Son’s Case with Prosecution Eyes?**

You can learn to see your son’s criminal charge from the point of view of the prosecutor’s eyes if you understand two points:

- 1) The prosecution lawyer is the lawyer for your community.... for all members of the community including you and your son. They work each day to put cases before a judge that the prosecution’s office believes to be good cases. So what do they see that you do not?

Ask this question again and again until all the emotion about your son's case has evaporated.

This is simple. Remember: the police have gathered evidence that suggests they can prove each and every element of the criminal offence...it is not personal, it is a job.

2) Prosecutors have a solemn duty to the court, a duty each prosecutor takes seriously, to stand up and do the right thing for their community. This means the prosecutor has strict ethical guidelines and will not risk losing a job for misbehaving on small cases like the one involving your son.

This does not mean prosecutors are wobbly, weak, or willing to buckle under pressure. The reverse is true. They have a job that requires great determination, and they are vigorous.

Before a case is approved, the prosecutor has asked and answered "yes" to these two questions:

1) Is there a substantial likelihood of conviction?

And

2) Is it in the public interest to proceed?

Lastly, prosecutors are driven by facts. The peculiarities of your son's birth defect rarely, if ever, enter their thinking process.

Again, prosecutors ask: Can I prove each and every element of the offence? If yes, then go to court. Yes, it is that simple for a prosecutor.

Thus, you need professional help in the shape of a criminal defense lawyer when dealing with the single-minded prosecutor. Rarely does any parental intervention with the prosecution do any good. Most of the time you give the prosecution more information that makes it easier to convict your son.

### **3. How to Prepare For the Outcome?**

Upwards of 80% to 90% of cases result in the person charged pleading guilty or being found guilty. This is not surprising as police and prosecutors are professionals. This fact needs to be taken to heart immediately after you hear the police have arrested or questioned your son.

Start by looking deep into your heart and tell yourself: he is still my son...what can I do?

Please consider this truism: your son is entitled to the same legal advice as any senator, judge or baseball player found with drugs in their car. Stop reacting emotionally and start responding carefully, as if you were a judge, senator, or million-dollar ball player.

First, get him a lawyer now.

Second .... Start preparing now for that moment when the judge says “guilty “. If another result occurs, take it as a gift and use the measures you have instituted as more of the daily learning process for you and your son.

This means start taking the “behavior” that someone has complained seriously. You may need to start using curfews, prohibit whom he “hangs out” with, where he goes, what he does, and other parental steps you have used in the past. Most importantly, begin NOW to employ consequences for those actions of his that might draw some negative attention.

I mention consequences for two reasons. First, so you can show the judge (and the community) you take this “problem” seriously and jail may not be necessary because you are willing to supervise and intervene when your son’s behavior is incorrect.

The second, and most difficult reason, is because once inside the criminal system, in jail, consequences will always swiftly follow negative behavior and your son will need preparation for this sudden change in environment. Your son may thrive on structure, as many persons with fetal alcohol issues do, but the ferocity of the change will startle even you.

By consequences, I mean more than structure. I mean immediate, weighty changes in structures, privileges, and rights. Yes, this means curbing liberties, this means clear actions on your part to indicate to your son that the complained of behavior is unacceptable. I would encourage you to have a team that can assist you here composed of employers, friends, relatives, teachers, coaches, and others familiar with your son’s birth defect. This team is called the “external brain”.

This sudden imposing of consequences will be tremendously difficult for you and be tremendously important to judges later, should sentencing be the necessary outcome. Judges need to know you can impose meaningful consequences if they are to be persuaded jail is not necessary.

#### **4. How Do I Assemble the “External Brain”?**

This is the single most vital task you as a parent can do for your son or daughter

This means gathering people, employers, friends who can help probation officers supervise your son. Here you must be candid with all members of the “external brain” team. Give them the medical info you have if you have a diagnosis. Give them any material you have gleaned from excellent websites such as [www.fasstar.com](http://www.fasstar.com) and [www.asantecentre.org](http://www.asantecentre.org). Your son has a brain-based birth defect: your team aims to fill in those brain functions the alcohol in the womb dissolved. This means different people might have different functions. Some might be there to make sure appointments are kept. Some might ensure certain “undesirables” have no contact with your son, while others work to keep him at work or on task.

The more effort you spend creating this team, and the more willing they are to help, the more likely the judge might say, “Jail is not necessary in this case!”

## **5. How Do I Anticipate and Create “Workable Terms” In Probation Orders?**

Going back to the “external brain”, this means finding language your son understands.... not the language of lawyers and judges.... to separate your son from the problem causing behavior, and create structure, so that opportunities for more criminal offences do not happen.

I suggest you make probation orders “fridge proof”.... that is, put the same language in probation orders you use when you leave notes, attached by fridge magnets, to family members. Do not assume that because a judge read the probation order aloud in court and your son agreed by nodding, that he has any real understanding of all that it means.

Probation orders work when they assist in stopping your son from repeating crimes or from attempting or completing new criminal offences. Use your years of experience as a parent to translate what the court wants into “parental” language you use in the home everyday.

Here, you can set out for your lawyer, for the court, and for the probation officer, simple sentences that, in your mind, that will achieve these goals.... because you know what works for your son. To the criminal system people, he is just another offender, and they usually know nothing about fetal alcohol issues.

Then tell your lawyer about your ideas for probation orders as a part of the process of educating your lawyer about FASD. You know your son and now look to these orders as a tool to continue your parenting.

## **6. How to Use the Orders to Build Structures for Success.... Not For Punishment?**

Here, as you know from working with this brain-based birth defect for years, learning is slow and failure is common. I suggest you review Teresa Kellerman and Dr. Asante’s websites for ideas. Both sites have excellent links, excellent articles, and much excellent info that you can give your lawyer that he can then give to the judge and probation officers.

Make sure your lawyer, the prosecutor, the judge, and the probation officers know that there will be missed appointments, some failures, and some future difficulties. Plan for the future successes by relying on the “external brain” you have created.

## **7. How to Teach The “External Brain” Concept Every Chance You Get?**

Again and again, like spelling or arithmetic drills, take every chance you get with lawyers and probation, with judges and prosecution to give them something on the “external brain”.... if nothing else.... it may keep your son out of jail. Again and again, explain that this person before

the court has a brain based birth defect. Do not use the problem of the faulty brain as an excuse. Quietly, say the behaviors are the result. The explanation is brain based. The “fix” is the “external brain”.

### **8. If Nothing Else: Learn and Teach That Mere Punishment Guarantees More Re – Offending Because People With Brain Based Birth Defects Do Not Learn Like You And I.**

As Diane Malbin, advocates we need to lower our expectations of people with fetal alcohol effected brains and then we need to change their environments.

This change in environment means using probation orders in positive ways. For instance, if there is a “no go” the mall, or a “no contact Fred Smith” order, write out alternative places to go or alternative people to see.

I wholeheartedly suggest parents and caregivers read Barbara Coloroso’s two excellent books:

The Bully, The Bullied, and The Bystander,  
and  
Kids Are Worth It.

She has crisp paragraphs with concrete suggestions that parents and probation officers will appreciate.

### **9. How to Give Lawyers, Judges, and Probation Officers Information?**

Put the paper in their hands. Do not expect them to cruise websites. Download and photocopy. Download and photocopy.

I suggest:

1. ” The Criminalization of Fetal Alcohol Syndrome” by Dr. Caron Byrne, Assistant Professor of Psychiatry at the University of British Columbia, Vancouver, B.C.
2. Mistakes I Have Made with FAS Clients by David Boulding
3. A Lawyer’s Brief on FASD by David Boulding

ALL THREE AVAILABLE AT: [www.asantecentre.org](http://www.asantecentre.org)

Another fine source for creative ideas for goodhearted probation orders that work is the website of Teresa Kellerman ([www.fasstar.com](http://www.fasstar.com)). She is a parent and trainer on FASD topics and she has many pages of specific information you will want to give probation officers.

Then buy and give books by Dr. Anne Streissguth:

1. The Challenge of Fetal Alcohol Syndrome: Overcoming The Secondary Disabilities
2. Fetal Alcohol Syndrome: A Guide for Families and Communities

Diane Malbin:

Fetal Alcohol Syndrome and Fetal Alcohol Effects: Strategies for Professionals

A judge cannot put a whole book in evidence. Many do, however, read in parts of books and refer to relevant articles when they give their reasons for judgment. Unless you give the information to judges, they will never know. Everyone in the criminal system is eager to help when they can once learn of fetal alcohol issues. If you give materials to a probation officer, you can be assured they will be read. Therefore, it is up to you, the parents, and caregivers, to educate the good people in the justice system.

Clearly, this education is a long haul process, just like bringing up the child with FASD.

Last Words. Repeat these three (3) points every chance you get:

- 1) Fetal Alcohol Spectrum Disorder means permanent brain damage - psychiatric drugs and jail time will not repair lost brain cells or bring back absent brain functions.
- 2) Fetal Alcohol Spectrum Disorder is a multi sector problem - a single agency can NEVER solve this difficult situation alone: Use teams!

There is good news and it is called the “external brain”. The external brain, as a legal concept, is our duty to care in the flesh: it is our duty to those with brain-based birth defects to accommodate them because we are all equal before the law.

As team members of the “external brain” composed of parents, caregivers, lawyers, judges, police, and probation officers we can make a positive difference in the lives of those with these brain based birth defects, if we act as a team.