

FASD as a Mitigating Factor

“Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder”

Summary

In 2012, the Alaska House of Representatives unanimously passed Senate Bill 151. The bill passed the Alaska State Legislature unanimously. Members of the “FASD & Legal System” workgroup presented before the State House Judiciary and Health & Social Services committees on the topic of FASD and its impact on the justice and correctional systems.

Purpose

A mitigating factor, in law, is information or evidence presented to the court regarding a defendant or circumstances of the crime that might result in reduced charges or lesser sentences. The intent of the law is the recognition of how the brain injury associated with an FASD can result in challenges with adaptive behavior, memory difficulties, challenges with planning, and difficulty with connecting cause and effect.

The law supports the recommendations of the unanimously approved American Bar Association Resolution that encouraged courts to apply FASD as a mitigating factor in the mitigation of juvenile justice and criminal sentencing while urging consideration of alternatives to incarceration that reduce recidivism.

Alaska identified the economic benefits of seeking alternatives to incarceration. The University of Alaska Anchorage found the cost of incarceration in an Alaskan prison is about \$136 per day. The cost of intensive case management, a recommended intervention for people with an FASD is about \$48 per day. If electronic monitoring (\$21 per day) and probation/parole (\$7 per day) are added, the total cost per day is \$76. These alternatives would be less expensive than prison.

Model Legislation

Section 1. {Title.} FACTORS IN AGGRAVATION AND MITIGATION

The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in XX:

(1) except in the case of an offense defined under XX or XX, the defendant committed the offense while suffering from a condition diagnosed

(A) as a fetal alcohol spectrum disorder, the fetal alcohol spectrum disorder substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the fetal alcohol spectrum disorder, though insufficient to constitute a complete defense, significantly affected the defendant's conduct; in this subparagraph, "fetal alcohol spectrum disorder" means a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy.