

FASD: In the (Forensic) Trenches

Natalie Novick Brown, PhD

The Arc: Moving Beyond Prevention to Practical Supports
Bellevue, WA
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SCOPE

RELEVANCE

FETAL ALCOHOL SPECTRUM DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

There was a part of me that was angry, but I also knew that the police department and the justice system were uninformed about how vulnerable and easily swayed people [with an FASD] are.

—Mother whose son with an FASD was wrongly convicted of a crime



WHAT YOU NEED TO KNOW



FETAL ALCOHOL SPECTRUM DISORDERS

FASD is an umbrella term describing the range of effects that can occur in an individual prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

REASONS PEOPLE WITH AN FASD GET IN TROUBLE WITH THE LAW

Studies show that people with an FASD have specific types of brain damage that may cause them to get involved in criminal activity. These individuals show:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends).

Persons with an FASD may break the law without intending to do so. For example, they may touch people when it is unwanted and think they are just being friendly. They may take things that do not belong to them because they like them.

People can take advantage of individuals with an FASD. They may talk them into committing crimes. Females with an FASD may be involved with destructive men for food, shelter, attention, or drugs.² These relationships put them at risk for arrest.

NUMBER OF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM WITH AN FASD

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems screen for FASD or conduct a full diagnostic assessment. Researchers

at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.¹

The number of people with an FASD in the criminal justice system is assumed to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.³

ISSUES RELATED TO FASD IN THE CRIMINAL JUSTICE SYSTEM

Laws vary by State and case law is binding only in the State or circuit where the case was decided. Only Supreme Court cases are binding nationally. However, several general issues can arise for attorneys and judges dealing with persons with an FASD:

- Competency to stand trial, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.⁴⁻⁶
- Validity of expert testimony regarding diagnosis. Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?^{7,8}
- Diminished capacity. Capacity refers to the ability to understand right and wrong and to understand the



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
www.samhsa.gov



SAMHSA
Fetal Alcohol Spectrum Disorders
Center for Excellence

Per U.S. Government:

- **Competency to stand trial**, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.⁴⁻⁶
- **Validity of expert testimony regarding diagnosis.** Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?^{7,8}
- **Diminished capacity.** Capacity refers to the ability to understand right and wrong and to understand the

likely outcome at the time of the act. Some crimes require evidence of intent for the person to be found guilty. Defense lawyers may argue that persons with an FASD cannot form the intent to commit crimes because they cannot foresee the likely outcome.⁹

- **Effect of FASD on sentencing.** Lawyers have appealed the death penalty by arguing that FASD was not introduced as evidence to support a lesser sentence.¹⁰⁻¹²
- **Ability to testify.** Persons with an FASD are highly suggestible and may not be able to give accurate testimony. They are prone to making false confessions.¹³
- **Recidivism.** Offenses do not appear to get worse, such as from auto theft to robbery. However, persons with an FASD tend to repeat crimes of opportunity, such as shoplifting. Their thought process seems to be, "I want. I take."¹⁴

30-Minute Tutorial on FASD Advocacy in the Forensic Context

How Advocacy Can Initiate & Support the Assessment Process, or....

7 Steps to Effective Pre-Trial Advocacy with Legal Team:

- 1) FASD Screening
- 2) PAE Confirmation
- 3) Comprehensive Neuropsychological Testing
- 4) Educating re FASD “Profile”
- 5) Educating re Life Course Outcomes
- 6) Vinelands
- 7) Identifying Adaptive Deficits

Why Advocacy Is Essential to Ensure a Safety Net, or....

3 Critical Elements in Effective Post-Release Planning:

- 1) Structured Residential Environment
- 2) Medication
- 3) Case Management

How Advocacy Can Initiate & Support the Assessment Process

#1: ADVOCATE FOR FASD SCREENING



Forensic Assessment of Fetal Alcohol Spectrum Disorders

Richard Adler, MD, Medical Director
Natalie Novick Brown, PhD, Program Director
Paul Connor, PhD, Neuropsychological Director
Retired Judge Anthony Wartnik, Legal Director

1700 Seventh Ave., Suite 210
Seattle, WA 98101
(206) 624-3800 (office)
(206) 624-3801 (fax)

FASD EXPERTS SCREENING QUESTIONNAIRE	✓
OFFENSE CONDUCT	
Illogical actions with high detection risk	
"Simple" plan (focus is only on the objective)	
No real exit strategy	
Impulsive and aggressive over-reaction to unforeseen events ("fight or flight")	
More sophisticated/experienced co-defendants	
ARREST CONDUCT	
Immediately or easily waives rights	
Over-confesses (suggestible)	
Bags about prowess or takes full responsibility if co-defendants	
Emotionally detached from crime (shows little remorse or guilt)	
Behavioral regression (breaks down in tears, infantile behavior)	
INTERVIEW WITH CLIENT	
Short stature (not always)	
Unstable lifestyle	
Immature and naïve	
Eager to please or stubbornly resists the obvious	
Can't provide coherent, detailed narrative	
Can't concentrate	
Doesn't add much	
Doesn't seem to remember what you tell him/her from appointment to appointment	
PRIOR LEGAL HISTORY	
Easily led by more sophisticated peers	
Multiple low-grade offenses in teen years, often with co-defendants	
Lots of stealing	
Illogical offenses (e.g., stealing something with little value)	
Oblivious to risk	
Impulsive, opportunistic crimes	
Probation violations	
LIFE HISTORY	
Mom abuses alcohol/drugs	
Involvement with child welfare	
Adoption/foster or relative placements/juvenile commitment	
Special Education / learning disabilities in school	
Multiple diagnoses in childhood (especially ADD/ADHD)	
Rule-breaking behaviors (lies, cheats, steals, fights)	
Disrupted education	
Substance abuse	
Unstable adult lifestyle (improves with structure)	

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Life History
Mom abuses alcohol/drugs
Involvement with child welfare
Adoption/foster or relative placements/juvenile commitment
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Multiple diagnoses in childhood (especially ADD/ADHD)
Rule-breaking behaviors (lies, cheats, steals, fights)
Disrupted education
Substance abuse
Unstable adult lifestyle (improves with structure)

#2: ADVOCATE FOR PAE CONFIRMATION

**Prenatal Alcohol Exposure (PAE)
Birth Mother/Informant Interview Guide**

Name of Person Responding to This Questionnaire: _____

Name of Person Administering This Questionnaire: _____

Date: _____

First, without informing the birth mother/informant that you are interested in prenatal alcohol exposure, ask the following questions imbedded within general questions regarding the birth mother's health:

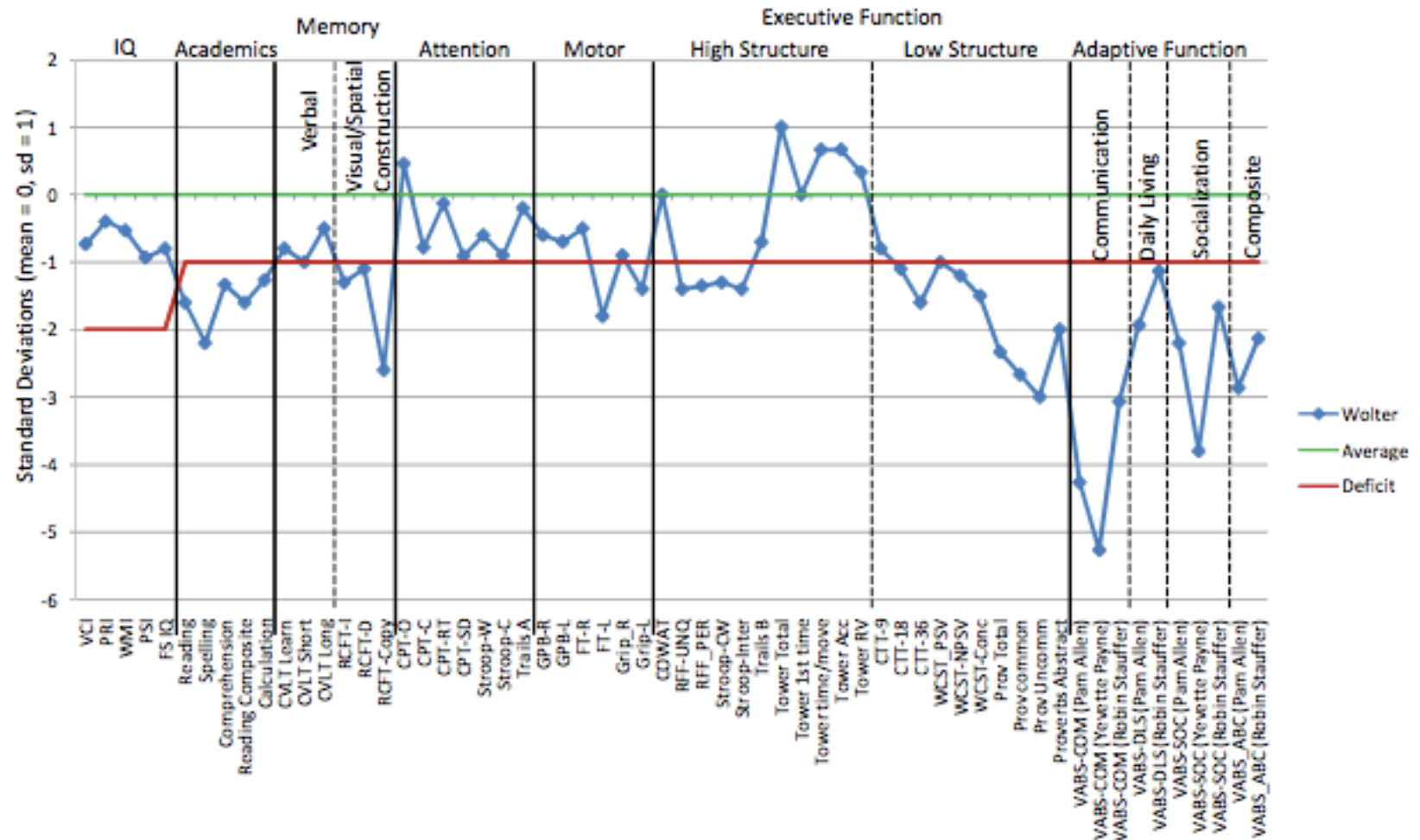
- 1) How old were you when you started drinking alcohol?
- 2) What amount of alcohol did you consider "a drink" at the time?
- 3) What kind(s) of alcohol did you drink around that time of your life?
- 4) Once you started drinking at age XX, was there ever a time in your life when you stopped drinking for any length of time?
- 5) How old were you when you were pregnant with (the subject/defendant in question)?
- 6) How far along were you when you learned you were pregnant?

Second, ask the following 4 questions from the perspective of the birth mother's drinking in the month before she learned she was pregnant. Then, ask the same questions again, this time from the perspective of her drinking during the time she knew she was pregnant.

Question	In the month before you learned you were pregnant:	During index pregnancy
On average, how many days per week did you drink?		
On an average drinking day, how many drinks would you typically have?		
How many days per month did you have 4 or more drinks?		
What is the most you had to drink on any one day?		

- I specifically recall Maze drinking, alcohol and smoking tobacco while she was pregnant in the late 1960s. Even when she was pregnant. Maze would go to bars and taverns with Bill and me and consume alcohol. I also observed her drinking alcohol and smoking, tobacco during the time she was nursing her children. As pregnant mothers during that time period, we did not know of the

#3: ADVOCATE FOR *COMPREHENSIVE* NEUROPSYCH TESTING



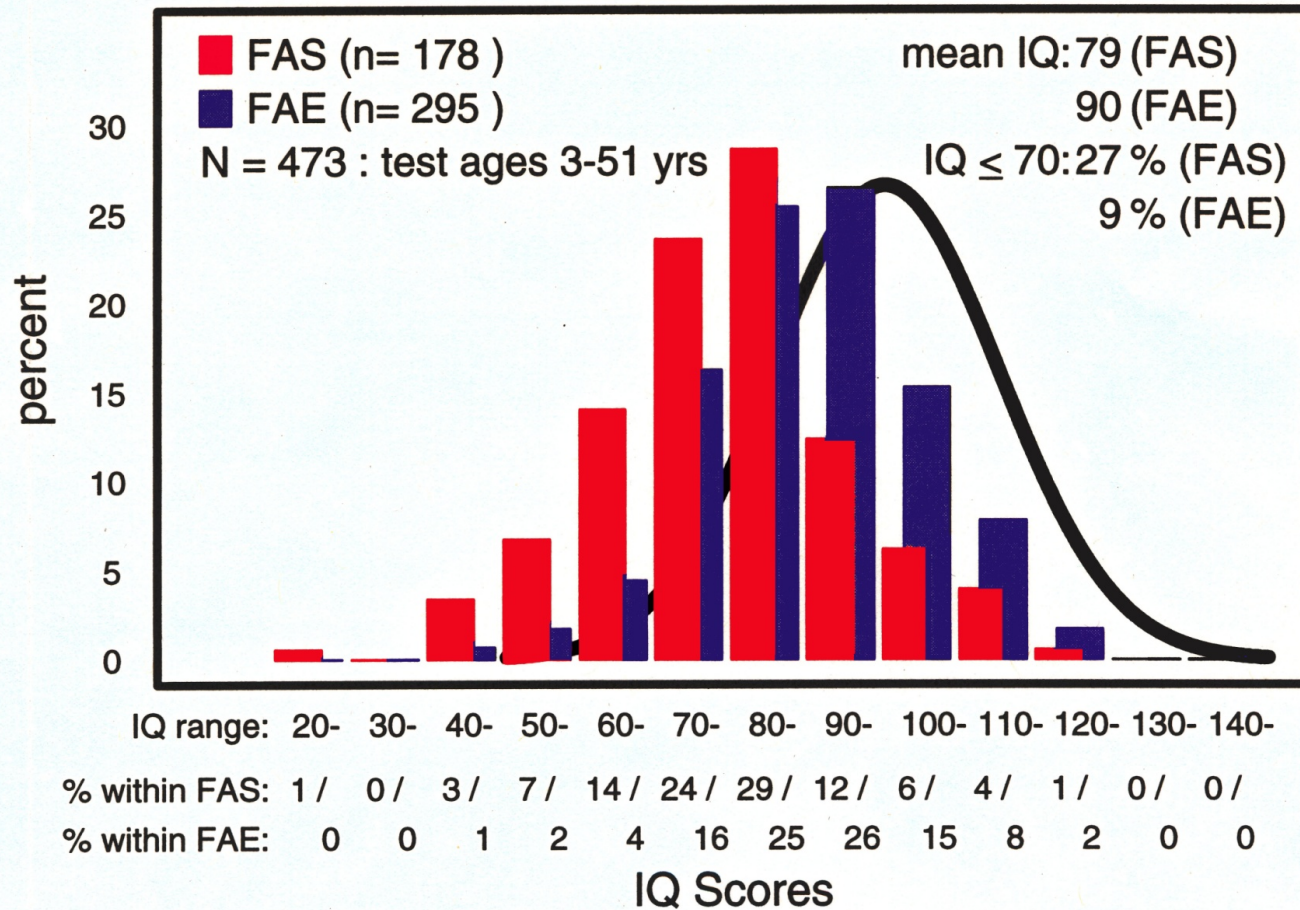
Neuropsychological Testing of Dennis Lee Wolter

#4: EDUCATE re FASD “PROFILE”

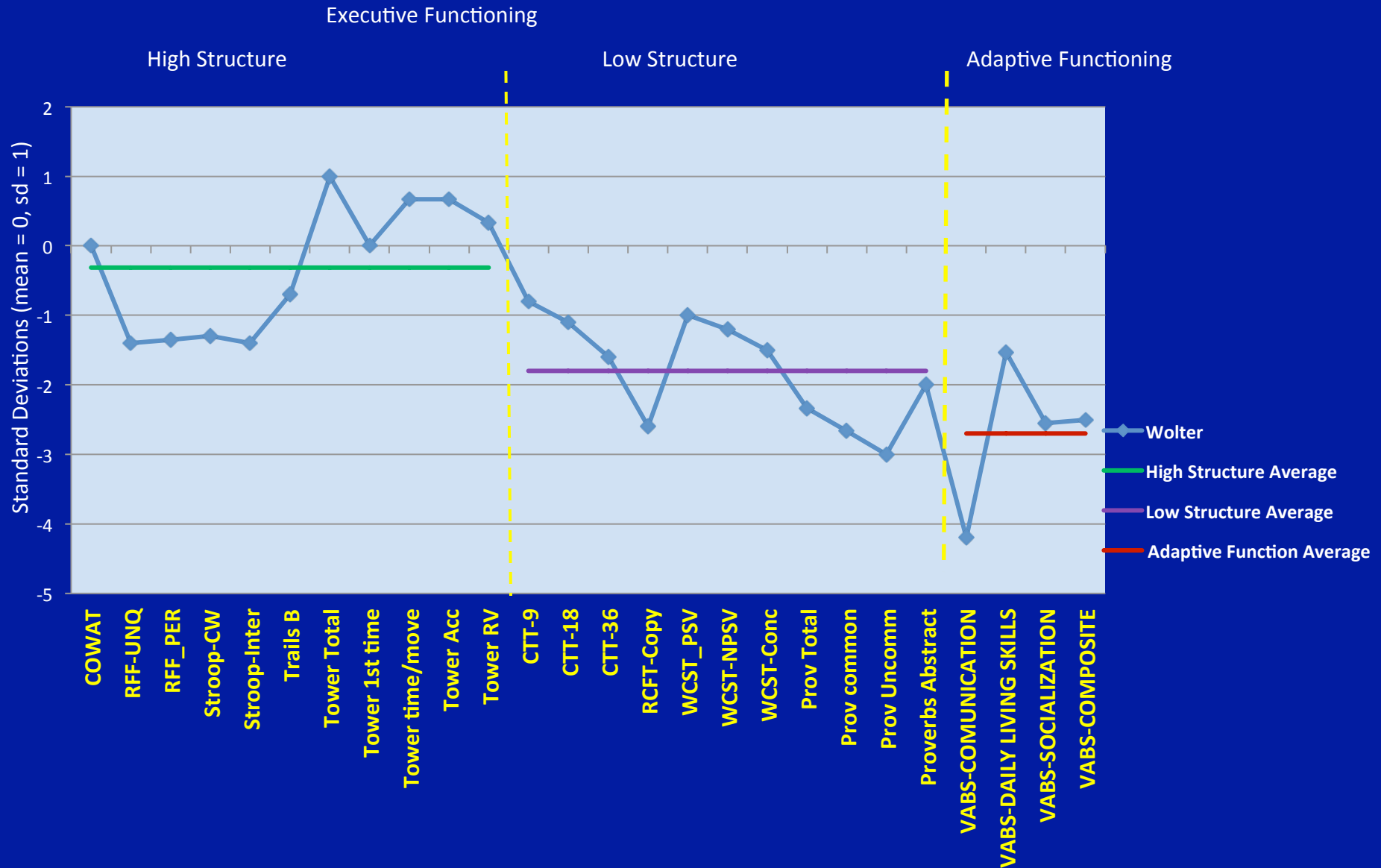
PROFILE #1:

IQ

IQ distributions in the Primary Disabilities Sample: FAS and FAE



PROFILE #2: STRUCTURE-CONTINGENT ADAPTIVE DECLINE



#5: EDUCATE re LIFE COURSE OUTCOMES

Understanding the Occurrence of Secondary Disabilities in Clients with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE)

Primary Authors:

Ann P. Streissguth, Ph.D.
Helen M. Barr, M.A., M.S.
Julia Kogan, Ed.M.
Fred L. Bookstein, Ph.D.

Final Report

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University of Washington School of Medicine
Department of Psychiatry and Behavioral Sciences

Fetal Alcohol and Drug Unit
180 Nickerson, Suite 309
Seattle, Washington 98109-9112
(206) 543-7155

Risk Factors for Adverse Life Outcomes in Fetal Alcohol Syndrome and Fetal Alcohol Effects

ANN P. STREISSGUTH, Ph.D.

*Department of Psychiatry and Behavioral Sciences, Fetal Alcohol & Drug Unit,
University of Washington School of Medicine, Seattle, Washington*

FRED L. BOOKSTEIN, Ph.D.

Institute of Gerontology, University of Michigan, Ann Arbor, Michigan

HELEN M. BARR, M.A., M.S.

*Department of Psychiatry and Behavioral Sciences, Fetal Alcohol & Drug Unit,
University of Washington School of Medicine, Seattle*

PAUL D. SAMPSON, Ph.D.

Department of Statistics, University of Washington, Seattle

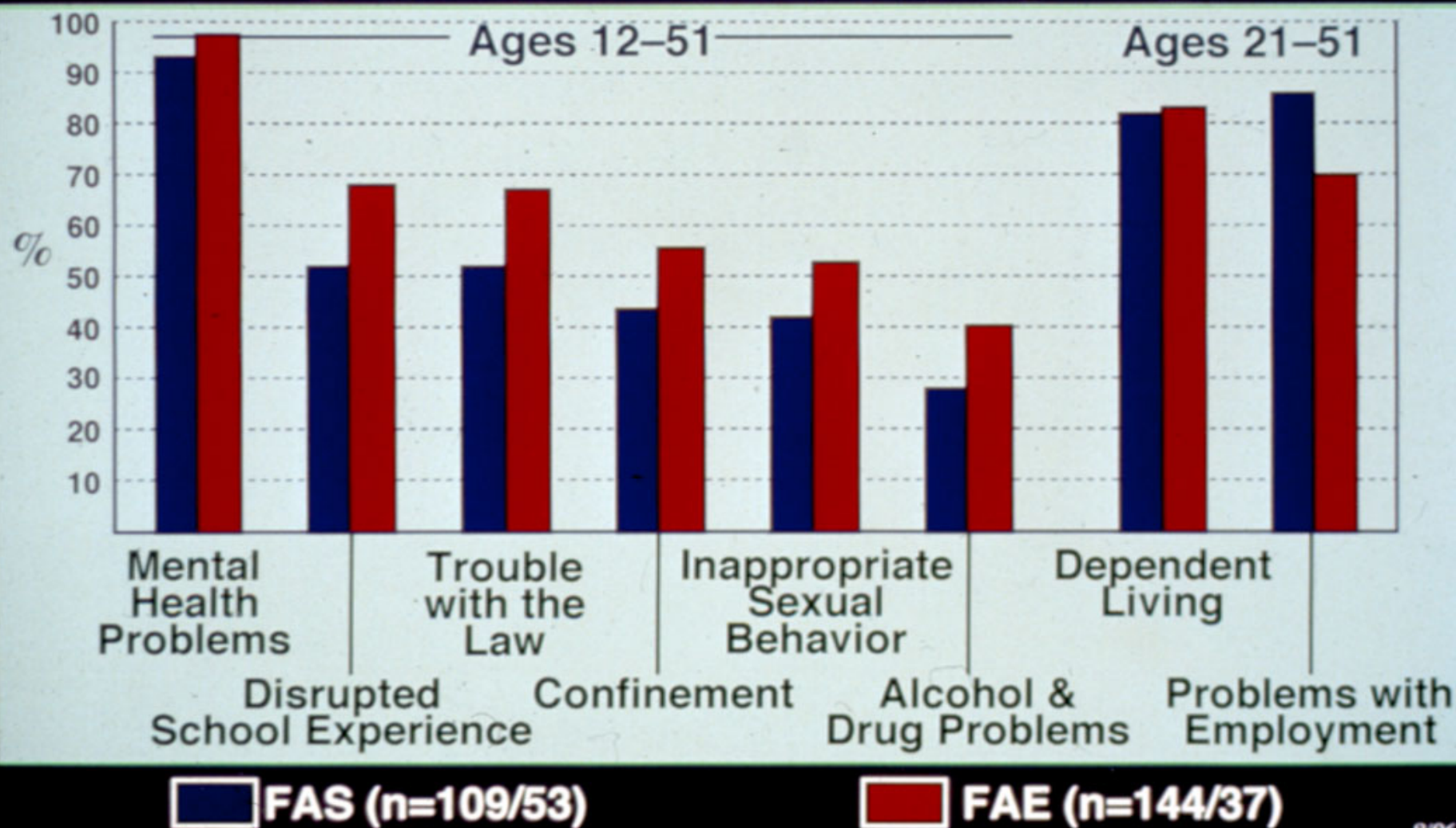
KIERAN O'MALLEY, M.B., D.A.B.P.N. (P)

JULIA KOGAN YOUNG, M.Ed.

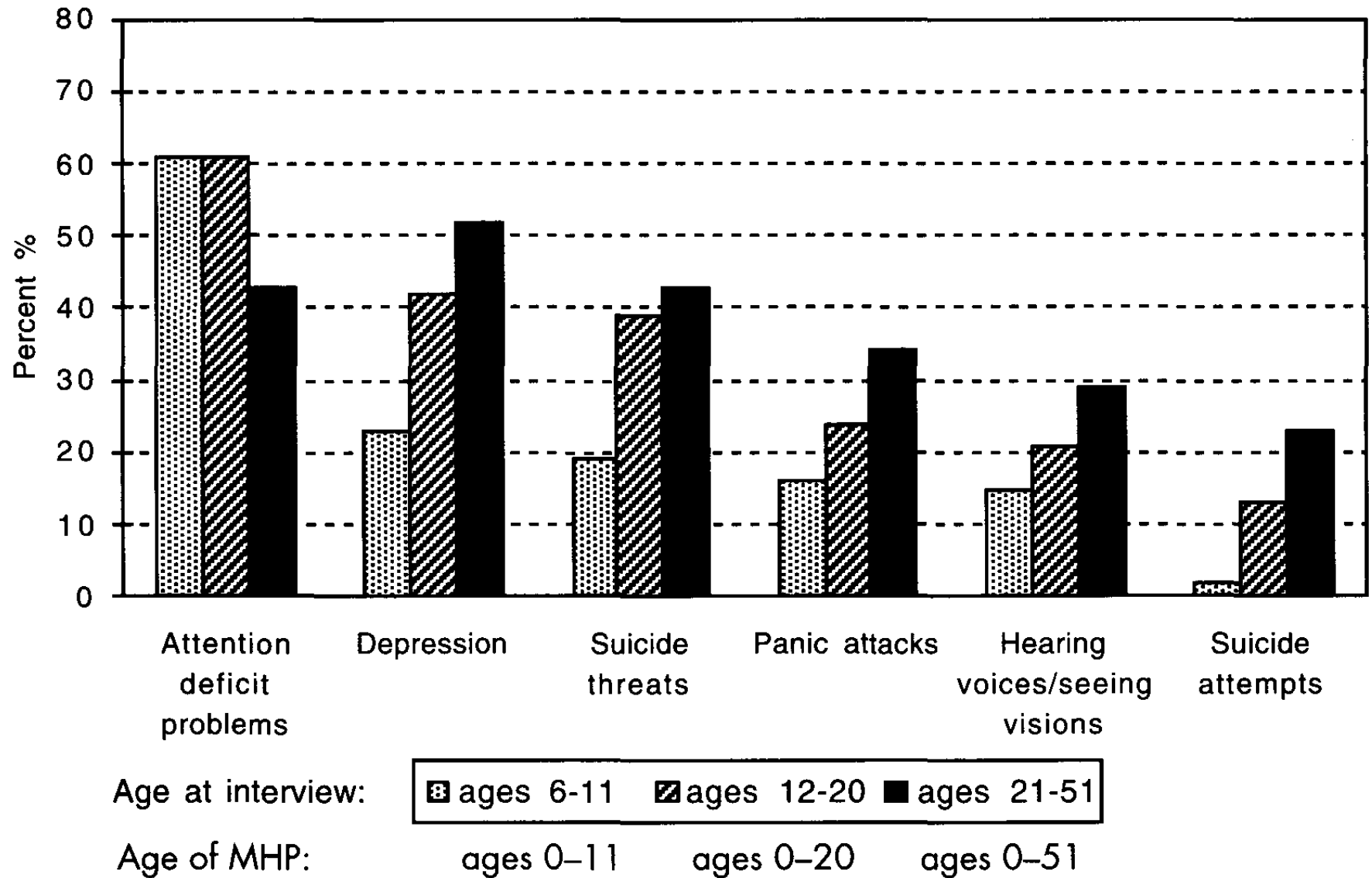
*Department of Psychiatry and Behavioral Sciences, Fetal Alcohol & Drug Unit,
University of Washington School of Medicine, Seattle, Washington*

ABSTRACT. Clinical descriptions of patients with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) suggest major problems with adaptive behavior. Five operationally defined adverse outcomes and 18 associated risk/protective factors were examined using a Life History Interview with knowledgeable informants of 415 patients with FAS or FAE (median age 14 years, range 6–51; median IQ 86, range 29–126). Eighty percent of these patients were not raised by their biological mothers. For adolescents and adults, the life span prevalence was 61% for Disrupted School Experiences, 60% for Trouble with the Law, 50% for Confinement (in detention, jail, prison, or a psychiatric or alcohol/drug inpatient setting), 49% for Inappropriate Sexual Behaviors on repeated occasions, and 35% for Alcohol/Drug Problems. The odds of escaping these adverse life outcomes are increased 2- to 4-fold by receiving the diagnosis of FAS or FAE at an earlier age and by being reared in good stable environments. *J Dev Behav Pediatr* 25:228–238, 2004. Index terms: fetal alcohol syndrome, fetal alcohol effects, risk factors for adverse life outcomes, life span studies, Fetal Alcohol Spectrum Disorders (FASD).

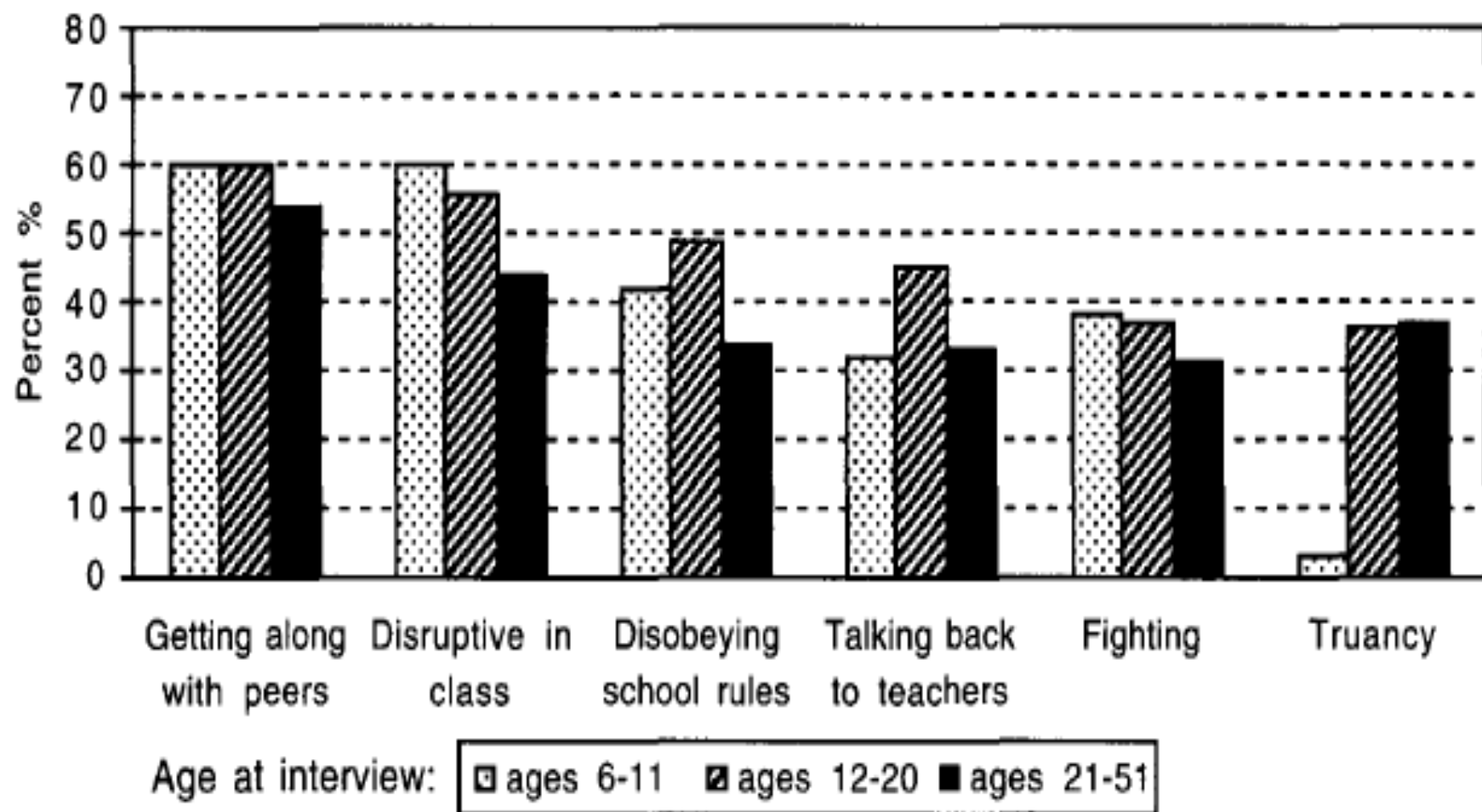
HISTORY OF SECONDARY DISABILITIES Among Clients ≥ 12 Years Old By Diagnosis



8.4 History of mental health problems by age at interview (n=415)

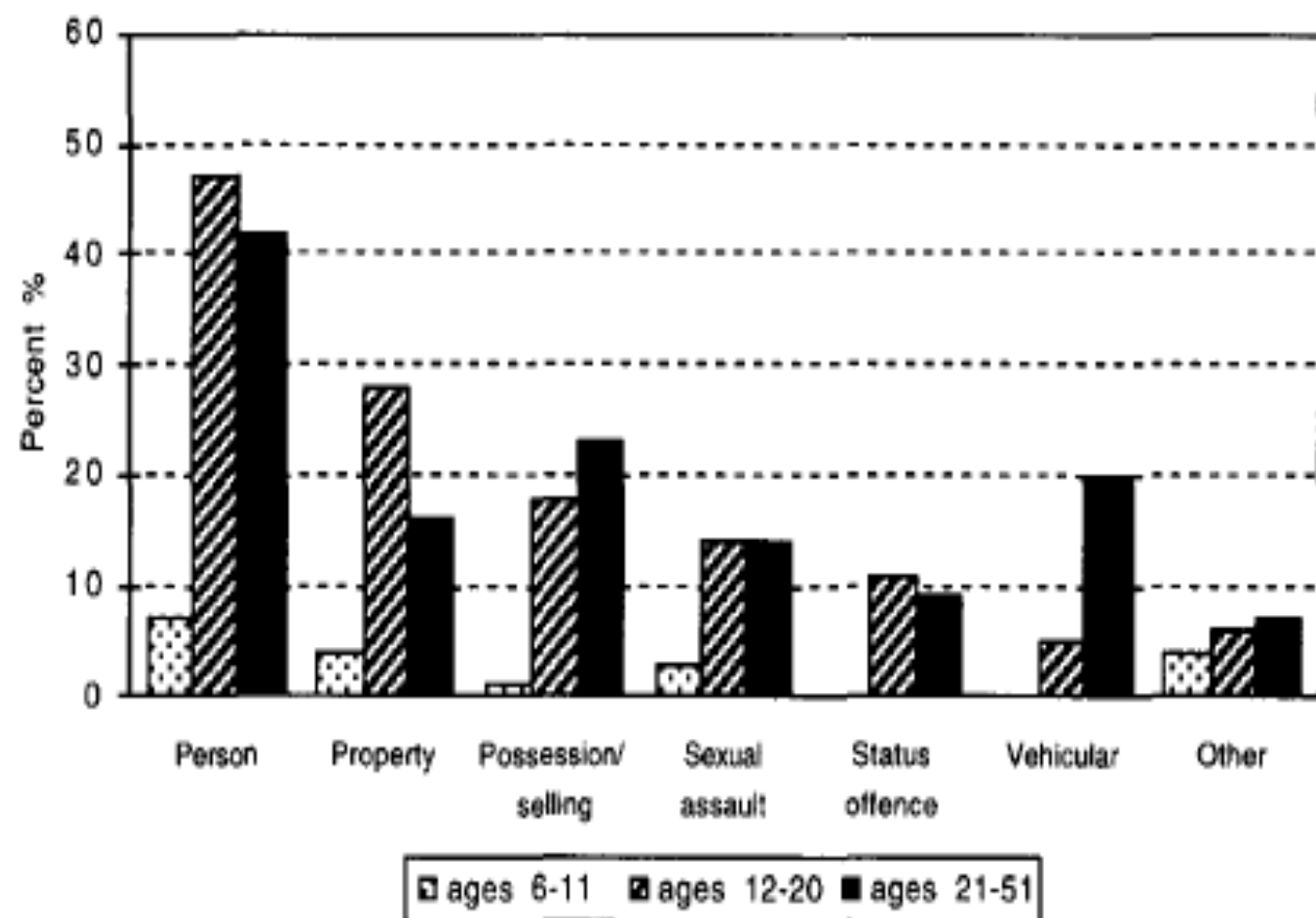


9.5 Repeated behavior problems by age at interview (n=403-408)

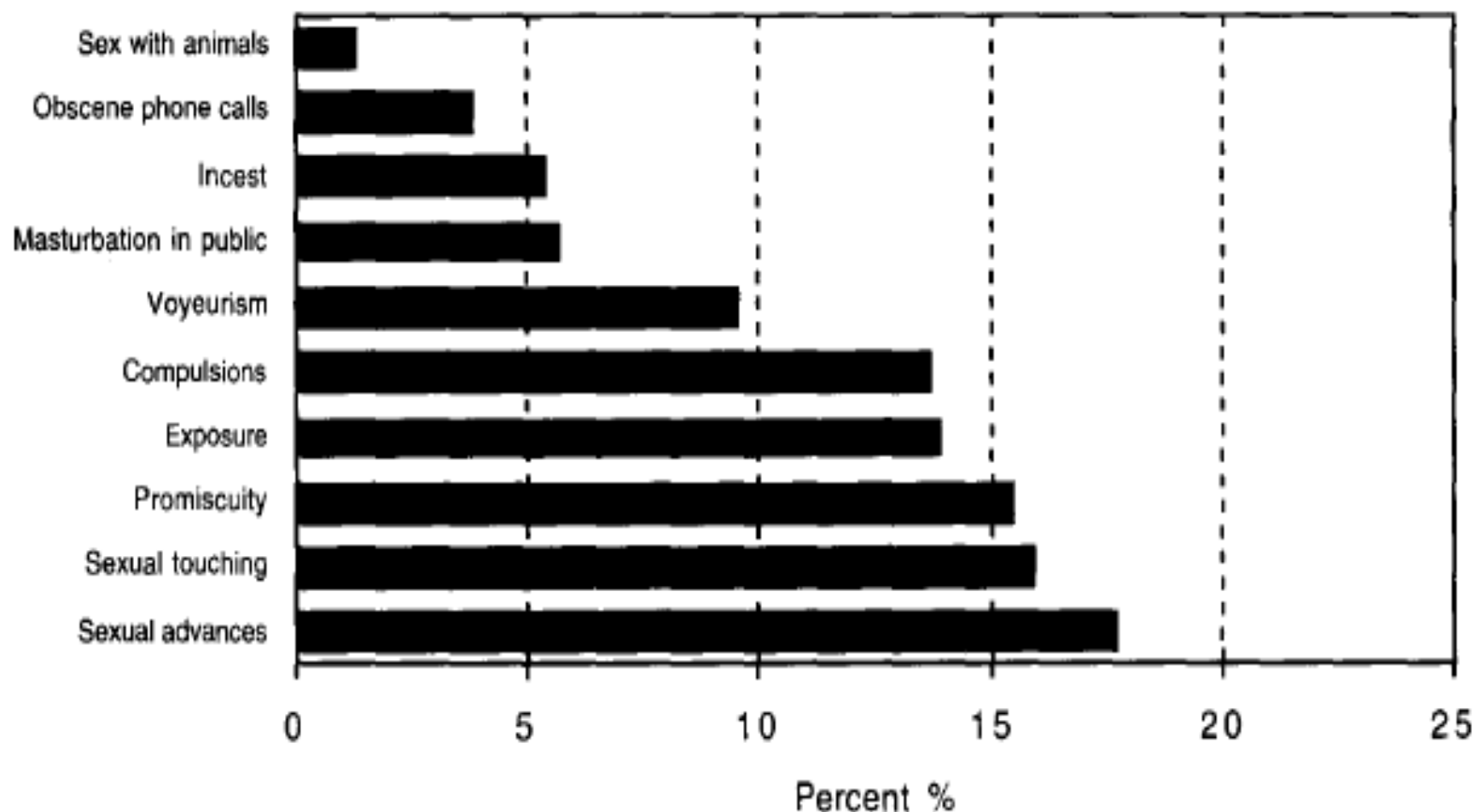


Age of behavior problems: ages 0-11 ages 0-20 ages 0-51

10.3 History of Trouble with the Law: Components of the Secondary Disability by age at interview (n=407-412)



12.3 History of Inappropriate Sexual Behaviors reported as repeated behaviors (n=388-408)



Behavioral and Psychosocial Profiles of Alcohol-Exposed Children

Tresa M. Roebuck, Sarah N. Mattson, and Edward P. Riley

“Because impairments in psychosocial functioning can lead to problems across multiple domains, effective early intervention programs should be considered for alcohol-exposed children. The need for early intervention is especially warranted given the presence of psychosocial problems at an early age with no observed change into adolescence.”

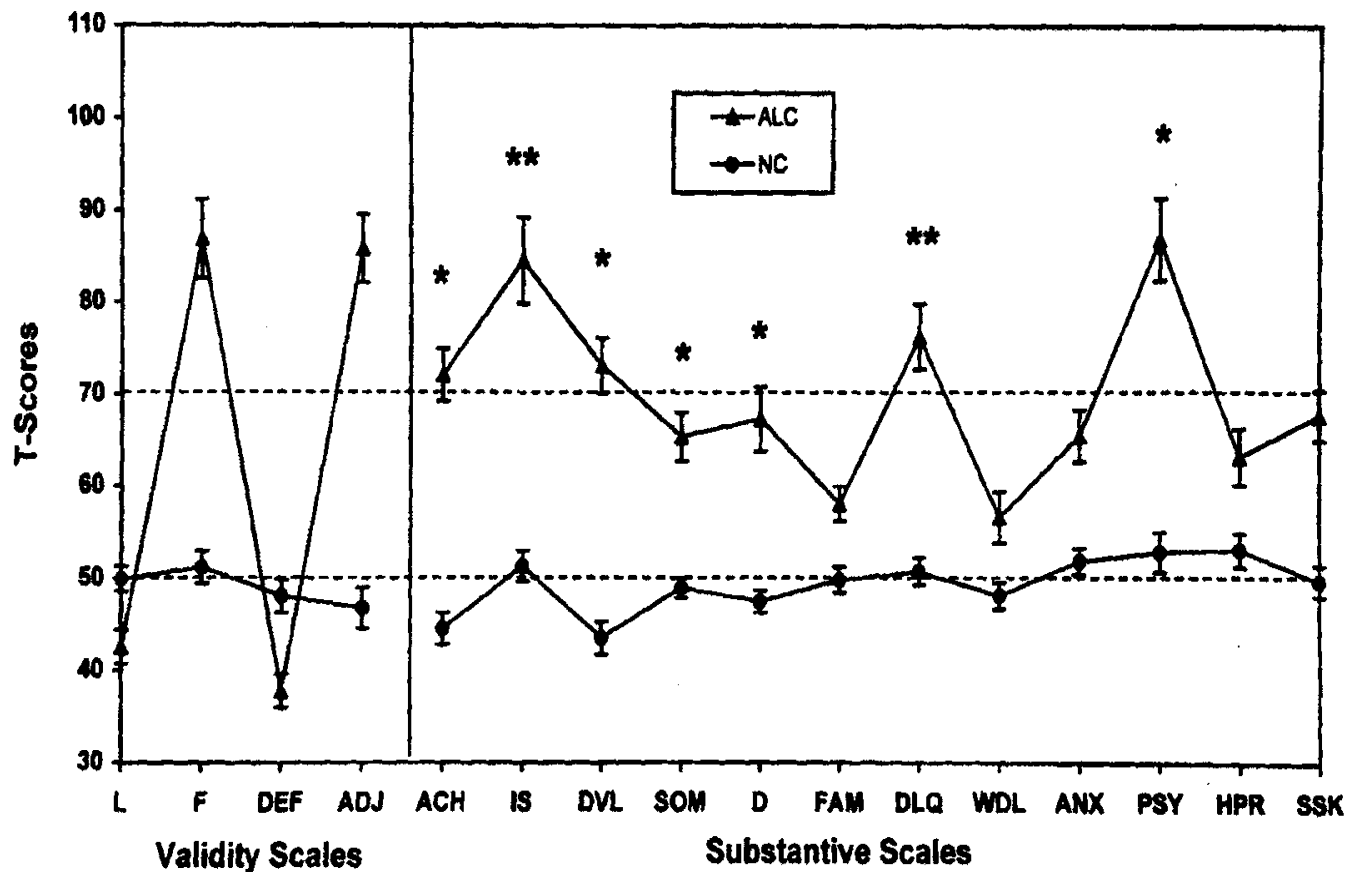


Fig. 1. Mean Personality Inventory for Children (PIC) profiles of alcohol-exposed (ALC) and control (NC) children. All scales, except HPR, are significantly different at $p < 0.05$. *ALC group >2 SD higher than NC group; **ALC group >3 SD higher than NC group.

L = Lie
F = Frequency
DEF = Defensive
ADJ = Adjustment

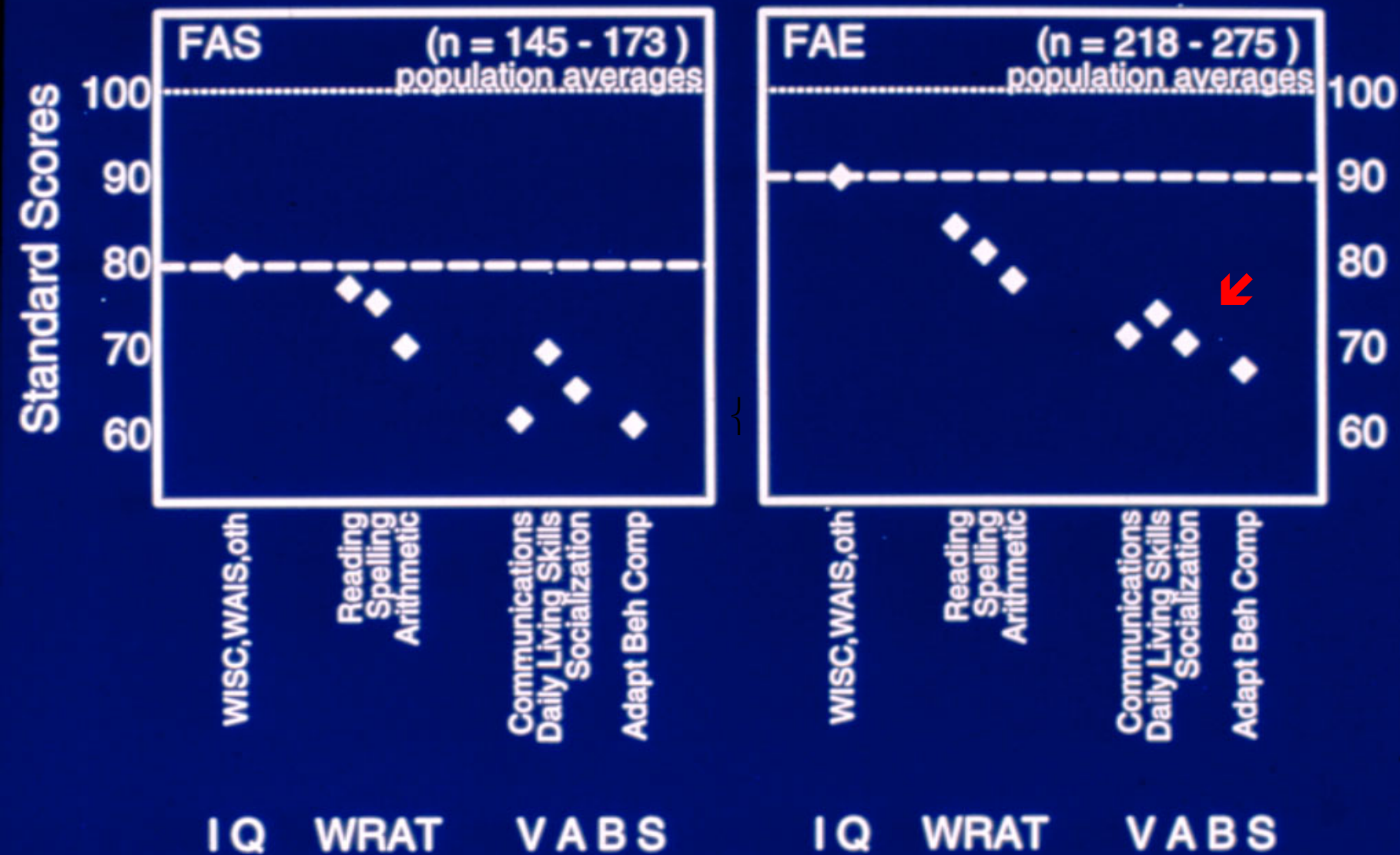
ACH = Achievement
IS = Intellectual Screening
DVL = Development
SOM = Somatic concern

D = Depression
FAM = Family relations
DLQ = Delinquency
WDL = Withdrawal

ANX = Anxiety
PSY = Psychosis
HPR = Hyperactivity
SSK = Social skills

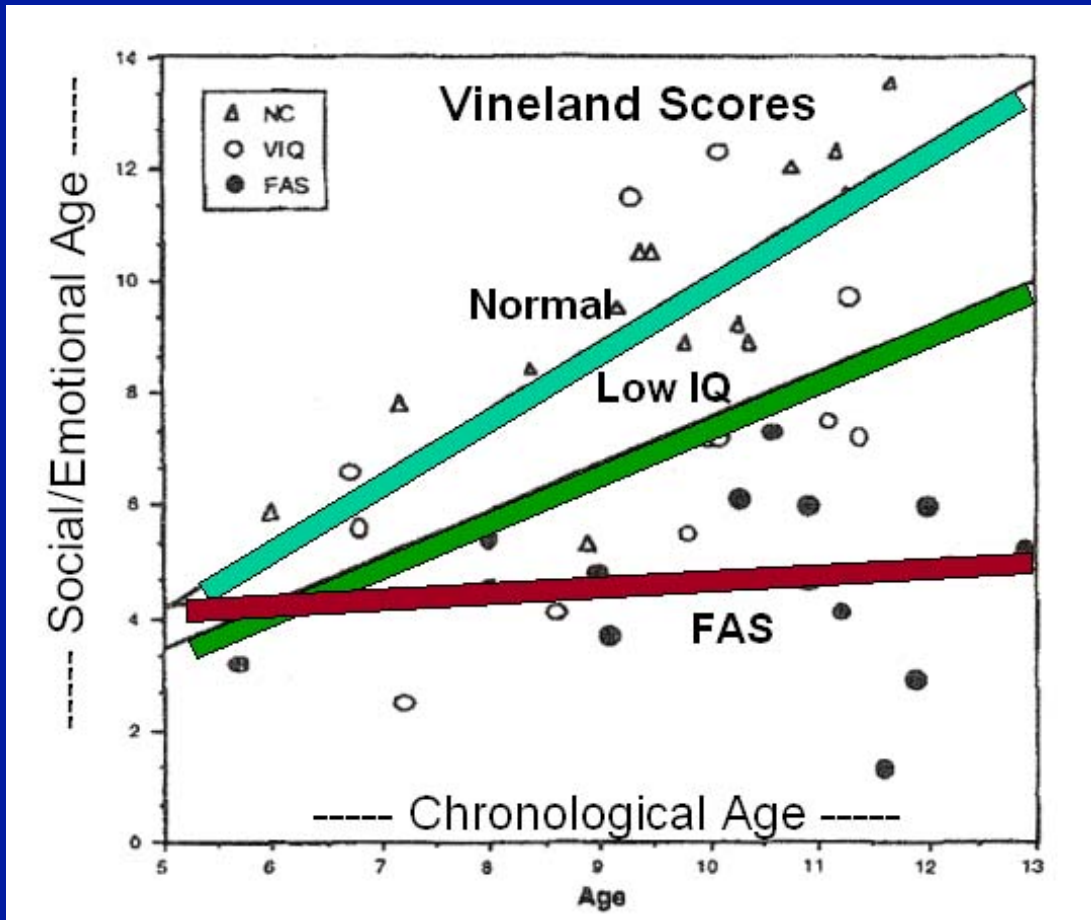
#6: ADVOCATE FOR VINELANDS

IQ, WRAT, VABS: FAS and FAE



FASD: Social Development in Children

[as measured by Emotional Regulation & Conscience Development]



Studies that used the Vineland to compare FASD children (RED) to children with normal IQs (BLUE) and children with IQs similar to FASD (GREEN) found that children with FAS stagnate in terms of social development.

Thomas SE, Kelly SJ, Mattson SN, Riley EP (1998). Comparison of social abilities of children with fetal alcohol syndrome to those of children with similar IQ scores and normal controls. *Alcohol Clin Exp Res*, 22, 528–533.

Adolescents and adults with FASD function socially as if they were 7 years old.

(age range = 12 – 51; mean IQ = 90)

#7: IDENTIFYING ADAPTIVE DEFICITS

School Records

1981 IEP Addendum (age 14, 8th grade):

“Clinical impressions suggest that Dennis is more capable intellectually than the present test results would indicate. Dennis is a confused individual with strong feelings of anger and loneliness because of being rejected by his parents. He relates adequate understanding of social norms, consequences, etc. However, he is not able to apply his knowledge to management of his own behavior consistently.”

Defendant: Low Average IQ but functional social age
(per Vineland) of *11 years old*

FABS Observations: Yvette Payne (friend)

- “will just start talking to anyone...establishes superficial friendships easily but has no close friends...shows poor judgment in people he trusts”
- “can be very opinionated...almost incapable of examining the other side of an argument...talks a lot but says little...not very tactful”
- “tries to brag about how good he is at something...has trouble completing tasks”
- “rapid mood swings...triggered by seemingly small things...often takes things too personally”
- “over-reacts to situations; emotional reactions are often stronger than you would expect...sometimes has tantrums or outbursts of excessive anger, extreme at times”
- “does not usually foresee potential danger...gets over-stimulated in social situations”
- “seems unaware of the consequences of his behavior...needs strong, clear commands because the fine points escape him”

Why Advocacy Is Essential to Ensure a Safety Net

#1: A STRUCTURED ENVIRONMENT =
AN 'EXTERNAL BRAIN'

#2: MEDICATION

#3: CASE MANAGEMENT



Thank You

NATALIE NOVICK BROWN, PhD
drnataliebrown@gmail.com