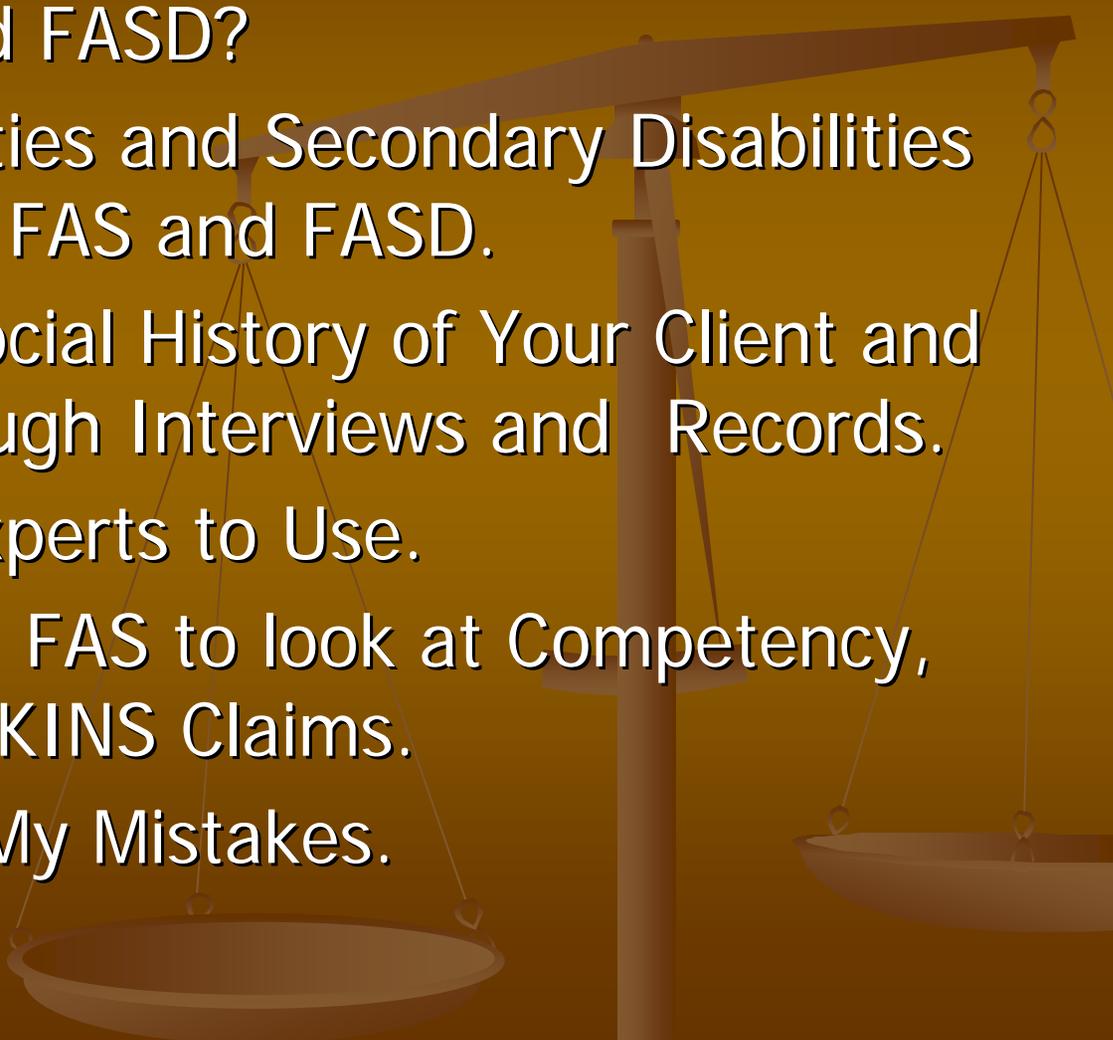
A faint, stylized image of a pair of scales of justice is visible in the background, positioned on the right side of the slide. The scales are dark brown and appear to be slightly tilted.

**REPRESENTING CLIENTS  
WITH  
FETAL ALCOHOL  
SPECTRUM DISORDERS:  
A NEURO-DEVELOPMENTAL  
DISORDER**

**WILLIAM J. EDWARDS, DEPUTY PUBLIC DEFENDER  
OFFICE OF THE PUBLIC DEFENDER  
LOS ANGELES COUNTY, CALIFORNIA**



# AGENDA



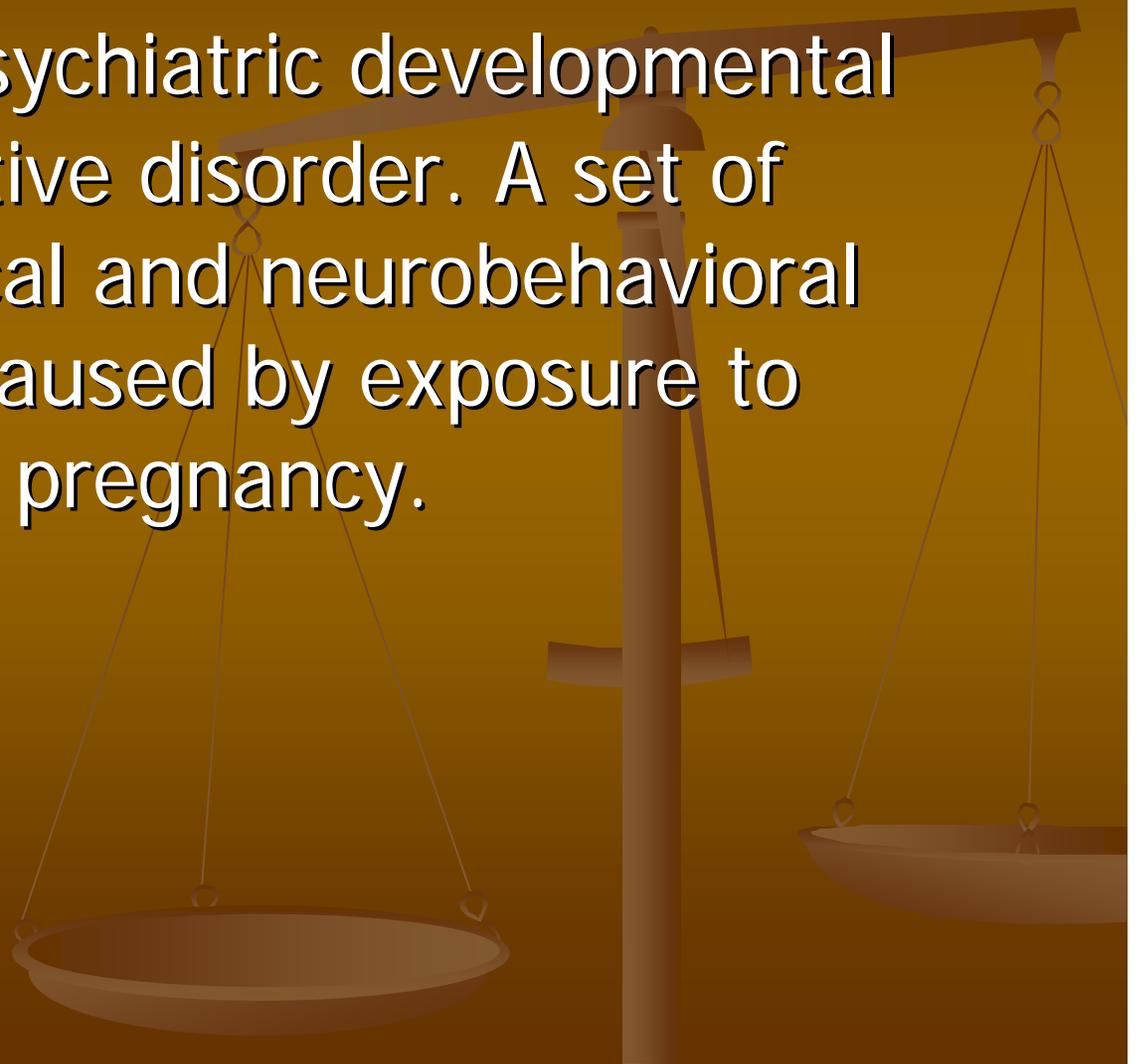
- I. What is FAS and FASD?
- II. Primary Disabilities and Secondary Disabilities Associated with FAS and FASD.
- III. Developing a Social History of Your Client and his Mother through Interviews and Records.
- IV. What Kind of Experts to Use.
- V. Using FASD and FAS to look at Competency, Miranda and ATKINS Claims.
- VI. Learning From My Mistakes.

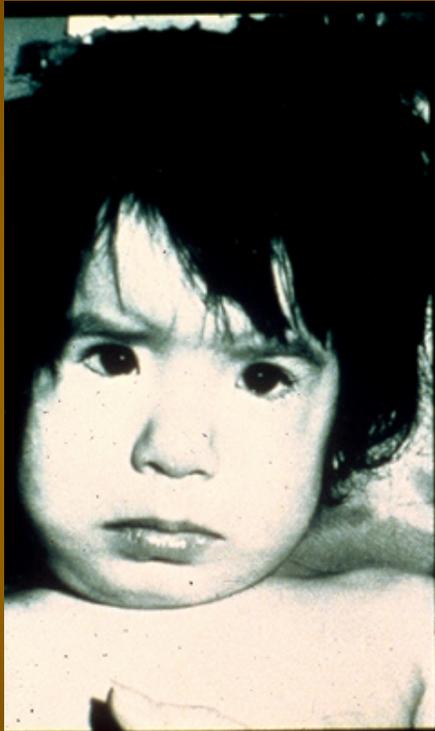
WHAT IS FAS & FASD?



# Fetal Alcohol Syndrome (FAS)

FAS is a neuropsychiatric developmental and degenerative disorder. A set of mental, physical and neurobehavioral birth defects caused by exposure to alcohol during pregnancy.





American  
Indian



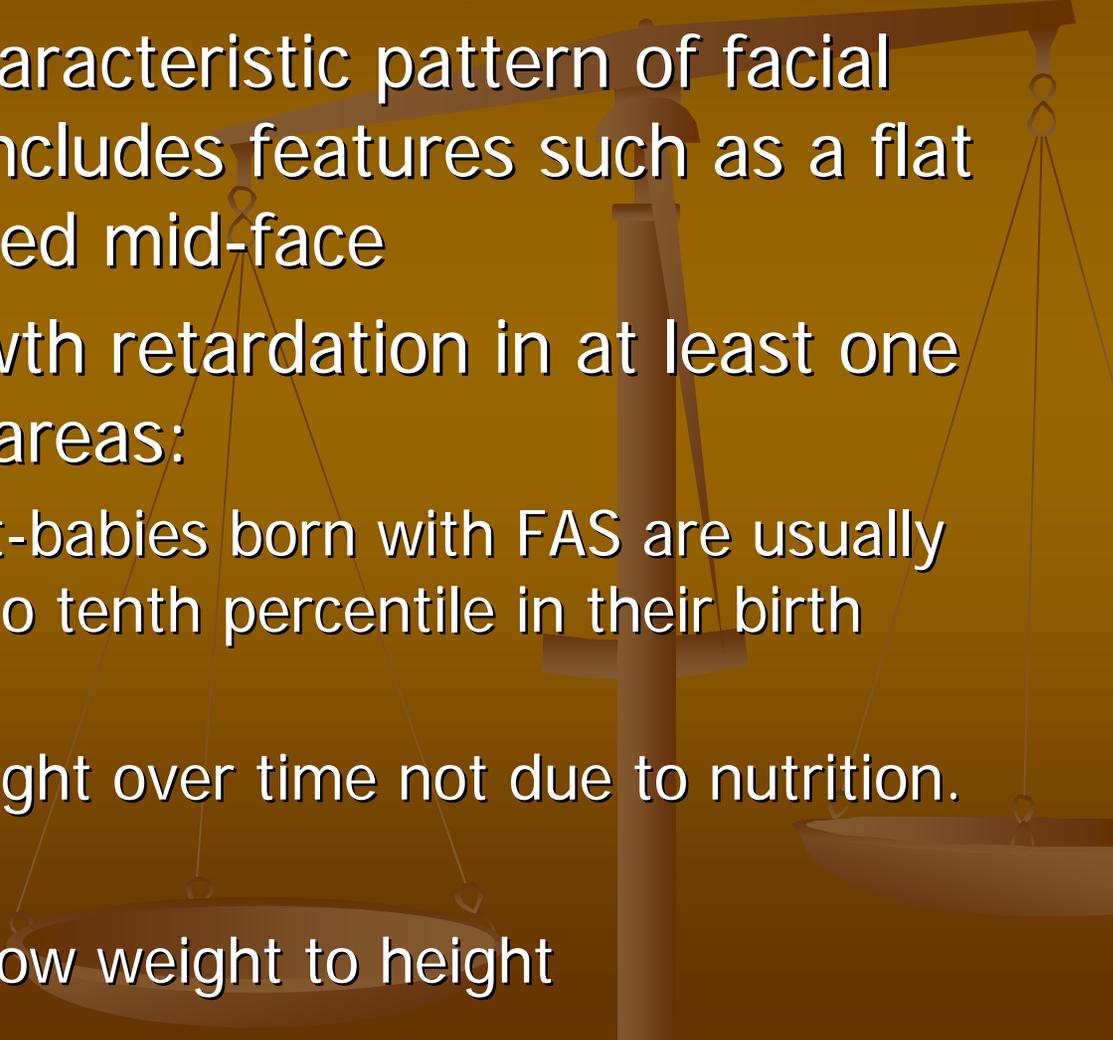
Black



White

Fetal Alcohol Syndrome in different races

# FAS May Include:

- a. Confirmed maternal alcohol exposure
  - b. Evidence of a characteristic pattern of facial anomalies that includes features such as a flat upper lip, flattened mid-face
  - c. Evidence of growth retardation in at least one of the following areas:
    1. Low birth weight-babies born with FAS are usually below the third to tenth percentile in their birth weight.
    2. Decelerating weight over time not due to nutrition.
    3. Failure to thrive.
    4. Disproportional low weight to height
- 

## Signs of Fetal Alcohol Syndrome

Low nasal bridge

Short palpebral fissures, obscure the canthus, or inner corner of the eye, a normal feature in certain species of the Mongolian race

Thin reddish upper lip



Small head circumference

Epicanthic folds

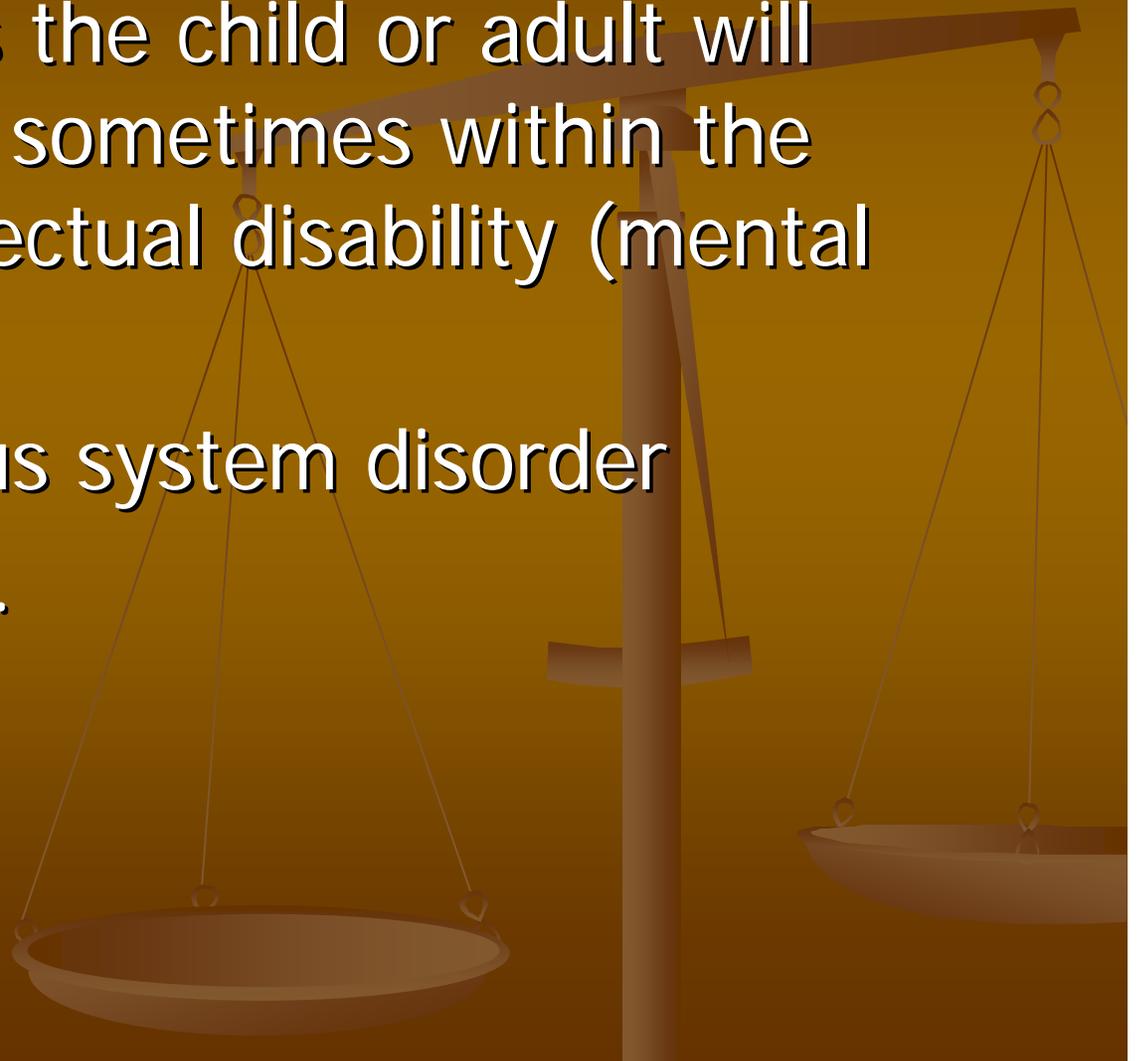
Short nose

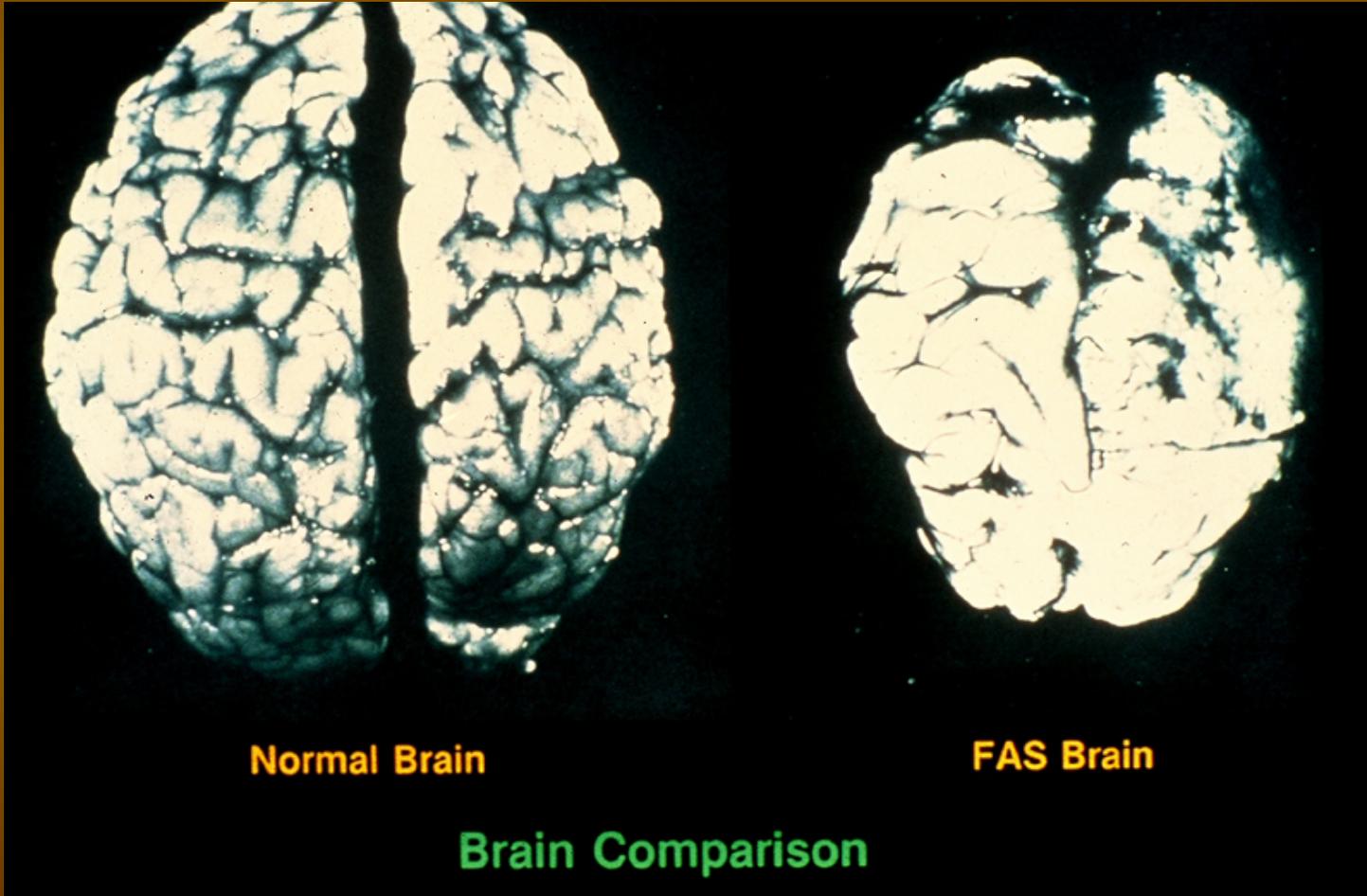
Small midface

Indistinct philtrum, an underdeveloped groove in the center of the upper lip between the nose and the lip edge

## FAS Cont.

- d. In many cases the child or adult will have a low IQ sometimes within the range of intellectual disability (mental retardation).
- e. Central nervous system disorder
- f. Brain Damage.





# Fetal Alcohol Spectrum Disorders (FASD)

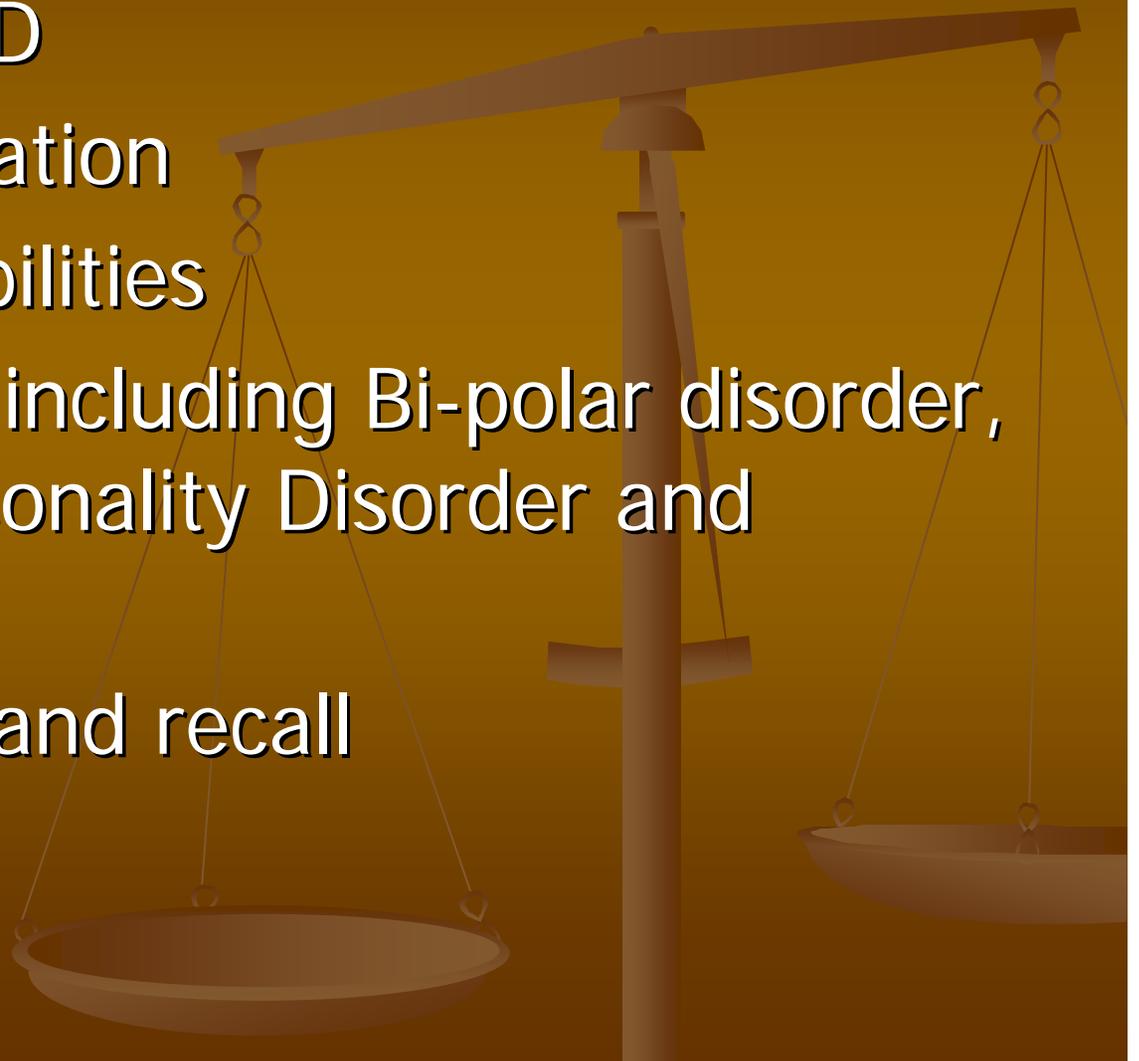
FASD is an umbrella term used to describe the many different disabling effects of prenatal alcohol exposure.

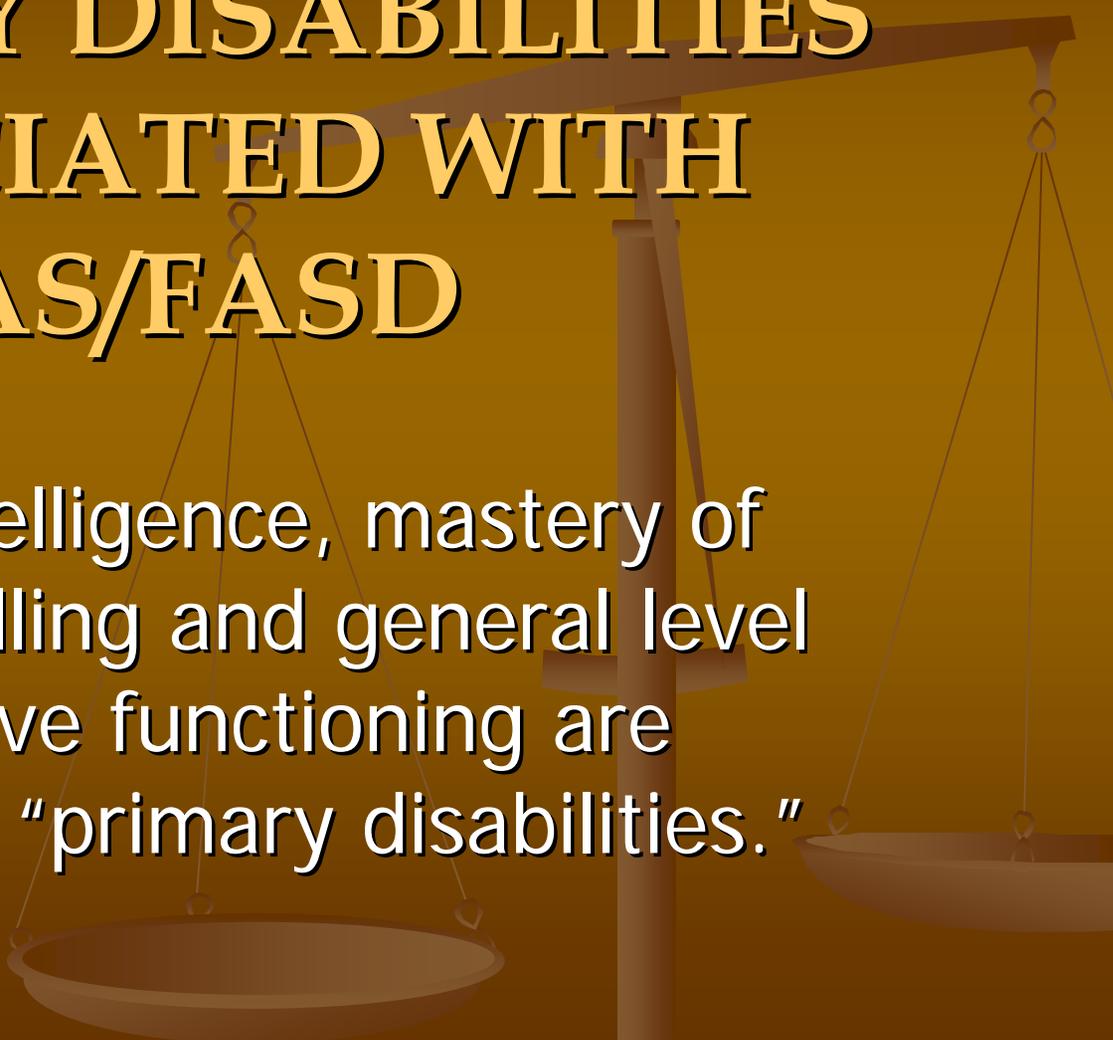
FASD includes FAS and other alcohol-related diagnostic categories such as ALCOHOL RELATED NEURODEVELOPMENTAL DISORDER (ARND).

FASD is a developmental disorder because of the obstructions and delays from normal growth patterns and resulting deficits including:

# Developmental Deficits

- a. ADHD and ADD
- b. Mental Retardation
- c. Learning Disabilities
- d. Mental Illness including Bi-polar disorder, Antisocial Personality Disorder and Depression
- e. Poor memory and recall
- f. Poor planning



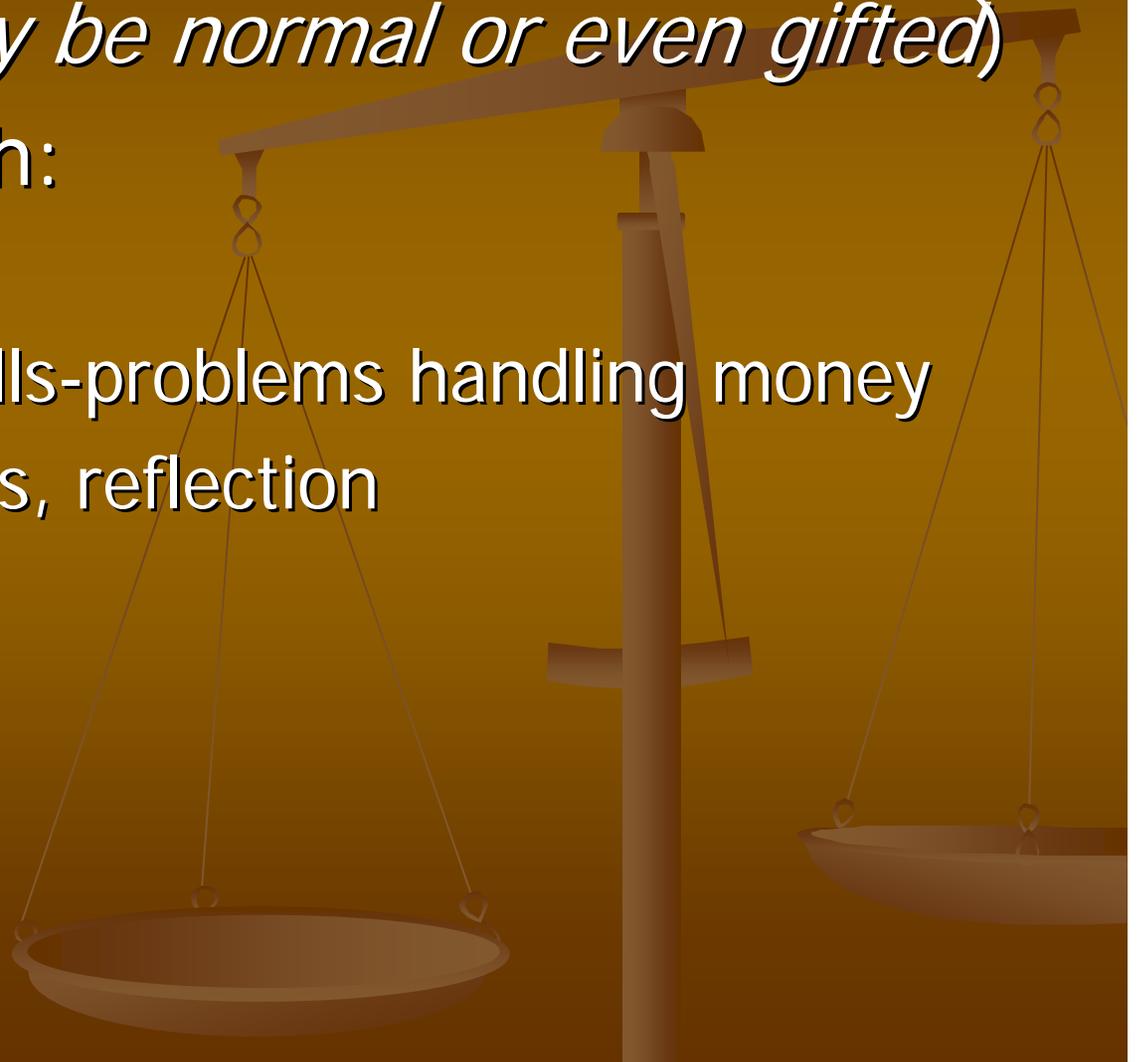


# PRIMARY DISABILITIES ASSOCIATED WITH FAS/FASD

General intelligence, mastery of reading, spelling and general level of adaptive functioning are measures of "primary disabilities."

# Cognitive

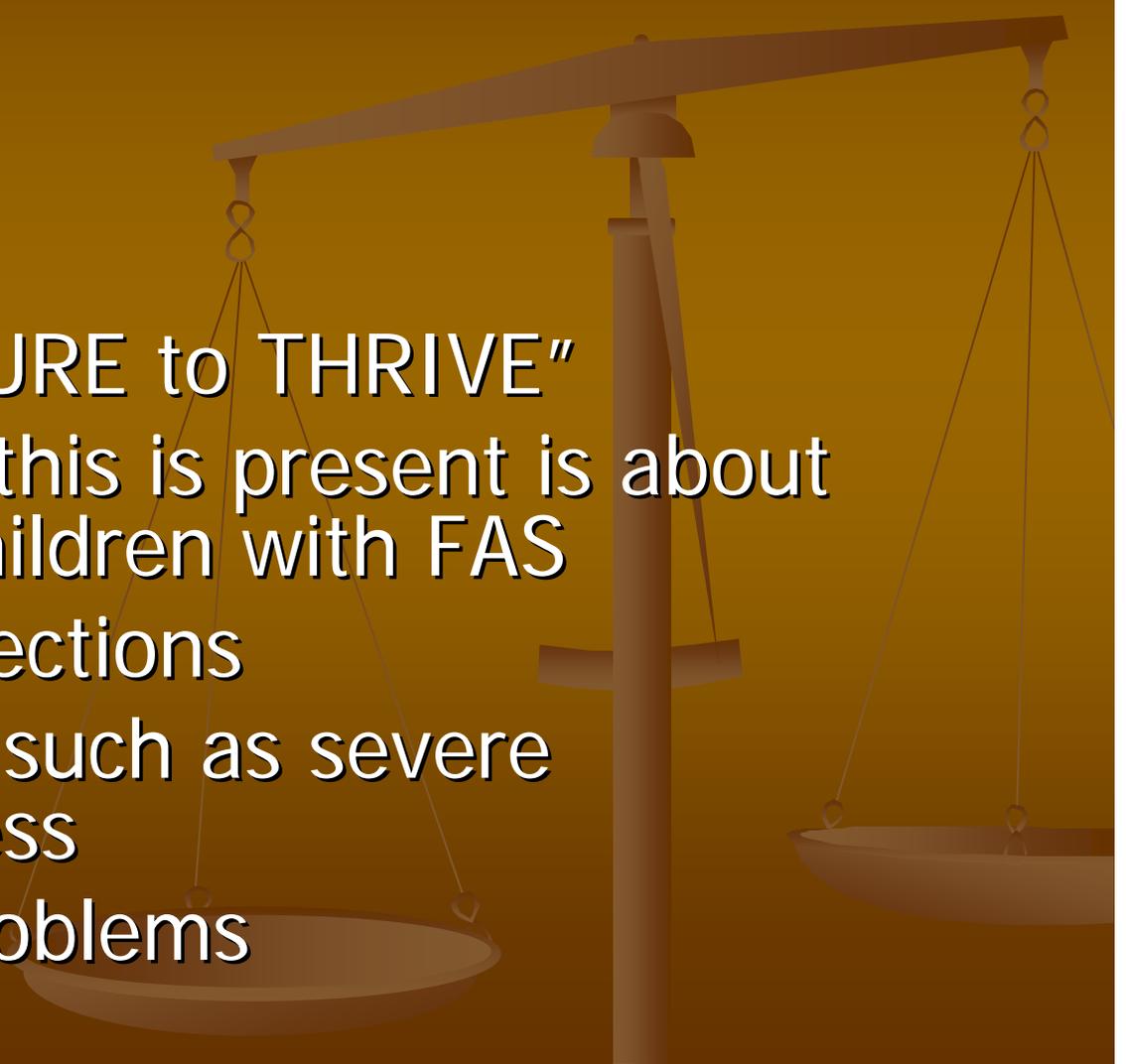
- a. Lower IQ (*may be normal or even gifted*)
- b. Difficulties with:
  1. Memory
  2. Poor math skills-problems handling money
  3. Self awareness, reflection



# Medical/Neuromotor

## Difficulties with:

- a. Balance
- b. Coordination
- c. Seizures
- d. Growth "FAILURE to THRIVE"
- e. Hyperactivity-this is present in about 85% of the children with FAS
- f. Middle ear infections
- g. Eye problems such as severe nearsightedness
- h. Orthopedic problems



# Executive Functioning

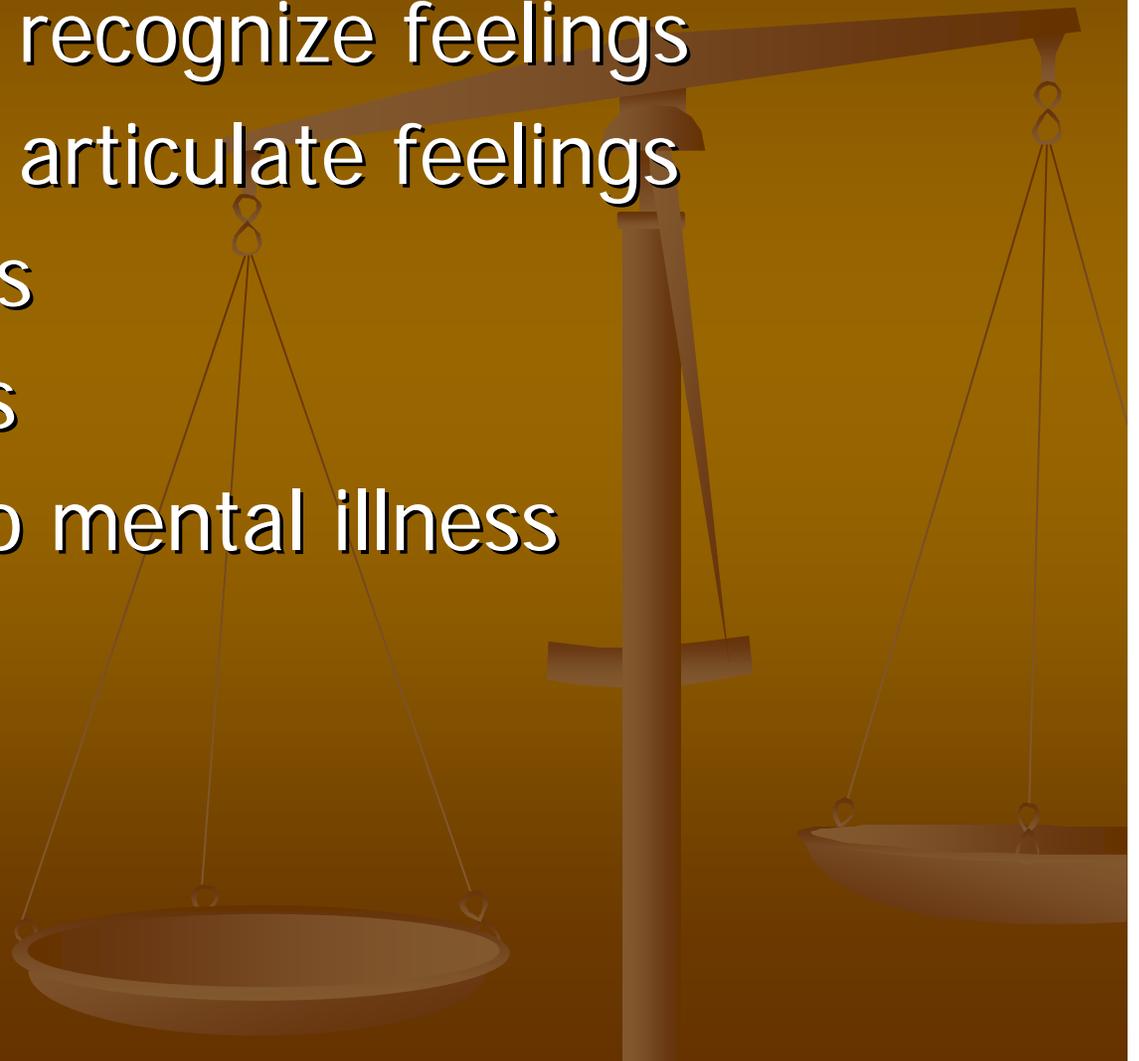
## Difficulties with:

- a. Planning
- b. Judgment
- c. Delayed gratification
- d. Impulse Control
- e. Organization skills
- f. Focus, concentration



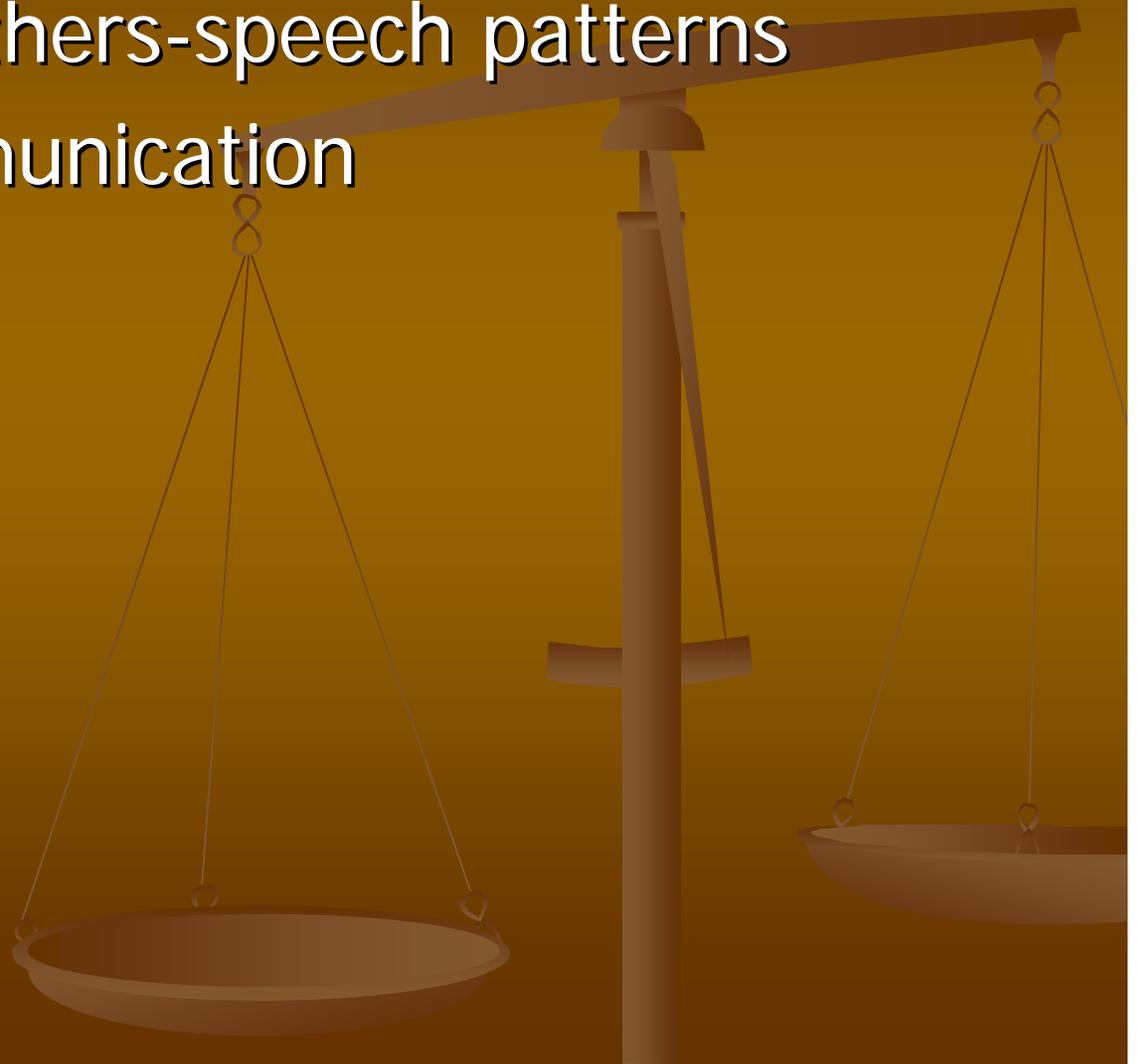
# Emotional

- a. Little ability to recognize feelings
- b. Little ability to articulate feelings
- c. Mood disorders
- d. Rage disorders
- e. Vulnerability to mental illness



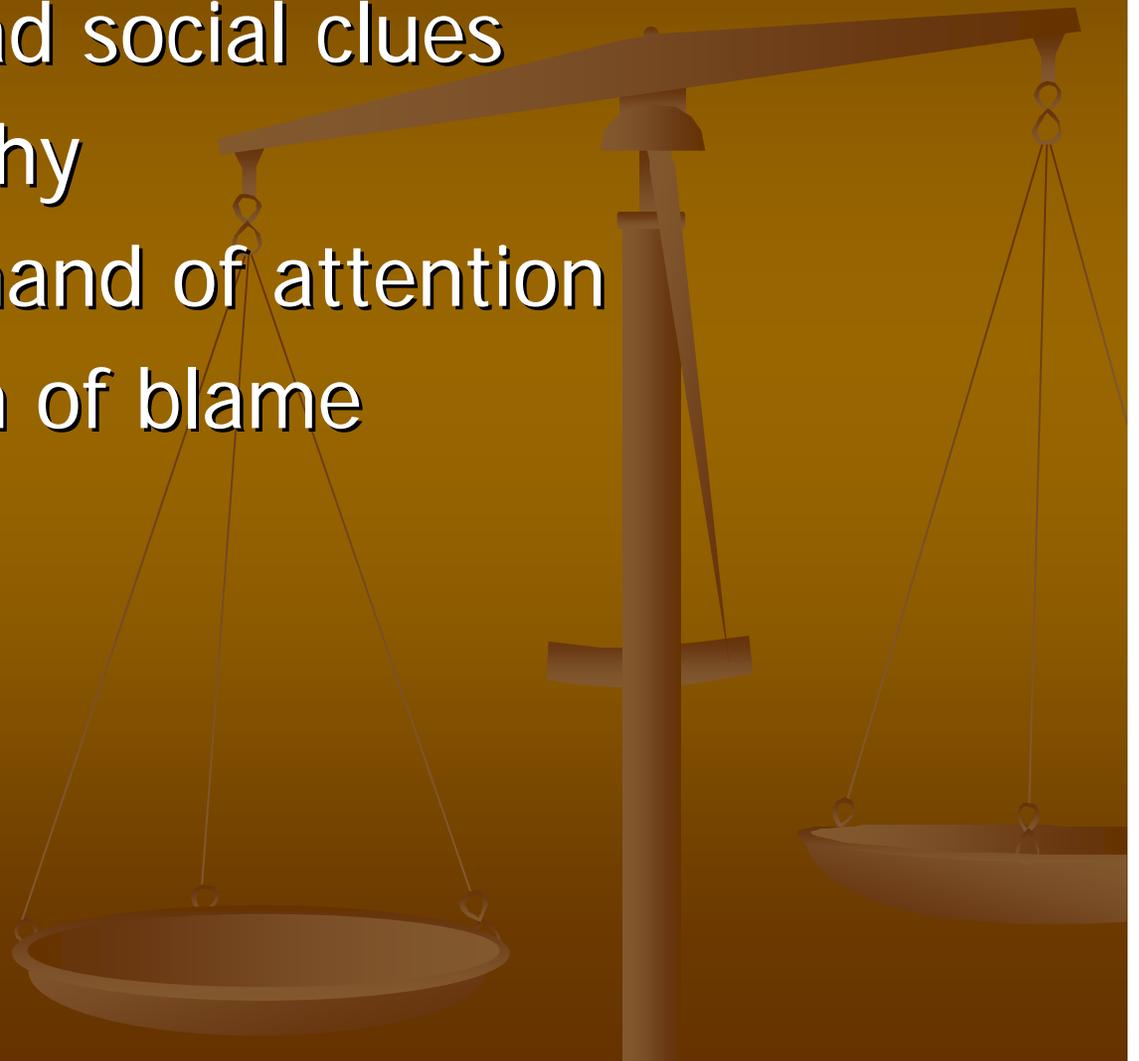
# Speech/Language

- a. Parroting of others-speech patterns
- b. Delay in communication
- c. Talkativeness



# Interpersonal Skills

- a. Inability to read social clues
- b. Lack of empathy
- c. Excessive demand of attention
- d. Externalization of blame

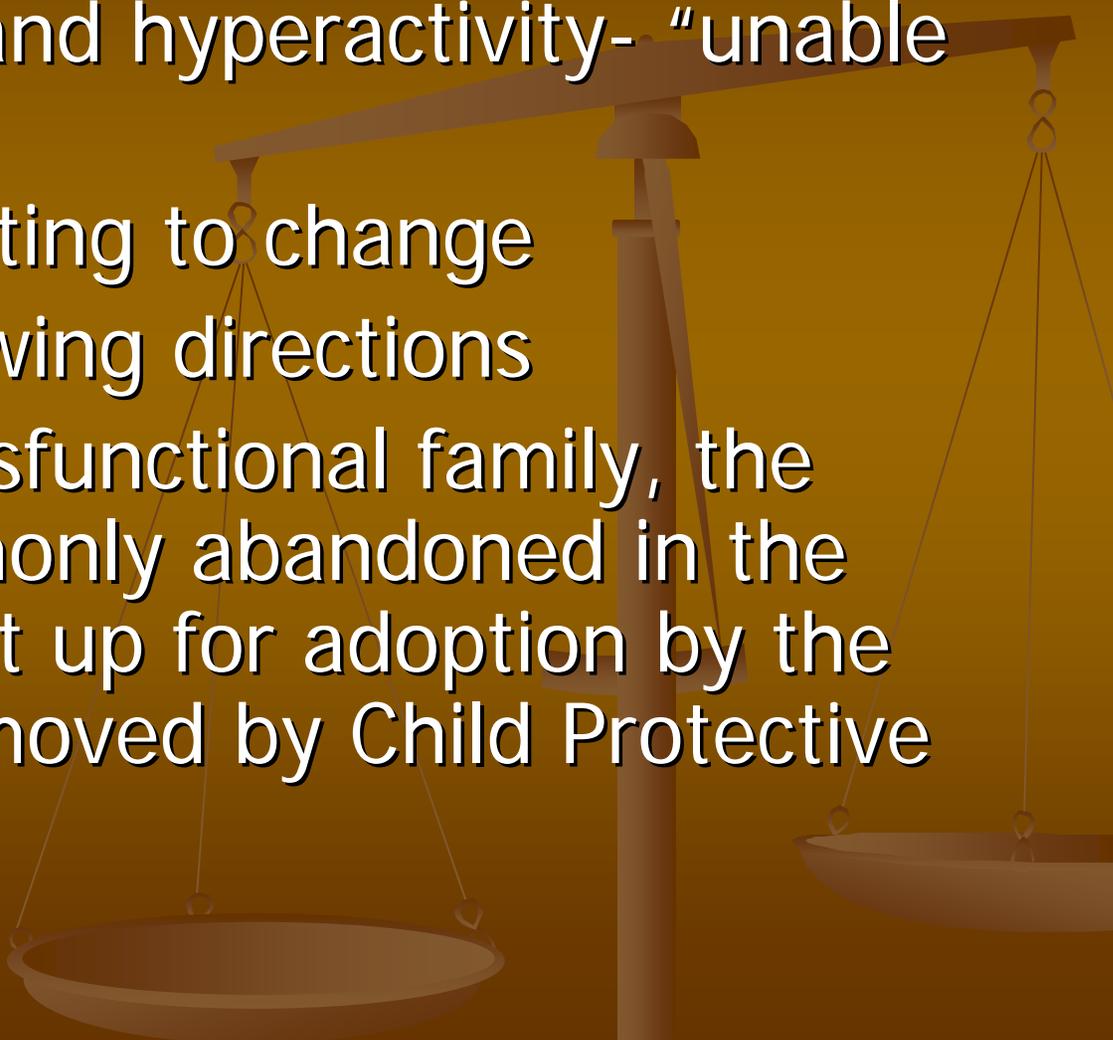


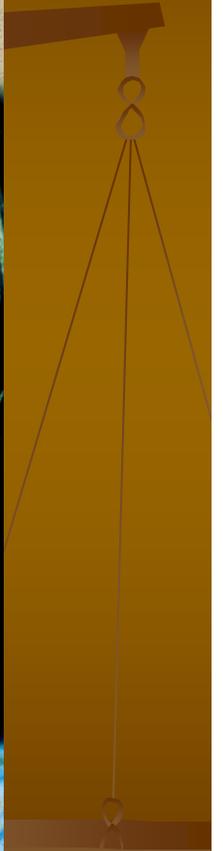
# Difficulties In Early Childhood

- a. Poor visual focus - "severe nearsightedness"
- b. Sleep difficulties
- c. Seizures
- d. Poor motor coordination - appear to be clumsy
- e. Mild Developmental Delays

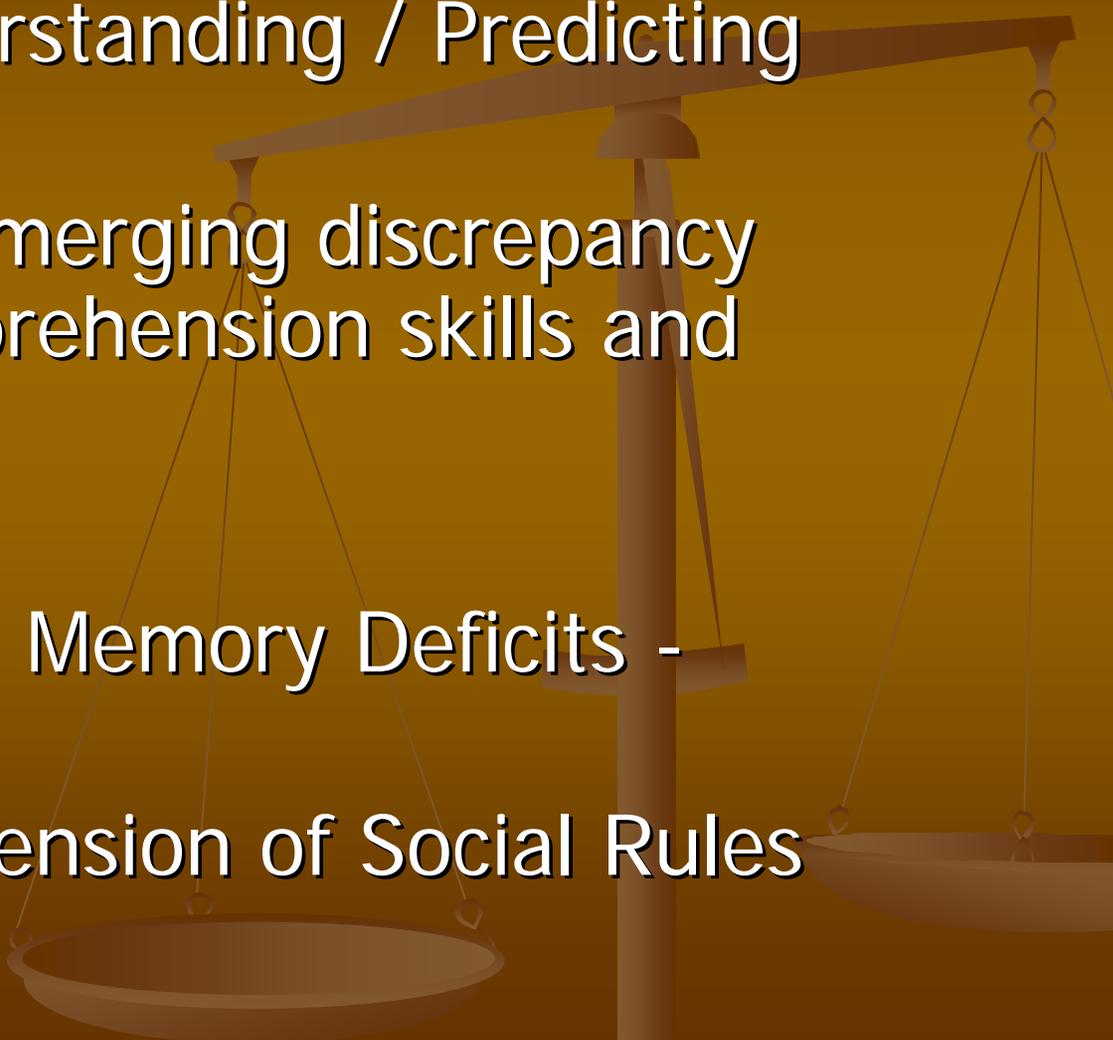


# Early Childhood Cont.

- f. Distractibility and hyperactivity- "unable to sit still"
  - g. Difficulty adapting to change
  - h. Difficulty following directions
  - i. Born into a dysfunctional family, the infant is commonly abandoned in the hospital, or put up for adoption by the mother, or removed by Child Protective Services.
- 



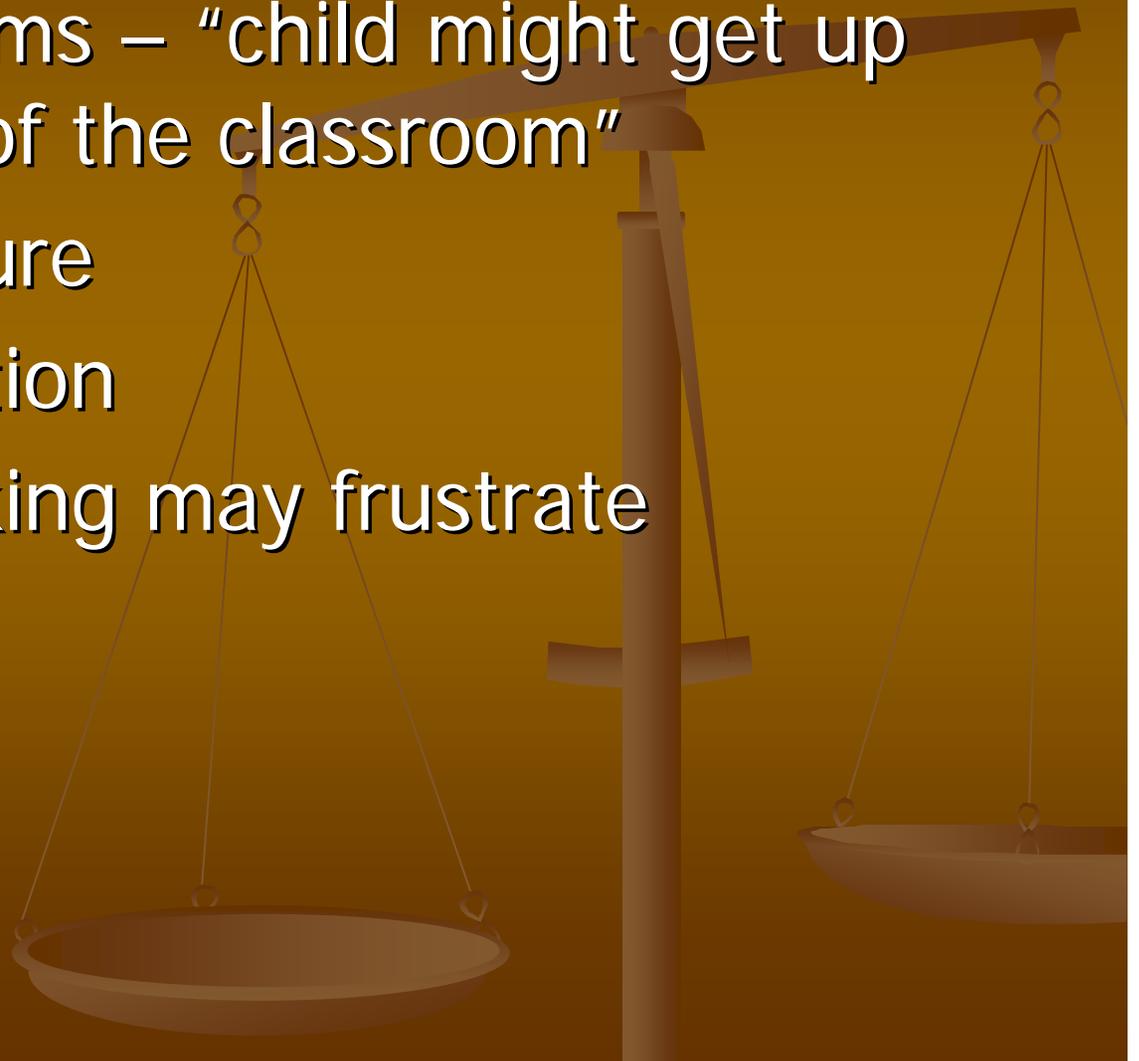
# Difficulties in Mid-Childhood



- a. Difficulty understanding / Predicting consequences
- b. Potential for emerging discrepancy between comprehension skills and expressive
- c. language
- d. Hyperactivity - Memory Deficits - Impulsivity
- e. Poor Comprehension of Social Rules

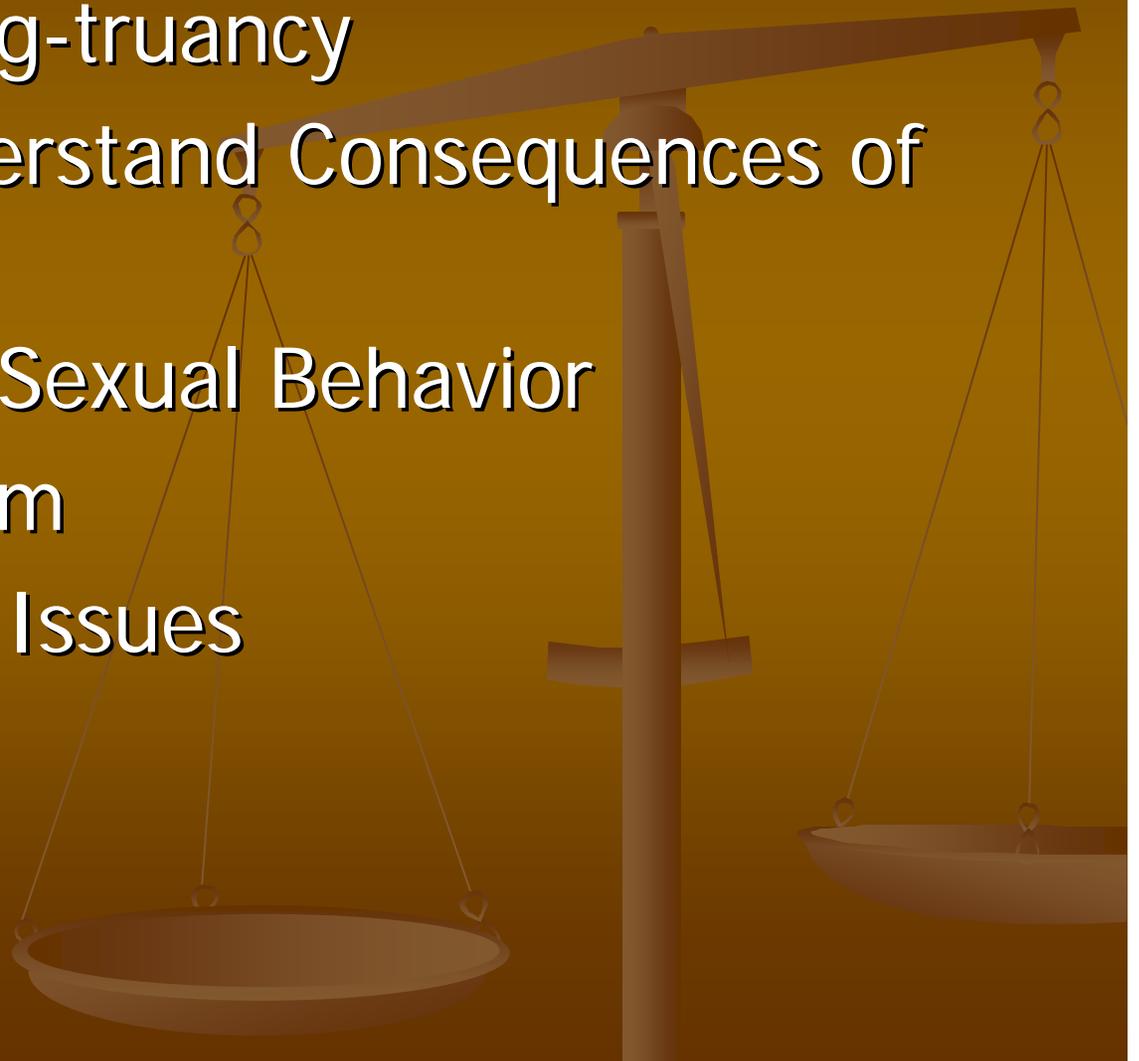
# Mid-Childhood Cont.

- f. ADHD symptoms – “child might get up and walk out of the classroom”
- g. Academic Failure
- h. Special Education
- i. Concrete thinking may frustrate relationships
- j. Gullibility

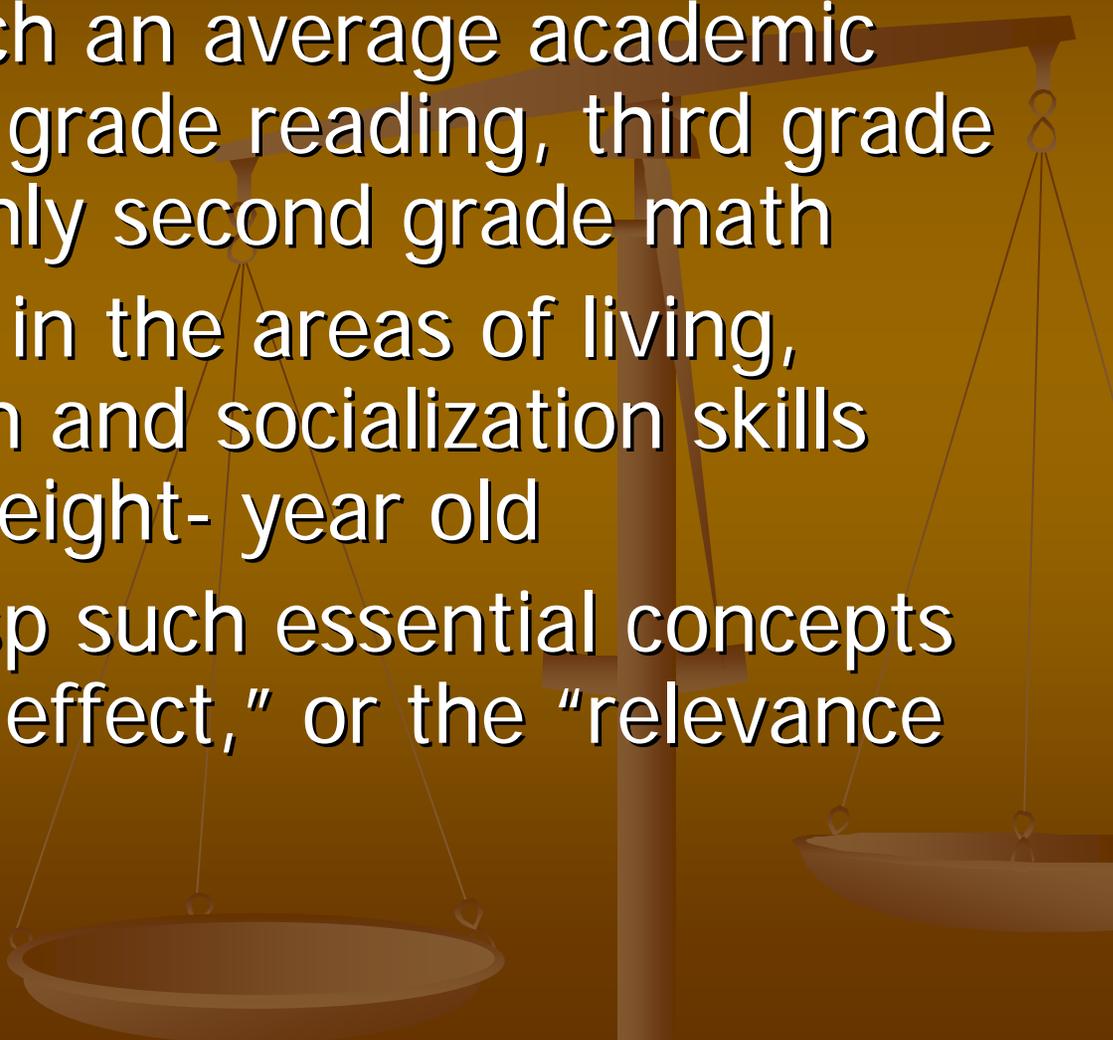


# Difficulty in Adolescence

- a. Lying - Stealing-truancy
- b. Failing to Understand Consequences of Actions
- c. Inappropriate Sexual Behavior
- d. Low self esteem
- e. Mental Health Issues

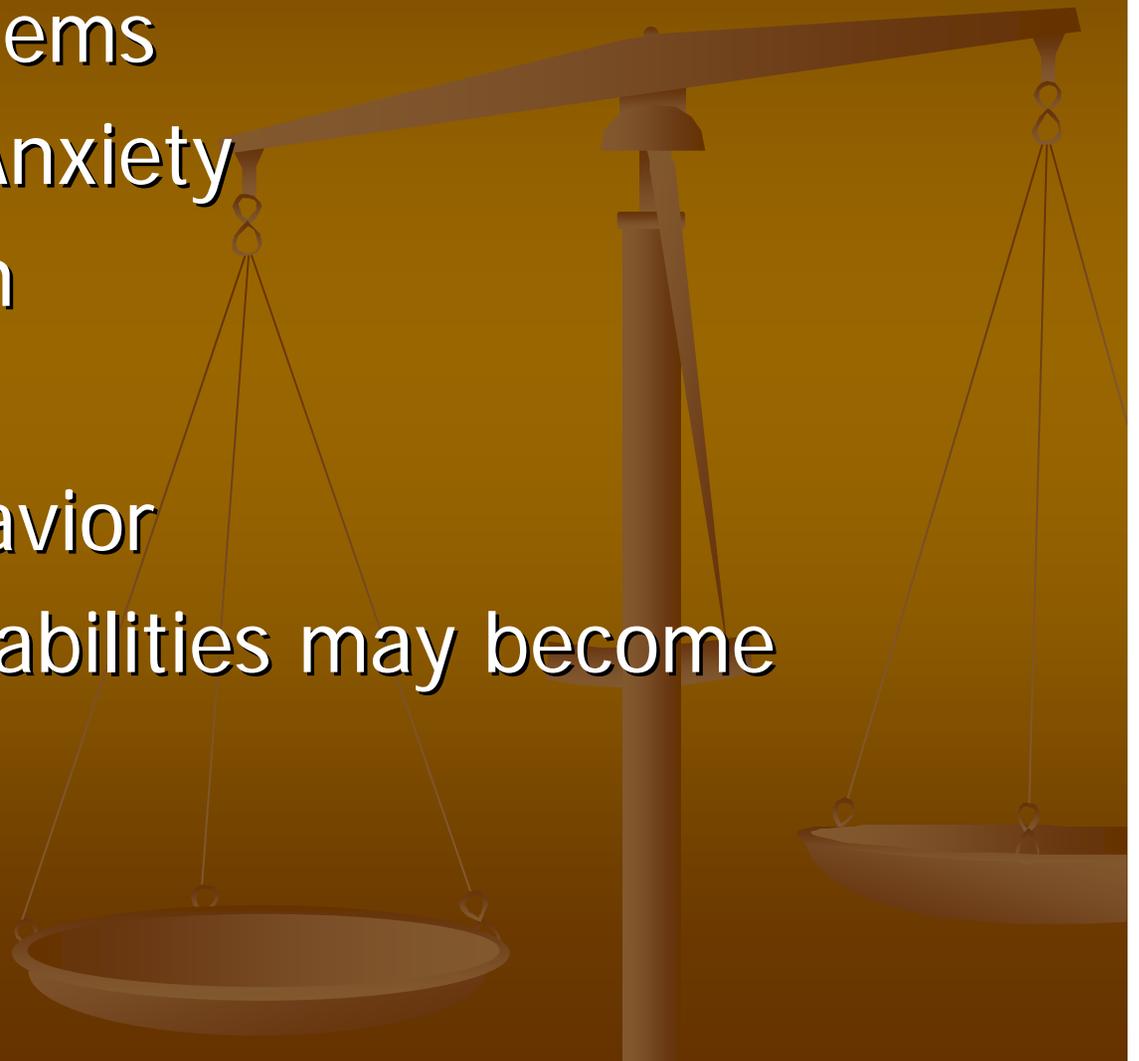


# Adolescence Cont.

- f. They may reach an average academic level of fourth grade reading, third grade spelling and only second grade math
  - g. Adaptive skills in the areas of living, communication and socialization skills are that of an eight- year old
  - h. Unable to grasp such essential concepts as "cause and effect," or the "relevance of time"
- 

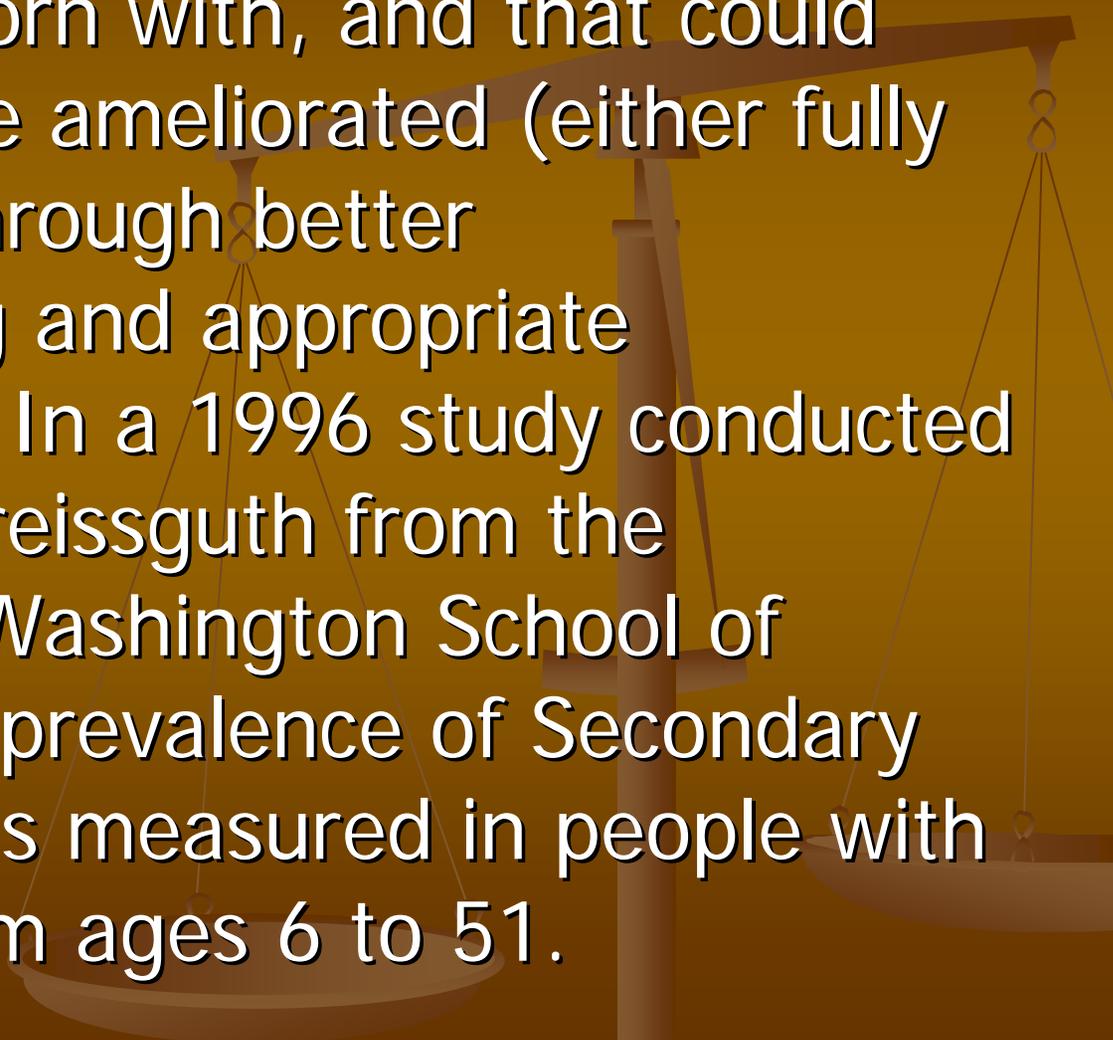
# Difficulties in Adulthood

- a. Behavior Problems
- b. Depression - Anxiety
- c. Drug Addiction
- d. Suicidal
- e. Psychotic behavior
- f. Secondary Disabilities may become dominant

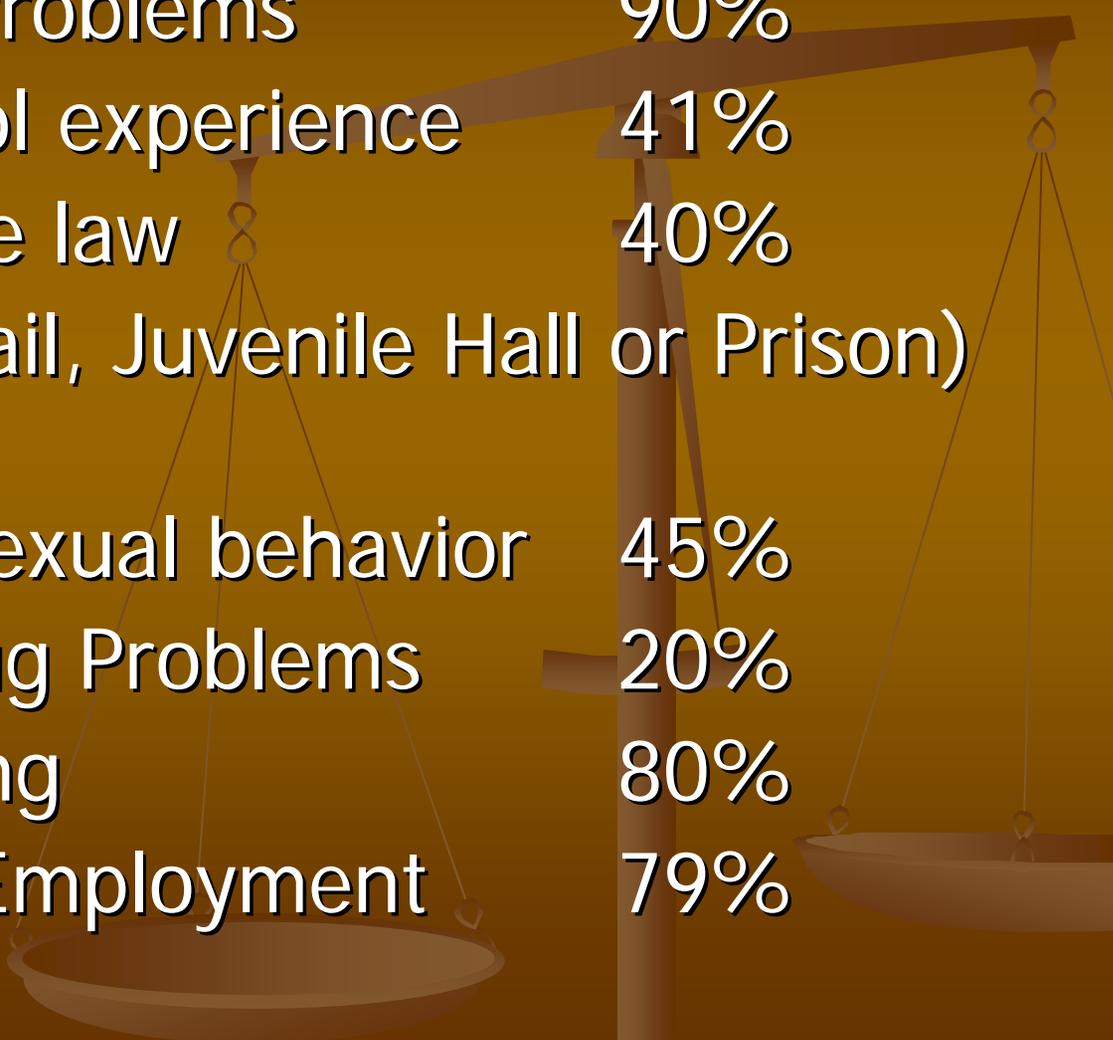


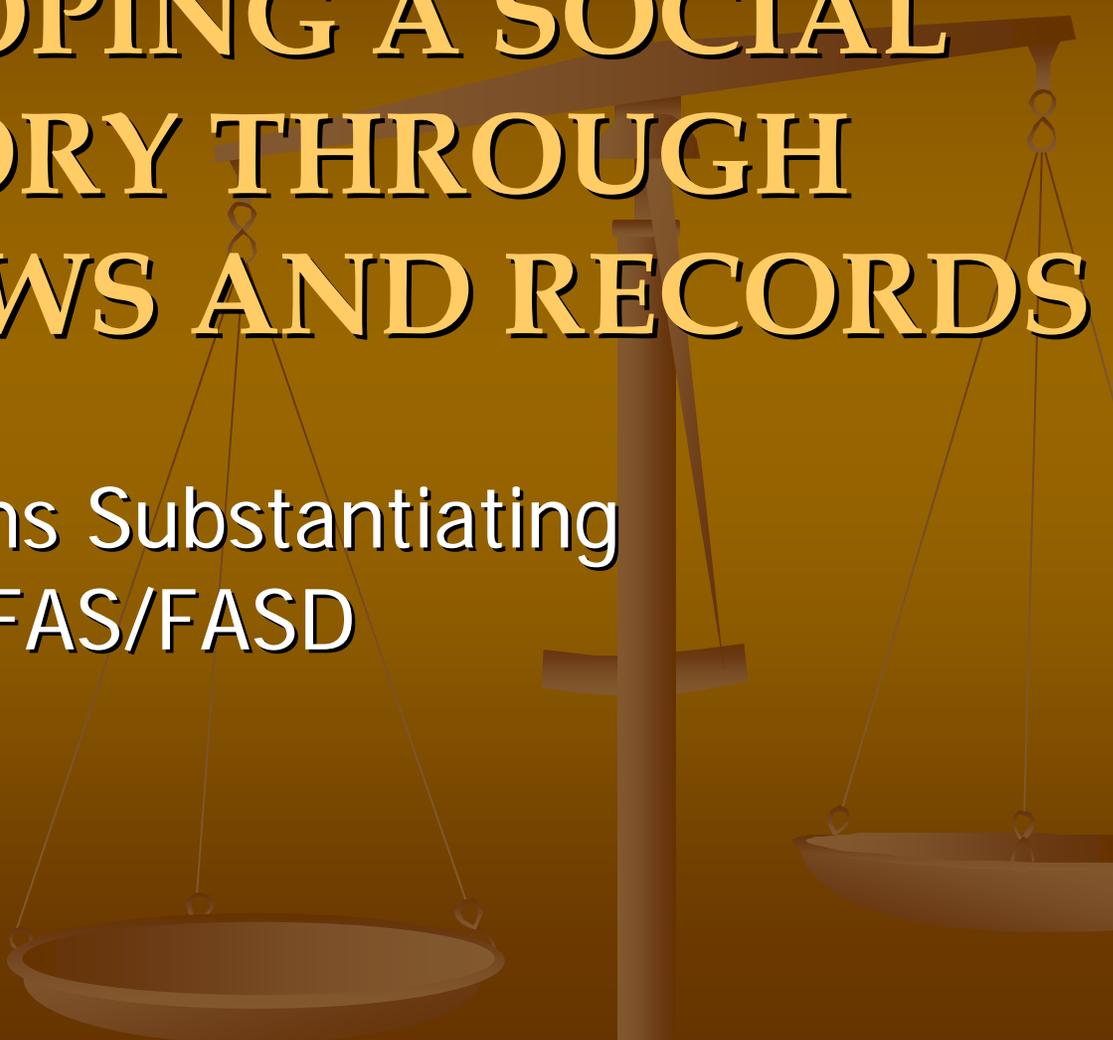
# SECONDARY DISABILITIES

Secondary disabilities are those that the client is not born with, and that could presumably be ameliorated (either fully or partially) through better understanding and appropriate interventions. In a 1996 study conducted by Dr. Ann Streissguth from the University of Washington School of Medicine, the prevalence of Secondary Disabilities was measured in people with FAS/FASD from ages 6 to 51.



# Secondary Disabilities

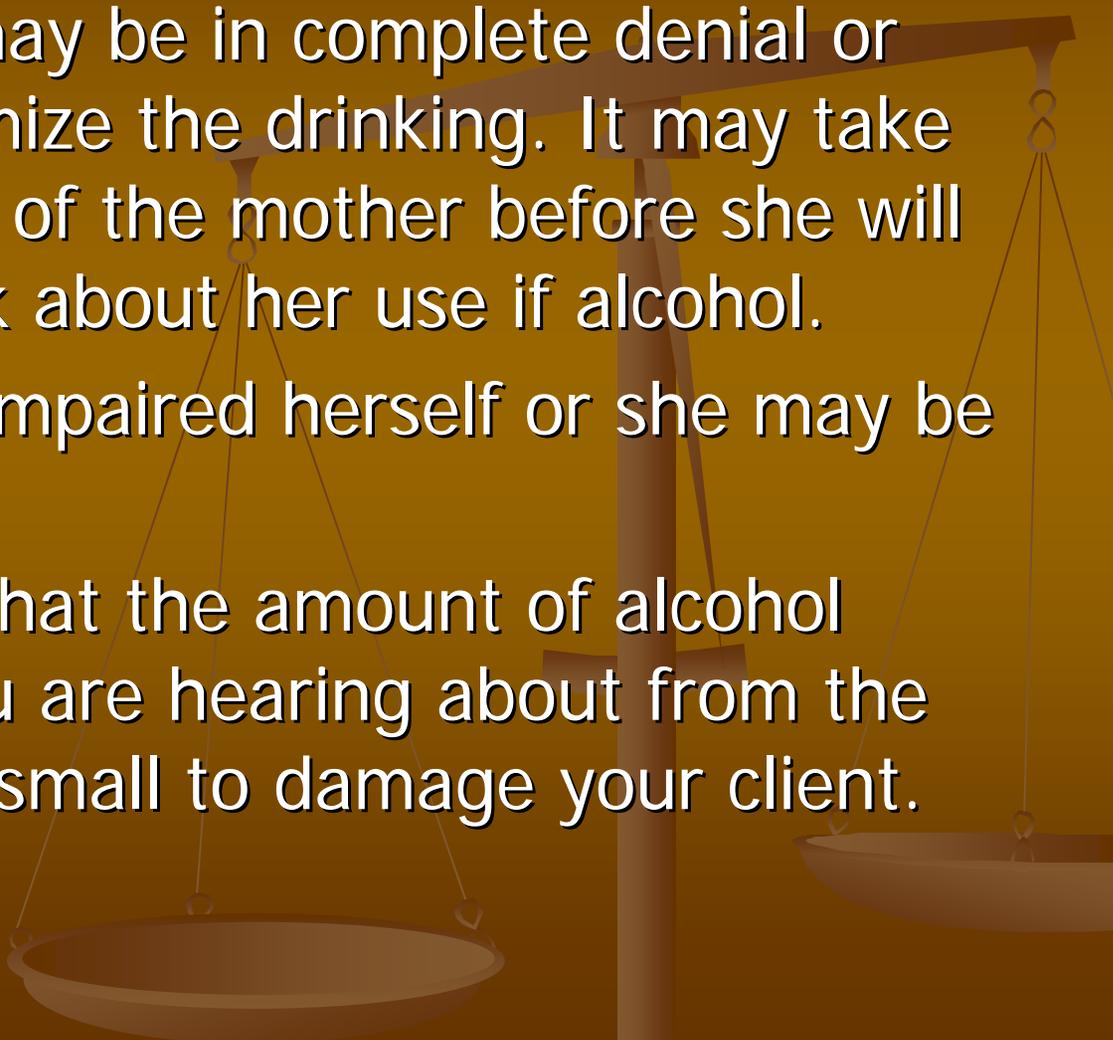
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- |  |     |
|--|-----|
| a. Mental Health Problems                      | 90% |
| b. Disrupted school experience                 | 41% |
| c. Trouble with the law                        | 40% |
| d. Confinement (Jail, Juvenile Hall or Prison) | 30% |
| e. Inappropriate sexual behavior               | 45% |
| f. Alcohol and Drug Problems                   | 20% |
| g. Dependent Living                            | 80% |
| h. Problems with Employment                    | 79% |



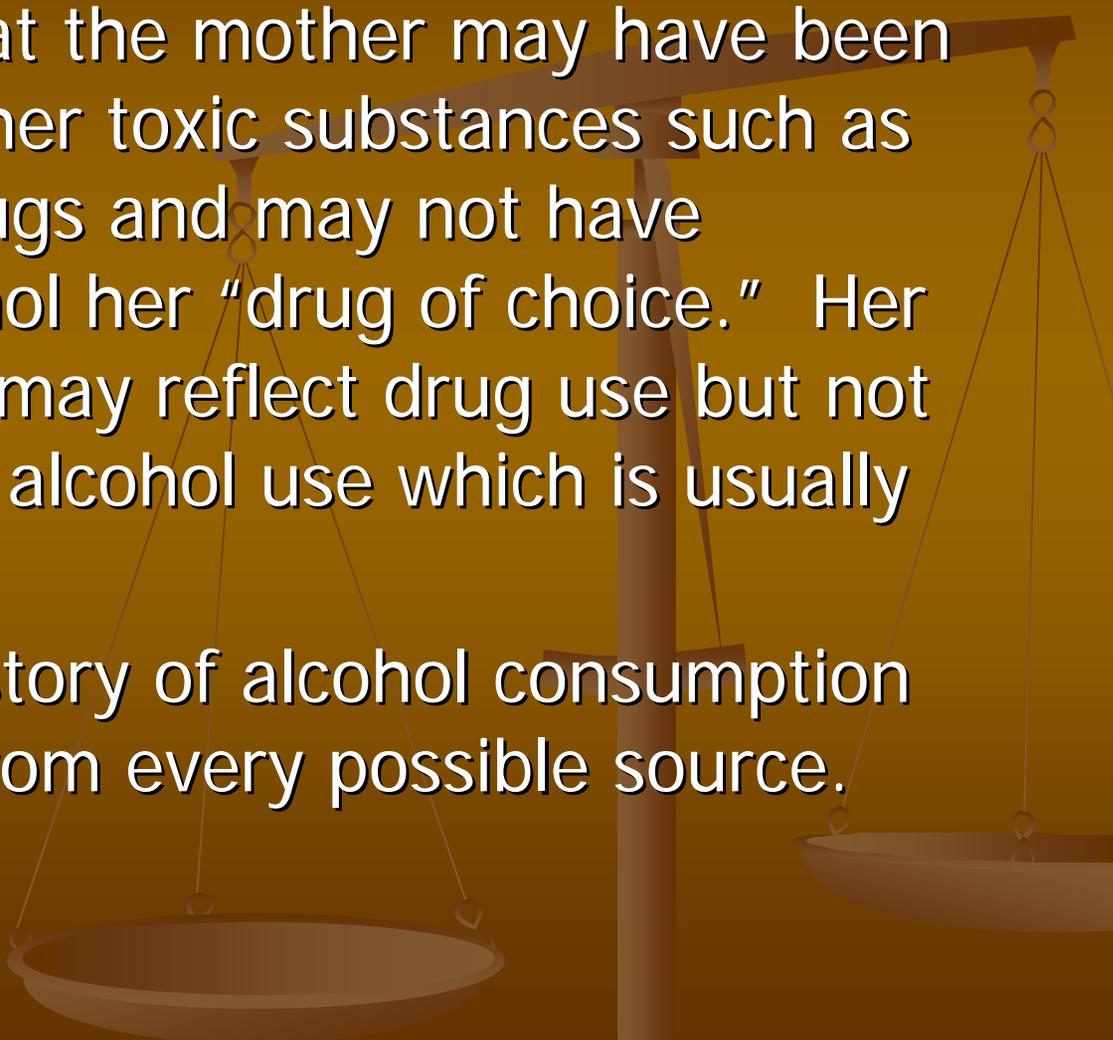
# DEVELOPING A SOCIAL HISTORY THROUGH INTERVIEWS AND RECORDS

Problems Substantiating  
FAS/FASD

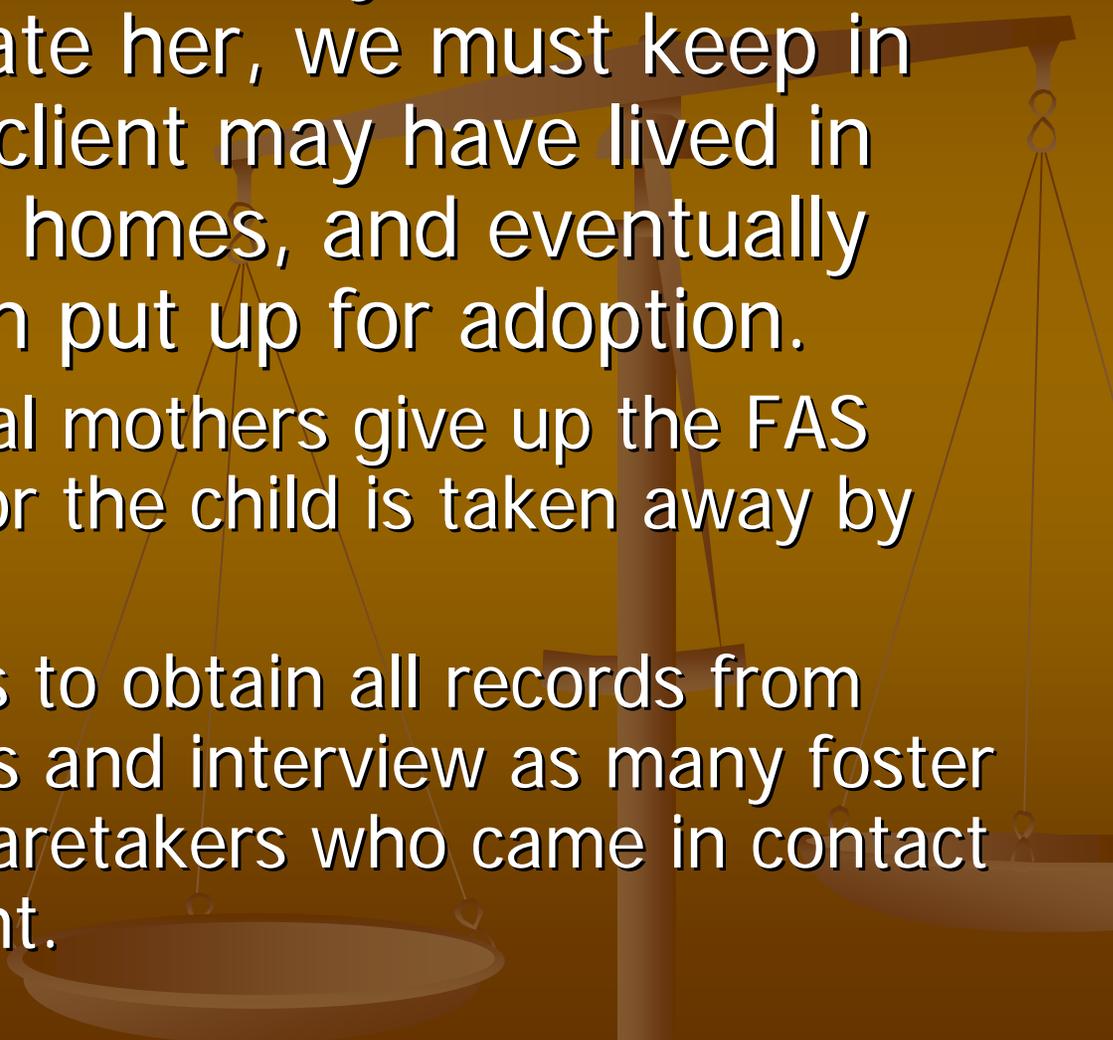
# Difficulty in Obtaining Mother's History of Alcohol

- a. Many mothers may be in complete denial or attempt to minimize the drinking. It may take many interviews of the mother before she will open up and talk about her use of alcohol.
  - b. Mother may be impaired herself or she may be deceased.
  - c. Do not assume that the amount of alcohol consumption you are hearing about from the mother was too small to damage your client.
- 

# Mother's History Cont.

- d. Keep in mind that the mother may have been involved with other toxic substances such as glue sniffing, drugs and may not have considered alcohol her "drug of choice." Her medical records may reflect drug use but not the concomitant alcohol use which is usually present.
  - e. The mother's history of alcohol consumption must be taken from every possible source.
- 

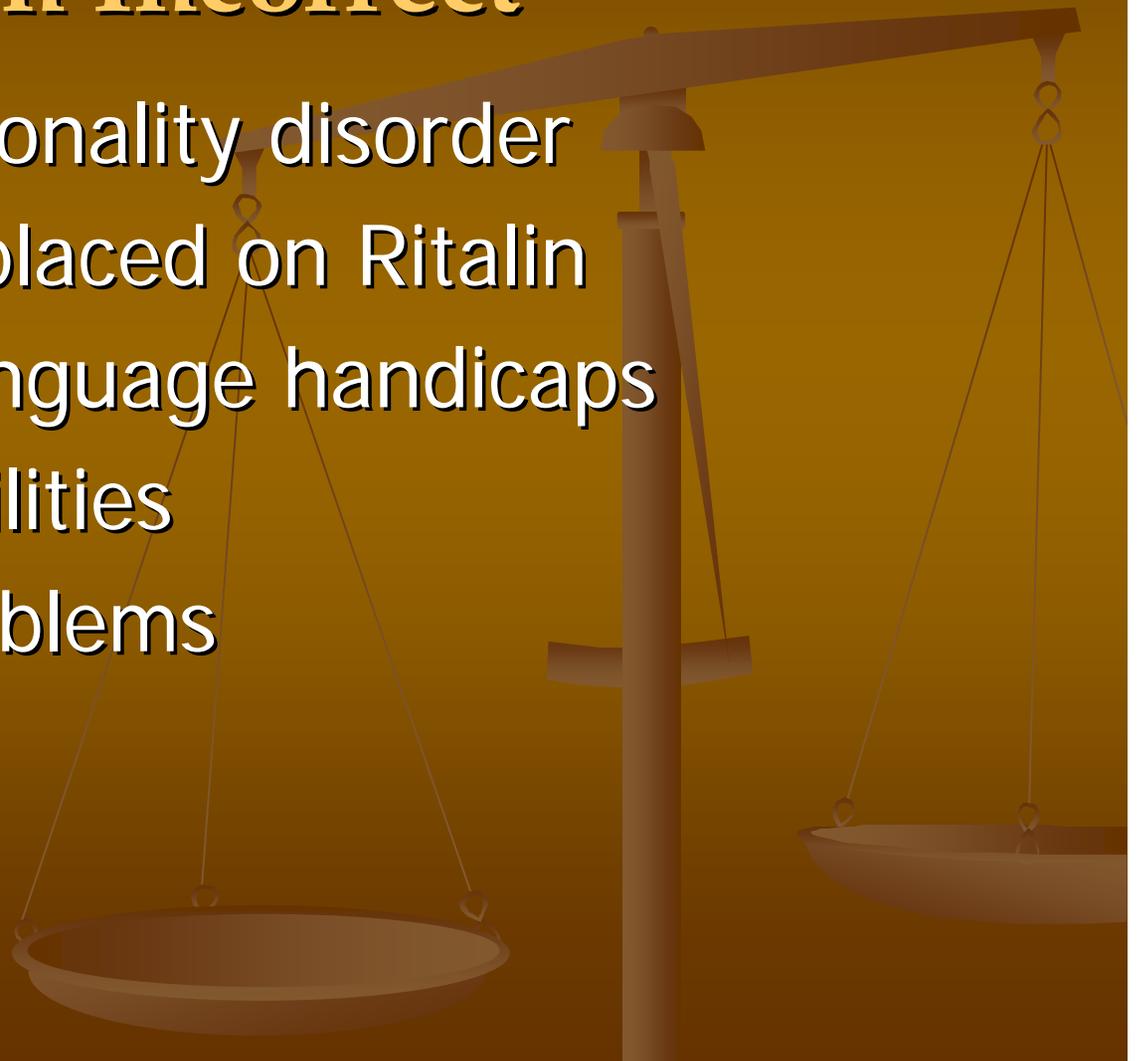
# Foster Families



- a. Because the mother may have died or we cannot locate her, we must keep in mind that the client may have lived in multiple foster homes, and eventually may have been put up for adoption.
  1. Many biological mothers give up the FAS child at birth or the child is taken away by the courts.
  2. Counsel needs to obtain all records from these agencies and interview as many foster parents and caretakers who came in contact with your client.

# Previous Diagnosis May Have Been Incorrect

- a. antisocial personality disorder
- b. ADHD/ADD - placed on Ritalin
- c. speech and language handicaps
- d. learning disabilities
- e. behavioral problems



# WHAT RECORDS TO OBTAIN FOR SOCIAL HISTORY

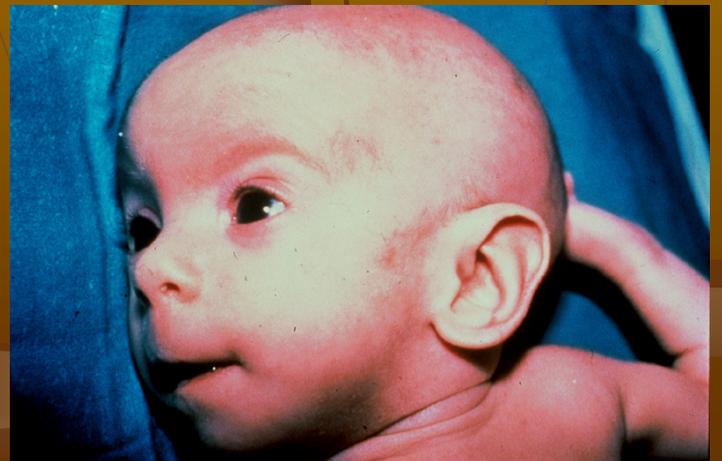


# MATERNAL HISTORY

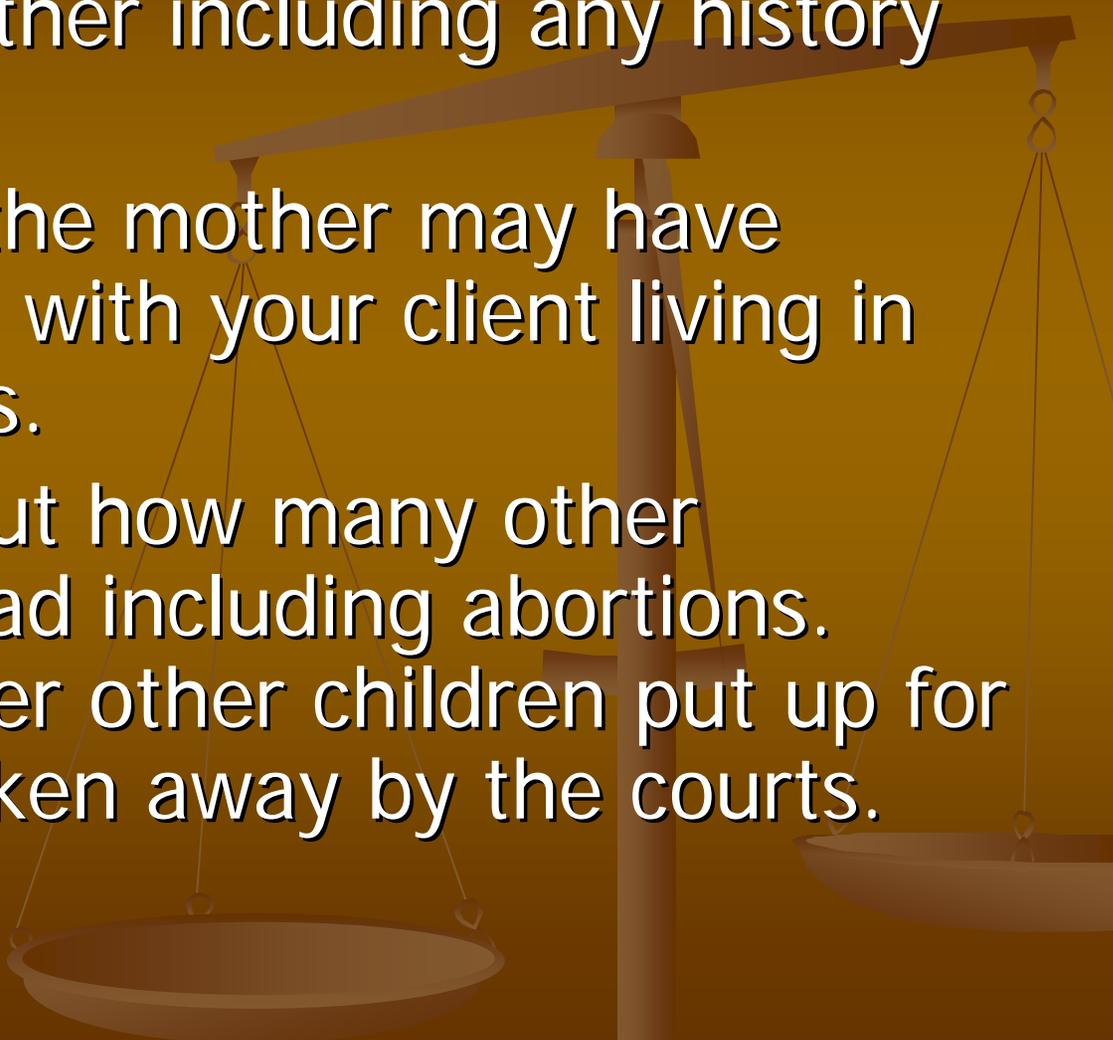


# Mothers Records

- a. Prenatal care records
- b. Post-natal care records
- c. Birth records
- d. All records relating to substance abuse treatment for drugs or alcohol
- e. Death Certificate



# Mother's Records Cont.

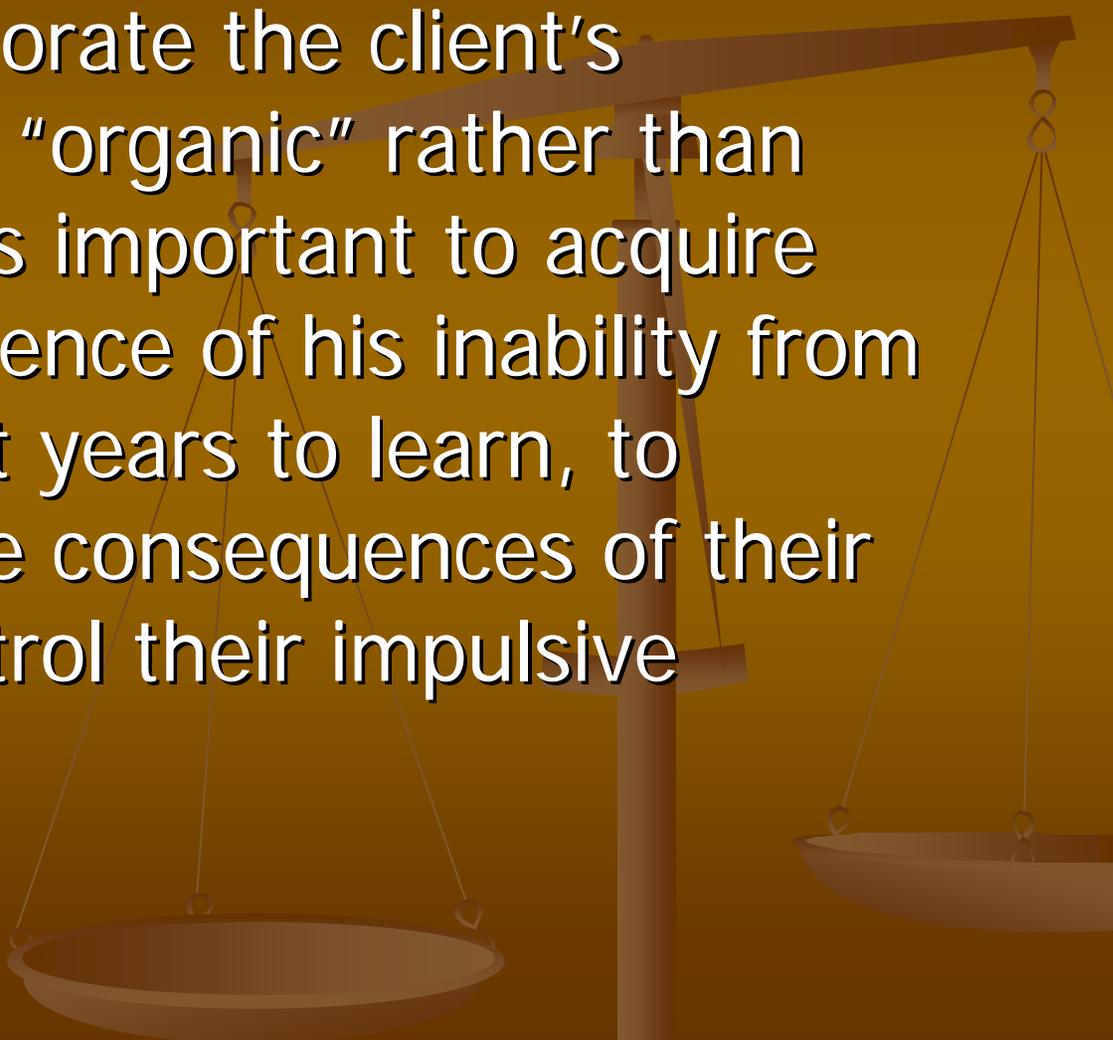
- f. Records on Father including any history of alcohol use.
  - g. Keep in mind the mother may have moved around with your client living in different states.
  - h. Try and find out how many other children she had including abortions. Were any of her other children put up for adoption or taken away by the courts.
- 

# CLIENT HISTORY



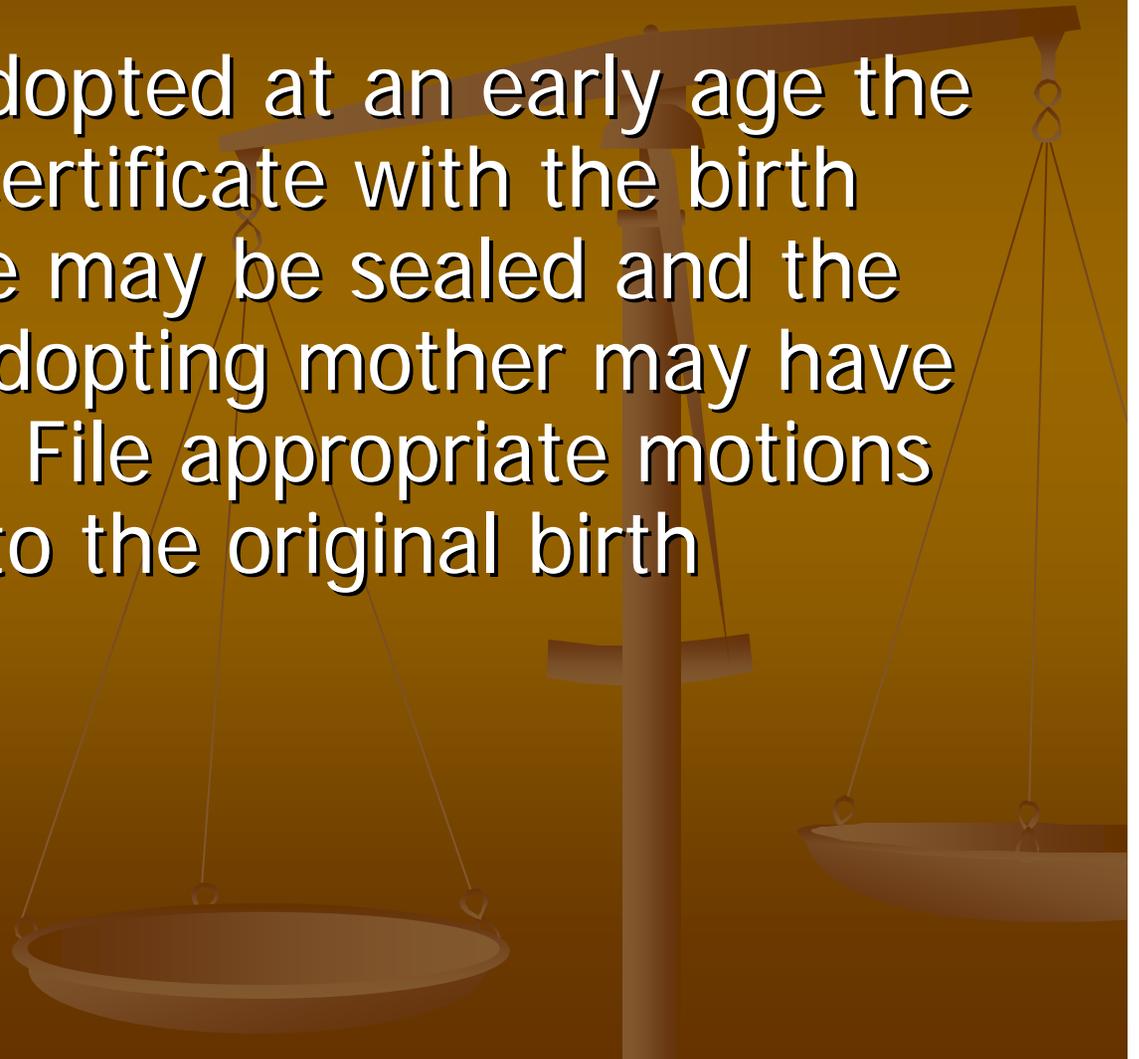
# Client's Records

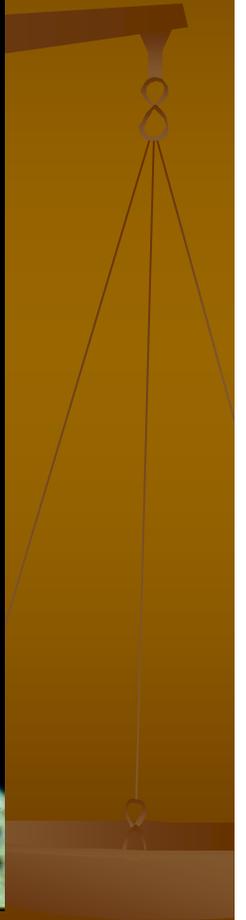
In order to corroborate the client's impairment as "organic" rather than behavioral, it is important to acquire anecdotal evidence of his inability from his/her earliest years to learn, to understand the consequences of their actions or control their impulsive behavior.



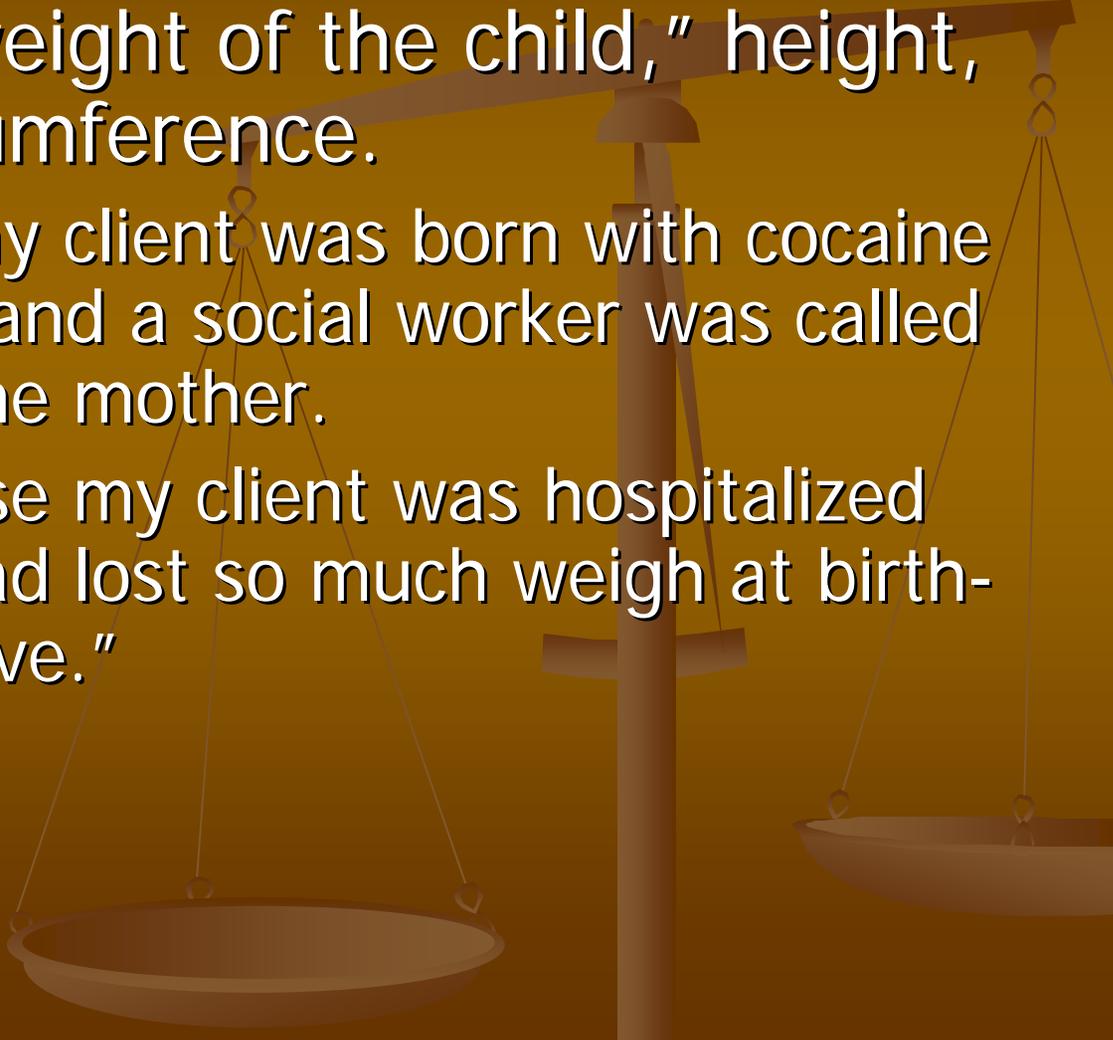
# Birth Certificate

- a. if client was adopted at an early age the original birth certificate with the birth mother's name may be sealed and the name of the adopting mother may have been inserted. File appropriate motions to get access to the original birth certificate.



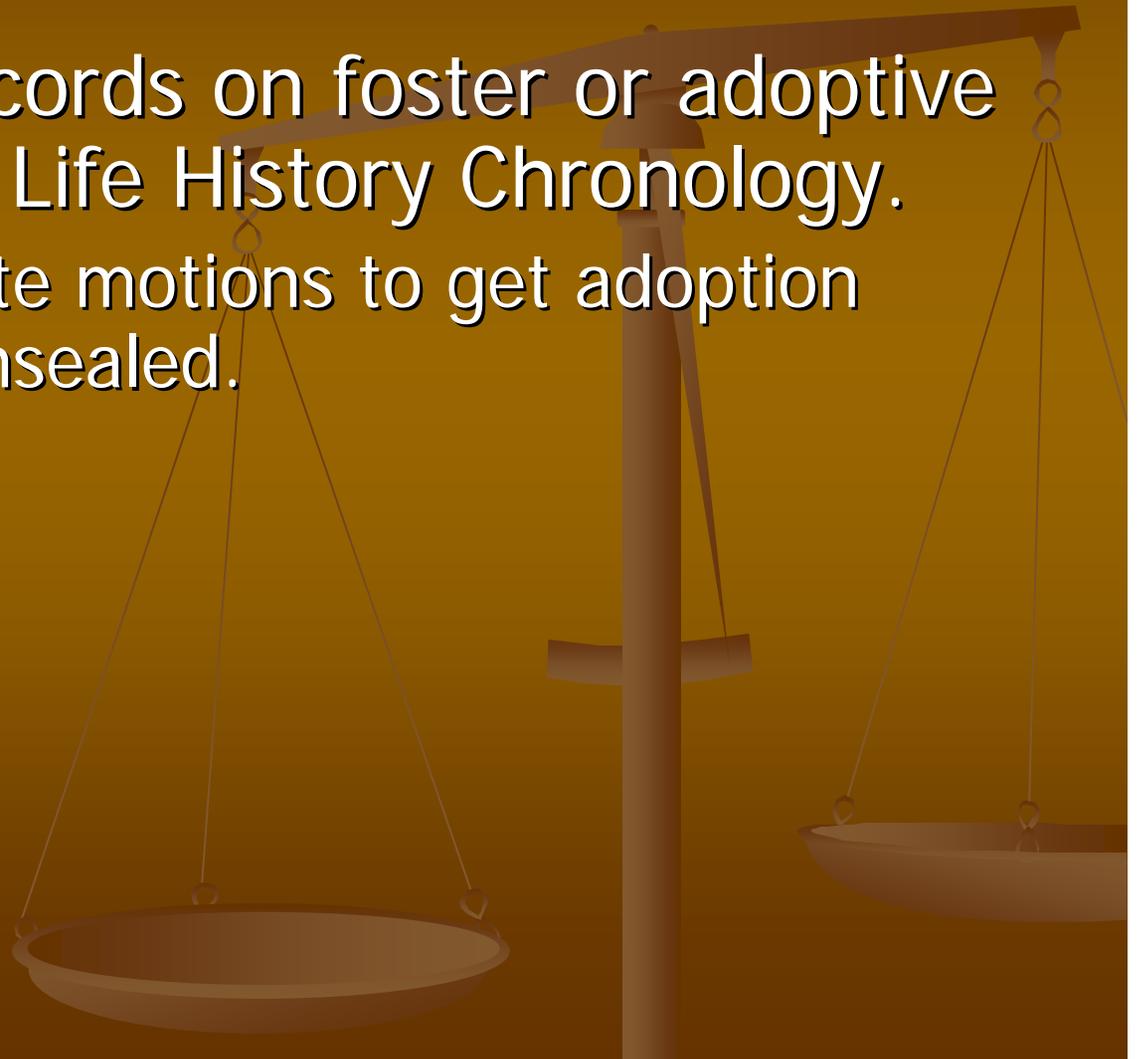


# Birth Records

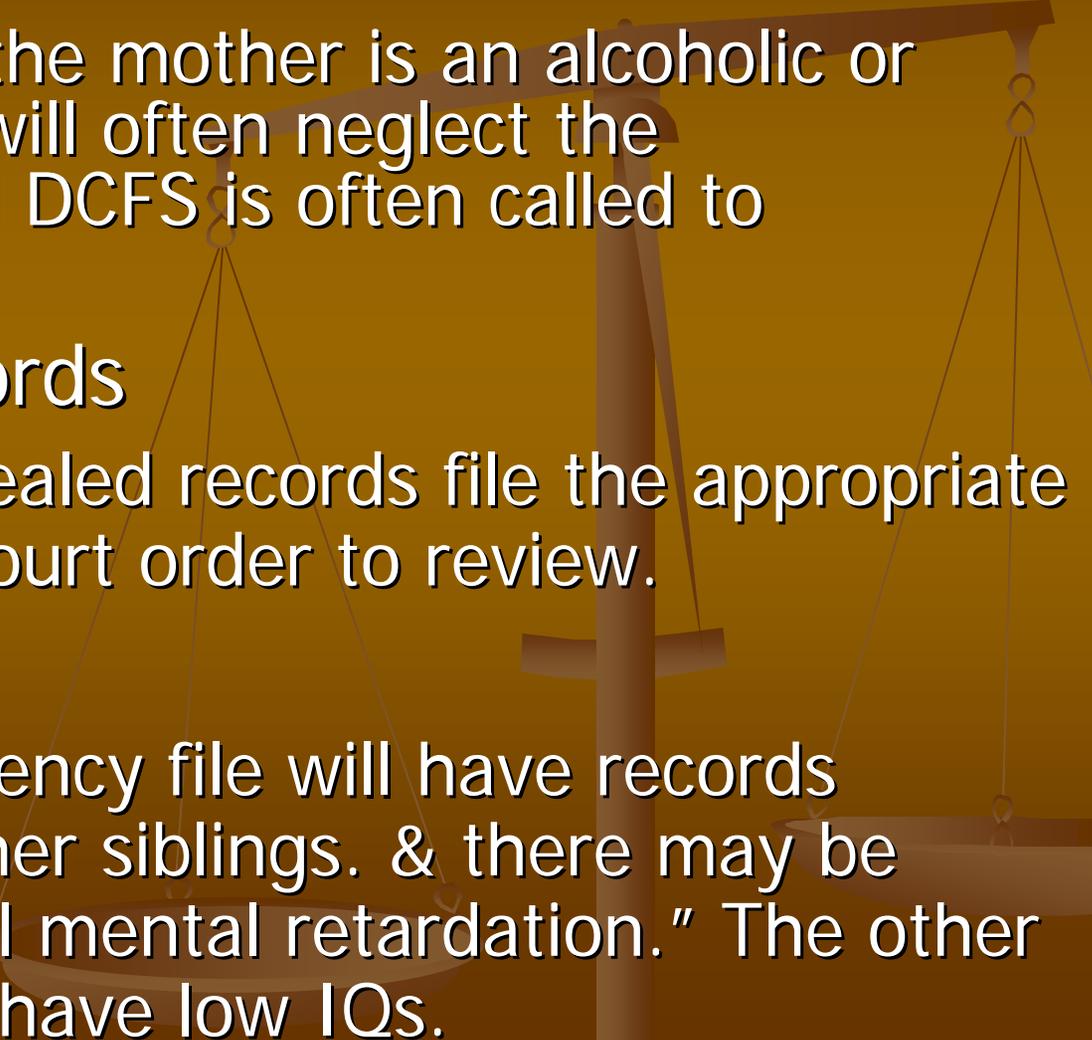
- 
- b. Look at the “weight of the child,” height, and head circumference.
    1. In one case my client was born with cocaine in his system and a social worker was called to interview the mother.
    2. In another case my client was hospitalized because he had lost so much weight at birth-“failure to thrive.”

# Foster & Adoptive

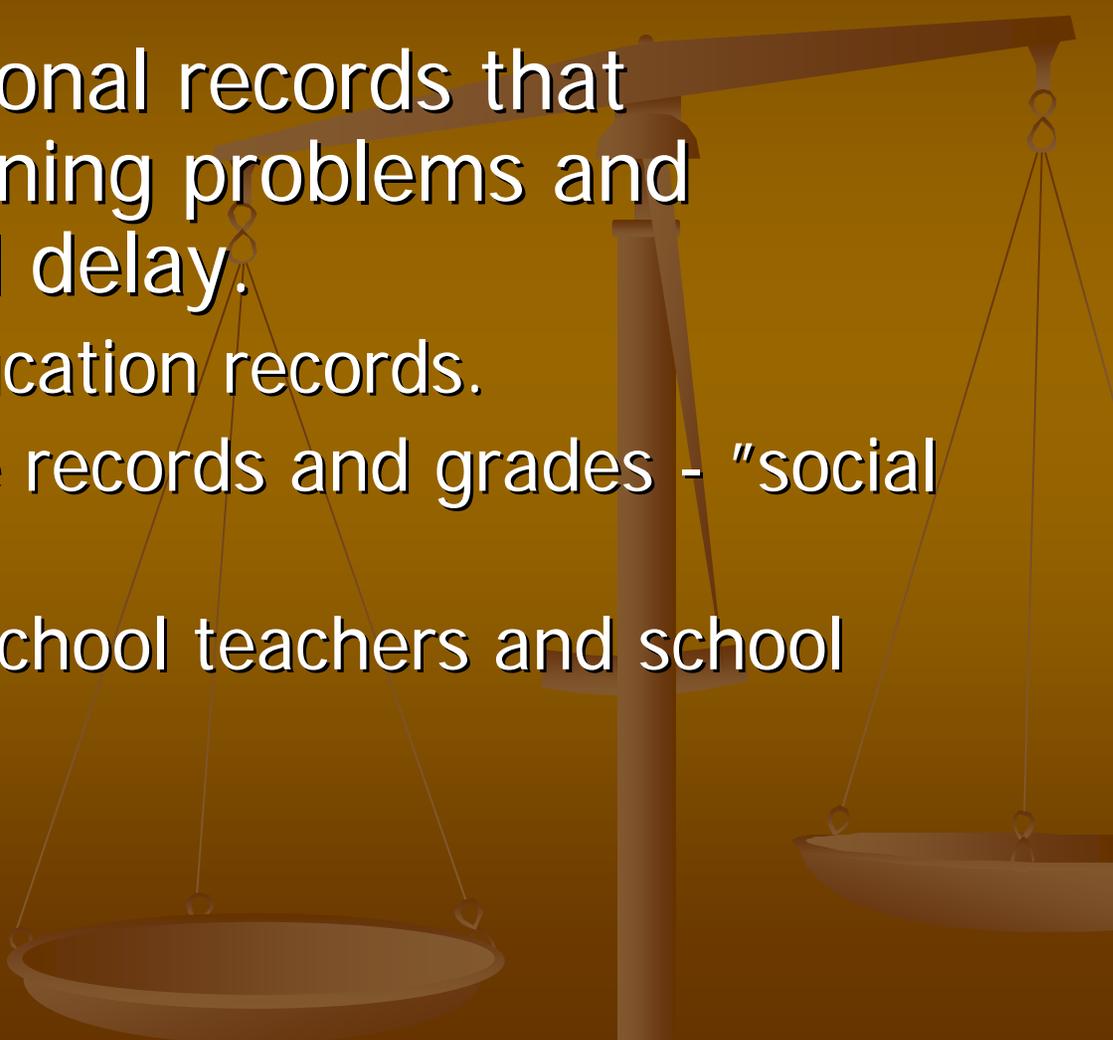
- c. Interweave records on foster or adoptive families into a Life History Chronology.
  1. File appropriate motions to get adoption file/records unsealed.



# Dept. Of Children & Family Services

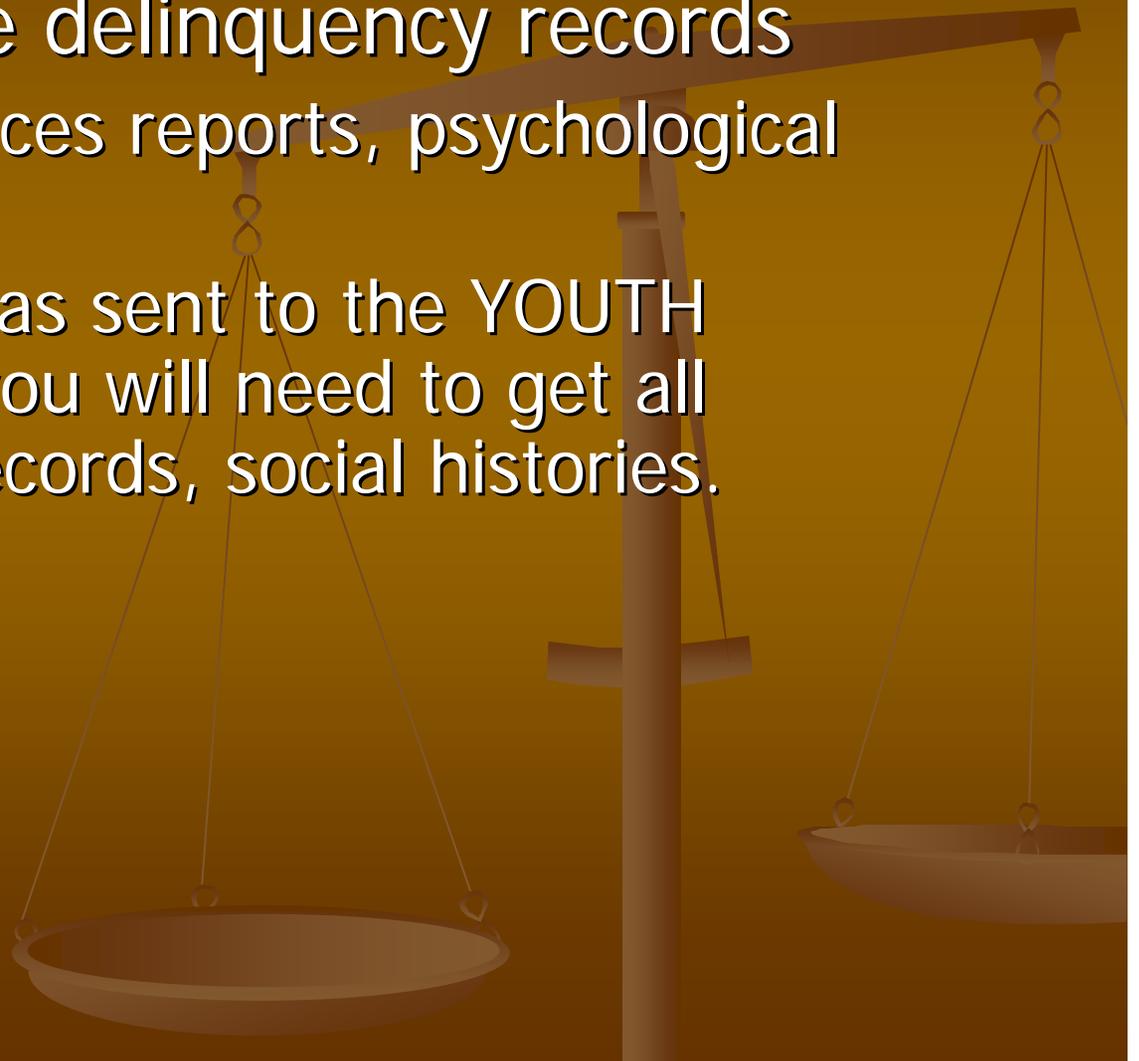
- d. Get all social history reports & social worker interviews.
    - 1. In many cases if the mother is an alcoholic or drug addict, she will often neglect the child/children and DCFS is often called to investigate.
  - e. Dependency Records
    - 1. if there are any sealed records file the appropriate motion to get a court order to review.
  - f. Siblings Records
    - 1. often the Dependency file will have records relating to the other siblings. & there may be signs of "maternal mental retardation." The other siblings may also have low IQs.
- 

# Educational Records

- 
- g. Get all educational records that document learning problems and developmental delay.
1. All special education records.
  2. All attendance records and grades - "social passing."
  3. Interview all school teachers and school psychologist.

# Juvenile Records

- h. Get all juvenile delinquency records
  - 1. All social services reports, psychological records.
  - 2. If the client was sent to the YOUTH AUTHORITY you will need to get all educational records, social histories.



# USE OF EXPERTS

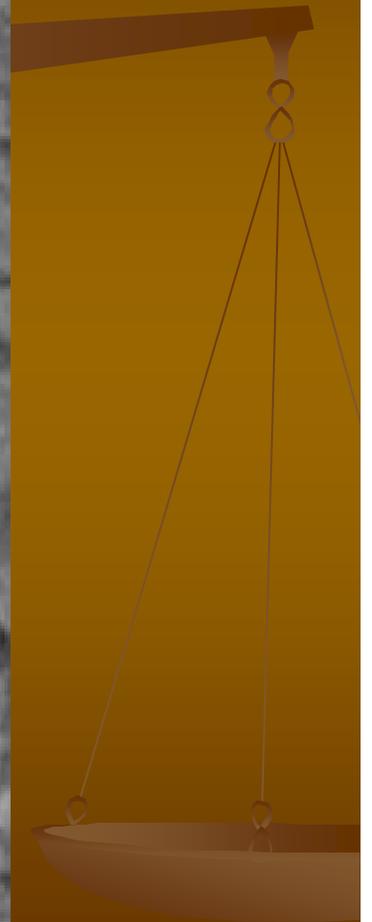


# Experts List

- a. Social worker
- b. Neurologist
- c. Dysmorphologist
- d. Pediatric Doctor
- e. Dr. Fred Bookstein, University of Washington, Seattle (Formats an MRI to look at brain damage caused by alcohol)
- f. Neuropsychologist-adaptive behavioral testing

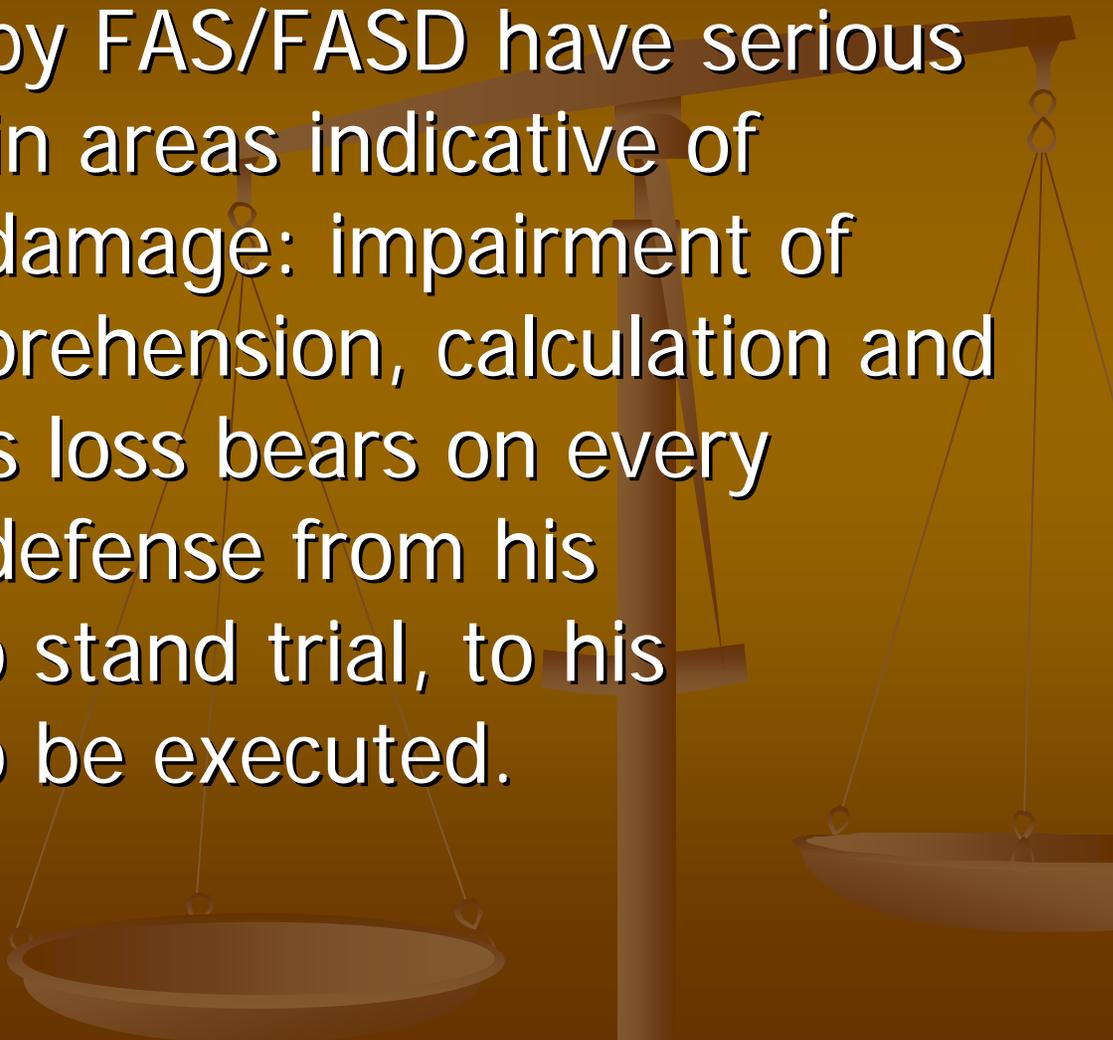


# Bookstein Research



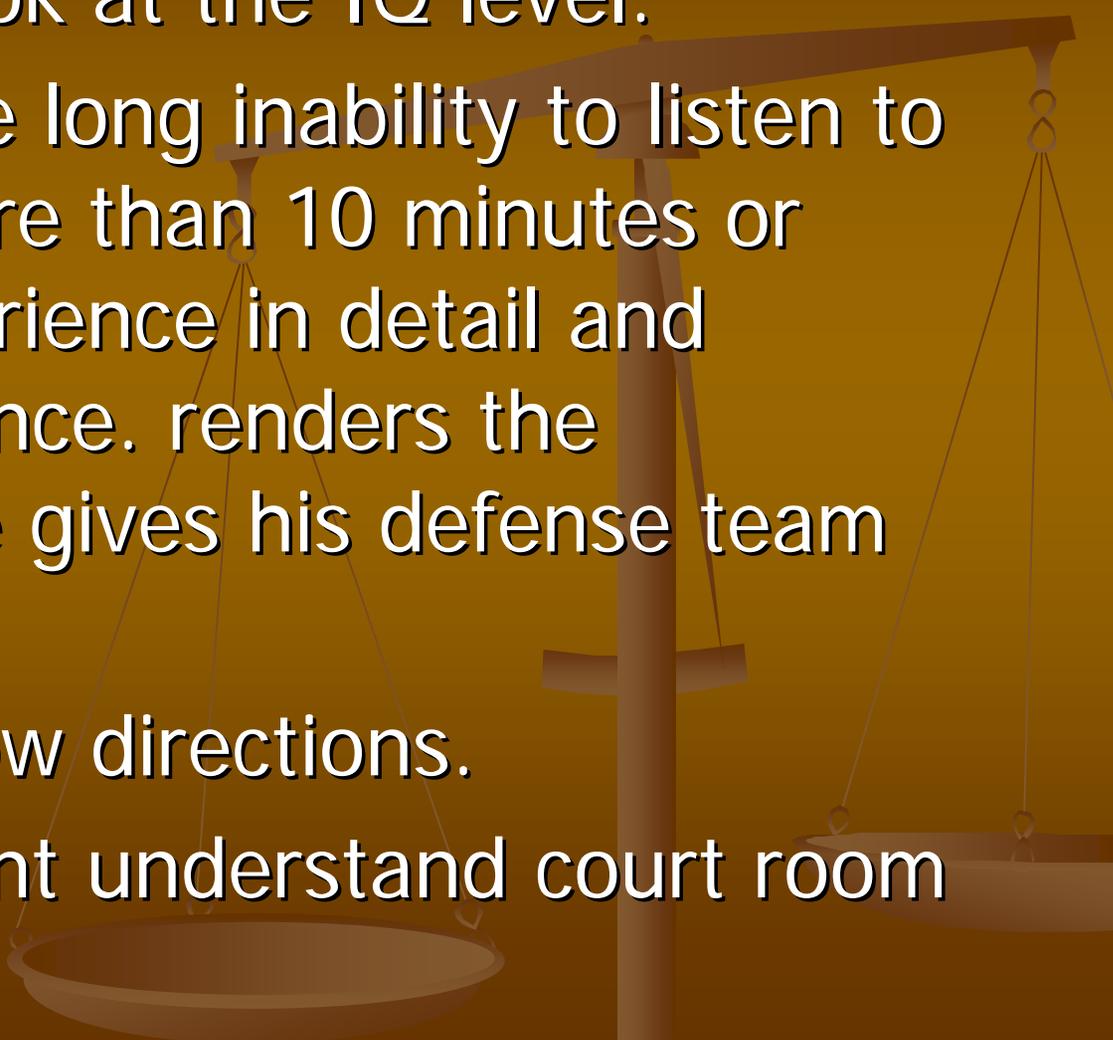


**LEGAL ISSUES THAT  
RELATE TO YOUR CLIENT  
WITH FAS/FASD**

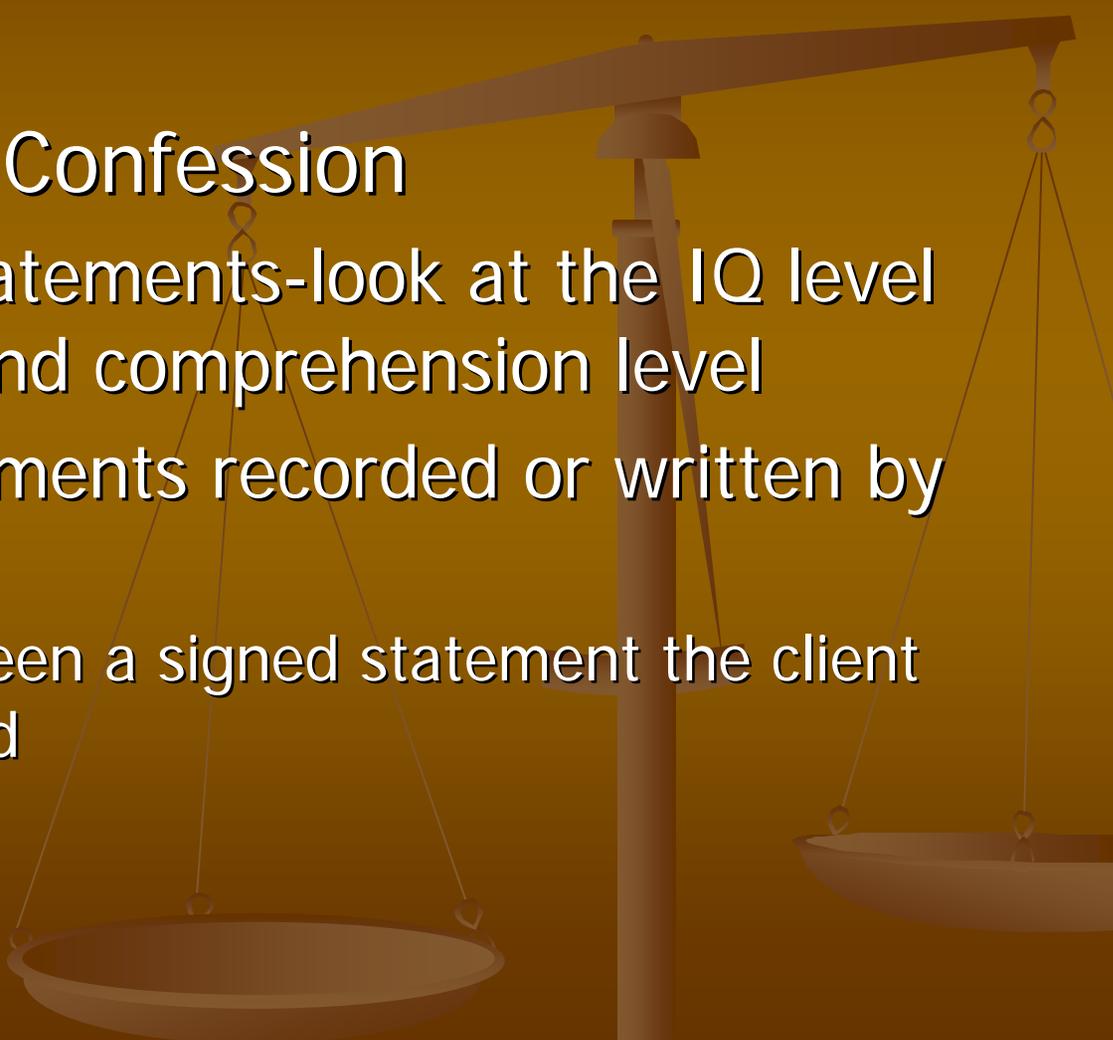


People damaged by FAS/FASD have serious cognitive loss in areas indicative of organic brain damage: impairment of memory, comprehension, calculation and judgment. This loss bears on every aspect of the defense from his competency to stand trial, to his competency to be executed.

# Competency To Stand Trial

- 
- a. Cannot just look at the IQ level.
  - b. Look at the life long inability to listen to a story for more than 10 minutes or relate an experience in detail and rational sequence. renders the information he gives his defense team unreliable.
  - c. Unable to follow directions.
  - d. Does your client understand court room procedures.

# Consent/Waivers

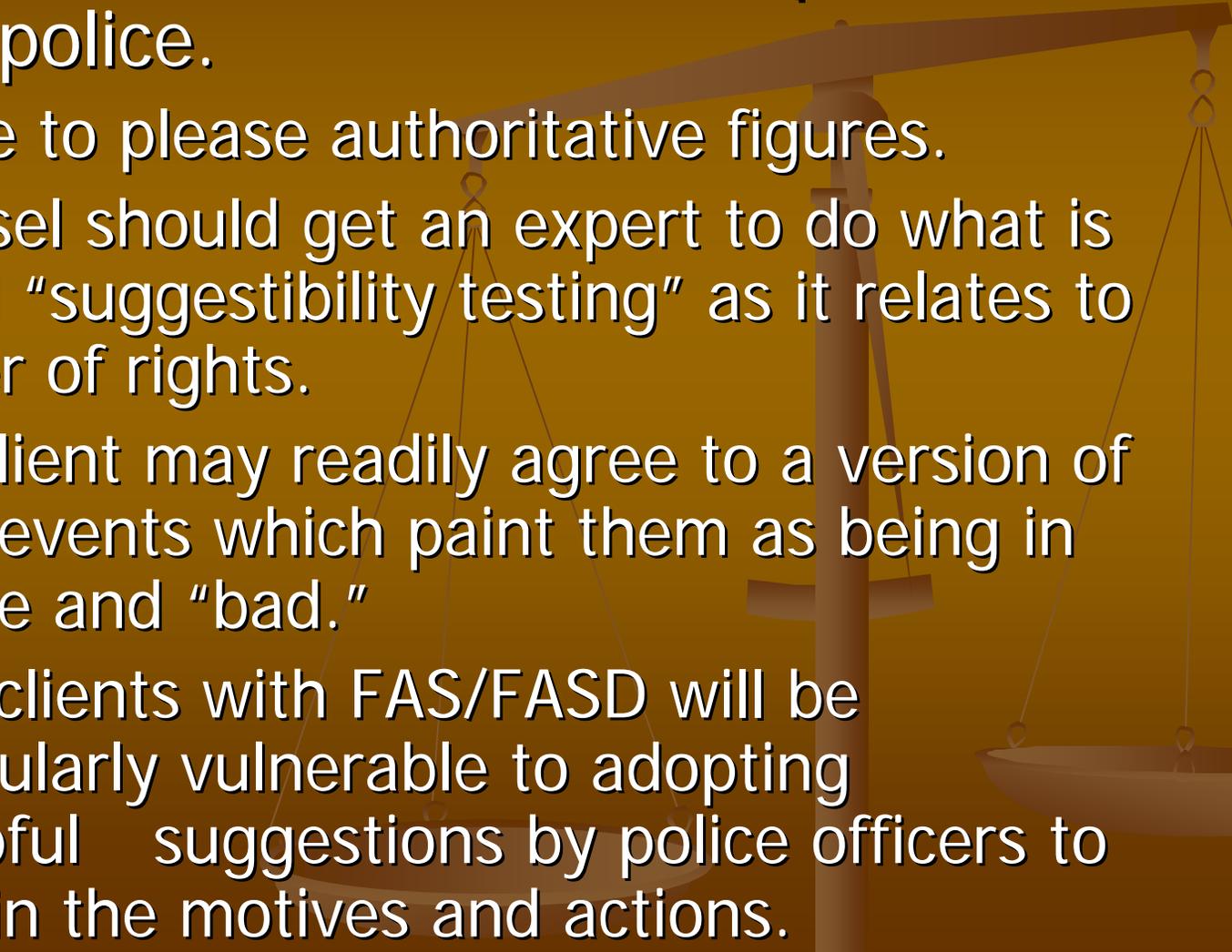


a. Search

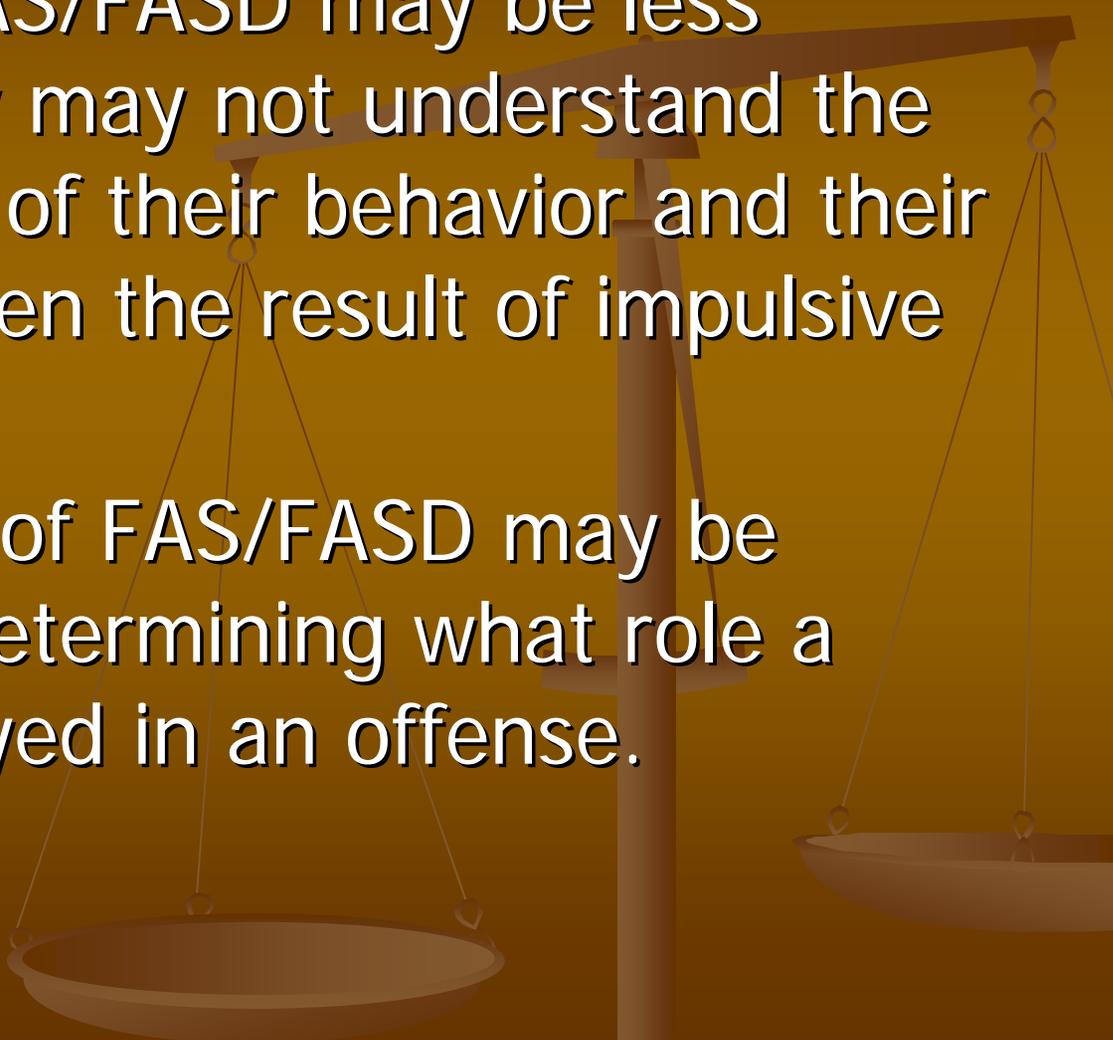
b. Miranda-False Confession

1. Review the statements-look at the IQ level and reading and comprehension level
2. Was the statements recorded or written by your client
  - Could have been a signed statement the client could not read

# Consent/Waivers Cont.

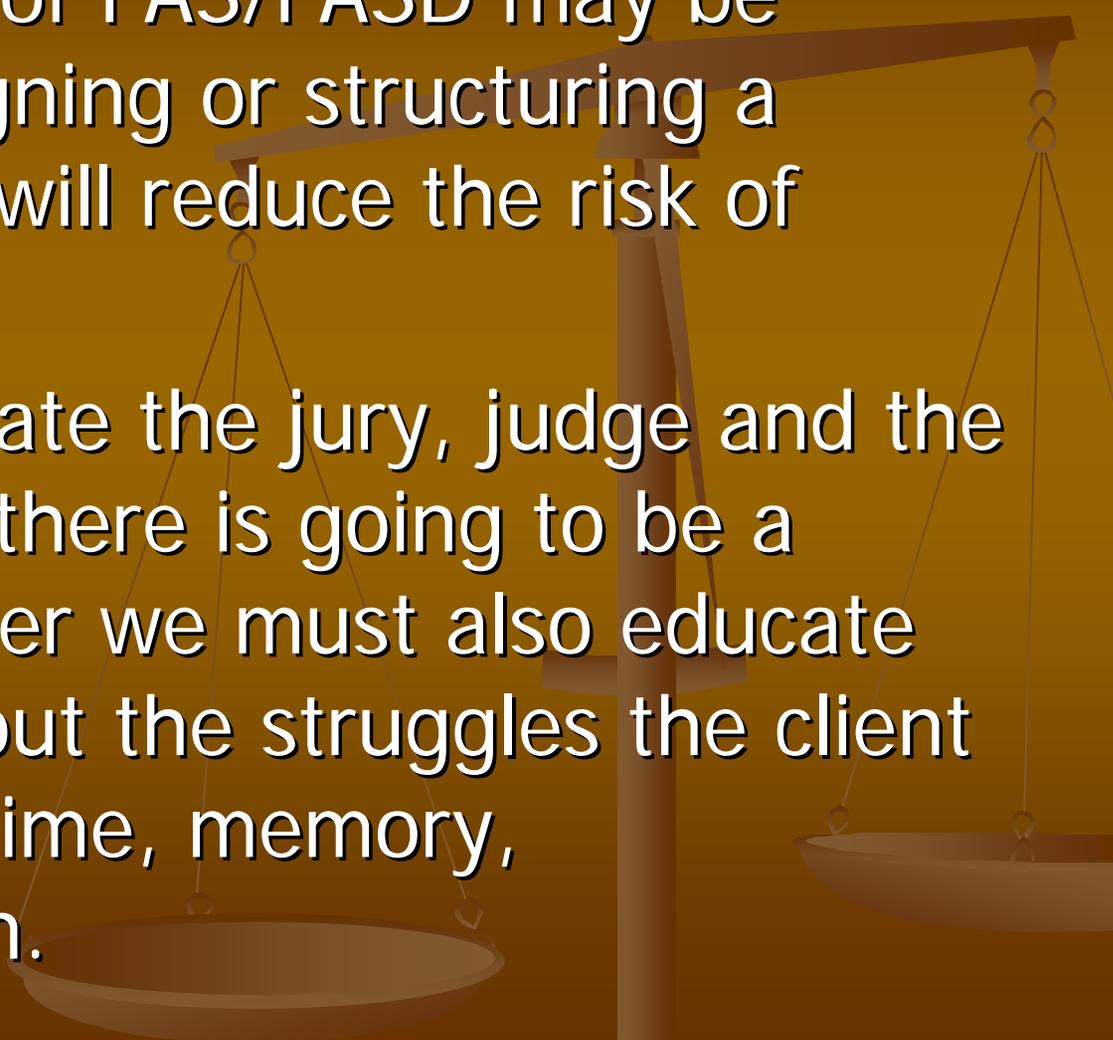
- c. Voluntariness - failure to comprehend the situation he was in when questioned by the police.
    1. Desire to please authoritative figures.
    2. Counsel should get an expert to do what is called "suggestibility testing" as it relates to waiver of rights.
    3. The client may readily agree to a version of facts/events which paint them as being in charge and "bad."
    4. Most clients with FAS/FASD will be particularly vulnerable to adopting helpful suggestions by police officers to explain the motives and actions.
- 

# Sentencing

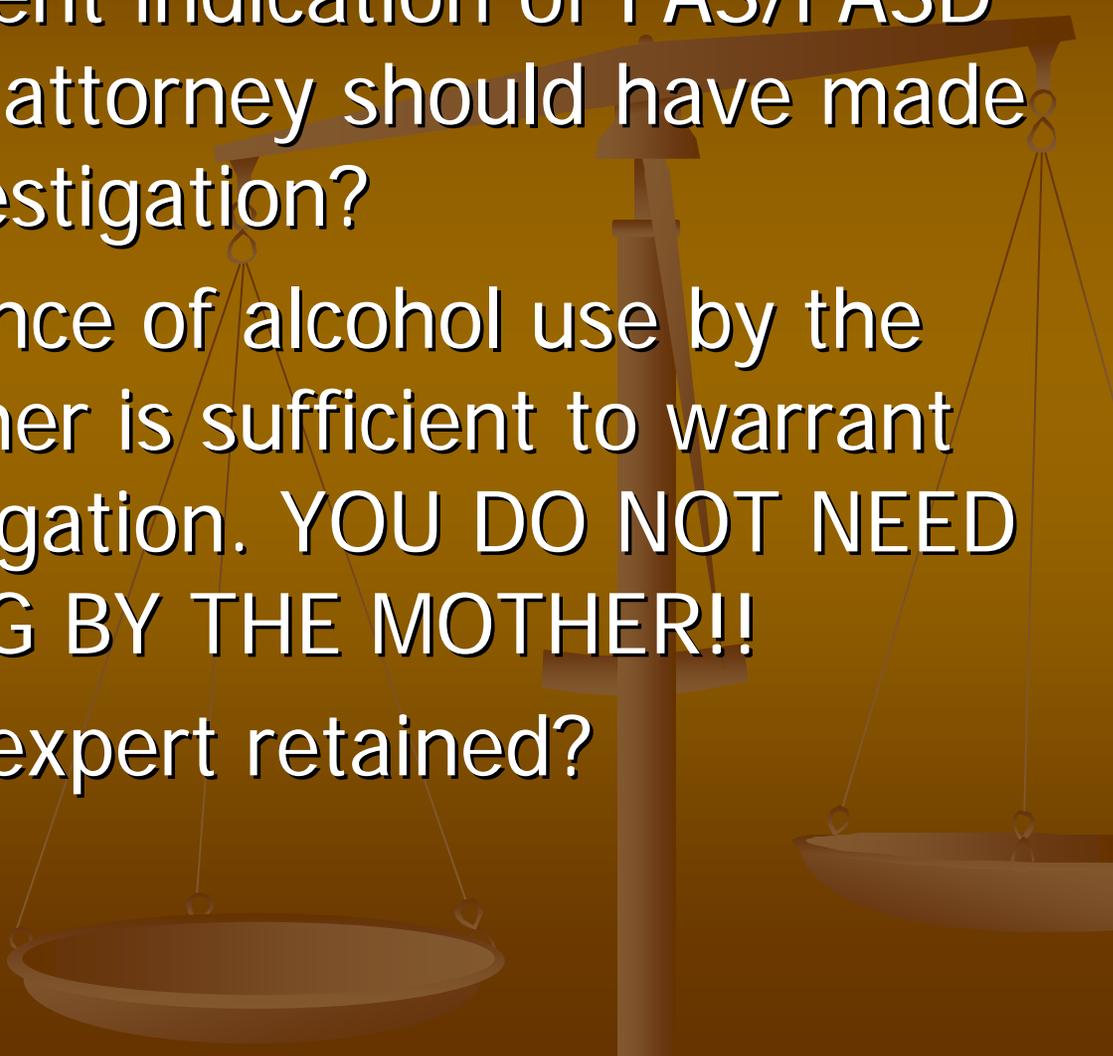


- a. Clients with FAS/FASD may be less culpable. They may not understand the consequences of their behavior and their actions are often the result of impulsive behavior.
- b. The existence of FAS/FASD may be important in determining what role a defendant played in an offense.

## Sentencing Cont.

- c. The existence of FAS/FASD may be critical in designing or structuring a sentence that will reduce the risk of recidivism.
  - d. We must educate the jury, judge and the prosecutor. If there is going to be a probation officer we must also educate him or her about the struggles the client will face with time, memory, communication.
- 

# Ineffective Assistance Of Counsel

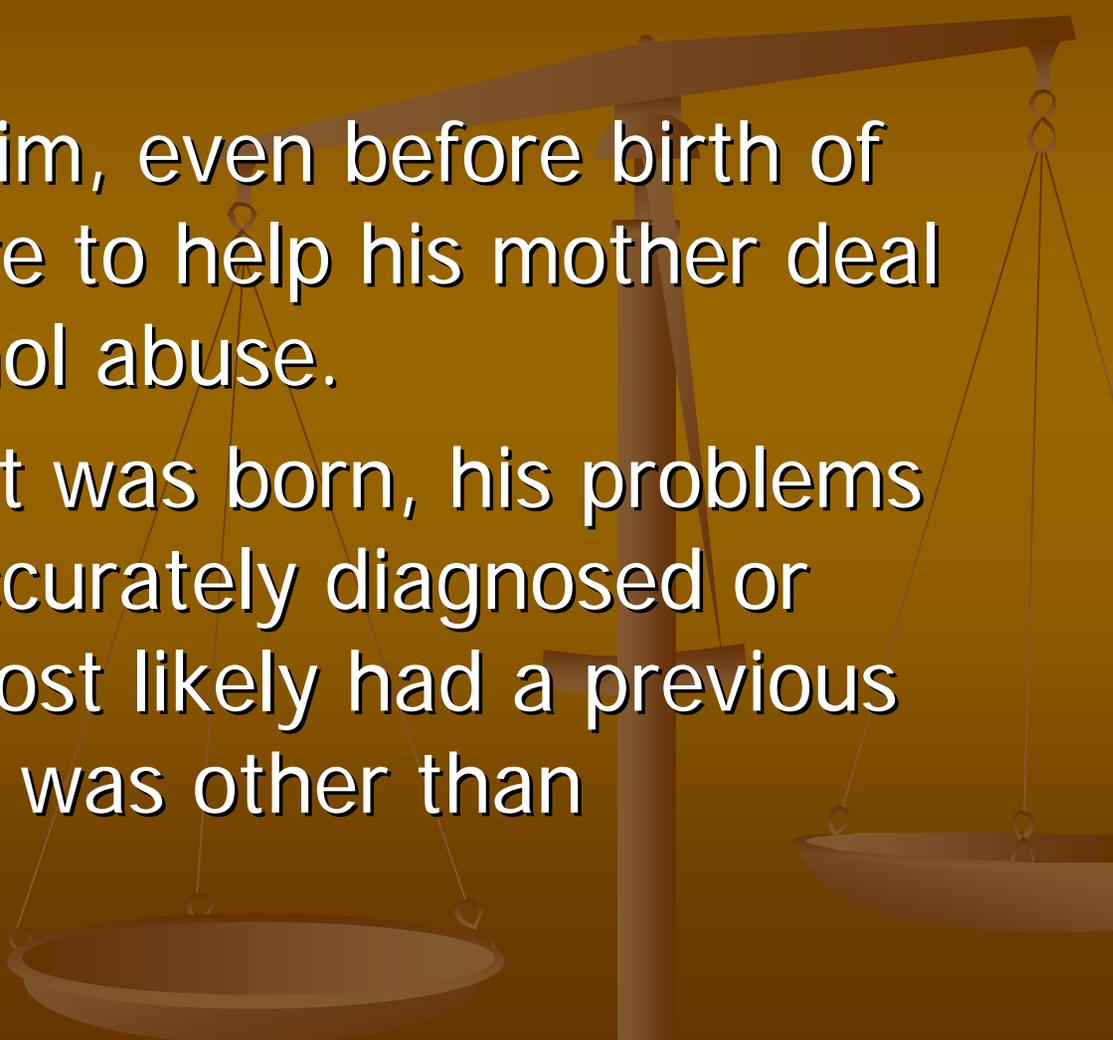


- a. Was there sufficient indication of FAS/FASD that the defense attorney should have made some sort of investigation?
- b. How much evidence of alcohol use by the defendant's mother is sufficient to warrant continued investigation. **YOU DO NOT NEED HEAVY DRINKING BY THE MOTHER!!**
- c. **WAS** the proper expert retained?



**PENALTY PHASE ISSUES  
RELATING TO FAS/FASD**

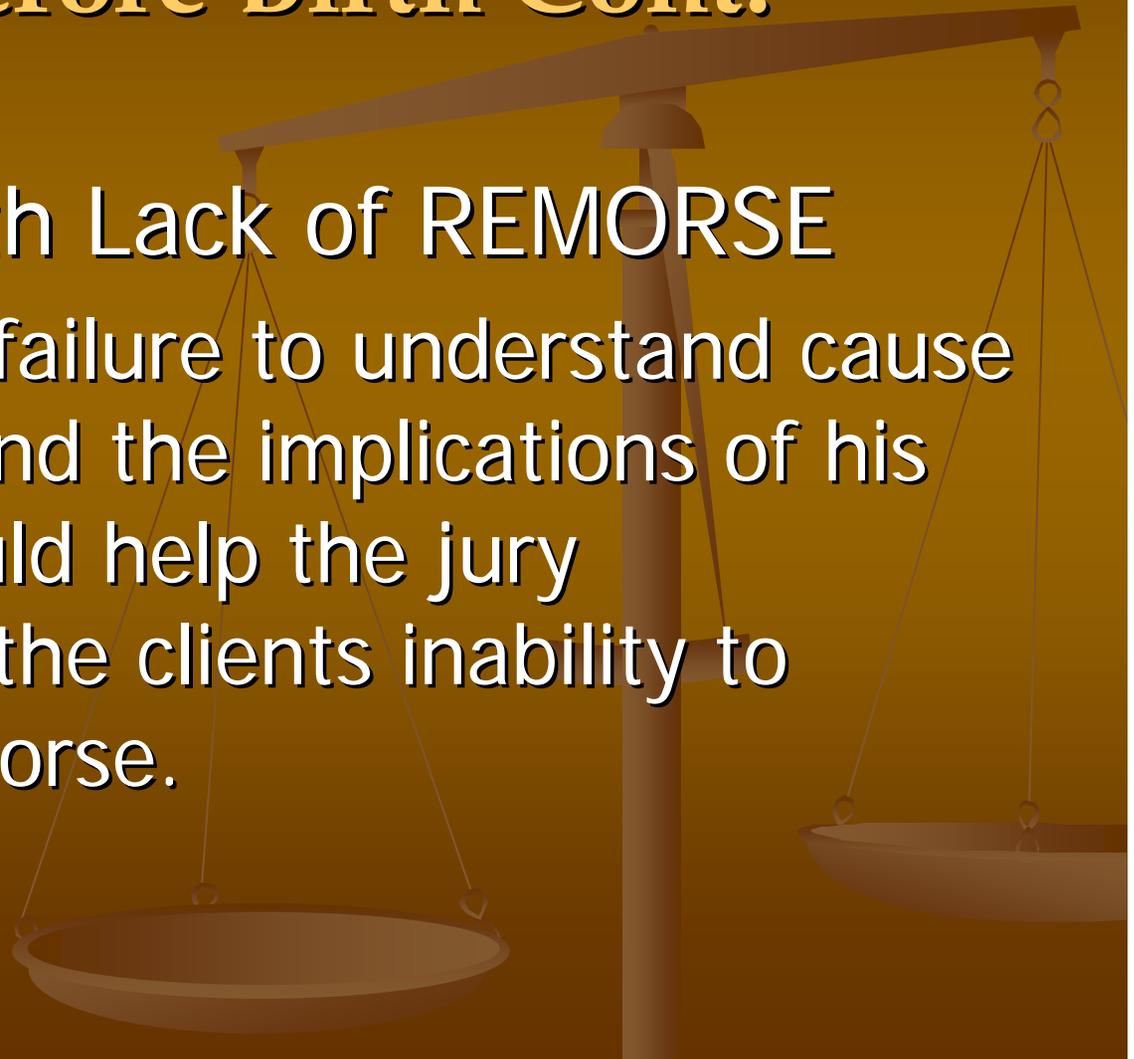
# Societal And Maternal Failures Even Before Birth

- a. Client is a victim, even before birth of society's failure to help his mother deal with her alcohol abuse.
  - b. After the client was born, his problems were never accurately diagnosed or treated. He most likely had a previous diagnosis that was other than FAS/FASD.
- 

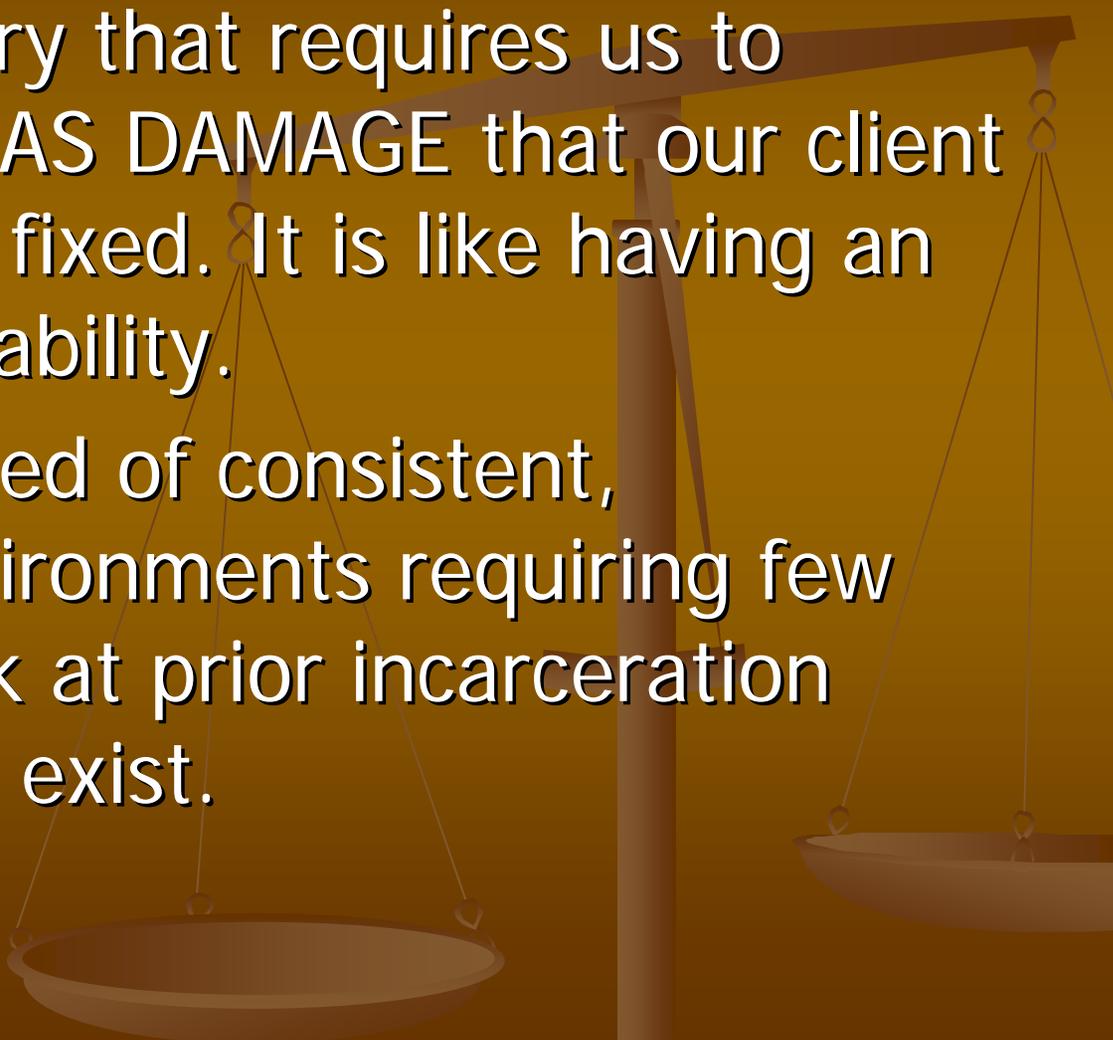
# Societal And Maternal Failures Even Before Birth Cont.

## c. Problems with Lack of REMORSE

1. The client's failure to understand cause and effect and the implications of his actions should help the jury understand the clients inability to express remorse.



# Adjustment To Prison



- a. Red flag for jury that requires us to explain. THE FAS DAMAGE that our client has cannot be fixed. It is like having an intellectual disability.
- b. They are in need of consistent, structured environments requiring few decisions. Look at prior incarceration records if they exist.

# LEARNING FROM MY MISTAKES

