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## **Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system**

**Submission from:**

**NOFASARD (The National Organization for Fetal Alcohol Syndrome and Related Disorders)**

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This submission will focus on how Fetal Alcohol Spectrum Disorder can be a significant risk factor that leads to juveniles and young adults getting involved in the criminal justice system.

### **About Fetal Alcohol Spectrum Disorder**

Fetal Alcohol Spectrum Disorder (FASD) is the terminology now being used to describe the range of effects that may occur in an individual who has been exposed prenatally to alcohol. The diagnoses that fall under the spectrum are Fetal Alcohol Syndrome, partial Fetal Alcohol Syndrome, Alcohol Related Neurodevelopmental Disorder and Alcohol Related Birth Defects.

Alcohol is a neurotoxin and a teratogen that crosses the placenta freely and can cause damage to the developing fetal brain at any stage throughout pregnancy. There is no safe known level for alcohol consumption in pregnancy.

FASD is the leading known cause of preventable developmental disability in children. Internationally FASD is estimated to affect 1/100 live births.<sup>1</sup>

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<sup>1</sup> Sampson et al, Teratology 56:317-326, 1997

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While there have been no population based studies in Australia anecdotal reports from some Indigenous communities report that as many as 30% of newborns have a Fetal Alcohol Spectrum Disorder. <sup>2</sup>

The Canadians have recognised that a high proportion of Aboriginal Canadian youths involved with the youth justice system suffer from Fetal Alcohol Spectrum Disorder (FASD) <sup>3</sup>

In Australia, the disorder is poorly understood and affected children adolescents and adults are slipping through the cracks.

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

- **The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;**

Behavioural impairments due to FASD make affected individuals more likely to get in trouble with the law. Many individuals with FASD will never socially mature beyond the level of 6 year-old child, irrespective of their IQ, which can fall anywhere in the range of 29 -142.<sup>4</sup> Other factors that may place persons with FASD at risk for involvement with the criminal justice system include:

Difficulties in impulse control

Intellectual deficits

Far better expressive language skills than receptive language so they appear to understand more than they actually do

Easily manipulated

Poor judgment skills

A history of abuse and/or neglect

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<sup>2</sup> Lateline special report: *Suzanne Smith investigates Foetal Alcohol Syndrome* Australian Broadcasting Corporation Broadcast: 23/03/2009

<sup>3</sup> Murphy, A., Chittenden, M., & The McCreary Centre Society. (2005). *Time out II: A profile of BC youth in custody*. Vancouver, BC: The McCreary Centre Society.

<sup>4</sup> Streissguth, A; Barr, H; Kogan, J; Bookstein, F; *Understanding the Occurrence of Secondary Disabilities in Clients with Fetal Alcohol Syndrome and Fetal Alcohol Effects* Final Report 1996 Centers for Disease Control and Prevention

have difficulty distinguishing between strangers and friends  
have trouble structuring their own lives and their behaviours.

Without FASD competent therapists, psychologists and psychiatrists to help manage mental health, affected youths and young adults experience problems with day to day life that they might otherwise avoid. Children, adolescents and young adults 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 young people and punishing them for their disability.

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.

The ultimate responsibility for addressing this situation must lie with Department of Health because FASD is primarily a Public Health issue. Unfortunately FASD has received very little attention by health authorities in Australia and while the published figures for the incidence of FASD in Australia are generally quite low NOFASARD believe that FASD is not rare but rather that is rarely diagnosed or it is mis-diagnosed. Most Australian health professionals cannot recognize Fetal Alcohol Syndrome (FAS) let alone the more complete spectrum of effects. In 2006 the results of a survey of health professionals, including GP's and Pediatricians were reported in the A&NZ Journal of Public Health. Only 4% of health professional surveyed felt very prepared to deal with FAS and only 12% new the diagnostic criteria.<sup>5</sup>

There are no Australian Clinical Guidelines for diagnosing FASD and there are no specially trained multidisciplinary diagnostic teams. The medical profession has received very little information about the disorder in their medical school training, FASD doesn't appear on the Government list of registered disabilities and there is no Medicare number for the diagnosis.

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<sup>5</sup> *Health professionals' knowledge, practice and opinions about fetal alcohol syndrome and alcohol consumption in pregnancy.* Australian and New Zealand Journal of Public Health 29 (6), 558-564.

In contrast, North America has over 70 specially trained FASD diagnostic teams and the Canadian Government has allocated millions of dollars into FASD Prevention and Intervention programs because they have realized that prevention and appropriate intervention and management is a far less costly alternative than serving them in jails.

The Justice System can help FASD-affected individuals by:

- Educating judges, lawyers and parole officers about the characteristics and behaviours of Persons with FASD;
- establishing screening, analysis, and treatment procedures for those with FASD who enter the juvenile justice or adult criminal justice system;
- Establishing/utilizing alternative sentencing programs for persons with FASD who have committed non-violent offences; and
- Offering referral information for the children of incarcerated women who may have been prenatally exposed to alcohol.

- **Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;**

FASD training for teachers is desperately needed as most teachers have very limited understanding of this disability and have not been given adequate training to equip them to deal with the behaviours these students can present in the classroom. As with any other organically based disorder, it is important that their condition is "named." Too often, the behaviours in these children are interpreted as "emotional," or "manipulative," or with some other term that misses the point that these children have an inherent developmental disorder which causes them to behave and respond in a different way from other students.

Students with FASD require an individualized approach irrespective of their IQ; it will not work to treat them just the same as other students as this places unrealistic expectations on them and sets them up for failure.

Adaptive behaviour assessments are more appropriate to determine support needs for these students but when their IQ falls within the "normal" range they often don't meet the requirement for this type of assessment and interventions are based on the assumption that these students are "bright" and therefore have the ability to take responsibility for their actions. In reality this is impossible and sets them up for failure, exclusion, early school drop out and loss of self esteem all factors that are often precursors to involvement with the judicial system.

- **The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;**

The majority of youth and adults with FASD will be unable to sustain employment without intensive and ongoing management and support. *Strategies for Employment Services Specialists* (Russell 2008) is a publication that has been written for case managers or consultants in the employment services industry who work with individuals suffering from the symptoms and characteristics of Fetal Alcohol Spectrum Disorder.<sup>6</sup>

- **Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;**

It is very important that any long-term approach to addressing the root causes of youth and young adult involvement in the criminal justice system be flexible enough to address the actual conditions and the actual problems in individual communities and families. There cannot be any "one size fits all" approach.

Justice Canada and the Youth Justice Policy Section in particular have funded many innovative projects that attempt to provide a fair and effective response to wrongdoing while respecting the rights and needs of those with FASD. The Research and Statistics Division has also conducted related research to assist criminal justice personnel and other service providers in implementing such a response. Research and programs to date suggests that the response required for individuals with FASD who are in conflict with the law needs to be multi-sectoral and multi-disciplinary.<sup>7</sup>

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*

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<sup>6</sup> *Strategies for Employment Services Specialists* Russell E (2008) Zeus Publications Australia

<sup>7</sup> Federal government actions on Fetal Alcohol Spectrum Disorder (FASD) Public health Agency of Canada website accessed online 20<sup>th</sup> Dec 2009 [http://origin.phac-aspc.gc.ca/fasd-etcaf/pubs/fs-fi\\_10-eng.php](http://origin.phac-aspc.gc.ca/fasd-etcaf/pubs/fs-fi_10-eng.php)

*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.*<sup>8</sup>

Traditional 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.

## **Further Reading**

*Education of Students with Fetal Alcohol Spectrum Disorder* Crawford K (2008) Churchill Scholarship Report available online  
<http://www.nofasard.org.au/media/pdfs/reports/churchill%20report.pdf>

*The Rights of Children in the Australian Juvenile Justice System Prenatally Affected by Alcohol* Australian Children's Rights News May 2007 Available online  
<http://www.dci-au.org/acrn/ACRNMay2007.pdf>

*Strategies for Employment Services Specialists* Russell E (2008) Zeus Publications Australia

*Canada's Aboriginal people, Fetal Alcohol Syndrome & the Criminal Justice System* British Journal of Community Justice, 2008 by Denis C. Bracken Available online  
<http://www.britannica.com/bps/additionalcontent/18/35693799/CANADAS-ABORIGINAL-PEOPLE-FETAL-ALCOHOL-SYNDROME-ampTHE-CRIMINAL-JUSTICE-SYSTEM#>

*The challenge of Fetal Alcohol Syndrome in adult offender populations* Boland et al Available online from Correctional Service of Canada website  
<http://www.csc-scc.gc.ca/text/pblct/forum/e143/e143s-eng.shtml>

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<sup>8</sup> Alcohol and Pregnancy: No blame No shame! Elizabeth Russell (2007)