Fetal Alcohol Spectrum Disorder: Knowledge, attitudes and practice within the Western Australian justice system

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APRIL, 2013

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Final Report

April 2013

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April 2013

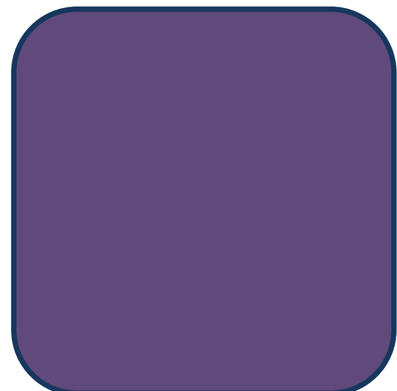
This project was undertaken with the financial assistance of the Foundation for Alcohol Research and Education

Preface

The genesis of this research was an idea by Dr Raewyn Mutch who wrote to the Chief Justice of Western Australia, the Hon. Wayne Martin AC in 2009. The Chief Justice invited Dr Mutch and researchers from the Telethon Institute for Child Health Research to submit information on Fetal Alcohol Spectrum Disorder for inclusion in the Western Australian Equality before the Law: Bench Book. We acknowledge the support of the Chief Justice for this project and more generally for his advocacy and instructional role on Fetal Alcohol Spectrum Disorder in the justice system.

"The first thing is I frequently have young lawyers say to me 'It was inevitable that my client would end up in the criminal justice system', and when you look at the life and childhood of that person, you know that's right, it was inevitable that they would end up in the criminal justice system. If we know it's inevitable, why aren't we doing more about it?"

Retired Chief Judge of the District Court of Western Australia, Justice Antoinette Kennedy,
Law Report Radio National, April 2012



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Acknowledgements

We are indebted to members of the Western Australian justice system: judges, magistrates, registrars, lawyers, Corrective Services staff and police officers, who completed the survey. Their contribution to this project will enable an improved understanding of how Fetal Alcohol Spectrum Disorder impacts on their decision making, and what challenges they face in their work within the justice system.

The project benefited from the generous time commitment and involvement of individuals within the justice sector. We would like to acknowledge the exceptional contributions of the following people:

- Dr Monica Cass: Senior Evaluation and Research Officer, Policy and Aboriginal Services Directorate, Department of the Attorney General
- Ms Dakota Gregory: Administrative Support Officer, Policy and Aboriginal Services Directorate, Department of the Attorney General
- Magistrate Andre Horrigan: Children's Court of Western Australia, Department of the Attorney General
- Dr Shona Hyde: Team Leader Research and Evaluation, Strategic Planning and Review Strategic and Executive Services, Department of Corrective Services
- Ms Jenny Kingsley: A/Assistant Director, Academic Development, Western Australia Police
- Ms Michaela Miller: Research Coordinator, Western Australia Police Academic Research Administration Unit

We wish to acknowledge the assistance of the Reference Group for their contributions to the project and development of this report.

- Ms Fay Alford: Director, Foster Care Association of Western Australia
- Mr David Davidson: Law Society of Western Australia, Criminal Law Committee
- Mr Warren Harvey: WA Representative, National Organisation for Fetal Alcohol Syndrome and Related Disorders
- Ms Sue Renshaw: A/Assistant Commissioner, Youth Justice Community and Youth Justice Divisions Department of Corrective Services
- Ms Claire Rossi: Senior Solicitor, Youth Law Team Legal Aid Western Australia
- Assistant Commissioner: Judicial Services Western Australia Police (Mr Wayne Gregson APM, Mr Jon Tuttle, Mr Kim Porter)

We thank the Foundation for Alcohol Research and Education for the funding to conduct this project.

Winthrop Research Professor Carol Bower is supported by a National Health and Medical Research Council (NHMRC) Research Fellowship (No 634341)

Executive Summary

Introduction

Fetal Alcohol Spectrum Disorder (FASD) is a non-diagnostic term used to refer collectively to a range of conditions caused by prenatal exposure to alcohol, including Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (PFAS), and related neurodevelopmental disorders. These conditions are characterised by severe structural or functional central nervous system dysfunction leading to a range of learning, developmental and behavioural problems including: problems with memory, the inability to complete complex tasks that involve planning and judgement, difficulty self-managing behaviour, and problems with social interaction. These primary disabilities have been associated with the occurrence of secondary disabilities including school failure, unemployment, substance abuse, mental health disorders, and engagement with the criminal justice system.

Early intervention with children with FASD has been recognised to improve children's social, health and educational outcomes and decrease the risk of secondary disabilities. However, there is evidence to indicate that FASD are under-diagnosed in Australia and there are no FASD-specific diagnostic and management services in the country. Most individuals who have FASD do not have the characteristic FAS facial features, and in general only those with more severely affected are identified during infancy. Studies from North America document a high prevalence of individuals with FASD among incarcerated youth and adults. Problems experienced by individuals within the criminal justice sector may not be recognised as symptoms associated with FASD, and FASD has been recognised to potentially affect the ability to understand and respond appropriately to interviewing, to be a reliable and credible witness, to understand the charges and the court proceedings, and to comply with court orders or the requirements of imprisonment.

Both the Canadian Bar Association and the American Bar Association have passed resolutions to urge governments to avoid ongoing criminalisation of people with FASD and prevent persistent over-representation of individuals affected with FASD within the justice system. These resolutions recommend: the allocation of additional resources to improve awareness of FASD and its impact on individuals within justice systems; collaboration with other professionals, including health and disability experts, to develop policies that acknowledge and treat the effects of prenatal alcohol exposure; better support for individuals with FASD; and amended criminal sentencing laws to accommodate the neurocognitive disabilities of those with FASD.

While there are no reliable data on the prevalence of FASD within the Australian justice system, similar issues to those described in North America are likely to also exist within the Australian justice system. Several studies in North America have found poor awareness of the impact of FASD on an individual among justice system professionals, and identified the need for action to improve their ability to identify and work with people with FASD. A study of judges and lawyers in Queensland suggests similar challenges may be faced by the justice system in Australia. Through this project we sought to investigate the knowledge, attitudes and practice of justice professionals in Western Australia (WA) and identify implications for training, policy and practice.

The Project

The aims of the project were to: assess justice professionals' awareness and knowledge of FASD; assess the perceived impact of FASD on practice within the justice system; and identify the information needs relating to FASD for the justice system in WA. A Reference Group was established to provide advice on study design and facilitate participant recruitment. A review of the literature was conducted to identify existing surveys or questionnaires that assessed FASD knowledge, attitudes and practice within justice systems that could be used as a basis for survey development.

To enable the investigation of issues specific to each sector of the WA justice system, separate surveys were developed for people working in all four sectors of the justice system: judicial, legal, corrections and police. Each survey assessed socio-demographic characteristics, knowledge of FASD, sources of information about FASD, and information and training needs. Additional sector specific questionnaire items assessed participant experiences and practices using language particular to each sector. Surveys were pilot tested within each sector to ensure the questions were clear and easily understandable. The surveys were administered to 133 judicial officers, 90 lawyers, 650 Department of Corrective Services (DCS) staff and 1000 police officers. Results were summarised using descriptive statistics and qualitative content analysis.

Main Findings

Response to the survey was low (23%) and relatively consistent across sectors. Over 90% of judicial officers, lawyers and DCS staff, and almost 75% of police officers were aware of FAS. Awareness of FASD was lower than for FAS across all sectors. Almost 80% of participants agreed that FASD is real, and that the negative effect of alcohol on fetal development has been proven. When participants were asked to describe their understanding of FASD, we found few differences in response between the judicial, legal and corrections sectors in the frequency of identification of the following four key aspects of FASD: identification of the cause as alcohol consumption during pregnancy, identification of potential impacts on physical and psychological development, and recognition that the damage is permanent. Across all four sectors of the justice system most participants reported only a basic understanding of FASD and how it affects individuals. Participants were most knowledgeable about the cause of FASD, and factors therefore important for prevention. Notably, some participants described FASD as caused by excessive alcohol use, alcohol abuse or dependence.

More than 75% of judicial officers, 85% of lawyers and DCS staff, and almost 50% of police officers perceived FASD as relevant to their work. Consistent with the importance of formal training or professional development as a source of information on FASD among DCS staff, knowledge about FASD was highest among DCS staff, who were more likely to report a good understanding of how FASD affects children and adults (44%) than participants from the other sectors. Few DCS staff reported not being aware of how FASD affects children and adults (5%) compared with 30% or more among participants from other sectors.

Participants across all sectors frequently reported recognition of suspected FASD among individuals they dealt with, and raised concerns about the management of these individuals within the justice system. Approximately 60% of participants from the judicial and legal sectors, 67% of staff from the corrections sector, and 43% from the police sector reported ever dealing with a person who may

have been affected by FASD. Suspicion of FASD was most commonly based on identification of a poor attention span, low intelligence quotient (IQ), maternal history of alcoholism and physical appearance. We found widespread agreement among judicial officers (79%), lawyers (92%) and DCS staff (84%) that the assessment and diagnosis of FASD would improve the possibilities of appropriate consequences for unacceptable behaviour. Most participants (72%) also indicated a need for more information about FASD, including information to improve the identification of individuals in need of specialist assessment, and guidelines on how to deal with people with FASD. We also found strong support across all sectors for the development of appropriate alternative or diversionary sentencing options for people with FASD.

Conclusions

Despite some differences in perceptions and practice between professionals working in different sectors of the justice system, participants generally indicated a limited capacity to formally identify and respond to the needs of people with FASD, and supported the need for a coordinated approach to the development of policies to improve the management of people with FASD within the WA justice system. Our findings indicate the need for training and education to improve awareness and management of the specific impairments associated with FASD within the WA justice system. They also point to the importance of access to services and programs for the appropriate diagnosis and management of these individuals both within the justice system and the wider community to prevent their continued engagement with the justice system.

Glossary of Terms and Abbreviations

Acronym	Full Text
ABA	American Bar Association
ACT	Australian Capital Territory
AIHW	Australian Institute of Health and Welfare
ALSWA	Aboriginal Legal Service of Western Australia
CBA	Canadian Bar Association
CCWA	Children's Court of Western Australia
CBO	Community Based Order
CIA	Criminal Investigations Act 2006
DCP	Department for Child Protection
DCS	Department of Corrective Services
DotAG	Department of the Attorney General
FARE	Foundation for Alcohol Research and Education Ltd
FAS	Fetal Alcohol Syndrome
FASD	Fetal Alcohol Spectrum Disorder
FASD ONE	FASD Ontario Network of Expertise
HREC	Human Research Ethics Committee
IDD	Intellectual Disability Diversion
IQ	Intelligence Quotient
NGO	Non-Government Organisation
NHMRC	National Health and Medical Research Council
NOFASARD	National Organisation for Fetal Alcohol Syndrome and Related Disorders
NSW	New South Wales
PFAS	Partial Fetal Alcohol Syndrome
QLD	Queensland
WA	Western Australia
WAP	WA Police Policy

Fetus/Foetus and Fetal/Foetal

The word 'fetus' is from Latin origins and means offspring, bringing forth or hatching of young. Fetus is now the Standard English spelling throughout the world in medical journals. Where the alternate spelling of foetus is used in a published report, resource, website or journal article the spelling has not been changed. This also applies to the use of fetal or foetal.

Fetal Alcohol Spectrum Disorder (FASD)

In this report we use the term FASD to refer collectively to the three diagnoses (Fetal Alcohol Syndrome, Partial Fetal Alcohol Syndrome and Neurodevelopmental Disorders – Alcohol Exposed) which comprise FASD.

Background

Fetal Alcohol Spectrum Disorder

Alcohol is a teratogen.[1] Exposure to alcohol in pregnancy may cause irreversible damage to the brain and other organs of the unborn child,[2, 3] with devastating lifelong consequences.[4-6] Fetal Alcohol Spectrum Disorder (FASD) is a non-diagnostic term encompassing a range of disabilities caused by prenatal exposure to alcohol, including Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (PFAS), and related neurodevelopmental disorders.

The effects of fetal alcohol exposure are life-long and may not be seen at birth.[7] Only a minority of children will have FAS, or PFAS, which are characterised by key facial features, poor growth and abnormalities of brain structure and/or function. Most children with FASD will not have the key facial features but will have a range of learning, developmental and behavioural problems. Additional developmental problems can specifically include: poor hand-eye coordination and fine motor function, inability to complete complex tasks that involve planning and judgement, and problems with social interaction. People with FASD commonly have cognitive impairment on standardised testing, but their intelligence quotient (IQ) is not often below 70 and so does not meet the definition of an intellectual disability.[8, 9] These primary effects or disabilities are the direct result of brain damage from alcohol exposure to the fetus.[3] Secondary effects or disabilities are those disabilities that a child develops as a result of the primary disabilities associated with FASD and include: problems at school, mental health problems, problems with alcohol and other drugs, unemployment and trouble with the law.[10]

Early diagnosis of children with FASD allows early intervention[11] and improves children's social, health and educational outcomes[12] through understanding and accommodating their strengths and weaknesses, thus reducing the possibility of secondary disabilities. Without early diagnosis, the life trajectory of children with FASD is significantly affected, with common experiences of school failure,[13] reduced self-esteem and depression,[14] early addiction[15] and risk behaviours,[16] and early engagement with criminal justice.[17, 18, 19, 20] Unfortunately, FASD are under-diagnosed in Australia[21-24] and there are no dedicated FASD-specific diagnostic and management services in the country.

Criminal Justice and FASD

People engaging with the criminal justice system may exhibit problems with learning, poor memory, difficulty self-managing their behaviour, and difficulty communicating.[18, 25, 26] These neurocognitive problems may not be recognised or understood as symptoms associated with FASD.[17, 20] The challenges within the justice sector for people with FASD were outlined by Professor Heather Douglas, Law Professor at the University of Queensland Beirne School of Law, in her presentation to the National Judicial College of Australia Sentencing 2010 Conference.[27] Professor Douglas charted the range of concerns facing people with FASD who become involved with criminal justice, such as their inability to be credible witnesses, their disadvantage through the processes related to police questioning, their vulnerability to suggestion and acquiescence, and their ability for confabulation; which together suggest a diminished capacity of fitness to plead. Professor Douglas went on to

advocate: *"It may be appropriate, considering the apparent under-diagnosis of FASD, to require sentencing report writers to address the possibility of FASD in preparation of their reports in circumstances where there has been a history of breaches of court orders or where there are other matters that suggest the possibility of FASD (for example impulsive offending or known history of maternal drinking). While more resources directed towards therapy are needed, the first step is awareness."*

International

Evidence from North America documents a high prevalence of individuals with FASD among incarcerated youth and adults.[25, 26, 28] A Canadian study[18] where all youth remanded to a Canadian psychiatric inpatient assessment unit over a one-year period were evaluated for FASD found that, of the 287 youth: 67 (23%) had an alcohol-related diagnosis, 3 (1%) had a diagnosis of FAS and 64 (22%) had a diagnosis within FASD. A United States of America (United States) longitudinal study of individuals diagnosed with FASD found approximately 60% had had some contact with the law.[29] A systematic literature review of FASD prevalence in correctional systems[28] estimated that there was a 19 times greater risk for individuals with FASD to be incarcerated.

Courts in both Canada and the United States acknowledged that an accused/victim/witness with FASD involved with the criminal justice system may not understand the arrest and court process. Some of the issues identified include: reduced competency and capacity, diminished legal responsibility, false confessions, unreliable testimony, sentencing; as well as the victimisation of persons with FASD while in custody.[20] A person with FASD may not be able to fully grasp the severity of the situation. United States and Canadian courts have identified the following broad areas of difficulty for persons with FASD related to their neurocognitive impairment and disability:

- difficulty translating information from one sense or modality into appropriate behaviour
- difficulty generalising information
- difficulty perceiving similarities and differences

Without the ability to generalise and make associations, judgment is affected. The court summed up these deficits as "gaps" and considered them significant in a legal context.[20]

In 2010 the Canadian Bar Association (CBA) passed a resolution concerning FASD in the criminal justice system[30] that urged governments to avoid ongoing criminalisation of people with FASD. It also urged them to allocate additional resources to develop policies and solutions relating to FASD as an access to justice issue. In 2012 the American Bar Association (ABA) followed the CBA lead and unanimously passed a resolution[31] that, like the CBA resolution, urged all members of the judicial system, including judges, lawyers and policy makers to improve awareness of FASD and its impact on individuals within justice systems. The resolutions recommend collaboration with other professionals, including health and disability experts, to develop policies that acknowledge and treat the effects of prenatal alcohol exposure and better assist individuals with FASD. The resolutions also urge governments to prevent persistent over-representation of individuals affected with FASD within the justice system and consider amending criminal sentencing laws to accommodate the neurocognitive impairment and disability of those with FASD.

With funding from the Public Health Agency of Canada and the Department of Justice Canada, Youth Justice Policy, the FASD Ontario Network of Expertise (FASD ONE) developed a website on FASD and the justice system specifically for individuals working in the justice system. The website provides

information and resources about FASD, including background information, case law, legal resources and strategies for effective intervention.[32] A comprehensive list of FASD and justice websites can be found in Appendix 1. Several Canadian and American judges have also documented their experiences and the issues faced when adapting the operations of their court or evaluating the impairment of the person before them who has or may have FASD.[33, 34]

Australia

The Australian Institute for Health and Welfare (AIHW) report, Juvenile Justice in Australia 2010-2011,[35] indicates that while rates of involvement remain low, youth were increasingly presenting at an early age to juvenile justice, and Indigenous youth were overrepresented. The 2010-2011 data estimated that on an average day 7,265 young people were under juvenile justice supervision in Australia with 86% supervised in the community and 14% in detention. As part of the National Assessment of Australia's Children's Courts, data show that WA has the highest representation of juveniles appearing in the Children's Court of WA (CCWA) relative to the proportion of juveniles in the WA population.[36] Other key findings of this research show an over-representation of Aboriginal children appearing in the CCWA; there is an absence of appropriate services and programs for children and their families; a lack of integrated approaches within the Department for Child Protection (DCP), Youth Justice and WA Police; and that there is a requirement for specific professional development and inter-agency training.[36] Whilst there are no figures on FASD in the AIHW or National Assessment of Australia's Children's Court data, a disproportionately large number of youth and adults with FASD are likely to be engaged with the legal system. In her submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (Doing Time – Time for Doing, Indigenous youth in the criminal justice system)[37] Professor Douglas estimated that 60% of adolescents with FASD have been in trouble with the law.

The New South Wales (NSW) Law Reform Commission consultation paper published in 2010 presented an overview of youth with cognitive and mental health impairments in the criminal justice system of NSW.[38] The consultation paper examined the applications of bail, apprehended violence orders, diversion, fitness and defence of mental illness and sentencing. The estimated rates of youth with a cognitive impairment and involved with the law may potentially include youth with as yet undiagnosed FASD.[38]

In Western Australia (WA) the Equality before the Law: Bench Book includes specific reference to FASD.[39] The purpose of the Bench Book is to ensure equal treatment for those who come into contact with the justice system by attempting to remove disadvantage and inequality without causing prejudice to other participants in the process. The Bench Book , which contains a chapter on 'People with Disabilities', also highlights the need to *"….determine accurately and appropriately whether a person with a disability requires any form of adjustment to be made, and if so, what type and level of adjustment"*.[39]

The House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into FASD received 92 written submissions and held 13 public hearings around Australia. The Aboriginal Disability Justice Campaign submission stated "*Too many children and young people living with undetected/undiagnosed FASD will have early entry into the criminal justice system and without intervention, will become our 'revolving door' prisoners."*[40] The submission from Legal Aid NSW and Aboriginal Legal Service NSW/ACT also highlighted the criminal justice perspective and focused on issues of pathways of people with disabilities in the criminal justice system, consequences of

increasing 'criminalisation of care' and the need to look at policing policies in relation to people with FASD.[41] In his address to the WA Legislative Assembly Education and Health Standing Committee Inquiry into FASD[42] the Chief Justice the Hon. Wayne Martin stated *"… symptoms of FASD will place a person at a significant disadvantage when they enter the criminal justice system."*

Justice System in Western Australia

The criminal justice system in Australia has three stages through which a case proceeds.[43] The first stage is the investigative component which involves police (state, federal and National Crime Authority); the second stage is the adjudicative component which involves courts (judicial officers, lawyers, barristers, solicitors); and the third stage is the correctional component (prisons or other correctional facilities).

Investigation

The principal duties of police are the prevention and detection of crime, protection of life and property, and the enforcement of law to maintain peace and good order. In WA there were 5,768 sworn police officers, inclusive of all ranks from senior police to probationary constables at the time of the project. WA Police are responsible for the world's largest single police jurisdiction covering 2.5 million square kilometres, with 3 regions, 14 districts and 157 police stations.[44] The Judicial Services section of WA Police has wide ranging responsibilities including community engagement, youth policy, custodial services and prosecution. With respect to juvenile justice, the Young Offenders Act of 1994 gives police officers discretionary powers to use diversionary options when dealing with a young person who commits an offence.

Adjudication

Courts in WA are administered by the Department of the Attorney General (DotAG). The judiciary includes judges (56), magistrates (65) and registrars (16) who control and arbitrate the functions of the courts. There are different levels of courts operating throughout WA.[45]

In WA the statutory minimum age of criminal responsibility is 10 years. The CCWA deals with offences alleged to have been committed by young people aged 10 - 17 years.[46] In this report the terms youth, adolescent and juvenile refer to a person under the age of 18 years.

Access to legal representation is an important part of the investigative and adjudication stages of the justice system. Where offenders are unable to afford to pay their own legal costs, access is provided through Legal Aid WA or the Aboriginal Legal Service of WA (ALSWA).

Corrections

The Department of Corrective Services (DCS) is responsible for offenders in WA's prisons and detention centres as well as people on probation, parole and other community orders.[47] The Community and Youth Justice Division has responsibility for two juvenile detention centres and 34 youth justice service centres in metropolitan, regional and rural WA. There are 400 staff within the Youth Justice System and 250 in the Youth Custodial Service.

Justice Project

Given the high proportion of individuals with FASD having contact with the justice system in North America and the concern about their understanding and competency in the system, there have been several studies in North America and one in Australia to ascertain the knowledge, attitudes and practice of justice professionals. The survey of judges and crown prosecutors in the Canadian province of New Brunswick was conducted to specifically determine their attitudes, knowledge, behaviours and training needs related to FASD.[20] Alaskan service professionals, including physicians, educators, correctional staff, social workers, public health nurses and substance abuse counsellors, were surveyed with the aim of exploring differences in FASD knowledge, attitudes and behaviours.[48] In parallel with the WA research, the University of Queensland (QLD) conducted a survey of members of the QLD judiciary (judges and magistrates) and lawyers about their understanding of FASD and how they deal with FASD in their role.[49, 50] This project was also funded by FARE.

In order to assess the knowledge, attitudes and practices of people working in each stage of the judicial system in WA – investigation, adjudication and corrections – we undertook a survey of professionals in the judicial, legal, corrections and police sectors in WA.

Methods

The aims of the 'Fetal Alcohol Spectrum Disorder: Knowledge, attitudes and practice within the Western Australian Justice System' project (Justice Project) were to: assess justice professionals' awareness and knowledge of FASD, assess the perceived impact of FASD on practice within the justice system, and identify the information needs relating to FASD for the justice system in WA. The Justice Project sought to involve people working in all sectors of the justice system including: 1. judicial (judicial officers); 2. legal (lawyers); 3. corrections (DCS staff); and 4. police (police officers). Throughout this report these four target groups are referred to as sectors of the justice system.

The Justice Project was conducted between July 2011 and November 2012. The study investigators consulted professional organisations and WA government departments during the project development phase to ensure stakeholder views were addressed and incorporated into the study design. The study process is summarised in Figure 1.

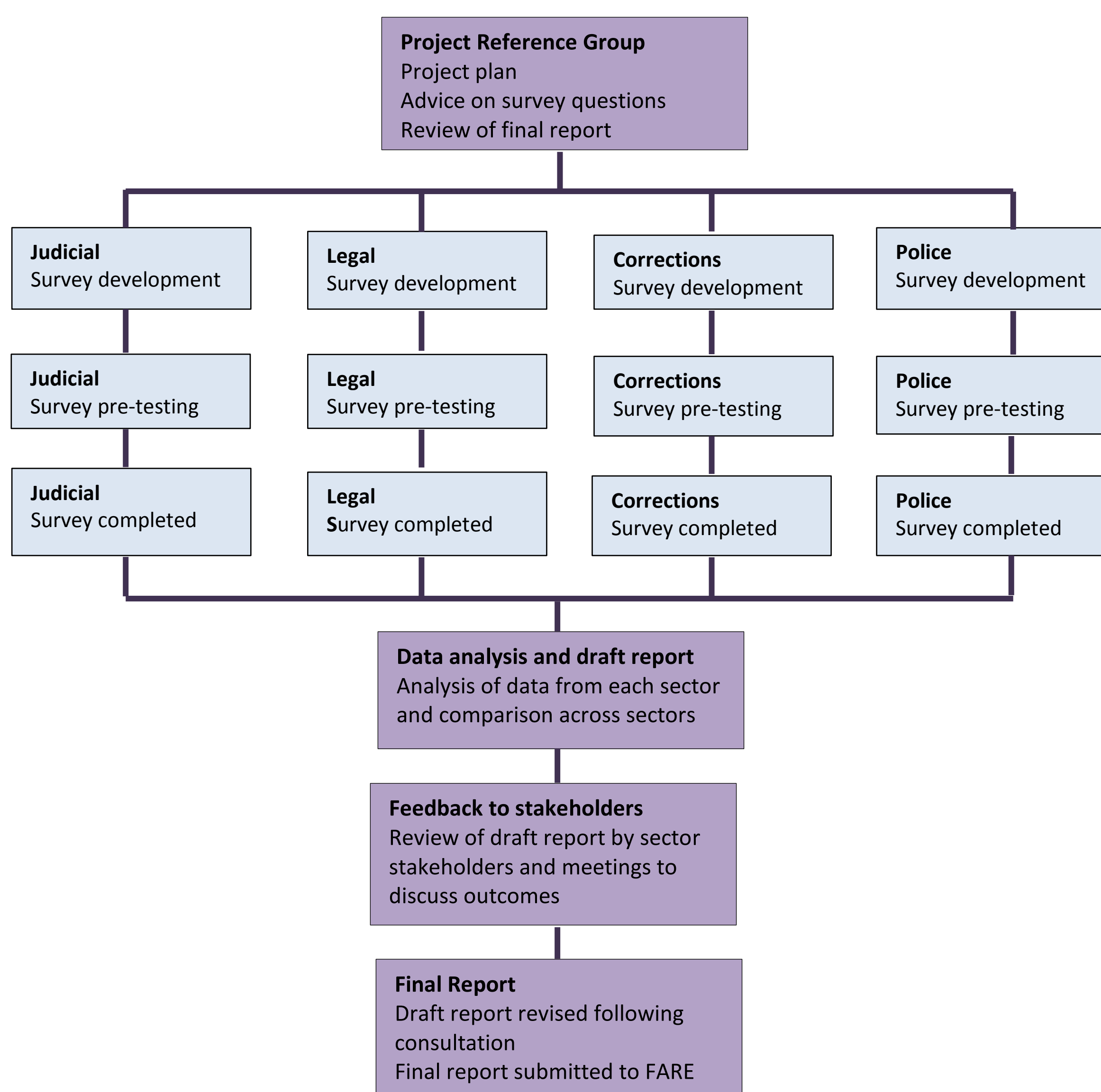


Figure 1: Justice Project flow chart

Ethics

Ethics approval for this project was granted by the University of Western Australia Human Research Ethics Committee (HREC). Approval to conduct the survey was granted by the DCS Research and Evaluation Committee, the DotAG Research Application Advisory Committee via the DCS Research and Evaluation Committee and the WA Police Research Application Review Committee.

Reference Group

A Reference Group was established to advise and assist the study investigators in conducting the Justice Project. Representation from the following legal associations and societies, related government departments and relevant non-government organisations was sought to participate in the Reference Group:

- Aboriginal Legal Service of WA (ALSWA)
- Criminal Lawyers Association of WA
- Department of Corrective Services
- Family Law Practitioners Association of WA
- Foster Care Association of WA
- Law Society of WA
- Legal Aid WA
- National Organisation for Fetal Alcohol Syndrome and Related Disorders
- WA Bar Association
- WA Police

In addition to the letter of invitation from the Telethon Institute for Child Health Research (Telethon Institute) and an outline of the project circulated to all groups, the legal associations and societies received a letter of introduction from the Chief Justice of WA.

Membership

Due to time and resource constraints not all organisations were able to nominate a representative. The following organisations nominated a representative to the Reference Group:

- Department of Corrective Services, Youth Justice Community and Youth Justice Division
- Foster Care Association of WA
- Law Society of WA, Criminal Law Committee
- Legal Aid WA
- National Organisation for Fetal Alcohol Syndrome and Related Disorders, WA
- WA Police, Judicial Services

The Lead Investigator and the Project Manager were also members of the Reference Group.

Role

The role of the Reference Group was to:

- Assist with the study design, survey development and recruitment
- Review and approve the final report to FARE

The Reference Group primarily conducted business via email, with face-to-face meetings convened on one occasion during the project.

Survey Development

Prior to developing the survey, two study investigators met with the ALSWA, the Youth Court Team and the Criminal Law Committee. While some legal professionals questioned the relevance of FASD to their work, others noted that even if they suspected a client or offender had FASD there were no diagnostic or support services available to assist either them or the person with FASD. It was also noted that it was only in rare instances that medical record evidence of the client's exposures to prenatal substances was available to legal professionals and the court. The increasing occurrence of youth committing serious offences at much younger ages than previously recorded and the potential association of this trend with in-utero exposure to alcohol was also raised. Examples included young people committing serious crimes as first offences, including gender-based violence. Experienced staff acknowledged that they were aware of FASD and how this may impact on the actions and behaviours of some youth in the justice system. Informants were supportive of the project, especially if it led to a greater understanding of FASD through educational opportunities for members of the justice system and ultimately services that could support youth in the justice system.

Literature review

A systematic review of the literature was conducted to identify existing surveys or questionnaires that assessed FASD knowledge, attitudes and practice within justice systems. Two relevant studies were identified: a survey of Canadian provincial judges and crown prosecutors to determine their attitudes, knowledge, behaviours and training needs,[20] and a survey of Alaskan health, education and service professionals to explore knowledge, attitudes and behaviour.[48]

Reference Group

Researchers initially proposed to conduct in-depth interviews with personnel across the justice system to develop a more detailed understanding of the context relevant to this study and to hear real life experiences of what is occurring with the WA justice system. However, feedback on the proposed study design from Reference Group members indicated that they could provide the most appropriate means to access relevant background information on the study context and information specific to each organisation involved in this study, and it was not necessary to conduct in-depth interviews with individual judicial officers, lawyers or police.

Survey

The study investigators reviewed the existing survey instruments identified in the literature review and ascertained that the survey used by Cox and colleagues[20] provided the most appropriate basis for the Justice Project survey. This survey was subsequently reviewed by the justice sector representatives on the Reference Group who concluded that it did not meet the needs of, or use language that was relevant to each sector in the WA justice system. Based on recommendations from the Reference Group a new survey instrument was developed to incorporate a series of generic questions that would be applicable to all sectors, and include questions that were specific to each

sector of the WA justice system. Several question areas were modified or adapted from the Cox survey.[20]

The initial generic section of the survey included questions to measure descriptive information such as age, gender, location of work, position (including title and role), year of graduation, and years of experience in the justice system. The generic section also encompassed questions on knowledge of FAS/FASD, where participants had heard of or found out about FAS/FASD, what information they would like and how they would like this information delivered. The sector specific items focussed on participant experiences and practices using language particular to each sector. To offer participants the opportunity to express their views, expand on issues and offer information that was relevant to their work situation, open-ended questions were also incorporated into the survey. WA Justice Project study investigators also communicated with researchers surveying QLD judicial officers and lawyers to discuss the respective projects and facilitate the collection of comparable data in these two projects.

Drafts of the survey instrument were disseminated to members of the Reference Group with a request that they discuss the questions with their colleagues and provide feedback on their suitability and content. Following this process staff from the WA Police Academic Research Unit, Legal Aid WA, DotAG and DCS sought specific feedback from colleagues on the proposed survey. The survey was pilot tested within each organisation to ensure the questions were clear and easily understandable. It was agreed that the surveys to lawyers and police could be administered using SurveyMonkey®. Because of security concerns within DotAG and DCS the survey could not be conducted using SurveyMonkey®, and internal systems were used to host and administer the survey at these study sites. The final survey instruments can be found in Appendix 2.

Recruitment

Participants were recruited by each sector using different methods as detailed below. Each participant was provided with a covering email from their organisation and project information from the Telethon Institute (Appendix 3).

Judicial

The survey was sent to 133 judicial officers (judges, magistrates and registrars) in the Supreme Court, District Court, Family Court, Children's Court, Magistrates Court, State Administrative Tribunal and the Coroner's Court through a secure internal DotAG system. These courts preside over both criminal and civil matters.

Legal

Legal Aid sent the survey to an estimated 90 lawyers in criminal, family and civil law across the organisation in Perth and WA regions, with a request to circulate to new lawyers who were not on the original email list. Requests to disseminate the survey were sent to the Criminal Lawyers Association of WA and the Law Society of WA but these requests were not actioned.

Corrections

The survey was circulated to all staff within the Youth Justice Service (400) and Youth Custodial Service (250) through a secure internal survey system. In addition the survey was advertised on the DCS intranet.

Police

The survey was sent to a random sample of 1,000 sworn police officers. This sample was selected from the overall WA Police staff list which was filtered to contain only sworn police officers (both detectives and general duties) from all over WA and from the rank of constable to inspector inclusive (n=5,201). Sworn officers are deemed operational unless they have an injury or other reason precluding their deployment to the front line if necessary.

Survey administration and follow up

Follow-up is crucial to achieving a high response. As the survey was distributed to participants by DotAG, Legal Aid, DCS, and WA Police, respective department and organisation staff were also responsible for sending follow up emails encouraging staff to complete the survey. Each organisation sent at least one reminder to potential participants, with most sending two reminders.

Data analysis

Data received from the online questionnaires were converted into SPSS format, and IBM SPSS Statistics Version 19 was used to analyse the quantitative response data. Results were summarised using descriptive statistics. In this report Likert scale responses of 'strongly agree' and 'agree' are reported collectively as 'agree', and 'strongly disagree' and 'disagree' are reported collectively as 'disagree'.

Qualitative data were independently coded and analysed by two study investigators using qualitative content analysis methods.[51, 52] Data from each open-ended question were reviewed and coded inductively, based on the underlying meaning of the data. Responses were read line by line prior to coding for each question, and significant words and phrases were identified. The main intent of each response was then conceptualised and coded. For questions which had a sufficient number and depth of responses, first level codes were also reviewed and categorised based on their characteristics or properties.[52, 53] Both analysts' independent coding schemes were documented and then reviewed for consistency to ensure credibility and trustworthiness of the analysis process.[51] Both quantitative and qualitative findings were summarised by sector.

Results

Participation

A total of 427 people from across the WA justice system completed the survey. Survey response is summarised by sector in Table 1. The response was low across all sectors.

Table 1: Survey response

	Judicial n (%)	**Legal** n (%)	**Corrections** n (%)	**Police** n (%)	**Total** n (%)
Invited	133	90[†]	650[†]	1000	1873
Responded	30 (22.6)	25 (27.8)	157 (24.2)	215 (21.5)	427 (22.8)

[†]Estimated number invited

Participant characteristics

Socio-demographic characteristics assessed included; gender, age, length of time working in the justice system, location of work and year of graduation from university or training college. Overall 54.8% of participants were male and 45.2% female. The gender distribution of respondents varied according to sector. Lawyers and DCS staff responders were predominantly female, whereas police officers responding were predominantly male (Figure 2).

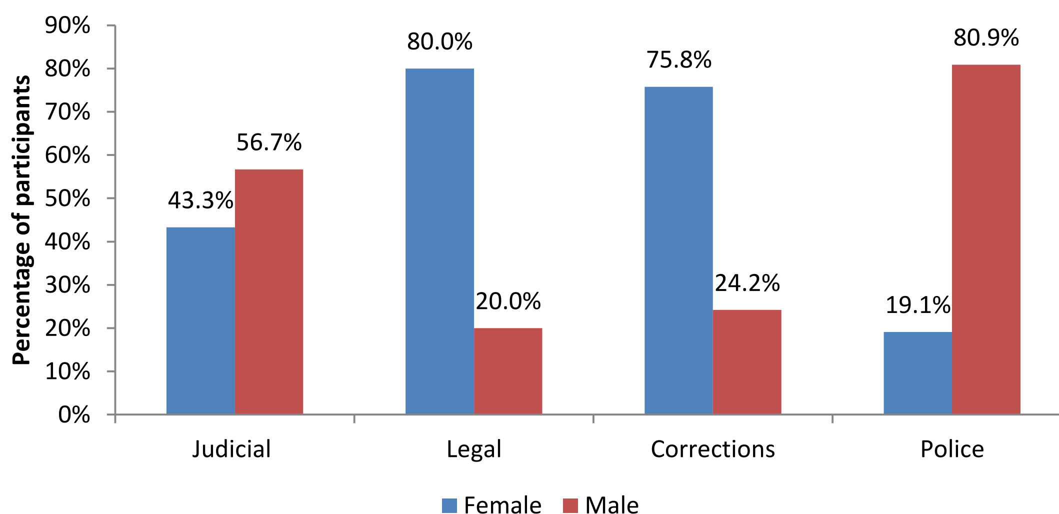


Figure 2: Gender of survey participants (n=427)

Participants were most commonly aged between 40-49 years (Figure 3), although the age distribution of participants varied by sector (Table 2.1). Judicial officers were more likely to be aged 50 years or older compared to other participants.

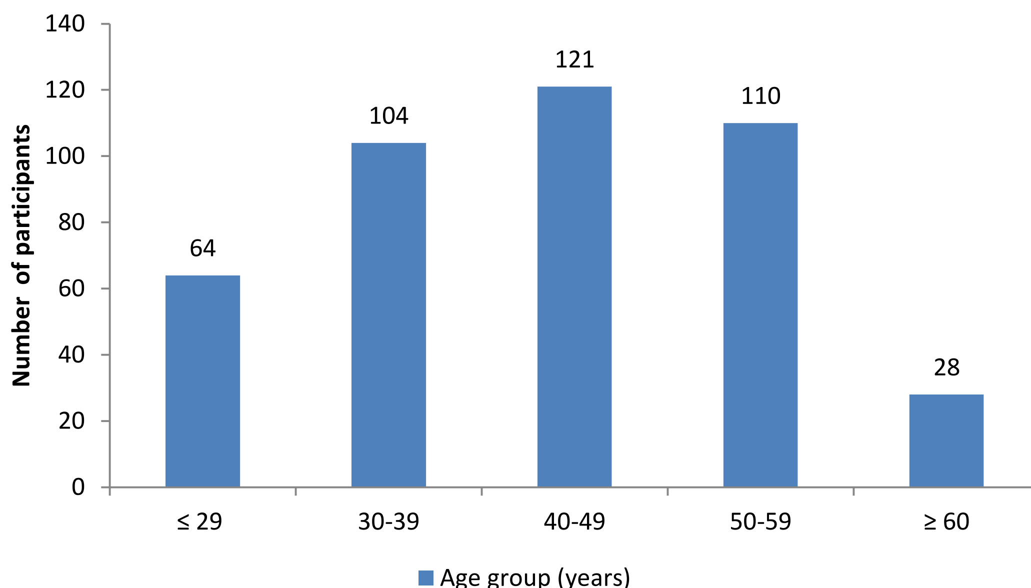


Figure 3: Age distribution of survey participants (n=427)

Table 2.1: Age of survey participants

	Judicial n=30 (%)	Legal n=25 (%)	Corrections n=157 (%)	Police n=215 (%)
≤ 29 years	0 (0.0)	5 (20.0)	37 (23.6)	22 (10.2)
30-39 years	0 (0.0)	8 (32.0)	31 (19.7)	65 (30.2)
40-49 years	8 (26.7)	6 (24.0)	34 (21.7)	73 (34.0)
50-59 years	20 (66.7)	6 (24.0)	38 (24.2)	46 (21.4)
≥ 60 years	2 (6.7)	0 (0.0)	17 (10.8)	9 (4.2)

The majority of participants worked in the Perth metropolitan area (Table 2.2). Approximately half the 427 participants (51.8%) had worked in the justice system for 11 or more years (Table 2.3). Judicial and police officers reported longer periods of service in the justice system than lawyers and DCS staff. Lawyers, DCS staff and police officers who reported graduating from university/training college were most likely to have graduated between 2000 and 2009 (Table 2.4).

Table 2.2: Location of survey participants' work

	Judicial[†] n=30 (%)	Legal[†] n=25 (%)	Corrections n=157 (%)	Police[†] n=215 (%)
Perth	24 (80.0)	13 (52.0)	64 (40.8)	112 (52.1)
Outer metropolitan	4 (13.3)	4 (16.0)	18 (11.4)	41 (19.1)
Regional	8 (26.7)	6 (24.0)	51 (32.3)	45 (20.9)
Rural	2 (6.7)	2 (8.0)	10 (6.3)	13 (6.0)
Remote	2 (6.7)	5 (20.0)	14 (8.9)	11 (5.1)

[†]Percentages sum to more than 100% as multiple responses were permitted

Table 2.3: Length of time survey participants worked in the justice system

	Judicial n=30 (%)	Legal n=25 (%)	Corrections n=157 (%)	Police n=215 (%)
< 1 year	0 (0.0)	2 (8.0)	15 (9.7)	1 (0.5)
1-5 years	1 (3.3)	7 (28.0)	54 (34.8)	30 (14.0)
6-10 years	0 (0.0)	9 (36.0)	48 (31.0)	37 (17.2)
11+ years	29 (96.7)	7 (28.0)	38 (24.5)	147 (68.4)

Table 2.4: Year of graduation of survey participants

	Judicial n=30 (%)	Legal n=25 (%)	Corrections n=157 (%)	Police n=215 (%)
Not applicable	0 (0.0)	0 (0.0)	42 (26.8)	3 (1.4)
1979 or before	11 (36.7)	0 (0.0)	13 (8.3)	25 (11.6)
1980-1989	15 (50.0)	3 (12.0)	11 (7.0)	47 (21.9)
1990-1999	4 (13.3)	5 (20.0)	16 (10.2)	55 (25.6)
2000-2009	0 (0)	15 (60.0)	64 (40.8)	79 (36.7)
2010 or after	0 (0)	2 (8.0)	11 (7.0)	6 (2.8)

Survey participants were asked to provide information on their role, position or title. Judicial officers held appointments in the Supreme Court, District Court, Family Court, Magistrates Court, State Administration Tribunal, Children's Court and Coroner's Court. The majority of lawyers who responded to the survey (88.0%) classified their position as solicitor, which may include senior or principal solicitor. Within Corrections the most frequently reported roles included: Youth Justice Officer (11.6%), Prevention and Diversion Officer (8.4%), Prison Officer (7.1%) and Youth Custodial Officer (7.1%). Just over half the police officers (52.4%) had the rank of Sergeant, including Senior Sergeant and those who may be in charge of a unit or station; and 30.6% classified their position as Constable, including First Class Constable, intelligence, forensics and training. A further 14.5% of

police officers identified their position as Detective, including Detective Senior Constable, Detective Sergeant and Detective Senior Sergeant.

Awareness of FAS and FASD

Initial survey questions explored respondents' awareness of both FAS and FASD. All lawyers (100.0%) and a high proportion of DCS staff (96.5%) and judicial officers (90.0%) had heard of FAS. Across all sectors, fewer participants had heard of FASD, with awareness lowest amongst police officers (Figure 4). Among those who reported being aware of FAS or FASD, most participants had heard about FAS or FASD in the mainstream media (Table 3). Other frequently reported sources of information included a legal practitioner or other justice professional for both judicial officers and lawyers; and professional training and education for both DCS staff and police officers.

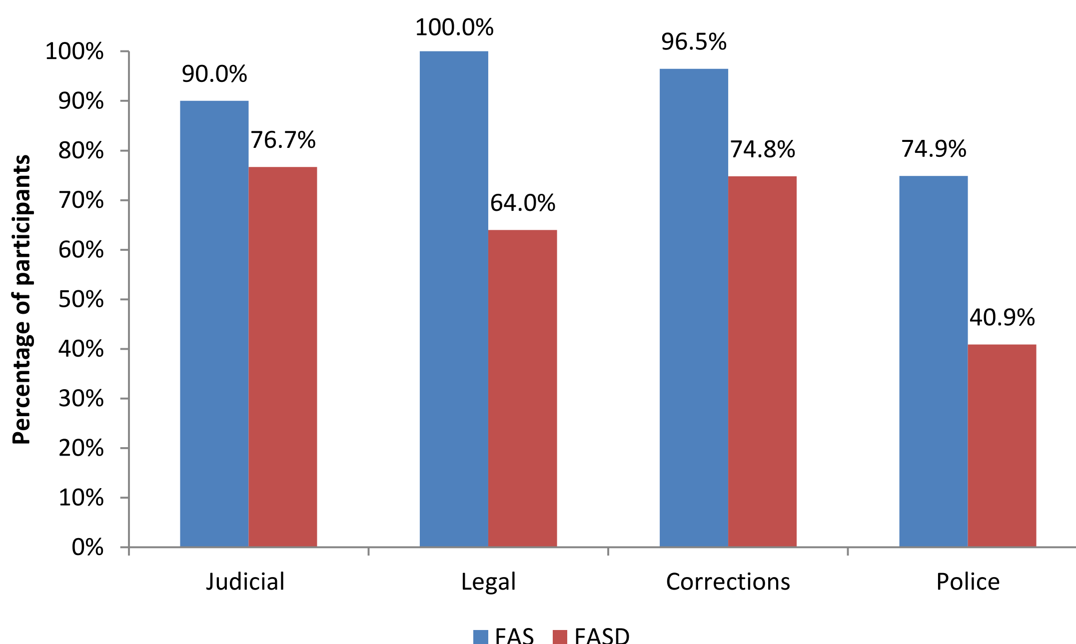


Figure 4: Proportion of participants who had heard of FAS and FASD

Table 3: Reported source of FAS/FASD information

	Judicial† n=30 (%)	Legal† n=25 (%)	Corrections† n=96 (%)	Police n=148 (%)
Mainstream media	22 (75.9)	15 (60.0)	65 (47.1)	83 (56.1)
University education or professional training	0 (0.0)	3 (12.0)	66 (47.8)	14 (9.5)
Legal practitioner or other justice professional	12(41.4)	12 (48.0)	14 (10.1)	5 (3.4)
Colleague	3 (10.3)	6 (24.0)	40 (29.0)	18 (12.2)
Professional journal	6 (20.7)	6 (24.0)	27 (19.6)	3 (2.0)
Education session	5 (17.2)	4 (16.0)	49 (35.5)	13 (8.8)
Court pre-sentence report	10 (34.5)	11 (44.0)	20 (14.5)	9 (6.1)
Court ordered psychological or psychiatric report	12 (41.5)	8 (32.0)	33 (23.9)	3 (2.0)
Other	4 (13.8)	3 (12.0)	37 (26.8)	0 (0.0)

†Percentages sum to more than 100% as multiple responses were permitted

Other ways in which participants found out about FAS/FASD included their own investigations for work or personal purposes; previous work or work of a partner in the health, disability or child protection sectors; personal or family member experiences as foster carers; and working with female offenders. Participants who had worked in rural and remote areas highlighted their involvement with communities and health professionals as a source of information about FASD and associated problems.

Participants who were aware of FAS/FASD were asked to rate their knowledge on a 3-point scale. Approximately one half of those who responded to this question (51.1%) described their level of knowledge as a basic understanding of the condition and how it affects children and adults (Figure 5). DCS staff showed the highest level of understanding of the condition and how it affects children and adults (Table 4).

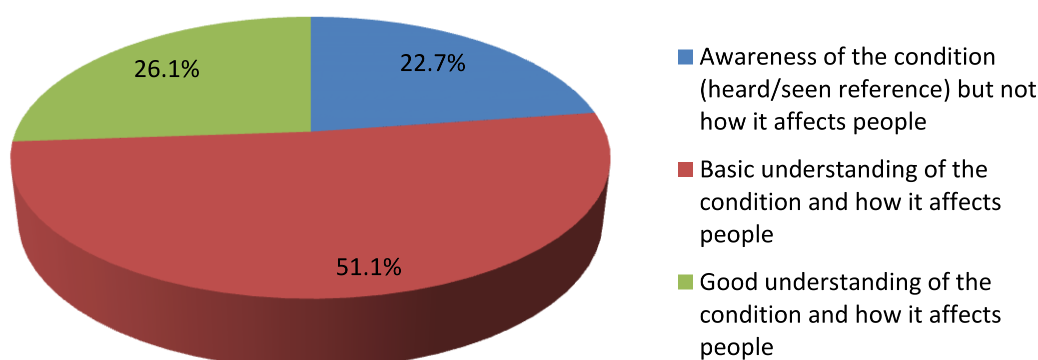


Figure 5: Reported knowledge of FAS/FASD across the justice system (n=347)

Table 4: Participant responses to the question 'Which would best describe your knowledge of FAS/FASD?'

	Judicial n=30 (%)	Legal n=25 (%)	Corrections n=137 (%)	Police n=160 (%)
Have an awareness of the condition (heard/seen reference) but not how it affects children and adults	9 (30.0)	11 (44.0)	7 (5.1)	53 (33.1)
Have a basic understanding of the condition and how it affects children and adults	16 (53.3)	12 (48.0)	70 (51.1)	82 (51.3)
Have a good understanding and how it affects children and adults	5 (16.7)	2 (8.0)	60 (43.8)	25 (15.6)

Knowledge and Beliefs about FASD

The following questions about knowledge and beliefs were prefaced with an explanation about the use of the term FASD: "*The remaining questions refer only to FASD. We use the term FASD as this incorporates the unique syndrome of FAS and all other conditions related to prenatal alcohol exposure*".

Seven Likert statements were used to assess participants' knowledge and beliefs about FASD (Tables 5.1 – 5.7). There was overall agreement that FASD is a real 'syndrome' (78.8%); alcohol's negative effect on fetal development has been proven (77.2%); and FASD is not only an issue for children and youth (75.7%). Fewer participants agreed that FASD is relevant to their work in the justice system (65.8%); and assessment and diagnosis of FASD would improve possibilities of appropriate consequences for unacceptable behaviour (63.8%). Most participants (75.7%) disagreed that children grow out of FASD and 36.1% of participants disagreed that FASD occurs primarily in Indigenous families.

Table 5.1: Participant agreement with the statement 'FASD is a real syndrome'

	Judicial n=28 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=215 (%)
Agree	20 (71.4)	25 (100.0)	126 (95.5)	144 (67.0)
Neither agree nor disagree	7 (25.0)	0 (0.0)	6 (4.5)	68 (31.6)
Disagree	1 (3.6)	0 (0.0)	3 (1.9)	3 (1.4)

Table 5.2: Participant agreement with the statement 'FASD is relevant to my work in the criminal justice system'

	Judicial n=28 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=213 (%)
Agree	22 (78.6)	23 (92.0)	113 (85.6)	104 (48.4)
Neither agree nor disagree	5 (17.9)	2 (8.0)	16 (12.1)	86 (40.4)
Disagree	1 (3.6)	0 (0.0)	1 (0.8)	23 (10.8)

Table 5.3: Participant agreement with the statement 'Alcohol's negative effect on fetal development has been proven'

	Judicial n=29 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=213 (%)
Agree	28 (96.9)	23 (92.0)	118 (89.4)	139 (65.3)
Neither agree nor disagree	1 (3.4)	2 (8.0)	14 (10.6)	70 (32.9)
Disagree	0 (0.0)	0 (0.0)	0 (0.0)	4 (1.9)

Table 5.4: Participant agreement with the statement 'FASD is only an issue for children and youth not adults'

	Judicial n=29 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=213 (%)
Agree	1 (3.4)	0 (0.0)	4 (3.0)	7 (3.3)
Neither agree nor disagree	5 (17.2)	0 (0.0)	8 (6.1)	73 (34.1)
Disagree	23 (79.3)	25 (100.0)	120 (90.9)	134 (62.6)

Table 5.5: Participant agreement with the statement 'Assessment and diagnosis of FASD would improve possibilities of appropriate consequences for unacceptable behaviour'

	Judicial n=28 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=213 (%)
Agree	22 (78.6)	23 (92.0)	111 (84.1)	98 (46.0)
Neither agree nor disagree	6 (21.4)	2 (8.0)	18 (13.6)	94 (44.1)
Disagree	0 (0.0)	0 (0.0)	3 (2.3)	21 (9.9)

Table 5.6: Participant agreement with the statement 'People grow out of FASD'

	Judicial n=30 (%)	Legal n=25 (%)	Corrections n=132 (%)	Police n=213 (%)
Agree	0 (0.0)	0 (0.0)	1 (0.8)	4 (1.9)
Neither agree nor disagree	10 (35.7)	1 (4.0)	14 (10.6)	128 (60.1)
Disagree	18 (64.3)	24 (96.0)	117 (88.6)	81 (38.0)

Table 5.7: Participant agreement with the statement 'FASD occurs primarily in Indigenous families'

	Judicial n=30 (%)	Legal n=24 (%)	Corrections n=132 (%)	Police n=210 (%)
Agree	9 (32.1)	6 (25.0)	25 (18.9)	36 (17.1)
Neither agree nor disagree	11 (39.3)	4 (16.0)	40 (30.3)	120 (57.1)
Disagree	8 (28.6)	14 (58.3)	67 (50.8)	54 (25.7)

When asked *"In your own words, what do you understand FASD to be?"* the majority of participants (81.1%) were able to identify the cause of FASD. This included 31.6% of respondents who mentioned high or excessive levels of alcohol use. Several respondents also referred to effects of alcohol consumption at specific stages or times during pregnancy. Most were able to identify one or more of the effects of prenatal alcohol exposure and some participants were able to provide detailed information on physical, neurological and behavioural impairments. Overall, 28.6% of survey participants were able to identify physical development, growth or facial features; 48.5% of participants mentioned psychological development or used the term cognitive, intellectual, mental, behavioural, neurological or brain development; and 16.6% of participants noted that FASD is permanent, irreparable or lifelong. Table 6 summarises the number of participants within each sector able to identify the key features of FASD.

Table 6: Participant identification of key features of FASD

	Judicial† n=28 (%)	Legal† n=24 (%)	Corrections† n=129 (%)	Police† n=211 (%)
Alcohol consumption during pregnancy	25 (89.5)	23 (95.8)	111 (86.0)	159 (75.4)
Physical development	13 (46.4)	12 (50.0)	53 (41.1)	34 (16.1)
Psychological development	15 (53.6)	19 (79.2)	86 (66.7)	70 (32.2)
Permanent	5 (17.9)	6 (25.0)	30 (23.3)	24 (11.4)

†Percentages sum to more than 100% as multiple responses were permitted

Requests for Information

Four questions were used to assess participants' requirements for more information, including type of information and the mode of delivery. Overall most participants reported that they would like to receive more information about FASD (71.5%) and saw merit in having a forum with other professionals in the justice system to discuss the development of a co-ordinated approach to FASD in WA (81.0%). Police officers were less likely to agree with the need for more information or a forum about FASD, than respondents from other sectors (Tables 7.1 and 7.2).

Table 7.1: Participant responses to the question 'Would you like more information about FASD?'

	Judicial n=27 (%)	**Legal** n=25 (%)	**Corrections** n=114 (%)	**Police** n=211 (%)
Yes	25 (92.6)	22 (88.0)	103 (90.4)	120 (56.9)
No	2 (7.4)	3 (12.0)	11 (9.6)	91 (43.1)

Table 7.2: Participant responses to the question 'Would it be helpful to have a forum with other professionals within the justice system to discuss the development of a co-ordinated approach to FASD in WA?'

	Judicial n=27 (%)	**Legal** n=25 (%)	**Corrections** n=132 (%)	**Police** n=213 (%)
Yes	26 (96.3)	23 (92.0)	128 (97.0)	144 (67.6)
No	1 (3.7)	2 (8.0)	4 (3.0)	69 (32.4)

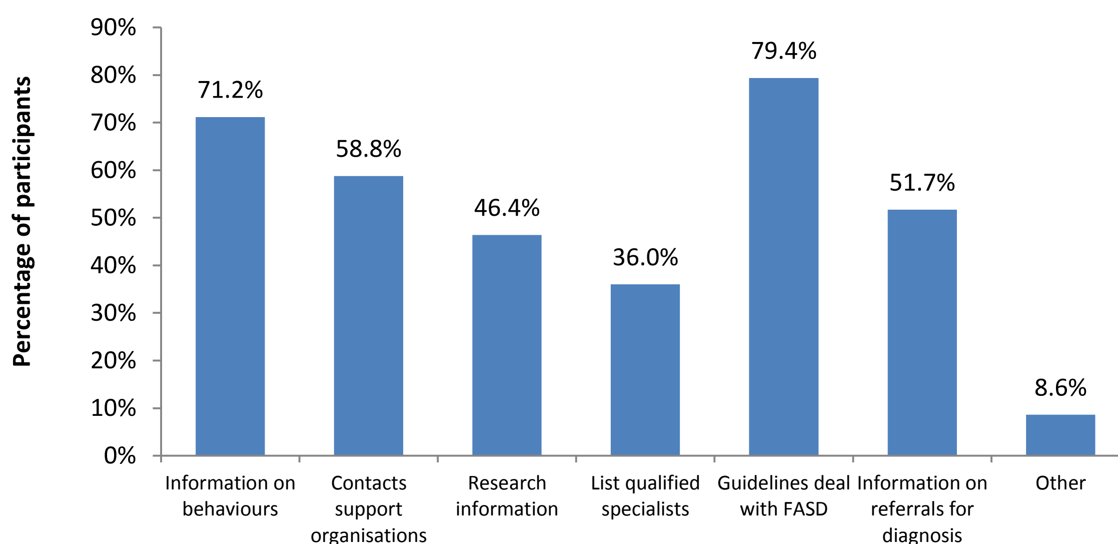
Among participants who wanted to receive more information about FASD, information was most frequently requested on: behaviours to prompt the need for assessment, guidelines on how to deal with people with FASD, and contact details for organisations that specialise in the support of people with FASD (Figure 6 and Table 7.3). Other kinds of information requested included strategies for government agencies and schools to manage behaviours in children, youth or adults who are suspected of having FASD but have not had a formal diagnosis. Participants also recommended that information on how FASD affects people in the justice system should be provided to government departments to instigate changes to policy and procedures. This is reflected in one participant's comment that *"the existing infrastructure will prevent managing these offenders in anything other than mainstream*".

Among participants who wanted to receive more information about FASD, the preferred modes of delivery of this information were: website or email, continuing professional development event, and printed information/resources (Table 7.4). Police officers were less likely to request all types of information compared with respondents from other sectors. Other modes of information delivery suggested by participants included having 'Fact Sheets' and information on internal government department portals, and internal newsletters that could include information on FASD, recent cases, what happened and the outcomes achieved.

Table 7.3: Participant responses to the question 'What type of information would you prefer?'

	Judicial† n=30 (%)	Legal† n=22 (%)	Corrections† n=96 (%)	Police† n=119 (%)
Information on behaviours to prompt need for assessment	22 (88.0)	22 (100.0)	77 (80.2)	77 (64.7)
Contact details for organisations which specialise in the care of people with FASD	14 (56.0)	19 (86.4)	65 (67.7)	59 (49.6)
More research information	15 (60.0)	14 (63.6)	56 (58.3)	39 (32.8)
List of qualified specialists	9 (36.0)	15 (68.2)	51 (53.1)	21 (17.6)
Guidelines on how to deal with FASD	21 (84.0)	20 (90.9)	86 (89.6)	85 (71.4)
Information about where to refer for diagnosis	11 (44.0)	17 (77.3)	70 (72.9)	40 (33.6)
Other	5 (20.0)	0 (0.0)	16 (16.7)	2 (1.7)

†Percentages sum to more than 100% as multiple responses were permitted



†Percentages sum to more than 100% as multiple responses were permitted

Figure 6: Summary of participant responses to the question 'What type of information would you prefer?'

Table 7.4: Participant responses to the question 'How would you prefer the information on FASD was delivered?'

	Judicial† n=30 (%)	Legal† n=22 (%)	Corrections† n=96 (%)	Police† n=141 (%)
Website or email	13 (52.0)	18 (81.8)	62 (64.6)	98 (69.5)
Continuing professional development event	14 (56.0)	17 (77.3)	50 (52.1)	17 (12.1)
Conferences/seminars	12 (48.0)	8 (36.4)	44 (45.8)	25 (17.7)
Special visit to your practice, department or organisation	6 (24.0)	8 (36.4)	54 (56.3)	24 (17.0)
Printed resources	N/A‡	11 (50.0)	N/A‡	46 (32.6)
Other	2 (8.0)	0 (0.0)	9 (9.4)	2 (1.4)

†Percentages sum to more than 100% as multiple responses were permitted

‡Response option not included in survey

Experiences and Practices

Participants were asked to reflect on their experience within the justice system and how FASD impacts on their work practice. The phrasing of questions in this section varied by sector, consistent with the different roles of judicial officers, lawyers, DCS staff and police officers. For clarity, generic terminology is used in the presentation of survey results. For example terms such as clients, offenders, witnesses, parties have been replaced with the generic term 'person'. The specific wording used in each sector survey can be found in Appendix 2.

Suspected FASD

When asked if they had ever dealt with a person who may have been affected by a FASD, police officers were least likely to report ever dealing with a person who may have been affected by a FASD (42.8%), followed by lawyers (60.0%), judicial officers (60.7%), and DCS staff (67.0%) (Table 8.1).

Table 8.1: Participant responses to the question 'Have you have ever dealt with a person who you suspect had a FASD?'

	Judicial n=28 (%)	Legal n=25 (%)	Corrections n=106 (%)	Police n=215 (%)
Never	3 (10.7)	4 (16.0)	11 (10.4)	29 (13.5)
Once	2 (7.1)	1 (4.0)	11 (10.4)	9 (4.2)
2-5 times	3 (10.7)	5 (20.0)	31 (29.2)	26 (12.1)
6-10 times	2 (7.1)	2 (8.0)	8 (7.5)	8 (3.7)
11+ times	10 (35.7)	7 (28.0)	21 (19.8)	49 (22.8)
Don't know	8 (28.6)	6 (24.0)	24 (22.6)	94 (43.7)

Participants who reported suspecting that a person had a FASD, were asked to identify factors that made them suspect a person had FASD. The list of response options provided for this question varied by sector, for example the corrections survey included *"continually disobeys Correctional Services officer's instructions"*. Response options for judicial officers and lawyers included *"unable to follow court proceedings and instructions".* Overall the most frequently endorsed factors for suspecting that a person had FASD were: poor attention span, obvious low IQ, know mother is an alcoholic, and physical appearance (Table 8.2).

Table 8.2: Participant responses to the question 'What factors made you suspect a person had a FASD?'

	Judicial† n=16 (%)	**Legal**† n=14 (%)	**Corrections**† n=68 (%)	**Police**† n=92 (%)
Physical appearance	12 (75.0)	12 (85.7)	53 (77.9)	59 (64.1)
Obvious low IQ	13 (81.3)	11 (78.6)	50 (73.5)	63 (68.5)
Inability to learn from mistakes	6 (37.5)	6 (42.9)	45 (66.2)	49 (53.3)
Repeat offender	7 (43.8)	7 (50.0)	31 (45.6)	58 (63.0)
Does not show empathy	3 (18.8)	6 (42.9)	24 (35.3)	23 (25.0)
Genuinely seems to not remember	7 (43.8)	6 (42.9)	38 (55.9)	30 (32.6)
Poor attention span	13 (81.3)	10 (71.4)	54 (79.4)	69 (75.0)
Disinterested during interview, consultation, interrogation	5 (31.3)	7 (50.0)	28 (41.2)	30 (32.6)
Highly suggestible	7 (43.8)	8 (57.1)	31 (45.6)	23 (25.0)
Poor understanding of time	8 (50.0)	7 (50.0)	37 (54.4)	39 (42.4)
Know mother is an alcoholic	0 (0.0)	10 (71.4)	50 (73.5)	69 (75.0)
Unable to follow court proceedings, instructions	8 (50.0)	8 (57.1)	N/A‡	N/A‡
Unable to comply with parole orders	0 (0.0)	4 (28.6)	N/A‡	N/A‡
Vulnerable to peer pressure	N/A‡	N/A‡	47 (69.1)	42 (45.7)
Continually disobeys correctional services officers/police officer instructions	N/A‡	N/A‡	26 (38.2)	28 (30.4)
Cannot read or comprehend basic instructions	N/A‡	N/A‡	40 (58.8)	47 (51.1)
Has explosive episodes	N/A‡	N/A‡	38 (55.9)	30 (32.6)
Has multiple substance addictions	N/A‡	N/A‡	28 (41.2)	55 (59.8)
Other	0 (0.0)	1 (7.1)	N/A‡	N/A‡

†Percentages sum to more than 100% as multiple responses were permitted
‡Response option not included in survey

When asked if they would consider taking a more detailed family history (including mother's substance abuse history) for juveniles who they suspected had a FASD, 8.0% of judicial officers responded that they would in every case, 76.0% responded that they would in some cases and 16.0% responded not at all. When judicial officers were asked why they would or would not take a more detailed family history, many highlighted the limitations of the criminal justice system and available sentencing options:

> *"Our criminal justice system's ability to properly deal with a FASD child is on a par with the FASD child's ability to deal with the system. Where it is established a child has a FASD, the management plan never provides for specialist input, and mostly has a minimalist approach."*

> *"Currently no different/alternative programs are available for juveniles diagnosed with a FASD, so obtaining a diagnosis or confirming such a suspicion would probably not impact much on the decisions made by the court as to sentencing."*

> *"In my experience unless the defendant has an obvious mental impairment which makes him/her unfit to stand trial no one is interested in getting the defendant assessed or diagnosed. Cost was the issue for health services, State and NGO [sic] [Non Government Organisation]. However there are many, many adults and children who transit through the justice system which appear to suffer one or more of the deficits which FASD encompasses. Without some evidence of even a preliminary diagnosis the court is not permitted, arguably, to proceed on the basis of diminished culpability."*

When asked if they would consider taking a more detailed family history (including mother's substance abuse history) for juveniles who they suspected had a FASD, 88.0% of lawyers and 87.6% of DCS staff responded in the affirmative. When lawyers and DCS staff who reported that they would not consider taking a more detailed family history were asked to identify the reasons for their response, most indicated that it was outside their role; that they did not know where to refer the person; or that it would be pointless as it would not change how they managed the client.

Known FASD

Overall, the majority of survey participants (75.1%) had never been informed that a person had a FASD, and police officers were least likely to report having ever been informed that a client had a FASD (Table 9).

Table 9: Participant responses to the question 'Have you ever been informed that a person had a FASD?'

	Judicial N/A[§]	Legal n=24 (%)	Corrections n=102 (%)	Police n=215 (%)
Never		13 (54.2)	62 (60.8)	181 (84.2)
Once		0 (0.0)	25 (24.5)	16 (7.4)
2-5 times		9 (37.5)	13 (12.7)	8 (3.7)
6-10 times		0 (0.0)	1 (1.0)	2 (0.9)
11+ times		2 (8.3)	1 (1.0)	8 (3.7)
Don't know		0 (0.0)	0 (0.0)	0 (0.0)

[§]Question not included in judicial survey

When asked if they had dealt with a person that they knew had a FASD, the majority of participants responded in the negative (Table 10.1). Respondents who reported knowing that a person had been diagnosed with a FASD were asked how they knew the person had a FASD. Lawyers, DCS staff and police officers frequently identified a known history of prenatal alcohol exposure; and judicial officers most frequently reported that investigation by, or on behalf of the court revealed a positive diagnosis (Table 10.2).

Table 10.1: Participant responses to the question 'Have you ever dealt with a person who you know had a FASD?'

	Judicial n=28 (%)	**Legal** n=25 (%)	**Corrections** n=99 (%)	**Police** n=215 (%)
Never	12 (42.9)	14 (56.0)	31 (31.8)	96 (44.7)
Once	1 (3.6)	1 (4.0)	24 (24.2)	12 (5.6)
2-5 times	5 (17.9)	7 (28.0)	21 (21.2)	16 (7.4)
6-10 times	2 (7.1)	0 (0.0)	3 (3.0)	2 (0.9)
11+ times	4 (17.9)	2 (8.0)	4 (4.0)	19 (8.8)
Don't know	3 (10.7)	1 (4.0)	16 (16.2)	70 (32.6)

Table 10.2: Participant responses to the question 'How did you know that a person had a FASD?'

Factor	**Judicial**† n=13 (%)	**Legal**† n=10 (%)	**Corrections**† n=51 (%)	**Police**† n=49 (%)
Investigation by, or on behalf of, the court revealed a positive FASD diagnosis	10 (76.9)	N/A‡	N/A‡	N/A‡
The defence counsel advised you that the person had FASD	7 (53.8)	N/A‡	N/A‡	N/A‡
The prosecution advised you that the person had FASD	1 (7.7)	N/A‡	N/A‡	N/A‡
File notes indicated a FASD diagnosis	2 (15.4)	N/A‡	N/A‡	N/A‡
Awareness of positive FASD diagnosis	N/A‡	6 (60.0)	31 (60.8)	11 (22.4)
The person advised you that s/he had FASD	1 (7.7)	2 (20.0)	8 (15.7)	6 (12.2)
Known history of prenatal alcohol exposure	6 (46.2)	5 (50.0)	31 (60.8)	37 (75.5)
Characteristic facial features	5 (38.5)	5 (50.0)	24 (47.1)	18 (36.7)
Other	2 (15.4)	3 (30.0)	10 (19.6)	6 (12.2)

†Percentages sum to more than 100% as multiple responses were permitted

‡Response option not included in survey

Support and Services

When asked if they had ever recommended, required or referred a person for a diagnosis most judicial officers, lawyers and DCS staff responded that this had never occurred (Table 11). Participants who had referred a person for a diagnosis did not provide specific information about where this occurred. However, one participant commented that *"they are expected to manage the behaviours, while 'experts' are appointed to provide this diagnosis yet they are not privy to this as it is considered confidential medical information"*.

Several participants stated they strongly suspected that a lot of people within the prison and youth justice systems are afflicted with this disorder but they had never been advised that these individuals had been assessed or diagnosed. Some also commented that it was not their role and questioned who would listen if they suggested FASD as an issue. One participant remarked that they were not sure if it was appropriate for them to be suggesting the need for a medical diagnosis.

Table 11: Participant responses to the question 'Have you ever recommended, required or sent a person for diagnosis for FASD where you suspected FASD may be relevant?

	Judicial n=26 (%)	**Legal** n=23 (%)	**Corrections** n=92 (%)	**Police** N/A[§]
Never	19 (73.1)	19 (82.6)	75 (81.5)	
Once	0 (0.0)	0 (0.0)	8 (8.7)	
2-5 times	4 (15.4)	3 (13.0)	5 (5.4)	
6-10 times	0 (0.0)	0 (0.0)	2 (2.2)	
11+ times	3 (11.5)	1 (4.3)	0 (0.0)	

[§]Question not included in police survey

Among judicial respondents who reported having never recommended that an offender be sent for diagnosis for FASD 50.0% stated that is was not part of their role, 41.7% said it would not change how they consider the case, 16.7% did not know where to refer the person and 8.3% stated they had no knowledge of FASD at the time. Among legal respondents who reported having never recommended that a client be sent for diagnosis for FASD 55.6% said they did not know where to refer the person, 33.3% reported trying a number of options which did not work, and 11.1% said it would be pointless because it would not change how they manage the client. Among corrections respondents who reported having never recommended that a client be sent for diagnosis for FASD 82.4% said they did not know where to refer the person, 11.8% reported trying a number of options which did not work, and 5.9% said it would be pointless because it would not change how I manage the client.

Few respondents reported using a trained person to communicate with a client or offender that they knew had a FASD (Table 12.1). Among the respondents who reported never using a trained communicator, the most frequent reason given was that no such services exist (Table 12.2). In addition to responses reported in Table 12.2, lawyers, DCS staff and police officers provided other responses to explain why they did not use a trained communicator. These responses most frequently indicated a lack of awareness of the existence of services.

Table 12.1: Participant responses to the question 'Have you ever used a trained person to communicate with a person that you knew had a FASD?'

	Judicial n=29 (%)	Legal n=25 (%)	Corrections n=86 (%)	Police n=212 (%)
Never knowingly encountered a person with FASD	7 (24.1)	9 (36.0)	83 (96.5)	92 (43.4)
Never	22 (75.9)	16 (64.0)	1 (1.1)	118 (55.7)
Once	0 (0.0)	0 (0.0)	2 (2.3)	1 (0.5)
2-5 times	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
6-10 times	0 (0.0)	0 (0.0)	0 (0.0)	1 (0.5)
11+ times	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)

Table 12.2: Participant explanations for not using a trained person to communicate with a client or offender they knew had a FASD

	Judicial† n=21 (%)	Legal n=12 (%)	Corrections† n=0 (%)	Police n=87 (%)
No such services exist	18 (85.7)	8 (66.7)	0 (0.0)	60 (69.0)
Services are difficult to access due to location	3 (14.3)	4 (33.3)	0 (0.0)	22 (25.3)
Such services are only available for those with a diagnosis and the person did not have a diagnosis	2 (9.5)	0 (0.0)	0 (0.0)	3 (3.4)
I am well trained to communicate with a person with a FASD	1 (4.8)	0 (0.0)	0 (0.0)	2 (2.3)
Not necessary to have such a service	3 (14.3)	0 (0.0)	N/A‡	N/A‡

†Percentages sum to more than 100% as multiple responses were permitted

‡Response option not included in survey

Sentencing

Counselling and use of behaviour change programs (61.9%) were most frequently reported by judicial officers when asked what current diversionary sentencing options were they most likely to consider. Other sentencing options included: use of the juvenile justice team (47.6%), alcohol programs (47.6%), and drug programs (42.9%). Judicial officers were also asked to consider what alternative treatment/diversionary sentencing options would be helpful.

"I believe some alternative programs/treatment options would need to be developed that take into account the cognitive deficits, behavioural patterns and developmental delays of individual offenders with FASD. This is particularly required in respect of adult offenders, where current programs are provided on a "one size fits all" basis and where consequences for breach of orders if they fail to attend or successfully complete such programs can be onerous. Strong supervision in the community, with strong long-term relationship with offender. Appropriate medical supports."

"As Judges we are not trained to identify FASD and it is not in our power to refer offenders to a specific treatment facility. All we can do as part of the sentencing process is to ask for psychological or psychiatric reports and we rely on them for identification of any mental disorders and suggested treatment. If the offender is given a community based order, Community Corrections decide what programmes/ treatment the offender should attend. A Judge can only make a recommendation. If it is a prison sentence, prison authorities decide what courses or treatments are offered in prison. I am very interested to learn more about FASD, but the people who would identify this disorder or make treatment available would be Community Corrections, the psychologists employed by them and the prison authorities. Lawyers also need to be trained to identify the symptoms so they can ask the judge to order a psychological report to determine fitness to stand trial or for purposes of sentencing. A judge has very little personal contact with an offender, as all discussions are with the offender's lawyer."

"Diversion through the IDD [sic] [Intellectual Disability Diversion] or Mental Health Court. FASD symptoms and low IQ in particular make it very difficult to succeed in Drug or Family Violence Court, especially the latter which relies on group therapy. Inclusion of DCP and signs of safety in relation to a juvenile."

"…programmes run specifically for people suffering FASD impairment, or catering specifically for people with similar impairments. There is a need to undertake a specific assessment of the defendant's needs, and a programme developed to assist and support the defendant and the family. If that person is Aboriginal then there need to be Aboriginal people involved in the assessment/delivery of the programme/support."

"I believe that in Canada a programme for dealing with FASD offenders has been developed, and I would like to see similar programmes in WA. However, because of the limited capacity to change the behaviours of FASD sufferers, the provision of a supportive environment, other than a custodial environment, in which the exposure of FASD offenders to the stimuli which might encourage re-offending can be reduced, would provide an important alternative to prison. At present we are essentially dependent upon family members for the provision of such an environment, and in some cases there are simply no family members who are willing or able to provide such an environment."

Lawyers and police officers were asked to respond to a series of questions with respect to sentencing options. While most participants thought that it would be helpful to have alternative or diversionary sentencing options for people with FASD (Table 13.1), many neither agreed nor disagreed with specific sentencing options listed in Table 13.2.

Table 13.1: Participant responses to the question 'Do you think it would be helpful to have alternative/diversionary sentencing options?'

	Judicial N/A§	Legal n=25 (%)	Corrections N/A§	Police n=102 (%)
Yes		23 (92.0)		102 (100.0)
No		2 (8.0)		0 (0.0)

§Question not included in judicial and corrections survey

Table 13.2: Lawyer and police officer agreement with statements on sentencing options

Practice	Agree (%)	Neither agree nor disagree (%)	Disagree (%)
In your opinion is a longer custodial sentence an appropriate sentence for a person diagnosed with a FASD?			
Legal n=25	0 (0.0)	5 (20.0)	20 (80.0)
Police n=205	23 (11.1)	122 (59.5)	60 (29.3)
In your opinion is a higher level of supervision an appropriate sentence for a person diagnosed with a FASD?			
Legal n=25	14 (56.0)	8 (32.0)	3 (12.0)
Police n=209	130 (62.2)	77 (36.8)	2 (1.0)
In your opinion is a suspended term of imprisonment an appropriate sentence for a person diagnosed with a FASD?			
Legal n=24	2 (8.3)	10 (41.7)	12 (50.0)
Police n=202	25 (12.4)	119 (58.9)	58 (28.7)
In your opinion is an unsupervised community based order an appropriate sentence for a person diagnosed with a FASD?			
Legal n=25	2 (8.0)	10 (40.0)	13 (52.0)
Police n=201	6 (3.0)	80 (39.8)	115 (57.2)
In your opinion is a supervised community based order an appropriate sentence for a person diagnosed with a FASD?			
Legal n=25	16 (64.0)	8 (32.0)	1 (4.0)
Police n=207	103 (49.8)	85 (41.1)	19 (9.2)

Practices

Judicial officers were asked to evaluate a series of statements on modifying practices when dealing with a person with FASD. As summarised in Table 14 most judicial officers agreed that they would change or modify their language, their approach to communicating with the person, and the formality with which they conducted the proceedings. Over 80.0% of judicial officers indicated that a more detailed knowledge of FASD would assist their work in the justice system.

Table 14: Judicial officer responses to statements on changes or modifications to practice

Practice	Agree (%)	Neither agree nor disagree (%)	Disagree (%)
I would change or modify my approach to formality n=26	16 (61.5)	10 (38.5)	0 (0.0)
I would change or modify my use of language n=25	18 (72.0)	7 (28.0)	0 (0.0)
I would change or modify my approach to communication methods n=26	16 (61.5)	9 (34.6)	1 (3.8)
I would change or modify the speed of proceedings n=24	13 (54.2)	11 (45.8)	0 (0.0)
I would change or modify my approach to closing the court n=25	3 (12.0)	14 (56.0)	8 (32.0)
I would change or modify my approach to fitness to plead n=26	8 (30.8)	13 (50.0)	5 (19.2)
A more detailed knowledge of FASD would assist my work in the criminal justice system n=26	22 (84.6)	4 (15.4)	0 (0.0)

Lawyers, DCS staff and police officers were also asked to indicate if a more detailed knowledge of FASD would assist in their work (Table 15). More than 85.0% of lawyers and DCS staff, and 65.5% of police officers responded that it would occasionally or frequently be of benefit.

Table 15: Lawyer, DCS staff and police officer responses to the question 'Do you think a more detailed knowledge of FASD would assist in your work in the criminal justice system?'

	Judicial N/A[§]	Legal n=25 (%)	Corrections n=80 (%)	Police n=215 (%)
Not at all		1 (4.0)	0 (0.0)	29 (13.5)
Rarely		1 (4.0)	9 (11.3)	45 (20.9)
Occasionally		10 (40.0)	21 (26.3)	116 (54.0)
Frequently		13 (52.0)	50 (62.5)	25 (11.6)

[§]Question not included in judicial survey

Decision making

An open-ended question was used to identify how knowledge that a client or accused has FASD impacts on the work of judicial officers, lawyers and police officers. A total of 29 judicial officers, 25 lawyers and 207 police officers responded to the question and findings are summarised below by sector.

Judicial Officers

The knowledge that a defendant had been diagnosed with FASD was perceived by most respondents as relevant to the assessment of fitness to plead and relevant to culpability when sentencing. This knowledge would also inform decision making as to the defendant's likelihood to comply with the order and if it would be setting them up to fail. Judicial officers stated that all impairments were highly relevant to sentencing, irrespective of the cause.

> *"We deal with people with low IQ, learning difficulties and emotional deficits, however caused, daily. We respond to the effects, not the syndrome."*
>
> *"I might try to be more creative in sentencing in order to accommodate particular behavioural features of an offender. I might decide against a formal order if I felt to do so would be setting the offender up to fail. (i.e. If they have no realistic prospects of complying with its requirements)"*

Lawyers

Of the lawyers who responded to this question, almost a third were of the view that the knowledge their client had FASD would change the way in which they dealt with them; and over half considered it relevant to the issues of fitness to plead and alternative or appropriate sentencing. Respondents also identified the impact of FASD when taking instructions from a client and the need for expert evaluation, diagnosis and support services.

> *"I am very careful to ensure the accused understands the charge; the facts alleged; the process; the consequences of their plea. I am mindful to ensure that they are fit to plead and that they, at the relevant time, had the mental capacity to form an intent. I regularly seek expert assessment."*
>
> *"I would change the way I deal with a child – and make me think even more carefully about how I explain complex legal matters. I would ask the court to source more resources for sentencing options."*

Police

Over one third of police officers identified the effect of FASD in dealing with, interviewing and cautioning an offender. Approximately one fifth of respondents identified that the knowledge that an offender had FASD would have no impact on their work. Respondents also frequently indicated that knowledge that an offender had FASD would enable them to understand the offender's behaviour.

Police officers noted that they must deal with an offender in accordance with rules and regulations imposed on them. A number of police officers commented that there should be justice for everyone, including the victim. It was also noted that FASD should not be used as an excuse for violent or recidivist offending, and that the community is deserving of protection from offenders.

> *"As my purpose is to keep victims safe or reduce crime, the knowledge that an offender has FASD would not impact on my functions in those areas. I can feel sorry for the offender but I cannot avoid the consequence, it is up to another area of justice to deal with the offender after he is charged."*

"You usually have greater difficulty dealing with them as they tend to have no concept of how their offending affects others and do not show any regard for possible punishments".

"I am not sure if putting a specific 'title' to a person's condition would help. Police officers have to be able to adapt their communication style to effectively communicate and deal with every person they interact with. Highly educated people, poorly educated people, people that have English as a second language, people with learning impairments all present unique problems that all law enforcement officers have to deal with. If the individual is dealt with as per WAP [sic] [WA Police policy] and procedure and the CIA [sic] [Criminal Investigations Act 2006] then the knowledge that an offender has FASD (ie the specific title) should only be relevant to the court. I am open to being convinced though...."

Challenges

An open-ended question was used to identify what challenges judicial officers, lawyers and police officers face in dealing with, and ensuring fair justice outcomes for an individual with FASD. A total of 23 judicial officers, 24 lawyers and 205 police officers responded to the question and findings are summarised below by sector.

Judicial officers

Approximately one third of respondents identified the challenge of ensuring that the individual with FASD understands the charges and court processes. Other challenges identified included: issues of appropriate sentencing and effective rehabilitation, and access to support and services.

"When the offending is in the more serious categories. Unsuitability for a CBO [sic] [Community Based Order] due to lack of engagement, low IQ etc. Lack of sentencing options. The complexity of their issues. The use of alcohol and substance abuse as complicating factors and lack of preparedness to address substance abuse issues. Difficulty of implementing long term strategies for behaviour change. The difficulties of no discretion in the sentencing process when facing mandatory imprisonment, eg third striker."

"It is a long term problem that will always impact on the sufferer's life. The system rarely has the ability to address the behaviour in a long term manner, and almost never with the continuity of supervision and relationship needed to have an impact."

Lawyers

Half the legal respondents made reference to the challenge posed by a lack of knowledge and recognition of FASD. Other challenges identified included: issues of appropriate sentencing, and access to diagnosis and health professionals.

"Is the whole process relevant to them? Do they understand? They need assistance but they often do not comply/attend appointments. How is specific deterrence going to be relevant if they don't really comprehend what is happening? The flip-side of submissions that your client is mentally unwell is that they will continue to compromise the protection of the community."

"Diagnosis and recognition of it as separate mental health issue. Little understanding of how the condition might be managed."

Police Officers

Police officers most frequently identified that they were unsure of the challenges faced in dealing with an individual with FASD and ensuring fair justice outcomes. Respondents commonly referred to their role within the justice system and that it was the responsibility of the courts to make a determination of guilt and examine any mitigating factors. Other challenges included appropriate sentencing, effective rehabilitation, and the issue of reoffending and protection of the community. Some police officers also identified that they did not face any challenges in ensuring fair justice outcomes for an offender with FASD.

> *"There is not much awareness of it and it is not known what systems are in place to assist the individual or police officer."*

> *"We don't want to add to the 'revolving door' justice system. By tailoring sentences to individuals, the system is more likely to have a positive impact on offenders, break the cycle of offending and reduce crime."*

> *"It is the role of the police to gather evidence and present this to the court, it is the role the Department of Justice and the Courts to ensure fair justice."*

> *"A police officer is not so involved with the outcome that more relates to courts and prosecutors etc but we need to know about FASD so we can present the facts and communicate better."*

Support

An open-ended question was used to identify what information, services and processes might assist judicial officers, lawyers and police officers in dealing with and ensuring fair justice outcomes for an individual with FASD. A total of 21 judicial officers, 24 lawyers and 201 police officers responded to the question and findings are summarised below by sector.

Judicial officers

Respondents most frequently identified access to support and services, including multi-agency input and access to health professionals and diagnostic services would assist them in dealing with an individual with FASD. The need for appropriate rehabilitation options including sentencing and diversionary options was also identified by judicial officers. Other responses highlighted the importance of improved awareness and knowledge of FASD and its effects within the community.

> *"Case studies which reveal the success and failures of alternate approaches would be of considerable value. Similarly it would be of value to know of other approaches adopted in other jurisdictions and any studies measuring their success."*

> *"… more education about FASD and its effects (for judiciary, lawyers and service providers), more information about having it effectively diagnosed and more appropriate treatment options/diversion programs to which to refer such offenders."*

Lawyers

The importance of greater awareness and knowledge of FASD and its effects within the community was most frequently mentioned by lawyers. Access to health professionals and diagnostic services; support and services, including multi-agency input; and easily accessible information on FASD, were also identified as important resources in dealing with an individual with FASD.

"The availability of experts who can diagnose and inform the court of those who have FASD, and the cognitive and behavioural ramifications involved in individualised assessments of FASD clients. More appropriate and diversionary sentencing options."

"Knowledge, education, treatment options, and guideline recommendations on general capacity for diagnosed FASD clients to comply with various sentencing dispositions."

Police officers

Police officers most frequently identified that they were unsure of what information, services and processes may assist them in ensuring fair justice outcomes for an individual with FASD. Other responses included the need for access to support and services including multi-agency input, greater awareness and knowledge of FASD and its effects within the community, and access to training and education.

"If it is a diagnosed disability and this is taken into account at sentencing with the justice outcome fair to the offender AND the community, that would lead to a fairer result all round. I do not know if there is a treatment program. The problem has to be resolved before the child is born ie by education in the communities where FASD is an issue of the dangers of alcohol abuse whilst pregnant."

"…Police can't affect sentencing but we can offer or direct persons to help if we know where to send/refer them (this can help in prevention)."

"Information so that a warning can be given to officers so that they manage there [sic] [their] investigations with FASD in mind."

"Earlier intervention with persons effected. If the sufferer is in the Justice system in most cases it is too late to save them. In my experience there is a very strong link between juvenile offenders and FAS."

Discussion

This study provides the first description of perceptions and practices related to FASD in the WA justice system. Many of the findings from this study are consistent with the original study of judges and prosecutors in Canada which provided the foundation for this work.[20] Our study extends the work of Cox and co-workers to examine the perceptions and practices of professionals from all four sectors of the justice system in WA – judicial, legal, corrections and police. More than 75% of participating judicial officers, more than 85% of participating lawyers and DCS staff, and almost 50% of police officers perceived FASD as relevant to their work. Across all four sectors of the justice system most participants reported only a basic understanding of FASD and how it affects individuals, and most indicated a need for improved knowledge about FASD, including information to improve the identification of individuals in need of specialist assessment, and guidelines on how to deal with people with FASD. We also found strong support across all sectors for the development of appropriate alternative or diversionary sentencing options for people with FASD. These findings provide valuable evidence which can be used to improve the ability of justice system professionals to deliver appropriate and effective services to the WA community, and improve the application of equality before the law in WA for people with FASD.

Awareness and Knowledge

Over 90% of participating judicial officers, lawyers and DCS staff were aware of FAS. Awareness of FASD was lower than for FAS across all sectors, and slightly lower than levels found among judicial officers and lawyers in QLD.[49, 50] Similar to findings reported from studies in QLD[49, 50]and Canada,[20] the mainstream media was reported as the primary source of information on FASD. Formal training or professional education was identified as a significant source of information only among DCS staff, highlighting differences between sectors in the provision of training and development related to FASD. Although others have noted the potentially inaccurate nature of information about FASD communicated in the mainstream media,[49, 50] the recent implementation of two health promotion campaigns in WA to improve awareness of the harms associated with alcohol exposure during pregnancy[54] may positively influence awareness, knowledge and the mainstream media discourse.

In contrast to findings among QLD judges, where there was only 50% agreement that 'FASD is an identifiable syndrome'[49] almost 80% of WA participants agreed that FASD is real, and that the negative effect of alcohol on fetal development has been proven. When participants were asked to describe their understanding of FASD, we found few differences in response between the judicial, legal and corrections sectors in the frequency of identification of the following four key aspects of FASD: identification of the cause as alcohol consumption during pregnancy, identification of potential impacts on physical and psychological development, and recognition that the damage is permanent. Despite little access to formal assessment and diagnosis or specific support services for FASD within the justice system, some descriptions of how FASD can affect an individual a person were highly accurate.

As found in studies of United States service professionals[48] and QLD judges and lawyers,[49, 50] participants were most knowledgeable about the cause of FASD, and factors therefore important for prevention. Notably, some participants described FASD as caused by excessive alcohol use, alcohol

abuse or dependence. Although evidence generally supports the presence of a dose-response relationship between prenatal alcohol exposure and the severity of observed impairments,[55-57] the epidemiology of FASD remains complex, and there is currently no known safe level of alcohol for consumption during pregnancy.[58]

Consistent with the importance of formal training or professional development as a source of information on FASD among DCS staff, knowledge about FASD was highest among DCS staff, who were more likely to report a good understanding of how FASD affects children and adults (44%) than participants from all other sectors. Few DCS staff reported not being aware of how FASD affects children and adults (5%) compared with 30% or more among participants from other sectors. A good understanding of FASD among DCS staff is important to enable the appropriate identification and management of individuals with FASD, and FASD prevention within the corrections sector. However, appropriate management of people with FASD within the justice system requires adequate awareness of FASD and its consequences across all sectors where people with FASD experience disadvantage.[42, 59]

An understanding of how FASD affects individuals and their behaviour is critical to the identification of appropriate responses to this issue across all sectors of the justice system. Over 70% of participants requested further information and training on FASD, indicating the need for effective training programs designed to meet the specific requirements of staff within each sector, as have been recommended elsewhere.[20] Practical information on the identification and management of people with FASD was most frequently requested, as was also found among judges and prosecutors in Canada.[20] Requested information included assistance in identifying the need for specialist assessment, guidelines on how to deal with people with FASD, and where to go for support. Participants most commonly desired delivery of information electronically and via continuing professional development events.

Compared with all other participants, police officers reported lower awareness of FAS and FASD, and identified fewer key features of FASD. Police officers were also least likely to have been informed that a person had a FASD, and most likely to be unsure if they have ever dealt with a person they suspected of having a FASD. Lower awareness of, and less experience with FASD, may in part explain the findings that only approximately half of police officers were likely to perceive FASD as relevant to their work, that they were less likely to request both general and specific information about FASD, that they were less likely to agree that more detailed knowledge of FASD would assist their work, and that they were less likely to endorse the need for a co-ordinated approach to FASD in WA than participants from other sectors.

Recognition of FASD

Participants across all sectors frequently reported recognition of suspected FASD among individuals they dealt with, and raised concerns about the management of these individuals within the current system. Although this study was not designed to assess the prevalence of individuals with FASD within the justice system, participant responses indicate considerable awareness of FASD as an unaddressed issue within the justice system, and a perceived need for improved knowledge, services and programs to address the disadvantage experienced by individuals with FASD across all sectors of

the justice system.[42] A high rate of incarceration among individuals with FASD has been demonstrated in North America,[18, 28, 60] and formal investigations are required to assess the extent of involvement of people with FASD in the justice system in Australia and address this critical information gap.

Reported suspicion of FASD was most commonly based on identification of a poor attention span, low IQ, maternal history of alcoholism and physical appearance. Attention and arousal issues are frequently encountered among people with FASD.[55, 57, 61] While low IQ does occur among some individuals, it is not a characteristic feature of FASD. Most individuals with FASD have an IQ within the normal range.[8, 62] Low IQ was also frequently associated with suspicion of FASD among both judges and lawyers in QLD.[49, 50] The consistency of this finding between the WA and QLD studies suggests that perceptions of low IQ among individuals with FASD may be based on understanding of IQ as a well-known general indicator of cognitive function. However, IQ score is a composite indicator which can mask variability in performance and correlate poorly with successful functioning outside a structured test environment, and does not often indicate the spectrum of behaviours or nature of the cognitive impairments exhibited by people with FASD.[63] Identification of specific deficits in cognitive abilities including executive function, memory and adaptive function is needed to ensure that the impairments of individuals with FASD are recognised.[59]

Approximately 60% of participants from the judicial and legal sectors and 67% of staff from the corrections sector reported ever dealing with a person who may have FASD, a finding similar to those reported among judges and lawyers in QLD (69% and 58% respectively)[49, 50] and judges and prosecutors in Canada (59% and 53% respectively).[20] Considerably fewer participants had ever recommended or referred person for diagnosis, as was also found in QLD[49, 50] and Canada.[20] The most common reasons for never referring for diagnosis among judicial officers were that it was not their role, and that it would not change how the case is managed. Among lawyers and DCS staff the most common reason for never referring for diagnosis was that they did not know where to refer the person. These findings demonstrate the impact of sector on both experiences and requirements for specific knowledge about FASD in the justice system. These findings reinforce the call for specific multidisciplinary diagnostic services for FASD in WA.[64]

Participants from all sectors recognised the need for appropriate medical support for people with FASD. Judicial officers highlighted the need for formal evidence of impairment relevant to the assessment of culpability and sentencing, and the role of lawyers in identifying when specialist assessment is required. Participants from all sectors noted the lack of services available for assessment, management and support for individuals with FASD and identified the need for further information in these areas. Over 70% of DCS staff and lawyers, 44% of judicial officers and 34% of police officers requested information about where to refer individuals for FASD diagnosis. DCS staff were most likely to report dealing with a person that they knew had FASD, consistent with both their greater awareness of FASD and their primary role in the management, rehabilitation and support of offenders.

Police officers frequently stated the limited nature of their role in the determination of justice outcomes for individuals with FASD, citing their primary responsibilities as investigation and the presentation of evidence for consideration in court, where mitigating circumstances are then considered. Many perceived the delivery of fair justice outcomes to be governed by legislative requirements and largely determined by factors outside of their control and their sector.

Identification of FASD

Police officers and other participants frequently referred to the constant need to adapt their practices to the needs of individuals with a variety of impairments, irrespective of the cause. Participants noted that FASD is only one of many conditions that can impair an individual's cognition and behaviour, and the impact of a disorder on an individual's cognition and behaviour was considered of central importance, rather than the specific cause of the impairment. Studies in other countries have highlighted that, due to poor awareness of the specific impairments associated with FASD, and the apparent ability of individuals with FASD to communicate normally, FASD often remains an unidentified impairment.[59, 65] Although the services of health professionals are required to provide specific information and advice about individuals with FASD, for the effective identification of FASD there is a need for justice system professionals to recognise and understand the basic neurocognitive impairments experienced by people with FASD to prompt the need for specialist assessment.[26]

We found widespread agreement among judicial officers, lawyers and DCS staff that the assessment and diagnosis of FASD would improve the possibilities of appropriate consequences for unacceptable behaviour, with levels of agreement found among judicial officers (79%) and lawyers (92%) in WA similar to those reported in Canada (87% and 82% respectively),[20] and slightly higher than those found in QLD (69% and 81% respectively).[49, 50] This is in line with the views expressed by the Chief Justice of WA in his submission to the WA Legislative Assembly Education and Health Standing Committee enquiry into FASD. [42] Many participants commented that the current system was unprepared and inadequately resourced to deal with FASD, with limited availability of alternative sentencing options.

Consistent with the CBA and ABA resolutions which urge avoidance of the criminalisation of people with FASD[30, 31] participant responses highlighted the need for improved capacity within the system to ensure effective identification of people with FASD and to provide programs which meet the specific needs of these individuals. Participants recognised that individuals with FASD required practice modifications to meet their needs during police interviews and cautioning, interactions with and giving instructions to their lawyer, and during and following the court process, including during incarceration, complying with court orders and provision of appropriate support within the community. Participants from all sectors recognised the need for alternative sentencing options, including diversion through a mental health court and programs which provide a supportive environment for individuals where the propensity to reoffend can be reduced.

Improved general awareness of FASD and access to specialist assessment services are important to ensure that the specific deficits experienced by individuals with FASD do not remain undetected and unaddressed in the justice system and in the general community. Failure to provide specific screening and diagnostic services for FASD precludes recognition of critical impairments in capacity and appropriate treatment. Formal evaluation of screening tools, including use of a locally appropriate checklist[66] and facial photography[67, 68] is needed to develop a standard and effective approach to the identification and referral of individuals for specialist assessment. Specialist multidisciplinary diagnostic services are recognised as the current standard for diagnosis[69] and there is an acknowledged need for improved national diagnostic capacity for FASD in Australia.[64] Work is continuing on the development of a national standard diagnostic tool for FASD in Australia,[70,71] and reinforcing calls for the establishment of specialist diagnostic capacity for FASD within the health

service of WA.[64, 72] Resources are also required to improve awareness of issues faced by people with FASD in the justice system and the management of individuals with FASD throughout the justice process, including the development of support services, legal resources and case law for FASD.[20, 32]

The lack of awareness of FASD in the general community, and lack of support services for people with FASD in the community were identified as important factors contributing to difficulties and issues encountered with FASD in the justice system. The frequent lack of family support for many people with FASD was also identified as a specific challenge. Strengthened prevention and management of these disorders in the community were considered key to preventing encounters with the justice system and addressing the drug and alcohol use and social circumstances that contribute to offending and recidivism.[25, 73]

There is growing evidence from North America describing programs which have proven efficacy in changing the behaviours of people affected by prenatal alcohol exposure and the lives of their families, carers and education.[74, 75] There is a need to develop effective locally-appropriate programs able to induce positive and sustained changes in behaviour and outcomes in the Australian context, including early intervention strategies to prevent children and youth with FASD appearing, or reappearing, before the courts. Policymakers have recognised that the cost of establishing programs for the diagnosis, management and prevention of FASD may be offset at a later date against the savings in the criminal justice system.[42]

Limitations

As a result of the consistently low response across sectors, our survey findings are unlikely to be generalisable. The inability of the investigators to directly administer the survey and provide personalised follow-up is likely to have contributed to the low response. A low response was also observed among similar surveys of judicial officers[49] and lawyers[50] in QLD despite considerable support for the research among the target group. A comparatively higher response (46% overall) was observed in a Canadian study of judges and prosecutors which differed to the current study in the use of personalised follow-up, including provision of the option to complete the survey via telephone interview, and the use of a considerably shorter questionnaire.[20]

The comparability of findings between sectors may also be influenced by variation in the nature of the participating organisations and the sampling methods used. Unlike participants from the other sectors, police officers who were invited to participate in the study were a random sample of all sworn officers. The larger police and corrections sector organisations also include significant specialisation of work roles, some of which may have more limited relevance to FASD. This may also occur in the judicial and legal sectors.

Conclusions

Our findings reveal deficits in the treatment of individuals with FASD within the justice system which are similar to those reported in studies of judges, lawyers and prosecutors in QLD[49, 50] and Canada,[20] and demonstrate important similarities and differences in perceptions and practice between professionals working in different sectors of the justice system. Overall we found that the WA justice system is poorly prepared and resourced to consider the neurocognitive impairments associated with FASD. Identified challenges to the effective management of individuals within the justice system include the need for:

1. training and education to improve awareness of the specific impairments associated with FASD that impact on the treatment of individuals with FASD across the justice system of WA;
2. training and education to describe how individuals with FASD should be managed;
3. improved methods for the identification of individuals with FASD and referral for specialist assessment;
4. identified specialist diagnostic services for FASD;
5. information to enable the appropriate recognition and management of an individual's neurocognitive and behavioural impairments within the justice system;
6. effective alternative sentencing options;
7. programs and resources to provide appropriate treatment for the underlying fixed brain injury; and
8. management and supportive environments specific to the needs of individuals with FASD.

Ultimately, the findings from this work emphasise the need for change within and outside of the justice system to prevent the continued engagement of people with FASD with the justice system. Participants recognised the importance of a co-ordinated cross-sector approach to the development of policies to improve both the recognition of, and response to, FASD. The strong engagement established among project partners provides a valuable foundation for continued collaboration to facilitate the development of locally appropriate resources and interventions to enable the more effective identification and management of people with FASD in the WA justice system.

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Appendix 1: FASD and Justice Websites

New Zealand

Court in the Act - Newsletter of the Youth Court of New Zealand (2-part special on FASD December 2010)
Part 1: http://www.lsa.co.nz/courts/youth/documents/publications-andmedia/newsletters/Issue%2050.pdf
Part 2: http://www.youthmentoring.org.nz/content/docs/Court%20in%20the%20Act.Dec.pdf

Fetal Alcohol Spectrum Disorder (FASD): Undiagnosed and Unrecognised - Judge Stephen O'Driscoll
http://www.courts.govt.nz/courts/youth/publications-and-media/principal-youth-court-newsletter/issue-53#6

Canada

Asante Centre
Identifying Fetal Alcohol Syndrome amongst Youth in the Criminal Justice System
http://www.asantecentre.org/_Library/docs/IdentifyingFASYouth.pdf

Legal Resources
http://www.asantecentre.org/legal.html

Youth Probation Officers Guide to FASD Screening
http://www.asantecentre.org/_Library/docs/Youth_Probation_Officers_Guide_to_FASD_Screening_and_Referral_Printer-Friendly_Format_.pdf

Canadian Bar Association
FASD as an Access to Justice Issue
http://www.cba.org/cba/submissions/pdf/11-20-eng.pdf

Resources
http://www.cba.org/cba/home/includes/SearchPage.aspx?txtSearch=FASD&txtSearchSubDir=

Professional Development – Addressing Fetal Alcohol Spectrum Disorder in the Criminal Justice System
http://www.cba.org/pd/details_en.aspx?id=NA_ONMAY111R

Correctional Services Canada
The Challenge of FASD in adult offender populations
http://www.csc-scc.gc.ca/text/pblct/forum/e143/e143s-eng.shtml

Department of Justice Canada
Victims and FASD: A Review of the Issues
http://www.justice.gc.ca/eng/pi/rs/rep-rap/rd-rr/rr07_vic4/p4.html

FASD and Youth Criminal Justice: A Discussion Paper (Sentencing)
http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_yj6-rr03_jj6/p5.html

FASD Ontario Networks of Experts (FASD ONE)
Justice Committee
http://www.fasdontario.ca/cms/groups/justice-committee

FASD and Justice
FASD and the Justice System was developed by the FASD ONE Justice Committee of FASD ONE (FASD Ontario Network of Expertise) with funding from the Public Health Agency of Canada and the Department of Justice Canada, Youth Justice Policy
http://fasdjustice.ca/

Government of Alberta
Criminal Justice System: Issues for Defence
http://www.fasd-cmc.alberta.ca/uploads/1010/fasdandpracticeissue79624.pdf

John Howard Society of Ontario
FASD and the Justice System: A Poor Fit
http://johnhoward.on.ca/pdfs/FactSheet_26_FASD_and_the_Criminal_Justice_System.pdf

Motherisk
Fetal Alcohol Syndrome in the Canadian Corrections System
http://www.motherisk.org/JFAS_documents/FAS_Corrections_REV.pdf

5th National Biennial Conference on Adolescents and Adults with FASD
It's a Matter of Justice Conference Presentations
http://www.interprofessional.ubc.ca/AdultsWithFASD/presentations.asp

Public Health Agency of Canada
Inventory of Education and Training Programs: FASD and the Judicial/Criminal Justice System
http://www.phac-aspc.gc.ca/hp-ps/dca-dea/publications/ietp-rpdf/pdf/ietp-rpdf-eng.pdf

Public Safety Canada
FASD and the Criminal Justice System, Aboriginal Corrections Policy Unit
http://www.publicsafety.gc.ca/res/cor/apc/apc-32-eng.aspx

Royal Canadian Mounted Police
Fetal Alcohol Spectrum Disorder: FASD Guidebook for Police Officers
http://www.asantecentre.org/_Library/docs/latestfasguide.pdf

United States

American Bar Association
Resolution with respect to FASD – 2012 Conference
http://www.americanbar.org/content/dam/aba/administrative/child_law/FASDRES_080712.authcheckdam.pdf

Children and the Law
Fetal Alcohol Spectrum Disorders: Legal Issues
http://www.americanbar.org/groups/child_law/what_we_do/projects/child_and_adolescent_health/fasd.html

Come on Over
FASD in the Court System
http://www.come-over.to/FAS/Court/

Journal of Psychiatry and the Law
Vol 39, No 1, Spring 2011 Special Issue FASD
http://www.federallegalpublications.com/journal-of-psychiatry-law/201110/jpl-2011-39-1-journal-of-psychiatry-law-volume-39-number-1-spring-2

National Institute on Alcohol Abuse and Alcoholism
Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders
http://www.niaaa.nih.gov/ICCFASD

North West Territories Justice Corrections Service Case Management Conference
FASD and the Criminal Justice System: An Exploratory Look at Current Treatment Practices
http://www.justice.gov.nt.ca/CommunityJustice/documents/Handouts-CaseManagementConference-June2010.pdf

You Tube: 123 Video presentations FASD and Justice 2008 - 2012
http://www.youtube.com/watch?v=VVaXchwh3AA

US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA)
FASD and the Criminal Justice System
http://fascenter.samhsa.gov/documents/WYNK_Criminal_Justice5.pdf

What corrections need to know about FASD
Santa Clara County Fetal Alcohol Spectrum Disorder Task Force, Santa Clara County Superior Court, District Attorney's Office, Probation Departments
http://www.youtube.com/watch?v=eT4i-nVFfn8&feature=share

Australia (not specifically FASD and Justice, however reports and submission do refer to FASD and justice)

House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs
Doing Time – Time for Doing: Indigenous youth in the criminal justice system
http://www.alsnswact.org.au/media/BAhbBlsHOgZmSSJ8MjAxMS8wOC8xNS8yM18xNl81N184MDdfRG9pbmdfdGltZV9UaW1lX2RvaW5nX0luZGlnX1lvdXRoX2luX0NyaW1pbmFsX0p1c3RpY2VfU3lzdGVtX0p1bmVfMjAxMV9Ib3VzZV9vZl9SZXBzX1JlcG9ydC5wZGYGOgZFVA

House of Representatives Standing Committee on Social Policy and Legal Affairs
Inquiry into FASD (Submissions and public hearings)
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/fasd/index.htm

Western Australia Legislative Assembly Education and Health Standing Committee
Inquiry into FASD Final Report
Foetal Alcohol Spectrum Disorder: the hidden disability
http://www.parliament.wa.gov.au/C8257837002F0BA9/(Report+Lookup+by+Com+ID)/1740F63B37A1314A48257A7F000766DD/$file/Final+FASD+Report+with+signature.pdf

Foundation for Alcohol Research and Education (FARE)
FASD Action Plan 2013-2016
http://www.fare.org.au/wp-content/uploads/2011/07/FARE-FASD-Plan.pdf

National Indigenous Drug and Alcohol Committee position paper on Fetal Alcohol Spectrum Disorder
http://www.healthinfonet.ecu.edu.au/about/news/885

Western Australian Department of Health, Child and Youth Health Network FASD Model of Care
http://www.healthnetworks.health.wa.gov.au/modelsofcare/docs/FASD_Model_of_Care.pdf

FASD Support and Advocacy Groups in Australia

National Organisation for Fetal Alcohol Syndrome and Related Disorders (NOFASARD)
NOFASARD is the peak national non-government organisation representing the interests of parents, carers and others interested in or affected by FASD.
NOFASARD delivers support to families living with FASD and education and training workshops for both government and non-government agencies throughout Australia.
Email: admin@nofasard.org.au
Phone: 1300 306 238
Website: http://www.nofasard.org/.au

Russell Family Fetal Alcohol Disorders Association (rffada)
rffada is a not-for-profit health promotion charity dedicated to ensuring that individuals affected prenatally by alcohol have access to diagnostic services, support and multidisciplinary management planning in Australia and that carers and parents are supported with a “no blame no shame” ethos.
Email: anne@trainingca.com.au
Phone: 1800 733 232
Website: http://rffada.org/

Resources that may also be useful for staff within the justice system to understand people with a FASD

Living with Fetal Alcohol Spectrum Disorders: A Guide for Parents and Caregivers (Australia)
http://beta.den2.handbuiltcreative.com/wp-content/uploads/2011/05/Living-with-FASD-A-Guide-for-Parents-and-Caregivers-VR-4-2011-2.pdf

Edmonton and Area Fetal Alcohol Network (EFAN)
FASD - Strategies not Solutions – A Downloadable Manual
http://www.faslink.org/strategies_not_solutions.pdf

DVD Information Parents and Teachers – Finding Hope
http://findinghope.knowledge.ca/home.html

FASD Diagnosis

There are various guidelines used to diagnose FASD throughout the world. In 2012 the Australian FASD Collaboration led by Winthrop Research Professor Carol Bower from the Telethon Institute for Child Health Research and Professor Elizabeth Elliott from the University of Sydney finalised a report on the development of a FASD diagnostic instrument for use in Australia to the Commonwealth Department of Health and Ageing (DoHA). At the time of submitting this report to FARE the DoHA was considering the report and implementation. The proposed Australian instrument combines elements from the Canadian Guidelines and the University of Washington 4-Digit Code for FASD.

Canadian Guidelines for Diagnosis (Canadian Guidelines)
Chudley, A. E., Conry, J., Cook, J. L., Loock, C., Rosales, T., & LeBlanc, N. (2005). Fetal Alcohol Spectrum Disorder: Canadian guidelines for diagnosis. *Canadian Medical Association Journal, 172*(5 Suppl), S1-S21.
http://www.cmaj.ca/content/172/5_suppl/S1.full

University of Washington 4-Digit Diagnostic Code for FASD (UW Guidelines)
Astley, S. J. (2004). Diagnostic Guide for Fetal Alcohol Spectrum Disorders: The 4-Digit Diagnostic Code (Third ed.). Seattle: University of Washington.
http://depts.washington.edu/fasdpn/htmls/4-digit-code.htm

Appendix 2A: Judicial Survey

Judicial Survey
1. What is your gender? Male Female
2. What is your age? 20-29 30-39 40-49 50-59 60+
3. What is the location of your work? (Please tick more than one if appropriate) Perth Outer metropolitan Regional (eg. Mandurah, Bunbury, Geraldton, Broome Albany,) Rural Remote
4. What year did you graduate from Law School/University/Training (relevant to the criminal justice sector)? a) Not applicable b) 1969 or before c) 1970 – 1979 d) 1980 – 1989 e) 1990 – 1999 f) 2000 – 2009 g) 2010 or after
5. What is your role/position/title? (eg Children's Court Magistrate)
6. What is your current or usual area of work or practice?
7. How long have you worked in the justice sector (including time in practice)? (Years) Less than one 1-5 years 6-10 years 11 or above
8. Have you heard of Fetal Alcohol Syndrome (FAS)? **Yes No**
9. Have you heard of Fetal Alcohol Spectrum Disorder (FASD)? **Yes No**
10. If you answered YES to Questions 8 and/or 9, from which of the following sources do you know about FAS/FASD? (Tick more than one if appropriate) a) In the mainstream media b) During my university education or professional training c) Legal Practitioner or other justice professional d) Colleague e) Professional journal f) Education session – conference, seminar, workshop g) Court Pre-sentence Report h) Court Ordered Psychological/Psychiatric Report i) Other (Please specify)

11. **If you answered YES to Questions 8 and/or 9 which of the following would best describe your knowledge of FAS/FASD?**
    a) Have an awareness of the condition (seen references) but not how it affects children and adults
    b) Have a basic understanding of the condition and how it affects children and adults
    c) Have a good understanding of the condition and how it affects children and adults

12. **The remaining questions refer only to FASD. We use the term FASD as this incorporates the unique syndrome of FAS and all other conditions related to prenatal alcohol exposure.**

Please indicate your level of agreement with the following statements.

    a) FASD is a real syndrome
    b) FASD is relevant to my work in the criminal justice system
    c) Alcohol's negative effect on fetal development has been proven
    d) FASD is only an issue for children and youths and not adults
    e) Assessment and diagnosis of FASD would improve possibilities of appropriate consequences for unacceptable behaviour
    f) People grow out of FASD
    g) FASD occurs primarily in Indigenous families

13. **In your own words, can you say what you understand FASD are?**

14. **Would it be helpful to have a forum to discuss the development of a co-ordinated approach to FASD in WA?**

Yes No

15. **Would you like more information about FASD?**

Yes No

16. **If YES, what kind of information would you prefer? (Tick more than one if appropriate)**
    a) Information on behaviours to prompt need for FASD assessment
    b) Contact details for organisations which specialise in the support of people with FASD
    c) Research articles on FASD
    d) List of qualified medical specialists
    e) Guidelines on how to deal with FASD
    f) Information about where to refer for diagnosis
    g) Other (Please specify)

17. **How would you prefer this information be delivered? (Tick more than one if appropriate)**

    a) Email
    b) Continuing professional development event
    c) Conferences/seminars
    d) Special visit to your workplace
    e) Other (Please specify)

18. **In the next 12 months we expect to explore further knowledge, attitudes and practices of FASD in the criminal justice system. If requested in the future are you likely to be willing to participate in an interview?**

Yes No

19. **Have parties or witnesses ever appeared before you or given evidence in your court who you SUSPECT had a FASD**
    a) Never
    b) Once
    c) 2-5 times
    d) 6-10 times
    e) 11+ times
    f) Don't know

20. What factors made you SUSPECT a person had a FASD? (Tick more than one if appropriate)

a) Physical appearance
b) Obvious low IQ
c) Inability to learn from mistakes
d) Repeat offender
e) Does not show empathy
f) Genuinely seems to not remember things
g) Poor attention span
h) Disinterested during consultation
i) Highly suggestible
j) Unable to follow court proceedings
k) Poor understanding of time (eg. inability to keep bail or court appointments)
l) Mother was a known alcoholic
m) Unable to comply with parole or bail requirements
n) Other (Please specify)

21 Have parties or witnesses ever appeared before you or given evidence in your court who you KNEW had been diagnosed with a FASD?

a) Never
b) Once
c) 2-5 times
d) 6-10 times
e) 11+ times
f) Don't know

22 How did you know the person had a FASD?

(Tick more than one if appropriate)

a) Investigation by, or on behalf of, the Court revealed a positive FASD diagnosis
b) The person advised you that s/he had a FASD
c) Known history of prenatal alcohol exposure
d) Characteristic facial features
e) The defence counsel advised you that the person had a FASD
f) The prosecution advised you that the person had a FASD
g) File notes indicated a FASD diagnosis
h) Other (Please specify)

23. If you SUSPECTED that a JUVENILE defendant had a FASD, would you consider taking a more detailed family history of the child (including mother's substance abuse history)?

Yes No

24. Why / why not?

25. If you SUSPECTED that a JUVENILE defendant had a FASD, would you recommend that an expert opinion is sought for a formal diagnosis of the condition?

Yes No

26. Have you ever recommended or required that a defendant be sent for a diagnosis or assessment for FASD where you have SUSPECTED FASD may be relevant?

a) Never
b) Once
c) 2 – 5 times
d) 6-10 times
e) 11+ times

Please provide details of where you sourced your expert from:

27. If you answered NO to Question 26 was it because: (Tick more than one if appropriate)

a) I did not have the power to request this
b) You had no knowledge of FASD at the time
c) This is not part of your role
d) It would not change how you consider the case
e) I did not know where to refer the person
f) Tried a number of options which did not work
g) Other (Please specify)

28. Have you ever used a specially-trained FASD facilitator to communicate with a person that you KNOW had a FASD?

a) Never knowingly encountered a person with a FASD
b) Never
c) Once
d) 2-5 times
e) 6-10 times
f) 11+ times

29. If you answered NEVER to Question 28 was it because: (Tick more than one if appropriate)

a) I did not know that such a service exists
b) Such services are difficult due to location
c) Such services are only available for those with a diagnosis and the person did not have a diagnosis
d) I am well trained to communicate with a child or youth with a FASD
e) Not necessary to have such a service
f) Other

30. What alternative treatment/diversionary sentencing options for offenders with FASD are you most likely to consider?

(Select one)

31. Do you think it would be helpful to have additional alternative treatment/diversionary sentencing options to clients with a FASD?

Yes No If YES, what options could these include and if NO why not helpful?

32. Please indicate your level of agreement with the following statements to reflect the likelihood that you will change or modify your practices, if a defendant was diagnosed with a FASD.

a) I would change or modify my approach to use of formality
b) I would change or modify my use of language
c) I would change or modify my approach to communication methods
d) I would change or modify my speed of proceedings
e) I would change or modify my approach to closing the court
f) I would change or modify my approach to fitness to plead

33. A more detailed knowledge of FASD would assist my work in the criminal justice system

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

34. How does/would the knowledge that an accused had a FASD impact on your decision-making?

35. What challenges do you face in the dealing with an individual with a FASD?

36. What information, services and processes might assist you to deal with an individual with a FASD?

Thank you for completing this survey.

Appendix 2B: Legal Survey

Appendix 2C: Corrections Survey

Appendix 2D: Police Survey

Appendix 3A: Justice Project Information for Judicial Officers

Email from DotAG to Judicial Officers

We are inviting you to take part in a research project conducted by the Telethon Institute for Child Health Research, Centre for Child Health Research (TICHR), the University of WA. The survey is being run by the Research and Analysis Branch, in order to protect your privacy. The survey should take approximately 10 minutes to complete. To complete the survey, please click on the link at the bottom of this e-mail.

The purpose of the project is to:

- find out what people across the justice sector know about Fetal Alcohol Spectrum Disorders (FASD), their attitudes towards adults, children and adolescents who may have a disorder in the spectrum, and their current practices in dealing with FASD; and
- identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

You should have already received an information sheet about this survey. As a reminder, please note that:

- participation in the survey is voluntary and you are free to withdraw from the research at any time without prejudice in any way;
- if you do not wish to participate, you can reply to the e-mail containing the survey invitation and let us know;
- identifying information will be removed before the data is sent securely to TICHR, where it will be stored securely;
- the results of this project will be reported at scientific conferences, in scientific journals and possibly the media;
- the results will also be used to identify the training and information needs relating to FASD within the justice system, with the overall goal to improve referral for people with FASD for appropriate services within and outside the justice system.

If you have any questions about this project or the survey please contact:

- Dr Raewyn Mutch, Chief Investigator on 0417 902 471 or raewynm@ichr.uwa.edu.au;
- Ms Heather Jones, Project Manager on 08 9489 7724 or hjones@ichr.uwa.edu.au;
- Dr Monica Cass, Senior Research and Evaluation Officer, DotAG on 08 9264 6236 or Monica.cass@justice.wa.gov.au; or
- Magistrate Andree Horrigan, DotAG representative on the Project Reference committee on magistrate.horrigan@justice.wa.gov.au.

If you have any concerns or complaints about this research project, you may contact the Human Research Ethics Office at The University of Western Australia on (08) 6488 3703 or by email to hreo-research@uwa.edu.au.

If you encounter any technical difficulties completing the survey, please contact Monica Cass at the above number.

Thank you for your time in completing this survey.

To participate in this survey, please click on the link below:

Http://...............

INTERDISCIPLINARY RESEARCH ON PROFESSIONAL KNOWLEDGE, ATTITUDES AND PRACTICE OF FETAL ALCOHOL SPECTRUM DISORDERS (FASD) WITHIN THE CRIMINAL JUSTICE SECTOR

A project conducted by the Telethon Institute for Child Health Research (Telethon Institute)

Funded by a grant from the Foundation for Alcohol Research and Education (FARE)

INFORMATION SHEET – JUDICIAL OFFICERS

We are inviting you to take part in a research project conducted by the Telethon Institute for Child Health Research, Centre for Child Health Research, the University of WA.

Project objectives

- To find out what people across the justice sector know about Fetal Alcohol Spectrum Disorders (FASD), their attitudes towards children and adolescents who may have a disorder in the spectrum, and their current practices in dealing with FASD.
- To identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

What will your participation involve?

You will be asked to participate in a survey. You will be sent an email containing a link to the survey and information on how to complete it.

The survey should take approximately 10 minutes to complete. By participating you will have contributed your knowledge, experience and insight into current practices within the criminal justice system.

Participation is voluntary

Participation in the survey is voluntary and you are free to withdraw from the research at any time without prejudice in anyway. Should you withdraw your details will be removed from the database and no further contact will be made unless you specifically request a copy of the final report.

How will your privacy be protected?

Study participants' identifying information is stored securely and separately from questionnaire responses to protect individual confidentiality. For more information on this, please see the full Telethon Institute privacy statement at www.ichr.uwa.edu.au/about/privacy.

How will your information be used?

Your information will be used to prepare a report to the FARE. The results of this project will be reported at scientific conferences, in scientific journals and possibly the media. Individual participants will not be identified in any publications or reports arising from the project.

The results will also be used to identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

Questions and further information

- If you have any questions about this project or the survey please contact:
- Dr Raewyn Mutch, Chief Investigator on 0417 902 471 or raewynm@ichr.uwa.edu.au;
- Ms Heather Jones, Project Manager on 08 9489 7724 or hjones@ichr.uwa.edu.au;
- Dr Monica Cass, Senior Research and Evaluation Officer, DotAG on 08 9264 6236 or Monica.cass@justice.wa.gov.au; or
- Magistrate Andree Horrigan, DotAG representative on the Project Reference committee on magistrate.horrigan@justice.wa.gov.au.

Concerns or complaints about this research

If you have any concerns or complaints about this research project, you may contact the Human Research Ethics Office at The University of Western Australia on (08) 6488 3703 or by email to hreo-research@uwa.edu.au.

Approvals for this research

This research project has been approved by the University of Western Australia Ethics Committee, DotAG Research Advisory Group via the Department of Corrective Services Research and Evaluation Committee. The Chief Justice of Western Australia, Wayne Martin has expressed his support for the project in the form of letters to the various legal professional organisations in WA.

Appendix 3B: Justice Project Information for Lawyers

INTERDISCIPLINARY RESEARCH ON PROFESSIONAL KNOWLEDGE, ATTITUDES AND PRACTICE OF FETAL ALCOHOL SPECTRUM DISORDERS (FASD) WITHIN THE CRIMINAL JUSTICE SECTOR

A project conducted by the Telethon Institute for Child Health Research (Telethon Institute)

Funded by a grant from the Foundation for Alcohol Research and Education (FARE)

INFORMATION SHEET – LEGAL

We are inviting you to take part in a research project conducted by the Telethon Institute for Child Health Research, Centre for Child Health Research, the University of WA.

Project objectives

- To find out what people across the justice sector know about Fetal Alcohol Spectrum Disorders (FASD), their attitudes towards children and adolescents who may have a disorder in the spectrum, and their current practices in dealing with FASD.
- To identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

What will your participation involve?

You will be asked to participate in a survey. You will be sent an email containing a link to the survey and information on how to complete it.

The survey should take approximately 10 minutes to complete. By participating you will have contributed your knowledge, experience and insight into current practices within the criminal justice system.

Participation is voluntary

Participation in the survey is voluntary and you are free to withdraw from the research at any time without prejudice in anyway. Should you withdraw your details will be removed from the database and no further contact will be made unless you specifically request a copy of the final report.

How will your privacy be protected?

Study participants' identifying information is stored securely and separately from questionnaire responses to protect individual confidentiality. For more information on this, please see the full Telethon Institute privacy statement at www.ichr.uwa.edu.au/about/privacy.

How will your information be used?

Your information will be used to prepare a report to the FARE. The results of this project will be reported at scientific conferences, in scientific journals and possibly the media. Individual participants will not be identified in any publications or reports arising from the project.

The results will also be used to identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

Questions and further information

If you have any questions about this project or the survey please contact:

- Dr Raewyn Mutch, Chief Investigator on 0417 902 471 or raewynm@ichr.uwa.edu.au;
- Ms Heather Jones, Project Manager on 08 9489 7724 or hjones@ichr.uwa.edu.au;
- Ms Claire Rossi, Senior Solicitor Youth Law Team on 9261 6404 or Claire.rossi@legalaid.wa.gov.au

Concerns or complaints about this research

If you have any concerns or complaints about this research project, you may contact the Human Research Ethics Office at The University of Western Australia on (08) 6488 3703 or by email to hreo-research@uwa.edu.au.

Approvals for this research

This research project has been approved by the University of Western Australia Ethics Committee, DotAG Research Advisory Group via the Department of Corrective Services Research and Evaluation Committee. The Chief Justice of Western Australia, Wayne Martin has expressed his support for the project in the form of letters to the various legal professional organisations in WA.

Appendix 3C: Justice Project Information for Department of Corrective Services Staff

INTERDISCIPLINARY RESEARCH ON PROFESSIONAL KNOWLEDGE, ATTITUDES AND PRACTICE OF FETAL ALCOHOL SPECTRUM DISORDERS (FASD) WITHIN THE CRIMINAL JUSTICE SECTOR

A project conducted by the Telethon Institute for Child Health Research (Telethon Institute)

Funded by a grant from the Foundation for Alcohol Research and Education (FARE)

INFORMATION SHEET – CORRECTIVE SERVICES OFFICERS

We are inviting you to take part in a research project conducted by the Telethon Institute for Child Health Research, Centre for Child Health Research, the University of WA.

Project objectives

- To find out what people across the justice sector know about Fetal Alcohol Spectrum Disorders (FASD), their attitudes towards children and adolescents who may have a disorder in the spectrum, and their current practices in dealing with FASD.
- To identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

What will your participation involve?

You will be asked to participate in a survey. You will be sent an email from the Department of Corrective Services containing a link to the survey and information on how to complete it.

The survey should take approximately 10 minutes to complete. By participating you will have contributed your knowledge, experience and insight into current practices within the criminal justice system.

Participation is voluntary

Participation in the survey is voluntary and you are free to withdraw from the research at any time without prejudice in any way. If you do not wish to participate, please reply to the e-mail containing the survey invitation and let the survey administrator know.

How will your privacy be protected?

To protect your privacy, the Department's internal survey facility will be used. This will allow identifying information to be removed before the data is sent securely to the Telethon Institute. Study participants' identifying information will be deleted from the internal systems once the survey period is finalised. All data will be stored securely at the Telethon Institute. For more information on this, please see the full Telethon Institute privacy statement at www.ichr.uwa.edu.au/about/privacy.

How will your information be used?

Your information will be used to prepare a report to the FARE. The results of this project will be reported at scientific conferences, in scientific journals and possibly the media. Individual participants will not be identified in any publications or reports arising from the project.

The results will also be used to identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

Questions and further information

If you have any questions about this project or the survey please contact:

- Dr Raewyn Mutch, Chief Investigator on 0417 902 471 or raewynm@ichr.uwa.edu.au;
- Ms Heather Jones, Project Manager on 08 9489 7724 or hjones@ichr.uwa.edu.au;
- Dr Shona Hyde, Team Leader Research and Evaluation, Department of Corrective Services on 08 9264 6341 or shona.hyde@correctiveservices.wa.gov.au

Concerns or complaints about this research

If you have any concerns or complaints about this research project, you may contact the Human Research Ethics Office at The University of Western Australia on (08) 6488 3703 or by email to hreo-research@uwa.edu.au.

Approvals for this research

This research project has been approved by the Department of Corrective Services Research and Evaluation Committee. The Chief Justice of Western Australia, Wayne Martin has expressed his support for the project in the form of letters to the various legal professional organisations in WA.

Appendix 3D: Justice Project Information for Police Officers

INTERDISCIPLINARY RESEARCH ON PROFESSIONAL KNOWLEDGE, ATTITUDES AND PRACTICE OF FETAL ALCOHOL SPECTRUM DISORDERS (FASD) WITHIN THE CRIMINAL JUSTICE SECTOR

A project conducted by the Telethon Institute for Child Health Research (Telethon Institute)

Funded by a grant from the Foundation for Alcohol Research and Education (FARE)

INFORMATION SHEET – WA POLICE

We are inviting you to take part in a research project conducted by the Telethon Institute for Child Health Research, Centre for Child Health Research, the University of WA.

Project objectives

- To find out what people across the justice sector know about Fetal Alcohol Spectrum Disorders (FASD), their attitudes towards children and adolescents who may have a disorder in the spectrum, and their current practices in dealing with FASD.
- To identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

What will your participation involve?

You will be asked to participate in a survey. You will be sent an email from WA Police containing a link to the survey and information on how to complete it.

The survey should take approximately 10 minutes to complete. By participating you will have contributed your knowledge, experience and insight into current practices within the criminal justice system.

Participation is voluntary

Participation in the survey is voluntary and you are free to withdraw from the research at any time without prejudice in anyway. Should you withdraw your details will be removed from the database and no further contact will be made unless you specifically request a copy of the final report.

How will your privacy be protected?

Study participants' identifying information is stored securely and separately from questionnaire responses to protect individual confidentiality. For more information on this, please see the full Telethon Institute privacy statement at www.ichr.uwa.edu.au/about/privacy.

How will your information be used?

Your information will be used to prepare a report to the FARE. The results of this project will be reported at scientific conferences, in scientific journals and possibly the media. Individual participants will not be identified in any publications or reports arising from the project.

The results will also be used to identify the training and information needs relating to FASD within the justice system, so that people with FASD may receive appropriate consideration within the justice system and referral for appropriate services within and outside the justice system.

Questions and further information

If you have any questions about this project or the survey please contact:

- Dr Raewyn Mutch, Chief Investigator on 0417 902 471 or raewynm@ichr.uwa.edu.au
- Ms Heather Jones, Project Manager on 08 9489 7724 or hjones@ichr.uwa.edu.au
- The Manager, Academic Research Administration Unit academic.research@police.wa.gov.au

Concerns or complaints about this research

If you have any concerns or complaints about this research project, you may contact the Human Research Ethics Office at The University of Western Australia on (08) 6488 3703 or by email to hreo-research@uwa.edu.au.

Approvals for this research

This research project has been approved by University of Western Australia Ethics Committee, the DoTAG Research Advisory Group via the Department of Corrective Services Research and Evaluation Committee and by the WA Police Research Application Review Committee. The Chief Justice of Western Australia, Wayne Martin has expressed his support for the project in the form of letters to the various legal professional organisations in WA.

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ISBN: 978-0-9875187-2-9