

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

20 July 2020

Dear Committee Secretary

Inquiry into effective approaches to prevention, diagnosis and support for Fetal Alcohol Spectrum Disorder (FASD)

Following the hearing on Thursday 25 June, I provide the following additional material on the FASD Court in Winnipeg, Manitoba Canada. I wish to acknowledge Professor Dorothy Badry, from the University of Calgary, who compiled these resources. Below I provide a brief overview, followed by a compilation of resources on the Court (news reports and court documents).

Sincerely

Dr Tamara Tulich
School of Law
University of Western Australia

1. Overview

In Canada, the success of the *Manitoba FASD Youth Justice Program* has led to the creation of the *FASD Court in Winnipeg, Manitoba Canada*. The court was established in 2019 for youth and adults who have been diagnosed with FASD, with judicial officers who understand FASD and support workers who can advise and connect people with FASD with community programs (Provincial Court of Manitoba, 2019). It has been described as a ‘game changer’ (Malone, 2019). The Chief Judge of the Provincial Court of Manitoba, Margaret Wiebe, issued a Notice on 14 March 2019 which outlined the new docket:

One of the goals of these dockets is to provide the accused with a court environment that takes into account the specific deficits identified in the FASD assessment report and how they might be related to the offender’s moral blameworthiness or degree of responsibility for an offence. If there is a link between the deficits resulting from FASD and the offending behaviour, the Court would explore how the sentence imposed would best reflect and respond to that link.

The court’s features have been described as (Pro Bono Students Canada, 2019):

1. A smaller, quieter courtroom;
2. Judges with a specialized understanding of FASD;
3. Support workers available to provide connections to community programs; and
4. Access to help for obtaining a medical diagnosis.

May (2019) reported on the Court’s first sitting on 28 March 2019:

The familiar fluorescent glare of institutional overhead lights is gone. So is the click-clack of the court clerk’s keyboard — it’s been replaced with a sleek and silent model. A sign outside the Winnipeg courtroom, illustrated with a cartoon gavel, cautions spectators not to walk in and out — the swinging of the heavy wooden door would be yet another distraction.

Since its first sitting, demand for the court has ‘skyrocketed’ (Geary, 2020) and sittings have more than doubled.

The FASD court is, like most specialist courts, a sentencing court. That is, it requires an accused person to enter a plea of guilty before they can be admitted into the program. However, there

is no reason in principle why a similar court could not also determine fitness matters. Indeed, as we outlined in our submission and oral evidence to the Committee, consideration should be given to a similar court innovation in Australia. At the fitness stage, a ‘reg flags’ referral to timely assessment and diagnosis could lead to a referral to specialist court that would facilitate court-based management, judicial monitoring and a non-adversarial problem solving approach – for both fitness and, where relevant, sentencing. It would also facilitate, through the co-location of services, the efficient development of supported treatment and diversion plans. This could be built around innovations already in existence in Australia such as Neighbourhood Justice Centre that do not require a plea of guilty to access the services of the centre and Aboriginal Court models that prioritise Aboriginal knowledges, leadership and pathways to healing.

Geary, A. (2020, January 13). As demand explodes, Manitoba’s new FASD court expands to meet need. *CBC News*.

Malone, K.G. (2019, 3 February). New Manitoba court for people with FASD could be game changer: experts. *The Canadian Press*.

May, K. (2019, 28 March). First case for Canada’s first FASD Court. *Winnipeg Free Press*.

Provincial Court of Manitoba. (2019). *Notice re: FASD Dockets – Adults and Youth*. 14 March 2019.

Pro Bono Students Canada. (2019). Fetal Alcohol Syndrome Disorder (FASD): New studies suggest that the prevalence of Fetal Alcohol Syndrome Disorder (FASD) in the Canadian population is higher than previously thought. *Marl* (Manitoba Association for Rights and Liberties) 9 October 2019.

2. News Media on FASD Court in Manitoba - with links

<https://www.cbc.ca/news/canada/manitoba/manitoba-fasd-court-1.5423386>



Getting home: One man's way through Manitoba's new court for offenders with fetal alcohol disorder

Manitoba's new FASD court is designed for people like Everett Redhead, who has some of the wide-ranging symptoms of fetal alcohol spectrum disorders. CBC News followed him from his first court date in April to sentencing.

www.cbc.ca

<https://www.winnipegfreepress.com/local/first-case-for-canadas-first-fasd-court-507807822.html>



First case for Canada's first FASD court - Winnipeg Free Press

Something closer to daylight shines down from the courtroom ceiling, as a 20-year-old man takes a seat in the prisoner's box. The familiar fluorescent glare of institutional overhead lights is gone.

www.winnipegfreepress.com

<https://www.cbc.ca/news/canada/manitoba/manitoba-fasd-court-expansion-1.5386229>



[As demand explodes, Manitoba's new FASD court expands to meet need | CBC News](#)

Legal experts in Manitoba's new court to help offenders with fetal alcohol spectrum disorder (FASD) say demand for the docket has skyrocketed since its launch, leading to long wait times and ...

www.cbc.ca

New Manitoba court for people with FASD could be game changer: Experts

<https://winnipegsun.com/news/local-news/new-manitoba-court-for-people-with-fasd-could-be-game-changer-experts>



[New Manitoba court for people with FASD could be game changer: Experts | Winnipeg Sun](#)

Lawyers and judges say a new court set to open in Manitoba specifically for people with fetal alcohol spectrum disorder could be a game changer. "If you have somebody who can't read, can&rsquo ...

winnipegsun.com

<https://www.thelawyersdaily.ca/articles/10177>



[New Manitoba court for offenders with fetal alcohol syndrome called ‘game changer’ - The Lawyer's Daily](#)

A new Manitoba sentencing court for offenders with fetal alcohol disorders will mean better access to justice for a widespread number of those with the condition — particularly those coming from the province’s Indigenous population, legal minds say. The court will be in Winnipeg and could be up and running by the end of March, according to both a judge and lawyer who have long advocated for increased supports for those with fetal alcohol spectrum disorder (FASD) in the criminal justice system.

www.thelawyersdaily.ca

Rights Watch Blog*

<http://rightswatch.ca/2019/03/01/the-fasd-court-a-new-addition-to-the-problem-solving-courts-of-manitoba/>

[The FASD Court: A New Addition to the Problem Solving Courts of Manitoba – Rights Watch Blog | La veille sur les droits](#)

The FASD Court: A New Addition to the Problem Solving Courts of Manitoba. TOPICS: Criminal Law Federal Court Manitoba. Posted By: Larissa Campbell 01/03/2019. Did you know that besides the traditional courtroom there are in fact several problem solving courts here in Manitoba? In my opinion, problem solving courts are a wonderful opportunity ...

rightswatch.ca

<https://www.robsoncrim.com/post/2019/03/12/manitobas-therapeutic-jurisprudence-salvo-fetal-alcohol-spectrum-disorder-court>

FETAL ALCOHOL SPECTRUM DISORDER		
Diagnostic criteria	Diagnostic categories	
	FASD with 3 Sentinel Facial Features	FASD with < 3 Sentinel Facial Features
Prenatal alcohol exposure	Confirmed or unknown	Confirmed
Neurodevelopmental domains - Brain structure/Neurology - Motor skills - Cognition - Language - Academic Achievement - Memory - Attention - Executive Function, impulse control and hyperactivity - Affect regulation - Adaptive behaviour, social skills or social communication	Severe impairment in at least 3 neurodevelopmental domains	Severe impairment in at least 3 neurodevelopmental domains
Sentinel facial features - Short palpebral fissure - Smooth philtrum - Thin upper lip	Presence of 3 sentinel facial features	Presence of 0, 1 or 2 sentinel facial features

Manitoba's Therapeutic Jurisprudence Salvo: Fetal Alcohol Spectrum Disorder Court - Robson Crim Manitoba

Manitoba's Therapeutic Jurisprudence Salvo: Fetal Alcohol Spectrum Disorder Court. The Canadian criminal justice system is faced with a constant balancing act between retributive and restorative justice. While retributive justice focuses on the punishment being proportional to the offence, restorative justice focuses on the rehabilitation and ...

www.robsoncrim.com

<http://www.marl.mb.ca/posts/82-fetal-alcohol-syndrome-disorder-fasd>

Fetal Alcohol Syndrome Disorder (FASD) | MARL

New studies suggest that the prevalence of Fetal Alcohol Syndrome Disorder (FASD) in the Canadian population is higher than previously thought. In fact, FASD may even be more prevalent than autism. As acknowledged by criminal defence lawyer Lori Van Dongen, ...

www.marl.mb.ca

Aboriginal People's Television Network (APTN) media coverage and video on new Manitoba FASD Court

<https://www.aptnnews.ca/national-news/new-manitoba-court-aimed-at-people-with-fasd/>



[New Manitoba court aimed at people with FASD - APTN News](#)

New Manitoba court aimed at people with FASD Brittany Hobson. Feb 08, 2019 . Winnipeg is getting ready to welcome a new courtroom designed specifically for individuals with fetal alcohol spectrum disorder (FASD). But one First Nations organization is worried the project could lead to more problems than solutions. Brittany Hobson ...

www.aptnnews.ca

3. Court documents

NOTICE

PROVINCIAL COURT OF MANITOBA (WINNIPEG CENTRE)

Re: FASD Dockets – Adult and Youth

The Provincial Court of Manitoba has established an FASD disposition docket for both youth and adults who have an FASD diagnosis. One of the goals of these dockets is to provide the accused with a court environment that takes into account the specific deficits identified in the FASD assessment report and how they might be related to the offender's moral blameworthiness or degree of responsibility for an offence. If there is a link between the deficits resulting from FASD and the offending behaviour, the Court would explore how the sentence imposed would best reflect and respond to that link.

When/where will the FASD dockets be held?

Sittings for the FASD court start on Thursday March 28, 2019.

The in-custody youth docket will sit every Thursday morning at the Manitoba Youth Center. With the permission of the Court, an in-custody youth may be dealt with in courtroom 307 - 408 York Avenue on the youth out-of-custody docket if the matter is lengthy, if there is limited availability on the MYC Thursday morning docket, and if there is availability on the afternoon 307 list.

An FASD docket will also be held in courtroom 307 - 408 York Avenue every Thursday afternoon. This docket will alternate weekly between youth and adult matters. Subject to the comments in the previous paragraph, the youth docket should deal with out-of-custody youth who have an FASD diagnosis. The adult docket can deal with individuals who are either in or out of custody. Those accused who are in custody should be adjourned as a must transport and appear personally.

Scheduling the Hearing:

The matter should be scheduled through the Disposition Coordinator who will confirm counsel have ensured the appropriate FASD assessment and any other material are filed in advance.

The youth email is: youthpcdispos@gov.mb.ca

The adult email is: earlypcdispos@gov.mb.ca

The phone number is: 204-945-6712 (for both)

The available dates for FASD courts will be available on the Court's website.
<http://www.manitobacourts.mb.ca/provincial-court/available-dates/fasd/>

A detailed information sheet and Q & A is attached.

ISSUED BY:

“Original signed by:”

**Chief Judge Margaret Wiebe
(Manitoba)**

DATE: March 14, 2019

FASD INFORMATIONAL SHEET

FASD Dockets – Adult and Youth

The Provincial Court of Manitoba is establishing an FASD disposition docket for both youth and adults who have an FASD diagnosis. One of the goals of these dockets is to provide the accused with a court environment that takes into account the specific deficits identified in the FASD assessment report and how they might be related to the offender's moral blameworthiness or degree of responsibility for an offence. If there is a link between the deficits resulting from FASD and the offending behaviour, the Court would explore how the sentence imposed would best reflect and respond to that link.

The FASD Justice Program

The FASD Justice Program - the "FASD JP" (formerly the FASD Youth Justice Program or FASD YJP) is being expanded to offer supports to those accused who have an FASD diagnosis obtained outside the FASD YJP. As well, the program will now offer ongoing supports to those with an FASD diagnosis (regardless of how obtained) for adult offenders to 25 years of age.

The FASD JP will assist in obtaining a copy of an existing FASD assessment for youth or adults. It will also facilitate an assessment for **youth** who do not yet have a diagnosis. An accused must have an official FASD diagnosis to participate in the FASD court.

The following information describes the criteria to be eligible for consideration in the FASD JP, depending on individual circumstances.

- Resident of Winnipeg (or planning to reside in Winnipeg post-sentencing);
- Pending on criminal charges;
- Consent of the accused/guardian/legal counsel;
- Confirmation of maternal drinking*.

*The FASD JP workers strongly urge that counsel refrain from discussing maternal drinking with the mother of the accused unless she raises the topic. As this continues to be a difficult topic for many women to discuss, it is best that this topic be left to the FASD JP workers who have training and experience in this area. Of course, if information is volunteered, it would be helpful if FASD JP workers were advised accordingly.

If Your Client is a.....

1. Youth Accused with no diagnosis –

- With the consent of the accused/guardian a referral can be made to FASD JP.
- The FASD JP will screen the referral, and if the criteria are met, a clinic date can be scheduled. An FASD assessment will be completed and if an FASD diagnosis is confirmed a copy of the report will be provided to counsel.

- If an FASD diagnosis is confirmed, the accused will receive support from the FASD JP both before and after sentencing.
- The FASD JP worker will assist in linking your client with services in the community.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

2. **Youth Accused** who *already has a diagnosis* through FASD JP – And your client has become re-involved with new charges -

- The FASD JP worker will be available to provide continuing support for the accused with the consent of the accused and the guardian.
- The FASD JP worker will build upon previous supports and/or arrange new community support where appropriate.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

3. **Youth Accused** and he/she has been *diagnosed outside FASD JP* -

- A referral can be made to FASD JP. With the consent of the accused/guardian in writing, the FASD JP worker will assist in obtaining an assessment (if counsel does not already have it).
- The FASD JP worker will work with the accused to establish community supports.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.

- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

4. **Adult Accused** and he/she was *diagnosed through the FASD JP* -

- With the consent of the accused, in writing, a copy of the assessment can be provided to counsel by the FASD JP worker.
- The accused must be agreeable and willing to engage with the FASD JP.
- The FASD JP will be available to provide continuing support to the accused to age 25.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

5. **Adult Accused** and was diagnosed *outside FASD JP* -

- A referral can be made to FASD JP. With the consent of the accused/guardian in writing, the FASD JP worker will assist in obtaining an assessment (if counsel does not already have it).
- With the consent of the accused in writing, a copy of the assessment can be provided to counsel by the FASD JP worker.
- The accused must be agreeable and willing to engage with the FASD JP.
- The FASD JP will be available to provide continuing support to the accused to age 25.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.

- Other community support workers who may be involved with the accused are also welcome to attend court.

FAQ

1. *When/where will the FASD dockets be held?*

At the Manitoba Youth Center (MYC) every Thursday morning.

The in-custody FASD youth docket will sit every Thursday morning at MYC. *With the permission of the Court*, an in-custody youth may be dealt with in courtroom 307 - 408 York Avenue on the youth out-of-custody docket if the matter is lengthy, if there is limited availability on the MYC Thursday morning docket, and if there is availability on the afternoon 307 list. Counsel may also add out-of-custody FASD dispositions and regular in-custody dispositions to the Thursday morning docket at MYC if an in-custody matter is also set.

At 307 – 408 York, every Thursday morning and afternoon.

An Adult FASD docket will be held in Courtroom 307- 408 York Avenue every Thursday morning and on the 1st, 2nd and 3rd Thursdays at 2:00 p.m. The 4th Thursdays at 2:00 p.m. will be the Youth FASD docket. Subject to the comments in the first paragraph, the youth docket should deal with out of custody youth who have an FASD diagnosis. The adult docket can deal with individuals who are either in or out of custody. Those accused who are in custody should be adjourned as a must transport, and should appear personally.

2. *Can I refer my client to the FASD JP for an assessment if we have not decided whether or not the outstanding charges will be contested or disposed of?*

Yes, you can request an assessment and if the criteria are met, a clinic date will be arranged. However, the FASD JP will not begin the process of arranging services and supports until the accused has been convicted or has entered a guilty plea.

3. *Once my client has been convicted or has decided to enter a guilty plea, can the matter be referred to the FASD docket?*

Yes, however, please recognize that the FASD docket is a disposition docket. Pleas can be entered on that docket and the matter can proceed to disposition if the Judge has been provided with the assessment and any other relevant information in advance. Alternatively, pleas can be entered in another Court and the matter can be adjourned to the FASD docket for disposition.

4. *How will matters be scheduled?*

Matter should be scheduled through the Disposition Coordinator who will confirm that counsel have ensured the appropriate FASD assessment and any other material are available and will be filed in advance of the disposition date.

The youth email is: youthpcdispos@gov.mb.ca
The adult email is: earlypcdispos@gov.mb.ca
The phone number is: 204-945-6712 (for both)

The available dates for FASD courts will be available on the Court's website.
<http://www.manitobacourts.mb.ca/provincial-court/available-dates/fasd/>

5. Does the assigned Crown attorney have to consent to a matter being heard on the FASD docket?

No, counsel can simply request that the matter be adjourned to the docket. However, depending on the degree of involvement of the assigned Crown attorney, their schedule may have to be taken into account.

6. Will there be a specific Crown attorney assigned to these dockets?

Yes, the Crown's office will assign specific counsel to attend these dockets. However, that does not preclude other Crown attorneys from maintaining conduct of matters where they have had significant involvement, despite the fact that the matter has been adjourned for disposition on this docket.

7. Will the same Judge preside in the FASD docket every week?

Although the intention is to have a smaller rotation of Judges assigned to this docket, it will not be the same Judge every week.

8. Can any type of charge be dealt with on an FASD docket?

Yes, any type of charge can be adjourned to this docket for disposition

9. Will the FASD JP workers attend Court with the accused?

Yes, if the accused is involved in the program, it is the intention of the FASD JP to have a worker attend with the accused on the date of disposition. It is hoped that the additional consistency in scheduling will make it easier for any community support workers who may be involved with the accused to attend court as well.

10. Will there be any changes to the actual Court proceedings?

Because some individuals with an FASD diagnosis are easily distracted, they often find certain aspects of the court process challenging. One goal of the Court is to provide an environment which is quieter than a normal court docket. Counsel will be asked to refrain from whispering, shuffling papers, texting on their cell phones, or coming in and out of the courtroom while a matter is being heard.

Counsel should consider it acceptable to wait in the hallway with their clients and any support people while other matters are being heard. It is hoped that a reduction in the number of people in the courtroom will assist the accused in understanding the proceedings.

Counsel will also be expected to address the specific deficits identified in the FASD assessment and should be prepared to discuss the nexus, if any, between the accused's deficits, the offending behaviour and their relationship to an appropriate sentence.

11. Will there be any changes to the supports available after sentencing?

The FASD JP will continue to work with your client after sentencing to facilitate community supports, if the client is willing to accept the supports. Because the community supports are largely voluntary, it is likely that while they will be referenced during submissions, the client's participation will not be specifically mandated by a Court order. It is more likely that a probation order may require an offender to "attend, participate and complete" any programming directed by the probation officer, giving all parties a needed degree of flexibility post-sentencing.

12. My client has an FASD diagnosis and I intend on referencing it during my submissions. Do I have to adjourn the matter to the FASD docket?

No. Although counsel will be encouraged to take advantage of the FASD docket and the resources available through the FASD JP, no one will be forced to participate. However, please remember that *wherever* you deal with the matter, if you reference a medical condition such as FASD, you should be prepared to provide supporting evidence and you should be prepared to address the nexus, if any, between the condition, your client's offending behaviour and the appropriate sentence.

13. Where FASD is suspected, can the Court force my client to obtain a diagnosis?

No. All participation in the assessment process, the follow up supports and/or the FASD court are voluntary.

14. My client is an adult but does not have a formal FASD diagnosis. Is there any way to obtain one?

The *Youth Criminal Justice Act* provides the Court jurisdiction to order an FASD assessment for youth when certain preconditions are met. The Court does not have similar jurisdiction under the *Criminal Code*. We are working with members of the medical community to try to establish some access to diagnosis for young adults. More information will be made available as this process evolves.

15. I understand that the sentencing Judge wishes to receive the materials in advance. Who is responsible for ensuring the Judge receives the assessment and other reports?

If a youth or adult is involved with the FASD JP then the FASD JP Coordinators will distribute the assessment reports to the Court. However, it is counsel's ultimate responsibility to make sure these reports as well as any other relevant material are before the Judge prior to the hearing date.

If a youth or adult is not involved with the FASD JP, but you have an assessment report (or you have asked FASD JP to obtain a copy of an existing report), then Defence counsel is responsible for distribution of the assessment reports to ensure judge, Crown and defence have background information for disposition, prior to the hearing date.