Fetal Alcohol Spectrum Disorder & the Criminal Justice System

What is FASD?

Fetal Alcohol Spectrum Disorder, also referred to as **FASD**, is a diagnostic term used to describe the impacts on the brain and body of individuals who are exposed to alcohol before birth.[1] It is a lifelong disability.

Fetal Alcohol Spectrum Disorders (FASDs) are a group of conditions that affect individuals in different ways.

Fetal Alcohol Spectrum Disorder (FASD)

A designation of at-risk for neurodevelopmental disorder and FASD

FASD with Sentinel Facial Features

FASD without Sentinel Facial Features [2]

Primary Disabilities

Individuals with FASD experience some degree of daily challenges. Some primary areas where individuals may need support:

- Motor skills
- Physical health
- Learning and skills development
- Memory and attention
- Understanding and following directions
- Switching attention between tasks
- Planning and organizing tasks
- Controlling emotions and impulsivity
- Communicating and developing social skills
- Experiencing depression and anxiety
- Life skills such as hygiene, understanding time, following directions, and managing money [1]

Adverse Outcomes

Individuals with FASD are also faced with a number of adverse outcomes. These can include:

- Medical
- School disruptions [4]
- Difficulty maintaining stable living arrangements and living independently [4, 5]
- Substance use
- Mental health [3, 4, 6, 7]
- Lack of employment [8, 9, 10]
- Social challenges
- Inappropriate sexual behaviour
- Conflict with the justice system including incarceration

A NOTE ABOUT LANGUAGE

"The FASD community prefers to use "person first" language. This means that you talk about a person that has a disability (as well as many other traits) rather than presenting the disability as the whole of who they are."

- CanFASD, 2023

Examples:
- Individuals with FASD
- People with FASD
- Youth with FASD

DID YOU KNOW?

Up to 90% of individuals with FASD have co-occurring (i.e., comorbid) mental disorders. This is especially evident with ADHD.[4, 5, 11]

Individuals with FASD are **10 times** more likely to have ADHD than the general population.[12]

PREVALENCE OF FASD IN CANADA

4%[13]

FASD

About
1.5 million people

FASD is the leading known cause of developmental disabilities in Canada - more common than autism, cerebral palsy, and down syndrome combined.[13]

1-2%[14]

AUTISM

About
400-700,000 people

0.2%[15]

CEREBRAL PALSY

About 80,000
people

0.1%[16]

DOWN SYNDROME

About 45,000
people

FASD is significantly **under- and mis-diagnosed** in Canada, which means that these numbers are likely much higher than reported.[17]

Why are people undiagnosed or misdiagnosed?

1. There is **no widely accepted screening test** for FASD in Canada.[18]
2. A **detailed multidisciplinary assessment** is needed.
3. It can be a **lengthy** and **costly** process.[18]
4. Confirmation of alcohol exposure during pregnancy is often required which is done by interviewing reliable sources.
5. FASD is often referred to as **"hidden"** as only 10% of individuals with FASD have any of the characteristic facial features associated with it.[9, 10, 13]
6. Individuals with FASD may also be **misdiagnosed with other disorders** (e.g., conditions such as ADHD and Williams syndrome have similar symptoms to FASD).[17, 19]

COSTS ASSOCIATED WITH FASD IN CANADA

APPROXIMATELY

40%

of the cost of FASD in Canada is associated with the criminal justice system. [20]

$9.7 billion

COST OF FASD IN CANADA PER YEAR

$3.9 billion [20]

COST OF FASD & THE CRIMINAL JUSTICE SYSTEM PER YEAR

COST BREAKDOWN OF FASD IN THE JUSTICE SYSTEM [20]

$1.6 billion	$1.2 billion	$500 million	$400 million	$200 million
for victims	for police	for correctional services	for court	for third-party

THE INTERSECTION BETWEEN FASD & THE CRIMINAL JUSTICE SYSTEM

THE NUMBERS

10-23%
of individuals with FASD are in the justice system[22-24]

There is an **overrepresentation** of both youth and adults[21] with FASD in the Canadian criminal justice system, specifically in **correctional settings.**[22]

These are likely **underestimates** due to individuals not being diagnosed or being misdiagnosed.[17]

60%
of people with FASD will have contact with the justice system [3]

Individuals with FASD face **additional challenges** as diagnostic services are limited within the justice system, and justice professionals may lack awareness on how to respond to individuals with FASD.

which is
30 times
higher than the general population[3, 24, 25]

Although criminal justice system involvement is an important challenge to consider for individuals with FASD, it is equally important to note that **not all individuals with FASD will become justice involved.**

Youth with FASD are
19 times
more likely to end up in custody [21]

Individuals with FASD are at **greater risk** of contact with the criminal justice system **at younger ages** and have **higher recidivism rates.**[26]

THE TRUTH AND RECONCILIATION CALLS TO ACTION FOR FASD

The Truth and Reconciliation Commission of Canada (TRC) has also recognized and recommended that the government better address the needs of individuals with FASD engaged in the justice system: [27]

Truth and Reconciliation Call to Action #33.

We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

Truth and Reconciliation Call to Action #34.

We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

- Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.
- Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.
- Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.
- Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

What can we do to reduce the risk of justice involvement and recidivism?

There is no "one-size-fits-all" approach to supporting individuals with FASD.

Each person with FASD has unique strengths, challenges, and needs which should be responded to through an individualized approach. This approach should be used through an FASD-informed lens to effectively reduce the risk of recidivism for these individuals.[28] If an FASD lens is not used, individuals with FASD are more likely to become deeply entrenched in a "revolving door" justice system.[29]

For example, people with FASD might appear uncooperative which is often mistaken for non-compliance (e.g., refusing to follow rules) by justice system actors. Rather than seeing these behaviours as something an individual can change, the justice system could adapt its practices to ensure that justice professionals provide individualized support to those that present with these behaviours.

FASD Screening

to provide individuals with appropriate referrals, assessments and supports

Preventative Programs

focused on prevention of criminal justice involvement

Diversion Programs

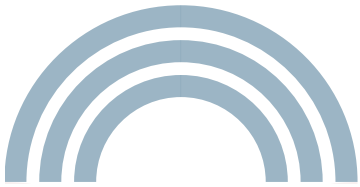
to prevent youth from entering the justice system

FASD-Informed Supports

essential in appropriately responding to individuals with FASD [3]

Training & Awareness

increasing awareness of justice professionals of FASD-informed approaches and support



Caregiver Stability

having stability in caregiving as a protective factor to decrease criminal justice involvement [3, 10]

JHSO's Position

The disproportionate rates of involvement in the justice system for people with FASD require a targeted approach. Greater awareness of FASD is essential for justice professionals, service providers and caregivers to recognize the signs of FASD in order to provide the appropriate care and response. There should be increased resources to facilitate access to diagnoses and provide culturally responsive prevention and diversion programs in order to improve outcomes for people with FASD.

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