

# 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.<sup>1</sup> It is a lifelong disability.

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

There are several different FASD diagnoses:

**Fetal alcohol syndrome (FAS)** is at the most involved end of the spectrum.<sup>2</sup>

### Other disorders on the spectrum include:

- Partial fetal alcohol syndrome (pFAS)
- Alcohol-related neurodevelopmental disorder (ARND)
- Alcohol-related birth defects (ARBD)
- Neurobehavioural disorder associated with prenatal alcohol exposure (ND-PAE)<sup>2</sup>

## 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 <sup>1</sup>

## Adverse Outcomes

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

- Medical
- School disruptions <sup>4</sup>
- Difficulty maintaining stable living arrangements and living independently <sup>4,5</sup>
- Substance use
- Mental health <sup>3,4,6,7</sup>
- Lack of employment <sup>8,9,10</sup>
- 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, 2017](#)

- 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. <sup>4,5,11</sup>

Individuals with FASD are **10 times** more likely to have ADHD than the general population. <sup>12</sup>

## PREVALENCE OF FASD IN CANADA

4%<sup>13</sup>

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.<sup>13</sup>

1-2%<sup>14</sup>

AUTISM

About  
400-700,000 people

0.2%<sup>15</sup>

CEREBRAL PALSY

About 80,000  
people

0.1%<sup>16</sup>

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.<sup>17</sup>

### ***Why are people undiagnosed or misdiagnosed?***

1. There is **no widely accepted screening test** for FASD in Canada.<sup>18</sup>
2. A **detailed multidisciplinary assessment** is needed.
3. It can be a **lengthy** and **costly** process.<sup>18</sup>
4. Confirmation of alcohol exposure during pregnancy is often required. This is done by interviewing the mother or other 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.<sup>9,10,13</sup>
6. Individuals with FASD may also be **misdiagnosed with other disorders** (e.g., conditions such as ADHD and Williams syndrome have similar symptoms to FAS).<sup>17,19</sup>

# COSTS ASSOCIATED WITH FASD IN CANADA



APPROXIMATELY

# 40%

of the cost of FASD in Canada is associated with the criminal justice system.<sup>20</sup>

## \$9.7 billion

COST OF FASD IN CANADA PER YEAR



## \$3.9 billion

COST OF FASD & THE CRIMINAL JUSTICE SYSTEM PER YEAR<sup>20</sup>

## COST BREAKDOWN OF FASD IN THE JUSTICE SYSTEM<sup>20</sup>

**\$1.6**  
billion



for victims

**\$1.2**  
billion



for police

**\$500**  
million



for correctional services

**\$400**  
million



for court

**\$200**  
million



for third-party

## THE NUMBERS



**10-23%**

of individuals with FASD  
are in the justice system<sup>22-24</sup>



**60%**

of people with FASD will  
have contact with the  
justice system<sup>3</sup>

which is  
**30 times**

higher than the general  
population<sup>3, 24, 25</sup>



Youth with FASD are  
**19 times**  
more likely to end up in  
custody<sup>21</sup>

## THE INTERSECTION BETWEEN FASD & THE CRIMINAL JUSTICE SYSTEM

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

These are likely **underestimates** due to individuals not being diagnosed or being misdiagnosed.<sup>17</sup>

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.

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**.

Individuals with FASD are at **greater risk** of contact with the criminal justice system at **younger ages** and have **higher recidivism rates**.<sup>26</sup>

## 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:<sup>27</sup>**

### **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.<sup>28</sup>

If an FASD lens is not used, individuals with FASD are more likely to become deeply entrenched in a “revolving door” justice system.<sup>29</sup>

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



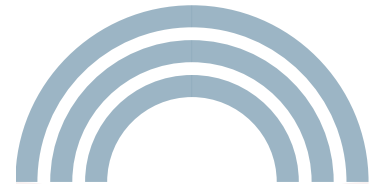
### **FASD-Informed Supports**

essential in appropriately responding to individuals with FASD<sup>3</sup>



### **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<sup>3,10</sup>



## **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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