

3/28/12

PRESENTA-

TION:

FASD AND

THE

JUSTICE

SYSTEM

<TARGET><BILL></BILL><SUBJECT>3-28-12 PRESENTATION
FASD AND THE JUSTICE
SYSTEM</SUBJECT><COMM>HJUD27</COMM></TARGET>

HJUD
Presentation

Melanie Lesh

3/28?

From: Melanie Lesh
Sent: Monday, March 19, 2012 5:13 PM
To: carljgatto@gmail.com
Cc: Melanie Lesh
Subject: RE: FASD Panel before House Judiciary on March 28

Carl,
The following email contains the essence of a House Judiciary Committee Overview request for next Wednesday (which correlate with the presence of this FASD Partnership folks being here in Juneau), March 28th.
FYI. Rep. Keller is said to be cross-sponsoring SB 151 Sen. Kevin Meyer's bill related to FASD.
Mel

BILL: SB 151 **SHORT TITLE:** FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

BILL VERSION:

CURRENT STATUS: (S) JUD **STATUS DATE:** 03/06/12

SPONSOR(s): SENATOR(S) MEYER, Hoffman, Dyson, Menard, Paskvan, Egan, Davis, Ellis, McGuire

TITLE: "An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

01/17/12 1225 (S)	PREFILE RELEASED 1/13/12
01/17/12 1225 (S)	READ THE FIRST TIME - REFERRALS
01/17/12 1225 (S)	HSS, JUD
01/20/12 1261 (S)	COSPONSOR(S): HOFFMAN, DYSON, MENARD, PASKVAN, EGAN, DAVIS, ELLIS, MCGUIRE
03/05/12 Text (S)	HSS AT 1:30 PM BUTROVICH 205
03/05/12 Text (S)	Moved CSSB 151(HSS) Out of Committee
03/05/12 Text (S)	MINUTE(HSS)
03/06/12 1754 (S)	HSS RPT CS 4DP NEW TITLE
03/06/12 1754 (S)	DP: DAVIS, DYSON, MEYER, EGAN
03/06/12 1754 (S)	FN1: INDETERMINATE(LAW)
03/06/12 1754 (S)	FN2: ZERO(CRT)
03/06/12 1754 (S)	FN3: ZERO(ADM)
03/06/12 1754 (S)	FN4: ZERO(COR)
03/06/12 1754 (S)	REFERRED TO JUDICIARY
03/12/12 Text (S)	JUD AT 12:30 PM BELTZ 105 (TSBldg)
03/12/12 Text (S)	Heard & Held

From: Tibbett, Teri (HSS) [mailto:teri.tibbett@alaska.gov]
Sent: Thursday, March 15, 2012 10:53 PM
To: Melanie Lesh
Cc: Burkhart, Kate (HSS)
Subject: FASD Panel before House Judiciary on March 28

Hi Melanie,

I'm writing to follow-up on the idea of a 15-minute panel before the House Judiciary Committee on the topic of FASD and the Justice System.

The panelists will be in Juneau for an FASD Justice Summit, hosted by the Alaska FASD Partnership, on March 28.

They include: Superior Court Judge Mike Jeffery, Barrow; Dee Dee Raymond, Mental Health Release Program/DOC; Trish Smith, Prevention Director/Volunteers of America-Anchorage, Stephanie Johnson, Mental Health/Nome Youth Facility; and Jeri Museth, Wellness Director, Central Council Tlingit & Haida Indian Tribes of Alaska/Juneau.

They would be prepared to give a short presentation on the prevalence of fetal alcohol spectrum disorders in Alaska's criminal justice system and solutions being implemented, followed by an opportunity to answer questions by the committee.

Before presenting to the committee, the panelists (as part of the FASD Justice Summit) will have met with the Juneau Mental Health Court, Juneau Public Defender's Agency, and Juneau Office of Public Advocacy, the statewide director of the Division of Juvenile Justice, and Barrow Superior Court Judge Michael Jeffery, who has been addressing FASD issues in his court for many years.

As a bit of background, our boards (see signature below) coordinate the [Alaska FASD Partnership](#), the sponsoring entity for the FASD Justice Summit. The goal of the summit is to strategize and put into place efforts to address fetal alcohol spectrum disorders within the criminal justice system. The "FASD and the Legal System Workgroup" of the Partnership has been working for nearly two years on issues related to FASD and the justice system.

Thanks again for your willingness to consider this. If it works out great, if not, thanks for trying!

Teri

Teri Tibbett
Advocacy Coordinator
Alaska Mental Health Board
Advisory Board on Alcoholism and Drug Abuse
(907) 465-4765

Melanie Lesh

HTB
SB 151

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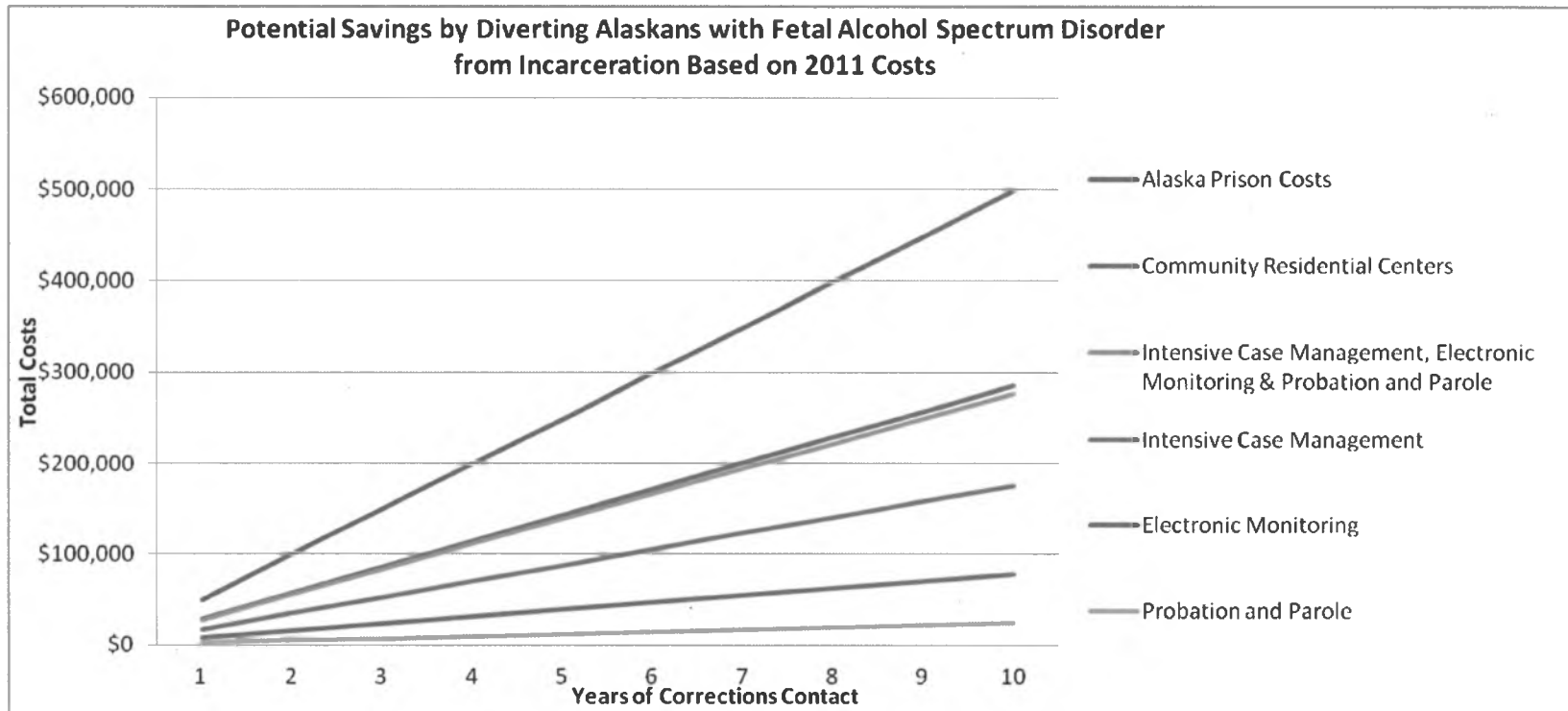
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	Alaska Prison Costs	Community Residential Centers	Intensive Case Management, Electronic Monitoring & Probation and Parole	Intensive Case Management	Electronic Monitoring	Probation and Parole
Daily Costs	\$136.44	\$78.34	\$76.01	\$48.00	\$21.25	\$6.76
Yearly Costs	\$49,800.60	\$28,594.10	\$27,743.65	\$17,520.00	\$7,756.25	\$2,467.40

Source of Corrections Costs: http://www.ahfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf
 Intensive Case Management costs based on a per person rate of \$48/day (highest estimate).
 Prepared by: Advisory Board on Alcoholism and Drug Abuse/Alaska Mental Health Board - 3.30.12

Alaska FASD Partnership

**Over 75 organizations
and individuals
supporting:**

Advocacy ▪ Diagnosis

- Case Management
 - Prevention
- Substance Abuse
 - Treatment for Pregnant Women
- Parent Navigation
- Training for Parents
- Public Awareness
 - Alternatives to Incarceration
- Court Interpreters
 - Peer Support
- Training for Judges, Public Defenders, and Prosecutors
 - Training for Educators and

Medical Professionals

- Traditional Healing
- Supported Housing and Employment
 - Family Support



March 30, 2012

House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Representative,

It is with great pleasure that the Alaska FASD Partnership supports HB 367 to include FASD as a mitigating factor in sentencing.

The intent underlying Alaska's sentencing structure – that people will modify their behaviors based on the criminal justice system's response to their crimes – is not met when applied to individuals with FASD. These disabilities manifest as deficits in executive function, resulting in impaired adaptive behavior, memory difficulties, an inability to plan, and a failure to recognize the consequences of actions. In the interest of justice, it is important to take these deficits into account during sentencing. Neither the offender nor society benefits from holding individuals with FASD to community standards that they cannot possibly attain given their impairments.

The cost of incarceration in Alaska's prison is about \$136 per day. Over the course of five to ten years in an Alaskan prison, an inmate is expected to cost the state close to \$250,000-\$500,000 (not including medical, mental health or other specialized treatment while incarcerated).

The cost of intensive case management, including electronic monitoring and probation/parole, is about \$76 per day (\$48 for intensive case management, \$21 for electronic monitoring, \$7 for probation/parole) – for a savings of \$21,900 per person, per year.¹

According to the 2009 ISER Study, *The Cost of Crime: Could the State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?* the cost of providing services is less than the cost of incarceration. With appropriate supports, clients with FASD and other brain-based disabilities can live successfully in the community as contributing citizens, and provide jobs for Alaskan case workers, clinicians, assisted living providers, mental health and substance abuse counselors, psychologists and psychiatrists. Not only does HB 367 further

¹ Source for Prison, Community Residential Centers, Electronic Monitoring & Probation and Parole: http://www.abfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf. Note: Intensive Case Management estimated costs are based on the most intensive case management with a high level of education and supervision for workers. Actual costs, depending on the case mix, may be lower.

the cause of justice for a vulnerable population, it represents a better investment of our state's resources.

Additionally, the state's movement toward "Smart Justice" aims to promote reduced public costs, fewer crimes, and a greater rehabilitative effect on offenders. While some offenders are clearly dangerous enough and need long-term incarceration, the research behind "Smart Justice" suggests that for certain non-violent offenders, treatment programs inside the prison, combined with adequate transition and case management services, will result in lower costs, less recidivism, and a safer general public.

Thank you for the time and effort you have put into supporting this important effort.

Sincerely,



Monica Charles-Leinberger, Chair
Alaska FASD Partnership

Partnership members include: *Abused Women's Aid in Crisis, Advisory Board on Alcoholism and Drug Abuse, Alaska Behavioral Health Association, Alaska Center for Children & Adults, Alaska Children's Services, Alaska Mental Health Board, Alaska Mental Health Trust Authority, Alaska Peer Support Consortium, Alaska Youth & Family Network, Aleutian Pribilof Islands Association, All-Alaska Pediatric Partnership, Anchorage Coordinated Resources Project, Anchorage School District (Anchorage), Anchorage Tlingit & Haida Indian Tribes of Alaska, Arctic FASD Regional Training Center, Assets Inc., Association for the Education of Young Children-SEAK, Big Brothers Big Sisters of Alaska, Boys & Girls Home of Alaska, Camp Fire USA Alaska Council, Central Council of the Tlingit & Haida Indian Tribes of Alaska, Christian Health Associates, Copper Basin Neurodevelopmental Center, Deltana Community Services Partnership, Dena A Coy/Southcentral Foundation, Diocese of Juneau, Fairbanks Community Behavioral Health Center, Family Centered Services of Alaska, Frontier Community Services, Gastineau Human Services, Governor's Council on Disabilities and Special Education, Hoonah Indian Association, Hope Community Resources, Independent Living Center, Kenai Peninsula FASD Program, Ketchikan Indian Community, Kinetictions, Kobuk Valley Consulting, Kodiak Area Native Association, Juneau Family Health and Birth Center, Juneau FASD Diagnostic Clinic, Juneau Partnerships for Families and Children, Lower Kuskokwim School District, Lynn Canal Counseling Services, Nenana City School District, Ninilchik Traditional Council, Nome Youth Facility, Nondalton Tribe, Regional Wellness Forum, Set Free Alaska, Inc. (Wasilla), Southcentral Foundation FAS Diagnostic Team, Southeast Regional Health Consortium, Southeast Regional Resource Center, Southern Kenai Peninsula Communities Project, Sprout Family Services, Stone Soup Group, Tongass Substance Screening, UAA Department of Health Sciences, UAA Center for Human Development, Volunteers of America-Alaska ...and many individuals.*



Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership
431 N. Franklin St. Suite 203, Juneau, Alaska 99801 • (907) 465-8920
Webpage: www.hss.state.ak.us/fasd.htm
Email: akfasdpartnership@alaska.gov

SB 151/HB 367 - Inclusion of FASD as a Mitigating Factor

The Need for SB 151/HB 367

Individuals diagnosed with a fetal alcohol spectrum disorder (FASD) are disproportionately represented within Alaska's criminal justice system. The intent underlying Alaska's sentencing structure – that people will modify their behaviors based on the criminal justice system's response to their crimes – is not met when applied to individuals with FASD. These disabilities manifest as deficits in executive function, resulting in impaired adaptive behavior, memory difficulties, an inability to plan, and a failure to recognize the consequences of actions. In the interest of justice, it is important to take these deficits into account during sentencing. Neither the offender nor society benefits from holding individuals with FASD to community standards that they cannot possibly attain given their impairments.

SB 151/HB 367 fulfills a recommendation adopted by the Alaska Criminal Justice Assessment Commission: "The legislature should create a statutory mitigating factor for use at criminal sentencing, recognizing when the wrongful conduct was substantially affected by an organic brain disorder."¹

A draft resolution being proposed by the Commission on Youth At Risk of the American Bar Association for consideration at this year's annual ABA meeting states: "... the American Bar Association urges lawyers and judges, as well as bar associations and law school clinical programs, to support training that includes law school law enforcement, and legal/judicial education curricula on enhanced awareness of the child and adult disability of Fetal Alcohol Spectrum Disorders (FASD) and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems, and that they work with medical, mental health, and FASD disability experts to promote: ... (d) applying FASD as a mitigating factor in the mitigation of juvenile justice and criminal sentencing ... and consideration of alternatives to incarceration that reduce recidivism."

Overview of the changes proposed in SB 151/HB 367

SB 151/HB 367 proposes to allow FASD as a mitigating factor for sentencing in certain cases where there is *clear and convincing* evidence that a "defendant committed [an] offense while suffering from a condition diagnosed as a fetal alcohol spectrum disorder, the fetal alcohol spectrum disorder substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the fetal alcohol spectrum disorder, though insufficient to constitute a complete defense, significantly affected the defendant's conduct."

SB 151/HB 367 would, for the purposes of the subsection on mitigating factors, define fetal alcohol spectrum disorder as any "a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy."

¹ Alaska Criminal Justice Assessment Commission (2000). *Final Report*. Retrieved October 12, 2010 from www.hss.aic.state.ak.us/reports/CJAC_Final_2004.pdf, at p.71.

The legislation *DOES NOT*:

- 1) *require* a judge to use the mitigating factor;
- 2) *automatically* adjust a presumptive sentence; the defendant would have to prove by *clear and convincing evidence* 1) that he or she has a fetal alcohol spectrum disorder and 2) that the condition “significantly affected the defendant’s conduct” before the judicial officer can consider the possibility of adjusting the presumptive sentence; or
- 3) the goal is not a “get out of jail free” card, but an attempt to be “smarter” within the justice system to better direct people who have impaired brain function to services both within and after release from the criminal justice system.

What are mitigating factors?

The Legislature has decided in the presumptive sentencing law that judges should give jail time within certain ranges in all felonies (with the exception of “class C felonies” where the minimum presumptive term is 0 years). The amount of the presumptive term depends on the severity of the crime and whether or not a defendant has prior felonies. There are 34 statutory aggravating factors that could result in a sentence above the presumptive range, if proved by clear and convincing evidence. A judge must sentence a person to at least the minimum presumptive term unless a “mitigating factor” is shown by clear and convincing evidence. There are 19 statutory mitigating factors. With the current mental disease or defect mitigating factor, the defendant must *also* show by clear and convincing evidence that the condition “significantly affected the defendant’s conduct.” The proposed fetal alcohol spectrum disorder mitigating factor also requires proof by clear and convincing evidence that the condition “significantly affected the defendant’s conduct” before a judge could consider it. If the required showing has been made for any mitigating factor, it is legally possible for the judge to sentence below the minimum term (but if the minimum term is more than 4 years, the lower limit is half the minimum presumptive term).

There are special rules when there is a factor in a case that does not fit within the statutory list but which is so important in a case that it would be manifestly unjust to sentence a person without considering the factor. If the sentencing judge finds that such a “non statutory mitigating factor” exists, then the judge must refer the case to a three judge sentencing panel. If at least two judges on the panel agree, the panel can sentence with the same lower limits applicable to a statutory mitigating factor. If the panel does not agree, the case is referred back to the original judge to impose at least the minimum presumptive term. The “three judge panel” method is very cumbersome, time consuming and expensive. SB 151/HB 367 is a “statutory mitigating factor” and would not require any referral to a three judge sentencing panel.

What are Fetal Alcohol Spectrum Disorders?

FASD is not a medical diagnosis, but an umbrella term for the range of diagnoses associated with damage caused by maternal alcohol consumption during pregnancy. These medical diagnoses can include Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (PFAS), Alcohol-Related Birth Defects (ARBD), and Alcohol-Related Neurodevelopmental Disorder (ARND). Note that the term, Fetal Alcohol Effects (FAE), is no longer commonly used, having been replaced by the PFAS, ARBD and ARND diagnoses.

Each diagnosis has its own symptoms and attributes, but common among all the diagnoses is permanent, life-long brain damage – often affecting decision-making, judgment and impulse control.

FASD is a brain-based disorder, similar to autism, traumatic and acquired brain injury, and other cognitive impairments.

FASDs appear in individuals differently. Some alcohol-exposed individuals may exhibit impulsivity, hyperactivity and risky behaviors. Some have difficulties with memory, while others have very good memories. Some have low IQs, while others have normal IQs.

Experts report that the different presentations are influenced by many variables, including when the mother drank, how much she drank, the genetic makeup (or genotype) of the baby, and the genotype of the mother.

Primary behavior characteristics of people with impaired brain function include: impulsiveness, memory difficulties, anger and frustration, difficulty pairing actions to consequences. Secondary behaviors that develop in reaction to or as a result of the primary disability, include substance abuse and mental health problems, anger and aggression, homelessness, involvement with the criminal justice system, and more.

Neurologist Dr. Susan Hunter-Joerns, a member of the Juneau FASD Diagnostic Team, wrote that structural brain damage "often significantly impair[s] cognitive behavior, common sense, the ability to understand right from wrong, cause-and-effect, consider consequences, ability to recognize social norm ... even though defendants may verbally seem able to talk about the issues. Making long term goals, planning appropriate actions, delaying gratification, and understanding the legal system, are often significant problems."

Who in Alaska is qualified to give a diagnosis of FAS/FASD?

Though some physicians may be qualified to diagnose all the disorders on the FASD spectrum, the preferred method of diagnosis, according to Susan Astley, Professor of Epidemiology and Pediatrics at the University of Washington and director of the Washington State FASD Diagnostic and Prevention Network, is by an interdisciplinary diagnostic team using current, rigorous FASD diagnostic guidelines. This preferred method is also advocated for nationally by the Centers for Disease Control and Prevention.

Each diagnosis on the spectrum requires evaluation and testing related to the Central Nervous System (CNS) to detect damage that cannot be measured alone by physical attributes. Interdisciplinary diagnostic teams using the 4-Digit Diagnostic Code include evaluations by a medical professional, psychologist, occupational therapist, and speech-language pathologist. These evaluations can detect the nuances of the disability.

How many diagnostic teams and/or physicians are available to give FASD diagnoses in Alaska?

Currently, through the Division of Behavioral Health FASD Diagnostic Team Provider Agreement, Alaska has eight active FASD diagnostic teams – in Bethel, Fairbanks, Mat-Su, Kenai, Juneau, Sitka, and two in Anchorage (Southcentral Foundation and ASSETS). Alaska also has a trained diagnostic team at Alaska Psychiatric Institute (API) for children who enter the service system through that door. In the past there were teams in Dillingham and Kodiak — both locations that are interested in reviving their teams at some point, but do not have the resources to do it at this time. Alaska also has had team in Nome, Copper Center, and Ketchikan. The majority of FASD diagnoses in Alaska are determined by the diagnostic teams overseen by DHSS.

How many people are diagnosed with FAS/FASD in Alaska annually?

In 2011, Alaska's FASD diagnostic teams diagnosed 179 individuals. The average per year number is around 153 per year, according to the Alaska Department of Health & Social Services.

What is Alaska's diagnostic standard based on?

In 1999, the DHSS Office of FAS, in conjunction with the statewide FASD Steering Committee, agreed to use the 4-Digit Diagnostic Code as the standard diagnostic system for Alaska's developing Diagnostic Team Network. The 4-Digit Diagnostic Code was developed at the University of Washington's FASD Diagnostic and Prevention Network by Drs. Susan Astley and Sterling Clarren. The 4-Digit Diagnostic Code measures: 1) facial features, 2) growth deficiency, 3) central nervous system damage/dysfunction, and 4) prenatal alcohol exposure. The client's diagnosis is derived after a thorough evaluation by an interdisciplinary team of professionals, which generally includes a physician (or nurse practitioner), psychologist, occupational therapist, speech-language pathologist, social worker, and family advocate. For more information on the FASD 4-Digit Code, visit: <http://depts.washington.edu/fasdpn/htmls/4-digit-code.htm>.

The 4-Digit Diagnostic Code is considered the "gold standard" for FASD diagnosis and provides a reliable, evidence-based diagnostic process that gives detailed information about the individual client and how best to help that person work with their disability to reach their full potential. All team members are required to complete the University of Washington FASD 4-Digit Diagnostic Code Training Course.

The economic benefits of SB 151/HB 367

The cost of incarceration in Alaska's prison is about \$136 per day. Over the course of five to ten years in an Alaskan prison, an inmate is expected to cost the state close to \$250,000-\$500,000 (not including medical, mental health or other specialized treatment while incarcerated).

The cost of intensive case management, including electronic monitoring and probation/parole, is about \$76 per day (\$48 for intensive case management, \$21 for electronic monitoring, \$7 for probation/parole) – for a savings of \$21,900 per person, per year.²

According to the 2009 ISER Study, *The Cost of Crime: Could the State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?*, the cost of providing services is less than the cost of incarceration. With appropriate supports, clients with FASD, T/ABI and other brain-based disabilities can live successfully in the community as contributing citizens, and provide jobs for Alaskan case workers, clinicians, assisted living providers, mental health and substance abuse counselors, psychologists and psychiatrists. Not only does SB 151/HB 367 further the cause of justice for a vulnerable population, it represents a better investment of our state's resources.

FASD in other jurisdictions

Judges nationwide are experiencing repeat offenders diagnosed with these disorders who, as a direct result of their disabilities, are effectively unable to understand the charges against them, or comply with the conditions of their sentence. There is a growing body of research affirming that FASDs are

² Source for Prison, Community Residential Centers, Electronic Monitoring & Probation and Parole: http://www.ahfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf. Note: Intensive Case Management estimated costs are based on the most intensive case management with a high level of education and supervision for workers. Actual costs, depending on the case mix, may be lower.

brain disorders effectively impairing “judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.”

Kate Burkhart, attorney and executive director of the Alaska Advisory Board on Alcoholism and Drug abuse, wrote that the language in SB 151/HB 367 “is commensurate with the federal sentencing guidelines and other western state laws that provide for such a mitigating factor. While none of the western states surveyed expressly include FASD in their definitions of mental defect, Utah includes a broad definition that would include FASD. The other states and federal guidelines would permit but do not mandate consideration of FASDs in sentencing unless they impair comprehension or ability to form intent.”

Burkhart noted that Utah defines “mental illness” as “a mental disease or defect that substantially impairs a person’s mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of an injury, or residual effect of a physical or mental disease that includes, but is not limited to, mental retardation” which is further defined to mean “significant sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior.”

Idaho permits consideration of mental condition creating an “inability to appreciate the wrongfulness” of conduct or to conform to legal requirements at sentencing.”

Washington permits the courts to consider “the defendant’s capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired.”

Nationally, advocates within the American Bar Association are proposing a resolution urging lawyers, judges, bar associations and law school clinical programs to promote “applying FASD as a factor in the mitigation of juvenile and criminal sentencing ... and consideration of alternatives to incarceration that reduce recidivism.” The resolution also asks, “that state and federal laws and policies reflect the serious effects of prenatal alcohol exposure by a) including persons diagnosed with FASD, or suffering from the affects of prenatal alcohol exposure, within the statutory definition of developmental disabilities ... and b) enhancing identification and diagnosis of ... persons with FASD.” Their intent is that this resolution would be approved by the ABA House of Delegates at the annual meeting in Chicago in August 2012.

Internationally, Alaska is among the forerunners in awareness, diagnosis, and prevention of fetal alcohol spectrum disorders, both nationally and internationally. However, Canada and parts of Australia are leading the world in establishing laws and practices that address FASD as a brain-based disability with specific interventions and solutions.

The Canadian Bar Association passed a resolution in 2010 acknowledging that FASDs involve a range of neurological and behavioral challenges that can include “impaired mental functioning, poor executive functioning, memory problems, impaired judgment, inability to control impulse behavior, inability to understand the consequences of their actions, and inability to internally modify behavior control.”

The resolution also acknowledged that “the criminal justice system is based on normative assumptions that a person acts in a voluntary manner, makes informed choices with respect to the decision to commit crimes, and learns from their own behavior and the behavior of others” and “ these normative assumptions and sentencing principals such as specific and general deterrence, are not valid for those with FASDs.

Following are other highlights addressed in the CBA’s resolution:

- sentencing options available to courts are often ineffective in changing the behavior of those with FASD and those with FASD are frequently repeat offenders

- some courts have ruled that absolutely no rehabilitative or deterrent purpose is served by incarceration of those with FASD;
- laws, programs or activities could ameliorate the disadvantages experienced by those with FASD whose behavior is judged on a standard that they are incapable of meeting because of their disability;
- the Canadian bar is resolved to urge the federal government to amend criminal sentencing laws to accommodate the disability of those with FASD.

In Heather Douglas' article, *The sentencing response to defendants with fetal alcohol spectrum disorder* (2010) published by Thomas Reuters in Australia, the author notes that "as a result of deficits in executive function resulting in memory difficulties, inability to plan and failure to recognize the consequences of actions, many of those with FASD are likely to fail to pay fines and to breach probation orders ... Suspended sentences will not be useful in a context where cause and effect is not understood. In prison, highly suggestible FASD sufferers are likely to be victimized. While FASD clients cannot be cured of all their symptoms, techniques and approaches have been identified that can be employed by professionals to help the person reach his or her potential."

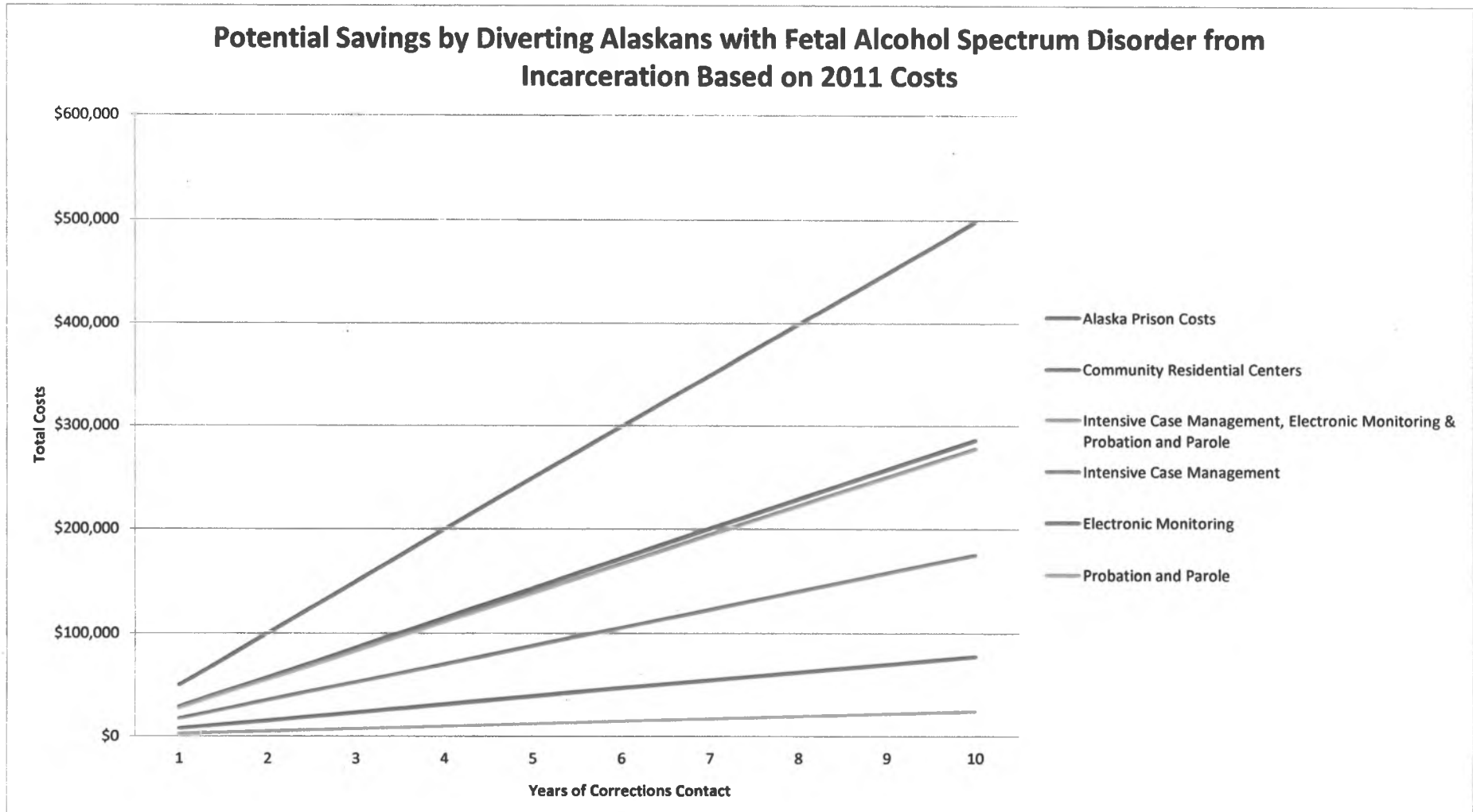
Conclusion

The state's movement toward "Smart Justice" aims to promote reduced public costs, fewer crimes, and a greater rehabilitative effect on offenders. While some offenders are clearly dangerous enough and need long-term incarceration, the research behind "Smart Justice" suggests that for certain non-violent offenders, treatment programs inside the prison, combined with adequate transition and case management services, will result in lower costs, less recidivism and a safer general public.

Chasnoff, M.D., an international expert on FASD, wrote in an article "Is Fetal Alcohol Spectrum Disorders a Mitigating Factor in Criminal Litigation and Sentencing?" in *Psychology Today* (2011), "We are in an ethical conundrum. Children, youth and young adults with FASD are more likely than not to end up before the court on criminal or civil charges, but the legal system has not come close to resolving how their cases should be treated. Most individuals with FASD have normal IQs, and most can relate a story as to how they ended up before the judge. Most can even state they understand the charges against them. But the truth is that neurocognitive damage that inhibits executive functioning, decision-making, and emotional and behavioral regulation has tremendous bearing on the capacity of these individuals to understand the ramifications of their actions. These people look normal, they speak normally, but they often have only a superficial understanding of the charges against them."

As noted by Canadian Judge Barry Stuart in *R. v. Sam* (1993), FASD takes away someone's "... ability to act within the norms expected by society." It is "manifestly unfair to make an individual pay for their disability with their freedom. Society is failed because a sentence calculated for a 'normal' offender cannot serve the same ends when imposed on an offender with FASD," he said. "Not only can traditionally calculated sentences be hopelessly ineffective when applied to FASD offenders, but the punishment itself, calibrated for a non-disabled individual, can have a substantially more severe effect on someone with the impairments associated with FASD," Judge Stuart concluded.

Potential Savings by Diverting Alaskans with Fetal Alcohol Spectrum Disorder from Incarceration Based on 2011 Costs



Source of Corrections Costs: http://www.ahfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf.
Intensive Case Management costs based on a per person rate of \$48/day (highest estimate)

Alaska FASD Partnership

Advocacy •
Diagnosis • Case
Management •
Prevention
• Substance Abuse
Treatment for
Pregnant Women •
Parent Navigation •
Training for Parents
• Public Awareness •
Education • Housing
• Employment •
Alternatives to
Incarceration •
Court Interpreters •
Training for Judges •
Supported Housing •
Case Workers •
Training for
Educators • Life
Skills • Traditional
Healing •
Intervention •
Training for Medical
Professionals •
Family Support



What are Fetal Alcohol Spectrum Disorders (FASD)?

Fetal Alcohol Spectrum Disorders (FASDs) are a range of birth defects caused by maternal consumption of alcohol during pregnancy. FASDs can include:

- Fetal Alcohol Syndrome (FAS)
- Partial Fetal Alcohol Syndrome (PFAS)
- Alcohol-Related Neurodevelopmental Disorder (ARND)
- Alcohol-Related Birth Defects (ARBD) and Fetal Alcohol Effect (FAE)
- Static encephalopathy (alcohol exposed)
- Neurobehavioral Disorder (alcohol exposed)

The term FASD is not in itself a clinical diagnosis, but describes the full range of disabilities that may result from prenatal alcohol exposure. Currently, the only expression of prenatal alcohol exposure that is defined by the International Statistical Classification of Diseases and Related Health Problems is FAS, assigned ICD-9 and ICD-10 diagnoses.

FASD-related disabilities result when alcohol crosses the placental barrier and causes the developing brain cells and structures in the fetus to be underdeveloped or malformed, causing permanent brain damage. Primary disabilities can include poor memory, attention deficits, impulsive behavior, and poor cause-and-effect reasoning. Secondary disabilities, or by-products of the primary disabilities, can include cognitive and behavioral problems, poor self-esteem, addiction disorders, homelessness and unemployability.

National prevalence rates for Fetal Alcohol Syndrome (FAS) range from 0.2 to 1.5 per 1,000 live births; prevalence rates for FASD were reported to occur approximately three times as often (Centers for Disease Control, 2004).

According to a 2007 report in the *Journal of Psychological Practice*, "FASD is of serious concern to behavioral health practitioners due to high prevalence rates, soaring economic costs, and lifelong implications of the disorder ... It is critical that practitioners working with children and families are aware of FASD and are prepared to screen for the disorder."

The Range of FASDs

Fetal Alcohol Syndrome (FAS) is a congenital medical condition which can include growth deficiency and body deformation, abnormal facial features, central nervous system damage, especially to the brain, and prenatal exposure to alcohol.

Partial Fetal Alcohol Syndrome (PFAS) is a diagnostic classification for patients who present with most, but not all, of the growth deficiency and/or facial features of FAS, central nervous system damage (structural, neurological and/or functional impairment), and prenatal exposure to alcohol.

Alcohol Related Neurodevelopmental Disorders (ARND)* is a diagnostic classification, coined by the Institute of Medicine in 1996, for patients who present with central nervous system damage (structural, neurological, and/or functional impairment).

Static encephalopathy (alcohol exposed)* The term *encephalopathy* refers to any significant abnormal condition of the structure or function of brain tissues. The term *static* means that the abnormality in the brain is unchanging – neither progressing nor regressing. This diagnostic classification is for patients who present with central nervous damage and prenatal alcohol exposure.

Neurobehavioral Disorder (alcohol exposed)* This is a diagnostic outcome classification for patients who present with central nervous system dysfunction (mild functional impairment with no evidence of structural or neurological abnormalities) and prenatal alcohol exposure.

*** Note:** Outcomes such as ARND, Static Encephalopathy (alcohol exposed), and Neurobehavioral Disorder (alcohol exposed) are more prevalent than FAS or partial FAS.

Alaska FASD Partnership

Advocacy ▪
Diagnosis ▪ *Case Management* ▪
Prevention
▪ *Substance Abuse Treatment for Pregnant Women* ▪
Parent Navigation ▪
Training for Parents
▪ *Public Awareness* ▪
Education ▪ *Housing*
▪ *Employment* ▪
Alternatives to Incarceration ▪
Court Interpreters ▪
Training for Judges ▪
Supported Housing ▪
Case Workers ▪
Training for Educators ▪ *Life Skills* ▪ *Traditional Healing* ▪
Intervention ▪
Training for Medical Professionals ▪
Family Support



Alaska FASD Talking Points

- FASDs are a range of disabilities caused when a developing fetus is exposed to alcohol.
- The term FASD is not in itself a clinical diagnosis, but describes the full range of disabilities that may result from prenatal alcohol exposure, including Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (PFAS), Alcohol-Related Neurodevelopmental Disorder (ARND), Static encephalopathy (alcohol exposed) and Neurobehavioral Disorder (alcohol exposed).
- One of every four Alaskans dependent on or abusing alcohol is a woman, and one of every 25 women whose babies are born alive said she drank while pregnant, according to the Center for Behavioral Health Research and Services (UAA).
- This lifelong disability can include learning disabilities, problems with memory, heart and kidney problems, impulsiveness, poor judgment, mental retardation and severe emotional disturbance (SED).
- Alaska has the highest per capita rate of FASD in the United States.
- FASD is the most common known cause of mental retardation in the United States.
- FASDs are a leading cause of preventable and permanent birth defects in the United States.
- A person with an FASD without support is at high risk of developing secondary disabilities – such as alcoholism, drug abuse, depression, mental illness, and/or criminal behaviors.
- With early diagnosis, knowledge, and support – families, schools and communities can become better equipped to support a person with FASD and minimize or prevent the development of secondary disabilities.
- With the right supports, individuals with FASD can live productive and fulfilled lives.

Alaska FASD Partnership

Advocacy •
Diagnosis • Case
Management •
Prevention
• Substance Abuse
Treatment for
Pregnant Women •
Parent Navigation •
Training for Parents
• Public Awareness •
Education • Housing
• Employment •
Alternatives to
Incarceration •
Court Interpreters •
Training for Judges •
Supported Housing •
Case Workers •
Training for
Educators • Life
Skills • Traditional
Healing •
Intervention •
Training for Medical
Professionals •
Family Support



FASD in Alaska's Correctional Institutions

Fetal Alcohol Spectrum Disorders (FASDs) are a range of birth defects caused by maternal consumption of alcohol during pregnancy. These defects can arise when alcohol crosses the placental barrier and causes the developing brain cells and structures in the fetus to be underdeveloped or malformed, resulting in permanent brain damage. Primary disabilities include poor memory, attention deficits, impulsive behavior, and poor cause-and-effect reasoning. Secondary disabilities, or by-products of the primary disabilities, can include alcoholism, drug abuse, depression, mental illness, and/or criminal behaviors. Impulsive behavior and poor cause-and-effect reasoning are commonly at the root of criminal behaviors.

A 2006 evaluation by the University of Alaska Anchorage (UAA) Behavioral Health & Research Services, conducted surveys distributed to personnel at each of Alaska's correctional institutions:

- Estimated percentage of the inmates on current caseload who may have FAS = 27%
- Percentage of Corrections staff who have referred an inmate for FAS screening or diagnosis = 25%
- Percentage of Corrections staff who say they have the appropriate skills and knowledge to deal with alcohol abuse among the inmates or offenders on their caseload = 56%
- Percentage of Corrections staff who say they have the appropriate skills and knowledge to deal with offenders or inmates who have FASD = 55%
- Percentage of Corrections staff who say they have the support of their administration to deal with inmates or offenders on their caseload who have FAS = 56%
- Percentage of Corrections staff who say the current social service programs within the correctional system are appropriate for inmates or offenders on their caseload who have FAS = 30%
- Percentage of Corrections staff who say the current educational service programs within the correctional system were appropriate for the inmates or offenders on their caseload who have FAS = 35%
- Corrections respondents had an average of 9-10 year experience working in corrections in Alaska.

Source: *FAS Knowledge, Attitudes, Beliefs and Behavior (KABB): 2006 Survey of Alaskan Professionals*. Behavioral Health Research and Services, FAS Evaluation, University of Alaska Anchorage. http://bhrrs.uaa.alaska.edu/pdf/reports/FAS/FAS_KABB_FINAL_Report.pdf

FETAL ALCOHOL SPECTRUM DISORDERS AND JUVENILE JUSTICE: HOW PROFESSIONALS CAN MAKE A DIFFERENCE



[T]here is hope. We can change how lawyers, clients, police, judges, probation officers, prison guards, and family members work with FASD clients.¹

—David Boulding, attorney for clients with fetal alcohol spectrum disorders

Young people who are affected by fetal alcohol spectrum disorders (FASD) are at increased risk for involvement with the juvenile justice system.^{2,3} Most youth who have an FASD have never received a diagnosis or services, and they reach the system after a long fall through the cracks.

HOW IS FASD LINKED TO PROBLEMS WITH THE JUVENILE JUSTICE SYSTEM?

Youth with an FASD were born with brain damage that can make it difficult for them to stay out of trouble with the law. They do not know how to deal with police, attorneys, judges, social workers, psychiatrists, corrections and probation officers, and others they may encounter.

Professionals who work with the court system can reach out to young people who may have an FASD to ensure that they receive needed help. Education and training can help professionals identify young people who may have an FASD. This can help them get fair treatment and appropriate services.

WHAT IS FASD?

“FASD” is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications.

The term FASD is not used as a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD). FASD occurs in about 10 per 1,000 live births, or about 40,000 babies per year in the United States.⁴

WHAT ARE THE CHALLENGES FOR YOUTH WITH AN FASD?

FASD’s effects on the brain can result in cognitive or behavioral deficits. These deficits may include mental retardation, learning disabilities, hyperactivity, attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.

Individuals with an FASD typically are impulsive and have trouble foreseeing the consequences of their actions. They

may have a poor sense of personal boundaries. Many are very susceptible to peer pressure and can be easily led. Their judgment is often poor.²

FASD also presents challenges throughout the judicial process, from questioning through arrest, hearings, sentencing, and detention. Many youth who have an FASD have poor communication skills, while others may “talk” much better than they can function. They may become confused under pressure. They often cannot understand their rights and may confess or otherwise implicate themselves and others, even if they are not guilty. Youth who have an FASD may believe that if they confess, they will be allowed to go home. They also want people to like them and may provide a false confession in an effort to please the police.

Youth who have an FASD typically have memory problems, which can contribute to forgotten court dates or meetings with probation officers, judges, and attorneys. Their risk for victimization in detention is high, as they may fall prey to other inmates.

It can be difficult for persons with an FASD to learn from their mistakes. Because the judicial process can be lengthy, they may not draw a connection between their actions and the later consequences. Once released from detention, youth who have an FASD may commit similar offenses and cycle through the system again and again.

HOW CAN THE SYSTEM HELP YOUTH WITH AN FASD?

Youth should be screened for FASD at all entry points into the juvenile justice system. Those who work in the system, especially attorneys and social workers, should look for a history of behavior that suggests an FASD. They also should ask questions about prenatal exposure to alcohol. When they suspect that an FASD is present, they should request a complete



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evaluation by clinicians qualified to diagnose an FASD. The evaluation should include assessments of possible co-occurring psychiatric disorders and adaptive behavior.⁵

Attorneys should be aware of FASD and use their knowledge to advocate effectively for their clients, particularly in proceedings related to:

- **Competency**—Youth with an FASD may be unable to understand the charges against them and participate in their own defense.
- **Diminished capacity**—Young people with an FASD may find it difficult to distinguish right from wrong, form intent to commit an offense, and understand consequences.
- **Decisions to decline/remand/waive**—Youth with an FASD are likely to be safer in a juvenile facility than in an adult prison due to potential victimization.
- **Sentencing**—In some cases, attorneys may be successful in presenting FASD as a mitigating or exculpatory factor. They also should explore alternative sentencing options.
- **Treatment**—Court-ordered treatment is sometimes the only way for youth with an FASD to receive appropriate interventions.

Information from evaluations, medical records, family history, and school and employment records should be included in presentencing investigations. The outcome may influence whether or not the youth will be detained, where, for how long, and what support he or she will receive. Appropriate services are essential, including medication or substance abuse treatment (if necessary), vocational training, life skills training, mentoring, and advocacy.

Detention of youth with an FASD may be unproductive. It can increase the risk of recidivism because they may copy the deviant behavior of other juveniles. For probation or aftercare, a highly supervised, structured living arrangement is critical for success. People with an FASD often have difficulty managing their money or tending to household chores. Attorneys should ensure that clients who were receiving developmental disabilities support do not lose their benefits while they are in the system.^{6,7}

Throughout the judicial process, communication with young people who have an FASD should be concrete, simple, and repetitive. Youth with an FASD have trouble following multistep instructions and understanding figures of speech. Using frequent reminders, visual cues, and open-ended questions can help them follow rules and understand what is happening.

FASD is not an excuse for breaking the law. However, all youth, including those with an FASD, deserve to be treated fairly by the juvenile justice system. Increased awareness and action at all levels of the system can offer a lifeline to young people with an FASD. In addition, the potential benefits to society, through decreased crime and costs, are tremendous.

ADDITIONAL RESOURCES

SAMHSA FASD Center for Excellence. 2005. **What You Need To Know: Understanding Fetal Alcohol Spectrum Disorders: Getting a Diagnosis.** Rockville, MD: fasdcenter.samhsa.gov

Minnesota Organization on Fetal Alcohol Syndrome. **Tools for Success: Working With Youth With Fetal Alcohol Syndrome and Effects in the Juvenile Justice System Resource Guide.** www.mofas.org

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Stop and think. If you're pregnant, don't drink.

For more information, visit fasdcenter.samhsa.gov or call 866-STOPFAS.

www.stopalcoholabuse.gov



FETAL ALCOHOL SPECTRUM DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

There was a part of me that was angry, but I also knew that the police department and the justice system were uninformed about how vulnerable and easily swayed people [with an FASD] are.

—Mother whose son with an FASD was wrongly convicted of a crime

FETAL ALCOHOL SPECTRUM DISORDERS



FASD is an umbrella term describing the range of effects that can occur in an individual prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

REASONS PEOPLE WITH AN FASD GET IN TROUBLE WITH THE LAW

Studies show that people with an FASD have specific types of brain damage that may cause them to get involved in criminal activity. These individuals show:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends).

Persons with an FASD may break the law without intending to do so. For example, they may touch people when it is unwanted and think they are just being friendly. They may take things that do not belong to them because they like them.

People can take advantage of individuals with an FASD. They may talk them into committing crimes. Females with an FASD may be involved with destructive men for food, shelter, attention, or drugs.³ These relationships put them at risk for arrest.

NUMBER OF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM WITH AN FASD

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems screen for FASD or conduct a full diagnostic assessment. Researchers

at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.¹

The number of people with an FASD in the criminal justice system is assumed to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.²

ISSUES RELATED TO FASD IN THE CRIMINAL JUSTICE SYSTEM

Laws vary by State and case law is binding only in the State or circuit where the case was decided. Only Supreme Court cases are binding nationally. However, several general issues can arise for attorneys and judges dealing with persons with an FASD:

- **Competency to stand trial**, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.⁴⁻⁶
- **Validity of expert testimony regarding diagnosis.** Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?^{7,8}
- **Diminished capacity.** Capacity refers to the ability to understand right and wrong and to understand the

WHAT YOU NEED TO KNOW



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likely outcome at the time of the act. Some crimes require evidence of intent for the person to be found guilty. Defense lawyers may argue that persons with an FASD cannot form the intent to commit crimes because they cannot foresee the likely outcome.⁹

- **Effect of FASD on sentencing.** Lawyers have appealed the death penalty by arguing that FASD was not introduced as evidence to support a lesser sentence.¹⁰⁻¹²
- **Ability to testify.** Persons with an FASD are highly suggestible and may not be able to give accurate testimony. They are prone to making false confessions.¹³
- **Recidivism.** Offenses do not appear to get worse, such as from auto theft to robbery. However, persons with an FASD tend to repeat crimes of opportunity, such as shoplifting. Their thought process seems to be, "I want. I take."¹⁴

WAYS THE CRIMINAL JUSTICE SYSTEM CAN ADDRESS THE NEEDS OF PERSONS WITH AN FASD

Because of their disabilities, persons with an FASD may repeat the same mistakes many times. Thus, support to improve functioning might be more appropriate than rehabilitation. This approach focuses on education, job training, and family support, rather than punishment. Medication may also help. In some cases, adults with an FASD who had multiple jail stints for petty, impulsive acts avoided jail when given appropriate medical treatment.³

Understanding how persons with an FASD respond to certain situations can help. Due to sensory issues, they can become overwhelmed by bright lights, causing them to panic and run from the police or resist arrest. Because they are eager to please,

many unknowingly waive their rights by signing forms that they do not understand. In addition, they may consent to being searched or take responsibility for the crimes of others to win favor.

Sentencing is also an issue. Some persons with an FASD respond well to the intense structure and rules of prison. Others are vulnerable to attack, exploitation, and manipulation by other inmates. Some do not understand prison rules and break them. Because corrections officers may not understand FASD, they may punish inmates with an FASD for failing to follow directions. It is critical to offer training on FASD to all corrections staff so they can learn strategies to respond to inmates with an FASD.

Once on probation, persons with an FASD may have trouble meeting probation requirements. They can have problems managing time, recalling appointments, and making plans. Therefore, they may need a greater level of supervision. A relative or support person may need to be assigned to follow up on probation requirements. Highly structured probation that includes supervised living, life skills education, and drug and alcohol treatment can be very effective.¹⁵ In fact, supervision can help prevent crime. Many clients with an FASD can remain crime free with intense supervision.¹⁴

Other effective alternatives to prison include halfway houses, group home treatment centers, or electronic monitoring at home. In such cases, emphasis must be placed on creating a well-structured environment with predictable rules and consequences. In these settings, persons with an FASD can continue to participate in the community but their behavior will be more closely monitored.¹⁶

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Stop and think. If you're pregnant, don't drink.

For more information, visit fasdcenter.samhsa.gov or call 866-STOPFAS.

Fetal Alcohol Spectrum Disorder and the Criminal Justice System



FASD: Fetal Alcohol Spectrum Disorder



FASD is an umbrella term covering a range of birth defects and brain damage resulting from prenatal exposure to alcohol. The term FASD is not used as a clinical diagnosis, but

encompasses diagnoses such as Fetal Alcohol Syndrome (FAS) and related disorders. FAS is diagnosed when a child shows retarded growth, a specific pattern of minor facial anomalies and neurological damage. Children who do not show all the features of FAS may receive a diagnosis of partial FAS, Fetal Alcohol Effects, Alcohol-Related Neurodevelopmental Disorder, or Alcohol-Related Birth Defects. All persons with a FASD have lifelong cognitive, social and behavioral disabilities.

Trouble with the law

FASD often goes unrecognized, or is misdiagnosed as ADHD or another disorder. The behavior is sometimes blamed on environment or poor upbringing, while the true underlying cause may be brain damage due to prenatal exposure to alcohol. Youth and adults with FASD get into trouble due to their cognitive disabilities:

- Poor grasp of right and wrong.
- No feeling of guilt.
- Lack of impulse control.
- Poor understanding of cause and effect.
- Do not learn from experience.
- Vulnerability to peer pressure.
- Social immaturity: think and act much younger than chronological age.

How many persons with FASD are in the criminal justice system?

It is not known how many people in the criminal justice system have a FASD. A report of the US Centers for Disease Control estimates that 60% of people with an FASD over the age of 12 have been in trouble with the law, and that 35% have been incarcerated.¹ A Canadian study found that 23% of young offenders remanded to a forensic psychiatric inpatient assessment unit had a FASD.²

Problems in dealing with the police

Youth and adults with FASD may panic during encounters with the police, or alternatively, may be very friendly and, in an effort to please, admit to crimes they did not commit. Questioning may confuse them due to their intellectual disabilities:

- Poor short- and long-term memory.
- Difficulty with concept of time (past, present, future, how long).
- Poorly developed concept of property ("It was just lying there, so it didn't belong to anybody.")
- Difficulty separating fact and fiction.

"The person with FASD can be misunderstood in court, victimized in jails, and mismanaged in the transition back to the community, unless those working with the individual are aware of FASD and its implications."
Fast & Conry (2004)

Helping offenders with FASD

Police, attorneys and judges should be aware of the limitations that accompany FASD. Offenders should be screened for FASD. Detention may be unproductive, resulting in copying deviant behavior. Lifelong structure and supervision is the best way to avoid recidivism.

Resources

FAS: Implications for Correctional Service, Canada
<http://www.csc-cc.gc.ca/text/rsrch/reports/r71/er71.pdf>

FASD Legal Issues Resource Center--U. of Wash.
Information and cases in the US justice system
<http://depts.washington.edu/fadu/legalissues/>

FASD and the Justice System--Canada
Information and cases in the Canadian justice system
<http://fasdjustice.on.ca/>

Factsheet FASD and the Criminal Justice System
http://fascenter.samhsa.gov/documents/WYNK_Criminal_Justice5.pdf

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National Organization on Fetal Alcohol Syndrome

Helping children & families by fighting the leading known cause of mental retardation & birth defects

FASD: What the Justice System Should Know



Alcohol abuse and pregnancy are common among women in the criminal justice system.

- An estimated 70 to 85 percent of inmates need substance abuse treatment.
- Approximately one in four women is either pregnant or postpartum when she enters prison.

The Justice System can help to prevent Fetal Alcohol Spectrum Disorders (FASD) among the incarcerated population by offering educational workshops on FASD and addiction counseling for women inmates.

Behavioral impairments due to FASD make affected individuals more likely to get in trouble with the law

- Sixty-one percent of adolescents and 58% of adults with FASD have been in legal trouble.
- Thirty-five percent of those with FASD over the age of 12 had been incarcerated at some point in their lives.

Many individuals with FASD will never socially mature beyond the level of 6 year-old child.

Other factors that may place persons with FASD at risk for involvement with the criminal justice system include:

- Difficulties in impulse control;
- Intellectual deficits;
- Poor judgment skills; and
- A history of abuse and/or neglect.



Problems individuals with FASD may encounter when dealing with police include:

- Being persuaded by the police (even inadvertently) to admit to crimes which they did not commit;
- Taking responsibility for crimes committed by others in order to win the favor of more sophisticated companions or to please the police;
- Consenting to searches of themselves or their possessions in circumstances in which non-disabled sophisticated individuals would not;
- Panicking during encounters with the police, running away or resisting arrest;
- Saying that they understand their legal rights when in fact they do not; and
- Making potentially incriminating statements about how serious any misconduct may have been.

The Justice System can help FASD-affected individuals by:

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

Alaska FASD Partnership

*A Coalition of 75
individuals and
organizations
supporting:*

Advocacy ▪ Diagnosis

▪ *Case Management*

▪ *Prevention*

▪ *Substance Abuse
Treatment for
Pregnant Women*

▪ *Parent Navigation*

▪ *Training for Parents*

▪ *Public Awareness*

▪ *Alternatives to
Incarceration*

▪ *Court Interpreters*

▪ *Peer Support*

▪ *Training for Judges,
Public Defenders,
and Prosecutors*

▪ *Training for
Educators and*

Medical Professionals

▪ *Traditional Healing*

▪ *Supported Housing
and Employment*

▪ *Family Support*



Monica Charles Leinberger, FASD and Behavior Specialist from Lower Kuskokwim School District in Bethel, presents during a noontime Legislative Health Caucus at the Capitol in Juneau in February, 2011. Also pictured are Senator Donny Olson (left) who chaired the caucus, and Jeanne Gerhardt-Cyrus (right), a parent advocate from Kiana. Partnership members presented on the topic of FASD and the Education System.

Alaska FASD Partnership: a productive first year

The Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership is now one year old. The coalition has expanded to 75 individuals and organizations statewide.

FASDs are a range of brain-based disabilities caused from drinking alcohol during pregnancy. The mission of the Partnership is to address prevention and interventions for people affected by FASD.

Since May 2010, Partnership members have advocated in work-groups, visited with policy-makers, and held public meetings and events promoting awareness of FASD statewide.

During the legislative session, Partnership members visited Juneau and wrote their legislators about FASD. They advocated for substance abuse treatment for pregnant women and

access to services for people diagnosed with FASD. They promoted early childhood screening and peer support services in rural areas.

Following are some of the Partnership's activities in 2010-11:

In 2010

- Membership increased to over 75 organizations and individuals by the end of 2010;
- Successfully advocated for funding in the state operating budget that supported case management for individuals diagnosed with FASD in Kenai, Juneau, Bethel and Sitka, and substance abuse treatment for pregnant women.

First Year – continued on page 2

July 2011

Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership
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Webpage: www.hss.state.ak.us/fasd.htm ▪ email: akfasdpartnership@alaska.gov

First Year -continued from page 1

- Co-sponsored with Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse, through the boards' *Family Voice* project, advocacy training for five families who presented on FASD before the House and Senate Health and Social Services Committees. Families also met with individual legislators and presented on a panel discussion at the FASD Southeast Alaska Regional Conference about their experiences related to FASD;
- Successfully advocated for SCR 12, proclaiming Sept. 9, 2010 as FASD Awareness Day, sponsored by Senator Kevin Meyer (R-Anchorage);
- Collaborated with Alaska CHARR in promoting "free non-alcoholic beverages for pregnant women" in restaurants on International FASD Awareness Day;
- Co-sponsored, with Alaska CHARR (Cabaret Hotel, Restaurant and Retailers), an appreciation luncheon at the Capitol for legislators who have worked on behalf of individuals and families affected by FASD;
- Hosted a summit of the Alaska FASD Partnership steering committee to determine short and long-term recommendations.

outlined facts and figures, funding recommendations for FY12, and other issues related to FASD;

- Co-sponsored with Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse, through the boards' *Family Voice* project, three families to present before the Senate Education Committee on "FASD and the Education System," and for a lunchtime Legislative Health Caucus. Participants received advocacy training and met with legislators individually to discuss issues related to FASD;
- Successfully advocated for substance abuse treatment for at-risk parents, rural peer support services, and the Alaska Complex Behaviors Collaborative, in the state operating budget;
- Successfully advocated for SCR 7, proclaiming Sept. 9, 2011 as FASD Awareness Day, sponsored by Senator Kevin Meyer (R-Anchorage);
- The steering committee continues to meet monthly; workgroups are addressing recommendations from the December 2010 Summit.

In 2011

- Met with all 60 legislators on topics related to FASD; each legislator received an information packet that

For additional information on the Alaska FASD Partnership, or how to become a member (no dues or minimum requirements) visit the new website at www.hss.state.ak.us/abada/fasd.htm. ❖

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Legislators learn about Fetal Alcohol Spectrum Disorders

During the 2011 legislative session, members of the Alaska FASD Partnership came to Juneau and advocated for issues related to fetal alcohol spectrum disorders.

In early February, Partnership members presented before the Senate Education Committee, chaired by Sen. Kevin Meyer, on the topic of FASD and the Education System. Other legislators on the committee include Sen. Gary Stevens, Sen. Bettye Davis, Sen. Joe Thomas, and Sen. Hollis French.

The group also presented at a noontime Legislative Health Caucus, sponsored by Rep. Sharon Cissna and Sen. Donny Olson, and chaired by Sen. Olson.

The panels included Cindy Anderson, director of Special Education for Anchorage School District; Monica Charles Leinberger, FASD and Behavioral Specialist for Lower Kuskokwim School District; Deb Evensen, FASD Education Consultant; Jeanne Gerhardt-Cyrus, parent navigator and parent of children with fetal alcohol spectrum disorders, and Ivory Gerhardt-Cyrus, teen with FASD; Mary, Trevor and Angela Andrews, family affected by FASD; and Mindy Cason, UAA student and adult with an FASD.

Panel discussions covered many issues facing students, teachers, administrators and families affected by FASD. Following are some of the highlights of their presentations, with recommendations:

- ✓ Policy-makers and administrators need to know what FASD is and understand the importance of addressing issues related to FASD; including:
- ✓ Expand FASD training for teachers and staff, including what is FASD and how to effectively work with students who have an FASD;
- ✓ Expand models for serving students, teachers and families used at Lower Kuskokwim School District and Anchorage School District who incorporate an FASD/Behavior Specialist in their schools;
- ✓ Expand special education services to students with FASD (and suspected FASD), with or without a diagnosis, based on behavior and functionality;
- ✓ Facilitate a paradigm shift for teachers, staff and families in how to work with students who have FASD, including seeing behavior as the result of a brain-based disability, understanding that students *can't* perform certain behaviors, not *won't*, develop patience with individual student processing time; work on changing the environment, to accommodate the student's disability.



During a visit to Juneau in 2011, members of the Alaska FASD Partnership presented in a panel before the Senate Education Committee (above) and again at a Legislative Health Caucus (below) on the topic of "FASD and the Education System." Panel members pose at the Capitol (center).

Members also visited legislators individually in their offices to discuss one-on-one many issues related to FASD and funding priorities supported by the Partnership.

Several budget items passed the legislature in 2011 that will benefit people and providers who work with people impacted by FASD (see pages 10-15 for state budget overview).

By the end of session, all sixty legislators had been visited and handed an FASD information packet that included background information on FASD and what kinds of efforts are needed to address FASD issues in Alaska. ❖

***Proclaiming September 9, 2011
as FASD Awareness Day***

WHEREAS fetal alcohol spectrum disorders are a leading cause of preventable and permanent birth defects and mental retardation in the United States; and

WHEREAS the birth defects associated with fetal alcohol spectrum disorders include brain damage, facial deformities, and deficits in growth, learning, memory, and internal organ development; and

WHEREAS fetal alcohol spectrum disorders result from ingestion of alcohol by a woman during pregnancy; and

WHEREAS Alaska has the highest known incidence of fetal alcohol spectrum disorders in the United States; and

WHEREAS fetal alcohol spectrum disorders affect all racial and socioeconomic groups; and

WHEREAS, in addition to the personal emotional costs, fetal alcohol spectrum disorders cost taxpayers millions of dollars over an affected individual's lifetime;

BE IT RESOLVED that the Alaska State Legislature proclaims September 9, 2011, as Fetal Alcohol Spectrum Disorders Awareness Day; and be it

FURTHER RESOLVED that the people of the state observe Fetal Alcohol Spectrum Disorders Awareness Day with appropriate efforts to promote awareness of the effects of prenatal exposure to alcohol and of the fact that there is no known safe level of alcohol consumption during pregnancy, to increase identification of children with fetal alcohol spectrum disorders, and to improve the lives of those affected by fetal alcohol spectrum disorders.

-- SCR 12 Sponsored by Senator Kevin Meyer,
signed into law on 4/28/11

New bill, SB 127, would put FASD Awareness Day permanently in state statute

At the end of the 2011 legislative session, Senator Kevin Meyer introduced a bill that would permanently recognize September 9 as FASD Awareness Day in state statute.

SB 127, "An Act establishing September 9 each year as Fetal Alcohol Spectrum Disorders Awareness Day" will likely begin having hearings in the 2012 legislature.

Alaska has the highest known incidence of FASD in the United States – a condition caused by prenatal exposure to alcohol – which can result in permanent brain damage, birth defects, learning disabilities, behavioral problems and the loss of individual potential.

While FASD affects all racial and socio-economic groups, it is a 100% preventable condition.

FASD Awareness Day is observed internationally on September 9th – serving as a reminder that during the nine months of pregnancy a woman should abstain from alcohol.

SB 127 would observe FASD Awareness Day by promoting the awareness of the effects of prenatal exposure to alcohol.

Following is the language of the bill:

Sec. 44.12.074. Fetal Alcohol Spectrum Disorders Awareness Day

"Fetal Alcohol Spectrum Disorders Awareness Day is established on September 9 of each year to promote awareness of the fact that there is no known safe level of alcohol consumption during pregnancy, to promote awareness of the effects of prenatal exposure to alcohol, to increase identification of children with fetal alcohol spectrum disorders, and to improve the lives of those affected by fetal alcohol spectrum disorders.

"SCR 7 would proclaim September 9, 2011 as Fetal Alcohol Spectrum Disorders Awareness Day (FASD)."

*For additional information, contact:
Senator.Kevin.Meyer@legis.state.ak.us*

Briefly

FAScinating Families Camp will expand to three new communities

Volunteers of America (VOA) in Anchorage was recently awarded a grant to expand their *FAScinating Families Camp* to three new locations: Fairbanks, Sitka and Homer. The three-day weekend camp provides a supportive, educational, and fun environment for children and families impacted by fetal alcohol spectrum disorders (FASD). VOA has been coordinating the camps in the Anchorage/Mat-Su area since 2000. Members of Anchorage Council on FASD helped develop the Anchorage camp.

VOA will partner with Anchorage's Stone Soup Group to share expertise and resources for the new and existing camps. Expanding the camps to rural areas was one of the priorities of the Partnership's Family/Peer Support workgroup, which worked with Trish Smith at VOA early on to help identify potential new sites and offer support.

The selected communities were chosen in part because they have a FASD diagnostic team coordinator or a parent navigator willing to assist in camp preparation – which will include locating a campsite, gathering volunteer support, advertising, and identifying eligible families.

The camps feature the 16-hour *FASD into Action* parent/care provider training model developed by Diane Malbin, MSW, an internationally recognized authority on FASD. The hands-on training is designed to help care providers better understand and work with young people affected by prenatal alcohol exposure.



Families and staff participate in Native dancing at FAScinating Families Camp in February 2011, near Anchorage.

Families are able to practice what they learn with the support and guidance of trained professionals.

Besides offering training and respite, the camps feature lots of fun activities, like arts and crafts, cultural and outdoor activities. Families get to know each other, share stories, watch their children play and have fun, and learn new strategies for success. For many families, the *FAScinating Families Camp* is the only resource they have for learning about FASD and meeting with others who share similar experiences.

"Trying differently, rather than harder" is a central theme at the camps, and the environment is supportive and helpful, as well as fun.

VOA is hoping to expand the camps to other camp-ready communities in the future.

The Governor's disabilities council invites comment on FASD issues

The Governor's Council on Disabilities and Special Education (GCDSE) is currently working on its Five-Year Plan. There are several parts that address issues related to FASD. If you're interested in reading about it and/or commenting, go to: www.hss.state.ak.us/gcdse and look for the 5-year plan. Deadline for comment is July 15.

Some sections to note, are: 1) Page 13, see description of underserved and underserved people affected by FASD; 2) Page 13, Goal 3, see the section related to housing and supporting "living in accessible, affordable and safe homes in the community;" and 3) Page 20, Goal 4, related to access to health care services, "work with relevant state agencies and other key stakeholders to prevent FASD and better serve those affected by prenatal alcohol exposure."

FASD training opportunities for parents and professionals in Alaska

Alaskans have several options for FASD training: *FASD 101* and *FASD 201* through the state Division of Behavioral Health (DBH) and affiliated trainers, and *FASD Into ACTION*, through Stone Soup Group in Anchorage.

FASD 101 focuses on the physiology of prenatal drinking and the disabilities that can result from prenatal exposure to alcohol. *FASD 201* offers helpful strategies for working with individuals with FASD, including successful

Briefly - continued from page 5

approaches in the home, classroom, employment settings, and society.

Genevieve Casey, FASD Program Coordinator with DBH, wrote: "Through this training we can begin to change the paradigm related to this disability (brain damage vs. behavior problem) and it can begin the process of systems change within our existing service delivery systems —education, developmental disabilities, juvenile justice, child protection, health care, public assistance, vocational rehabilitation, substance abuse treatment, mental health and corrections to name a few ... Most importantly, we need to ensure that these service systems remain strong and continue to grow."

FASD into ACTION: Becoming a More Effective Caregiver was developed for parents and professionals working with people affected by FASD by Diane Malbin of Fetal Alcohol Syndrome Consultation, Education and Training Services, Inc., (FASCETS) in Oregon.

The course provides parents and professionals information about FASD and neurobehavioral disorders. Malbin reports that with an increased understanding of FASD as a brain-based disorder, parents and caregivers can adjust the environment to decrease the occurrence of secondary behaviors (e.g., frustration, aggression, depression, irritability, anger, isolation, tantrums, etc.).

Participants have reported reduced stress and improved parenting ability after taking the course. Similar results were found in a study by Hume et al. (2009) which reported an increase in parent/caregiver confidence and understanding of the needs and strengths of people with FASD.

Substance abuse treatment for pregnant women expands in Kenai and Juneau

In 2010, stakeholders statewide successfully advocated for increased funding that would expand substance abuse treatment for pregnant women in Alaska. The Division of Behavioral Health (DBH) has recently awarded grants to two programs, Serenity House at Central Peninsula Hospital and Rainforest Recovery Center at Bartlett Regional Hospital. Another program is expected to be awarded soon.

Serenity House offers a wide variety of clinical programs assisting clients with their individual needs, including substance abuse treatment and mental health care, motivation interventions, FASD education, Dialectical Behavior Therapy, trauma-informed care, couples therapy, and Strengthening Families Program. Contact them at: www.cpg.org.

Rainforest Recovery Center's outpatient

addiction treatment program for women focuses on pregnant women, women with children, and women of child-bearing age, and offers family and individual counseling, group therapy, case management, child care assistance and transportation. Contact them at www.bartletthospital.org/patientServices/rainforest.htm.

Funding for FASD case management

In 2010, stakeholders successfully advocated for funding to help people diagnosed with FASD get better access to support services in four communities: Juneau, Bethel, Kenai, Sitka. The diagnostic clinics in these communities determined the best way to get clients to services is to offer case management, since most families upon getting a diagnosis are unaware or unprepared to handle what comes next. A case manager helps families identify what services are needed, fill out necessary paperwork, make it to appointments, etc.

The Division of Behavioral Health (DBH) has finalized provider agreements and funding should be available in July.

Lower Kuskokwim and Anchorage School Districts lead the way on FASD

The Alaska FASD Partnership applauds the work of LKSD and ASD in serving students, teachers, and families impacted by FASD. Both districts have initiated efforts to deal with FASD in their schools. The establishment of a district-wide FASD specialist position at LKSD and putting a behavior specialist in each school at ASD shows foresight and leadership. As other school districts increase their awareness and follow this trend, they will be looking to LKSD and ASD for guidance.

FASD and Sexuality Workshop

Advocates in Juneau hosted a one-day workshop in February that addressed FASD and sexuality, including how people with FASD understand and express sexuality, what strategies are effective for directing and encouraging healthy expressions of sexuality and preventing inappropriate behavior, healing for victims and perpetrators, and how communities and care systems can better respond to FASD challenges.

Break-out sessions focused on parents and caregivers, justice system workers and care providers. Presenters included Jeremy Baumbach, Deb Evensen, Morgan Fawcett, Ric Iannolino, Judge Mike Jeffery, Kay Kelly and Sherri Wes. ❖

Participate in FASD Awareness Day on September 9



A table tent offers pregnant women a free, non-alcohol beverage on Sept. 9, 2011, and informs restaurant customers about the effects of drinking alcohol during

Free non-alcoholic drinks in restaurants for pregnant women

For the past eight years, the Alaska Women's Recovery Project has promoted a "free non-alcoholic drinks for women" in Anchorage restaurants. The Alaska FASD Partnership has helped expand the effort throughout the state.

This campaign invites local restaurants to offer a free non-alcoholic beverage to pregnant women on FASD Awareness Day, September 9, 2011. The event promotes awareness about alcohol-free pregnancies and educates patrons about the potential effects of drinking during pregnancy. Table tents at participating restaurants present an overview of what FASD is, what causes it, and how to prevent it. The tents also give contact info for local and national FASD agencies and invites pregnant women to enjoy a free non-alcoholic beverage provided by the restaurant.

In 2010, three other communities joined the effort: Juneau, Nome and Sitka. In 2011, the Partnership is coordinating with CHARR (Alaska Cabaret, Hotel, Restaurant and Retailers Association) in promoting the effort statewide.

If you would like to host your own restaurant promotion, here are some hints, or contact the Partnership for templates:

Event Preparation:

1. Assign a master coordinator to keep track of who is doing what.
2. Recruit volunteers to go to restaurants and solicit participation in the promotion. Consider church groups, youth groups, VISTA, AmeriCorp volunteers, etc.
3. Maintain a master list of volunteers and their assigned restaurants.
4. Print and prepare posters, restaurant invitation letter, table tents, and sample thank you notes.
5. Hang community posters around town week before the event (optional).

Volunteer Responsibilities:

1. Volunteers choose or are assigned a restaurant.
2. Volunteers agree to approach the restaurant manager or owner to solicit participation in the promotion. Each restaurant is given a participation request letter, sample table tent, and poster. Set a deadline to confirm with restaurant and report to master coordinator.
3. Upon commitment from the restaurant, volunteer counts how many tables will need table tents and agrees to return on September 9 to place the tents on the tables. At this same time, volunteer hangs a poster in a prominent place at the restaurant (such as front door, bulletin board, near cash register, bathrooms, etc.) at the direction of the manager/owner to pre-advertise the event.
4. Volunteers report to master coordinator with a total number of table tents needed and coordinate for time to pick up table tents.
5. On September 9, each volunteer picks up table tents and returns to assigned restaurant to place them on the tables and hangs poster in prominent place.
6. Volunteers return the following day to pick up table tents and take down poster(s).
7. Volunteers give a thank you note to the restaurant.

For guidelines and posters/table tent templates contact Teri at (907) 465-4765, or email at: akfasdpartnership@alaska.gov. ❖

Partnership workgroups address top issues statewide

At a summit in December 2010, the steering committee of the AK FASD Partnership met in Anchorage to finalize short-term and long-term goals for the following year. The recommendations came after a month of teleconferenced workgroups, who met and identified issues related to FASD that are most pressing to Alaskans. To join a workgroup, contact akfasdpartnership@alaska.gov.

Diagnosis

- Develop use of telemedicine in expanding diagnosis, support and services
- Promote use of screening tools/EPSTD (Early Periodic Screening, Diagnosis & Treatment) statewide
- Promote FASD training for primary care and behavioral health providers

Family/Peer Support

- Expand FASD Family Camps to rural areas
- Expand FASD training for primary care and behavioral health providers
- Coordinate efforts with the Alaska Peer Support Consortium (AKPSC), Alaska Mental Health Trust Authority and Dept. of Health & Social Services to develop peer specialist network and training programs

Prevention and Treatment for Pregnant Women

- Support FASD messages on pregnancy tests
- Vary "Do Not Drink When You Are Pregnant" signs in public places
- Expand substance abuse screening for females of child bearing age
- Expand Parent-Child Assistance Programs (PCAP) in Alaska
- Coordinate efforts with the Dept. of Health & Social Services

FASD and the Education System

- Educate district, board and school personnel about FASD, TBI, and other neurobehavioral disabilities and their relationship to behavior, e.g. presenting at conferences, in-services, hands-on in classrooms, etc.
- Promote statewide the LKSD/ASD models of employing an FASD/Behavior Specialist offering effective interventions for students, teachers and families impacted by FASD
- Expand training for para-educators, teachers and special education teachers, small village clergy, tribal staff and elders about successful interventions, e.g. positive behavior support (PBS), the importance of structure, alternative tools for discipline, etc.
- Coordinate efforts with the Dept. of Education and Early Development

FASD and the Legal System

- Address mitigating factors for people with FASD and other neurobehavioral disabilities (e.g. Traumatic Brain Injury (TBI), Bipolar Disorder, etc.)
- Expand use of mental health courts as alternatives to incarceration for people with FASD, and other neurobehavioral disorders.
- Expand screening and services in corrections and juvenile justice for people with neurobehavioral disabilities.
- Coordinate efforts with the Depts. of Corrections and Law, Public Defenders Agency, Courts, Disability Justice Workgroup of the Alaska Mental Health Trust Authority, and the Criminal Justice Working Group (CJWK).

Services for Adults with FASD

- Expand transition services (housing, treatment, medication management, employment, education, case management)
- Develop service system for adults with neurobehavioral disabilities
- Expand diagnosis for adults
- Coordinate efforts with Depts. of Health & Social Services and Corrections.

Professional Development

- Distribute resources for professionals
- Training for professionals, including medical personnel, educators, small village clergy, tribal staff, legal system personnel, public safety personnel, mental health/substance abuse treatment providers, and alcohol beverage servers
- Coordinate efforts with Dept. of Labor & Workforce Development, the Disability Justice Workgroup of the Alaska Mental Health Trust Authority, and Criminal Justice Working Group (CJWG)

Public Relations (Ad Hoc)

- Identify/contact conferences for exhibit space, keynote and break-out sessions
- Create/distribute exhibit kits for use at conferences
- Create/distribute packets for mushers and other potential sponsors ❖

Strategies for Success

Mindy Cason is a recent UAA graduate. She experienced prenatal alcohol exposure and was 20 before she discovered many of her difficulties were related to having an FASD. Her early school years were difficult because learning disabilities and a lack of interventions limited her ability to develop normal social and academic skills. After realizing the cause of her difficulties, she began to let go of the blame and shame, and with others' help, started developing strategies that have helped her succeed. Mindy wrote this article for people who experience an FASD and for people affected by FASD.

By Mindy Cason

When thinking about success, to me, it means preventing certain responses that come with shame, guilt, or embarrassment. When looking at coping mechanisms, any of the three of these emotions can hinder success. Learning how to reframe my ability to learn is critical to deter these feelings.

When looking closely at education and social life, there are a few coping skills that I have developed, and since awareness is the best tool to find these for any individual, here are my discoveries:

- Focusing for long amounts of time is not a strength. There are things to be expected, distractions. Redirecting and asking many questions are inevitable.
- Keeping and carrying a bag with the essential items I frequently use to escape uncomfortable situations: ipod, pen, pencils, snacks, a book, journal, tactile hand toys, magazines, and pictures of people I care about. These provide comforts and familiarity in an unfamiliar environment, or situations such as social or educational setting, and relieve anxiety or stress.
- Prepare for distractions: make the items I distract myself with available, collect them before I sit to study. This may include



Mindy Cason (far right), and other panelists, discuss personal experiences at Collaborative Conversations, sponsored by the Arctic FASD Regional Training Center, in May 2010.

making food before studying and having it available the entire time I have to focus my attention. Also, having the bag of essentials available as well. I will become distracted at some point so I provide myself with an expected distraction. This way I can move from one thing to another easily and redirect to the task at hand without feeling guilt for being off task. After being distracted for a while I find a closing point and redirect to the task I am accomplishing.

- Asking questions – all and any questions. This can mean asking the same one many times even minutes after the answer has been given. I process verbal directions atypically. I may think I understand, only to discover I am off base from the intended outcome. I find it encouraging and reassuring to know that if there are doubts about the outcome, I can ask for clarification or to be walked through the information until I own it.
- Learning that taking breaks and knowing that it's alright to isolate at times, and understanding that I have social differences, was difficult. However, I now understand my perspective is uniquely mine; no one perceives things the same as myself. I need time alone with my comfort tools to find a calm place and be ready to re-enter the setting in a healthy way.
- Positive regard is very important. My difficulty with learning, the inability to stay focused, and my not understanding sequential information creates frustration for those working with me. The times I realize I have frustrated someone unintentionally causes me to shut down due to guilt and embarrassment. Having a person who is patient and has positive regard makes a significant difference. ❖

FY12 state budget supports people with disabilities, including those impacted by FASD

DEFINITIONS:

DHSS = Department of Health & Social Services
 DBH = Division of Behavioral Health
 DJJ = Division of Juvenile Justice
 OCS = Office of Children's Services
 SDS = Division of Senior and Disability Services
 DPH = Division of Public Health
 DOC = Department of Corrections
 DEED = Department of Education and Early Development
 LAW = Department of Law
 ADMIN = Department of Administration
 Courts = Alaska Court System
 Trust = Alaska Mental Health Trust Authority
 AHFC = Alaska Housing Finance Corporation
 RPTC = Residential Psychiatric Treatment Center
 SED = Severe Emotional Disturbance
 FASD = Fetal Alcohol Spectrum Disorders

YOUTH and PREVENTION

Early Intervention/Infant Learning Program Positive Parenting Training \$80,000 to *Infant Learning Program Grants, OCS/DHSS*. Funding will support three demonstration sites in fully implementing the "Teacher Pyramid" model, an evidence-based research model for supporting social competence and preventing challenging behavior in young children. The parent training modules serve both biological and foster families who are in need of intervention supports, but whose provider agencies have not yet adopted these strategies (*funded by Alaska Mental Health Trust Funds*).

Clinician to work with Head Start & day care centers for early childhood screening services \$100,000 to *Infant Learning Program Grants, OCS/DHS*. Funding will establish an early childhood mental health learning network and provide grants for agencies to engage in early childhood screening and intervention services – serving youth at risk of experiencing SED. Coordinator will provide consultation, technical assistance, and professional development to mental health clinicians, family support workers, child care workers, Head Start staff, early intervention, and infant learning specialists (*funded by Alaska Mental Health Trust Funds*).

Expansion of school-based services capacity \$300,000 to *Services for Seriously Emotionally Disturbed Youth, DBH/DHSS*. Grants will provide funding for educational tracking of youth returning from RPTCs to ensure their educational success upon return; and pilots positive behavioral supports in four school districts: Ketchikan, Juneau, Sitka and Dillingham (*funded by Alaska Mental Health Trust funds and state GF funds*).

Crisis bed stabilization statewide

\$150,000 to *Services for Seriously Emotionally Disturbed Youth, DBH/DHSS*. This program maintains services in Anchorage and begins to expand services beyond Anchorage for youth in crisis. It provides grants to assist both youth in OCS custody and youth with family, and is expected to save Medicaid funds by reducing acute hospitalizations and referrals to RPTCs (*funded by state general funds*).

Services for transition-aged youth

\$250,000 to *Services for Seriously Emotionally Disturbed Youth, DBH/DHSS*. Funding will support community-based capacity for transition-aged youth to move into adulthood with age-appropriate services, including productive work and educational activities. The goal for this increment is to target youth with few or no family supports who are at risk of moving into adult systems, such as corrections, emergency mental health or substance abuse services (*funded by Alaska Mental Health Trust funds*).

Training and Technical Assistance for Bring the Kids Home programs \$330,000 to *Behavioral Health Administration, DBH/DHSS*. Funding will support technical assistance, training, and ongoing mentoring to improve delivery of integrated, family-driven, recovery-oriented services. Focus is on business practices and clinical performance improvement projects – such as developing wraparound facilitation, implementing evidence-based or best practices, developing FASD waiver services, and/or expanding in-home and family therapy service models (*funded by Alaska Mental Health Trust funds*).

Child Psychiatrist at API

\$50,000 to *Alaska Psychiatric Institute (API), DBH/DHSS*. Funds will pay for a child psychiatrist at API to provide doctor-to-doctor consultation to other RPTCs on issues of case planning and treatment recommendations. The psychiatrist will provide a second opinion for state staff working to divert children from RPTC care and consults with primary care physicians on children at risk of moving into acute or residential care (*funded by state general funds*).

Alaska Family Violence Prevention Project (AFVPP)

\$200,000 to *Chronic Disease Prevention and Health Promotion, DPH/DHSS*. Funding will support training, personnel, curricula and tools, printing and dissemination of resource materials for providers statewide. AFVPP is a nationally recognized best practices program for violence prevention that uses a community-based, multidisciplinary team approach to address dating violence and substance use among youth (*funded by state general funds*).

Pre-K Program Funding

\$1.7 million to Early Learning Coordination, TLS/DEED; and \$300,000 for intervention districts Lower Yukon and Yupiit School Districts. Funds will help continue pilot preschool programs statewide as part of the Alaska Pre-Kindergarten Project, which provides voluntary, comprehensive, half-day preschool pro-grams in rural and urban settings. These programs build on existing community resources and supports the creation of local model programs. Early childhood programs help identify and serve students with special needs throughout their school years. This increment maintains the program that began as a pilot project in previous years *(funded by state general funds)*.

See "Training and Technical Assistance for Bring the Kids Home Programs" under TRAINING/WORKFORCE

See "Foster parent & parent recruitment training & support" under TRAINING/WORKFORCE

See "Rural/tribal system development" under RURAL SERVICES

See "Training and Technical Assistance for Bring The Kids Home Programs" under YOUTH/PREVENTION

See "Community Behavioral Health Centers Outpatient & Emergency Residential Services & Training" under TRAINING/WORKFORCE

TREATMENT/RESOURCES

Alaska Complex Behaviors Collaborative: Start Hub
\$325,000 to Services to Seriously Mentally Ill, DBH/DHSS. This funding will be used to begin implementation of the Alaska Complex Behaviors Collaborative Hub, where individuals who experience developmental disability, mental illness, addiction, fetal alcohol spectrum disorders, and/or other behavioral disorders can receive stabilization, triage, assessment, referral to diagnostic services and/or short and long-term community-based support services. Funding will support project start-up costs, brief stabilization services, intensive intermediate services, and development of the Hub, or point-of-entry, component *(funded by state general funds)*.

Substance Abuse Treatment and Recovery Services for At-Risk Parents *\$225,000 to Family Preservation in OCS/DHSS.* Funding will provide clinical substance abuse treatment and recovery services for parents who have a substantiated report of harm, where substance abuse is a contributing factor to continued risk of harm for their children. It will be delivered through the Family Preservation program offered by the Office of Children's Services, to ensure that treatment services are available to the parent before a child must be removed from the home *(funded by state general funds)*.

Treatment funding for therapeutic court participants
\$500,000 to Therapeutic Courts/COURTS. Funding will support timely access to substance abuse and mental health

treatment for therapeutic court participants in an effort to address the underlying issues related to contact with the criminal justice system. Timely access to substance abuse and mental health treatment services is a critical component to the operations of these courts, the success of its participants, and to reduced recidivism *(funded by Alaska Mental Health Trust funds and state general funds)*.

Pre-development for sleep-off alternatives in Nome

\$100,000 to Behavioral Health Grants, DBH/DHSS. Funds will be used to support pre-development and planning activities for alternatives to incarcerating persons requiring protective custody in Nome. Activities may include substance abuse assessment, assessment of the service capacity of existing programs and facilities within the community, and developing an implementation plan for identified treatment services *(funded by Alaska Mental Health Trust funds)*.

IMPACT model of treating depression

\$75,000 to Alaska Psychiatric Institute, DBH/DHSS. Funding will support the "Improving Mood Promoting Access to Collaborative Treatment" (IMPACT) model of treating depression in the primary care setting. Administered by a psychiatrist and depression care manager, this model emphasizes patient education, positive lifestyle changes, and antidepressant medication when appropriate. Funding will also support telehealth equipment for three demonstration projects in urban and rural Alaska *(funded by Alaska Mental Health Trust funds)*.

Family Wellness Warriors Initiative (Year Two)

\$200,000 to DHSS. Family Wellness Warriors Initiative seeks to address domestic violence, abuse, and neglect in Alaska Native communities. The project will equip organizations and individuals to effectively address the emotional, spiritual, mental and physical effects of domestic violence, abuse, and neglect *(funded by state general funds)*.

Traumatic/Acquired Brain Injury Program

\$300,000 to Senior and Disabilities Services Administration, SDS/DHSS. Funding will support continuation of the Acquired/Traumatic Brain Injury (A/TBI) Program, a mini-grant program currently serving about 60 Alaskans with A/TBI. Funding will support planning, coordinating and developing TBI-specific services in Alaska – including access to neuropsychological exams, assistive technology, memory devices, treatment, and more. Additionally, it will support the development of the Traumatic/ Acquired Brain Injury Longitudinal Registry. People with A/TBI are at risk for mental health, substance abuse, homelessness, incarceration and suicide. Access to appropriate services is critical to ensuring hope for recovery *(funded by state general funds)*.

Acquired/Traumatic Brain Injury Program Research Analyst & Registry Support *\$136,000 to Senior and Disability Services Administration, SDS/DHSS.* This funding will support staffing,

planning infrastructure and development expertise for the ATBI Program. These funds will also support planning and successful demonstration of best practice activities that provide treatment and support for individuals and families impacted by brain injury (*funded by Alaska Mental Health Trust funds*).

See "Alaska Family Violence Prevention Project (AFVPP)" under YOUTH/PREVENTION

PEER SUPPORT

Rural Peer Support Services

\$225,000 to Behavioral Health Grants, DBH/DHSS. Funding will expand availability of peer support services for people with mental health and/or substance use disorders in rural areas. Peer-operated services include drop-in centers, clubhouses, crisis services, support groups, supported employment and housing assistance, case management, outreach, and more. "Peers" have experienced mental and/or physical difficulties and support other people experiencing the same difficulties (*funded by state general funds*).

Peer Navigator Program

\$200,000 to Services for Seriously Emotionally Disturbed Youth, DBH/DHSS. Funds will maintain peer navigator services, including hiring parents and youth experiencing SED to assist peers in navigating the service delivery system. Grantees are required to report outcomes, including number of parents involved, results of the interaction, and effectiveness of services (*funded by Alaska Mental Health Trust funds and state general funds*).

RURAL SERVICES

Tribal/rural system development

\$100,000 to Behavioral Health Administration, DBH/DHSS. Funding will assist in establishing SED children's services in rural areas, including developing and improving funding mechanisms and strategies specific to tribal systems. Projects may include developing Medicaid clinical, billing and supervision capacity, technical assistance to link programmatic and finance sections into an effective service delivery/billing revenue generation, implementing telemedicine, Skype or other distance delivery technology, grant writing, and/or blending funding streams (*funded by Alaska Mental Health Trust funds*).

Rural specialist

\$110,900 to Probation Services, DJJ/DHSS. Funding will support a specialist to assist rural communities (treatment providers and local natural supports) in developing prevention and/or early intervention activities and making training recommendations that ultimately serve youth returning to their rural home communities from DJJ facilities (*funded by Alaska Mental Health Trust funds*).

Rural long term care development

\$140,000 to Senior and Disabilities Services Administration, SDS/DHSS. Funding continues a project that provides technical assistance to rural communities and helps address long-term care needs and resources to meet those needs. It includes outreach, education, and intensive community-based work to meet the needs of people with Alzheimer's and related dementias, fetal alcohol spectrum disorders, and other cognitive impairments (*funded by Alaska Mental Health Trust funds*).

See "Rural peer support services" under PEER SUPPORT

See "Alaska Complex Behavior Collaborative" under TREATMENT/RESOURCES

See "Family Wellness Warriors Initiative (Year Two)" under TREATMENT/RESOURCES

DISABILITY JUSTICE

Social services specialist position in Bethel

\$138,800 to Public Defenders Agency, LAS/ADMIN. Funding will support a social services specialist in the Public Defender Agency to assist attorneys with "in-house" clinical expertise on the disorders experienced by Trust beneficiaries and available community treatment. Duties may include forensic psycho-social interviews, home visits, needs assessments, and assistance in developing expert opinion and negotiating ongoing legal issues (*funded by Alaska Mental Health Trust funds*).

Mental Health clinical positions in Corrections

\$164,000 to Behavioral Health Care, IHC/DOC. Funding will support a mental health clinician in the Dept. of Corrections to manage the high needs of offenders in the newly expanded Men's Mental Health Unit at the Anchorage Correctional Complex. Duties will include assessment and programming, monitoring for safety, and developing appropriate release plans (*funded by Alaska Mental Health Trust funds*).

Implement APIC discharge planning model in Corrections

\$210,000 to Behavioral Health Care, IHC/DOC. Funding will support "Assess, Plan, Identify, and Coordinate" (APIC) model of connecting Trust beneficiary offenders re-entering the community to appropriate community behavioral health services. APIC has shown to reduce recidivism by engaging both Corrections and the community treatment provider in developing transition plans for the soon-to-be-released offenders (*funded by Alaska Mental Health Trust funds*).

Criminal justice technician in Corrections

\$56,000 to Behavioral Health Care, IHC/DOC. Funding will support a technician to track and provide reports on program outcome measures, clinical contacts, unit census changes, mental health Title 47s, access to programming, treatment failures, suicide data, assault and injury data, release data and a variety of other patient and programming needs, for offenders in the Dept. of Corrections (*funded by Alaska Mental Health Trust funds*).

Increase mental health clinical capacity in DJJ

\$200,000 to McLaughlin Youth Center, DJJ/DHSS. Funding will maintain adequate mental health clinical staff capacity to provide appropriate mental health treatment and transition planning to youth in DJJ facilities statewide (*funded by Alaska Mental Health Trust funds and state general funds*).

Management & clinical oversight of therapeutic court probation staff

\$142,700 to Therapeutic Courts/COURTS. Funding will provide focused daily and clinical supervision of the therapeutic court probation staff to ensure for adequate mentoring, program planning, budget management, monitoring, and public safety. Therapeutic courts serve people with mental illness, substance abuse and other cognitive impairments (*funded by state general funds*).

Fairbanks Juvenile Therapeutic Court

\$245,900 to Therapeutic Courts/COURTS. This project continues funding for a therapeutic court alternative for youth with mental illness, substance abuse disorders, or other cognitive impairments involved in the juvenile justice system in Fairbanks. The project engages youth in treatment to avoid future treatment services and costs associated with the adult correctional and judicial systems. Funding also supports tracking and reporting outcomes (*funded by Alaska Mental Health Trust funds*).

Mental Health Court expansion in targeted communities

\$204,400 to Therapeutic Courts/COURTS. Funding supports a therapeutic court alternative for people with mental illness, substance abuse disorders, or other cognitive impairments in identifying the underlying reasons for an individual's contact with the criminal justice system. Funds will also support development of court-ordered treatment plans designed to decrease the risk of future contact with the criminal justice system. Funding also supports tracking and reporting data related number of individuals served and their outcomes, how funding is utilized and associated cost savings (*funded by Alaska Mental Health Trust funds*).

ASAP therapeutic case management and monitoring treatment in Barrow

\$139,900 to Therapeutic Courts/COURTS. Funding maintains a position with the Barrow Alaska Safety Action Program (ASAP) which provides a therapeutic court alternative for people with mental illness, substance abuse disorders, and other cognitive disabilities. Responsibilities include identifying available treatment options and making treatment recommendations, monitoring adherence to court-ordered recommendations, and mechanisms that address the underlying disorder contributing to the individual's contact with the justice system (*funded by Alaska Mental Health Trust funds*).

Probation Officer for Anchorage Wellness Court

\$79,900 to Alcohol Safety Action Program, DBH/DHSS. Funding supports a probation officer at the Anchorage Municipal Wellness Court. Responsibilities include substance abuse screening, case management, education and treatment recommendations, monitoring of DWI and other alcohol/drug related misdemeanor cases. ASAP operates as a neutral link between the justice and the health care delivery systems, including enforcement, prosecution, judicial, probation, corrections, rehabilitation, licensing, traffic records, and public information/education (*funded by state general funds*).

See "Bridge Home Program" under SUPPORTED HOUSING

See "Discharge Incentive Grants" under SUPPORTED HOUSING

See "Treatment funding for therapeutic court participants" under TREATMENT

See "Training for Judicial Conference participants" under TRAINING/WORKFORCE

See "Deliver training for defense attorneys" under TRAINING/WORKFORCE

See "Training for Therapeutic Court clinical staff" under TRAINING/WORKFORCE

See "Probation staff instruction on therapeutic models of community supervision" under TRAINING/WORKFORCE

See "Pre-development for sleep-off alternatives in Nome" under PLANNING/RESOURCES

See "Rural specialist in DJJ" under RURAL SERVICES

SUPPORTED HOUSING**Office of Integrated Housing**

\$225,000 to Behavioral Health Administration, DBH/DHSS. Funding supports an ongoing project offering technical assistance in developing supported housing options for people with mental illness, substance abuse disorders, cognitive impairments and other disabilities (*funded by Alaska Mental Health Trust funds*).

Discharge Incentive Grants

\$400,000 to Services to Seriously Mentally Ill, DBH/DHSS. Funding supports beneficiaries in DOC settings who require extended supervision and support services to prevent repeat incarceration and public health concern. These funds will be administered by DBH as Assisted Living Home Vouchers or support service resources. Resources will help increase skill level and capacity for assisted living providers (*funded by Alaska Mental Health Trust funds and state general funds*).

Bridge Home Program

\$750,000 to Services to Seriously Mentally Ill, DBH/DHSS. Funding supports the Bridge Home Program, which offers rent

subsidies paired with intensive in-home support services for individuals 'cycling' through emergency and institutional settings, including DOC facilities, API, hospital emergency services, and other high-cost social service and health programs (*funded by Alaska Mental Health Trust funds*).

Capital projects

AHFC Homeless Assistance Program (\$10.05 million in AHFC receipts); and
AHFC Beneficiary and Special Needs Housing (\$1.750 million).

See "Assisted living home training and targeted capacity for development" under TRAINING/WORKFORCE

PLANNING and RESOURCES

Comprehensive Integrated Mental Health Plan

\$120,000 to Health Planning and Systems Development, DPS/DHSS. Funding supports continued development of the Comprehensive Integrated Mental Health Program Plan (Comprehensive Plan), a legislatively-mandated planning process used to guide the behavioral health system, to be carried out by DHSS, The Trust and four advisory boards (*funded by Alaska Mental Health Trust funds*).

Behavioral health follow-up survey

\$100,000 to Behavioral Health Grants, DBH/DHSS. Funding will be used to conduct a behavioral health survey of client recovery levels at one year after treatment. This survey has important policy implications for improving mental health and substance abuse treatment and could also help to document important cost savings from good treatment. If survey information is found to be helpful, it is the intent to repeat this survey every four- to five-years (*funded by Alaska Mental Health Trust funds*).

Family Voice for parents and youth

\$25,000 to Alaska Mental Health Board, DBH/DHSS. Funding brings youth experiencing SED to the Bring the Kids Home (BTKH) quarterly meetings and other advocacy/policy settings, with the goal of providing policymakers with first-hand knowledge of issues affecting youth and families affected by SED, including FASD (*funded by Alaska Mental Health Trust funds*).

TRAINING and WORKFORCE

Assisted living home training and targeted capacity for development

\$100,000 to Behavioral Health Grants, DBH/DHSS. Funding continues assisted living home training and targeted capacity development to improve the quality of training available for assisted living home providers serving individuals with severe mental illness and high-needs individuals in correctional facilities. Both programs address homelessness and daily functioning for very impaired individuals (*funded by Alaska Mental Health Trust funds*).

Mini grants for people with disabilities

\$227,500 to Community Developmental Disabilities Grants, SDS/DHSS. Mini-grants provide Trust beneficiaries with a broad range of equipment and services that are essential to directly improving quality of life and increasing independent functioning, including therapeutic devices, access to medical, vision and dental, special health care, and other supplies or services that might remove or reduce barriers to an individual's ability to function in the community (*funded by Alaska Mental Health Trust funds*).

Microenterprise capital

\$125,000 to Governor's Council on Disabilities and Special Education, SDS/DHSS. Funding provides beneficiaries access to startup funding, small business technical assistance and support, alternative and innovative resources and other options promoting beneficiary self-employment and economic independence (*funded by Alaska Mental Health funds*).

Community Behavioral Health Centers outpatient/ emergency residential services & training

\$780,000 to Services for Seriously Emotionally Disturbed Youth, DBH/DHSS. Funding expands grant opportunities to Community Behavioral Health Centers (CBHC) to enhance outpatient services with innovative programs and training for children experiencing SED, Fetal Alcohol Syndrome (FAS), and other cognitive impairments. A separate component will evaluate the cost effectiveness of these outpatient services (*funded by Alaska Mental Health Trust funds and state general funds*).

Training and technical assistance for Bring the Kids Home programs

\$330,000 to Behavioral Health Administration, DBH/DHSS. Funding will support technical assistance, training and on-going mentoring to improve delivery of integrated, family-driven, recovery-oriented services. Focus is on business practices and clinical performance improvement projects, such as wrap-around facilitation, evidence-based or best practices, FASD waiver services, and/or in-home/family therapy service models (*funded by Alaska Mental Health Trust funds*).

Foster parent & parent recruitment training & support

\$276,000 to Family Preservation, OCS/DHSS. Funding will provide 1) resources to recruit and screen potential foster parents, 2) provide training and technical assistance for parents and foster parents. Therapeutic Foster Homes are recognized in Bring the Kids Home (BTKH) planning as an economical and effective alternative to more costly residential care for youth experiencing SED. Biological parents will be included in relevant trainings as available (*funded by Alaska Mental Health Trust funds and GF funds*).

Probation staff instruction on therapeutic models of community supervision

\$80,000 to Therapeutic Courts/COURTS. Funding supports training for ASAP probation staff in evidence-based practices that will serve to improve

long-term client outcomes and reduce criminal recidivism among people with mental illness, substance abuse disorders and other cognitive impairments (*funded by state general funds*).

Training for Judicial Conference participants

\$15,000 to Therapeutic Courts/COURTS. Funding will support training on topics related to mental health disorders, substance abuse and other cognitive impairments, including autism, bipolar disorder, and fetal alcohol spectrum disorders, etc.. Training offers jurisprudence principles and practices to participants of the Judicial Conference, which includes representatives from Dept. of Law, Public Defender Agency, Office of Public Advocacy. Focus will be on root causes for a beneficiary's contact with the criminal justice system, recommendations for appropriate interventions, and alternatives in sentencing and conditions of bail/ probation (*funded by Alaska Mental Health Trust funds*).

Training for prosecutors

\$15,000 to Third Judicial District-Anchorage, Criminal Division/LAW. This project provides foundational knowledge to prosecutors within the Dept. of Law on mental illness, substance abuse, and other cognitive impairments, to include available treatment and an overview of the state's community behavioral health system. Training better equips prosecutors to 1) better understand and provide for the needs of offenders with disabilities, 2) consider underlying causes for an offender's contact with the criminal justice system, and 3) setting appropriate conditions of bail/ probation based on the individuals mental and/or cognitive capacity (*funded by Alaska Mental Health Trust funds*).

Training for defense attorneys

\$15,000 to Office of Public Advocacy, LAS/ADMIN. Funding will provide training for defense attorneys in understanding mental illness and other impairments, and how to better handle legal cases involving persons with disabilities, including education in treatment options and available resources (*funded by Alaska Mental Health Trust funds*).

Training for therapeutic court clinical staff

\$15,000 to Therapeutic Courts/COURTS. Funding will send Therapeutic Court teams (judges, attorneys, clinical case coordinators) to a national conference sponsored by SAMHSA and the GAINS Center focusing on the connection between mental health and criminal justice systems, including evidence-based practices as solutions (*funded by Alaska Mental Health Trust funds*).

See "Early Intervention/Infant Learning Program Positive Parenting Training" under YOUTH/PREVENTION

UNIVERSITY OF ALASKA

Anchorage Campus

Increase provider capacity to better serve cognitively impaired offenders - \$80,000 (*Alaska Mental Health Trust funds*).

Specialized skills and training on serving cognitively impaired offenders - \$55,000 (*Alaska Mental Health Trust funds*).

Training and technical assistance for providers - \$210,000 (*Alaska Mental Health Trust funds*).

Children's mental health (interdisciplinary education) and certification - \$64,000 (*Alaska Mental Health Trust funds*).

Fairbanks Campus

Alaska Rural Behavioral Health Training Academy - \$172,500 (*Alaska Mental Health Trust funds*).

Human Services - \$50,000 (*Alaska Mental Health Trust funds*). ❖

Follow the State Budget from home...

To follow budget and policy issues as they pass through the legislative process, go to the Governor's website at www.omb.alaska.gov and the Alaska State Legislature website at www.legis.state.ak.us/basis.

To join a statewide **Action Network** sponsored by the Alaska Mental Health Trust Authority, go to: www.capwiz.com/mhtrust/home/

Organizations that participate in state budget issues related to vulnerable Alaskans:

- Advisory Board on Alcoholism and Drug Abuse
- Alaska Brain Injury Network
- Alaska Commission on Aging
- Alaska Addiction Professionals Association
- Alaska Behavioral Health Association
- Alaska Mental Health Board
- Governor's Council on Disabilities and Special Education
- Statewide Suicide Prevention Council

ADVOCACY TIPS

- Write a letter-to-the-editor about FASD, or coordinate a letter writing campaign.
- Make a telephone call to a public official's office or coordinate a telephone campaign.
- Write a letter to a public official or coordinate a letter-writing campaign.
- Organize people to join the Alaska Advocacy Network at www.capwiz.com/mhtrust/home/.
- Host a reception in your home or place of work.
- Make five new contacts and spread the word about an issue.
- Set up a table at a public event, party, or reception and raise awareness about FASD.
- Visit a legislator in your hometown and talk about how FASD affects you or people you know.
- Write an opinion piece for your local newspaper or find someone else to do it.
- Go on a radio talk show and discuss FASD, or find someone else to do it.
- Write a personal story and send it to a policy-maker.
- Join the Alaska FASD Partnership and stay informed about FASD issues. Participate in the Partnership's workgroup teleconferences.
- Tell your friends or co-workers about FASD.
- Attend an advocacy training workshop or FASD 101/201 training.
- Tell your personal story at a public meeting (Assembly, City Council, Rotary, Chamber, School Board, state legislature).
- Coordinate a local advocacy effort in your community – involve the media, host receptions, write letters, coordinate volunteers, visit policymakers, etc.

To join the statewide **Action Network** sponsored by the Alaska Mental Health Trust Authority, go to www.capwiz.com/mhtrust/home/



Alaska FASD Partnership
Steering Committee

Message from the Chair

Waqaa to the readers from the Alaska FASD Partnership. This partnership is a group of individuals and organizations coming together to address Fetal Alcohol Spectrum Disorders (FASD) and the concerns associated with FASD – health and social issues, as well as, providing education and awareness. We are professionals, parents, educators, voters, community leaders, health care providers, and more.

Alaska is an incredible state with diversity in our cultures, languages, and communities. Every year, our state attracts many tourists to witness firsthand the beauty of Alaska – in our lands and our people. Yet, behind this beauty, Alaska leads the way with the highest number of individuals born with FASD, the highest rates of alcohol abuse and domestic violence. The common factor is alcohol. FASD does not discriminate by culture, education, or economic status. It can happen anywhere alcohol is available.

Our policymakers are working to address the needs for each district: safe school buildings, road improvements, health care, safe water, law enforcement ... to name a few. Although Alaska leads the way with identification of FASD through our diagnostic teams, we can do more to help decrease the incidence of FASDs through education and awareness. If everyone reading this newsletter pledges to learn more about FASD – its causes and the issues surrounding alcohol use – our state has the potential to live more healthy, safe, and happier lives. Join our cause – sign up to become a member of the AK FASD Partnership!

Quyana for your time. If you have any questions, concerns, or would like to join the Partnership, please contact us.

Monica Charles Leinberger

The criminal justice system was never designed to accommodate the reality of people affected by Fetal Alcohol Spectrum Disorder. With efforts under way to address this issue, it is becoming apparent that the focus belongs on keeping them out of the system to begin with. And that is proving to be a far greater challenge.

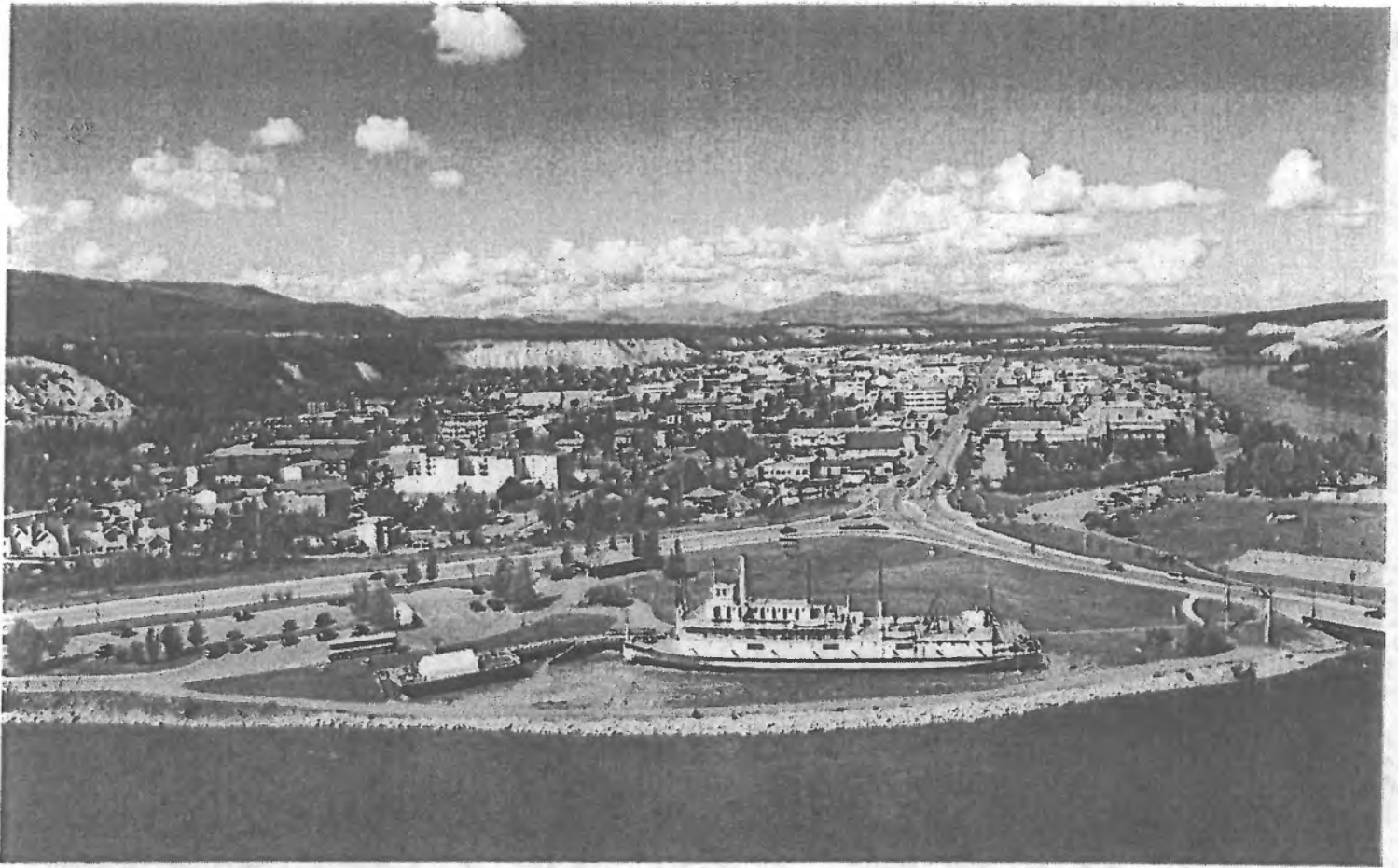
A DIFFERENT KIND OF JUSTICE

By Beverley Spencer

Lesley Carberry puts her arm affectionately around the smiling young man in the sunny kitchen of her home in Whitehorse. She introduces a guest and asks whether he knows why she's come to visit. "Do you remember what we're going to talk about?" she asks. "Hurt brain," he replies.

Frank, 33, has Fetal Alcohol Spectrum Disorder (FASD). So does his brother Carl, 36. They were adopted 26 years ago by Carberry and her husband Ray Marnoch, who have also acted as caregivers to two other young men with FASD. "Hurt brain" is how Frank has come to understand the permanent brain damage he suffered because his mother drank during pregnancy.

FASD is an umbrella term referring to a complex range of brain injuries resulting from prenatal exposure to alcohol. It is one of the leading causes of mental retardation, developmental and cognitive disabilities in Canada. It is estimated to affect 0.9 per 1,000 people in the general population with higher rates in areas with widespread alcohol abuse and poverty, but this is based on an extrapolation of U.S. data. The actual prevalence is not known since diagnostic capacity is limited and there is no systematic screening for FASD. Most of the legal cases where FASD has been a factor involve native people, but FASD affects anyone whose mother abused alcohol during pregnancy.



Every case is different. Symptoms include poor memory, impulsiveness, an inability to fully appreciate the consequences of one's actions and being easily influenced by others. It is a permanent condition that can affect the ability to function independently in life and it puts many on a collision course with the criminal justice system. It is also costly for both individuals and society: individuals with FASD in Canada who are alive today will cost taxpayers about \$600-billion, according to FASworld Canada, a non-profit organization that aims to build awareness for the disorder.

"FASD is not just a northern issue nor is it only a first nations issue," Yukon Justice Minister Marian Horne wrote to her provincial counterparts in 2010. "It is an issue that affects every community... and every facet of the justice system we are responsible to uphold."

FASD means that Carberry and her husband still financially support their adult children and guide them through the ups and downs of everyday life. Carl, who lives in Edmonton with his partner and two daughters, cannot keep a regular full-time job. The only people who will hire him, Carberry says, are people on the fringes who think he is an easy target. "And he is," she says. He has been in and out of jail and has battled addiction. Frank, who lives at home, works at a major retailer through a supported employment program and dreams of becoming a full-time employee. He has a job coach and a girlfriend and generally enjoys a happy life, his mother says, but he will always need a support worker. She worries about what will happen to her sons and grandchildren when she and her husband are no longer there.

There is greater recognition of FASD now than there was

26 years ago, but not the permanent life-long support her sons will need.

"I'm not comforted that when I die and my husband dies there will be anybody to take care of our children," she says. "I'm not comforted that if they were to get into trouble because they're not getting the supports that were provided for them [by us] that anybody would understand any better about what's going on."

The wrong assumptions

The criminal justice system is based on a set of assumptions that collide with the reality of FASD, namely that people act in a voluntary manner that is determined by free will, University of Toronto law professor Kent Roach and Andrea Bailey, a law clerk at the Territorial and Supreme Courts of Yukon, write in a paper on the issue. It assumes that "they can make informed and voluntary choices both with respect to the exercise of their rights and the decision to commit crimes."

In law, accused persons are presumed to be fit to stand trial and not to suffer from a mental disorder that would exempt them from criminal responsibility. There are exceptions for those with extreme cognitive impairments that deprive them of the ability to understand the proceedings or to appreciate the consequences or wrongfulness of their actions. There is also an assumption that mental disorders can be treated so that the accused will either be fit to stand trial or no longer present a substantial danger to the public and be safe to release. As Roach and Bailey point out, this runs counter to the reality of the permanent brain damage caused by FASD.

The law of sentencing is also influenced by assumptions about free will. The purposes of sentencing — specific and general deterrence, denunciation, incapacitation, rehabilitation and the promotion of a sense of responsibility — all assume that offenders are capable of “making choices, understanding the consequences of their actions and learning from their mistakes,” write the authors.

“In short, Canadian criminal law is premised on assumptions about free will and individual responsibility, and temporary and treatable departures from that norm,” they add. “These assumptions unfortunately do not fit well with what is known about FASD.”

The Yukon has been a leader in addressing the reality of FASD in the criminal justice system. Judges Heino Lilles and Barry Stuart of the Yukon Territorial Court (both now retired), are considered pioneers in recognizing that crimes committed by offenders with FASD must be understood in the context of the cognitive brain damage they suffered and the system needs to change.

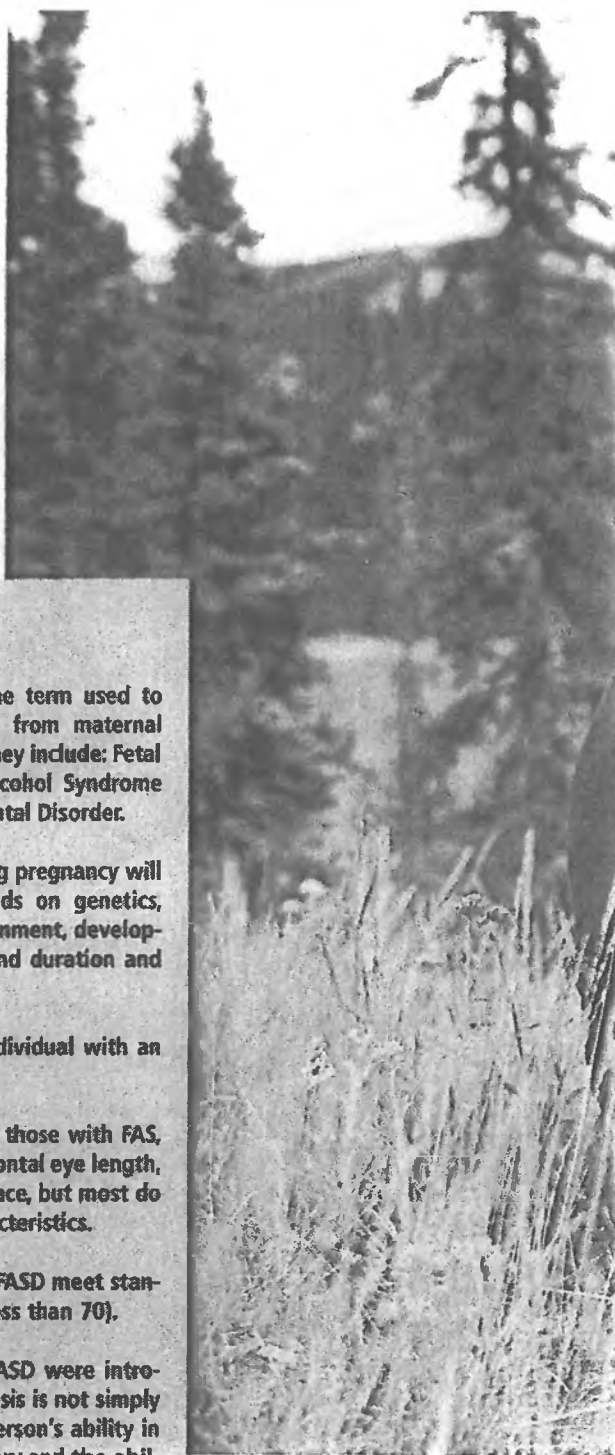
In 2002, Chief Judge Barry Stuart issued a clarion call for action in the case of Marcel Jacob, a 21-year-old who had committed a vicious sexual assault. The judge sentenced him to eight years in the penitentiary, but warned there will be more cases like his unless families, communities and professionals learn to work together to address the root causes of crime.

Jacob was neglected for most of his childhood and physically and sexually abused; his history was full of symptoms suggesting FASD and he was diagnosed with psychopathic tendencies and multiple personality disorders, the judge observed. How could those well-documented problems not have been addressed? he asked.

“The villain in this piece, as in so many other cases, is no one person, no one agency or department, but rather the system,” he wrote. “The fragmented, truncated system that has no integrated vision or holistic approach is the villain.”

“We cannot stop the next Marcel Jacob with good intentions, nor with small changes. . . . I believe there will always be a need for what the justice system currently offers, but it can no longer be the only . . . approach to the underlying causes of crime, the conditions that generate so many ‘next cases’ like Marcel Jacob.”

In 2007, a Community Wellness Court was established in Whitehorse in a partnership between the Yukon Territorial Court, Yukon Department of Justice and the Yukon First Nations. It offers a therapeutic alternative for offenders with substance abuse problems, FASD or other cognitive impairments



What is FASD?

- **Fetal Alcohol Spectrum Disorder is the term used to describe the medical diagnoses caused from maternal alcohol consumption during pregnancy. They include: Fetal Alcohol Syndrome (FAS); partial Fetal Alcohol Syndrome (pFAS); Alcohol-Related Neurodevelopmental Disorder.**

- **Not everyone who drinks alcohol during pregnancy will have a child with FASD: it also depends on genetics, maternal characteristics, nutrition, environment, development timing, reactions to other drugs and duration and extent of alcohol exposure.**

- **FASD manifests differently in every individual with an alcohol-related diagnosis.**

- **Some individuals with FASD, especially those with FAS, have facial anomalies, such as short horizontal eye length, a thin flat upper lip and a flattened midface, but most do not have any visible facial or other characteristics.**

- **Approximately half of individuals with FASD meet standard criteria for mental retardation (IQ less than 70).**

- **National guidelines for diagnosis of FASD were introduced in 2005. The challenge with diagnosis is not simply to identify brain injury, but to assess a person's ability in the exercise of judgment, planning, memory and the ability to cope independently with day to day life.**

Source: The Path to Justice: Access to Justice for Individuals with FASD, Yukon Government; Consensus Statement on FASD — Across the Lifespan, Institute of Health Economics, Government of Alberta.

and/or other diagnosable mental health problems related to the commission of their offences. In 2008, the Yukon

hosted the first-ever national conference on FASD and the law, which brought together experts and professionals to share information about cross-country FASD initiatives, including youth justice projects in Vancouver and Winnipeg and efforts by Correctional Service of Canada to identify the prevalence of FASD in the prison population.

Since then, the Yukon has developed a justice training curriculum on FASD, undertaken a prevalence study in the Yukon corrections population with Justice Canada and is developing greater collaboration between government departments.

In 2010, the CBA passed a resolution, put forward by its



"I would get a phone call and [my client] would always be embarrassed and upset to be calling me. "He'd say: 'Oh, I screwed up again' which I don't think is necessarily the case. I think I felt like everybody else was screwing up."

— Fia Jampolsky —

Cabott & Cabott, and member of the CBA FASD Advisory Committee, Whitehorse

Yukon branch, urging the federal government to avoid criminalization of people with FASD and allocate resources to develop solutions. CBA past-president Rod Snow recalls asking a meeting in Whitehorse in 2006 whether the branch should take on the issue of FASD in the criminal justice system. A judge sitting across the table responded immediately. "Of course you should. If you are not doing that, what good

are you doing? I have a file this thick on the topic," he said, holding his hand about a foot above the table.

Fia Jampolsky, a former Legal Aid lawyer who now works for Cabott & Cabott in Whitehorse and serves on the CBA FASD Advisory Committee, remembers a client who couldn't spend more than three weeks out of the system. A "lost soul" who had been bounced around group homes



"We have to ask ourselves in each case, 'Do we have what this person needs to be able to help them?' and the sad reality is sometimes we don't."

**— Chief Judge Karen Ruddy —
Yukon Territorial Court, Whitehorse**

after his caregiver died, the 19-year-old was always in trouble for spontaneous crimes of opportunity: grabbing jackets off the wall or stealing penny jars from hotels. Sometimes the offences would escalate to break and enters or assault.

"I would get a phone call and he would always be embarrassed and upset to be calling me," she recalled in an interview. "He'd say: 'Oh, I screwed up again' which I don't think is necessarily the case. I think I felt like everybody else was screwing up."

For Jampolsky, he epitomized the conundrum of FASD in the criminal justice system. "I don't think his behavior is necessarily criminal," she says. "I think he's a victim more often than he's an offender and he lacks the services and resources that may have been able to stabilize him." He was diagnosed with Alcohol Related Neurodevelopmental Disorder (ARND), a form of FASD, but displays no physical symptoms of the disorder. "I think it is hard for people to see him as anything less than willfully disregarding the law," Jampolsky said. He wasn't in the wellness court program because he missed too many meetings and could not follow conditions.

Nils Clarke, executive director of Yukon Legal Services Society, estimates that FASD is a factor for between 30 and 40 per cent of his clients. "These are not people that are criminal

masterminds committing sinister offences of forethought and premeditation," he observed in an interview.

Jampolsky tried to work within the system to find a solution that could break the cycle for her client. She asked the court for time to get assessments for a suspected cognitive disorder, a measure not normally available to adults under the *Criminal Code*. The court nonetheless agreed to the request, but by the time the assessment was ready, her client "would have spent so much time in jail that I would end up doing a sentencing with him and he would get time served," she said.

Efforts to get Jampolsky's client into adult services also failed. "They would say, 'This is voluntary so he has to be able to come in and make his meetings and tell us the path that he wants.' Well that's precisely the problem with an individual with FASD."

What would have made a difference, she believes, is a multi-sectoral approach to the young man's problems. "Everybody knew about him," Jampolsky points out. "He was a product of the foster care system so he has a file a foot thick. I know there are privacy interests, but I think more sharing of information and resources with a real focus on preventing him from coming into the system would have been the most important approach."

The last she heard, he was back in the system and a former legal-aid colleague was handling his bail review.



"My role is to ensure that citizens have access to justice. In the Yukon, it's clear we could do better for those with FASD."

**— Dennis Cooley —
Yukon Deputy Minister of Justice**

A rough start in life

Lesley Carberry's son Carl was a handsome young boy who displayed none of the outward manifestations of FASD. That turned out to be part of the problem.

Unlike his younger brother, he didn't have the physical facial features — the thin upper lip, short eye slits and slightly recessed jaw — associated with Fetal Alcohol Syndrome. Frank, on the other hand, was a "funny-looking kid," Carberry told the Yukon FASD conference in 2008. "And thank goodness he was because that diagnosis afforded him a protection and services not available to his older brother, who didn't look funny and therefore didn't come to the attention of any medical professionals at the time."

Carl was handsome, bright, charming, "very verbal, very adept" and a people-pleaser. Teachers viewed him as capable and competent. But something was very wrong. "He was in trouble really from the day we met him," Carberry says. "His inability to accept consequences for actions, his inability to predict consequences for actions — looking back, it's all there."

She and her husband knew very little about the early history of their adopted children. In fact, Carl and Frank both had endured an abusive childhood in a Dene Nation community in the Northwest Territories. Carl had suffered a traumatic brain injury as a baby when his father smashed his skull against the wall. He spent over a year recovering in a medical foster home before being returned to his parents. His mother later took the two boys and moved to Whitehorse. The two brothers were apprehended and placed in foster care after they were discovered stealing food from a grocery store. Carl was 6 and Frank was 2.

They spent the next four years in a foster home where Carl was physically and sexually abused by his foster father and foster brother. Eventually, Carl and Frank were put up for adoption, their pictures appearing in an ad in the local newspaper. "Ray and I looked at them, and I said: 'I think this is it,'" Carberry remembers.

After a rigorous home study, the boys, ages 10 and 6, came to

live with them. Frank had the benefit of supportive teachers and social workers who understood his diagnosis, but Carl struggled.

His teachers expected him to be able to perform at school and would make excuses for him when he couldn't. "There was no diagnosed disability," Carberry says. "He's charming, he's first nations; they wanted him to succeed. So they let him off with a whole lot of stuff." He had trouble understanding consequences and his parents' efforts to make him learn from his mistakes were futile.

Attempts to express love and support and talk things through were interpreted as judgment and created confusion and misunderstanding, Carberry says. Tough love and behavior modification didn't work. The family sought professional help, but the situation was blamed on a variety of factors, including adoption breakdown, overprotective and unrealistic parents and an incorrigible son. "Systems and professionals continued to look for reasons, to focus on something that could be 'fixed' — either our son or us," Carberry told the FASD conference. Carl started drifting from the family and took up with a community that was more accepting than his home: kids who were abusing drugs and stealing cars. It led to his first encounter with the criminal justice system.

He was 13.

No ordinary court

It's Monday afternoon in Whitehorse's Community Wellness Court and the first accused stands before Chief Judge Karen Ruddy.

OFFICIAL NOTICE/AVIS OFFICIEL



Darren Vallentgoed of Schulich Law School in Halifax, has won the 2011 CBA National Military Law Section (NMLS) Law School, Sword & Scale Essay Prize. Mr. Vallentgoed's essay deals with the extraterritorial applicability of the Charter after the Omar Khadr decisions and Amnesty International v. The Canadian Forces.

The prize is presented annually for the best scholarly essay in military law or justice, public policy or public affairs related to Canadian military law affairs. The *Sword & Scale* Essay Competition prize consists of a monetary prize of \$250 as well as paid registration for the NMLS annual PD conference in Ottawa held on June 14, 2011. The winning essay will be published in NMLS' electronic newsletter, the *Sword & Scale*.

Full details can be found on the CBA's website, at http://www.cba.org/CBA/sections_military/main/.

Darren Vallentgoed, de la Faculté de droit Schulich à Halifax, est le lauréat du Prix Salut militaire pour le Concours de dissertation des facultés de droit 2011 de la Section nationale du droit militaire (SNDM) de l'ABC. Sa dissertation traite de l'application extraterritoriale de la Charte à la suite des décisions portant sur Omar Khadr et de l'affaire *Amnistie Internationale c. les Forces canadiennes*.

Le Prix est présenté, à tous les ans, à l'étudiant ou l'étudiante en droit qui rédige la meilleure dissertation sur un thème de droit militaire ou de justice militaire, de politiques publiques ou d'affaires publiques se rapportant au droit militaire canadien.

Le gagnant reçoit un prix en espèces de 250 \$, ainsi qu'une inscription gratuite à la conférence annuelle de développement professionnel de la SNDM, qui a eu lieu à Ottawa le 14 juin 2011. La dissertation de M. Vallentgoed sera publiée dans *Salut militaire*, le bulletin électronique de la Section.

Vous trouverez tout renseignement complémentaire sur le site de l'ABC: http://www.cba.org/ABC/sections_military_f/main/.

Une autre forme de justice

Le système de justice criminelle n'a pas été conçu pour tenir compte des déficits cognitifs associés aux troubles causés par l'alcoolisation fœtale. Mais le défi est de taille si l'on veut aider les personnes qui en sont atteintes à obtenir un meilleur accès à la justice.

Lesley Carberry place son bras autour des épaules d'un jeune homme souriant, dans la cuisine ensoleillée de Whitehorse. Elle lui présente votre correspondante et lui demande s'il sait pourquoi il est venu. « Cerveau blessé », répond-il.

Frank, 33 ans, souffre de l'Ensemble des troubles causés par l'alcoolisation fœtale (ETCAF). Son frère Carl, 36 ans, également. Ils ont été adoptés il y a 26 ans par Leslie Carberry et son mari, Ray Marnoch. « Cerveau blessé » est la manière dont Frank exprime le dommage permanent qu'a subi son cerveau parce que sa mère buvait durant sa grossesse.

L'ETCAF est un terme général utilisé pour décrire un ensemble complexe de blessures cérébrales résultant de l'exposition prénatale à l'alcool. C'est l'une des premières causes de retards mentaux, de troubles cognitifs et de développement au Canada. Près d'une personne sur 1000 en serait atteinte, beaucoup plus dans les régions

où la consommation d'alcool et la pauvreté sont plus répandues. Mais l'ampleur du phénomène demeure peu connue, vu l'absence d'évaluation systématique de l'ETCAF.

Chaque cas est différent et il dépend de la consommation de la mère. Les symptômes incluent la mauvaise mémoire, l'impulsivité, une incapacité à juger des conséquences de ses actes et le fait d'être facilement influencé par les autres. C'est une condition permanente qui en place plusieurs sur la voie de la délinquance.

L'ETCAF signifie que Lesley Carberry et son mari soutiennent toujours financièrement leurs enfants adultes et les guident à travers les hauts et les bas de leur vie quotidienne. Carl, qui vit à Edmonton avec sa conjointe et ses deux filles, n'est pas capable de conserver un emploi stable. Frank, qui habite à la maison, travaille dans un grand magasin dans le cadre d'un programme de soutien aux employés. Il rêve d'y travailler à temps plein.

« Je m'inquiète du fait que quand je mourrai et que mon mari mourra, il n'y aura personne pour s'occuper de nos enfants, dit M^{me} Carberry. Je m'inquiète du fait que s'ils se mettent dans le trouble parce qu'ils n'ont plus le même soutien, personne ne comprendra ce qui se passe. »

De mauvaises présomptions

Le système de justice criminelle est bâti autour d'une série de présomptions qui sont en contradiction avec la réalité de l'ETCAF. Le système assume que les gens « peuvent faire des choix informés et volontaires au moment d'exercer leurs droits ou de prendre la décision de commettre des crimes », ont récemment écrit le professeur Kent Roach et la juriste du Yukon, Andrea Bailey, dans un article sur la pertinence de l'ETCAF en droit criminel canadien.

Les principes de détermination de la peine sont aussi influencés par des présomptions de libre arbitre. La dissuasion, la dénonciation, la

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"How are you feeling?" the judge asks with a kind smile. "I'm feeling anxious," the woman replies in a quiet voice. She had missed a recent court appointment, but the judge notes it is her first slip, suggests a change in scheduling and gently reminds her about the importance of showing up.

This sets the tone for the rest of the afternoon. Every sign of progress earns a "Good job!" from the judge. "It's been a long road, but it will be nice to get to the end of it," she tells a young dark-haired man wearing an Evil Knieval T-shirt and a black hoodie. People who have failed to follow through on commitments are quietly but firmly set straight. "Mr. Blanchard, we've missed you," Judge Ruddy tells a man who has missed the last two court appearances. "If you don't show up, we can't help you. You need to think long and hard about whether you want to be in this process. If no, we'll go to sentencing on June 13."

Clearly, this is no ordinary court.

Therapeutic courts have gained popularity over the past 20 years as part of a move to restorative justice and a focus on rehabilitation and reconciliation. They have been established in Canada, the United States and Britain in response to the

stress placed on the system by increasing numbers of offenders and the recognition that the traditional approach addresses the symptoms but not the cause of their legal problems, according to a paper on the Yukon wellness court prepared by the Four Worlds Centre for Development Learning in Alberta.

They are based on the assumption that an integrated program of intense supervision, treatment, therapeutic support, and skills development will produce better results for the offender (who must be willing to take responsibility for his or her behavior), the victims and the community. But finding resources to make it work, especially for structured supervision, can be a challenge.

One of the most important roles of the Yukon wellness court is getting a proper diagnosis for offenders with suspected FASD. Once the individual is found to be a suitable candidate for the program, the judge can order a formal FASD assessment. It costs \$3,000 to \$6,000; separate funding is available under the program since FASD assessments are not routinely covered by provincial or territorial health plans.

"Once you've got that assessment, it's not limited to this process," Judge Ruddy said. "Where people's expectations of

réhabilitation et la promotion d'un sens de la responsabilité assument toutes que les délinquants sont capables de faire des choix, de comprendre les conséquences de leurs actions et d'apprendre de leurs erreurs.

« Ces présomptions ne cadrent pas avec ce que l'on sait de l'ETCAF », ont conclu les deux auteurs.

Un tribunal pas comme les autres

Le Yukon est un leader quand vient le temps de faire face à la réalité de l'ETCAF dans le système de justice criminelle. En 2007, Whitehorse a créé un Tribunal communautaire du mieux-être, en partenariat avec la Cour territoriale du Yukon, le ministère de la Justice et les Premières nations du territoire. Cette cour offre une alternative thérapeutique pour les délinquants avec des problèmes de consommation, aux prises avec l'ETCAF ou d'autres formes de troubles mentaux.

Dans une petite juridiction comme celle-ci, les juges, les avocats et d'autres employés de la cour ont rapidement noté que les mêmes personnes revenaient toujours devant les tribunaux pour faire face aux mêmes accusations et au non-respect de conditions.

Fia Jampolsky, une ancienne avocate de l'aide juridique qui travaille maintenant chez Cabot & Cabot, à Whitehorse, se souvient d'un client qui ne pouvait passer plus de trois semaines à l'écart du système judiciaire. Le jeune homme de 19 ans était toujours dans le trouble pour des crimes spontanés : voler des manteaux sur des murs, voler des pots de monnaie dans des hôtels... Parfois, les infractions escaladaient jusqu'à l'entrée par effraction ou les voies de fait.

« Je recevais un coup de téléphone et il était toujours gêné et frustré de devoir m'appeler », se souvient M^e Jampolsky.

Pour elle, ce jeune homme incarnait la tragédie de l'ETCAF dans le système de justice criminelle. « Je ne pense pas que son comportement soit nécessairement criminel, dit-elle. Je crois qu'il est une victime plus souvent qu'il est coupable, en ce qu'il manque de services et de ressources qui pourraient l'aider à se stabiliser. »

Il a été diagnostiqué avec des Troubles neurologiques du développement liés à l'alcool (TNDLA), une forme d'ETCAF, mais il n'affiche aucun symptôme. « C'est difficile pour les autres de le voir autrement que comme une personne qui ne respecte pas la loi », note M^e Jampolsky. Il n'était plus devant le tribunal du bien-être parce qu'il avait manqué trop de rencontres et ne pouvait respecter ses conditions.

Les tribunaux thérapeutiques comme celui du Yukon ont gagné en popularité au cours des 20 dernières années. Ils sont basés sur l'hypothèse qu'un programme intégré d'intense supervision, de soutien thérapeutique et de développement des habiletés donnera des meilleurs résultats pour le délinquant, les victimes et la communauté.

L'un des rôles les plus importants du tribunal du mieux-être du Yukon est d'obtenir un diagnostic pour les gens en apparence atteints de l'ETCAF. Ce diagnostic aide par la suite à établir un plan de mieux-être aux délinquants, qui inclut une évaluation de leurs habiletés.

Mais pour faire de véritables progrès, les individus ont besoin d'un environnement de vie stable, sobre et supervisé. Et c'est peut-être là le plus grand défi, note la juge en chef du tribunal, Karen Ruddy. Malgré l'existence de certaines familles comme celle de Lesley Carberry ou de centres comme la maison de transition de 20 lits opérée par l'Armée du salut à Whitehorse, « la réalité est que nous n'avons pas toujours » ce dont ils ont besoin, reconnaît la juge.

Signes de progrès

L'ABC travaille avec le ministère fédéral de la Justice pour trouver des solutions au problème de l'ETCAF dans le système de justice criminelle. En 2010, l'Association a adopté une résolution exhortant Ottawa d'éviter de criminaliser les gens aux prises avec l'ETCAF et d'allouer des ressources pour développer des solutions. Puis, en mars dernier, un comité qui travaille sur le sujet a entre autres recommandé d'amender le Code criminel pour permettre aux tribunaux d'ordonner une évaluation des adultes susceptibles d'être touchés. Les changements proposés permettraient aussi au juge de ne pas tenir compte de certaines obligations du code, comme des peines minimales, dans certaines circonstances.

Quand les ministres de la Justice du pays se sont entretenus de la question de l'ETCAF en octobre 2010, ils ont donné leur appui aux efforts de sensibilisation de l'ABC et ont indiqué leur volonté de continuer à échanger avec l'ABC sur le sujet.

Lesley Carberry est encouragée par tous ces efforts, mais l'expérience lui a appris que ces changements doivent être accompagnés par des plans de soutien communautaire pour faire une différence à long terme. « Pour moi, ce qui est prometteur, c'est de voir plusieurs communautés qui luttent avec ce problème de supporter tant de délinquants aux prises avec l'ETCAF. Et ils prennent vraiment les choses en main et tentent de savoir quoi faire. »

Quand on lui demande ce qui l'a soutenu pendant toutes ces années passées à élever deux enfants avec l'ETCAF, elle répond immédiatement : « Mes enfants. Mes enfants sont les personnes les plus fortes que je n'aie jamais rencontrées. Ils se relèvent chaque fois et se remettent à marcher. Je ne suis pas certaine que je pourrais faire la même chose. »

« Mes enfants sont mes héros. » N

them need to be modified that assessment is there and can still be used for other purposes.”

The assessment helps the court develop a wellness plan for each individual. The diagnosis is accompanied by an assessment of individual skills and abilities and recommendations on how to deal with them in the justice system. “The nature of the disorder differs from person to person,” Judge Ruddy points out. “It helps you clearly understand what you can expect from a particular individual in terms of what they can do and what they can't do.”

The nature of FASD means their behavior is not going to improve over time. The goal is to create an environment and structure that allows them to function in a way that keeps them from coming into conflict with the law, Judge Ruddy says. “For a lot of [FASD clients], success is keeping them from offending substantively over the period of time that they're with the court.”

Life skills programs such as Challenge, which also offers vocational training and employment opportunities, provide some of that structure. But to make real progress, the individual needs a sober, stable, supervised living environment. And that's been the biggest struggle, Judge Ruddy admits. “There

have actually been people that we have had to turn away because we can't find that for them.”

Sometimes family can help. The Adult Resource Centre (ARC), a 20-bed halfway house for adult men operated by the Salvation Army in Whitehorse, is another option. For individuals who can function at a higher level and don't need 24-hour supervision, a semi-independent living situation can work. “We have to ask ourselves in each case, ‘Do we have what this person needs to be able to help them?’ and the sad reality is sometimes we don't,” she says.

Dennis Cooley, the Yukon deputy minister of justice, says the biggest challenge is finding funding and co-ordinating services to ensure clients with FASD get what they need. “My role is to ensure that citizens have access to justice,” he said in an interview. “In the Yukon, it's clear we could do better for those with FASD.”

What would be ideal, Judge Ruddy says, is a comprehensive housing project that provides programs and a supervised living environment. Longer-term programs to transition offenders back into the community are also needed.

“Having something that assumes responsibility for meeting



"These are not people that are criminal masterminds committing sinister offences of forethought and premeditation."

— Nils Clarke —

Executive director, Yukon Legal Services Society, Whitehorse

those needs outside of the justice system would be wonderful. But it's going to take time for us to get to that stage. It's an evolution."

Lucky to be alive

Carl was in and out of the criminal justice system from age 13 until he was over 30. As a youth, he was involved in stealing cars. He withdrew from his parents; a series of psychiatrists framed his problems as attachment disorder and adoption breakdown. A cognitive disorder was never considered.

"We were at a loss," Carberry remembers. "It took us a long time to understand that someone could be as bright as Carl and still be affected by pre-natal exposure."

At age 15, he left home in a stolen vehicle. Later, he wound up in jail in Edmonton after being caught in a high-speed police chase in another stolen car. Back on the street with a group of other young troubled kids, he got involved in drugs and alcohol. "I don't know all the details of what happened there," she says. "I know enough to know that he's really fortunate to still be alive."

But Carberry and her husband never lost contact with Carl and eventually rebuilt the relationship. She has a theory about why he left. "He knew he had to go because he felt he was

going to take us down," his mother says. "I think he was right. I don't think we were going to survive with him here."

Carl was finally diagnosed with FASD in his early thirties. He understands that his life will be permanently affected by what has happened to his brain. But after the birth of his two daughters, he gave up criminal activity (he has not been in trouble with the law for the past six years) and stopped using drugs and alcohol. He wants his daughters to have a better dad than he did.

Carl is a good father who loves his children, Carberry says, but he can't manage without support from his family. "The key is to keep him in that strong husband/father role without overwhelming him," she says. "I don't have many fears that he's going to slide back as long as we keep a support network around and as long as the money can last."

Recently when she asked Carl what might have made a positive difference for him, he had two observations. First, when he was caught misbehaving, as a child, he felt it was like a little game: there weren't enough consequences so he didn't understand the path he was on. Second, he said, "People just need to be kind."

As for what the criminal justice system could have done differently, he says his natural father should have been charged with abusing him. "His father has never had any consequences

CATHIE ARCHBOLD

for anything he's ever done to this kid," Carberry says. "So Carl grew up knowing that you could do those things to somebody and it didn't matter."

Signs of progress

FASD is a multifaceted issue with no easy solutions. There are no national surveillance or prevention strategies and research activities are fragmented and underfunded. Multiple sectors, including health, social services, education, the courts and corrections, are involved which means approaches to services for individuals with FASD and their families can be haphazard.

The criminal justice system has proved to be a blessing and a curse for offenders with FASD. Some would never have received a diagnosis or any kind of therapeutic intervention if they hadn't committed a crime. On the other hand, the system itself creates unique challenges for them. Their inability to

that hold individuals accountable "consistent with their degree of responsibility" [see sidebar below.]

The committee also wants the *Criminal Code* amended to address the unique challenges that FASD presents. For example, it recommends taking a page from the *Youth Criminal Justice Act* to allow courts to order assessments of adults suspected of having FASD. (Currently, courts cannot order assessments for suspected cognitive disorders in adults unless the accused is considered unfit to stand trial or not criminally responsible by reason of a mental disorder. These provisions do not apply or are considered inappropriate for individuals with FASD.) The committee also recommends giving the judiciary discretion when sentencing individuals with FASD and removing barriers including mandatory minimum sentences.

Nils Clarke favours dual track sentencing provisions for FASD and any other cognitive disorder where diminished capacity is recognized. "I would like the judges to have the tools to

Call to action

The CBA FASD Advisory Committee and members of the Federal Provincial Territorial FASD Steering Committee have suggested the following measures to improve access to justice for people with FASD:

Allocate resources for community alternatives, including supportive housing and social services, to avoid the unnecessary criminalization of individuals with FASD;

Develop alternative measures/diversion programs in the criminal justice system that hold individuals with FASD accountable consistent with their degree of responsibility;

Educate justice system professionals, including police, judges and lawyers, about FASD;

Add sections of the *Youth Criminal Justice Act* that offer special protections to youth to the *Criminal Code* to accommodate the unique challenges presented by individuals with FASD. That would include:

a. Allowing courts to order assessments of adults that are believed to be affected by FASD at any stage in the proceedings and as early as possible;

b. Ensuring that counsel are present in encounters with the criminal justice system;

c. Using case conferencing at an early stage to get collaboration among key players in deciding an appropriate response.

Encourage all government ministries to collaborate to share information and co-ordinate and integrate services;

Recognize that FASD is a life-long disability distinguishable from a mental illness that requires appropriate legal and social accommodations;

Allow all sentencing options to be available to judges to allow them to devise just and appropriate dispositions for people affected by FASD;

Limit unnecessary conditions, including bail conditions and terms of probation, to avoid the unnecessary accumulation of administration of justice breaches;

Review standardized checklists and risk assessments tools used by courts and corrections to ensure their validity for people affected by FASD.

connect behavior to consequences makes the process confusing and stressful; their impulsive behavior makes it a challenge to comply with routine conditions and probation orders, and they struggle in the aggressive and uncertain prison environment and are more likely to be victimized by other inmates, according to a 2008 report submitted to the Yukon Department of Justice by the Canadian Research Institute for Law and the Family.

When federal, provincial and territorial (FPT) ministers responsible for justice and public safety met in October, 2010, there was strong support to continue to make FASD and the justice system a priority item, and to engage the CBA in dialogue about FASD as an access to justice issue.

In March, 2011 the CBA FASD Advisory Committee and the Federal Provincial Territorial FASD Steering Committee recommended measures to improve access to justice for individuals with FASD. They include education of justice professionals, resources for community alternatives such as supportive housing and alternative measures and diversion programs

have that parallel-track sentencing regime," he said. "There should be national consensus and it shouldn't be that controversial. We should move forward and strike while the iron is hot."

Lesley Carberry is encouraged by the efforts she sees to deal with the issue in the criminal justice system, but experience has taught her that changes must be accompanied by corresponding community support plans to make a difference over the long haul. "What's promising for me is just to see different communities struggling with how to support so many of these high-volume offenders with FASD. They're really stepping up and saying, 'We need to know how to do this,'" she says, "It's very, very tough stuff they're trying to do."

When asked what has sustained her through the years of raising two children with FASD, she answers immediately: "My kids. My kids are the strongest people I have ever met. They just get up and keep going. I'm not sure I could do that.

"My kids are my heroes." **N**

Beverly Spencer is editor-in-chief of *National*.

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Suggestions for more user-friendly court hearings

Barrow has about 4,500 people. It's the farthest north community in the United States. The Barrow court serves an area about half the size of California, with a population of about 10,000 people. We do a lot of telephonic hearings. Most of the population is Inupiaq Eskimo, but there are a large number of other racial and cultural groups, too. These suggestions are offered in a spirit of humility, knowing that there are many different kinds of courts, different types of cases and different amounts of time available for each case. These thoughts are personal to me based on over 29 years as a judge in this community: they are not an official position of the Alaska Court System.

- Realize that a person who appears to understand everything, and even says they understand, **may not**. There may be language problems and cultural misunderstandings about the justice system. There may be mental conditions like Fetal Alcohol Spectrum Disorder in which (for example) a young adult in his or her 20's actually has the ability to understand of an elementary school student. Some "red flags" that I consider in being especially careful to accommodate the person:
 - ✓ Diagnosis of FAS/FAE/FASD or other mental challenge.
 - ✓ A very traditional type of person who may just not understand the Western justice system.
 - ✓ Judge's personal knowledge or indication in file that the person had an alcoholic mother and/or a very disrupted childhood.
 - ✓ A follower in criminal activity but is the person getting caught.
 - ✓ Keeps getting into trouble multiple times, especially in similar type of cases.

- ✓ In special education or left school early.
- ✓ Others say the person is impulsive—does not think before doing actions.
- ✓ Back in court for multiple, relatively minor, probation violations.
- Slow down and check in with a person during an explanation of rights or similar hearing to make sure that the person knows what is going on. Pauses are probably necessary between different major points just to make sure the concepts sink in. When questions are being asked, pauses may be necessary for the person to respond in a manner that is comfortable and that will allow sharing of information that the person wants to say. Offer a chance to consult again with the attorney after the explanation.
- Consider using visual aids, such as writing on large sheets of paper or on a wipe on/wipe off board. Logistics in the courtroom may make this difficult.
- A rural court like Barrow involves frequent use of telephonic hearings. Using the telephone is extremely convenient and cost-effective for everyone. But such hearings present special issues. If silences are necessary during telephonic hearings, explain what is going on so that the frustration level for the person(s) on the phone can be reduced. Sometimes, it's impossible to do a telephonic hearing with certain people involved in the justice system. The lack of personal contact may reduce their ability to understand. It may be possible simply to combine two hearings done in person at a future date instead of having one telephonic (like a change of plea) and the other (like a felony sentencing) in person. We have arranged for a preparation of a presentence report and then conducted a combined change of plea and sentencing with a remand to jail immediately following the hearing.
- Be sensitive to your own cultural biases. Someone may not look at you directly. It may be the person is ignoring you. But, in that person's culture, it may be a sign of respect.

Some shy juveniles dealing with justice system personnel in this part of Alaska may raise their eyebrows to indicate "yes". Though not saying anything, they are responding to the question. Saying "he let me do something" might mean the other person allowed it to happen or it might mean that the other person forced it to happen.

- Do not assume that the attorneys involved have had the time to explain what is needed to their clients in a way that the client can understand. There may have been a lack of time or a lack of understanding of a client's mental conditions (such as FASD). I believe that it's the judge's responsibility to make sure the persons involved in the hearing understand what happened.
- Where possible, use plain English in what is said and what is written. Written forms should have places for a defendant or juvenile to initial so that the person focuses on each portion of the form. Concrete language is best. Having "white space" and easy to read type is helpful, even if it uses more paper! We need to avoid having the whole experience being a "blur" of words.
- When appropriate, check in with the lawyer's client about their personal schedule when setting a court hearing. The convenience of the judge and attorneys may not coincide with other factors like making sure that a child's hearing occurs after the school day.
- Once structure has been provided to a juvenile by a conduct agreement and treatment, the juvenile may do much better. Busy professionals may suggest that the interventions are no long needed. Be very cautious about removing the structure, since that portion of the environment of the juvenile may be the source of the success being experienced.
- **Bottom line: the goal of timely judicial decision making ("moving cases") must not displace having respect for all the participants' need to understand what is happening.**

GENERAL CONDITIONS OF PROBATION

**I KNOW THAT I MAY BE SENT TO JAIL IF I DON'T OBEY ALL
THESE RULES**

I AM PUTTING MY INITIALS TO SHOW THAT I UNDERSTAND

1. I will follow all the direct court orders in this sentencing order by the deadlines stated in this order.

My initials: [_____]

2. I will contact my probation officer the next work day after my sentencing (if no jail time) or the next work day after I get out of jail. **My initials:** [_____]

3. I will ask my probation officer before moving to a new place, leaving my approved region of residence or before getting a new job. **My initials:** [_____]

4. I will try to find a job, if I can. When I don't have a job, I will give my probation officer proof of my job search efforts or other activities if asked to do so by my probation officer.

My initials: [_____]

5. I will visit my probation officer before the tenth of each month, or as otherwise directed. If my probation officer says it is okay, I can call or fax a report instead.

My initials: [_____]

6. I will not carry firearms or any hidden weapon.

My initials: [_____]

7. I will let my probation officer know about any friends or family on felony supervision or have a felony conviction. I will not associate with other felons without first getting permission from my probation officer. Brief incidental contact is okay.

My initials: [_____]

8. No matter where I am, I will stay sober. I cannot drink any alcohol, including "homebrew".

My initials: [_____]

9. I will stay out of trouble and follow the laws.

My initials: [_____]

10. I will tell my probation officer if I buy or sell a car, truck, snow machine, or ATV.

My initials: [_____]

11. I will follow any special rules given by my probation officer or the judge, in order to enforce these general and special conditions of probation.

My initials: [_____]

**SPECIAL CONDITIONS OF PROBATION FOR
XXXXXX**

**I KNOW THAT I MAY BE SENT TO JAIL IF I DON'T OBEY ALL
THESE RULES
I AM PUTTING MY INITIALS TO SHOW THAT I UNDERSTAND**

1. I will stay sober. I will not drink, order, make or possess alcoholic beverages, including homebrew. I will only live in a residence where there is no alcohol (including homebrew) present.

My initials: [_____]

2. I will be "drug-free." I will not use or possess any illegal drugs, including marijuana. I will only live in a residence where there are no illegal drugs (including marijuana) present.

My initials: [_____]

3. I will promptly give samples of my breath (including a "PBT") or urine at the direction of my probation officer to test for use of alcohol or illegal drugs. I will promptly give enough of a sample so that the test(s) can be done.

My initials: [_____]

4. I will not knowingly enter or remain at a place where alcohol is the main thing being sold. This rule includes bars, liquor stores, and bootlegger's houses.

My initials: [_____]

5. My Probation Officer can search me without a warrant or the Probation Officer can tell a police officer to do the search

without a warrant. The search can include my body, my personal property, my living space, my vehicle, or any vehicle that I control. This search is for alcohol, including homebrew; illegal drugs, including marijuana, and items used for taking drugs ("drug paraphernalia").

My initials: [_____]

6. Within thirty (30) days after my probation begins, I will contact an alcohol/substance treatment program approved by the Department of Corrections and arrange to have an assessment for alcohol/substance abuse treatment. I will take the first available assessment for treatment. If treatment is recommended, I will enter, actively participate and successfully complete the treatment, which may include residential treatment of up to **thirty (30) days**.

My initials: [_____]

7. As arranged by my Probation Officer, I will get an evaluation for alternatives to violence/anger management from a program approved by the Department of Corrections. I will follow any treatment recommendations in the evaluation. I will not stop treatment without approval of my Probation Officer.

My initials: [_____]

8. I will sign the permission slips ("releases") so that the Department of Corrections can monitor my participation and attendance at any of the evaluations and treatment programs and receive copies of evaluations, progress reports and discharge summaries.

My initials: [_____]

9. I will submit to taking of a swab from inside my cheek and the taking of fingerprints for the DNA Identification System when my Probation Officer asks me to.

My initials: [_____]

10. I will have no contact with the victim in this case, XXXXX without permission from my supervising probation officer. In addition, I will not use the services of any employee of City Cab in Barrow, Alaska.

My initials: [_____]

11. I will have no contact with co-defendants XXXXXX & XXXXXX without permission from my probation officer. But incidental contact is okay.

My initials: [_____]

12. If restitution is ordered, I will make payments on a schedule approved by my probation officer. I will provide income and expense records to help set up a reasonable payment plan.

My initials: [_____]

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT BARROW

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
_____,)
)
Defendant.)
DOB: _____ DOV: _____)

BAIL ORDER

Date Judge's Initials
This order is valid until _____

Case No. 2BA- _____ - _____ CR

ATTORNEY:

- I will get a private attorney. My initials: [_____]
- I want an attorney and the court agrees I cannot afford one:
 - My attorney is the Public Defender. P.O. Box 429, Barrow, AK 99723. Phone: 852.2520 or 1.800.478.2521. My initials: [_____]
 - My attorney is the Office of Public Advocacy 100 Cushman Street, Suite 100, Fairbanks, AK 99701. Phone: 907. My initials: [_____]
 - My attorney is _____ Address: _____ Phone: _____ My initials: [_____]
- I do not want to have an attorney. I know I can ask for an attorney later. My initials: [_____]

COURT DATES:

- My next court date is _____ at _____ for _____
 pretrial conference omnibus hearing _____
 My initials: [_____]
- Another court date is _____ at _____ for _____
 calendar call _____ My initials: [_____]
- Another court date is _____ at _____ for _____
 jury trial _____ My initials: [_____]
- I can call in for all my hearings except my jury trial. I have to be in Barrow for my jury trial. Phone: 907.852.4800 or the "866 line." My initials: [_____]

BAIL PROMISES: FOLLOW THESE RULES AND BE SUCCESSFUL ON BAIL!

I promise the Judge/Magistrate that I will follow the rules that the judge/magistrate has checked.

I will stay away from alcohol completely. [0.00 BrAC] My initials:

[NO alcohol]

I will be "clean" of illegal drugs and stay away from them. My initials:

[NO illegal drugs]

I will only be in places that have no alcohol and no illegal drugs. My initials:

I will take a "PBT" when an officer asks me to. I know the officer has to have a good reason for asking. My initials:

I will go to the police station with my photo id EVERY DAY and take a "PBT." In Barrow, I will go between 11:00 a.m. and 1:00 p.m. In a village, I will go during the times set by the village police officer. My initials:

While in town, I will ONLY be a passenger in a car, truck, snow machine or four-wheeler. My initials:

I will stay away from: _____

[Including NO calls, texting, sending letters or email, Facebook posts, My Space or other messages, either].

My initials:

I will always be at least 100 feet away from this place: _____ My initials:

I can go to this place ONCE with an officer to get my personal things. My initials:

I will be with _____ who is my "third party custodian" My initials:

all the time _____ . My initials:

I will let the police search my living space, my clothes, or my car/truck for alcohol illegal drugs weapons. They don't need a warrant. My initials:

I will be inside or right beside a house from _____ p.m. to _____ a.m. OR at times set for me by my probation officer. My initials:

I will stay in touch with my attorney. My initials:

If I change where I live, I will tell my attorney or the court within a day. My initials:

I will get a written OK from the Court before I leave Alaska and Barrow _____ My initials:

I will stay out of trouble and follow all the laws. My initials:

_____ My initials:

**** YOU MAY BE ARRESTED WITHOUT A WARRANT IF YOU VIOLATE ANY OF
THE BAIL PROMISES****

RELEASE OR BAIL BOND:

“Own recognizance.” I do not have to give any money to be released,
But if I do not show up for court or follow the rules, I could be arrested and put in
jail. My initials:

Unsecured appearance bond. I don't have to give any money right now. But the
state could get the money from me later if I don't follow the rules. The bond is an
“appearance bond” for \$ _____. This bond is to make sure I come
to court for all my hearings. My initials:

Other bonds. I have to get everything arranged before I can get out of jail.
Any money I give can be lost to the State if I do not follow the promises I have
made.

The bond is a cash **“performance bond”** for \$ _____.
Cash in that amount has to be given to the jail or court before I can get out of jail.
This bond is to make sure I follow all the promises except the one about coming
to court. My initials:

The bond is an **“appearance bond”** for \$ _____. Either cash
in full amount or 10% of the amount, or a bond from a bonding
company has to be given before I can get out of jail. This bond is to make sure I
come to court for all my hearings. My initials:

Not bailable. The judge/magistrate has decided I have to stay in jail right now. I can ask
for a bail review later on. My initials:

AGREEMENT BY DEFENDANT

I PROMISE to follow the rules the judge/magistrate checked. I know I can get in trouble if I
don't. I could be put in jail and the State could take my bail money. The police could charge me
with new crimes like “Violation of Conditions of Release,” “Failure to Appear,” and “Unlawful
Contact.” I give permission for the Clerk of Court to accept for me any paperwork needed for the
state government to get the bail money if I cannot be found.

_____ Today's date: _____
My name (sign your name)

_____ My address for mail
Phone numbers: Cell _____ Home _____ Work _____

PROMISE BY THIRD PARTY CUSTODIAN

I accept the duty of making sure the defendant follows the promises made in this court form. I will make sure the defendant comes to court or jail as ordered by the Judge/Magistrate. I understand that I can be charged with a misdemeanor crime that has up to one year in jail and up to a \$10,000 fine or up to 90 days in jail and up to a \$2,000 fine if I do not call the police right away if the defendant does not follow the bail promises in this case.

_____	_____	_____
Custodian's Signature	Date of Birth	Home Phone
_____	_____	_____
Residence Address	City State	Work Phone

COURT ORDER

Based on the above information, the Court makes the following order:

- 1. The defendant must obey all promises checked in this court form.**
- 2. Arrest without a warrant is allowed for violation of any of the bail conditions.**
- 3. If an attorney is "checked" above, that attorney is appointed to represent the defendant.**
- 4. The defendant shall be released, after any required bail has been posted or other court order such as a court-approved third party custodian has been satisfied.**
- 5. The defendant may be transported to any appropriate jail if the defendant has not posted any required bail within 48 hours.**

_____	_____
Date	Judge/Magistrate

I certify that copies distributed to: Defendant Barrow jail Village of _____ Police (fax)
 DA PD Defense Attorney _____ Adult Probation _____
 _____ on _____, _____, Clerk.

THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT BARROW

In the Matter of:)
)
)
AKA)
)
A minor under 18 years of age.)
)
Date of Birth: _____)

CONDUCT AGREEMENT

CASE NO. 2BA- - - DL

CONDITIONS OF PROBATION

I WILL PUT MY INITIALS IN THE [] TO SHOW I UNDERSTAND AND AGREE WITH EACH RULE.

1. I won't drink alcohol. []
2. I won't use illegal drugs like marijuana. []
3. I will take a "PBT" or "UA" test when the police or the probation officer asks me to. []
4. I won't buy or carry any weapons, unless I'm out hunting with an approved adult. []
5. The police or my probation officer can search my clothes, things I am carrying, my living space or a vehicle I'm in for alcohol, drugs, or weapons. []
6. I will come to my court hearings when I'm supposed to. []
7. I will follow the rules of my parents or guardians or the probation officer. []
8. I will go to school when it is open and follow their rules. []
9. I will stay where I am living or be with my parent or guardian or other approved adult between 10:00 p.m. and 7:00 a.m. every night. []
10. I will stay out of trouble and follow the law. []

Special Rules. These rules are part of this case. _____, Judge

11. will talk to the counselors about what kind of treatment I may need to help me stop using alcohol or illegal drugs. []

12. I will do the treatment the counselors say to do. Treatment might be in Barrow with Inupiat Teens Taking Control or off the North Slope. []

13. I will sign papers so the probation officer knows about the assessment and treatment. []

14. I will also follow these rules:

_____ []

I understand all these rules and I will follow them.

My signature

Witness: _____
Probation Officer

Promise of parents or guardians:

We also understand these rules. We will make sure the minor follows them, and we will call the police if the minor does not do so. We understand that if the minor does not follow them, the minor could be arrested and put in a locked place for juveniles. We agree to bring the minor to the court hearings.

Parent/Guardian/Custodian

Parent/Guardian/Custodian

COURT ORDER

Based on these promises, IT IS HEREBY ORDERED that the minor follow these rules. The minor can be released from any detention.

Recommended on _____
(date)

Effective Date: _____

Superior Court Master

Superior Court Judge
Michael I. Jeffery
Type or print name

I certify that on _____
a copy of this document was sent to:

- DJJ Minor Attorney Parent/Guardian
- DA GAL Placement Facility Other: _____

Clerk: _____



PROBATION CONDITION

JUSTICE AND
EQUALITY FOR ALL
**Keep
your eyes
on the
dream**



Abstain



Go to court



Appointment



Break in tools



Report ISSP



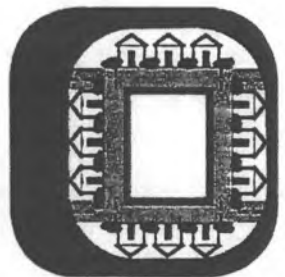
Counselling



Curfew



DNA testing



Geographical boundaries



Employment & training



Keep the peace



Release to



School



Reside



Auto related



Report PO



No contact



No weapons



ID required

JAIL ALTERNATIVE SERVICES

State of Alaska Department of Corrections

Purpose

- The Alaska Mental Health Trust Authority, Alaska Mental Health Board and Alaska Department of Corrections identified "decriminalization of the mentally ill" as a priority. In 1998, Anchorage based Jail Alternative Services (JAS), was funded by the Trust as a pilot project. In 2005, JAS became a core program in State budget. Jail Alternative Services links mentally ill misdemeanants with treatment programs in the Anchorage community.
- Initial identification in jail -- with sufficient time to stabilize acute symptoms or make treatment arrangements prior to sentencing -- could help stop the "revolving door."
- Court ordered conditions to comply with mental health treatment could enhance the individual's motivation and prospect for continued treatment and stability.

Eligibility

- Pre-sentenced **misdemeanants** in DOC custody
- **Agreement by the offender to participate**
- Psychotic disorder or Major mental illness
- **Final approval by DOC project staff**
- New arrests **in or out of custody**
- Up to 30 clients can be served on each caseload

Admission Process

- DOC Mental Health Clinicians collaborate with the two JAS Coordinators to identify pretrial mentally ill misdemeanants in Anchorage correctional facilities, assess current mental status and suitability for release, make recommendations for treatment, identify risk factors and determine the likelihood of compliance with community-based treatment recommendations.
- JAS Coordinators assist the Defense to determine whether the individual is willing and able to participate in the program.
- Recommendations for post-release treatment are presented to the Defense for use in determining sentencing and court-ordered conditions of probation.
- The Defendant must agree to follow the recommendations of the JAS program and agree to be sentenced in the Anchorage Coordinated Resources Project (Mental Health Court).

Monitoring

- The JAS Coordinator maintains regular contact with treatment providers and program participants for the purpose of monitoring stability and treatment compliance.
- Clients remain on the Active Caseload for at least 12-24 months, with the length of time dependent on criminal and psychiatric history. Clients who experience relapse or make only minimal progress may remain on the Active Caseload for the duration of the court order.
- If the client fails to comply with court ordered conditions, then the JAS Coordinator facilitates filing affidavits of non-compliance and petitions to revoke probation.
- If the JAS participant decides not to follow treatment and probation conditions, then he/she may decide to opt out and return to sentencing in regular District Court.

For additional information or referrals contact

Doug Lindsay, M.S., JAS Coordinator
Phone: 269-7357 Fax: 269-0013
Email: Douglas.Lindsay@alaska.gov

Tamra Matlock, M.S., LPC, JAS Coordinator
Phone: 269- 7374 Fax: 269-0013
Email: tamra.matlock@alaska.gov

Colleen Patrick-Riley, MSW, LCSW
Director DOC Mental Health Release Programs
Phone: 269-7317 Fax: 269-0013
Email: Colleen.Patrick-Riley@alaska.gov

Kate Sumey, MA, Anchorage CRP Project Manager
Phone: 264-0886 Fax: 264-0872
Email: ksumey@courts.state.ak.us

Institutional Discharge Project Plus (IDP+)

State of Alaska Department of Corrections

Purpose

- The Alaska Department of Corrections has identified "decriminalization of the mentally ill" as a priority.
- DOC IDP+ Clinicians work to link mentally ill felons who will be released on felony probation or parole to treatment programs in Anchorage. The IDP+ Coordinator s work closely with probation officers and community treatment providers to provide an effective case plan.
- Initial identification in jail – with referral to IDP+ to be made within 6-12 months of release date. Although shorter referral dates may be considered, longer notice helps to insure establishing effective treatment plans, intake with a community provider, and referral to appropriate housing resources. IDP+ is also able to initiate expedited prerelease Social Security applications for individuals who qualify.
- Close monitoring of court ordered conditions to comply with mental health treatment can enhance the individual's motivation and prospect for continued treatment and stability, and promote public safety.
- IDP+ is a mandatory DOC program for all individuals with a DOC diagnosed psychotic disorder that will be released on felony probation or parole in Anchorage.

Eligibility

- Must be released on **felony** probation or parole
- Major mental illness with a history of **psychosis**
- Final **approval by DOC project staff**
- 75-80+ clients are served on the active caseload.

Admission Process

- Mental Health Clinicians in DOC correctional facilities collaborate with the IDP+ Coordinators to identify felons with a psychotic disorder who will release on probation or parole in Anchorage, make recommendations for treatment, identify risk factors and determine the likelihood of compliance with community-based treatment recommendations.
- The institutional clinician advises the IDP+ Coordinator of possible referrals and completes the DOC Mental Health Release Program IDP+ referral packet.
- If accepted, the IDP+ Coordinator will meet with the referred individual to create a set of treatment recommendations and determine the appropriate agency to refer to for services.
- Recommendations for post-release treatment are presented to the individual, who is advised he/she is required to comply with treatment recommendations as part of probation or parole. IDP+ works to increase the prospect of a successful transition and to ensure public safety.

Monitoring

- The IDP+ Coordinator maintains regular contact with treatment providers and program participants for the purpose of monitoring stability and treatment compliance, or to alter treatment plans as necessary.
- If the client fails to comply with court ordered conditions, the IDP+ Coordinator works with the Probation Officer to use positive reinforcement, impose sanctions or revoke probation or parole. The person may be remanded for a short or long period depending on what will be needed to enhance compliance with treatment and probation conditions in the community.

For additional information or referrals contact:

Pauline (Polly) Slisz, LMSW, MHC II, IDP+ Coordinator
Phone: 269-7381 / cell 748-8907 Fax: 279-0013
Email: Pauline.Slisz@alaska.gov

Derek Sandlin, LPC, MHC II, IDP+ Coordinator
Phone: 269-7320 Fax: 269-0013
Email: Derek.Sandlin@alaska.gov

Colleen Patrick-Riley, LCSW, MHC III
Director of Mental Health Release Programs
Phone: 269-7317 / cell 632-2656 Fax: 269-0013
Email: Colleen.Patrick-Riley@alaska.gov

Attorney/Clinician Handout October 2011

What is APIC and what does an APIC Mental Health Clinician do?

Due to the deinstitutionalization of America, the nation's correctional system has become the largest residential provider for individuals with severe mental illness, developmental delays or mental retardation (DDMR). APIC is a national best practice model that was implemented statewide through procedures that were developed by the APIC Steering Committee; a multi-state, federal and community agency committee. The goal of APIC is to reduce recidivism for severely mentally ill inmates with co-occurring disorders and increase public safety through transitional planning that can start 90 days before release and continue for at least 60 days post release from jail. The APIC Steering Committee chose to implement the APIC model through the awarding of contracts with funds from the AMHTA to community providers. The APIC funds pay for non-Medicaid billable services, to include services inside of the jail, services prior to benefits, and services that are needed for success. Initially, the community mental health providers had planned on providing all the transitional planning and services; however, it quickly became apparent that a bridge between the all the systems (DOC, the Court, OPA, SSA e.g.) was essential. The APIC population encompasses a broader diagnostic range than the other mental health release programs and it is statewide. The IDP+ clinician and DOC institutional clinicians rely on the assistance of APIC for release planning. The APIC staff work on planned releases and the "crisis" of the day for inmates that are suddenly released from jail. The APIC Mental Health Clinician also manages the APIC contracts and works closely with the DOC Director of Mental Health Release programs to develop interagency partnerships, problem solve and advocate for the most challenging and difficult to house or serve individuals, and assists in maintaining multi-agency systems (social security, guardianships, court e.g.). APIC was originally implemented to work with the severely mentally ill population; however, it quickly became apparent that the DDMR population had been significantly underserved. Because of the mental health challenges both of these populations face, they are more likely to re-offend and can be very dangerous if left untreated. For example, a sex-offender with DDMR issues will need housing, wrap-around treatment and services, and benefit applications. At present, APIC provides transitional services to some of the DDMR population, simply because no one else does. Within this fiscal year, APIC has provided intensive transitional services to 26 high risk inmates that did not qualify for APIC or a DOC mental health release program. Since the inception of APIC in 2007, APIC has grown from 60 to 143 APIC individuals and is currently beyond maximum capacity.

What is IDP+ and what does an IDP+ Mental Health Clinician do?

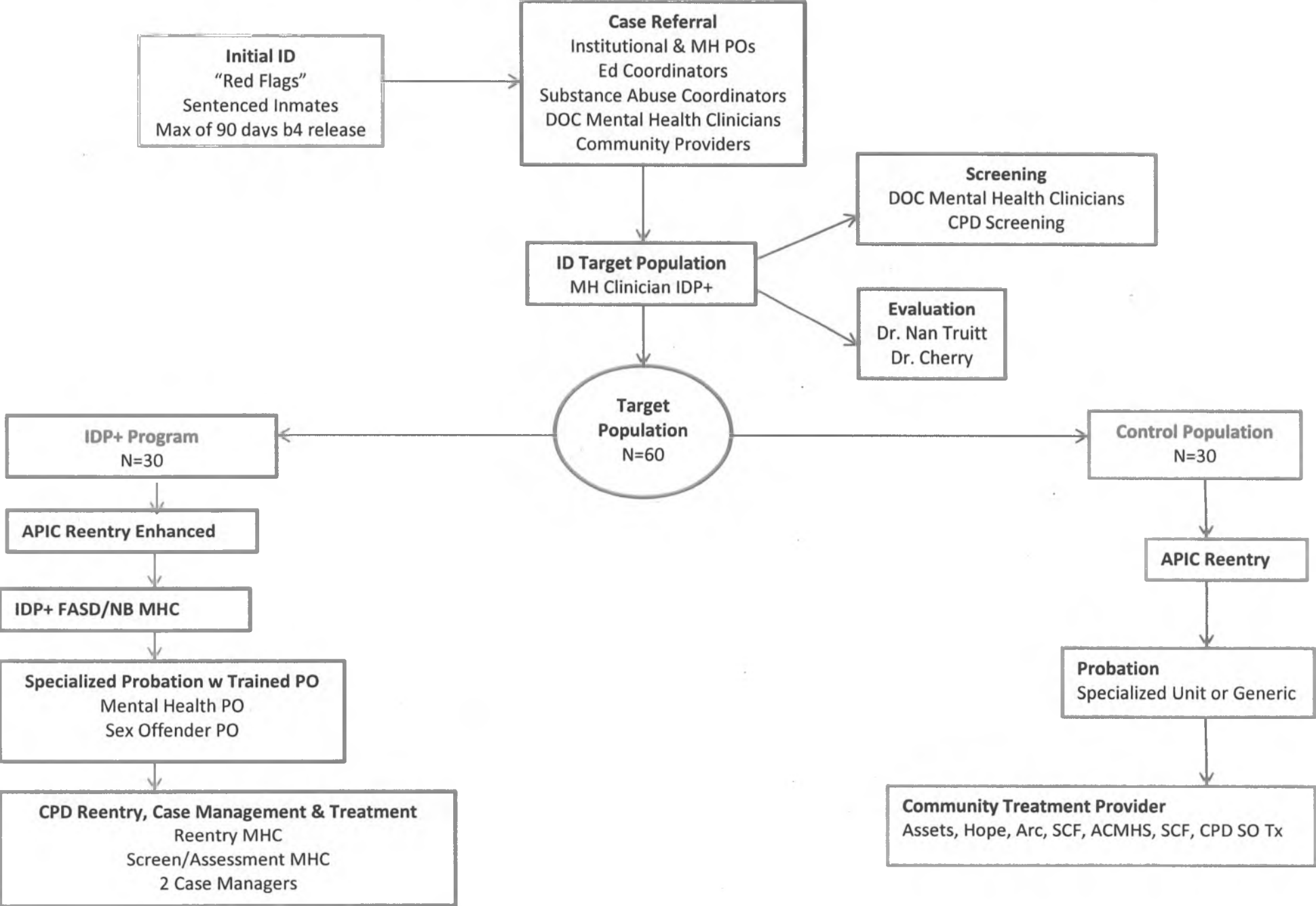
IDP+ is a DOC Mental Health Release Program for felons released on felony probation or parole who are diagnosed with a psychotic disorder. While APIC provider crisis and transitional services, IDP+ provides ongoing supervision. Given the intensive level of services and monitoring needed and the lack of housing options statewide, most of these individuals with a psychotic disorder and significant functional impairments and are released in Anchorage. The current Anchorage IDP+ caseload is 77-81, up from a caseload of 30 when DOC took over management of IDP+ in 2002. Outside-of-Anchorage, an additional 15 felons are on probation or parole with a psychotic disorder that meet formal IDP+ diagnostic criteria. All these out-of-Anchorage IDP+ probationers are supervised by Probation Officers only. No DOC mental health clinician is assigned or able to provide ongoing oversight or assistance with out-of-Anchorage cases. Initial limited consultation for these individuals is provided by the APIC clinician, with occasional telephone calls and 1 time per year face to face contact. This is in stark contrast to felons with a psychotic disorder who are on IDP+ in Anchorage, who are intensively supervised by both the DOC IDP+ mental health clinician and designated Anchorage mental health Probation Officers, in tandem with Anchorage based community mental health providers.

At the present time, the IDP+ caseload is too high to broaden the diagnostic range to include individuals with FASD, TBI or other DDMR cognitive impairments. The DDMR population can be very intensive due to the combination of the behavior and cognitive challenges this population faces and the very limited to non-existent services and housing options. In FY10, it is estimated that DOC institutional mental health staff completed consults on 188 unique inmates who were identified as having a history of a Traumatic Brain Injury and 93 unique inmates who were considered to have Fetal Alcohol Spectrum Disorder. At the present time it is estimated that there are approximately 25 probationers in Juneau, Fairbanks and Palmer, plus, 45 probationers that are supervised by the Anchorage Probation Officers who have DDMR related diagnosis and corresponding severe functional impairments, for a total of 70 individuals statewide that have a non-psychotic disorder or a DDMR related challenge.

TALKING POINTS

- The Alaska Department of Corrections (DOC) is the largest institutional provider of mental health services in the State of Alaska. Since the deinstitutionalization of American, nationwide correctional centers have become the largest residential provider for individuals with severe mental health and DDMR challenges.
- 42% of DOC's inmate population are considered Alaska Mental Health Trust beneficiaries with a mental illness or mental disorder (Hornby Zeller, 2006). There are over 2,327 unique individuals within the correctional system that were seen by DOC mental health staff in 2010.
- 95+ felony offenders, who have been diagnosed with a psychotic disorder, are on the current IDP+ caseload (80+ for Anchorage and 15 for out-of-Anchorage). The IDP+ caseload has more than doubled since 2002 (caseload of 30) and there is only 1 mental health clinician assigned to the Anchorage caseload.
- IDP+ probationers are intensively supervised by the IDP+ Mental Health Clinician and Anchorage Mental Health Probation Officers, in tandem with Anchorage based community mental health providers.
- Outside of Anchorage, there are 15 felony offenders who have been diagnosed with a psychotic disorder that are on IDP+. All these out-of-Anchorage IDP+ probationers are supervised by Probation Officers only. No DOC mental health clinician is assigned or able to provide ongoing oversight or assistance with out-of-Anchorage cases.
- The DDMR population, to include individuals with FASD, TBI and other cognitive impairments, face challenges that significantly increase their risk for re-offending and recidivism.
- Individuals with DDMR challenges, such as FASD, TBI, mental retardation or other cognitive impairments are significantly underserved by the APIC program and not supervised at all by the IDP+ program.
- 70 felony offenders that include individuals with non-psychotic disorder or DDMR challenges are currently on statewide Mental Health Probation Officer's caseloads that need IDP+ supervision.
- APIC has proven to be very successful in bringing the community together to integrate services and systems to provide transitional services for severely mentally ill inmates. APIC participant have a much higher chance of success in the community and a reduced chance of recidivism.
- IDP+ had no new felony charges for violent offenses for years when the caseload numbers were within recommended limits. Now that the caseload has more than doubled, the rates of legal (jail) and clinical (API) recidivism has increased.
- The IDP+ and APIC Mental Health Release programs have been presented in numerous statewide conferences and in the National GAINS conference in 2008 and 2010, respectively. Both programs are considered to be very effective at reducing recidivism, increasing public safety and increasing offender's chances of success in the community.

Alaska DOC Reentry Program for Inmates with Fetal Alcohol and other Neurobehavioral Brain-Based (FA/NB) Conditions
(Need a positive/neutral program name)



THE JOURNAL OF

Psychiatry & Law

An Arctic judge's journey with FASD

BY HON. MICHAEL I. JEFFERY

An Arctic judge's journey with FASD

BY HON. MICHAEL I. JEFFERY

A trial court judge knowledgeable about Fetal Alcohol Spectrum Disorders struggles with adapting the operations of his court to the needs of FASD-affected individuals in the Alaskan Arctic. His background in learning about FASD through cases and training, the methods he has brought to the Barrow Superior Court to attempt to make the justice system more understandable and fair to persons affected by FASD are described. His frustration at not being able to evaluate the degree of impairment from FASD experienced by the affected persons in the courtroom and the appropriate accommodations needed for each person are also described.

KEY WORDS: FASD, Arctic, justice system.

Barrow, Alaska,¹ is the northernmost community in the United States. It is the hub community of the North Slope Borough,² an expanse of about 89,000 square miles of Arctic tundra, ponds, critical habitat for wildlife, and the home of the resilient Inupiaq Eskimo people and other ethnic groups.

AUTHORS' NOTE: The comments in this article are personal and do not represent the Alaska Court System. For additional information about this article contact: The Honorable Michael Jeffery, e-mail: mjeffery@courts.state.ak.us.

¹ Estimated 2003 population of 4,286, including 59.3% Inupiaq Eskimo persons. (North Slope Borough Department of Planning & Community Services 2003, BRW-3, BRW-5).

² Estimated 2003 population of 7,307, including 74.21% Inupiaq Eskimo persons. (North Slope Borough Department of Planning & Community Services 2003, NSB-3, NSB-6).

The wind blows for hundreds of miles across the Arctic plain. The small amount of air pollution in Barrow is carried by the winds from Russia and China. The sun shines nonstop in the summer, but it does not rise in the winter for about 8 weeks.

A group of Inupiaq Eskimo people ("the Inupiat") settled in Barrow in ancient times because of the food resources, including caribou, ducks, seals, and the bowhead whale. In the late 1800's the bowhead whale attracted the intrepid Yankee whaling crews for whale oil and baleen. The whalers not only drastically reduced the population of bowhead whales; they also brought alcoholic beverages with them. The Inupiat were introduced to a substance that is still part of daily life, used by many natives and nonnatives alike.

In precontact times, the Inupiat had traditional laws administered by consensus of the whaling captains and elders (Case, 1984). In the late 19th century, the traditional law was supplemented by the U.S. Revenue Cutter Bear whose captain dispensed Western justice during annual visits, until Charles Brower, a nonnative former whaler who had married into the community, became territorial magistrate. From Alaska statehood on January 3, 1959 to the early 1980s, Barrow was served by dedicated local magistrates, without formal legal training, supplemented by Superior Court judges who would visit on occasion.

After a year of work as a legal services attorney in Boston, a near-fatal car crash, and almost 5 years in India, I moved to Barrow in mid-January 1977 to open an office for the Alaska Legal Services Corporation. I traveled to all seven North Slope villages as part of this work. In 1982, I was appointed the North Slope's first resident superior court judge and have continued this service since. Alaska has a statewide court system. The Barrow Court has been staffed since 1982 by a superior court judge and magistrate, with the support of the hard-working court staff. The magistrates serving since 1984 have all had law degrees. The court serves an area of about

80,000 square miles,³ including Barrow, six of the seven Arctic villages, and the Prudhoe Bay oil complex.

My journey with FASD begins

The ancient Greek philosophers Plato and Aristotle recognized the problems caused to children by mothers drinking during pregnancy, but in 1968, French researchers first described the existence of common issues associated with children thus born (Lemoine, Horausseau, Borteyru, & Menuet, 1968). In 1973, researchers in Seattle, Washington identified a set of characteristics occurring in children with mothers who drank alcohol during pregnancy. They called these characteristics Fetal Alcohol Syndrome (FAS) (Warren, 1997).

Since 2004, the term Fetal Alcohol Spectrum Disorders (FASD) has been used to describe a variety of conditions that can occur when a child has been exposed to alcohol while in the mother's womb (CDC, 2009).⁴ Fetal Alcohol Syndrome is the most easily diagnosed and studied of the FASD conditions because of distinctive physical features, but the number of individuals affected by all of FASD conditions is 9-10 times the number affected by FAS (Briacombe et al. 2009).

I was completely unaware of all this information during my years in Barrow with Legal Services and during my early years on the bench. I don't remember when I first heard about "Fetal Alcohol Syndrome or Fetal Alcohol Effects" (the former terms used for FASD), but Clayton's⁵ case in 1990 was a crash course for me.

³ This area is about the same size as Minnesota (79,610 sq. mi., 206,189 sq. km.) (Bockenbauer & Cunha, 2004).

⁴ "Fetal Alcohol Spectrum Disorders" is not itself a diagnosis. The term includes the following diagnoses: Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (PFAS) (most of the features of FAS), static encephalopathy (alcohol exposed) (an unchanging brain condition with central nervous system damage and prenatal alcohol exposure), and neurobehavioral disorder (alcohol exposed) (central nervous system impairment without structural or neurological abnormalities). The last two categories have also been described as "Alcohol-Related Neurodevelopmental disorders" (ARND) (Fetal Alcohol Syndrome Diagnostic and Prevention Network. n.d.).

⁵ The names of all persons involved in cases have been changed.

Clayton had appeared before me as a juvenile delinquent. Shortly after his 18th birthday, he received an adult felony conviction for taking money from the cash register of a local restaurant. He was back in front of me in 1990 for his second felony, sexual assault in the second degree, for the sexual touching of a teacher in a remote classroom. His energetic defense attorney on the second felony discovered that the sober couple that raised Clayton had adopted him—his birth mother had been afflicted with severe alcoholism. The defense attorney was able to get her client diagnosed by a mental health professional who was familiar with FAS/FAE, and the conclusion was “fetal alcohol effects.” The diagnosis recognized the damage to his brain even though he did not have the short stature and facial features of Fetal Alcohol Syndrome.

Under the sentencing laws in effect in 1990, Clayton was facing a maximum sentence of 10 years and a “presumptive term” of 4-6 years on the new charge.⁶ In Alaska, the only way for a defense attorney to obtain an adjustment of a presumptive term is to convince the sentencing judge by clear and convincing evidence that it would be manifestly unjust to sentence the person according to the presumptive term (Alaska Statute 12.55.165(b)).

The defense attorney contended that it would be manifestly unjust to sentence Clayton without considering his fetal alcohol effects condition. Her solution was that there should be less than the required four years of jail time, followed by supervision of the Department of Corrections in a far less restrictive setting. I agreed with her arguments and followed the presumptive sentencing statute's requirements by referring the case to a three-judge sentencing panel of other superior court judges. If at least two members of the panel agreed

after a sentencing hearing in front of them that the panel should accept the case, they would be able to sentence Clayton without being bound by the presumptive term. If they did not accept it, they would refer the case back to me, the sentencing judge, to impose the presumptive term (Alaska Statute 12.55.165(b)).

They did not accept the case, finding that the fetal alcohol effects issue was a mental health consideration not included in the Legislature's existing mental health mitigating factor, and that judges should not add new mental health considerations when the Legislature had already spoken. They stated that the Department of Corrections would have discretion to release the inmate to a halfway house during the jail time, and they referred the case back to me.

Since our spring judicial conference was being held in Fairbanks, Alaska, at the appropriate time for the resentencing hearing, the parties agreed that I would do the hearing there. Fairbanks is the location of the nearest long-term jail to Barrow and is located about 500 miles south. As it happened, just before the Fairbanks conference my long plane flights to and from a meeting on the East Coast provided the opportunity to read a book that opened my eyes to the challenges facing families and children affected by fetal alcohol exposure. The book was Michael Dorris' *The Broken Cord* (Dorris, 1990), a memoir about raising a child afflicted with mysterious difficulties that proved to be FAS.

As required by statute, I sentenced Clayton to the four-year presumptive term with a recommendation for classification to a halfway house. But as I looked at him, I suddenly was deeply affected by the thought of so many defendants like him that would really not understand or benefit from the longer jail sentence. I got emotional and left the bench abruptly at the end of the hearing. The defendant appealed the three-judge panel decision but the Alaska Court of Appeals affirmed (*W. R. L. v. State*, 1992).

⁶ The current Alaska sentencing scheme for sexual felonies has drastically increased the jail time for these crimes. Now a person with one prior nonsexual felony convicted of sexual assault in the second degree is subject to a maximum of 99 years and a presumptive range of 10-25 years (Alaska Statute 12.55.125(i)(3)(B)).

There is some good news: The Department of Corrections followed my recommendation and did release Clayton to a halfway house during the jail term. He is now living in the Anchorage area and he has a guardian/conservator to help manage his affairs. Court records show only one misdemeanor case for Clayton since his 1990 felony case.

After my encounter with Clayton, I was appointed to the Alaska Criminal Justice Assessment Commission, which had been established to allow representatives of all three branches of government and other citizens to review the criminal justice system "and to collectively develop recommendations to alleviate the problem" of prison overcrowding (Alaska Criminal Justice Assessment Commission, 2000). I advocated for inclusion of "organic brain disorder" as a mitigating factor in felony presumptive sentences. Although the Commission adopted the proposal,⁷ this statutory amendment has not been passed by the Legislature.

My understanding increased during a 1996 Barrow conference on FAS/FAE sponsored by the North Slope Borough Health Department. The organizers arranged for many inspiring speakers including Ann Streissguth, Ph.D., from Seattle, Washington, (one of the leading researchers on FASD) and Jan Lutke from Vancouver, British Columbia (who is raising and effectively advocating for her adoptive children with FASD), as well as experts from Alaska. As I attended the sessions and continued my work at the court that week, I began to realize that the lifelong effects of exposure of a fetus to alcohol in the mother's womb affected the justice system in countless ways. I also realized that it would be impossible to know for certain in a particular hearing who was affected and who was not, and how deeply prenatal alcohol exposure affects any given person. The frustration this understanding left with me remains with me daily.

⁷ Proposal 19: "The legislature should create a statutory mitigating factor for use at criminal sentencing, recognizing when the wrongful conduct was substantially affected by an organic brain disorder" (Alaska Criminal Justice Assessment Commission, 2000, p. 71).

Characteristics of FASD that are recognized as presenting difficulties for the justice system

It is not surprising that the justice system in Barrow is struggling to adapt to FASD. That the challenges faced by persons affected by FASD impact the justice system has been recognized in other jurisdictions as well. A recent example is the September, 2008, conference in Whitehorse, Yukon Territory on The Path to Justice—Access to Justice for Individuals with Fetal Alcohol Spectrum Disorder. The conference attracted 130 delegates from across Canada and the United States, and the summary conference report discusses characteristics of FASD that present severe problems for adaptation by the Canadian justice system to these conditions.

Dr. Sterling Clarren, a physician involved with FASD issues for over thirty years and now CEO and Scientific Director of the Canada Northwest FASD Research Network in Vancouver, British Columbia, described persons with FASD who have been diagnosed early in life as having "mysterious maladaptation:"

First, they don't do well in school and social experiences; by the time they get to [be] adults they are often alienated or have exhausted their care givers, so they are out on their own, and these combined lead to social isolation, poor job performance, poverty, mental health problems, homelessness, victimization, and criminogenesis (Fraser, 2008, September, p. 6). He recognized that "there are often no apparent physical characteristics that predict FASD. Individuals with FASD may appear 'normal' and often have good verbal communication skills. Without specific knowledge of the common behavioral characteristics associated with FASD, it is difficult to 'flag' or identify someone that may have this disability" (Fraser, 2008, p. 8).

The 2008 conference identified additional reasons that the justice system has difficulty adapting to persons with FASD:

Furthermore, behaviors associated with individuals with FASD are also common among offenders that do not have FASD. For example, offenders with and without FASD are often considered to be impulsive, thrill-seeking, and lacking in judgment. Individuals from both groups who are involved with the criminal justice system may

have substance abuse and mental health problems, along with limited employment and education histories. Also, co-occurring problems such as anti-social personality disorder, conduct disorder, or attention deficit disorder may be masking an underlying condition of FASD.

Justice professionals, whether they are police, defense counsel, Crown [prosecutors], judges, victim services workers, or corrections officers, only spend limited time with a client. The short period of time spent with each client often results in the professional not knowing much about the client, including if they have a disability. It often takes more time than professionals have to clearly communicate with individuals with FASD to ensure that they fully understand what is being said to them. Also, some behavioral characteristics associated with FASD are sometimes seen by justice professionals as behavior that suggests disobedience, non-compliance, or aggressiveness. If justice professionals are not aware how FASD may impact an individual, they may not want to get to know their client or work with them any more than the basic minimum to "get by" (Fraser, 2008, p. 8).

The conference report summarized the challenges facing efforts to encourage justice system adaptation to the needs of persons affected by FASD. An important issue is the "lack of awareness of FASD among justice system professionals." Additional challenges are: "(1) that FASD is an 'invisible disability'; (2) the short time-frame that individuals spend with criminal justice professionals; and (3) that it is difficult to order or conduct an FASD diagnostic assessment" (Fraser, 2008, p. 8).

Recent documentation of the prevalence and costs to society of FASD

Facial features typical of FAS make it easier to document than the other far more prevalent but hidden FASD conditions. Therefore, even in publications discussing the general issues presented by FASD, the available statistical data is often limited to studies of the prevalence of FAS. The Alaska Department of Health and Social Services has found that among states tracking FAS rates, Alaska has the highest prevalence in

the nation (Alaska Department of Health and Social Services, 2010). Corrections officers in Alaska estimate that 27% of the inmate population has FAS (Behavioral Health Research and Services, 2006). The federal Centers for Disease Control (CDC) reports that the FAS prevalence in the general population of the United States is 0.2-1.5 per 1,000 births; in the American Indian/Alaska Native population it is 3-5 per 1,000 births; in the population of the children in foster care it is 15 per 1,000 births; and in the population of children in a (Canadian) juvenile justice treatment facility it is 200 per 1,000 births (Briacombe et al, 2009, p. 11).

The CDC also reports studies showing that the estimated prevalence of all FASD conditions in the general population of the United States is 9-10 per 1,000 live births (Briacombe, et. al, 2009, p. 11). The Alaska Department of Health and Social Services states that about 180 babies born each year in Alaska have "suspected FASD." (Alaska Department of Health and Social Services, 2010). In 2008, there were 11,438 births (Alaska Bureau of Vital Statistics, 2010) yielding an estimated prevalence of FASD in Alaska of approximately 16 per 1,000 live births. The prevalence of births of children affected by FASD on the North Slope or other rural areas of Alaska is not documented.

A study by the Fetal Alcohol and Drug Unit at the University of Washington of 661 clients diagnosed at their clinic with FAS from 1973 to 1995 showed that "[s]ixty percent of the adolescents and adults and even 14% of the children had trouble with the law." (Streissguth, 1997). This over-representation of persons affected by FASD in the justice system, justifies substantial efforts to accommodate the cognitive disabilities presented by fetal alcohol exposure.

The incredibly high costs to society from this situation are illuminated by the federal Centers for Disease Control recognition of a 2004 study, which found that "[i]n 2002, the estimated [average] lifetime cost for one individual with FAS

was \$2 million" (Briacombe et al., 2009, p. 12,). The CDC admits that the costs to society from all FASD conditions are "unknown" (Briacombe, et al., 2009).

Accommodations used in the Barrow court for persons who may be affected by FASD

The following ideas are offered as a work in progress. The justice system in Barrow is always interested in approaches relevant to our situation and I have found that each conference I attend presents new ideas and a deeper understanding of how to best adapt to the realities presented by FASD. These are some techniques that seem to work for us in our rural court environment:

own ring Instead of completing the hearing quickly by assuming that there has been effective communication with counsel before the hearing, I take the time to completely explain to local participants what is going on. It is sometimes necessary to take a break in the hearing to allow an individual affected by FASD to process what he or she has heard before yet more information is discussed.

ear, rete age the ing I try to avoid legal jargon as much as possible. I often use a more informal tone, since a person affected by FASD may really be relating to the whole experience like a middle school (or far younger) student, instead of the high school student or adult that the person appears to be.

ber rral ors In addition to sensitivity to the possibility of FASD, I need to respect cultural influences that can affect many court participants. For example, more traditional persons in many Alaska Native cultures do not look directly at an authority figure, as a sign of respect. Shy youth on the North Slope will sometimes not respond to a question except by raising their eyebrows, meaning, "yes." Local people on the North Slope often require a longer time to formulate an answer to a ques-

tion even if they understand perfectly what was said, as within this culture a thoughtful answer is valued above a quick answer.

Adapt commonly used forms to have 1) concrete language, 2) more white space, and 3) opportunities for a defendant to put initials by each condition

For example, my criminal forms do not simply state "OR Release." Alaskan practitioners know that this statement means a person is released without posting any bail, but one should not assume a defendant, especially one affected by FASD, understands this. The current version of my four-page form appointing counsel, setting dates and bail conditions, says:

OWN RECOGNIZANCE. I can get out on my "own recognizance." This means: I don't have to give any money right now. I promise to come back to court or jail. I also promise to follow all the promises in this form. The police could arrest me if I do not come back to court or follow all the promises.

My initials: [_____]

Using more white space, 14-point type, and the requirement to initial each rule are efforts to make sure that the whole process is not simply a "blur" of words. Both the Court and the defendant must focus on each point.

Use the same system for conduct agreement/conditions of probation forms in a juvenile delinquency case

These cases are less formal than the adult criminal cases and Alaska's Division of Juvenile Justice emphasizes the value of "restorative justice." The Division has been supportive in our implementation of a shortened version using concrete language of its Conduct Agreement/Conditions of Probation form. For example, the current form used at Barrow includes the following rules:

1. I won't drink alcohol. [_____]

2. I won't use illegal drugs like marijuana. [_____]

3. I will take a "PBT" or "UA" test when the police or the probation officer asks me to. [_____]

Be receptive to "third party custody" arrangements (including, when available, electronic monitoring) in criminal cases rather than using higher bail, when such arrangements will provide adequate structure for a defendant. Such arrangements will reduce overcrowding in the jails, are more humane and constructive for defendants affected by FASD, and reduce costs to society.

When sentencing laws provide enough flexibility, reduce the amount of jail time (or the level of care for a juvenile delinquent) and increase the amount of supervision time. The attorneys involved in a case can often reach this result through plea bargains that reduce the severity of a charge, enhancing judicial discretion in fashioning a meaningful sentence or juvenile disposition. A person affected by FASD could adapt well to the structure of a jail or juvenile institution, but the person is also more likely to learn negative behaviors from others in the same environment. Another reason supporting the use of sentencing alternatives for persons affected by FASD is that jail beds and placements at juvenile institutional facilities provide more structure than needed at greatly increased cost to society (Wartnik, 2007).

When FASD is suspected, include a recommendation in a sentencing judgment or juvenile disposition order that can assist professionals working with the individual. The recommendation for adult defendants could read something like: "This defendant may have a FASD condition. The Court THEREFORE RECOMMENDS that anyone working with the defendant use concrete language, with the realization that basic concepts will need to be repeated frequently."

- For defendants who might qualify for community custody and who have issues of alcohol/substance abuse and limited employment skills: Classification to a halfway house for alcohol/substance abuse counseling and employment training.
- For defendants likely to remain in jail and have alcohol/substance abuse issues: Defendant should participate in any alcohol/substance abuse counseling provided to the defendant

by the Department of Corrections, which may include a residential therapeutic community within the jail.

- For defendants with more severe cognitive impairments: Prior to release from jail, the Department of Corrections should explore long-term structured living arrangements that might be available for this defendant upon completion of the jail term.

Keep bringing up the issue of FASD, especially in child welfare and juvenile delinquency cases

If a FASD condition is suspected, encourage the social worker or juvenile probation officer to obtain a FASD diagnosis. The greater resources available in these cases and the greater amount of time that a youth is in custody, as compared to adult defendants, make it more likely that an evaluation might be arranged. The earlier the evaluation can occur, the more useful in the life of the person: Having an evaluation prior to the age of 6 is the second most beneficial "protective factor" for patients 12 years and older (Streissguth, Barr, Kogan, & Bookstein, 1997). Efforts to bring up the subject of FASD are also necessary in other types of cases when a participant is suspected of having the condition (Malbin, 2004).

Schedule periodic review hearings in certain cases

More frequent interaction with an authority figure like a judge is a great way to enhance structure for juveniles and adults involved in the justice system. Therefore, we have monthly or quarterly review hearings in some cases. The hearings are an opportunity to make sure a treatment program is working, to celebrate successes, and (once again) to warn of consequences of not following the rules.

Acknowledge and support, on record, initiatives by other professionals to assist FASD-affected clients

For example, one officer in Barrow had a number of probationers who were obviously affected by FASD who were not doing well. Rather than immediately filing petitions to revoke probation, the officer started the "Breakfast Club." Each of these defendants had to come into the office at 8:00 a.m. to plan his or her activities for that day. The next day they would come in and report on the previous day's activities and plan the current day. The officer found that after about three

weeks of this additional structure in their lives, they would get the message on complying with probation or show that they were not able to do so.

Caring social workers or juvenile probation officers may have gone through the steps necessary to qualify a young adult affected by FASD for federal Social Security disability payments. In Alaska, youth in custody may build up a significant trust fund from dividends received from the state and/or native corporations. Such trust funds become available in a lump sum on the 18th birthday. Most youths need guidance in managing these government or private funds, and appointment of a conservator provides great benefits for such youth. If the mental problems are severe enough to prevent normal decisions about living arrangements and medical care decisions, the court may also need to appoint a guardian.

Another adaptation I have made is to attempt to identify suspected FASD cases even though an actual FASD diagnosis is rare in my court. I keep in mind (and put on record) that I cannot "diagnose from the bench." Yet there are indicators that I use to tell me if a person is probably affected by FASD:

1. Comes from an alcoholic family.
2. Frequent contact with the justice system—especially with similar kinds of cases; back in court repeatedly for bail or probation violations.
3. Impulsive behavior is demonstrated in current situation and/or prior record.
4. Often a "follower" in criminal incidents, but is the one who is getting caught.
5. History of problems with school, including having an IEP or dropping out early.
6. Has a lot of mental health diagnoses (FASD may be the most basic one that has been missed).
7. Short stature.
8. Facial appearance—however, for adults this factor is not very useful.

9. Multiple foster home placements (in the unusual case in which such information is available to me).
10. History of inappropriate sexual behavior (when such information is available to me).

Encourage the individual to learn more about FASD and attempt to reduce feelings of guilt and blame of the birth mother

Bringing up the issue of FASD at a court hearing can sometimes lead to some very sensitive moments, especially when parents are in court to support a person with a possible FASD. Here is the approach I use for both adolescents and adults:

It looks like you might have a challenge in your life called FASD. It's not your fault; it just happens that your brain may work a little differently because your mother may have been drinking while you were inside her. You might want to learn about it and mention it to people working with you so that they can do a better job in helping you understand things. Remember that your mom could have been drinking before she even knew that she had you inside her.

(Based on suggestions from Olson, 2009; Kelly, 2010).

Special programs at the Barrow Court

Barrow Misdemeanor Resources Project

The Alaska Mental Health Trust Authority (Alaska Statutes 47.30.11-47.30.61) uses the income from the one million acres of Alaska's land Congress granted to the Territory of Alaska "to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska" (*Weiss v. State*, 1997).⁸ The beneficiaries of the Trust are persons with various mental health conditions, including developmental disabilities (Alaska Statute 47.30.056(c)(2), (d), (e), (f), & (g)). The Trust programs may also include "prevention or early intervention services for individuals at risk of becoming Trust beneficiaries. The Trust considers prevention of these conditions, where possible, as part of its mandate" (Alaska Mental Health Lands Trust, 2010).

⁸ The lands were granted in the U.S. Congress' Alaska Mental Health Enabling Act (1956).

The Trust has been aware that there are a significant number of persons involved in the justice system in Alaska who have FASD or other mental health challenges that result in excessive jail time. In fact, "approximately 42% of individuals incarcerated in the Alaska Department of Corrections qualify as Trust beneficiaries" (Alaska Mental Health Trust Authority, 2010). The Trust approached the Barrow Court as a site to try initiatives to specifically deal with this issue in a rural setting. The Trust's first approach at Barrow was to encourage formation of a therapeutic court program. It paid for a consultant who (after consultations with the judicial officers, social workers, juvenile probation officers, prosecutor, defense attorney, police and others) prepared manuals for both professionals and defendants. Despite these substantial efforts, this attempt did not work in our small community: We have only one prosecuting attorney, one resident defense attorney, one superior court judge and one magistrate. Considerations of both time and personnel made it impossible to have the type of specialized "team" and "premeetings" before each court hearing that therapeutic courts require. The extremely low number of clients demonstrated that the complexity of the program did not appeal to North Slope defendants.

With considerable input from the justice community in Barrow, the Trust's efforts have now evolved into the Barrow Misdemeanor Resources Project (BMRP). An adult misdemeanor probation officer/case manager (administered through the statewide Alcohol Safety Action Program [ASAP]) staffs this program. The case manager's duties are broader than other probation officers administered by ASAP. Since well over 90% of the crime on the North Slope is alcohol-related, and since we also have a relatively high percentage of domestic violence assaults, misdemeanor (and felony) probation conditions routinely include treatment requirements. The case manager attends misdemeanor arraignments and sentencings as well as other court hearings. Most referrals to the case manager state that the defendant is to meet with BMRP soon after the hearing (or completion of jail time) "for assistance

in complying with probation conditions." The case manager meets with the defendant in the BMRP office across from the courtroom. The case manager interviews the person to gain information for a mental health screening tool she has developed based on models used in other programs, reviews the probation conditions, and then assists the defendant in contacting local treatment programs for assessment.

The assistance from BMRP may end after the interview if the defendant does not appear to have mental challenges. However, if the initial interview reveals mental health concerns, including suspected FASD, the case manager undertakes a broader range of involvement. The defendant is assisted in contacting treatment programs, referrals may be made to other support services, and family counseling about guardianship/conservatorship may be given. The case manager schedules ongoing appointments with the defendant to monitor progress. The effort is to make the criminal justice process more understandable with extra attention and explanation, and to keep the defendant affected with FASD from needlessly facing petitions to revoke probation and more jail time by providing greater structure that helps maintain the defendant's ability to make appointments and comply with treatment recommendations (G. Hooper, personal communication, September 1, 2010). The adult probation officer has also requested assistance from the BMRP caseworker for felony probationers needing special assistance because of mental health concerns.

Compliance hearings

The flexibility of a therapeutic court program to conduct relevant hearings and have reasonable, swift sanctions for those with FASD make such programs a very desirable option,⁹ but Barrow's small justice community does not have the available staff to support a full therapeutic court program. However, this reality does not prevent us from using therapeutic

⁹ See, for example, the Community Resources Project/Mental Health Court in Anchorage, Alaska and the Community Wellness Court in Whitehorse, Yukon Territory, Canada.

court principles. For about 2 years, District Court Magistrate Karen R. Hegyi maintained a program of monthly compliance hearings, inviting the superior court judge to join her on the bench to hear from treatment providers and misdemeanor defendants whose probation conditions included treatment conditions. Unlike a traditional therapeutic court, however, there were no premeetings before the monthly compliance hearings. Treatment providers sent compliance forms in before hearings. These were reviewed by the magistrate and cases were ranked. Defendants doing well were first. As each name was called, the defendant would come up and treatment provider(s) would give a summary of progress in treatment. Completion of a program resulted in a standing ovation, good progress met with applause, spotty compliance was met with silence and the prosecuting attorney would inform persons not making adequate progress that a petition to revoke probation would be filed. (If the defendant shows compliance, the prosecutor would withdraw the petition).

The value of ongoing contact between the judicial authority figure and the defendant is one of the basic techniques of the nationwide therapeutic court movement, especially for defendants with mental challenges such as FASD (Hora, Schma, & Rosenthal, 1999). Barrow's compliance hearing program is currently in vacation mode because of workload considerations from the clerk's office and the concern of a treatment program's former administrator that the monthly reporting could harm the program's treatment relationship with the client. We anticipate addressing these issues and rejuvenating this program within the next few months.

The journey continues: Some recent cases involving persons affected by FASD

Tom *Tom has never been evaluated for Fetal Alcohol Spectrum Disorder despite his lengthy juvenile justice history, a series of misdemeanor convictions, and his felony weapons charge*

involving a dangerous standoff with police officers. Tom is now 24 years old, but he started using alcohol and marijuana when he was 12. Raised in a North Slope village, he was placed in another village in foster care from age 11 to 14. Several males in his extended family had committed suicide. Police investigations found at least probable cause that he was involved with a great deal of dysfunctional behavior as a juvenile: at age 8, deliberately setting a fire; at 10, breaking windows; at 14, stealing items from the counseling center in Barrow, assaulting another youth, stealing a bike and trying to steal a four-wheeler; at ages 15 to 16, being identified as someone who took snow machines and arranged for other youth to do so. All these incidents were dismissed or handled with counseling by the juvenile probation officer.

Tom was formally adjudicated a juvenile delinquent at 16 after he chased another youth while in possession of a baseball bat. He was referred to a residential alcohol/substance abuse treatment program in Southeast Alaska and did fairly well. But then, as a 19- to 20-year-old adult he was convicted three times of misdemeanor domestic violence assaults against his girlfriend. He reported to treatment providers that during this period of time he also had eight major snow machine accidents. He had periods of employment: 2 years as a stockman in an auto parts store, 4 months as a laborer, and 28 months as a tour guide.

At the age of 22 he received his first felony conviction for having an illegal weapon (a sawed-off shotgun) during an incident in which he possessed the illegal weapon and a rifle, was intoxicated and highly agitated, and engaged in a 3-hour standoff with police officers until he was allowed to talk with his ex-girlfriend. Based on the plea agreement, I sentenced him to 24 months with 18 months suspended and put him on probation for 3 years with probation conditions including no possession or consumption of alcohol and treatment requirements. By the time of the sentencing hearing he had served the jail time.

His probation officer allowed him to travel to Anchorage shortly after the sentencing. When he returned, the probation officer searched his baggage and found two bottles of whiskey, a probation violation. He told his probation officer that he knew he should not have brought in the alcohol, but he figured "his chances of getting searched were only about 5% so it was worth the risk." I added some community work service to his sentence. He is currently before the court for another petition to revoke probation for failing to complete the court-ordered domestic violence intervention program. The probation officer, prosecuting attorney, and defense attorney agreed to extend his probation for enough time to complete all treatment and to require him to travel to Fairbanks, Alaska to complete (and pay for) domestic violence intervention treatment, alcohol/substance abuse treatment, and a psychiatric evaluation. I recommended that the psychiatrist be someone familiar with FASD.

The fact that Tom was in foster care from ages 11 to 14, the dysfunction in his birth family, and his ongoing offenses as a juvenile strongly suggest a cognitive impairment such as Fetal Alcohol Spectrum Disorder, but he never had the benefit of this type of assessment. The child welfare and juvenile justice systems (and the Court) had ample opportunity to conduct such an evaluation but missed it. At last, as an adult, he is being referred for an appropriate mental health evaluation.

Jane *Jane's case demonstrates the limits of service delivery when a client turns 18 and insists on leaving an available structured placement.* Jane was involved in the child welfare system, and the FASD evaluation arranged by the social worker yielded a diagnosis of FASD. "static encephalopathy-alcohol exposed." Her behaviors were quite difficult for care providers to deal with and she lived in institutional placements for extended periods of time. As she approached her 18th birthday, she was placed in a therapeutic foster home. The foster parents were working with her to finish her high school diploma. But she insisted that she leave the custody of the social workers as soon as she turned 18. When all persua-

sive efforts failed, the state moved to close the case at the 18th birthday. Custody remained open only long enough to have a conservatorship established for her.

Tragically, she was sexually assaulted while in Anchorage shortly after her release from custody. She returned to her birth mother in a North Slope village, but had problems in the village and became suicidal. She was immediately transferred to the Fairbanks Memorial Hospital for care. When the hospital released her, she was provided temporary housing, and she received transition to adulthood services in Fairbanks from a specialist at the Office of Children's Services. But she insisted on going to locations frequented by alcohol and drug abusers and spending time there. Only after she was again physically assaulted did she begin to realize that she needed more assistance than the conservatorship. A temporary guardian is now in place (pending the permanent guardianship hearing) with the ability to find adequate housing and require Jane to take advantage of the placement.

Mary *Mary is someone for whom the structure provided by a loving adoptive family has given her a reasonable chance to live a full life as an adult.* I had handled the termination of parental rights proceeding of Mary's birth parents some twenty years ago. One part of the evidence was videotaped testimony of a child psychologist about the many complicated problems Mary would face as she grew up because of her exposure to alcohol during her mother's pregnancy, and how the birth parents would be unable to cope with them because of their own instability. I granted the termination of parental rights. Mary was very blessed to have a Barrow couple file an adoption petition within a few months. I insisted that the couple watch the videotaped expert testimony before I would grant the adoption. The couple watched the video and proceeded; I granted the adoption. I have noticed that Mary has never been in the Barrow court¹⁰ and has had appropriate employment. She

¹⁰ She has had traffic tickets and a minor misdemeanor in South Central Alaska.

appears to be doing fine, with the structure that had been provided by the adoptive parents and her employment.

John *John had the benefit of a tentative FASD diagnosis while in the juvenile justice system. But his desire to live with his family in an Arctic village resulted in an environment that did not provide the structure he needed. His impulsive criminal behavior has landed him in jail, again.* John came before me in a juvenile delinquency case for burglarizing the store in his home village near Barrow. His dysfunctional family situation and the lack of other options on the North Slope that would meet his needs required placement outside the North Slope. One benefit of the placement was that the Division of Juvenile Justice was able to arrange for a mental health evaluation that concluded he had "Axis III: . . . Possible Fetal Alcohol Effect/Fetal Alcohol Syndrome." Just after his 18th birthday, he was back in front of me with an adult felony case for burglarizing the same village store. He had learned something from the previous burglary juvenile case: He wore gloves and turned off the store's electricity so that the surveillance camera did not work. But he was quickly turned in and the stolen items were recovered. When he was arrested, he was still wearing socks he'd stolen from the store.

The probation officer noted the diagnosis and recommended approval of an agreement for limited jail time and a suspended imposition of sentence that would give John the opportunity to have the felony taken off his record. She showed her understanding of FASD in her additional recommendation that if the defendant violated probation there should be a prompt response so that he will understand the connection between his actions and the consequences. I accepted the plea agreement and the defendant was out on probation immediately, since prior to sentencing he had already served the 60-day jail sentence required by the plea agreement.

Back in the village after the jail time, John wanted to get a job with a local construction company. The construction staff lived

in the village's small hotel. When he approached them about the job, they told him to apply online. He said he did not have a computer and they let him use the computer in their area of the hotel. When he left, he was wearing some Carhartt overalls that he had seen inside the hotel, which had an iPhone in the pocket. The staff called the police. When the officer arrested John, he was still wearing the Carhartts, with the iPhone still in the pocket. Now he faced a petition to revoke probation with a possible maximum sentence of five years in the old case, as well as a new charge of burglary in the first degree with a maximum of 10 years and a "presumptive sentence" of 4-6 years. He faced an immediate sanction, because he remained in jail continuously since his arrest; however, the investigation and plea negotiations for the two cases lasted 5 months. I accepted the plea agreement resolving both cases, which mandated dismissal of the new case and a permanent felony conviction with a 2-year flat sentence for the probation revocation in the earlier case. I included a recommendation that because of the diagnosis of "probable FASD," corrections staff should use concrete language and repeat basic concepts. I also recommended that the defendant be transferred to a halfway house.

Joseph *This young adult was diagnosed with FASD as a youth and his behaviors prevented an adoptive placement. He was not able to cope with living in a community setting and his social workers placed him in a residential psychiatric facility for treatment that lasted about one year. He now has chosen to live in Anchorage and he has just started residing in an assisted living program that will be available for almost the next 3 years.* Joseph was one of several children in a highly dysfunctional family that generated a child welfare case resulting in termination of parental rights. He was 6 years old at the time. Both parents were severely alcoholic. When he was 11, Joseph was diagnosed with the FASD "static encephalopathy-alcohol exposed." His behaviors prevented a permanent adoptive placement. The social workers had to place him in a residential psychiatric program in the rural hub community of Bethel in Southwest Alaska, which had staff that understood his FASD

condition and worked well with their native clients. He completed the program in approximately 1 year.

As he approached his 18th birthday, professionals obtained the services of a court-appointed conservator for him. Joseph wanted to move to Anchorage and, with assistance from the transition to adult life specialist in the Office of Children's Services, he was accepted to an assisted living program where he can live with some structure until his 21st birthday. With the income he has coming in from Social Security and native corporation dividends, along with the structure of the assisted living program, he has an ideal situation for beginning his life as an adult. His case is now being transferred to Anchorage, but I had the gratification of seeing these arrangements put in place for him.

The journey continues: Ideas for the future at Barrow

In addition to continuing to implement adaptations in the court setting, it is important to consider additional projects to make our rural community more responsive to the needs of persons affected by a FASD.

Service providers in our community have identified the difficulty of finding opportunities for diagnosis of FASD as a stumbling block in providing support to individuals with obvious challenges in dealing with their life experiences (Ruiz, personal communication, September 9, 2010). Having the diagnosis when it is justified holds the promise of more effective treatment and adequate structure to avoid the justice system altogether.

Efforts are underway to form a FASD diagnostic team in Barrow. Dedicated professionals active in a FASD diagnostic team in Anchorage have offered to assist Barrow professionals in establishing a FASD diagnostic team for the North Slope. They have proposed a model of having quarterly 4-day trips (including weekend days) to Barrow to conduct evaluations as a team alongside local professionals. We could have a "FASD Clinic"

just like the existing "Orthopedic Clinic," "Diabetes Clinic," and other specialty clinics provided at our local hospital facility with specialists from Alaska Native Medical Center in Anchorage. Having such a team would slowly reduce the tremendous backlog of undiagnosed individuals, including young children, teenagers and adults, resulting in more effective service delivery, greater understanding by the person and his or her caregivers about behavioral issues, and enhanced ability to access benefits. On a statewide basis, this model would encourage development of traveling FASD diagnostic teams to serve rural hub communities similar to Barrow.

Adopt innovations such as the "Probation Icon Project" for juvenile justice cases

The FASD Youth Justice Program in Winnipeg, Manitoba has developed sheets of peel-off icons symbolizing each juvenile probation condition. When the juvenile probation officer is explaining the conditions to a FASD-affected youth, the youth is encouraged to peel off the appropriate icon and place it by the corresponding probation condition. When the youth is done, the youth leaves with the copy of the conditions with the icons on it. The probation officers testing this approach feel that the level of comprehension is greatly increased (Robson, 2009). The Alaska Division of Juvenile Justice is receptive to adapting the use of peel-off icons to its Conduct Agreement/ Conditions of Probation (Murray, personal communication, October 28, 2010). The first step will be to develop icons that fit the Alaska Division of Juvenile Justice probation conditions.

Encourage development of programs to support birth mothers to care for a child with FASD, when at all possible, while preserving safety for the child

The value of such programs in providing meaningful support for birth mothers and their families has been confirmed by research (Olson, Oti, Gelo, & Beck, 2009). Programs in Washington such as Families Moving Forward and the Parent Child Assistance Program provide such a model. Dr. Sterling Clarren, a leading physician in the field of FAS for over 30 years, has predicted that such programs would reduce the incidence of FASD by half, since birth mothers given such support tend not to have additional FASD-affected children (Clarren, 2010). Barrow's Children and Youth Services program¹¹ is currently developing such an initiative using

¹¹ Jointly sponsored by the North Slope Borough, the Native Village of Barrow and the Alaska Office of Children's Services.

the Teaching-Family Model of providing a great deal of support within the family to eliminate or at least greatly reduce time that a child must be separated from the child's family (Dunbar, personal communication, October 22, 2008).

The Barrow Superior Court is in the process of becoming the first rural Alaska court to implement the Alaska Department of Corrections' Probationer Accountability with Certain Enforcement (PACE) program. Modeled on a successful program in Hawai'i, the program identifies certain felony probationers for special enforcement procedures in which even technical probation violations result in immediate petitions to revoke probation, warrants are served on an expedited basis, and a court hearing is held within 72 hours (Halpin, 2010). The hearing results in a very prompt but limited sanction. The sanction might be the immediate service of a few days in jail (Telkamp, personal communication, October 13, 2010). Such an effort will assist probationers affected by a FASD or similar cognitive impairments to realize that violating probation conditions has a consequence of jail time by having the limited consequence occur immediately after the violation.

Such placements would be more humane, suitable, and far less costly to the citizens than locking persons affected by FASD in jails or locked juvenile institutions. The Lakeland Centre for Fetal Alcohol Spectrum Disorders in Cold Lake, Alberta, Canada has issued a report describing a large number of Canadian programs that provide structured living for persons affected by FASD. One program of particular interest is the Whitecrow Village FASD Society in Nanaimo, British Columbia, Canada, which provides a wonderful model of a structured living and outreach program administered by and serving adults with FASD (Warner & Kissinger, 2010). Two programs that have lost their funding also demonstrated the feasibility of structured living specifically targeted for adults and adolescents affected by FASD: the Phoenix House program for adult offenders in a halfway house in Vancouver, British Columbia, and the Kids Kare

and Education program in Washington State for adolescents in state custody.

Bread for the journey

As hopes for a North Slope justice system that is more caring and more appropriate for its citizens with fetal alcohol spectrum disorders and other mental health challenges become more real, it is useful to keep some basic realities in mind.

FASD is not a racial issue; it is a medical condition caused by maternal drinking during pregnancy that can happen anywhere on earth among persons of any race. Unfortunately, the medical community may misdiagnose or overlook the FASD condition and provide a psychiatric diagnosis that leads to ineffective and inappropriate treatment. Instead of realizing the FASD condition exists, the professional may give a diagnosis limited to conditions such as Attention-Deficit/Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder, and/or Conduct Disorder only (Dubovsky, 2008). On the other hand, a person with a FASD may also have a number of other mental health conditions along with the FASD.¹² Effective intervention will only occur if the treatment providers pay attention to FASD and the other conditions as well.

Even if facial appearance changes over time, a person does not "outgrow" FASD. With a structured life, the person may adapt and become a productive citizen (Kleinfeld & Westcott, 1993). In court, an affected person may be quite verbal, give answers indicating that the person has "understood," and could, if asked, repeat back what was said. But an adult or teenager affected by FASD may have the understanding and behavior of

¹² "Attention-Deficit/Hyperactivity Disorder. Schizophrenia. Depression. Bipolar Disorder. Substance Abuse Disorder. Sensory Integration Disorder. Reactive Attachment Disorder. Separation Anxiety Disorder. Post Traumatic Stress Disorder. Traumatic Brain Injury. Medical disorders (e.g. seizure disorder, heart abnormalities.)" (Dubovsky, 2008).

a middle school student or younger. A person affected by a FASD may be able to follow a direction one day and be unable to do so the next, not due to recalcitrance, but simply because of the way the person's brain functions (Rathbun, 1993).

The challenges for persons affected by FASD are present across the justice system. A defendant may lack the intent required for certain crimes, yet be convicted of them. A defendant might be very suggestible during police questioning, leading to false confessions and wasted resources (and increased danger to the community) when the investigation is shut down too soon. Victims and other witnesses affected by FASD may have a great deal of difficulty in a trial when asked to describe what has happened (Conry & Fast, 2000). Probationers or parolees may have special difficulties in following the rules, leading to more court time and jail commitments for violations of bail, probation and/or parole. Parents in child welfare cases may have special difficulties in satisfactorily completing case plans.

Delivering adequate training about FASD to justice system professionals can be challenging, given work loads and shift work. The problems become more acute when dealing with the vast area of a jurisdiction like Alaska. Even when persons have been trained, the turnover in these positions fosters the need for ongoing training despite the costs involved.

Even if judicial officers and other justice system professionals understand FASD and its effect across a person's life span, the traditional justice system has many roadblocks for those wishing to adapt. Research on the effect of FASD shows that an affected person has difficulty relating consequences to previous actions (Conry & Fast, 2000), yet cases drag on for months because of workloads and efforts to protect rights, greatly diminishing the impact of any consequences imposed. The experience of families raising a child affected by FASD shows that it is most productive to have an affected person concentrate on a very limited number of goals

(Jones & Cunningham, n.d.), yet bail orders and case plans may have a dozen rules and a document like the judgment for a felony probationary sentence in Alaska has 12 to 30 general and special probation conditions. Pressures to complete hearings promptly to move the docket and leave court clerks free to work on progressively more difficult data entry requirements make it difficult to slow down a hearing and provide the explanations needed by an affected person. The very real possibility that a person affected by FASD will be overwhelmed by too much information provided at one time justifies taking a short break in a hearing when possible to maximize the ability of the person to understand it.

A person affected with FASD almost always needs enhanced structure—the “external brain.” But the available tools may be excessive in structure and expense—like a jail cell—or provide reasonable structure, but only for a relatively short period of time—like a halfway house, alcohol treatment program, or juvenile treatment program. Also, knowing how much structure is needed for a particular individual is difficult: Professionals (including judicial officers) can become chronically frustrated with the frequent situation that we do not know how intensely a particular individual is affected by FASD.

Conclusion, but not the end of the journey

Failure to adapt to the legitimate needs of persons with the “invisible disability” of FASD needlessly encourages the development of “secondary disabilities” (Streissguth, Barr, Kogan & Bookstein, 1996) that lead to excessive involvement of affected persons with the justice system, increased confinement, and tremendous time demands for all the professionals involved, including peace officers, probation officers, and social workers. Tribal courts face the same challenges as they resolve cases within their jurisdiction. Society as a whole bears a great burden of cost. By helping

affected persons avoid disproportionate entanglement with the criminal justice system, these costs would be reduced.

Accommodating persons with a cognitive disability like Fetal Alcohol Spectrum Disorder is both a human rights issue and a due process issue (Evensen, 2010). Despite the pressures on time and energy, courts must do their best to be understandable, and to be respectful of such persons appearing before them. Failure to do so implicates ethical requirements for both attorneys and judges to insure that persons involved in the justice system understand what is happening to them (Huguelet, 2010).

Fetal Alcohol Spectrum Disorder impacts the entire justice system in ways that are difficult for any one person to grasp. Those who realize this fact feel somewhat lonely and overwhelmed as the overall justice system adapts slowly to accommodating the human rights of cognitively impaired persons. But there are some rays of hope. The Canadian Bar Association's (CBA) 2010 resolution 10-02-A "Fetal Alcohol Spectrum Disorder in the Criminal Justice System" shows admirable understanding of the issues raised by FASD (Canadian Bar Association, 2010). The resolution recommends that the CBA:

1. support the initiative of Federal, Provincial and Territorial Ministers responsible for Justice with respect to access to justice for people with FASD and urge all levels of government to allocate additional resources for alternatives to the current practice of criminalizing individuals with FASD;
2. urge the federal, territorial and provincial governments to develop policies designed to assist and enhance the lives of those with FASD and to prevent persistent overrepresentation of FASD affected individuals in the criminal justice system; and
3. urge the federal government to amend criminal sentencing laws to accommodate the disability of those with FASD.

Similar efforts in the justice community in Alaska and the rest of the United States would result in a more humane, effective justice system which would lead to a noticeable

reduction in the needless human and financial costs of our current treatment of persons affected by a Fetal Alcohol Spectrum Disorder. As Canadian Judge Mary Ellen Turpel-Lafond stated at the September, 2008 Whitehorse conference on access to justice of persons affected by FASD, improving effective "access to justice" for individuals with FASD "is the desire in fact to understand and keep them out of the justice system and to ensure that the justice system is not used as a substitute for appropriate social services and supports for some of the most vulnerable citizens" (Fraser, 2008).

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Fetal Alcohol Spectrum
Disorder - Management
and Policy Perspectives
OF FASD

by Edward Riley, Sterling
Clarren, Joanne Weinberg,
and Egon Jonsson

14

**Understanding FASD: Disability and Social Supports
for Adult Offenders**

E. Sharon Brintnell, Patricia G. Bailey, Anjili Sawhney, and Laura Kreftin

Fetal Alcohol Spectrum Disorder (FASD) can affect people of all backgrounds, ethnicities, religious persuasions, and socioeconomic groups, and represents a significant factor in predicting involvement in the correctional system. The following discussion is focused on the issues facing the corrections system and offenders or former offenders with FASD, as well as issues facing society on the release of people with FASD back into the community. The strong correlation between the disability, unmet multifaceted needs and incarceration of people with FASD, along with the stigma and hard realities of incarceration, necessitate a thoughtful perspective to improve the chances of success for this population.

Adults with FASD experience a range of disabilities that contribute to the likelihood that they will enter the correctional system. These include the primary brain deficits of cognitive and behavioral problems, gullibility, inhibition and poor judgment; secondary disabilities, such as substance abuse and mental illness; and deficits in the social determinants of health, such as poverty and racism. However, the judicial and correctional systems are generally not prepared either to identify FASD, or to address the disabilities of FASD among the offender population. Screening and assessment for the spectrum in these systems is limited, and at present there is no system in place to screen for FASD in adult prisons in Canada (Chapman, 2008). Although there are overtures in some jurisdictions to address the latter deficit, the needs of adult offenders with FASD are currently not adequately met in the corrections system (Chapman, 2008; Miller, 2005; Boland, Chudley, and Grant, 2002). It is important that the correctional system recognizes and identifies affected individuals, because people with FASD are vulnerable and their disabilities contribute to their getting into trouble with the law (Moore and Green, 2004; Streissguth *et al.*, 2004). Moreover, research has indicated that identifying FASD at any age improves options for interventions and helps to reframe problematic behaviors (Malbin, 2004).

14.1

Fetal Alcohol Spectrum Disorder (FASD) is a Disability

The term “disability” has a variety of definitions. For the purposes of discussing the interrelationship between FASD, social services and incarceration, disability occurs when individuals have activity limitations that create barriers to their participation in society. In the International Classification of Functioning, Disability and Health (ICF), developed by the World Health Organization (WHO), three broad health domains are noted: body functions and structures; activities or the execution of actions; and participation, or life involvement (Cieza *et al.*, 2009). Using this international framework, it is appropriate to view FASD as a brain dysfunction that causes impairments (Olson *et al.* 2009) in all three main areas of functionality.

Fetal alcohol exposure (FAE) results in a continuum of impairments that cause affected people to be functionally disabled in a variety of ways. There are both primary disabilities and secondary disabilities associated with FASD. *Primary disabilities* are those that are directly caused by exposure to alcohol before birth, while *secondary disabilities* arise out of the interplay between primary disabilities, psychosocial factors, and environmental influences. Other factors that contribute to the barriers experienced by people with FASD are deficits in the social determinants of health.

Incarcerated people with FASD are an especially vulnerable subgroup of the affected population. Offenders may never have received a diagnosis, and they commonly have a pattern of repeated trouble with the law. People with extensive criminal histories are frequently considered high-risk offenders, and factors contributing to their criminality, including brain damage caused by FASD, may not be taken into account by the justice system. The incidence of primary and secondary disabilities caused by the prenatal exposure to alcohol is very high in offenders with FASD, and interventions to ameliorate adverse outcomes generally have not been employed (Fast and Conry, 2004). The interrelationship between the primary and secondary disabilities of FASD can lead to behavior that results in incarceration, and as a result affected people will require the same societal accommodation and supports that are available to people with other disabilities. Offenders with FASD are disabled. FASD can be viewed as a disability with societal challenges and needs for support similar to those of other chronic impairments that result from injury, such as spinal cord injuries.

14.1.1

Primary Disabilities Associated with FASD

The effects of prenatal alcohol exposure (PAE) include damage to brain structures that results in deficits in cognition, development, and behavior. PAE can also cause separate medical conditions, such as seizure disorders, skeletal problems, cardiovascular disease, dental problems, and reactions to medications (Paley and O'Connor, 2009). All of these conditions influence an individual's ability to function and participate fully in society.

In particular, the diminished cognitive function in FASD results in major deficits in an individual's ability to meet the demands of daily life. Poor short-term memory can result in information and instructions being quickly forgotten; and while long-term memory may be unaffected, information storage is often disorganized and therefore information becomes difficult to retrieve (Grant *et al.*, 2004). Effective executive function (EF), or the integration of basic cognitive processes, is often lacking in people with FASD. Deficiencies in EF affect multiple areas of functioning, including work and school performance, social interactions, parenting, daily living skills, and ability to plan, organize and learn from mistakes (Grant *et al.*, 2004; Connor *et al.*, 2000). The scores on intelligence tests of people with FASD may or may not be abnormal, but many people with FASD are not able to perform at the level predicted by their IQ scores (Malbin, 2004; Kodituwakku, 2009; Fast and Conry, 2009; Chudley *et al.*, 2007; Wass, Persutte, and Hobbins, 2001). These factors, combined with insufficient inhibition and poor cause-and-effect reasoning, can lead to life-long difficulties in adapting to social expectations and functioning socially (Rasmussen *et al.*, 2008).

14.1.2

Secondary Disabilities Associated with FASD

Secondary disabilities are conditions, behaviors or situations that develop after birth. Secondary disabilities associated with FASD include mental illness (depression, anxiety and psychoses), substance abuse, restlessness, trouble at school, homelessness, and unemployment (Paley and O'Connor, 2009; Chudley *et al.*, 2007). Secondary disabilities cause significant upheaval in people's lives. Trouble at school can lead to delinquency and then to trouble with the law, which can in turn cause difficulty in attaining and retaining employment and lead to further encounters with the legal system. According to Streissguth *et al.* (2004), adolescents and adults with FASD have a 60% risk of getting into trouble with the law. Incarceration can result in a loss of housing and possessions, and association with other criminals can lead to stigma and victimization.

These problems are also referred to as “neurobehavioral.” Malbin (2004) states that the observable behavioral effects of FASD need to be recognized as the result of the physical changes in the brain and their impact on brain processing. Dysfunction in behavior includes poor judgment, poor impulse control, conduct problems, poor problem-solving skills, learning problems, fine motor skills deficits, hyper-reactivity to stress, sexual promiscuity, resistance to change, difficulties in forming lasting relationships, gullibility, victimization, and an inability to understand or conform to social norms (Paley and O'Connor, 2009; Chudley *et al.*, 2007; Rasmussen *et al.*, 2008; Aragon *et al.*, 2008). Some of these behaviors develop over time as protective reactions to feelings of frustration (Malbin, 2004). Aragon *et al.* (2008), indicate a link between a lack of services due to undiagnosed FASD and the development of secondary disabilities in adolescence and adulthood. Other research suggests that the early evaluation and identification of exposed people is vital to anticipating the confounding occurrence of secondary

disabilities (Schonfeld, Mattson, and Riley, 2005). Among offenders with FASD, secondary disabilities are a key aspect of their involvement with the justice system.

14.1.3

The Social Determinants of Health and FASD

Housing, sanitation, nutritious food, health care, employment, access to services, justice and human rights are vital for everyone, and are known as the “social determinants of health.” These are the economic and social conditions in which people are born, grow up, live and age, and the wider economic, social and political systems established to deal with illness (World Health Organization, 2008). Research indicates that social determinants of health have a greater influence on an individual than behavioral risk factors.

Social determinants of health influence both the incidence of FASD and the outcomes of people affected by it. There are a number of factors that lead to FAE. The mother’s alcohol consumption during pregnancy is the direct cause; however, women do not live their lives in a vacuum. Trauma, poverty, inadequate nutrition and housing, gender inequity, racism, addiction, abusive relationships and other conditions affect their health, personal options and behavior. Children born with FASD in such environments face serious environmental and social adversities that place them at risk for adverse outcomes (Streissguth *et al.*, 2004; Rasmussen *et al.*, 2008). Adults with FASD have frequently grown up in unstable environments and have experienced difficulty in meeting their basic needs; many have been separated from biological parents and lived in multiple foster homes (Olson *et al.*, 2009). They often have experienced learning problems and unemployment, and may have ended up in jail (Streissguth *et al.*, 2004). Studies indicate that FASD-affected children have lower health-related quality of life than children who have survived cancers and other significant physical disabilities (Stade *et al.*, 2006). High-quality caregiving and a stable home environment are important factors in successful outcomes for people with FASD, yet positive and stable family environments are not typical for this population (Olson *et al.*, 2009). The negative outcomes associated with FASD are thus related to the very high rates of environmental risk factors and the inadequacy of family resources for affected children (Olson *et al.*, 2009). Offenders with FASD represent the output of an environment that is characteristically rated low on social determinants of health.

The principal health risks such as trauma, physical and sexual abuse, racism, poverty and housing instability are rarely addressed in FASD prevention (Reid, Greaves, and Poole, 2008). In order to improve the health of people with FASD and lower the prevalence of the spectrum, the contributing social influences on alcohol use need to be attended to (Gearing, McNeill, and Lozier, 2005). All of these factors are important to address, as they contribute to sustaining a disadvantaged life situation. When added to the secondary disabilities such as substance abuse, unemployment and incarceration, social and environmental risk factors are increased. Attending to the social determinants of health should help to reduce not only the occurrence of complex conditions but also the societal costs associated with FASD.

14.1.4

Human Rights and FASD

FASD is best considered within a broader disability context wherein participation in society is accommodated and functionality is managed through service provisions, much as would occur for someone with a progressive degenerative disorder. Canadian law, as detailed in the Charter of Rights and Freedoms, recognizes that individuals are equal under the law and entitled to equal protection and benefit, without discrimination based on age, race or ethnicity, religion, skin color, gender, mental or physical disability (Canada, Charter of Rights and Freedoms, 1982). The purpose of equality rights is to respect the dignity, worth and value of all Canadians, and to ensure that laws and government action are based on circumstances and needs, and not on negative stereotypes. One of the roles of government is to facilitate equal access to services and supports for citizens. The impairments caused by FASD necessitate that affected individuals receive the supports they need to participate equally in society.

14.1.5

Incarceration and FASD

The prevalence of FASD is difficult to assess. Current estimates of the percentage of the overall population that is affected range from 2% to 5% in North America and Western Europe, with the spectrum generally under-recognized (Malbin, 2004; Fast and Conry, 2004; May *et al.*, 2009). There is a higher incidence of FASD in certain regions and groups. Typically, rural, isolated and remote areas have a higher incidence, but the precise numbers are unknown (Bohjanen, Humphrey, and Ryan, 2009). Canadian FASD research suggests that rates are also higher in some Aboriginal communities (Boland *et al.*, 1998). In particular, the prevalence of FASD is significantly higher among incarcerated people in Canada, and an estimated 10-fold greater than among the general population (MacPherson and Chudley, 2007).

The problems that people with FASD have in adhering to social norms of behavior can result in their being considered socially deviant instead of disabled. Children with FASD are viewed as victims of the birth defects caused by alcohol exposure (Donohue, 2008). Adults with FASD in the correctional system are regarded in an entirely different way, as deviants who have violated social norms (Donohue, 2008). Research indicates that the disabilities caused by FASD become de-medicalized as the affected person develops into an adult (Donohue, 2008; Golden, 1999). The term “de-medicalization” refers to affected people coming to be regarded as in charge of their lives and perpetrating social wrongs through choosing to display challenging behaviors, rather than as people with physical and mental limitations caused by damage to the brain (Golden, 1999). This change in perspective results in adults with FASD being considered fully responsible and then being relegated to the criminal justice system (Donohue, 2008). However, the child with FASD inevitably matures into the adult with FASD, because the

14.2.1

Treatment Programs

The brain deficits in offenders with FASD, combined with the secondary disabilities associated with the spectrum, cause problems in functioning that make traditional prison treatment programs ineffective. It is an expensive use of scarce resources to have people enrolled in programs that cannot be effective. Moreover, a lack of response to programs by people with FASD can lead to their not being able to access prison programs because they have a history of not being helped by such programs (Fast and Conry, 2009; Chudley *et al.*, 2007; Boland *et al.*, 1998; Burd *et al.*, 2003). The literature calls for corrections to do a better job with offenders with FASD. One way to accomplish this goal is to effect a change in offenders' behavioral skills and social circumstances before they are released into the community. The research calls for programs in prisons to address affected people's abilities (Chapman, 2008; Debolt, 2009; Alberta Health Services, 2009; SAMHSA, 2007). In addition, the prison programs need to be client-centered in order to assess each individual's strengths and weaknesses and to develop appropriate skills training and treatment. In order to attend to the different needs and functional abilities of people with FASD, existing programs in the corrections system require restructuring. Notably, this can be accomplished through focusing on meaningful outcomes, such as building adaptive skills.

The rehabilitation of offenders is an evaluative and capability-building process (Ward and Marshall, 2007). Current research indicates that rehabilitation programs, and the release plans developed for individuals, need to include constructive conceptions of positive lives (Ward, 2002). It is important to assess individuals' life histories to better understand their psychological dispositions and vulnerabilities, as well as the internal and external factors that may prevent them from meeting their primary needs (Ward, 2002). The multiple and comprehensive requirements of people with FASD in the correctional system require interdisciplinary teams to deliver programs (Evans and Brewis, 2008; Egger, Binns, and Rossner, 2009). The research on PAE conducted in schools indicates that a structured environment which is heavily oriented around order and routine is beneficial for people with FASD; developing integrated programs in the corrections system could help to address these requirements for adults (Chapman, 2008; Bell, Trevethan, and Allegri, 2004).

14.2.2

Recidivism and Alternative Sentencing

Numerous studies have noted the high rates of recidivism among offenders with FASD (Boland, Chudley, and Grant, 2002; Malbin, 2004; Fast and Conry, 2004; Chudley *et al.*, 2007; Mitten, 2003). Recidivism among FASD-affected people occurs for many reasons. The brain structural deficits that cause difficulty with school and socializing continue to cause problems in the correctional system. People with FASD have difficulty adhering to parole conditions, which is a primary

reason for the recidivism problems for this group (Fast and Conry, 2004; Chudley *et al.*, 2007). Moreover, research indicates a link between a lack of community living skills and high rates of recidivism (Eggers *et al.*, 2006; Lindstedt *et al.*, 2004). For offenders with mental illnesses, a lack of community services after release can exacerbate their illnesses and contribute to recidivism (Sneed *et al.*, 2006).

Considering the primary and secondary disabilities of people with FASD, a strong argument can be made for addressing recidivism among offenders with FASD through purposeful sentencing, improving skills, and attending to other issues such as mental illness. Research into chronic offenders acknowledges that high-needs offenders, such as people with FASD, are more likely to return to prison (Government of Canada, 2007), and that receiving services to meet those needs may act to reduce recidivism. However, this research also suggests that the criminal law paradigm is a less than appropriate way to deal with disabled offenders (Government of Canada, 2007).

Incarceration is based on principles of deterrence and rehabilitation, along with denouncing unlawful conduct. Incarceration is designed to deter people from breaking laws, and rehabilitation is intended to return offenders to the community in a better state than before the crime. These principles assume that offenders have the capacity to understand the nature and consequences of unlawful behavior and to enact changes in their behavior and personal circumstances. The brain damage caused by FASD makes deterrence from future crimes and rehabilitation unlikely, if not impossible (Malbin, 2004). Alternatives to incarceration for people with FASD, such as diversions, conditional sentences and sentencing circles, need to be considered (Fast and Conry, 2004; Fast and Conry 2009; Roach and Bailey, 2009; Mitten, 2004). The literature calls for environmental accommodations for affected people within the correctional system, much as would be considered standard for persons with other disabilities (Malbin, 2004). Chudley *et al.* (2007) have recommended alternative sentences and parole conditions that consider the disability caused by FASD.

Currently, the justice system in Canada may consider FASD as either a mitigating or an aggravating factor in sentencing offenders. An analysis of Canadian case law indicates a lack of consistency in the approach to offenders with FASD (Roach and Bailey, 2009; Justice Canada, 2009). In certain cases, offenders were found unfit to stand trial, some were sentenced as youths to adult correctional facilities, while others were labeled as dangerous offenders (Roach and Bailey, 2009; Justice Canada, 2009). FASD may be considered or mentioned by the court, but the brain impairments are frequently not given substantial weight during sentencing (FASD Ontario Justice Committee, 2007).

For offenders with FASD, it is essential for the justice system to focus on achieving long-term positive outcomes. Alternatives to incarceration are recommended in the literature for offenders with FASD who are not a risk to the public (Fast and Conry, 2009; Mitten, 2003; Debolt, 2009; Roach and Bailey, 2009). Suggestions for incarceration alternatives include holistic community-based programs that address both substance-abuse problems and mental health issues (Mitten, 2003). According to the research, the most purposeful sentences for people with FASD

may be those that effect change in the person's life or social circumstances, rather than strictly aiming to change the person's behavior (Fast and Conry, 2009). Another factor to consider in the sentencing of FASD-affected offenders is their susceptibility to victimization while in custody (Chudley *et al.*, 2007; Jones, 2007). Incarceration is not appropriate for many affected people because of the brain deficits caused by PAE, which impair learning and reasoning and influence behavior. Inmates with mental illnesses may accumulate disciplinary sanctions during incarceration, and thereby reduce their opportunities for parole (Baillargeon *et al.*, 2009). In addition, the negative social networks extant in prison increase the probability of re-offending through post-release affiliations.

Reducing recidivism by offenders with FASD will require adjustments within the correctional system. Canadian government research acknowledges that incarceration is an inefficient and ineffective way of addressing recidivism in chronic offenders for whom prison is not a deterrent (Government of Canada, 2007). This research recommends that, for chronic offenders with cognitive impairments, investing resources in health and social systems may yield better results than repeated processing through the criminal justice system (Government of Canada, 2007). Chudley *et al.* (2007) have called for the allocation of appropriate resources within social services to improve the outcome and quality of life for affected people. Addressing the lack of fit between the abilities of people with FASD and release requirements will also reduce the costs of recidivism associated with FASD, and improve outcomes (Alberta, Government, 2007–2008; Every *et al.*, 2000; Canada Government, 2009; Canada, Government, 2007).

The criminal justice system is currently limited in its ability to impose the type of sentencing that would be beneficial to people with FASD. Court jurisdictions were not intended to recommend the community-based holistic supports and services that help people with FASD live effectively in the community (Roach and Bailey, 2009).

14.2.3

Release Planning

Statutory release from custody is governed by a federal law that allows offenders who are not considered dangerous to serve the last one-third of their sentence in the community on parole to the Correctional Service of Canada (CSC). Parole is granted to offenders to facilitate rehabilitation and ease transition into the community. The criteria for granting parole includes the risk to society, the prisoner's post-release plan, criminal record, behavior in prison, and information provided by psychiatrists/psychologists, police, victims, and family. The CSC is responsible for preparing offenders for consideration by the National Parole Board. Upon release, prior offenders are required to report to a parole supervisor and to adhere to a variety of conditions, including curfews, restrictions on travel, movement and behavior, as well as prohibitions on alcohol consumption and associating with certain individuals. Should the conditions of release be violated, the offender may be returned to custody (Correctional Service of Canada, 2008).

Before an offender is released from custody, the individual must agree to a correctional plan, which outlines the procedures to maintain a law-abiding lifestyle in the community. The plan details restrictions on movement and commitment to participate in employment and programs. Each plan is individualized to the person's needs and focuses on specific issues, such as job training and substance abuse. Successfully re-engaging prior offenders in the community requires adequate supervision and effective community programs (Correctional Service of Canada, 2008). The inherent limitations faced by people with FASD can result in significant barriers to reintegration into the community for this group.

Community reintegration programs for offenders with brain damage, including those with FASD, are vital to success. However, the research identifies a general need for community reintegration programs in the corrections systems (Egger *et al.*, 2006), and a lack of continuity and program consistency between correctional sites and community settings. This can result in people with FASD "falling through the cracks" in service provision if bridging and transitions between the two environments are not in place.

Prior to the release of an offender with FASD into the community, planning for that eventuality is critical. Both pre-release and post-release plans for affected individuals need to be developed (Eggers *et al.*, 2006; Sneed *et al.*, 2006). Any treatment needs of individuals, such as for mental illness and substance abuse, need to be started while the person is in custody and then continued in the community upon release (Magaletta *et al.*, 2009). Establishing contacts with a team of service providers in the community is therefore essential for affected people before release (Eggers *et al.*, 2006). It is also important that probation and parole orders be interpreted to offenders with FASD. Otherwise, their learning disabilities may preclude adherence to the guidelines and increase their risk of re-offending (Fast and Conry, 2004). Research recommends that affected people receive comprehensive but simply written and meaningful discharge planning before being released into the community (Debolt, 2009).

Housing for offenders with FASD upon release appears to be a key to succeeding in the community. Stable housing for adults with FASD upon release from incarceration will also improve the delivery of necessary services. The correctional system has an opportunity to maximize the chance of successful reintegration for offenders with FASD by tailoring services and supports, programs, sentences and probation or parole orders to reflect the needs and functionality of the individual.

14.2.4

Correctional System Needs

The challenges facing the corrections system in addressing the functional disabilities caused by conditions such as FASD are increasingly being recognized by both researchers and governments. The complexity is in altering the existing system in such a way as to enable the needs of FASD-affected offenders to be successfully met within the corrections context, and then extending these services into the community upon the person's release. The FASD literature calls for purposeful

sentencing that is focused on outcomes, and effecting changes in the behaviors and skills of this population while they are in custody.

A recent formal evaluation of federal Canadian correctional programs revealed that targeting the specific needs of offenders is both relevant and effective (Correctional Service of Canada, 2009). Offenders who participated in correctional service programs, such as for substance abuse, exhibited changes in behavior and were more likely to be granted a discretionary release than those who did not participate in programs (Correctional Service of Canada, 2009). Program participation was also associated with a reduction in re-admissions into the correctional system. However, the evaluation also revealed that the correctional system is significantly lacking in its ability to deliver programs to offenders with learning deficits, cognitive disabilities, and mental disorders. The report formally recommended developing a strategy to address the programming needs of such offenders (Correctional Service of Canada, 2009).

Studies indicate a need to develop a clear approach to FASD in the criminal justice system, and to develop clear practice guidelines (Cox, Clairmont, and Cox, 2008). FASD research calls for specific units to be established within the correctional system that are environmentally sensitive to the offenders' behavioral profile (Fast and Conry, 2009; Chudley *et al.*, 2007; Boland *et al.*, 1998; Bell, Trevehan, and Allegri, 2004; Burd *et al.*, 2003). Founding FASD units would enable the corrections system to address the cognitive and behavioral impairments of offenders with FASD. Training corrections personnel about FASD and its effects is also vital since, unless they have an awareness of the condition, such personnel are unlikely to recognize that potentially difficult behaviors are not deliberately chosen but are, rather, a result of brain impairment. Corrections system staff require both a knowledge of FASD impairments and the skills to interact effectively with offenders with FASD (Fast and Conry, 2009; Chudley *et al.*, 2007; Boland *et al.*, 1998; Bell, Trevehan, and Allegri, 2004; Burd *et al.*, 2003). In these ways, the neurobehaviors caused by the impairment can be addressed through modifying the social and physical environment experienced by affected people.

In addition to training for corrections personnel, programming is needed that targets meaningful and relevant roles for FASD-affected offenders after release. Corrections is an environment that can be viewed as both a barrier and a facilitator to participating in society. Because people do get released, it can play a vital role in preparing people to re-enter society (Canada, Criminal Code of Canada, RSC, 1985). Certain aspects of correction culture—structure, repetition, habit—are positive environmental supports that can enhance this pre-release preparation. Working with the FASD-affected population in prisons is an opportunity to connect with individuals who might otherwise “fall through the cracks” in the system.

14.3

Interventions and Social Supports for Adults with FASD after Release

Viewing FASD as a disability under the WHO International Classification of Functioning (ICF) framework allows us to see FASD as a condition that can benefit

from many of the same strategies and principles used in developing services for other disability groups, such as those with acquired brain injury or spinal cord injury. In the case of FASD, there is some research indicating that the disabilities (both primary and secondary) may not be in a stable state (Moore and Green, 2004; Paley and O'Connor, 2009; Kodituwakku, 2009; Rasmussen *et al.*, 2008; McGee *et al.*, 2008). (This point will be discussed later, because it has implications for the design of a community service network.) Drawing on the prevention model (Caplan and Grunebaum, 1967), secondary prevention (which is sometimes called “treatment”) and tertiary prevention (which can be viewed as “rehabilitation”) are the focus of the activities both within corrections system and in the community.

Appropriate interventions and accommodations are vital for people with FASD if they are to remain in the community after being released from the correctional system. One major issue here is to establish seamless and continuous support from the correctional system to the community. Providing continuity in services requires that the correctional system establishes methods and policies to interact with community partners who will help individuals function and access services in the outside world. The limited knowledge regarding adults with FASD, and the challenges that they face in the community, dictates that interventions be specifically tailored to their individual profiles, but still be within the principles of general social service offerings.

14.3.1

Client-Centered Lifelong Multisectoral Supports

A client-centered approach recognizes that the specific characteristics and circumstances of individuals must influence service need and service delivery. The clients are the best persons to describe their experiences of reality, and as a result it behooves service providers to spend the necessary time to learn about the client's life experiences (Law, 1998). An essential element of client-centered practice is facilitating clients in solving their problems (Law, 1998). In the client-centered approach, clients may be involved in making choices about their rehabilitation, rather than having pre-established external decisions imposed on them. The approach allows for flexibility in program delivery and recognizes the particular requirements of the individual.

A client-centered approach has multiple advantages in delivering interventions for people with FASD, because of the highly variable nature of the brain deficits associated with the disorder. The needs of individuals with FASD depend in part on the extent of brain damage by PAE and on the secondary disabilities. Interventions that focus on the individual will be most able to address specific requirements (Chudley *et al.*, 2007; O'Connor and Paley, 2009; Bertrand, 2009). The literature recommends the establishment of multidisciplinary teams to work with community partners to maximize the interventions for individuals, based on their needs and abilities (Grant *et al.*, 2004; Chudley *et al.*, 2007). By tailoring interventions to the needs of the individual, personally beneficial programs and treatments can be provided (Lindstedt *et al.*, 2004; O'Connor and Paley, 2009).

The disabilities caused by FASD do not self-correct over time, and the FASD research indicates that lifelong interventions are necessary for affected people (Paley and O'Connor, 2009; Grant *et al.*, 2004; Chudley *et al.*, 2007; O'Connor and Paley, 2009; Bertrand, 2009). As a result, people with FASD need multisectoral coordinated services that are accessible across their lifespan (Grant *et al.*, 2004). The involvement of multiple service providers in comprehensive interventions has a variety of benefits. Service providers generally follow different mandates to deliver services, which can result in a "silo" approach. Affected people can be lost to follow-up and monitoring if left alone to negotiate the support system. A comprehensive approach that offers coordinated care across multiple systems, including corrections, is important to maximize success for people with FASD (Paley and O'Connor, 2009). Furthermore, traumatic brain injury research reveals that rehabilitation involving an interdisciplinary team leads to improved function and independence (Evans and Brewis, 2008). Successful initiatives are multidisciplinary and multisectoral, and also involve partnerships with community agencies to provide services (Olson *et al.*, 2009; Brown, 2004).

There are multiple barriers to accessing community services for adults with FASD. Affected individuals may not realize they are in need of formal support, and therefore do not seek it out (Debolt, 2009). In addition, they may not possess sufficient cognitive faculties to negotiate separate application processes, and adhere to the variety of system requirements developed for people without brain damage. For offenders with FASD, other impediments include a lack of coordination between the correctional system and programs available in the community (Hartwell and Orr, 1999). The literature identifies a need for community programs for newly released offenders, in part due to the prevalence of waiting lists for entry into treatment programs in communities (Brown, 2004). Further, establishing connections between the services that people receive in the correctional system and in the community will assist in informing service providers about the specific needs and goals of individual offenders (Magaletta *et al.*, 2009).

14.3.2

Employment and Housing

For adults with FASD, an additional impediment to successful community establishment after release from prison is trouble finding employment and other forms of support (Brown, 2004). Other barriers include deficient work skills, gaps in employment records, difficulty accessing transportation to employment or community services, and the availability of health care, child care, and medication (Brown, 2004; Magaletta *et al.*, 2009; Fonfield-Ayinla, 2009).

The availability of stable housing for newly released offenders with FASD is also crucial to success in the community. Homelessness worsens secondary disabilities, such as mental illness and substance abuse, even in people without the brain deficits caused by FASD (Fonfield-Ayinla, 2009; Zlotnick, 2009; Shand, 2004). Moreover, offenders may be released into unfamiliar communities, and with few financial resources (Brown, 2004). It is well known that limited financial resources

have a negative influence on the ability to find and maintain a stable home. As a result, developing a comprehensive approach to intervention across multiple systems of care, including stable housing, is strongly advocated for people with FASD (Paley and O'Connor, 2009; Grant *et al.*, 2004; Chudley *et al.*, 2007; Bohjanen, Humphrey, and Ryan, 2009).

Secure and stable housing has multiple benefits for adults with FASD, and acts as a cornerstone to success in other programs. Housing can help people with FASD to protect against, cope with, and minimize secondary disabilities, such as mental illness (Burd *et al.*, 2003; Brinda, 2006). Stability in housing also assists them in adhering to treatment goals (Debolt, 2009), and reduces recidivism in offenders with mental illnesses (Lindstedt *et al.*, 2004; Case *et al.*, 2009). The difficulties of affected individuals in tracking finances, controlling impulses and following rules necessitates support to ensure stability in housing, such as access to a case worker who can assess the person's needs and ensure that they are met (Brinda, 2006).

The variable and particular effects of FASD on individuals require that programs cover a wide range of housing options appropriate to the range of abilities and functionality, including specialized support and more independent programs. For a newly released offender with FASD, housing within the community is preferred over placement in halfway houses, due to the negative influence of other criminals on affected individuals (Brinda, 2006). Following a client-centered model for providing housing to newly released offenders with FASD is beneficial. A comprehensive umbrella program to provide housing for people with FASD has been recommended in recent research. Such a program would have the capacity to maintain housing stability while accommodating the changing needs of individuals.

14.3.3

Training and Programs

Social and vocational skills training is important for people with FASD. Adults with FASD may have significant social and vocational skill deficits because the impairments caused by PAE do not improve over time, and may even intensify (Moore and Green, 2004; Paley and O'Connor, 2009; McGee *et al.*, 2008). Moreover, even if individuals have received social skills training during their incarceration, repetitive training is vital due to problems in short-term memory and information storage and retrieval (Grant *et al.*, 2004).

The deficits in social problem-solving skills in adults with FASD also require specific interventions. Social problem-solving is affected by impairments in working memory, initiating and planning tasks, and organization and monitoring behavior. Interventions aimed at providing appropriate training and adequate academic and social support can improve the individuals' skills (McGee *et al.*, 2008). Research into interventions in anger management and social skills programs for adults with FASD after release from prison suggests that the management of high-risk situations can be successful with appropriate interventions (Brinda, 2006).

Integrated treatment programs to address mental illness and substance abuse for people with FASD are important. The literature clearly indicates that the secondary disabilities of mental illness and substance abuse are common in people with FASD. Furthermore, mentally ill offenders are at risk of social isolation on release, which is known to worsen substance abuse-related problems (Hartwell and Orr, 1999). Considering that many offenders with FASD are affected by mental illness and addictions, linking treatment for these conditions will help to reduce feelings of isolation. Research into the experiences of mentally ill offenders strongly advocates for an integrated mental health and substance abuse treatment to improve outcomes (Magaletta *et al.*, 2009; Roskes and Feldman, 1999).

Treating mental illnesses or substance abuse in people with FASD requires certain accommodations. Treatment approaches that focus on changing behaviors that are symptoms of FASD disability are inappropriate and ineffective (Malbin, 2004). Research indicates that, like people who have received a traumatic brain injury, those with FASD can be more sensitive to the medications used to treat mental illnesses, and may react to such medications in unexpected ways (Paley and O'Connor, 2009; Fast and Conry, 2009; O'Connor and Paley, 2009). People with FASD may also be resistant to medications and psychosocial therapy (O'Connor and Paley, 2009; Hellemans *et al.*, 2008). These atypical reactions to typical interventions require that service providers monitor individuals closely in order to ensure that medications are prescribed and administered effectively, and that any negative side effects are minimized.

Interventions provided for people with FASD after release from corrections must be tailored to address the needs that are specific to people of their age and gender. Youth require access to education, vocational and life skills training, social skills training and to stable housing. Adaptations to the learning problems associated with FASD require environments of reduced stimulation, the use of visual schedules, repeated instructions, and positive behavioral support (Bohjanen, Humphrey, and Ryan, 2009). Women require access to birth control and child care, as well as certainty in release planning to aid in re-establishing relationships with their children (Pedlar *et al.*, 2008). It is also important to screen for alcohol use in women during pregnancy (SAMHSA, 2007). The social and life skills training for women and men with FASD should reflect particular life circumstances, gender roles, culture and behaviors, such as anger management and parenting skills.

14.3.4

External Executive Function Support

People with FASD require the assistance of designated people to act as transitional navigators or advocates, mentors, advocates, and trustees. The problems that affected people have in learning, reasoning, judgment and adaptive skills frequently result in their becoming lost in the system, without assistance. They may have a limited insight into their lack of abilities, and over-represent their capabilities

ties to themselves and others (Chudley *et al.*, 2007). The FASD research recommends that an "external brain" in the form of formal caregivers and advocates be established to help affected individuals adapt, function, and meet their social needs (Chapman, 2008; Chudley *et al.*, 2007; Boulding, 2007; Kellerman, 2003). Access to stable and funded contacts for service providers helps to improve adherence to recommendations and retain participants in programs (Grant *et al.*, 2004; Debolt, 2009). Assistance in financial management is also necessary, and affected people should benefit from the establishment of trustees to manage their personal finances (Chudley *et al.*, 2007). The experience of disability can be minimized with integrated approaches to optimize the person's capacities, strengthen their access to available resources, and improve their interaction with the environment (Stucki and Celio, 2007).

Accommodating the disabilities caused by FASD requires whole system modifications to the person's social and political environment. The ability of affected people to function in society can be improved through coordinated multisectoral targeted interventions, and the establishment of an "external brain" composed of caretakers, advocates, and trustees. Alterations in the environment to support and enhance the functionality of the person disabled by FASD need to be made at the community level, through programs and services provided by governments and community agencies.

One essential aspect of providing interventions to adults with FASD is to follow individuals through the system. When multiple systems of care provide services, it is vital to establish a process to follow the individual across services, to communicate between providers, and to ensure that the individual does not fall through any gaps in the services. Research indicates that, without follow-up, individuals can become lost in the system (SAMHSA, 2007; Hartwell and Orr, 1999). Recent FASD-associated literature calls for a full continuum of services to be available to affected individuals across the lifespan (Malbin, 2004; Olson *et al.*, 2009; Paley and O'Connor, 2009; Fast and Conry, 2009; Chudley *et al.*, 2007). Developing official procedures to follow affected people from the correctional system through the services supplied by multiple providers is critical.

14.3.5

FASD Costs

The economic costs of FASD are important to consider when evaluating the benefits of multisectoral assisted support across the lifespan for adult offenders with FASD. The overall costs of FASD are difficult to assess, due to the variety of factors that influence individuals. Furthermore, researchers acknowledge that the estimates of costs are minimum values, due to the unavailability of many types of data on individuals (Fast and Conry, 2009; Thanh and Jonsson, 2009; Stade *et al.*, 2009). However, there are several basic categories of cost, including direct short-term and long-term costs of FASD to society, correctional system costs, and costs of homelessness.

Evaluations of the general costs of FASD for Canada and for Alberta indicate considerable expenditures at provincial and federal levels. In Canada, the cost of FASD from birth to 53 years of age is CA\$5.3 billion (at 2007 price levels) (Stade *et al.*, 2009). (For updated figures on the cost of FASD, see Chapter 4.) Over half of these costs are attributed to education and healthcare for affected children. This estimate does not include the costs of incarceration, or the cost of lost productivity among adults. The costs in Alberta of FASD amount to about CA\$400 million annually in long-term costs, and about CA\$143 million annually in short-term costs such as healthcare, education and the justice system (based on 2009 price levels) (Thanh and Jonsson, 2009).

Although the correctional system costs are not exclusive to people with FASD, the corrections system includes many with FASD. The cost of the corrections program in Alberta is CA\$106.31 per person per day (CA\$38 696 per year), while the federal corrections cost is CA\$260.10 per person per day (CA\$94 676 per year) (Alberta, Government 2008–2009). Despite these significant expenditures, the figures do not include all of the costs of FASD to the legal system, as there are also costs associated with the crime itself, policing, and court appearances (Fast and Conry, 2009). Boland, Chudley, and Grant (2002) have advocated that the costs associated with adult offenders with FASD be reduced by identifying affected individuals, so that the system could accommodate their disabilities.

The costs of homelessness are also significant. For example, in 2008 there were approximately 11 000 homeless people in the province of Alberta, while the provincial government spends annually an estimated CA\$ 100 000 per person to deliver programs and services to chronically homeless people, such as emergency medical services. The cost of shifting from managing homelessness to ending homelessness in Alberta would save an estimated CA\$ 7 billion over a 10-year period (The Alberta Secretariat for Action on Homelessness, 2008). Clearly, the avoidance of homelessness in people with FASD would lead to a major reduction in associated costs.

The extent of costs to society from FASD is substantial, even without an accurate breakdown of all the costs associated with the spectrum. The figures indicate, unmistakably, that to assist affected individuals in avoiding the correctional system and homelessness would not only greatly help the person but also have significant and lasting economic benefits to society.

14.3.6

Developmental Disability Assistance

The FASD research recognizes that a significant impediment to improving the community participation of people with FASD is the narrow criterion for disability assistance, which includes developmental disabilities (DD) and financial assistance (Streissguth *et al.*, 2004; Grant *et al.*, 2004; Bertrand, 2009). Chudley *et al.* (2007) have identified the need for access to developmental disability assistance for adults with FASD. Moreover, DD services can help in secondary prevention efforts. Burd *et al.*, (2003) have identified the receipt of developmental disability

services as a protective factor for avoiding the secondary disabilities associated with FASD. The literature clearly indicates the lasting and meaningful solutions that could be developed through providing access to developmental disability assistance to people with FASD, thus improving the quality of their lives. These supports may be just enough to keep some of these adults out of justice systems.

Alberta has developed a vision and innovative approaches to FASD in its ten-year strategic plan. There are a number of important ongoing projects in the province, and recently programs have been funded to address the needs of adults with FASD, one of which is Corrections and Connections to the Community (3C). The program has three components: evaluation, transition, and follow-up. Evaluation occurs within the correctional site, while transition begins with programming and relationship-building prior to release, and then continues into the community. The project also has an assertive follow-up phase.

Existing funded programs should be an exceptional source of data to expand the current knowledge of FASD. The annual reports that they submit to funders illustrate the importance of reporting requirements that go beyond accountability, and actually provide important information.

The above strategies are all reasonable and currently in existence in many areas of the community. The challenge is access to support for those people who are not in the greater urban areas and, more specifically, those returning to remote geographical areas with limited health and social services.

14.4

Policy Considerations for Adults with FASD

- 1) Comprehensive diagnostic capacity. In order to access services and supports to assist people with FASD to be contributing members of society, it is necessary to have access to a diagnosis. Diagnostic services for people who may be affected by FASD are needed for children, youth, and adults in all jurisdictions. The usual diagnostic clinics should also seek to evaluate the functional performance of individuals.
- 2) Seamless and equitable services across the lifespan. The brain impairments caused by FASD are lifelong. Thus, services that transcend the traditional "silo" approach, are multisectoral and connect the separate social, health and corrections systems are vital if people with FASD are to have access. It is important for these services to be available, regardless of the affected person's chronological age.
- 3) Expand Persons with Developmental Disabilities (PDD) legislation to incorporate the functional disabilities of FASD. Legislation that governs developmental disabilities assistance needs to be expanded to include adults with FASD. The legislation which guides eligibility and available services to people with developmental disabilities varies by province. Currently, the

leading provinces in Canada for providing inclusive disability support are Manitoba, Ontario, Prince Edward Island, and Saskatchewan. Alberta, British Columbia, the Northwest Territories and Quebec continue to link access to developmental disability support to narrow eligibility criteria: people with an IQ two standard deviations below the norm.

- 4) Transitions from child to adult services be pre-planned and allow for wrap-around services, including follow-up, housing, and supported employment.
- 5) Sustainably funded services based on functional needs.
- 6) Ongoing life skills and socialization assistance.
- 7) FASD prevention efforts to target the social determinants of health.
- 8) Alternative sentences for offenders with FASD whenever possible.
- 9) Pre-release and post-release plans for offenders with FASD.
- 10) Enhance correctional environment to reflect the needs and functionality of offenders with FASD.
- 11) Reduce reconnecting with justice and correctional systems through provision of training, programs, and ongoing assertive supports.
- 12) Create a safe and supporting community-based "virtual world." Such a world has destinations, activity programs and shelters in which staff and volunteers understand and can manage the neurobehavioral presentation and profile of individuals with FASD. This world is interconnected and linked to resources and case management options across disparate service sectors.

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Fetal Alcohol Spectrum Disorder as an Access to Justice Issue

Meeting with Canadian Bar Association and Federal Provincial Territorial Co-ordinating Committee of Senior Officials (Criminal Justice) Steering Committee on FASD

March 1, 2011 • 10:00am – 5:00pm

Vancouver

Participants

CBA FASD Advisory Committee: Dan MacRury (NS), Corey LaBerge (MB), Fia Jampolsky (YT), Jonathan Rudin (ON), Gaylene Schellenberg (CBA staff) Regrets: David Christie (YT), Rod Snow (CBA President)

FPT Steering Committee Members: Teresa Brown (MB), Marilou Reeve (DOJ Canada), Natasha Phillips (YT), Sherri Lee – (AG/ BC) Janice Laycock (NT), Samantha Hulme (BC).

Chair: Marilou Reeve, Department of Justice Canada

Background

At its 2010 Canadian Legal Conference, the Canadian Bar Association (CBA) passed a resolution concerning Fetal Alcohol Spectrum Disorder (FASD) in the criminal justice system (*Appendix A*). This resolution supported the current work on FASD by the Federal Provincial Territorial Ministers Responsible for Justice (FPT Ministers). It urged them to avoid ongoing criminalization of people with FASD, and to allocate additional resources to develop policies and solutions relating to FASD as an access to justice issue.

In October 2010, FPT Ministers directed officials to engage with the CBA on FASD as an access to justice issue. An Engagement Strategy was then approved by FPT Deputy Ministers in January 2011 (*Appendix B*). Deputies supported the Engagement Strategy approach and directed its FASD Steering Committee to implement the Engagement Strategy and report back at the June 2011 Deputies' meeting.

A meeting was convened on March 1, 2011 (Item # 6 of the Engagement Strategy) in conjunction with *The 4th International Conference on FASD*, Vancouver, BC, March 2-5, 2011. Funding was provided by Justice Canada.

Meeting Overview

The CBA FASD Advisory Committee representatives and members of the FPT FASD Steering Committee discussed the complex issues related to access to justice for individuals with FASD in a comprehensive and constructive forum. Participants had extensive experience working on issues relating to FASD, including program and frontline work, as well as policy development and prosecution/defence of individuals with FASD. The group discussed promising practices and the good work that is currently taking place in relation to this issue in some areas.

Participants agreed that individuals with FASD should be assessed and dealt with outside of the criminal justice system whenever possible through health and social services systems with adequate supports.

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If individuals with FASD become involved in the criminal justice system, alternative measures/ diversion programs should be considered. The realities of the disability of FASD must be balanced with the need for public safety. Social services and agencies outside the criminal justice system play a critical role in responding appropriately to individuals with FASD who become involved in the justice system.

Outcome

Participants at the March 1 meeting suggest that the following measures would improve access to justice for people with FASD:

1. **Allocate new resources (or re-allocate existing resources as appropriate) for effective programs that avoid the unnecessary criminalization of individuals with FASD (i.e. community alternatives including supportive housing, social services etc.).**
2. **Explore and develop alternative measures / diversion programs that deal effectively with individuals with FASD who come into conflict with the law, in a timely, effective manner that holds individuals accountable consistent with their degree of responsibility.**
3. **Educate justice system professionals, including RCMP, police services and probation officers, judges, Crown, defence, court workers, corrections, and victim service workers about FASD and the implications for service provision.**

The possibility of FASD should be considered in deciding on an appropriate justice system response. For example, the Prosecution Policy directives should be changed to require that consideration.

4. **Amend the legislative framework within the *Criminal Code* to more effectively address the unique challenges that FASD presents to the criminal justice system.**

The *Youth Criminal Justice Act (YCJA)* provides a legislative framework that could be applied to offenders with special needs such as those with FASD. Some of the sections offering special protections to youth under the *YCJA* that could be added to the *Criminal Code* to accommodate the unique challenges individuals with FASD present to the criminal justice system include:

YCJA s.34 (ordering assessments) A similar provision would allow court ordered assessments of adults that the court believes might be affected by FASD.

YCJA s.25 (right to counsel) Ensuring that counsel are present in encounters with the criminal justice system is critical for people with a diminished cognitive ability, as with FASD.

YCJA s.19 (case conferencing) Case conferencing can be an effective tool to garner collaboration amongst key players, in deciding on an appropriate response in the individual circumstances at an early stage of the criminal justice system process.

5. **Address the problems of people affected by FASD through an interdisciplinary/multi-sectoral approach.**

Fetal Alcohol Spectrum Disorder as an Access to Justice Issue

Some jurisdictions effectively use collaborative or inter-ministerial approaches between government ministries to share information and coordinate and integrate services. All jurisdictions should consider implementing this approach when addressing the needs of individuals with FASD.

Participants also recommended that a case conferencing provision equivalent to section 19¹ of the *YCJA* should be added to the *Criminal Code* to recognize the diminished capacity of people affected by FASD and the need for an integrated, multi-sectoral approach to addressing the unique challenges.

6. Create legislative authority to allow courts to obtain an accurate assessment of an individual's neurocognitive abilities.

Section 34 of the *YCJA* has been used effectively to order assessments for FASD. The same provision should be added to the *Criminal Code* for adults affected by FASD.

Currently, the courts cannot order assessments for adult accused they believe may have a cognitive deficit unless the accused is considered "unfit to stand trial" or "not criminally responsible by reason of a mental disorder". Part XX.1 of the *Criminal Code*, dealing with mental disorder, is generally not applicable to, or appropriate for individuals with FASD.

In order to more effectively ensure access to justice for individuals with FASD, courts should be able to order an assessment at any stage in the proceedings, and as early as possible in the judicial process to ensure that any diagnosis is properly considered throughout the individual's involvement with the justice system.

7. Recognize that FASD is a life long disability distinguishable from a mental illness.

The distinction between permanent brain damage and a condition that may change with treatment is critical when considering the appropriate criminal justice system response, including in specialty courts and in sentencing dispositions.

FASD must be considered the primary underlying issue and any mental illnesses then be considered in the context of FASD. FASD is not an illness, but a permanent disability that requires appropriate legal and social accommodations.

8. Allow all sentencing options to be available to judges to allow them to devise just and appropriate dispositions for people affected by FASD.

It is important to remove barriers that constrain the exercise of judicial discretion, including mandatory minimum sentences.

For example, a legislative safety valve (exemption clause) could be added to the *Criminal Code* that would allow judiciary to exercise discretion when sentencing individuals with FASD.

¹ Section 19 of the *Youth Criminal Justice Act* provides that a conference can be convened by a youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker for the purpose of making a decision under the *Act* (subsection 19(1)).

Fetal Alcohol Spectrum Disorder as an Access to Justice Issue

9. Minimize possibilities for people with FASD to accumulate unnecessary Administration of Justice Breaches.

All justice professionals should limit unnecessary conditions (bail conditions, terms of probation, sentencing conditions) to accommodate the cognitive ability of individuals with FASD and avoid the unnecessary accumulation of administration of justice breaches. This is a perfect example of the need for education and the types of policies and directives that can be established by justice agencies for working with individuals with FASD.

10. Review standardized checklists and risk assessment tools used in the Court and Corrections systems to make decisions about individuals to ensure their validity & reliability for persons affected by FASD.

FASD and the Legal System

"FASD is not an excuse, it is a reason".

Fetal Alcohol Spectrum Disorder (FASD) is a range of clinical conditions including Fetal Alcohol syndrome (FAS), Partial Fetal Alcohol syndrome (pFAS), Alcohol-related Neurodevelopmental Disorder (ARND) and Alcohol Related Birth Defects (ARBD). Many of these individuals go unrecognized as they appear "normal" with above average IQ's and are often defiant or disruptive. The spectrum of neurological damage with FASD causes many different cognitive and behavioral problems.

Currently our legal system is based on fundamental principals of freewill and choice. However, the whole issue of FASD challenges these precepts.

Whether or not we are able to overcome the issues of identification and diagnosis of FAS in the court system is not the context of this discussion. Diagnosis or not, we are still left struggling to understand the issue of FASD and its relationship to offending and the law. There are a number of issues we must begin to understand and address.

1. Individuals with FASD have an increased susceptibility to involvement with the legal system.

FASD individuals are highly suggestible, often have a negative self-image and almost always get caught by the legal system because they can't plan ahead. These individuals have poor adaptive behavior, poor language ability, they acquiesce when they don't understand, confabulate because their memory is faulty, and fail to reason through issues. Julie Conry's study (Conry, 1999) reports that approx 25% of youth prison populations in British Columbia are FAS affected and 50% have other disabilities. This results in a high representation of disabled youth who are now labeled criminal. A Seattle study found 60% of FAS affected individuals were in conflict with the law (Conry, 1999)

2. Courts are designed to deal with a model of intervention that assumes a person is responsible for their future behavior.

The court system is inappropriate and unworkable for FASD affected individuals. The model of the courts is based on the notion of freewill and choice and that the accused is responsible for their future behavior. Judges need to ask that people affected with FASD have a fixed point of responsibility who monitors the specific and concrete plans for day-to-day living. A fixed point of responsibility requires someone who knows how to advocate for access to those services in the community that will best facilitate the FASD individual's needs. FASD affected are often without family supports that could act as such for them. A model that has been successful in the deinstitutionalization of the handicapped is the individual program plans (I.P.P.'s). Should we not consider the concept of Individual Sentencing Plans (I.S.P.'s) where the emphasis is on the individual's plans and there is identification of a fixed point of responsibility to ensure that those needs are met?

3. FASD affected individuals have little or no concept of cause and effect. We must ask

whether or not their actions can then be deemed to be criminal.

An FASD affected individual is not able to link cause and effect which of course limits their ability to anticipate consequences. They are unable to integrate all of the information from cause and effect situations, leading to an inability to look at the "whole picture". These are serious cognitive impairments. We must ask ourselves if it is morally or ethically acceptable to punish handicapped individuals. More humane methods of dealing with FASD in the legal system can be utilized.

4. FASD are victimized in the court system and the jail setting.

FASD display a number of characteristics, which have a negative effect in the court and in the prison system where there is a definite expectation of ability to comply with "appropriate behavior". They are often non-compliant, "stubborn", misinterpret cues, go to far, don't respond to adult approval, ignore verbal limit setting, have trouble adjusting in social situations, over or under react, may show flat affect or lack of eye contact, are spacey or lack initiative, have inappropriate responses to situations and have an apparent lack of remorse. Failure to engage in appropriate behavior leads to the desire to "teach the youth a good lesson", one which he will usually be unable to learn.

5. We don't spend enough time early in their conflict with the law, trying to understand the underlying causes for why people come into the system.

Criminal lawyer's are taught to ask the question of guilt and innocence but these are not the right questions to ask FASD affected. We need to ask "why are you here", "What should happen to you now", "Why did this happen" and "what can we do to ensure that this doesn't happen again"? The vast majority of accused do not warrant incarceration. This could be reduced by 50% if we focused on these questions. (Canada places second in the Western World for number of incarcerated citizens)

6. We can lower the risk of re-offending by establishing effective strategies for working with FASD individuals.

Incarceration is not the only form of punishment in our society. The increased use of the principles of restorative justice could assist in diverting these disabled individuals from the legal system and ensure appropriate community supports. There are no restrictions on the kinds of offenses that can be diverted so as long as the issues of public protection and the needs of the individual are addressed there is a potential here to decriminalize people with disabilities.

Viable Alternatives

Judges are asking for alternatives. They are becoming more aware of the need to deal with this disability in a more proactive way. An "aggressive, comprehensive, intervention and treatment program" is required. Information Management Systems that keep track of FASD affected people are required and Therapeutic Courts like those used in the Toronto Drug Courts should be developed.

Circle Courts are being explored in Saskatoon (Judge Turpel-LaFond, Saskatoon Provincial Courts, 2001). These team-based, mediation oriented, interagency courts create a "circle of care" support network that utilizes the inter-community expertise and family supports to create a solid support network for the FASD affected. The provision of appropriate legal services for FASD affected is not

specialized treatment. It is however differential treatment with the goal of ensuring an outcome of equality. All disabilities deserve to have an outcome of equality in our society.

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David Michael Boulding - Lawyer

Fetal Alcohol and the law

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A LAWYER'S BRIEF ON FETAL ALCOHOL SPECTRUM DISORDERS (FASD)

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Alcohol in the womb is a solvent and acts on the baby's developing brain like paint stripper acts on layers of old paint on furniture: it dissolves brain cells, bubbles them away. Thus, brain functions are missing.

1. FASD IS A PERMANENT BRAIN-BASED BIRTH DEFECT

- Jan Lutke advises: distinguish between non-compliance and non-competence. **There is a difference, and it is brain-based.**

2. FASD IS A MULTI-SECTOR PROBLEM

- It is a school, police, social, legal, medical, family, community, and national problem.
- It is a delusion to think one agency can solve this problem.

3. DO NOT RE-INVENT THE WHEEL

- Find the new research online. Start at these two websites: www.asantecentre.org and www.fasdconnections.ca
- Early assessments are critical. Seek informed help now.

4. GO PAST JUDGMENT AND UNDERSTAND THE REASONS WHY PREGNANT WOMEN DRINK ALCOHOL

- This is difficult and requires a heartfelt, clear-minded knowledge of family violence, the history of close relationships, poverty, lack of education, addiction, and an understanding of how people cope with daily difficulty.
- FASD is not restricted to poor marginalized Canadians. Rich stockbrokers have wives who binge-drink while pregnant. Young, educated professional women binge-drink almost as a rite of passage, often not knowing they are pregnant.

5. THERE IS GOOD NEWS: IT'S CALLED THE "EXTERNAL BRAIN"

- The "External Brain" as intended by Dr. Sterling Clarren means appropriate supervision 24/7. Design appropriate structures to create opportunities for the FASD person to be successful. All the available drugs and therapy, all the jail time, all the best intentions found in court orders, will not generate new brain cells. These offenders will be the same every time they come into the courtroom. They are not going to change. It is our responsibility to create success for persons with FASD. They need help from a walking, talking committee of knowledgeable helpers.
- The "External Brain", as a legal concept, is our duty of care. It is our duty to accommodate FASD persons because we are all to be equal before the law.
- Diane Malbin provides four practical suggestions:
 1. Match the brain before you to the task you set.
 2. Identify your assumptions.
 3. Adjust your expectations and stretch your definition of success.
 4. Change their environment.
- These suggestions are easy to say aloud but difficult to implement for four reasons:

- o Each of us has a little voice inside that says: they should not get away with this unacceptable behaviour.
- o Each of us shares a social sense that an individual could do better if the individual would just try harder.
- o If we really knew how the brain worked, we would punish differently. We would design our “teaching and corrections industries” differently. Our knowledge of the human brain is in its infancy. There is much we do not know. Many of our brain-based assumptions in the criminal system are clearly wrong. The McNaughten Rules (1853) work for you and I, not FASD persons.
- o Change is not easily accepted or even wanted, especially in rigid systems like the legal or educational systems.

Most importantly: caregivers and others charged with dealing with persons with FASD will experience near total exhaustion very quickly—this includes police, teachers, lawyers, social workers, and judges. Guard against dying inside yourself, the same way a long-distance runner guards against fading too soon. There are training tips and they involve physical, mental, emotional, and spiritual fitness—take care of yourself. Like the monotonous warnings on airlines, put on your air mask before helping others. You are useless if dead, or unable to do your appointed task.

RESOURCES:

- Fetal Alcohol Spectrum Disorder: Trying Differently Rather Than Harder, Diane Malbin.
- Fetal Alcohol Syndrome and the Criminal Justice System: Understanding the Offender with FAS (DVD and VHS), Dr. Julianne Conry. www.asantecentre.org
- The Challenge of Fetal Alcohol Syndrome: Overcoming Secondary Disabilities, Ann Streissguth and Jonathan Kanter (eds.)
- Fetal Alcohol Syndrome: A Guide for Families and Communities, Ann Streissguth
- Beautiful Smiles, Gentle Spirits. Fetal Alcohol Spectrum Disorder: A Misunderstood Problem, Margaret Michaud and Sacha Michaud (eds.)
- Web Resources by Dr. Kathy Sulik, Ph.D., University of North Carolina (Embryologist).

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AMERICAN BAR ASSOCIATION
COMMISSION ON YOUTH AT RISK

Resolution for August 2012 Meeting of the ABA House of Delegates (3/22/12 Third Draft)

RESOLVED, that the American Bar Association urges attorneys and judges, as well as state and local bar associations and law school clinical programs, to support training that enhances understanding of the child and adult disability of Fetal Alcohol Spectrum Disorders (FASD), its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems, and the importance of collaboration with medical, mental health, and disability experts to promote:

- a) Skilled civil, juvenile, and criminal legal representation for persons with FASD;
- b) Enhanced access to FASD experts for screening and assessing persons suspected of having this disability;
- c) Appropriate responses to the over-abundance of FASD-affected persons in foster care, juvenile delinquency cases, adult criminal proceedings, and correctional facilities; and
- d) Use of FASD knowledge in court for the mitigation of sentencing, as well as in the use of alternatives to incarceration and execution, including therapy and comprehensive services, to help rehabilitate individuals and reduce recidivism.

FURTHER RESOLVED, that the American Bar Association urges that state and federal laws, and policies at all levels of government, reflect the serious effects of prenatal alcohol exposure by:

- a) Including FASD, alcohol-related neurological disorders, alcohol-related birth defects, and persons suffering from the effects of fetal alcohol abuse generally within the statutory definition of developmental disabilities and the listing of conditions that provide medical and other benefit coverage for screening, diagnosis, and treatment to help enhance the lives of those with these conditions;
- b) Allocating comprehensive resources for the early identification, diagnosis, intervention, and treatment of persons with FASD;
- c) Fully implementing provisions, including those in the federal Child Abuse Prevention and Treatment Act, for more effective screening and referral processes to help ensure that infants and toddlers affected by FASD are identified at the earliest possible age and provided assistance at the earliest opportunity;
- d) Developing programs designed to enhance the lives of and protect persons living with FASD (and to support their families), including youth transitioning from foster care and juvenile justice systems, since these impairments make those with this condition especially vulnerable to physical and sexual assault; and
- e) Increasing public awareness, especially for women of childbearing age and substance-abusing women generally, about FASD and the importance of preventing alcohol-related birth disorders.

Report

Introduction

Fetal Alcohol Spectrum Disorders (FASDs) are a group of conditions that can occur in individuals whose mother drank alcohol during pregnancy. This can result in severe physical and emotional symptoms. FASD is a serious problem in the United States that warrants greater attention. This past

FASD and the Brain

© 2000-2008 Teresa Kellerman www.fasstar.com

Alcohol is a "teratogen" (substance that is toxic to the baby's developing brain). Damage can occur in various regions of the brain. The areas that might be affected depend on which areas are developing at the time the alcohol is consumed. Since the brain and the central nervous system are developing throughout the entire pregnancy, the baby's brain is always vulnerable to damage from alcohol exposure.

The regions of the brain that might be affected by prenatal alcohol exposure include:

Frontal Lobes – this area controls impulses and judgment. The most noteworthy damage to the brain probably occurs in the prefrontal cortex, which controls what are called the **Executive Functions**.

Corpus Callosum - passes information from the left brain (rules, logic) to the right brain (impulses, feelings) and vice versa; related to attention deficits, psychosocial function, and verbal learning.

Basal Ganglia – involved in cognitive function; affects spatial memory and behaviors like perseveration and the inability to switch modes, work toward goals, and predict behavioral outcomes, and the perception of time.

Hypothalamus - controls appetite, emotions, temperature, and pain sensation

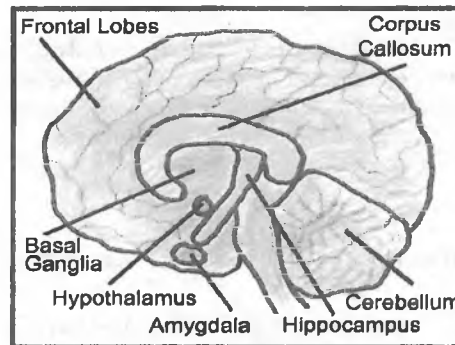
Amygdala – central part of emotional circuitry, senses danger, fear and anxiety; plays major role in recognizing faces and facial expressions, social behavior, aggression, and emotional memory; critical for stimulus-reinforcement association learning.

Hippocampus - plays a fundamental role in spatial and verbal memory retrieval; damage can cause chronic stress, anxiety, and depression; dysfunction is related to symptoms of schizophrenia.

Cerebellum – controls balance, coordination and movement; impacts learning and cognitive skills.

The hypothalamus, amygdala, and hippocampus are part of the **limbic system**, regulating emotions, social and sexual behavior, fight or flight" response, and empathy.

Fetal Alcohol Spectrum Disorders (FASD)



Executive Functions of the Prefrontal Cortex

Effects of alcohol exposure on behaviors related to executive functions of the prefrontal cortex:

- inhibitions: socially inappropriate behavior
- problem solving: inability to figure out solutions spontaneously
- sexual urges: inability to control sexual impulses, especially in social situations
- planning: inability to apply consequences from past actions
- time perception: difficulty with abstract concepts of time and money
- internal ordering: like files out of order, difficulty processing information
- working memory: storing and/or retrieving information
- self-monitoring: needs frequent cues, requires "policing" by others
- verbal self-regulation: needs to talk to self out loud, needs feedback
- motor control: fine motor skills more affected than gross motor
- regulation of emotion: moody "roller coaster" emotions, may withdraw or lash out
- motivation: apparent lack of remorse, need external motivators
- judgment – inability to make wise decisions

Alcohol Exposure by Trimester:

1. During the first trimester, as shown by the research of Drs. Clarren and Streissguth, alcohol interferes with the migration and organization of brain cells. [Journal of Pediatrics, 92(1):64-67]

2. Heavy drinking during the second trimester, particularly from the 10th to 20th week after conception, seems to cause more clinical features of FASD than at other times during pregnancy, according to a study in England. [Early-Human-Development; 1983 Jul Vol. 8(2) 99-111]

3. During the third trimester, according to Dr. Claire D. Coles, the hippocampus is greatly affected, which leads to problems with encoding visual and auditory information (reading and math). [Neurotoxicology And Teratology, 13:357-367, 1991]

Not all damage from alcohol exposure is seen on brain scans, as lesions might be too small to be detected, yet large enough to cause significant disabilities.

Children do not need to have full Fetal Alcohol Syndrome (FAS) to have significant difficulties due to prenatal exposure to alcohol. According to research done by Drs. Joanne L. Gusella and P.A. Fried, even light drinking (average one-quarter ounce of absolute alcohol daily) can have adverse effects on the child's verbal language and comprehension skills. [Neurobehavioral Toxicology and Teratology, Vol. 6:13-17, 1984] Drs. Mattson and Riley in San Diego have conducted research on the neurology of prenatal exposure to alcohol. Their studies show that children of mothers who drank but who do not have a diagnosis of FAS have many of the same neurological abnormalities as children who have been diagnosed with full FAS. [Neurotoxicology and Teratology, Vol. 16(3):283-289, 1994]

The brain is the organ most sensitive to prenatal alcohol damage. [Dr. Edward P. Riley lecture, September 25, 2002]

Damage to the brain from alcohol exposure can have an adverse affect on behavior. Alcohol exposure appears to damage some parts of the brain, while leaving other parts unaffected. Some children exposed to alcohol will have neurological problems in just a few brain areas. Other exposed children may have problems in several brain areas. The brain dysfunction is expressed in the form of inappropriate behaviors. Their behavior problems should be viewed with respect to neurological dysfunction. Although psychological factors such as abuse and neglect can exacerbate behavior problems in FASD, we are looking primarily at behavior that is organic in origin. To better understand FASD behavior issues, shift perspective from thinking the child "won't" to "can't." (Diane Malbin, MSW, Trying Differently Rather Than Harder,)

Sometimes the person's behavior is misinterpreted as willful misconduct (Debra Evensen, www.fasalaska.com), but for the most part, maintaining good behavior is outside of the child's control, especially in stressful or stimulating situations. Behavior problems in children with FASD are often blamed on poor parenting skills. While good parenting skills are required, even alcohol exposed children raised in stable, healthy homes can exhibit unruly behavior. The most difficult behaviors are seen in children who were prenatally exposed to alcohol and who also suffer from Reactive Attachment Disorder.

Most children with FASD have some attachment issues, may display inappropriate sexual behaviors, show poor judgment, have difficulty controlling their impulses, are emotionally immature, and need frequent reminders of rules. As a result, many will require the protection of close supervision for the rest of their lives.

Fetal Alcohol Spectrum Disorders (FASD)

Alcohol causes more damage to the developing fetus than any other substance, including marijuana, heroin, and cocaine.
(Institute of Medicine, 1996)

"Soft Signs"

(Psychological signs of FASD brain damage)

- Immature social development: overly friendly to strangers
- Emotional lability:
- Poorly developed conscience:
- Lack of consistent impulse control:
- Inability to learn from consequences
- Good expressive language skills
- Talented in art, music or mechanics.
- Attention deficits: not always hyperactive, but easily distracted by external stimuli
- Short-term memory deficits
- Inappropriate social interactions
- Difficulty managing money:
- Poor concept of time
- Grandiose ideas and unrealistic life goals, distorted perceptions
- Poor judgment
- Vulnerability and naiveté

"The greatest obstacle our children with fetal alcohol disorders must overcome is chronic frustration from not being able to meet the unrealistic expectations of others." – Dr. Calvin Sumner, nationally recognized expert.

FASD and the Brain



(Photo courtesy of Sterling Clarren, MD)
Brain of a baby with no alcohol exposure Brain of baby with heavy alcohol exposure

How Prenatal Alcohol Exposure Affects Development of the Brain

By Teresa Kellerman

Fasstar Enterprises
Fetal Alcohol Syndrome: Support,
Training, And Resources

www.fasstar.com

Fasstar Information Series Brochure 0408B1

Alaska FASD Partnership

The Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership is a coalition of over 75 organizations and individuals committed to addressing issues related to FASD in Alaska.

The mission of the Partnership is to promote awareness, prevention, and effective life-long interventions for those affected by prenatal exposure to alcohol and their families.

The Partnership was formed in early 2010 after a groundswell of stakeholder effort and public comment to the Advisory Board on Alcoholism and Drug Abuse, and its partners, about the need for a more organized effort to address FASD in Alaska.

The Partnership is guided by a steering committee of individuals, organizations, and agencies – including people who experience FASD, family members, and professionals who work in the field. Additionally, the steering committee has members representing the Departments of Health & Social Services, Corrections, Education and Early Development, Labor and Workforce Development, and the Alaska Court System.

Seven workgroups of the Partnership are actively addressing a variety of issues related to FASD, including developing policy and funding recommendations, promoting public awareness, workforce development, collaborations,

research, training, and more. They are:

- Diagnosis and Parent Navigation
- Family and Peer Support
- Prevention & Treatment for Pregnant Women
- FASD and the Education System
- FASD and the Legal System
- Services for Adults with FASD
- Professional Development

If you are interested in joining the Partnership or a workgroup, please visit our webpage or contact us via the information below.



Members of the Alaska FASD Partnership pose at the Alaska State Legislature in 2011 after a day of advocating for policies and funding related to FASD.

Message from the Chair

Waqaa from the Alaska FASD Partnership. We are a group of individuals and organizations coming together to address Fetal Alcohol Spectrum Disorders (FASD) and the concerns associated with FASD. We are individuals, parents, professionals, educators, community, healthcare providers, and voters.



Alaska is an incredible state with diversity in our cultures, languages, and communities. Every year, our state attracts many tourists to witness firsthand the beauty of Alaska – in our lands and our people. Yet, behind this beauty, Alaska leads the way with the highest number of individuals born with FASD, and the highest rates of alcohol abuse and domestic violence. The common factor is alcohol. FASD does not discriminate by culture, education, or economic status. It can happen anywhere alcohol is available.

Although Alaska leads the way with identification of FASD through our diagnostic teams, we can do more to help decrease the incidence of FASDs through education and awareness. If everyone reading this newsletter pledges to learn more about FASD – its causes and the issues surrounding alcohol use – our state has the potential to live more healthy, safe, and happier lives. Join our cause – sign up to become a member of the AK FASD Partnership!

Quyana for your time. If you have any questions, concerns, or would like to join the Partnership, please contact us.

Monica Charles Leinberger

Website:

www.hss.state.ak.us/abada/fasd.htm

Alaska FASD Partnership

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PARTNERSHIP MEMBERS

*Abused Women's Aid in Crisis
Advisory Board on Alcoholism and Drug Abuse
Alaska Behavioral Health Association
Alaska Center for Children & Adults
Alaska Children's Services
Alaska Mental Health Board
Alaska Mental Health Trust Authority
Alaska Peer Support Consortium
All-Alaska Pediatric Partnership
Anchorage Coordinated Resources Project
Anchorage School District (Anchorage)
Arctic FASD Regional Training Center
Assets Inc.
Association for the Education of Young Children-SEAK
Big Brothers Big Sisters of Alaska
Boys & Girls Home of Alaska
Camp Fire USA Alaska Council
Central Council of the Tlingit & Haida Indian Tribes of Alaska
Christian Health Associates
Copper Basin Neurodevelopmental Center
Deltana Community Services Partnership
Dena A Coy/Southcentral Foundation
Diocese of Juneau
Fairbanks Community Behavioral Health Center
Family Centered Services of Alaska
Frontier Community Services
Gastineau Human Services
Governor's Council on Disabilities and Special Education
Hoonah Indian Association
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Independent Living Center
Kenai Peninsula FASD Program
Ketchikan Indian Community
Kinetitions
Kobuk Valley Consulting
Kodiak Area Native Association
Juneau Family Health and Birth Center
Juneau FASD Diagnostic Clinic
Juneau Partnerships for Families and Children
Lower Kuskokwim School District
Lynn Canal Counseling Services
Nenana City School District
Nome Youth Facility
Nondalton Tribe
Regional Wellness Forum
Set Free Alaska, Inc. (Wasilla)
Southcentral Foundation FAS Diagnostic Team
Southeast Regional Health Consortium
Southeast Regional Resource Center
Southern Kenai Peninsula Communities Project
Sprout Family Services
Stone Soup Group
Tongass Substance Screening
UAA Department of Health Sciences
UAA Center for Human Development
Volunteers of America-Alaska
...and many individuals*

HOW TO BECOME A MEMBER

You are invited to join the Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership, a coalition of organizations and individuals committed to addressing issues related to fetal alcohol spectrum disorders in Alaska. There is no cost for membership and no minimum requirements.

Members will be informed of and invited to participate in the Partnership's efforts – including advocacy, budget and policy issues, public awareness, alternatives to incarceration, substance abuse treatment for pregnant women, supported housing, family support, diagnosis, case management, prevention, training for professionals and paraprofessionals, and other issues related to FASD. You may participate in or decline to participate in whatever efforts you choose.

Please fill out and MAIL, SCAN or FAX to 907-465-4410.

Organization Individual

Contact Person _____

Organization Name _____

Address _____

Email _____

Phone contact(s) _____

What is your affiliation/interest in FASD?

What services do you provide related to FASD?

Alaska FASD Partnership

**Advocacy • Family Support • Diagnosis •
Case Management • Prevention • Life Skills •
Substance Abuse Treatment for Pregnant
Women • Parent Navigation • Training for
Parents • Public Awareness & Education •
Supported Employment • Supported Housing •
Case Workers • Court Interpreters •
Alternatives to Incarceration • Training for
Attorneys & Judges • Training for Educators •
Traditional Healing • Training for Medical
Professionals • Life-Long Interventions**



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Website: www.hss.state.ak.us/abada/fasd.htm

*The mission of the
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awareness, prevention, and effective life-long
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alcohol exposure and their families.*