

Policy Webinar Report

Improving the outcomes of youth and adults
with FASD in the court system:
exploring the Manitoba FASD Court

November 2, 2021




This event was intended to stimulate discussion for policy makers and enhance understanding of key elements of effective interventions to support youth and adults with fetal alcohol spectrum disorder (FASD) in the justice system. This was done by exploring the experience of the Manitoba FASD Court. It is important to note that this summary uses the term 'FASD' but individuals with a range of prenatal alcohol exposure who do not have a diagnosis of FASD can still present with cognitive and behavioral challenges that can benefit from interventions.

This report is to provide an overview of the webinar and summary of the policy discussion. This report is to assist you with sharing the information with others in your ministry. Canada FASD Research Network (CanFASD) is honoured to support the efforts to improve the outcomes of individuals with FASD through this webinar series. The lead province for this webinar was Manitoba.


Presentation By:

The Honourable Judge Mary Kate Harvie has practiced criminal law, civil litigation, and labour law at the firm of Myers Weinberg for 14 years. Judge Harvie was appointed to the Provincial Court of Manitoba in July of 2000 and was appointed Associate Chief Judge in September of 2002 for a 7-year term. Judge Harvie has been working with a multidisciplinary dx team since 2002 to establish the "FASD Youth Justice Program" which has developed a process by which youth involved in the criminal justice system can be assessed for Fetal Alcohol Spectrum Disorder. On June 20, 2008, the FASD Youth Justice Program was awarded the Government of Manitoba's Service for Excellence Award in the "Partnership" category. Judge Harvie has attended and presented at a variety of National and International Conferences on FASD. She has published journal articles and book chapters, won awards for her work with FASD, and been involved in the development of the FASD Justice project since it began, including the expansion to the specialized court.

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Tannis Toothill graduated from the University of Manitoba with a Bachelor of Arts degree, and then spent nearly 25 years working with Children, Youth and Families. With a commitment to lifelong learning, Tannis began her social services journey in a grass roots inner city organization working with at-risk youth. She ultimately gravitated towards a career with Manitoba Corrections where she has made significant contributions in the past 20 years. Through her focused work with female offenders and Fetal Alcohol Spectrum Disorder, Tannis has devoted herself to advocating and improving outcomes for young people in the criminal justice system. Tannis is now currently the Program Manager of the FASD Justice Program with the Manitoba Department of Justice. The goal of the program is to ensure that individuals with FASD in conflict with the law will receive appropriate judicial dispositions, a multidisciplinary assessment and diagnosis with improved access to services for more equitable outcomes. More recently, Tannis has been involved in the implementation of FASD court in Manitoba as well as the expansion of FASD Justice Program from servicing youth and now young adults.

Facilitator: Mr. Darren Joslin worked for the Government of Alberta for 31 years in the Social Services and Health sectors. His work focused on a number of different areas including Fetal Alcohol Spectrum Disorder (FASD), Mentoring and Youth Homelessness. He was the Co-Chair of the Alberta FASD Cross-Ministry Committee during the development and initial implementation of Alberta's FASD 10-Year Strategic Plan. As a member of the Canada Northwest FASD Partnership he was involved in the establishment of the Canada FASD Research Network.

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Presentation Summary

I. Background

The conservative prevalence estimate of FASD in Canada is 4% of the general population, which is more common than the prevalence of other common neurodevelopmental disorders combined (Flannigan et al., 2018). The global prevalence estimate is closer to 0.8%, however, this might be an underestimation because of the stigma associated with the diagnosis (Popova et al., 2018). Annual costs associated with FASD amount to over \$9.7 billion CAD, with a large proportion stemming from the criminal justice system (Popova et al., 2015; Thanh and Jonsson, 2015). In particular, FASD has a higher prevalence in certain populations such as 3-11% of children in the child welfare system, 11-23% of youth and 10-18% of adults in correctional settings (MacPherson and Chudley, 2007). The likelihood of youth with FASD becoming incarcerated is 19 times greater than youth without FASD (Popova et al., 2011). Involvement in the justice system is often referred to as a secondary outcome of FASD when substantial supports are not in place (McLachlan and Rasmussen, 2018; Pei et al., 2018). Moreover, the criminal justice system is rooted in the idea that individuals learn from their own mistakes and the mistakes of others yet, this expectation may not be feasible for individuals with significant central nervous system deficits.

II. The Development of the Manitoba FASD Court

a) The FASD Justice Program

In Manitoba, prior to 2004, FASD assessments were only offered to children from 0-12 years of age through the health system at the 'Clinic for Alcohol- and Drug-exposed Children' (CADEC). A multi-systemic FASD justice advisory committee, led by Judge Harvie, recognized the need for an FASD diagnosis to be considered at the time of sentencing. The committee submitted a proposal and was granted funding from the youth justice renewal fund from the Department of Justice in Canada to conduct these assessments and provide comprehensive, coordinated post-diagnostic services.

The FASD Youth Justice Program was piloted on September 15, 2004, for 18 months under evaluation with the following goals:

1. To assess youth between 12-18 years of age involved with the justice system who may have FASD for the court's consideration.
2. To provide recommendations to the courts for appropriate dispositions
3. To build capacity within the family and the community while enhancing government and non-government FASD supports and services including FASD training. Within the justice system, training was offered to the Courts (Crown prosecutors, judges), defence counsel, custody corrections and probation officers. Comprehensive case management with client- and family-centred approaches were offered in the home and in the community around income, housing, transportation, advocacy, referrals and more to promote stabilization and long-term planning.
4. To implement meaningful multidisciplinary interventions and re-integration plans with supports for individuals affected by FASD and their families.

Online Resources for Training through CanFASD:

1. Comprehensive training (<https://canfasd.ca/online-learners/>).
2. A language guide (<https://canfasd.ca/wp-content/uploads/2018/01/LAEO-Language-Guide.pdf>).
3. Guidelines around best practices (https://canfasd.ca/wp-content/uploads/2018/09/Best-Practices_June12018.pdf).

The evaluation of the program demonstrated increased access to community supports and a reduction of recidivism, the severity of offences, and the cost associated with court and justice systems. On October 1, 2006, the FASD Youth Justice Program was permanently funded through the province, and it was decided that participation would be voluntary and not mandated.

Challenges: There were a few predominant challenges at this point. The first challenge was that families did not have access to FASD assessments unless youth (12-18 years) were involved in the justice system. In 2009, the health system responded by expanding its age criteria to include adolescent assessments in the community. Shortly thereafter, CADEC was renamed the 'Manitoba FASD Center'. The second challenge was that individuals already diagnosed with FASD were not eligible to participate in the FASD Justice Program, while the third challenge was youth only received support until the age of 18.

Current Circumstances: In 2019, Manitoba introduced Canada's first FASD court to support justice-involved youth and adults with FASD. In response, the criteria for the FASD Youth Justice Program expanded in 2019 to coordinate services for justice-involved individuals up to the age of 25 to align with the introduction of the FASD court. Individuals could now participate in the FASD Justice Program even if they were previously diagnosed with FASD. Four new probation officers joined the program as coordinators to respond to the influx of referrals. In 2020, the FASD Justice Program (in partnership with the Province of Manitoba and the Manitoba FASD Centre) began a 3-year pilot to provide FASD assessments to justice-involved young adults (18-25 years). This pilot project, which is the result of community and intergovernmental in-kind contributions, collaboration, and partnerships, is currently under evaluation.

A series of questions are considered by the court of appeal beyond acknowledging the diagnosis of FASD. For example, is there evidence of cognitive limitations similar or associated with FASD and information about the severity of limitations? Is there a link between the diagnosis and the offending behaviour? Assuming the record is correct, what is the moral culpability of the person, or the degree of responsibility, and how should that play into sentencing?

Currently, over 1500 referrals have been received for the FASD Justice Program across (1) the Youth Justice Program and (2) the young adult diagnostic pilot, including those youth and young adults who already have a diagnosis.

b) Partnerships and conditions for collaboration

Expansion to the FASD Justice Program and introduction of new initiatives such as the FASD court and young adult diagnostic pilot are rooted in community collaborations. This includes a variety of professionals in justice, rehabilitation (Speech and Language Pathologists, Occupational Therapists), administration, health (physicians), correctional psychologists and more. Organizations in Manitoba that coordinated efforts included Manitoba Provincial Courts, Manitoba FASD Center, Manitoba Adolescent Treatment Center (MATC), Youth Forensic Services (YFC), Manitoba Justice, Addictions Foundation of Manitoba, the Starfish program, Department of Families; and the Department of Health, Seniors and Active Living.

III. The Manitoba FASD Court is the first in Canada

a) Eligibility and Accommodations

Youth and adults (12-101 years of age) diagnosed with FASD are eligible to appear in this court, though individuals above the age of 25 will not receive comprehensive program supports. A number of accommodations have been made to the court's proceedings.

Environmental accommodations: Small changes have been made in the courtroom and have had a tremendous impact such as using a smaller courtroom, non-fluorescent lighting, a silent keyboard for clerks, flexible seating, a slower pace, reframing disruptive behaviours in court, and plain language dialogue with the accused. Visual icons to represent probation conditions (Figure 1) continue to be available to the courts and community if it is a good fit for the client to augment probation compliance. Individuals who support the accused are also encouraged to attend and participate. This increases the likelihood that the individual with FASD understands the proceedings and the supports in place to prevent future involvement in the criminal justice system.



Figure 1. Visual icons to represent probation conditions.

Professional accommodations: Everyone in court is not only knowledgeable about FASD but they are each provided, in advance, with the diagnostic information and other pertinent reports to consider a sentence responsive to the individual's needs. If the client is eligible, the FASD Justice Program is always available for consultation and debriefing upon request to help lawyers interpret psychological testing and level of functioning and to build meaningful interventions. The coordinators of the FASD Justice Program attend court to provide support to youth, young adults and family and can answer any questions surrounding diagnosis, brain functioning, and the community support plan.

b) Barriers and Lessons Learned

New challenges include scheduling as the court is currently only available on Thursdays (mornings and afternoons to separate youth and adults); however, more flexibility in scheduling is starting to be offered. Additionally, the pandemic has created challenges around in-person appearances for the accused and their support persons. There are more supports for youth, compared to young adults, in the community especially around housing, primary health care, addictions, employment and income assistance, and mental health.

c) Successes

The Manitoba FASD Court, and its partnership with the FASD Justice Program for youth and adults, has demonstrated actions in:

- Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed and that appropriate community supports are in place for those with FASD
- Enacting statutory exemptions on mandatory minimum sentences of imprisonment for offenders affected by FASD

- Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community
- Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety
- Item #34 of the Truth and Reconciliation Commission calls governments – at the federal, provincial, and territorial level – to undertake reforms to the criminal justice system and better address the needs of offenders with FASD

Since 2019, over 150 individuals with FASD have had matters set in the Manitoba FASD Court, which were implemented in response to brain function and moral culpability, with consideration of public safety.

IV. Advice for Other Jurisdictions and Creating Community Partnerships

Other jurisdictions should include an assessment of need in their area around FASD-informed practices and approaches, onboarding and continued FASD training offered to all systems, as well as consultation, collaboration and support between government and community-based resources to build capacity.

From an ecological perspective, the success of the Manitoba FASD Court has been contingent upon collaboration with youth, families and supports in the community. For example, it involves physicians and healthcare, housing, education and training, counselling and treatment, recreation, natural supports and more. Approaches must be holistic: strengths-based, client-centred, multi-systemic, parent-focused, and with an eye toward public safety (Figure 2).

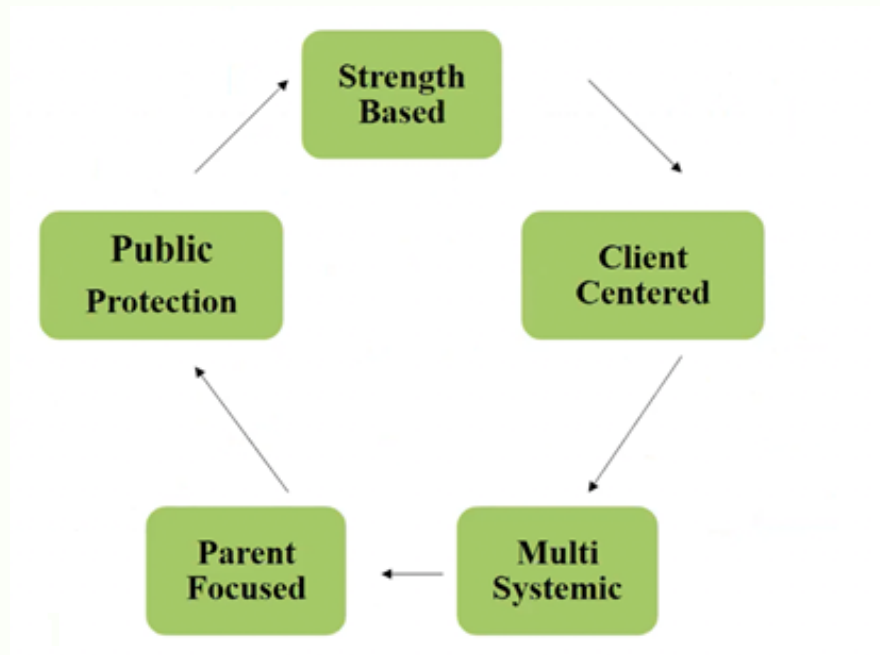


Figure 2. Holistic planning principles for community partnerships after involvement in the justice system.

For example, in 2014, the Starfish Program was implemented in Manitoba. This wrap-around program offers addictions treatment and counselling programming for youth with FASD and justice involvement. It was funded by the federal youth justice fund but is now supported by the Addictions Foundation of Manitoba (AFM) and the Departments of Justice and Families.

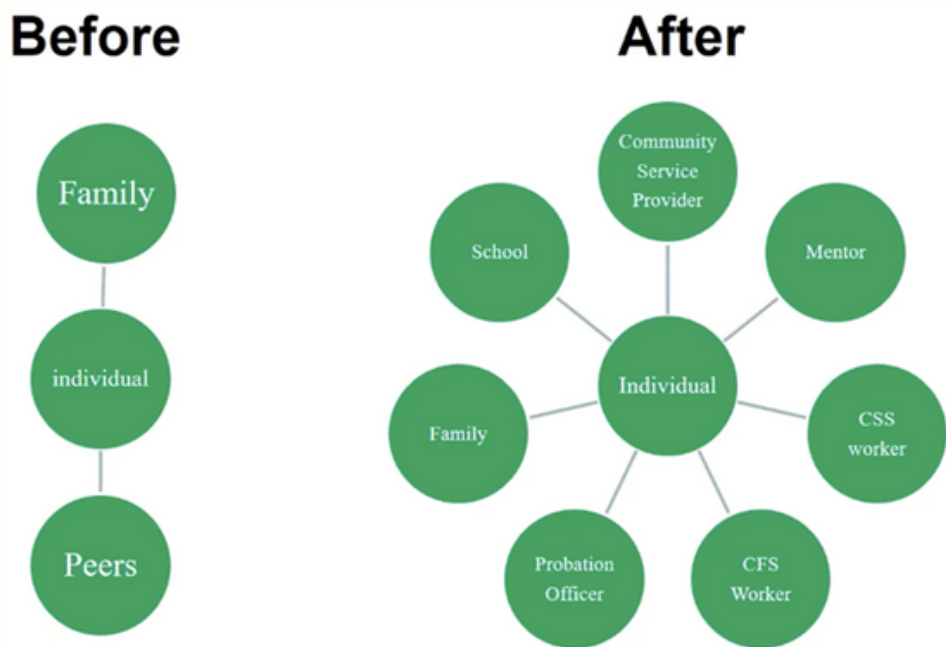


Figure 3. One of the goals of the FASD Justice Program is to connect an individual to multi-systemic supports after involvement in the justice system.

V. Themes from Discussion

- 1. Collaboration is the key to launching an initiative to improve the justice system for individuals with FASD.*
- 2. Community supports*

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