



Department of Justice  
Canada

Ministère de la Justice  
Canada

# **Exploring the Use of Restorative Justice Practices with Adult Offenders with Fetal Alcohol Spectrum Disorder**

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**2020**

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## Acknowledgements

The Department of Justice Canada would like to thank the representatives from the five community-based programs for their ongoing support, insight, and collaboration throughout this project. The Department would also like to thank Goss Gilroy Inc. and Otter Daughters Consulting for their collaboration and support of this study. Finally, special acknowledgement is given to Richard Gill, Alderson-Gill and Associates, for his excellent leadership, project management, insight, and commitment to collaborative exploration.

## 1. Introduction

There are serious concerns about the vulnerability and needs of individuals with fetal alcohol spectrum disorder (FASD) in the criminal justice system (CJS). FASD, a diagnostic term used to describe the impacts of prenatal alcohol exposure on the brain and body, is a lifelong disability. Although each individual with FASD is unique, most will experience some challenges in their daily living and require support with learning, memory, attention, communication, emotional regulation, motor skills, physical health, and social skills (Fraser 2008).

Research on the prevalence of FASD in Canada is limited. The Canada FASD Research Network has reported that the best estimate of FASD in the general Canadian population is 4 percent (Flannigan et al. 2018a). Research on the prevalence of adults with FASD in the CJS is even more limited, resulting in varying estimates. In 2011–12, the prevalence of FASD was estimated at 9.9 percent among adults in custody on any given day in Canada (FASD Ontario 2015). A more recent study found that an estimated 17.5 percent of offenders in Yukon’s correctional system had FASD (McLachlan n.d.).

Growing concerns about the vulnerability and needs of individuals with FASD in the CJS have been raised in several forums. Between 2014 and 2016, three private members’ bills were introduced to amend the *Criminal Code* and the *Corrections and Conditional Release Act*.<sup>1</sup> Although the bills did not pass, they called for a number of amendments to address the needs of individuals with FASD who are involved in the CJS. These included: adding a definition of FASD in the *Criminal Code*, establishing a procedure for assessing individuals for FASD, requiring courts to consider FASD a mitigating factor in sentencing, and ensuring that external support plans are put in place for individuals with FASD.

In 2015, two of the Truth and Reconciliation Commission (TRC) Calls to Action (CTA) asked governments to address and prevent FASD through culturally appropriate programming as well as to undertake CJS reforms to better address the needs of offenders with FASD.<sup>2</sup>

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<sup>1</sup> Bill C-583 was introduced 31 March 2014; Bill C-656 was introduced 10 March 2015; and Bill C-235 was introduced 25 February 2016.

<sup>2</sup> CTA 33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal

A 2018 literature review of FASD and the CJS highlighted the lack of research on justice interventions for offenders with FASD. Specifically, the review stated, “we have a limited understanding, based on the current evidence, of what types of supports might lead to better outcomes. There is no research to explore what forms of intervention may help or harm, individuals involved in the system” (Flannigan et al. 2018b).

The need to identify programs and services that might lead to better outcomes was also highlighted in a 2016 report to the Federal-Provincial-Territorial (FPT) Ministers and Deputy Ministers Responsible for Justice and Public Safety by the Steering Committee on FASD and Access to Justice. The report recommended that “jurisdictions consider evaluating the effectiveness of restorative justice approaches for people with FASD.” It also highlighted the importance of engaging with restorative justice (RJ) programs and encouraged the “development and delivery of education and training programs on FASD and other neurocognitive disabilities for criminal justice system professionals.”

Restorative Justice is an approach to justice based on the understanding that crime causes harm to people and affects the community. Under this approach, those who have caused the harm have a responsibility to repair it; those who have been harmed are central in deciding what is needed to repair it; and communities have a role to play in supporting victims and offenders,<sup>3</sup> as well as addressing the root causes of crime.

Some of the potential benefits of RJ include:

- allowing more timely access to justice;
- providing victims with an opportunity to be heard and to understand the offender;

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people, FASD preventive programs that can be delivered in a culturally appropriate manner.

CTA 34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD) including:

- i. 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;
- ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD;
- iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community; and
- iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety. [http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf)

<sup>3</sup> For the sake of brevity, the report uses the term “victims,” which includes the experiences of both victims and survivors, and the term “offenders,” which includes the experiences of both accused and offenders.

- providing victims and the community with answers;
- providing victims with an opportunity for reparation;
- facilitating victims' recovery;
- reducing the frequency and the severity of reoffending; and
- contributing to effective reintegration of the offender in the community.<sup>4</sup>

Although the effectiveness of RJ with FASD populations has not been formally evaluated, RJ principles have been found to improve outcomes for individuals with FASD who are involved in the CJS. This may be because RJ uses an individualized approach to addressing harm, which is not as easily achieved through the mainstream justice process.

In this context, the Department of Justice Canada (JUS) examined RJ practices that are used with adults involved with the CJS who are diagnosed with or suspected of having FASD.<sup>5</sup> The research was conducted in collaboration with five community-based programs in Canada that have taken steps to address the needs of these individuals.

## 2. Methodology

The research involved case studies in five communities across the country. The research team included two JUS researchers as well as three researchers from Ottawa-based research consulting firms, working closely with the community-based programs.

As a first step, the research team sought to identify programs that formally adapt their RJ processes to meet the needs of individuals with FASD, drawing on available descriptions of existing RJ programs and selecting a number of them to contact. Through this process, five programs were identified that met the criteria, represented a range of locations in Canada, and were interested in participating. These included:

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<sup>4</sup> These are a selection of benefits identified in the *Handbook on Restorative Justice Programmes* published by the United Nations Office on Drugs and Crime in 2020.

<sup>5</sup> For the sake of brevity, the report uses the term "individuals with FASD." This includes individuals with FASD or related cognitive impairments or brain injuries.

- Lanark County Community Justice<sup>6</sup> (Perth and Smiths Falls, rural community in Ontario)
- Lillooet Restorative Justice Program<sup>7</sup> (Lillooet, small community in British Columbia)
- Onashowewin Justice Circle Program<sup>8</sup> (Winnipeg, capital and urban centre in Manitoba)
- Peak Vocational and Support Services FASD Justice Program<sup>9</sup> (Lethbridge, mid-sized city in Alberta)
- Victoria Restorative Justice<sup>10</sup> (Victoria, capital and urban centre in British Columbia)

Four of the programs provide RJ programming and services. The other, the Peak Vocational and Support Services FASD Justice Program, coordinates working with individuals with FASD in the courts, uses RJ principles in their approach, and works with other programs in the community.

The research team collaborated closely with the five programs to develop the interview guides, tailoring the questions to ensure they reflected local realities and terminology. The team developed and used separate guides for program managers and staff, as well as for CJS professionals and representatives of other key community programs/services that work with the participating programs.

The programs identified the interview participants for the study and helped coordinate the site visits. In addition to program staff, the interviewees included Crown prosecutors, judges, probation officers, police officers, health and mental health service providers, and social service workers. All interviewees were selected because they worked directly with individuals with FASD and were part of a network seeking ways to better address their needs within the CJS.

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<sup>6</sup> Lanark County Community Justice was established in 1997 after a group of citizens in Lanark County organized a grassroots service to develop a RJ method, which included offender accountability, victim participation, and community involvement to address harm in the community. <https://www.commjustice.org/>

<sup>7</sup> The Lillooet Restorative Justice Program was established in 2003 at the request of the local Royal Canadian Mounted Police (RCMP) detachment commander, under the auspices of the Lillooet Learning Communities Society. The program offers an alternative way of dealing with conflict and crime within the home, school, workplace, and community. <http://www.rjlillooet.ca/>

<sup>8</sup> The Onashowewin Justice Circle has been operating since 2003. The Program aims to encourage healing in Indigenous communities and within society by providing culturally adapted RJ practices for adult offenders. <http://www.onashowewin.com/>

<sup>9</sup> The FASD Justice Program has been operating for 13 years, using a court-centred approach. Cases involving FASD and related cognitive impairments can be referred post-charge to the program. Although it is not a formal RJ program, RJ practices are sometimes used when appropriate for the offender and when the victim is amenable to participating. <http://www.peaksupport.ca/justice-initiative/>

<sup>10</sup> The Victoria Restorative Justice Program was established in 2002. The goal of its work is to address the harms resulting from crime and violence. <http://www.rjvictoria.com/>

In total, 49 interviews were conducted: 16 with program staff, 16 with CJS officials, and 17 with representatives of government offices and non-governmental organizations (NGOs) delivering health and social service programs.

### 3. Findings

The purpose at the outset of the study was to explore the use of RJ in addressing the cycle of re-contact<sup>11</sup> that is common for individuals with FASD. However, as the study progressed, the scope was expanded to look more broadly at how communities were responding to the challenges that individuals with FASD experience in the CJS and what alternative approaches address their needs. The information included in this section of the report comes from the interviews conducted during the five case studies.

#### 3.1 Key Challenges for Individuals with FASD in the CJS

Prenatal alcohol exposure can lead to different types of effects on individuals: physically,<sup>12</sup> cognitively, socially, and behaviourally. Interviewees indicated that the extent of an individual's brain injury, the impairments they experience, and the types of behaviour they exhibit vary. Despite this broad spectrum, individuals with FASD often share characteristics that may lead them into contact with the CJS (e.g., impaired judgment, reduced impulse control, being impressionable). Once in the system, individuals with FASD can encounter a number of additional challenges because of their impairment.

Interviewees indicated that since individuals with FASD may have trouble predicting the consequences of their actions, this may impact their ability to follow instructions, manage their time, attend appointments, and adopt the kinds of repetitive behaviours that many people do as a matter of routine. Individuals with FASD may also have difficulty learning from mistakes due to challenges with short-term memory and attention. They may also have difficulty understanding the impact and consequences of their actions. Therefore, they may repeat the same or similar criminal or antisocial behaviour multiple times.

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<sup>11</sup> Statistics Canada defines "re-contact" as a subsequent contact with the police, such as a new charge/charge cleared otherwise, following the individual's first completed pathway through the system. For the purposes of this report, re-contact can include any contact with the police, courts or corrections for the same or different offence.

<sup>12</sup> Although, some individuals may have physical characteristics, FASD is often described as a "hidden disability" because most of the time it cannot be detected by looking at an individual.

Interviewees indicated that individuals with FASD may have multiple re-contact incidents with the CJS. This is further compounded when they are given standard bail conditions such as attending court on a specific date for a pleading. Adhering to standard conditions can be challenging for individuals with FASD depending on their impairment(s) (e.g., difficulty thinking things through, limited short-term memory).

Some interviewees also noted that individuals with FASD are more likely to plead guilty. Due to anxiety over the court process or lack of understanding of the system, individuals with FASD may say whatever they believe is required of them to have the case over as quickly as possible.

Interviewees noted that this means that Crown prosecutors and judges need to be vigilant to ensure that guilty pleas in cases involving individuals with FASD are genuine. The CJS process also tends to be slow, which is challenging for individuals with FASD because they may forget what they did to bring them into the system and the harm they caused.

Once identified, individuals with FASD in the CJS are usually referred to community-based programs or support services, which vary considerably across communities based on the resources available. However, as noted by interviewees, formal diagnoses are rare and difficult to obtain. When there is a formal diagnosis, it often happens in childhood, because the individual is in school or involved with other social systems. FASD becomes increasingly difficult to diagnose later in life due to the requirement to confirm the mother's alcohol use during pregnancy. Some interviewees observed that parents might be hesitant to disclose exposure to alcohol during pregnancy due to the stigma associated with FASD and other cognitive impairments. Others noted the challenges in obtaining this information if the birth parents' whereabouts are unknown. FASD can also be difficult to diagnose because of long waitlists and the hidden nature of FASD in the presence of other compounding issues, such as the individual's own alcohol or substance use or mental health issues.

Without a formal diagnosis, CJS professionals need to rely on their observations of the individual's behaviour to identify a possible impairment. Where staff turnover is low, they may encounter the same individuals repeatedly, which may in turn help them identify a possible impairment. CJS professionals may also learn about the impairment through their own personal and professional networks (e.g., knowing a family member, a caregiver, service providers), which is common in small communities. However, interviewees noted that in some communities, CJS professionals have a limited ability to connect with local health and social service providers. This is especially true in

more remote locations where there is high staff turnover (e.g., RCMP detachments) or where the Crown prosecutor is part of a circuit court that comes to the community infrequently.

### 3.2 Integrated Courts

In two of the participating communities, an Integrated Court (IC) was established specifically to provide an alternative process for repeat offenders who have cognitive impairments or addictions.<sup>13</sup> As described by interviewees, the IC courts were designed to mitigate the high cost of repeat contact with the CJS by individuals with cognitive impairments or addictions. Within the IC models, designated IC Crown prosecutors work in partnership with local agencies, police, and probation services to help address these individuals' underlying needs. When the IC is in session, these partners meet with defence lawyers to discuss the cases on the docket and to develop a strategy for each case, subject to the agreement of the judge (who presides on a consistent basis). Cases brought to the IC typically result in a guilty plea, followed by a temporary release of the offender with a set of modified conditions. Offenders then work with the appropriate community services and receive ongoing monitoring of their progress. If, after an agreed upon period of time, the court is satisfied that the individual has been held accountable, the case is closed. The goal of ICs is for the individual to make positive connections with programs and services to help them improve their lives, successfully integrate into society, and ultimately, avoid re-contact with the CJS.

### 3.3 Restorative Justice Approaches

RJ programs and processes<sup>14</sup> have been part of Canada's CJS for over 40 years. It is valued as an effective approach for victims, offenders, and communities affected by a crime because it allows those affected by crime to communicate the causes, circumstances, and impact of that crime, and to address what they need.<sup>15</sup> RJ programs are available at all stages of the CJS: pre- or post-charge; at the sentencing stage; post-sentencing, such as within a correctional setting; and as part of the reintegration process. The timing of when offenders enter a RJ process depends on how the program interacts with the CJS based on its mandate. These programs are guided by skilled

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<sup>13</sup> Another community established an FASD court in 2019 that is similar to the IC model. The court ensures that they are linked with appropriate services in the community to address their underlying needs in the same way as the ICs.

<sup>14</sup> In this report, restorative justice also includes community-based Indigenous justice programs that use culturally appropriate restorative justice approaches.

<sup>15</sup> <https://scics.ca/en/product-produit/restorative-justice-key-elements-of-success/>.

facilitators and can take different forms. The models most often used in the Canadian CJS are restorative conferences, victim-offender mediation, and restorative circles.<sup>16</sup>

Although RJ is widely used within the CJS, interviewees indicated that there is a lack of consensus within the justice community as to whether RJ is appropriate for cases involving individuals with FASD. These concerns stem from questions about whether individuals with FASD have the capacity to take responsibility for the harm they may have caused, to learn from their mistakes, and to demonstrate empathy towards the victim/survivor, which is an essential component in addressing the harm in a RJ process. The justice community is also concerned with using a RJ process that focuses more on the offender than the victim. However, these concerns may reflect a limited understanding of the varying abilities of individuals with FASD and of the opportunities that a RJ process can offer to address harm.

In interviews, the program staff recognized that while not all individuals with FASD have the capacity to participate in a RJ process, the severity of the impairment and its related limitations vary considerably. Interviewees noted that many individuals with FASD are able to understand, to some degree, that what they did was wrong, how it harmed the victim, and are able to learn from their mistakes. Program staff shared multiple positive RJ experiences with cases involving individuals with FASD. They noted that victims who participate in these cases experience benefits similar to those that did not involve an offender with FASD. For example, they highlighted that RJ often alleviates victims' safety concerns, such as understanding that the crime was not deliberately targeted towards them and is unlikely to be repeated. Program staff also noted that the RJ process provides an opportunity for victims to be involved and have a say in the outcome, which can help with their healing process and obtain a sense of closure. Finally, RJ processes can offer victims a better understanding of why the incident occurred.

#### A. Involving Victims

The needs of the victim are paramount in any RJ process. According to program staff, cases referred to RJ involving individuals with FASD were usually for minor offences (e.g., shoplifting, public mischief). In these types of cases, where a business may be involved, the victim may choose not to spend the time or resources to participate in a RJ process. When there is no victim willing or able to

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<sup>16</sup> For more information on different RJ processes see the United Nations Office on Drugs and Crime Handbook on Restorative Justice Programmes [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf).

participate, the program may use a victim surrogate, such as a community member, who can speak to the broad harm and impact of the crime on the community. The offender is still required to acknowledge responsibility, and participate in a discussion about the impact and harm caused by their crime, as well as about a reasonable agreement to repair the harm. The difference, however, is that there is no restorative dialogue or communication between the offender and the direct victim.

Pre-conference meetings allow program staff to inform participants (both the victim(s) and the offender) about how the RJ conference would take place and understand what their expectations are for the process. These pre-meetings may also involve mock RJ conferences to help alleviate any anxieties about the process. It is also during these meetings that victims, victim surrogates, and other participants are informed about the offender's impairment.<sup>17</sup> In some circumstances, the victim may need additional time to prepare to take into consideration the unique abilities of the individual with FASD.

#### B. Accommodating the Unique Needs of Offenders with FASD

The four RJ programs in this study had extensive experience working with individuals with FASD given that a big proportion of their caseload involved offenders with FASD.

Although not a requirement for referral to RJ, the majority of cases involving these individuals did not include a formal diagnosis of the impairment. Program staff and CJS professionals have learned to work without a formal diagnosis by recognizing the signs of possible cognitive impairments among offenders. These signs may include extraordinary fidgeting, lack of eye contact, memory problems, challenges in cognitive reasoning (e.g., difficulty understanding the links between action and consequence), difficulty in understanding what is happening, or apparent lack of empathy for what has happened.

Program staff noted the importance of adapting their approach to meet the unique needs of individuals with FASD. To do so, program staff begin by completing an assessment of the case to identify individuals' needs and expectations, which may require multiple meetings. Then they identify what approaches and strategies may be needed to achieve a successful RJ process.

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<sup>17</sup> Program staff request the individual's permission to disclose such personal information (i.e., diagnosis or suspicion of FASD) to the victim(s) and other participants in pre-conference meetings.

Although each RJ process is unique and tailored to the individual needs of those involved, the following are some common approaches that were highlighted during the study.

### **Increasing number of pre-conference meetings**

Cases involving individuals with FASD may require an increased number of pre-conference meetings. This would ensure that the offender fully understands the process, and that program staff understand the individual's needs and can determine how to adapt the process to increase the likelihood of a successful outcome.

### **Repeating and reviewing information**

Slowing down the RJ process is usually a best practice for individuals with FASD. The key is to repeat the information multiple times and conduct frequent reviews to make it easier for individuals with FASD to better understand both the harm they have caused, the RJ process and expectations. This may require multiple pre-conference meetings, ultimately prolonging the RJ process.

### **Using clear and simple language**

Using clear and simple language, rather than complicated words or legal jargon is also essential for individuals with FASD. This helps them understand the process and facilitates better dialogue.

### **Adapting the length of pre-conference meetings**

The length of pre-conference meetings may be adapted to accommodate the particular needs of the individual with FASD. This could mean having shorter pre-conference meetings if the individual is uncomfortable sitting for any length of time or if they have a short attention span. Alternatively, the pre-conference meetings could be extended to repeat and review information, and provide additional support and explanations.

### **Being consistent**

A key component of working with individuals with FASD is consistency. Although program staff or caregiver turnover may occur, it is crucial to have a consistent and stable support system.

Consistency enables staff, especially those facilitating the conference or dialogue, to get to know the individual and understand their unique needs. Consistency also reduces the risk of losing pertinent information, such as successful strategies implemented with the individual; preparation practices; and routine tasks, such as scheduling.

### **Increasing use of visual aids**

Using visual images or props rather than relying solely on written or verbal communication helps increase individuals' understanding of the sequence of events and how harm was caused. One interviewee described using mapping exercises to create a story in drawings (see Image 1). First, the client determines the starting point, for example at school if the event occurred after school. Then the program staff asks prompting questions such as "where did you go next" or "what happened next." Together, the program staff and client also add drawings to represent the objects, people encountered, or events that occurred along the way, while connecting the various points in time with a line. These maps can act as memory aids and visual cues if needed when the individual has to tell their story during the RJ process.

Image 1. Example of Event Mapping Exercise.



### **Using disclosure and FASD education**

In most cases, individuals with FASD give their consent to disclose their impairment to the victim and other RJ participants. Once consent is obtained, program staff take additional time to meet with the victim and other participants to disclose and discuss this information. Educating participants about FASD and its related challenges and limitations is an essential part of preparation for the RJ process. Program staff also go over any specific accommodations or strategies that are already in place to address these unique needs. It is important to note that all parties must be comfortable with the accommodations put in place for the RJ session to proceed.

### **Modifying the meeting space and conference**

To increase the likelihood of a successful RJ process, various adaptations to the meeting space can be made. For example, making the meeting space brighter or darker to address light sensitivity can help make an individual be more receptive and attentive during the conference. Decorating the meeting space can also increase an individual's attentiveness and focus during a RJ conference by removing possible triggers and increasing the sense of comfort and safety. Other approaches and strategies may focus on the individual, such as enabling them to wear headphones throughout the conference to reduce ambient noise or allowing the individual to stand and walk around the room rather than sit in a chair to reduce anxieties. Other examples provided by interviewees to help facilitate the conference included allowing additional support people be present or reducing the number of participants in the room to help reduce anxieties, as well as taking extra breaks to allow the individual to maintain focus and attention.

### **Modifying agreements**

Another adaptation of the RJ process for Individuals with FASD is to prepare realistic agreements on how the individuals will address the harm they caused. For example, 100 community service hours might not be realistic for an individual with FASD, while 20 hours may be possible. During the pre-conference meetings, program staff usually discuss the need for realistic expectations about how an individual with FASD can address the harm they caused.

### **C. RJ Outcomes**

Although this study did not systematically examine or assess program outcomes, interviewees stated that RJ processes involving offenders with FASD have achieved a high degree of success of completion of their agreements.

Program staff also reported a high degree of satisfaction among victims during their follow-up, usually three to six months after the conference. In some cases, the victim even reported maintaining a relationship with the offender. For example, in one case where the offender had broken the hood of the victim's car, the offender would regularly wash the victim's car even after fulfilling the RJ agreement.

After participating in the RJ process, victims also reported having a better understanding of the circumstances that led to the harm, and subsequently felt a greater sense of security knowing that

the offender had not intentionally targeted them. Victims also reported empathizing with the offender's circumstances and appreciating their genuine participation in the process.

### 3.4 Collaboration with Other Community Services

Interviewees from all five programs noted that involving and collaborating with other community supports and services is important when working with offenders with FASD. Although some communities have a distinct and established RJ program, others offer RJ processes through a community organization that offers a range of services, such as probation offices and the John Howard Society. One of the programs that participated in the study is part of a FASD network that offers a range of services for adults with FASD, including RJ processes with individuals in contact with the CJS.

In addition to RJ programming, other community supports and services include a range of health, mental health, and social service agencies such as clinics (including residential facilities); detox and rehabilitation centres; community outreach programs; and harm reduction programs. These supports are usually best equipped to address the unmet needs of individuals with FASD that may increase their likelihood of contact with the CJS. Some supports and services are also able to offer alternatives to incarceration or unsupervised release back into the community. For example, *Community Living* chapters,<sup>18</sup> where available, offer services tailored to people with cognitive impairments, including FASD. The number, variety, and availability of services vary across communities. Although some communities have considerable resources and services, others need to refer individuals to services in nearby communities.

Interviewees indicated that some of the organizations in their communities have formalized referral protocols, which outline referral criteria and appropriate entry points to provide support for offenders with FASD. An interviewee noted that their inter-agency FASD network is closely connected with the CJS so the program coordinator is informed whenever someone with FASD enters the system. This connection also means that the Crown prosecutor can consult with the

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<sup>18</sup> Community Living is a community-based organization that supports people with intellectual disabilities together with their families, support networks, and community by promoting their full citizenship. It is part of the national Canadian Association for Community Living, which has chapters in more than 300 communities.

program coordinator when deciding on charges and diversion, and in making recommendations to the court on sentencing and release conditions.

In another community, a multidisciplinary team called the Assertive Community Treatment (ACT) team provides various supports and services to people living on the street who come into repeated contact with the CJS, emergency medical services, or hospitals. One of ACT's goals is to provide individuals with FASD appropriate supports and services to prevent future contact with the CJS. The ACT team includes psychologists, nurses, and social workers who work with police, and probation and welfare officers.

Some communities with specialized integrated court models offer offenders the appropriate supports and services to help them meet the terms of their conditional release, provide alternatives to incarceration, and help them establish a sustainable life outside of the CJS.

## 4. Lessons Learned

This study identified a number of barriers that affect the ability of communities to address the needs of offenders with FASD. The following section identifies the tools needed to eliminate those barriers.

### **Specialized training**

Interviewees noted that better training on FASD would benefit CJS professionals and other community service providers. The few who had received some FASD-related training highlighted the need for refresher courses to keep up to date with the latest medical knowledge and promising practices. All interviewees agreed that more systematic and widespread training is needed to improve the CJS's knowledge and response to individuals with FASD who come into contact with the system.

### **Formalized protocols**

The lack of formalized referral processes among CJS professionals and community organizations to RJ programs and other community supports negatively affects the outcomes of cases involving individuals with FASD. Although some communities have formal processes, especially with the

creation of the ICs, most referrals rely on the personal practices and networks of individual CJS professionals, which might be less reliable when staff turnover is high.

### **Lifelong supports**

RJ programs are usually well connected to a range of community resources and services, such as counselling services, life skills programs, and employment assistance, which can help serve some of the needs of offenders with FASD. However, all interviewees noted that most individuals with FASD require lifelong daily assistance to help reduce their likelihood of re-contact with the CJS, long-term support that is often unavailable in many communities.

### **Public education and awareness**

Interviewees also noted the need for increased public awareness and education about FASD. This would help increase community members' understanding of the impairments individuals with FASD have and help them gain the supports that they need to be part of the community.

## **5. Conclusion**

There is growing recognition among CJS professionals that the mainstream CJS is not appropriately set up to accommodate the needs of individuals with FASD. As a result, these individuals often find themselves in a cycle of re-contact with the system (e.g., arrests, releases, breaches, re-arrests, and ultimately convictions). CJS professionals have recognized that they need to better understand what kinds of measures and supports might lead to better outcomes for offenders with FASD

This study examined the use of RJ practices with adults in the CJS diagnosed with or suspected of having FASD. This was done in collaboration with five community-based programs in Canada that have taken explicit steps to address the needs of offenders with FASD.

The following are some of the approaches used to address the harm caused by individuals with FASD in the CJS:

- Three of the participating communities have established integrated courts or FASD courts as alternative processes for repeat offenders to address their needs while still holding individuals accountable for their crimes.

- CJS professionals in all five communities work closely with other community-based health and social services to provide referrals for offenders to ensure that they receive the supports they need to prevent further contact with the CJS.
- Four of the communities have well established RJ programs and the fifth uses RJ processes when working with offenders with FASD.
- The communities use RJ to divert individuals from or in combination with the mainstream CJS process. All program staff interviewed for the study noted great success with RJ cases involving individuals with FASD by adapting their approach to address their unique needs and challenges. A few common best practices were noted, such as:
  - repeating information to ensure understanding;
  - using clear and simple language;
  - tailoring the length of meetings;
  - being consistent about who works with the individual;
  - using visual images or props (e.g., visual mapping to identify sequences of events);
  - increasing the number of meetings before the RJ conference;
  - identifying appropriate accommodations;
  - ensuring all RJ participants are aware of and understand the offender’s impairments and accommodation needs for the session; and,
  - modifying the RJ agreement to ensure that any tasks/requirements are achievable.

The study also found that an essential component in addressing the needs of individuals with FASD and reducing their re-contact with the CJS is to involve and collaborate with other community supports and services. In addition to RJ programming, other community supports and services include a range of health, mental health, and social service agencies such as clinics (including residential facilities); detox and rehabilitation centres; community outreach programs; and harm reduction programs.

Although interviewees highlighted the successes they have had working with individuals with FASD, they also noted some needs that should be addressed to enhance their community response. These include:

- the need for formal protocols among CJS professionals and community organizations on how to deal with cases involving individuals with FASD;

- the need for life-long family or community-based supports;
- tailored FASD training for CJS professionals and community organizations; and,
- public education and information on FASD.

This exploratory study was the first of its kind in Canada and was undertaken to help inform discussions about community and system responses to the involvement of individuals with FASD in the CJS. This includes providing examples of how to modify RJ processes to help guide and inform the delivery of services across the country in appropriately responding to the unique challenges and needs of individuals with FASD involved in the CJS.

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