



November 23, 2016

Via email: Larry.Bagnell@parl.gc.ca

The Honourable Larry Bagnell, P.C., M.P.
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Bagnall:

Re: Bill C-235, *An Act to amend the Criminal Code (fetal alcohol spectrum disorder)*

The Canadian Bar Association is writing to express our support for and provide comments about Bill C-235, your bill to amend the *Criminal Code* to address the treatment of people with fetal alcohol spectrum disorder (FASD).

The CBA is a national association representing 36,000 jurists across Canada. Among the Association's primary objectives are seeking improvement in the law and the administration of justice. The proposals in Bill C-235 would improve the criminal justice system's response to people with FASD. The CBA has advocated for similar improvements to the system in dealing with people with FASD, and believes that this Bill represents an important step forward.

People with FASD have a permanent organic brain injury caused by maternal alcohol consumption during pregnancy. That brain injury results in a wide range of symptoms of varying severity, but is characterized by symptoms that often go against underlying principles of criminal law. These normative assumptions of criminal law infer that individuals are responsible for their own actions, that they can control their behaviors in keeping with societal expectations and that they can learn from and be deterred by previous experience.

Characteristics of FASD directly challenge these assumptions. Individuals with FASD may exhibit a lack of impulse control, impaired judgment, and an inability to control or modify their behavior. They may be susceptible to pressure from others and lack the ability to learn from past experiences or to understand the consequences of their own actions. Poor executive functioning skills mean that they may make the same mistakes over and over.

For these and other reasons, many people with FASD are in frequent contact with the criminal justice system. Often, the characteristics that made them susceptible to coming before the system are the very same characteristics that will keep them unreasonably enmeshed in the system over time (for example, failure to comply with or benefit from sentencing conditions that do not identify and accommodate their rehabilitation and reintegration needs). In June 2015, this reality was recognized in the Calls to Action from the Truth and Reconciliation Commission.

The current criminal justice framework does not give individuals with FASD adequate support, which in turn increases both the suffering of those involved and increases the costs to the criminal justice system. We believe that Bill C-235 is an important step in addressing some of the shortcomings of the current framework. In 2010 the CBA passed a resolution advocating improvements to the criminal justice system and sentencing practices for people with FASD. In 2011, we met with officials from the Coordinating Committee of Senior Officials Subcommittee responsible for FASD, and agreed on ten joint recommendations. In 2013, the CBA adopted further recommendations to address the deficiencies in the criminal justice system regarding FASD (documents attached).

Bill C-235 advances several changes in line with previous suggestions made by the CBA. The CBA supports the proposed amendment to define FASD in section 2 of the *Criminal Code*. The CBA also supports an amendment to allow a judge to order an assessment of someone they suspect has FASD. We believe this would assist courts in handing out more appropriate dispositions to people with FASD. The CBA supports amending the sentencing provisions in section 718.2 of the *Criminal Code* to allow a judge to consider evidence that an offender has FASD as a mitigating factor on sentencing. We also appreciate the section that would require judges to include, as a condition of probation, compliance with an external support plan established for the purpose of supporting and facilitating successful reintegration into society. Finally we commend the proposed amendment to the *Corrections and Conditional Release Act* to expressly require Correctional Services Canada to be responsive to the special requirements or limitations of people with FASD. The problem of incarcerating people with FASD is pressing and can no longer be ignored.

The CBA believes that some additions would further improve the Bill. It should be expanded to clearly apply to both summary conviction and indictable offences. The reasons why people with FASD often run into trouble with the law apply equally to their ability to differentiate more or less serious criminal activities.

Trial judges must have discretion to deal humanely with people who have FASD. Judicial discretion should be available to impose a wide range of sentencing options, as required in the individual case. Mandatory minimum sentences may prevent judges from creating sentences in line with section 718.1 of the *Criminal Code*, that are proportionate to both the gravity of the offense and the degree of responsibility of the offender. Those sentences pose an obvious problem, as they may prevent a judge from exercising the discretion necessary to find a just sentence for an individual with FASD. For these and other reasons, the CBA opposes most mandatory minimum sentences. So long as they remain in the *Criminal Code*, however, we recommend the enactment of a "safety valve" or exemption clause in section 718 of the *Criminal*

Code, allowing judicial discretion to avoid a mandatory minimum penalty where imposing it would result in an injustice.

We urge Parliament to adopt Bill C-235, and trust that these comments will be helpful during Parliament's consideration of the Bill.

Yours truly,

(original letter signed by René J. Basque)

René J. Basque, c.r./Q.C.

Enclosures (3)

Fetal Alcohol Spectrum Disorder in the Criminal Justice System

WHEREAS a person, whose mother consumed alcohol during a critical development period in her pregnancy, may be born with a permanent organic brain injury which results in a cognitive disorder known as Fetal Alcohol Spectrum Disorder (FASD), a the range of neurological and behavioural challenges that may affect an individual;

WHEREAS disabilities of FASD reflect the underlying brain and central nervous system damage, including 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;

WHEREAS the nature of behavior resulting from these disabilities means that persons with FASD frequently come into conflict with the law;

L'ensemble des troubles causés par l'alcoolisation fœtale et le système de justice pénale

ATTENDU QU'une personne dont la mère, lors de la grossesse, a consommé de l'alcool au cours d'une phase critique du développement du fœtus, peut souffrir d'une atteinte cérébrale organique permanente qui donne lieu à des troubles cognitifs que l'on regroupe sous le nom « ensemble des troubles causés par l'alcoolisation fœtale » (ETCAF ou TCAF), toute la gamme de troubles neurologiques et de troubles de comportement dont peut souffrir un individu;

ATTENDU QUE les déficiences liées à l'ETCAF sont le reflet de l'atteinte au cerveau et au système nerveux central sous-jacent, et que celles-ci comprennent des dysfonctionnements au niveau mental, des fonctions exécutives faibles, des troubles de la mémoire, un jugement affaibli, une incapacité de maîtriser ses impulsions, de comprendre les conséquences de ses actions et de modifier son comportement;

ATTENDU QUE la nature des comportements qui découlent de l'ETCAF fait en sorte que les personnes qui en souffrent ont souvent des démêlés avec la justice;

WHEREAS 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;

WHEREAS these normative assumptions and the sentencing principles such as specific and general deterrence are not valid for those with FASD;

WHEREAS sentencing options available to courts are often ineffective in changing the behaviour of those with FASD and those with FASD are frequently repeat offenders;

WHEREAS the approach to offenders with FASD has been inconsistent and some courts have ruled that absolutely no rehabilitative or deterrent purpose is served by incarceration of those with FASD;

WHEREAS those with FASD are entitled under the *Charter of Rights* to substantive and not merely formal equality before and under the criminal law without discrimination on the basis of their disability;

ATTENDU QUE le système de justice pénale est fondé sur un certain nombre d'hypothèses normatives voulant que toute personne agisse de façon volontaire, prenne des décisions éclairées lorsqu'elle commet un crime et tire des enseignements de son propre comportement et de celui des autres;

ATTENDU QUE ces hypothèses normatives et les principes qui sous-tendent la détermination de la peine, telles la dissuasion particulière et la dissuasion générale, ne s'appliquent pas aux personnes souffrant de TCAF;

ATTENDU QUE les choix en matière de détermination de la peine dont disposent les juges sont souvent inefficaces pour ce qui est de changer le comportement de personnes souffrant de TCAF et ces derniers sont souvent des récidivistes;

ATTENDU QUE l'approche adoptée quant aux délinquants souffrant de TCAF n'est pas constante et que certains tribunaux ont statué qu'on ne répond pas aux objectifs visant la réhabilitation et la dissuasion en incarcérant les personnes souffrant de TCAF;

ATTENDU QUE les personnes souffrant de TCAF ont le droit, en vertu de la *Charte des droits*, à l'égalité réelle, par opposition à l'égalité formelle, sous le régime du droit pénal, indépendamment de toute discrimination fondée sur leur déficience;

WHEREAS laws, programs or activities could ameliorate the disadvantages experienced by those with FASD whose behaviour is judged on a standard that they are incapable of meeting because of their disability;

WHEREAS recognizing the forgoing, Federal, Provincial and Territorial Ministers responsible for Justice have established an initiative with respect to access to justice for people with FASD;

BE IT RESOLVED THAT the Canadian Bar Association:

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 over-representation of FASD affected individuals in the criminal justice system; and

ATTENDU QUE les lois, les programmes et les activités pourraient pallier les inégalités auxquelles font face les personnes souffrant de TCAF, dont le comportement est évalué selon une norme qu'ils sont incapables de respecter en raison de leur déficience;

ATTENDU QUE les ministres de la Justice des paliers fédéral, provinciaux et territoriaux, qui reconnaissant ce qui précède, ont mis en œuvre une initiative en matière d'accès à la justice pour les personnes souffrant de TCAF;

QU'IL SOIT RÉSOLU QUE l'Association du Barreau canadien :

1. appuie l'initiative des ministres de la Justice des gouvernements fédéral, provinciaux et territoriaux en matière d'accès à la justice pour les personnes souffrant de TCAF et exhorte tous les paliers du gouvernement à attribuer des ressources supplémentaires à la mise en œuvre de solutions de rechange pour éliminer la criminalisation de personnes souffrant de TCAF;
2. exhorte les gouvernements fédéral, provinciaux et territoriaux à rédiger des politiques dont l'objet est d'aider les personnes souffrant de TCAF et d'améliorer leur bien-être, ainsi que d'empêcher que ces dernières soient

constamment surreprésentées au sein du système de justice pénale;

3. urge the federal government to amend criminal sentencing laws to accommodate the disability of those with FASD.

3. exhorte le gouvernement fédéral à modifier la législation pénale en matière de détermination de la peine afin d'accommoder les personnes souffrant de TCAF.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Niagara, Ontario August 14-15, 2010

Copie certifiée d'une résolution adoptée, par le Conseil de l'Association du Barreau canadien, lors de son Assemblée annuelle, à Niagara (Ontario) les 14 et 15 août 2010.

**John D.V. Hoyles
Chief Executive Officer/Chef de la direction**

Accommodating the Disability of FASD to Improve Access to Justice

WHEREAS a person whose mother consumed alcohol during a critical development period in her pregnancy may be born with a permanent organic brain injury which results in a cognitive disorder known as Fetal Alcohol Spectrum Disorder (FASD), a range of neurological and behavioral challenges that may affect an individual;

WHEREAS disabilities of FASD reflect the underlying brain and central nervous system damage, including 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;

WHEREAS the nature of behavior resulting from these disabilities means that persons with FASD frequently come into conflict with the law;

Accommodement des déficiences liées à l'ETCAF afin d'améliorer l'accès à la justice

ATTENDU QU'une personne dont la mère, lors de la grossesse, a consommé de l'alcool au cours d'une phase critique du développement du fœtus, peut souffrir d'une atteinte cérébrale organique permanente qui donne lieu à des troubles cognitifs que l'on regroupe sous le nom « ensemble des troubles causés par l'alcoolisation fœtale » (ETCAF ou TCAF), une gamme de troubles neurologiques et de troubles de comportement dont peut souffrir un individu;

ATTENDU QUE les déficiences liées à l'ETCAF sont le reflet de l'atteinte au cerveau et au système nerveux central sous-jacent, et que celles-ci comprennent des dysfonctionnements au niveau mental, des fonctions exécutives faibles, des troubles de la mémoire, un jugement affaibli, une incapacité de maîtriser ses impulsions, de comprendre les conséquences de ses actions et de modifier son comportement;

ATTENDU QUE la nature des comportements qui découlent de l'ETCAF fait en sorte que les personnes qui en souffrent ont souvent des démêlés avec la justice;

WHEREAS in 2010, the Canadian Bar Association:

- supported the initiative of federal, provincial and territorial Ministers responsible for Justice with respect to access to justice for people with FASD;
- urged all levels of government to allocate additional resources for alternatives to the current practice of criminalizing individuals with FASD and develop policies designed to assist and enhance the lives of those with FASD and to prevent their persistent over-representation in the criminal justice system; and
- urged the federal government to amend criminal sentencing laws to accommodate the disability of those with FASD;

WHEREAS at the 2010 CBA Annual Meeting the federal Minister of Justice said that FASD is a “huge problem” in the Canadian justice system and promised to put it on the agenda for the next Federal/ Provincial/Territorial (FPT) Justice Ministers meeting;

WHEREAS the FPT Justice Ministers considered this problem in October 2010 and issued a communiqué that affirmed their “strong commitment” to work on FASD issues

ATTENDU QU’en 2010, l’Association du Barreau canadien a :

- appuyé l’initiative des ministres de la Justice des gouvernements fédéral, provinciaux et territoriaux en matière d’accès à la justice pour les personnes souffrant de TCAF;
- exhorté tous les paliers du gouvernement à attribuer des ressources supplémentaires à la mise en œuvre de solutions de rechange pour éliminer la criminalisation de personnes souffrant de TCAF et à rédiger des politiques dont l’objet est d’aider les personnes souffrant de TCAF et d’améliorer leur bien-être, ainsi que d’empêcher que ces dernières soient constamment surreprésentées au sein du système de justice pénale; et
- exhorté le gouvernement fédéral à modifier la législation pénale en matière de détermination de la peine afin d’accommoder les personnes souffrant de TCAF;

ATTENDU QUE, lors de l’Assemblée annuelle 2010 de l’ABC, le ministre fédéral de la Justice a fait état de l’« énorme problème » que représente l’ETCAF au sein du système de justice canadien, et a promis d’inscrire la question à l’ordre du jour de la prochaine réunion des ministres de la Justice fédéral, provinciaux et territoriaux (FPT);

ATTENDU QUE les ministres de la Justice FPT ont étudié ce problème en octobre 2010, ont émis un communiqué qui a affirmé leur « engagement ferme » à travailler sur les

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and invited the CBA to engage in a dialogue with them on this issue;

WHEREAS at the 2012 CBA annual meeting, the federal Minister of Justice reaffirmed his commitment to address the issue of FASD in the Canadian legal system;

BE IT RESOLVED THAT the Canadian Bar Association urge the federal government to amend the *Criminal Code* and other legislation based on the following principles:

- **Legal Definition of FASD** - Legislation should define FASD by reference to generally accepted medical guidelines and protocols except that any requirements for evidence of maternal consumption of alcohol may be waived by the Court if there is a good reason why this evidence is not available, such as when the birth mother has died or cannot be identified or found.
- **Power to Order Assessments** - Based on the precedent of section 34 of the *Youth Criminal Justice Act*, which allows a judge to order an assessment of an accused youth, the *Criminal Code* should be amended to allow a judge to order an FASD assessment of an accused adult who is suspected of having FASD.

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enjeux de l'ETCAF, et ont invité l'ABC à engager un dialogue avec eux sur ce sujet;

ATTENDU QUE, lors de l'Assemblée annuelle 2012 de l'ABC, le ministre fédéral de la Justice a réaffirmé son engagement à traiter du problème de l'ETCAF au sein du système juridique canadien;

QU'IL SOIT RÉSOLU QUE l'Association du Barreau canadien exhorte le gouvernement fédéral à modifier le *Code criminel* et d'autres lois, en se fondant sur les principes suivants :

- **Définition juridique de l'ETCAF** - Les lois devraient définir l'ETCAF en faisant référence aux pratiques et protocoles médicaux généralement reconnus, si ce n'est que la Cour peut toutefois renoncer à exiger des éléments de preuve établissant que la mère a consommé de l'alcool pendant sa grossesse, s'il existe une bonne raison pour laquelle de tels éléments de preuve ne sont pas disponibles, comme par exemple lorsque la mère biologique est décédée, ou lorsqu'elle ne peut être identifiée ou retrouvée.
- **Pouvoir d'ordonner des évaluations** - En se fondant sur le précédent établi par l'article 34 de la *Loi sur le système de justice pénale pour les adolescents*, qui permet à un juge d'exiger, au moyen d'une ordonnance, l'évaluation d'un jeune accusé, le *Code criminel* devrait être modifié de façon à permettre à un juge d'ordonner une évaluation des TCAF d'un accusé adulte dont on soupçonne qu'il souffre de TCAF.

- **Mitigating Factor** - If an accused is found to have FASD, this should be a mitigating factor in sentencing the accused.
- **External Support Order** - A judge should be authorized to make an order approving an external support plan recommended by an FASD person's probation officer that could be in effect after probation expires.
- **Duty to Accommodate** - The *Corrections and Conditional Release Act* should be amended to expressly require the Correctional Service of Canada to accommodate FASD as a disability when providing correctional services to inmates who have or likely have FASD.
- **Facteur atténuant** - S'il s'avère qu'un accusé souffre de TCAF, cela devrait constituer un facteur atténuant lors de la détermination de sa peine.
- **Ordonnance de soutien externe** - Un juge devrait être autorisé à rendre une ordonnance approuvant un plan de soutien externe recommandé par l'agent de probation d'une personne qui souffre de TCAF, lequel plan pourrait entrer en application après l'expiration de la période de probation.
- **Devoir d'accommodement** - La *Loi sur le système correctionnel et la mise en liberté sous condition*, devrait être modifiée de façon à ce qu'incombe au Service correctionnel du Canada un devoir d'accommodement de l'ETCAF à titre d'invalidité, dans le cas de la prestation de services correctionnels à des détenus qui souffrent ou qui souffrent vraisemblablement de TCAF.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Saskatoon, SK August 17-18, 2013.

Copie certifiée d'une résolution adoptée par le Conseil de l'Association du Barreau canadien, lors de son Assemblée annuelle, à Saskatoon, SK les 17 et 18 août 2013.

John D.V. Hoyles
Chief Executive Officer/Chef de la direction

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.

Fetal Alcohol Spectrum Disorder as an Access to Justice Issue

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.