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Fetal Alcohol Spectrum Disorder

Justice and efficiency require us to do better

Fetal Alcohol Spectrum Disorder is the most common developmental disability, impacting an estimated one in 100 Canadians and 130,000 Ontarians. Yet our province lags far behind the rest of the country in meeting the needs of these individuals, most particularly in law and justice. Recent roundtable discussions and a provincial FASD justice conference have concluded that we can and must do better.

FASD is like Alzheimer's disease; it is an invisible brain-based disability – a disability impacting thinking. Individuals may appear capable, but have significant deficits in memory and communication. They have difficulty recalling past experiences, anticipating consequences, and adapting to new circumstances. Skills needed to problem solve and to interact socially are severely compromised.

This puts them at heightened risk of involvement with the justice system as victims and perpetrators of crime. No one tracks how often they are victimized but research suggests that youth with FASD are 19 times more likely to be incarcerated, and the incidence of FASD may be as high as three in ten among federal adult inmates.

That staggering over-representation results from a legal system in which individuals with FASD are too often treated as bad and willfully non-compliant rather than disabled. This handcuffs us to a cycle of counterproductive, expensive, and ineffective responses. It fills prisons with individuals with permanent neurobiological impairment and eats up resources that could be invested in preventing victimization and criminality.

As a past president of the Canadian Bar Association (CBA) put it, people with FASD receive life sentences, 30 days at a time.

It doesn't need to be this way and many of the solutions are relatively straightforward.

FASD is preventable. The annual cost associated with the disorder is estimated at \$5.3 billion in Canada, ample motivation for sustained prevention campaigns. Men and women need information regarding the risk of alcohol use and unplanned pregnancies; and women need treatment addressing the challenges that contribute to alcohol use in pregnancy.

We need to establish assessment and diagnostic capacity. Research can help us target our initial efforts. We know FASD is most commonly encountered in child protection, the criminal justice system and among those with long-term welfare reliance. Diagnosis can open the door to the development of FASD-sensitive policy and programs.

Services for exhausted caregivers who deal with the daily challenges of this chronic disability are essential. Access to respite and other support helps stabilize placements and can prevent escalation of problematic behaviour at a fraction of \$50,000 to \$120,000 annual per-inmate incarceration costs. Support programs have proven effective in

preventing criminal behaviour and in contributing to sustained employment and healthier social engagement.

Training for professionals in the corrections and justice, education, health, and human services sectors will ensure we respond effectively to individuals with FASD. All youth probation staff participating in research I recently conducted suspected clients had FASD, but only one-third had referred clients for diagnosis.

Informed professionals, parents, and caregivers can generate strategies that accommodate the FASD learning needs and behaviour challenges – although a defined pathway for diagnosis and referral has to be in place if such strategies are ultimately going to be meaningfully implemented.

And perhaps most crucial in the justice context is the need to simplify judicial responses and provide appropriate supervision. We know this can divert FASD offenders from further criminal involvement. In contrast, complex bail, probation and parole conditions only increase the risk of reoffending and can result in years of escalating intervention and imprisonment that's often entirely out of proportion to the original offence.

And finally, all of the above needs to be delivered within a framework of effective collaboration across multiple ministries and agencies. Elsewhere in Canada this is achieved through a provincial government-led FASD strategy, something that is urgently needed in Ontario.

Recent justice-sector FASD deliberations demonstrate an emerging awareness of the scope of this problem. The CBA has formally called for improved judicial responses, and a comparable resolution is on the agenda of the American Bar Association this week.

We urgently need to heed these calls, and to be aware that continued inaction comes at a cost: A cost to the disabled of course – many consigned to prison or other bleak life trajectories – but also to their families, communities and the taxpayer.

Sheila Burns is a former chairperson of the FASD Ontario Network of Expertise. She recently completed a Law Foundation of Ontario Community Leadership in Justice Fellowship at Georgian College, involving outreach to a wide range of stakeholders aimed at improving the justice system's response to FASD. The opinions expressed are her own.