MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

29 MAR 2017

[redacted]

[redacted]

On 16 February 2017, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *Any information that relates to a link between fetal alcohol syndrome and crime in New Zealand. This should include, but not be limited to reports, research and reviews.*

On 3 March 2017, you were advised that your request has been partially transferred to Mr Chai Chuah, Chief Executive of the Ministry of Health. The Ministry of Health is the lead agency on action plans and information pertaining to fetal alcohol spectrum disorder (FASD). Further information about FASD can be found on the Ministry of Health website at: www.health.govt.nz/your-health/conditions-and-treatments/disabilities/fetal-alcohol-spectrum-disorder-fasd

An estimated 570 New Zealand children are born with an FASD each year. These babies typically grow up with less cognitive and adaptive function, and are therefore likely to be difficult to parent, disruptive at school, come into contact with the criminal justice system, develop mental health and addiction problems, and expose their own children to alcohol during pregnancy. Accordingly, the impact of FASD spans social and justice sector agencies.

You will find enclosed the following documents that fall in scope of the request:

- Cover Report, '*Briefing to Judge Becroft on Fetal Alcohol Spectrum Disorder and the Youth Justice System*', dated 3 May 2010*. *Please note that the year is incorrect on the report and should read as '3 May 2011'.
- Report, '*Fetal Alcohol Spectrum Disorder and the Youth Justice System*', dated 6 May 2011.
- Briefing, '*Fetal Alcohol Spectrum Disorder and the Youth Justice System (Draft – Not Government Policy)*', dated 6 May 2011.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

The Aurora Centre / 56-66 The Terrace / Wellington 6011
PO Box 1556 / Wellington 6140 / New Zealand
Phone: 64 4 916 3300 / **Fax**: 64 4 918 0099 / **www.msd.govt.nz**

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding FASD and crime, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

James Poskitt
General Manager, Working Age Policy

3 May 2010

COVER REPORT: BRIEFING TO JUDGE BECROFT ON FETAL ALCOHOL SPECTRUM DISORDER AND THE YOUTH JUSTICE SYSTEM

Purpose

1 This cover report provides a summary of the information in the attached briefing prepared by the Ministry of Social Development (the Ministry) for Principal Youth Court Judge Becroft, regarding Fetal Alcohol Spectrum Disorder (FASD) in the youth justice system. It also outlines next steps that could be taken to address the issue of FASD in the youth justice system, and in New Zealand society more generally.

Background

2 Judge Becroft meets regularly with Child, Youth and Family. At the meeting of 14 December 2010, he raised the issue of FASD affecting young people appearing in the Court. Judges have long suspected that many young people appearing in the Court have FASD, but had no way of confirming this. The Ministry agreed to provide him with a briefing about FASD in the youth justice system.

Key issues

Issue		Response
FASD is one of a range of presentations of intellectual disability. FASD is preventable. Once damage is caused to a fetus by maternal alcohol intake, it is permanent and cannot be cured	→	A long-term campaign of FASD prevention and education could reduce rates of FASD
There is no research on the prevalence of FASD in New Zealand, but overseas estimates gauge rates at 1 in 100 births	→	Increasing research on FASD in New Zealand would provide a clearer picture of the extent of the problem
Undiagnosed FASD may lead to inappropriate sentencing orders being imposed on offenders in the Youth Court	→	Introducing mental disability screens into the pre-Family Group Conference assessment for young people in the youth justice system could increase detection of FASD in the youth justice system and avoid ineffective treatment programmes being implemented
Diagnosis is more difficult in adolescence as FASD characteristics may be indistinguishable from other mental health and behavioural problems	→	Early diagnosis of FASD could reduce the likelihood of a young person engaging in criminal activity. Introducing a mental disability screen into the Gateway assessment of young people entering the care of Child, Youth and Family may increase rates of diagnosis and prevent many young

		people with FASD entering the youth justice system
FASD is a complex social problem requiring a multi-faceted response		Measures addressing FASD in the youth justice system should be part of a wider programme of awareness, diagnosis, research and management

Next steps

In light of the estimated prevalence of FASD in New Zealand, young people with FASD are likely to feature in the youth justice system. The most effective intervention would be a multi-faceted programme to address the behaviour resulting from FASD. This would require:

- raising public awareness of the risks of drinking alcohol during pregnancy
- improving assessment and diagnosis
- increasing research around FASD
- enabling service providers to understand the impact of FASD on the lives of their clients and use best practice approaches.[1]

The costs associated with such screening and assessment would be substantial, as currently no such service exists in New Zealand.

The Manitoba Model

The Manitoba FASD Youth Justice Programme in Canada has an effective intervention programme for young people in the court system who exhibit characteristics of FASD. It provides a possible model for New Zealand (see Appendix 1). The programme has three key elements:

- to offer diagnostic assessment
- to provide sentencing recommendations to the courts
- to create comprehensive case management and re-integration plans for young people.

The initial pilot programme showed promising results and has been extended. An evaluation in 2006 showed feedback from the judiciary, crown lawyers and defence lawyers was largely positive. Judges noted that prior to the programme they only had a vague notion of the impacts and consequences of FASD, and so were unaware of the appropriateness of the dispositions they placed on young people. Nonetheless, lawyers emphasised the importance of ensuring there were adequate programmes and services to manage young people following diagnosis. Without sufficient programme capacity, some young people were diagnosed but did not have a management plan developed for them.

[1] These five points are the Manitoba Strategy Goals and offer an example of an effective wraparound FASD programme. Retrieved 7 March 2010 from http://www.manitoba.ca/healthychild/fasd/fasdstrategy_en.pdf

Short-term measures

Diagnosis is crucial to implementing an effective management plan for FASD sufferers. As a child or young person with FASD is likely to exhibit other mental health and behavioural problems, screening, diagnosis and management of FASD should not occur in isolation. It should form part of a wider approach addressing the range of issues the child or young person faces. In many cases, signs and symptoms of FASD are similar to those of mental illness or brain injury, and can be unrecognised or misdiagnosed.[2]

The planned Gateway Assessment programme for children entering care and assessed as high risk at FGC will significantly assist in identifying those children with FASD. Following diagnosis, an individualised management plan can address primary disabilities, reducing the likelihood of secondary disabilities developing. This will decrease the chances of someone with FASD entering the court system. However, if the individual does offend, a diagnosis can provide a better interpretation of their behaviour and allow judges to consider sentences that are more suitable.

Initial screening for FASD can indicate whether there is a need to refer for definitive diagnosis. An option for consideration is screening young people subject to formal Youth Court orders. In the 2009-2010 financial year, this group numbered 551. This would target the most serious or persistent offenders appearing in Youth Court, and is likely to be the most cost-effective stage at which to screen. Screening of these individuals and referral for diagnosis as needed, would enable the judge to make more informed sentencing decisions, which take into account the impact of FASD and the needs arising from it. In turn, this may lead to outcomes that are more positive for the young person.

Long-term measures

To maximise effectiveness, any short-term measures addressing the impact of FASD must be in conjunction with measures to reduce the incidence of FASD. This would require ongoing and multi-faceted work across a range of Ministries, including Social Development, Health and Education, to address early detection, public awareness, education of professionals, research and management.

Taking measures to improve rates of early diagnosis has multi-faceted benefits. It is not only easier to diagnose FASD at a younger age, but implementing management and support programmes around children with FASD earlier can help prevent secondary disabilities developing. This increases the chances of the young person having positive life outcomes, including avoiding the justice system.

Public education campaigns can raise awareness of the risks of drinking while pregnant. The Manitoba 'With Child – Without Alcohol' programme uses television and radio commercials, posters, brochures, information kits and a website to raise public awareness about alcohol use during pregnancy.[3] New Zealand's 'It's not okay' campaign targeting domestic violence has demonstrated that a social awareness campaign can be successfully implemented in this country. A similar style of campaign could be investigated to raise awareness of FASD.

Labelling of alcohol is another avenue for raising awareness. In January this year, the Trans-Tasman Australia and New Zealand Food Regulation Ministerial Council recommended that generic alcohol warning messages be placed on alcohol labels. A

[2] Center for Substance Abuse Prevention, above n. 8.
[3] Healthy Child Manitoba, *FASD Initiatives*. Retrieved from http://www.manitoba.ca/healthychild/fasd/initiatives.html 7 March 2010.

response to the recommendation from the Ministerial Council is expected in December 2011.

Summary

FASD is a common cause of intellectual disability in children in care and those who are involved in the youth justice system. It is difficult to diagnose, and carries the risk of misdiagnosis. FASD cannot be managed in isolation, as it often co-occurs with other mental health problems. Someone with FASD has an elevated likelihood of offending, and they require an approach from the court system that takes into account the nature of FASD. The Manitoba programme has benefited many with FASD, and helped the court system to better respond to youth offenders with FASD. This programme could be a model for a similar programme in New Zealand, but cultural considerations would need to be considered. Such a model would be most effective in conjunction with a broader programme addressing early detection, public awareness, education of professionals, research and management.

MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Date: 6 May 2011

Security Level: **IN CONFIDENCE**

Report to: Minister for Social Development and Employment

FETAL ALCOHOL SPECTRUM DISORDER AND THE YOUTH JUSTICE SYSTEM

Purpose of the Report

1 This report provides a summary of research findings from a draft briefing on Fetal Alcohol Spectrum Disorder (FASD) in the youth justice system, prepared by the Ministry of Social Development for Principal Youth Court Judge Becroft.

Background

2 Judge Becroft meets regularly with Child, Youth and Family. At the meeting of 14 December 2010, he raised the issue of FASD affecting young people appearing in the Court. The Ministry of Social Development agreed to provide him with a briefing about FASD in the youth justice system.

3 On 6 April, Judge Becroft met with Hon Peter Dunne (Associate Minister of Health) to discuss FASD and its potential impact on the youth justice sector. The Ministry of Health agreed to prepare a paper for Minister Dunne for early July 2011 canvassing what could be done in this area.

4 We recently became aware of this request from Minister Dunne to the Ministry of Health. We have suspended our work on the briefing for Judge Becroft while we pursue a collaborative approach with the Ministry of Health.

Executive Summary

5 FASD is a common, preventable cause of intellectual disability in young people in care and those who are involved in the youth justice system.

6 FASD is difficult to diagnose, and carries the risk of misdiagnosis. FASD cannot be managed in isolation, as it often co-occurs with other mental health problems.

7 A young person with FASD will have an elevated likelihood of offending, and would require an approach from the court system that takes into account the nature of FASD.

8 In Canada, the Manitoba FASD Youth Justice Programme provides a specific programme of intervention for young people in the court system who exhibit characteristics of FASD. The programme has three elements:

- offering diagnostic assessment
- providing sentencing recommendations to the courts

- creating comprehensive case management and re-integration plans for young people with FASD.

9 The initial pilot programme showed promising results and has been extended. It cost just under CA$500,000 to operate the pilot phase of the programme, which occurred over a year and a half. Approximate costs for each diagnostic assessment were CA$7,000. Implementation of a similar programme in New Zealand would most likely require additional funding for cultural enhancement, research and evaluation.

10 This programme could be a model for a similar programme in New Zealand, but would require reprioritisation of existing funding which might be difficult to justify.

11 Funding such a model would be most effective in conjunction with a broader programme addressing prevention, early detection, public awareness, education of professionals, research and management of FASD.

Next steps

12 We are meeting with Health officials on 6 May to agree on a joint approach on progressing the briefing requested by their Associate Minister and the briefing requested by the Principal Youth Court Judge. We anticipate that the areas for discussion will include the options to:

- increase research on FASD in New Zealand
- introduce a mental disability screen into the Gateway assessment of young people entering the care of Child, Youth and Family
- introduce mental disability screens into the health and education assessments for young people attending a Family Group Conference for the first time
- develop a specific youth justice screen
- develop a public campaign of FASD prevention and education.

13 We will advise you of the outcome of that meeting on 11 May when FASD is an agenda item for discussion at the Project meeting.

Holden Hohaia
General Manager
Child Family and Community Policy

Date

Hon Paula Bennett
Minister for Social Development and Employment

Date

6 May 2011 Security Level: IN CONFIDENCE

BRIEFING: FETAL ALCOHOL SPECTRUM DISORDER AND THE YOUTH JUSTICE SYSTEM (DRAFT – NOT GOVERNMENT POLICY)

Purpose

This briefing describes Fetal[1] Alcohol Spectrum Disorder (FASD) and its possible implications for the New Zealand youth justice system. It emphasises the importance of early diagnosis in forming an effective management plan and reducing the likelihood of a young person with FASD entering the youth justice system. This briefing shows that if a young person with FASD is already in the youth justice system, diagnosis could increase the use of suitable management programmes.

Summary

Fetal Alcohol Spectrum Disorder is a complex problem. It is difficult to diagnose, and carries the risk of misdiagnosis. FASD cannot be managed in isolation, as it often co-occurs with other mental health problems. Someone with FASD has an elevated likelihood of offending, and they require an approach from the court system that takes into account the nature of FASD. The Manitoba programme has benefited many with FASD, and helped the court system to respond better to youth offenders with FASD. This programme could be a model for a similar programme in New Zealand, but cultural considerations would need to be considered. Such a model would be most effective in conjunction with a broader programme addressing early detection, public awareness, research and management.

Key issues

The briefing outlines the following key messages:

- FASD includes a range of birth defects and brain damage resulting from prenatal exposure to alcohol. It is permanent and cannot be cured
- if FASD is diagnosed in early childhood, it enables interventions which reduce the young person's chances of engaging in criminal behaviour. Diagnosis doesn't change outcomes, management does
- without an effective management plan, young people with FASD can develop secondary disabilities, including behavioural and intellectual functioning problems, which increase their likelihood of becoming involved in the youth justice system
- early diagnosis of FASD is important, as it becomes much harder to diagnose by adolescence, when the behaviours of many young offenders and those with FASD appear similar
- undiagnosed FASD can lead to inappropriate and ineffective sentencing decisions by the Youth Court.

[1] The term 'fetal' is used here, as this is the accepted spelling in the scientific community, although 'foetal' is also commonly accepted in Commonwealth countries.

What is Fetal Alcohol Spectrum Disorder?

FASD is a term covering a range of preventable birth defects and brain damage resulting from prenatal exposure to alcohol. FASD can range from its extreme form of Fetal Alcohol Syndrome (FAS) to mild or insignificant mental impairment and behavioural effects. Children who do not show all the features of FAS may receive a diagnosis of partial FAS (pFAS), Fetal Alcohol Effects, Alcohol-Related Neurodevelopmental disorder (ARND), or Alcohol-Related Birth Defects (ARBD). [2]

The majority of people with FASD do not have easily identifiable physical characteristics, but may still have extensive brain dysfunction. People without the obvious physical characteristics of FASD may be at greater risk of not being diagnosed and receiving appropriate support, as they may not be easily identified as having FASD.

FASD is a brain-based physical disability. It occurs pre-birth, is permanent and cannot be cured. All children with FASD have lifelong cognitive, social and behavioural disabilities. FASD can cause neurological and physical damage.

The neurological damage can include:

- impaired intellectual functioning and memory problems
- secondary disabilities, including learning difficulties, a lack of understanding of consequences and difficulty learning from experience.

The physical consequences can include:

- delayed growth
- specific minor facial anomalies.

Secondary disabilities can develop from the primary disabilities, including:

- attention deficit (often similar to symptoms of attention deficit disorders[3])
- lowered intellectual functioning and consequential learning problems[4]
- difficulty with mathematical concepts, memory and verbal ability
- deficits in balance and motor coordination (suggesting cerebellar dysfunction)
- reduced problem solving and cognitive ability.[5]

Identifying Fetal Alcohol Spectrum Disorder

Difficulties in identification and diagnosis

There is no research to confirm the prevalence of FASD in New Zealand, but overseas studies estimate that FASD affects one in every 100 live births.[6] In light of recent studies, this number may in fact be much higher in New Zealand due to the binge drinking culture and increased alcohol consumption by women of reproductive age.[7]

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[2] The John Howard Society, (2010). *Fact Sheet: Fetal Alcohol Spectrum Disorder and the Criminal Justice System: A Poor Fit.* Issue 26, 2010, p. 1.
[3] Nanson and Hiscock, cited in Boland, FJ, Burrill, R, Duwyn, M, and Karp, J (1998). *Fetal Alcohol Syndrome: Implications for Correctional Service.* Correctional Service of Canada.
[4] Conry, cited in Boland et al (1998), above n. 3.
[5] Carmichael Olson et al, cited in Boland et al, above n. 3.
[6] Alcohol Healthwatch (2007) *Action on Liquor*, p. 16.
[7] Ibid, pp. 6 and 9.

There is no easy or agreed method of diagnosing FASD, as the term describes a range of disorders. The DSM-IV has no codes for FASD.[8] The degree to which an individual is affected depends on many factors, including the stage of fetal development at which alcohol was consumed, how often, and how much. This information is difficult to obtain and measure accurately.

FASD often co-occurs with other mental health and behavioural problems.[9] The risk of misdiagnosis is high. If FASD is undiagnosed, treatment a young person may receive for symptoms of the secondary disabilities may be inappropriate and ineffective. For example, Ritalin is often prescribed to young people with attention deficit. However, studies have shown that it is not effective in treating young people with FASD who have problems focussing attention.

Following diagnosis, attempting to manage FASD without addressing other mental health or behavioural problems is unlikely to be effective. Diagnosis and management of FASD should not occur in isolation, but rather as a holistic approach addressing the range of mental health and behavioural issues the child or young person is facing.

Diagnosis of FASD often requires a multidisciplinary approach. In New Zealand, a general paediatrician can undertake initial screening to assess growth deficiency and FAS facial features and may make an initial diagnosis. The general paediatrician then refers the individual to a developmental paediatrician for further assessment. Other countries may use one or a combination of health professionals, often involving a paediatrician specifically trained in FASD diagnosis, a clinical psychologist, an occupational therapist or a speech-language pathologist to undertake this assessment.[10]

In New Zealand, the B4 School Check is a questionnaire to promote health and wellbeing in preschool children and identify behavioural, developmental or other health concerns that may adversely affect the child's ability to learn.[11] While not designed specifically to identify FASD, it may help identify FASD characteristics. The check assesses a child's physical health, environment, learning ability, social development and family circumstances. If a health professional thinks the child may be showing characteristics of FASD, they can refer the child to a developmental paediatrician for further assessment.

By definition, parents of children with FASD have alcohol issues and are unlikely to identify difficulties their child is experiencing because of FASD. Teachers can play an important role in identifying children with behavioural difficulties, socio-emotional problems and mental health problems. Involving family/whānau members in the identification and management process offers the child with FASD a greater chance of effective management.

If the developmental paediatrician concludes that the FASD disability is severe (ie an IQ of less than 70), they will refer the child for assessment for disability support. In New Zealand, children diagnosed with FASD receive educational support from their teacher

[8] Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration U.S. Department of Health and Human Services (2007). *Fetal Alcohol Spectrum Disorders Co-Occur with Mental Illness.*

[9] Ibid.

[10] Chudley, A E, Conry, J, Cook, J L, Loock, C, Rosales, T and LeBlanc, N (2005). 'Fetal alcohol spectrum disorder: Canadian guidelines for diagnosis'. *Canadian Medical Association Journal* (172) 5 at http://www.cmaj.ca/cgi/content/full/172/5_suppl/S1 Retrieved 4 March 2011.

[11] Ministry of Health (2008). *The B4 School Check: A handbook for practitioners.* Ministry of Health: Wellington.

and their school's Special Education Needs Coordinator, if needed. Resources are linked to the level of disability, not to a specific diagnosis.

The Year 9 check implemented in low decile high schools is another avenue to identify intellectual disability and likely impact of FASD. While this assessment does not incorporate specific intellectual disability screening, it does look at socialisation, drug use and relationships.

Diagnosis is easier at a younger age, as the physical characteristics of FASD can become less obvious with age. Early diagnosis is important as it enables better recognition of the special needs of those with FASD. Developing and implementing a management plan following early diagnosis can help prevent or reduce secondary disabilities.[12] These include attention deficit and difficulties understanding consequences, which increase the likelihood of an individual with FASD becoming involved in the Youth Court system.

Fetal Alcohol Spectrum Disorder and offending by children and young people

Increased risk of offending

Longitudinal studies show that children with the characteristics of FASD (such as attention deficit, hyper-activity and impulsivity) are more likely to become involved in delinquency and adult criminal behaviour.[13]

Problems for children with FASD typically begin when they enter the school system, struggle to learn at the expected rate and lack the social skills of their peer group. Due to these problems, children with FASD are more likely to leave the education system early. Early school leaving also increases the likelihood of becoming involved in criminal activities.

The cognitive, social and behavioural problems associated with FASD often bring those with FASD to the attention of the criminal justice system. Those with FASD often display traits of impulsive behaviour, leading to unplanned offending and high-risk crimes. Those with FASD are susceptible to the influence of more sophisticated offenders due to their increased suggestibility.[14]

Difficulties for those with Fetal Alcohol Spectrum Disorder in the legal system

A person with FASD or other intellectual disability who is charged with a criminal offence may not remember accurately what has happened, and may give inaccurate statements or false confessions if they believe this will shorten the questioning process.[15] They can also forget fines, instructions, dates and times, leading to further legal complications.

Someone with FASD or other intellectual disability may not understand the complex legal system. They may not be able to deal with court processes, language, or give and accurate recollection of facts, and may not be able to understand the gravity of the situation and the consequences of their actions.[16] They can have significant challenges

[12] Streissguth, cited in Boland et al (1998), above n. 3.
[13] Farrington (1995), cited in Boland et al, above n. 3.
[14] Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration U.S. Department of Health and Human Services (2007). *Fetal Alcohol Spectrum Disorders and Juvenile Justice: How Professionals Can Make A Difference.*
[15] Ibid.
[16] Ibid.

understanding cause and effect. They may be unable to make a connection between committing a crime and conviction, and so punishment may not have any deterrent effect.

The impact of Fetal Alcohol Spectrum Disorder on sentencing

The fact a defendant has FASD may affect sentencing in three ways:

- it may reduce the culpability of the defendant's conduct
- it may require different measures to reduce the defendant's likelihood of reoffending
- a defendant with FASD may have problems functioning in society, which can be exacerbated or alleviated by sentencing.[17]

A FASD diagnosis allows for better-informed sentencing so the individual can receive the specific help they need. Diagnosis helps professionals to identify techniques and approaches to help prevent reoffending.

Awareness that individuals with FASD have brain damage causing behavioural and developmental disturbances may help those involved with them to have more realistic performance expectations of their behaviour, and how that behaviour is managed. Rather than inferring that people are unmotivated, manipulative or self-defeating, it is possible to see these maladaptive behaviours as the result of neurological impairments caused by FASD-associated brain damage.[18]

The following table illustrates how the behaviours of those with FASD and other intellectual disabilities may be misinterpreted:[19]

Negative Behaviour	Misinterpretation – "won't"	Accurate interpretation – "can't"
Non-compliance • failure to appear • missing meetings • not abiding with conditions of release	• wilful misconduct • stubborn • disregard for rules of court • indifference • disrespectful	• lose reminder slips • can't understand abstract concept of time • difficulty with organisation
Repeatedly making the same mistakes • recidivistic actions • correction doesn't work	• wilful misconduct • manipulative	• can't link cause to effect • can't see similarities • can't remember
Often late • late to court • late for meetings • late for community service	• wilful misconduct • lazy, slow • poorly parented	• can't understand abstract concept of time • can't remember
Repetitive behaviours • fidgeting in court	• wilful misconduct • seeking attention • bothering others	• neurologically-based need to learn by doing
Poor judgement • inappropriate touching	• wilful misconduct	• misinterpret social cues

[17] FAS/FAE Legal Issues Resource Center, Fetal Alcohol and Drug Unit, University of Washington, Department of Psychiatry and Behavioral Science, School of Law. *Sentencing and Supervising Offenders with FASD*. http://depts.washington.edu/fadu/legalissues/SENTENCING.3rdDraft.fasd.pdf Retrieved 4 March 2010.

[18] Streissguth, above n. 12.

[19] Based on table at http://fasdjustice.on.ca/what-works/reframe-behaviours.html

• overly friendly • inappropriate choice of peers • commits illogical crimes	• poorly parented • abused child • defiant • disrespectful	from peers • doesn't know what to do • easily influenced • inability to learn from previous consequences
Overly physical • inappropriate touching • gets too close to others • abusive, especially if intoxicated • assaultive	• wilful misconduct • deviancy • angry	• over or under-sensitive to touch • cannot relate social cues to boundaries
Unable to act independently • can't perform community service effectively • needs to be led	• wilful misconduct • passive aggression	• chronic health problems • can't translate verbal directions into action • can't remember

How can the New Zealand youth justice system improve its response to a young person with Fetal Alcohol Spectrum Disorder?

Identification

Health and education assessments are conducted for a small group of high-risk offenders undergoing a Family Group Conference for the first time. These assessments are based on the HEADS assessment. This assessment does not screen for intellectual disability or mental health disorders. Introducing a mental disability screen into these assessments would increase identification of young people exhibiting characteristics consistent with FASD, with referral for further testing and diagnosis if needed.

If a child or young person with FASD is undiagnosed and enters the youth justice system, it may be possible to raise the suspicion of FASD by the common characteristics of sufferers.

They may exhibit certain behavioural traits when being dealt with in the youth justice system:

- appear to show a lack of remorse
- overly friendly, aggressive or withdrawn
- act inappropriately, impulsively or without inhibition
- not understand the severity of the situation.

They may also show language difficulties, such as:

- improper use of words
- inappropriate answers
- vague and confusing responses
- going on tangents when talking
- 'parroting back' in response to questions.

The Manitoba Model

The Manitoba FASD Youth Justice Programme in Canada has an effective intervention programme for young people in the court system who exhibit characteristics of FASD. It

provides a possible model for New Zealand (see Appendix 1). The programme has three key elements:

- to offer diagnostic assessment
- to provide sentencing recommendations to the courts
- to create comprehensive case management and re-integration plans for young people.

The initial pilot programme showed promising results and has been extended. An evaluation in 2006 showed feedback from the judiciary, crown lawyers and defence lawyers was largely positive. Judges noted that prior to the programme they only had a vague notion of the impacts and consequences of FASD, and so were unaware of the appropriateness of the dispositions they placed on young people. Nonetheless, lawyers emphasised the importance of ensuring there were adequate programmes and services to manage young people following diagnosis. Without sufficient programme capacity, some young people were diagnosed but did not have a management plan developed for them.

Appendix 1

Effects of Fetal Alcohol Spectrum Disorder

The effects of FASD can vary with age, although some problems persist.

Infants with FASD often display primary disabilities such as:

- irritability
- problems with sleeping and eating
- failure to thrive
- delayed development
- poor motor control
- difficulty adapting to change.

Preschoolers with FASD may have problems such as:

- hyperactivity
- attention problems
- perceptual difficulties
- language problems
- poor motor coordination.

A school-age child with FASD may have primary disabilities such as:

- hyperactivity
- attention deficit
- learning disabilities
- arithmetic difficulties
- cognitive deficits
- language problems
- poor impulse control.

In adolescence and adulthood: [20]

- primary difficulties
  - memory impairments
  - problems with judgement
  - problems with abstract reasoning
  - poor adaptive functioning
- secondary disabilities
  - easily victimised
  - unfocused and distractible

[20] Boland et al, above n. 3.

- difficulty handling money
- problems learning from experience
- trouble understanding consequences
- problems perceiving social cues
- poor frustration tolerance
- inappropriate sexual behaviours
- substance abuse
- mental health problems
- trouble with the law.

Features of Fetal Alcohol Spectrum Disorder

In general, FASD identification can be broken down into broad categories, the most notable being Fetal Alcohol Syndrome.

Fetal Alcohol Syndrome consists of deficits in three categories:

- facial malformations: small head, small eyes, small eye slits, under developed groove between upper lip and nose, thin upper lip, flat upper jaw
- brain and central nervous system disorders: developmental delay, intellectual impairment, biological abnormality, frontal lobe damage causing problems with executive function
- growth retardation: low weight and height at birth, slow physical development throughout childhood.

Other conditions associated with FAS may include:[21]

- heart and kidney defects
- hearing and eyesight impairment
- skeletal defects
- immune system deficiencies.

Only individuals with full-blown FAS have the visible physical characteristics of the syndrome, and those physical characteristics may become less evident in time. The majority of people with FASD do not have easily identifiable physical characteristics, but may still have as severe brain dysfunction as those with full-blown FAS. They are just as at risk, perhaps even more so, as they are not as easily identifiable. There are useful guidelines to identify other FASD conditions.

- **Partial Fetal Alcohol Syndrome (pFAS)** refers to those who have a cluster of the following characteristics:
  - some of the facial characteristics found in FAS
  - abnormal brain function (central nervous system damage), which results in problems with thinking processes and behaviours
  - no growth deficiency
  - prenatal exposure to alcohol.
- **Alcohol-Related Neurodevelopmental Disorder (ARND)** refers to individuals affected in the following ways:
  - abnormal brain function (central nervous system damage) which results in problems with thinking processes and behaviours
  - none of the facial characteristics associated with FAS
  - no growth deficiency
  - prenatal exposure to alcohol.
- **Alcohol-related birth defects**:
  - describes the presence of birth defects that include physical malformations or specific organ defects in an individual with confirmed

[21] Stratton, Howe and Battaglia, cited in Boland et al, above n. 3.

prenatal alcohol exposure, such as heart defects, cleft lip and palate, spina bifida, orthopaedic anomalies or other defects.

Behavioural problems of those with Fetal Alcohol Spectrum Disorder

A 2004 study of New Zealand caregivers reported the following behavioural problems they experienced when raising children with FASD:[22]

- 58% had experienced mental health problems such as serious depression, suicide attempts, panic attacks and attention deficit disorders
- 93% lied frequently
- 75% had problems with theft
- 76% damaged property
- 26% lit fires
- 70% were violent
- 96% had anger problems
- 56% had sexuality problems
- 50% needed regular supervision in adulthood.

These findings are similar to an earlier longitudinal study of secondary disabilities in a population affected by FASD in the USA, which reported that:[23]

- 90% had diagnosed mental health problems
- 80% of adults were dependent for their daily needs
- 80% had employment problems
- 60% were expelled from or dropped out of school
- 60% had been in trouble with the law
- 50% had inappropriate sexual behaviour
- 50% had been confined for mental health reasons, alcohol and drug treatment, or as a consequence of law violations
- 30% had alcohol and drug problems (prevented from being more significant due to family intervention and control).

[22] Symes, M (2004). *The legacy of parental exposure to alcohol: Fetal Alcohol Spectrum Disorder, the New Zealand situation* (doctoral thesis). Retrieved from http://www.fasdconnections.ca

[23] Streissguth, A (1996). *Understanding the occurrence of secondary disabilities in clients with FAS and FAE.* Retrieved from http://www.notasingledrop.org

Appendix 2

Effective management of Fetal Alcohol Spectrum Disorder

Children with FASD work best in an uncluttered environment where there is order, structure, consistent rules and predictable routines.[24] The type of damage to the brain associated with FASD is likely to manifest in minimally structured environments where there are too many distractions.

A stable and highly structured home environment is important for children with FASD, as family support can help prevent an incomplete education, criminal involvement, and other secondary conditions associated with FASD. Where possible, family should participate in any strategies and plans to help the child. Alternatively, there may be a need for those with FASD to live in a group home situation with established routines.

A child with FASD at school or other kind of institution will need close supervision to keep them out of trouble. The supervisor needs to understand the nature of FASD, be aware of the child's strengths, weaknesses and other important patterns of behaviour. They need to be able to recognise any cues that signal the child is becoming agitated, and have the appropriate skills to manage the situation. Because individuals with FASD are easily overwhelmed or distracted by excessive social stimulation and easily confused by tasks they have difficulty in understanding, activities should be carried out in small groups, or one on one.[25]

The most effective intervention for managing a child's behaviour is 'contingency management'. This involves setting specific behavioural goals, teaching the necessary skills to achieve these goals, rewarding good behaviour and penalising antisocial behaviour.[26] Children and young people with FASD can lack basic life skills. Any intervention should include programmes targeting communication, socialisation, developing positive relationships, organisation, time management and anger management.[27]

Individuals with FASD can have short-term memory problems. Any information given to sufferers needs to specific and repetitive. They may need to be taught and re-taught new information for it to be retained in their long-term memory. The pace of presentation should allow plenty of time for practice and repetition. Intensive or crammed learning would be counter productive.[28]

Often a young person with FASD will be receiving, or will need to receive, treatment for co-occurring disorders such as attention deficit/hyperactivity disorder, oppositional defiant disorder, and anxiety disorder. It is important that the sufferer have an individual medical treatment plan as part of their intervention programme.

[24] Streissguth, above n. 12.
[25] Ibid.
[26] Church, J (2003). *The Definition and Treatment of Children and Youth with Severe Behavioural Difficulties*. Special Education Division, Ministry of Education. Retrieved from http://www.educationcounts.govt.nz
[27] Spohr and Steinhausen, cited in Boland et al, above n. 3.
[28] Tonneato, cited in Boland et al, above n. 3.

Appendix 3

The Manitoba Fetal Alcohol Spectrum Disorder Youth Justice Programme (Canada)

The Manitoba programme provides a model of an effective intervention programme for young people in the court system exhibiting characteristics of FASD. The programme was initiated as a pilot programme in 2004, and was adopted by the province of Manitoba in 2006. It sought to gather data answer questions and develop recommendations for the court regarding young people with FASD in the criminal justice system. The programme was led by the court with the assistance of other groups with an interest in Court-ordered FASD assessments. The Manitoba Clinic for Alcohol and Drug Exposed Children (now known as Manitoba FASD Center) provided the medical services.

The programme has three key elements:

1. offer diagnostic assessment
2. provide sentencing recommendations to the courts
3. create comprehensive case management and re-integration plans for youth and their families.

The following indicators were used to initiate a referral:

- repeated 'fail to comply'
- lacking empathy
- poor school experiences
- difficulties within the institution
- unable to connect actions with consequences
- seemingly unaffected by past punishments
- crime committed may be of opportunity rather than planned
- crimes involving risky behaviour for little gain
- gang involvement
- superficial relationships/friendships.

Once the pre-screening process was complete, the process for assessment gathered behavioural, medical and physiological information.

Evaluation of the programme showed it developed some realistic and worthwhile initiatives in managing FASD, including:

- 'This is Me – A tool for learning about working with people affected by FASD'. An interactive package, including a CD-ROM and interactive guide designed to illustrate typical behaviours of people affected by FASD
- 'This is Me' Life books – a creative way for youth to better understand themselves and their disability. In creating their own book, the young person is allowed to identify their preferred learning style, interests, goals and strengths
- The Icons Project – laminated posters assisting those for whom a visual representation is easier to comprehend than a written explanation

- Youth Accommodation Counsel – Legal Aid provides a lawyer with extensive knowledge, training and experience with FASD youth and adults, who is dedicated in improving services and outcomes for youth clients.

The Manitoba programme is a collaborative project funded provincially by Manitoba Justice, the Clinic for Alcohol Exposed Children, and the Manitoba Adolescent Treatment Center. It costs just under CA$500,000 to operate the pilot phase of the programme, which occurred over a year and a half. Approximate costs for each diagnostic assessment were CA$7,000.

The Manitoba programme provides a potential model for a similar programme to be developed in New Zealand. If people involved in the youth justice system are identified as having any or several of the indicators listed above, this could be used to initiate referral for diagnosis.