

# FASD & THE CRIMINAL JUSTICE SYSTEM: A POOR FIT

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**FASD | ONE**

Fetal Alcohol Spectrum Disorder  
Ontario Network of Expertise

[www.fasdontario.ca](http://www.fasdontario.ca)

# FASD | ONE

Fetal Alcohol Spectrum Disorder  
Ontario Network of Expertise

A volunteer collaborative of caregivers, practitioners and specialists.

Founded in 2005 with funding from the Public Health Agency of Canada to inform government on FASD prevention and advancing best practices for improved outcomes in awareness & prevention, assessment & diagnosis, education, intervention & support, and justice.

## ACTIVITIES

- FASD ONE *Call to Action* (May 2015)
- FASD symposiums for professionals and caregivers
- Workshops for caregivers
- Awards recognizing contributions to enhanced understanding of FASD
- Reports related to FASD prevention, justice and effective interventions
- Dissemination of emerging practice
  - [www.fasdontario.ca](http://www.fasdontario.ca)
  - [www.fasdjustice.ca](http://www.fasdjustice.ca)

# LEARNING OUTCOMES

Characteristics of FASD

Justice misfit for accused, offenders, witnesses and victims

Voice of lived experience

The perspective through the lens of HSJCC members (FASD ONE Justice Survey)

Provincial and national FASD activities

# WHAT WE KNOW ABOUT FETAL ALCOHOL SPECTRUM DISORDER (FASD)

It is a common neurodevelopmental disability affecting 1-3% of Canadian births (Koren 2007, May et al 2014)

FASD is caused by drinking during pregnancy.

FASD is a spectrum disability; the degree of impairments are impacted by:

- Dose and timing of alcohol use during the pregnancy
- Genetic factors – vulnerabilities and resiliencies
- Maternal health factors including stress and nutrition
- Fetal factors

Research suggests that damage can be mitigated or exacerbated by postnatal experiences:

- neglect vs enriched environment
- nutrition
- stress vs calm/nurturing
- trauma vs loving/protected care

FASD is about brain function. New diagnostic criteria removes growth as a criteria and simplifies terminology:

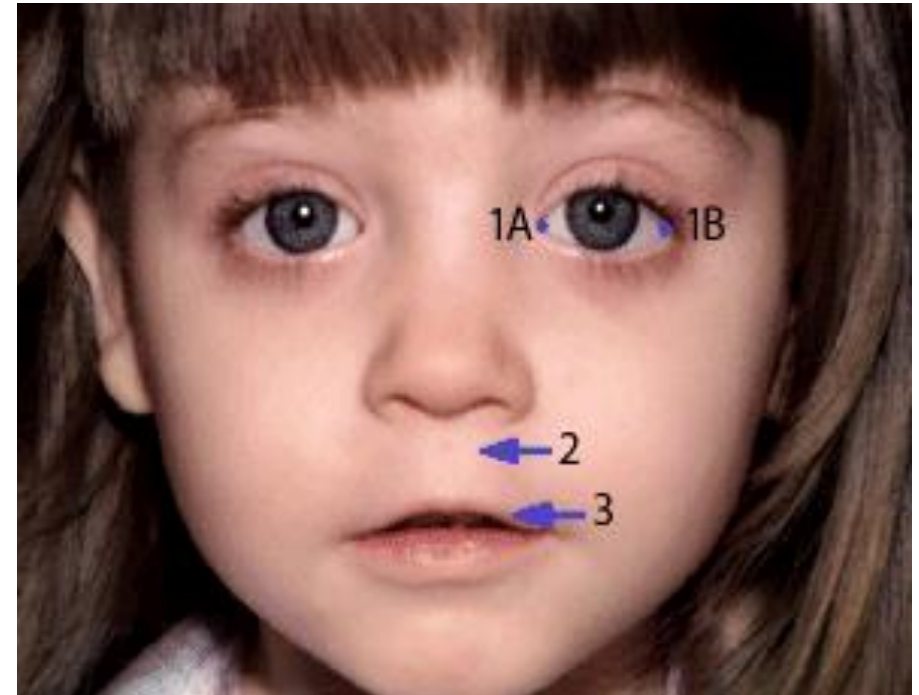
- FASD with sentinel facial features (+/-10%)
- FASD without sentinel facial features (+/-90%)
  - confirmation of prenatal exposure is still needed
  - moved away from pFAS and ARND

Added a 10<sup>th</sup> brain domain – Affect Regulation. Still require brain function 2 sd deviations below the norm in 3 of 10 areas of brain function or a large discrepancy among major subdomain scores below the 3<sup>rd</sup>% and 1 sd below the mean.

New: PAE at risk for FASD – exposure and suspicion but assessment cannot be done at this time i.e. too young

(publish date expected December 2015 or February 2016) with input from Valerie Temple. PhD

## Sentinel features



# COMPONENTS OF DISABILITY

Primary disability – organic and permanent in nature

Secondary disorders are preventable mental illnesses and can result from postnatal life experiences including:

- abuse (victim or witness) and trauma
- trauma due to neglect
- missed, inaccurate or incomplete diagnosis and/or co-occurring mental health disorders i.e. LD, ADHD, RAD, CD, OCD, PTSD, bi-polar, addictions, anxiety and depression
- are excluded from developmental services

ADVERSE OUTCOMES are measured in failure to thrive across the lifespan; disrupted home-lives/placements, school failure, being unemployed, homeless, in conflict with the law, substance misuse, sexual vulnerability/exploitation, having children you cannot care for, and early death by accident, disease, suicide or violence. Sampson, Streissguth et al 1997; Li Q, Fisher WW, Peng CZ, Williams AD, Burd L. 2011

# PRIMARY DISABILITY

## REFLECTS IMPAIRMENTS IN INTELLECTUAL AND EMOTIONAL DEXTERITY

### Memory

- working memory doesn't support the manipulation of incoming/new information
- short/long-term recall – correct and sequenced – flaws in learning theory
- relative strength is often seen in either visual or auditory memory

### Sensory integration

- processing internal and external (environmental) stimulation/information accurately

### Language processing

- taking in information effectively and accurately and drawing conclusions and responding accurately and appropriately

### Social communication

- mimic/parrot language of others
- superficial conversations/relationships
  - theory of mind
- expressive language that is not in sync with comprehension
- applying social rules as contexts change – even subtly

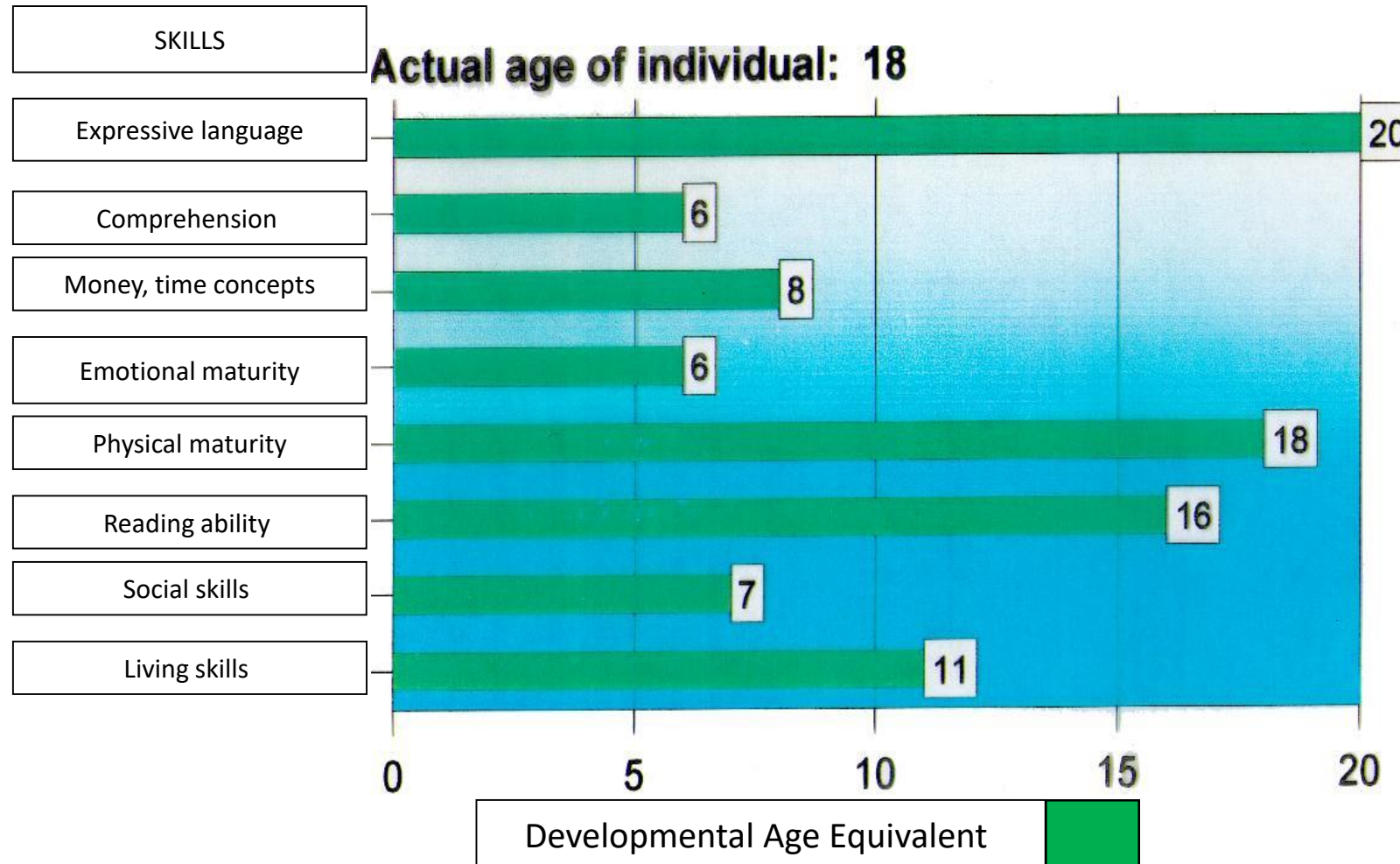
### Adaptive functioning

- caring for themselves like same-aged peers

### Executive function

- emotional regulation
- anticipate, plan, organize, and accommodate information

Function and Skill: the developmental profile for an 18 year old with FASD



Adapted from research findings of Streissguth, Clarren et al by D. Malbin 94

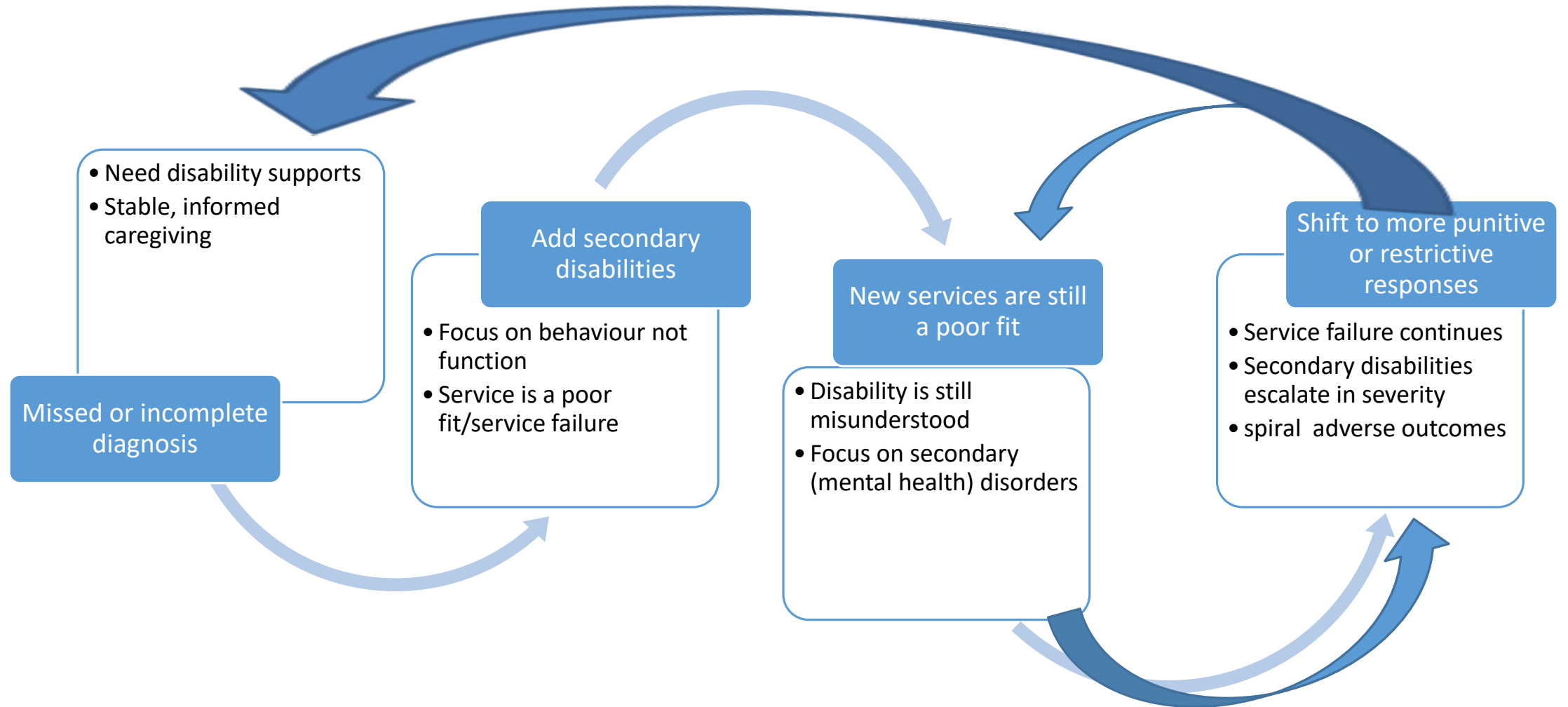


# VOICE OF LIVED EXPERIENCE

Alex –

Andy -

# FASD: NEED VS SERVICE



# FASD AND THE JUSTICE SYSTEM

Youth with FASD are 19x more likely than non-affected peers to be incarcerated (Popova 2011)

Adults with FASD are 28x more likely to be incarcerated (MacPherson, Chudley 2011)

Recidivism rates among individuals is high though the research shows that the severity of offenses doesn't escalate

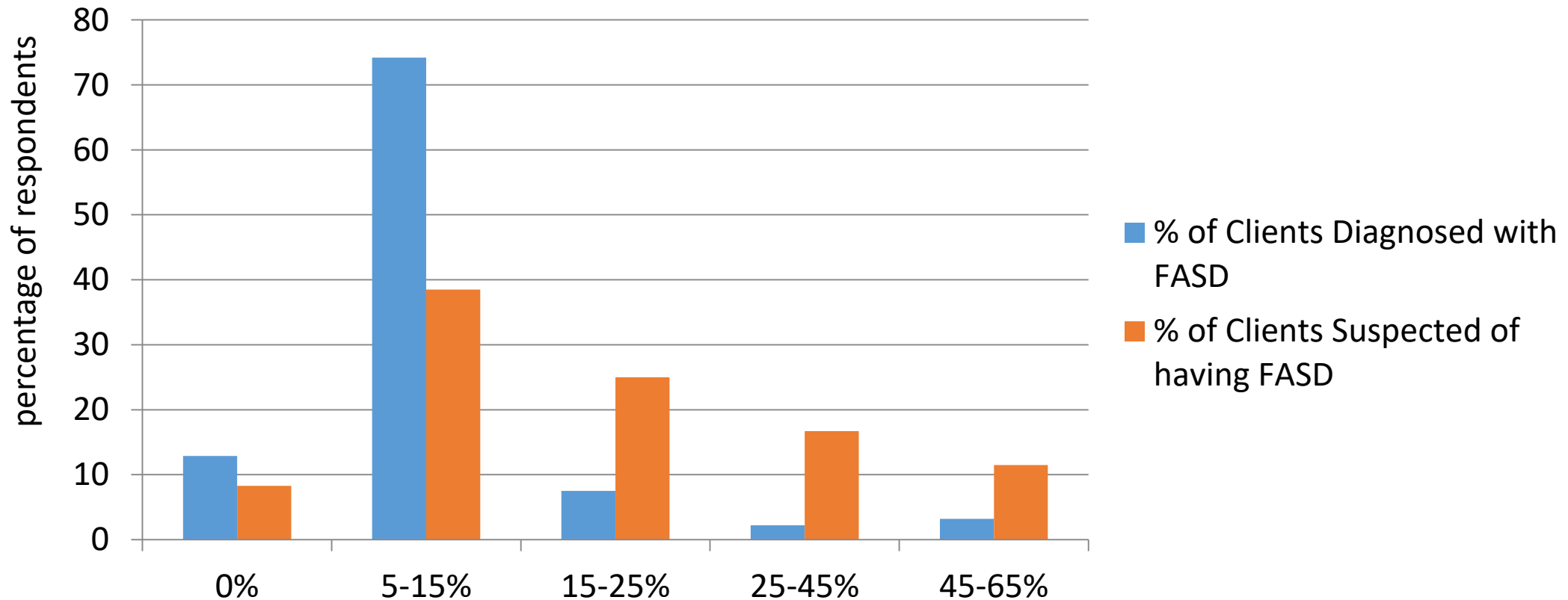
- A repeat of the same offence
- Breaching probation or parole

There is also increased awareness that offences occur while in custody

Unable to use mechanisms available to them within the system to get out of trouble

# FASD AND JUSTICE SURVEY FINDINGS 2013

## PREVALENCE RATES OF FASD AND SUSPECTED FASD



# FASD AND JUSTICE SURVEY FINDINGS 2013

## RESPONDENTS' IMPRESSION OF CLIENTS WITH FASD

Vulnerable clients/offenders

Victimization inside and outside institutions

The qualities in clients with FASD

- Earnest and loyal
- Creative and artistic
- Kind and helpful

## FASD AND JUSTICE SURVEY FINDINGS 2013 RESPONDENTS' REPORTED SIGNIFICANT CONCERNS

Significant concern was expressed by respondents regarding development of or access to appropriate interventions and supports.

They identified that programs are not a good fit

- resulting in client failure
- rather than program failing to meet developmental needs

There are many opportunities to realign services to reduce recidivism, increase individual and community safety

FASD AND JUSTICE SURVEY FINDINGS 2013

WHERE CHANGE IS NEEDED

**Training and education** – *in the community and within the legal and correction's system*

Identification **screening, assessment and diagnosis**

Treatment, support **Housing**

Expand options **DIVERSION, BAIL, COURT SYSTEM & THE USE OF MENTAL HEALTH COURTS**

In custody programs – **skill building**

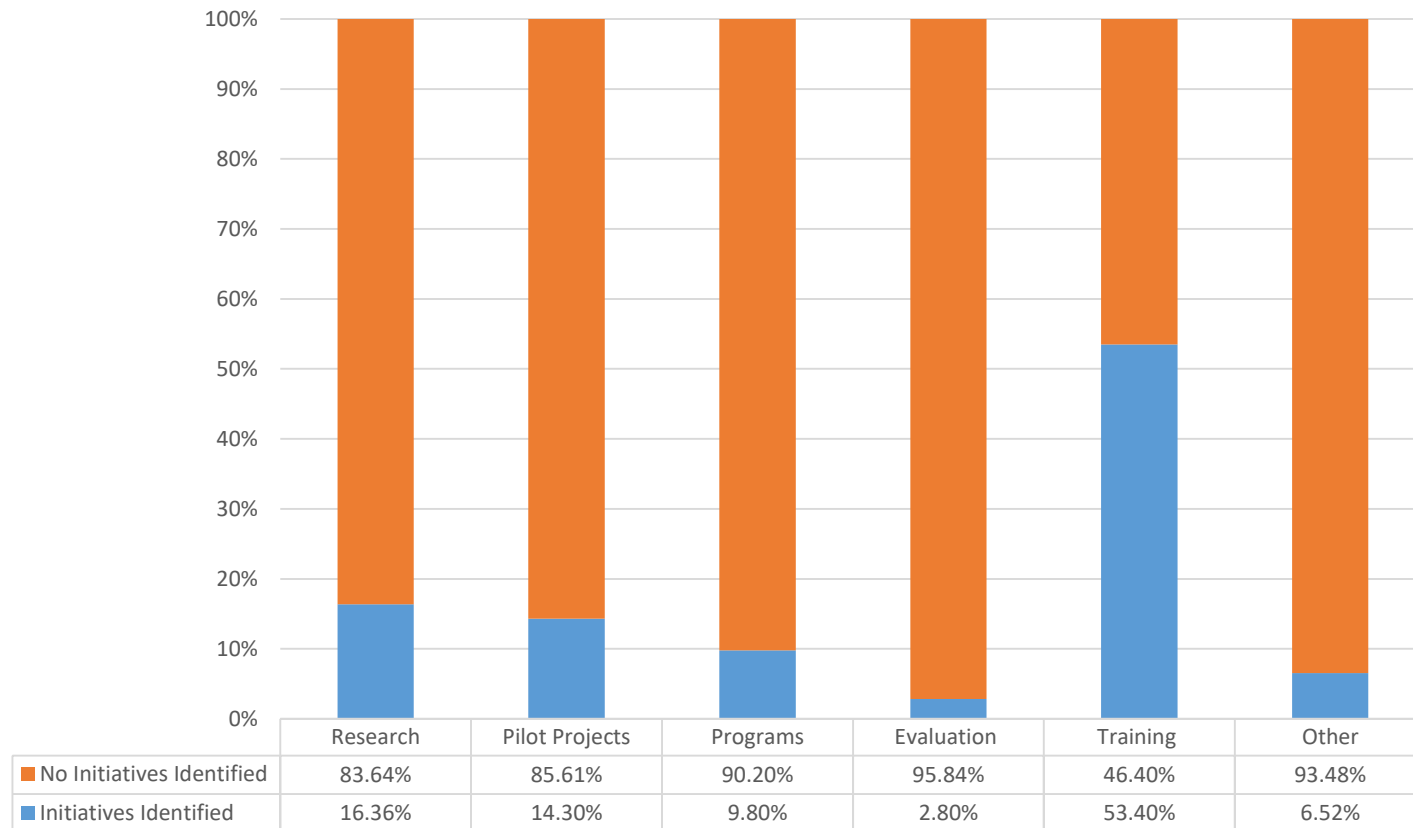
**Case management & long term support**

Findings from FASD and Justice Survey  
2013

# FASD AND JUSTICE SURVEY FINDINGS 2013

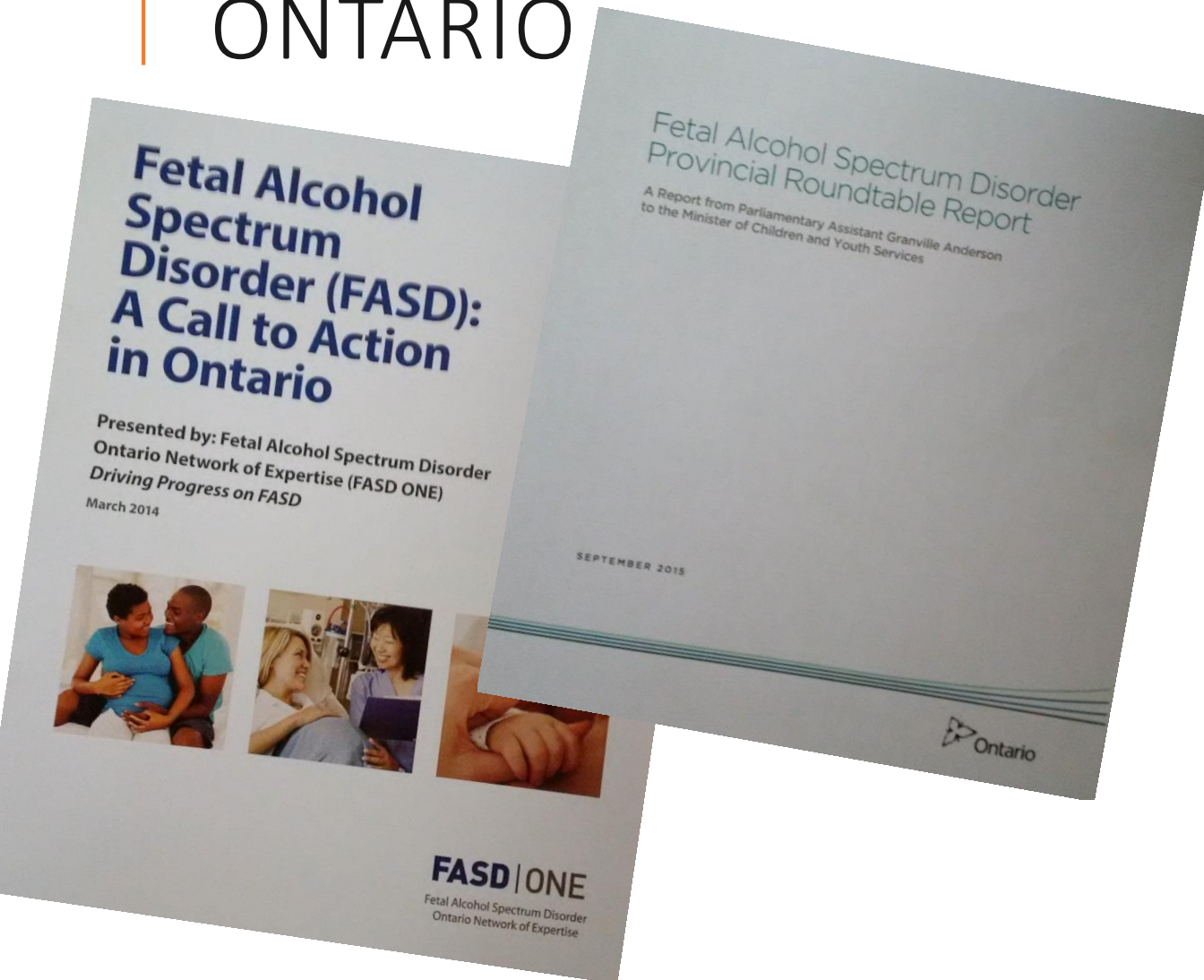
## SYSTEMIC ACTION

**Respondent Awareness of FASD Justice Related Initiatives**



rate of response in each category varied from 42% -55% of overall responses

# LEADERSHIP IN ONTARIO



MCYS is organizing cross-ministerial action and expert and stakeholder engagement.

A recent report provides insight into needs and priority concerns of caregivers, clinicians and individuals with the disability.

The FASD ONE Call to Action and the Ministry initiative outline the need for leadership toward the advancement of effective FASD prevention, intervention, and service enhancement and coordination in key areas of

- Protocols, policies and programs that coordinate services to bridge the life span deficits implied by the diagnosis and that recognize the need for lifelong interdependent living supports

And in areas of

- Awareness and prevention
- Training and knowledge dissemination
- Research and evaluation

[http://www.children.gov.on.ca/htdocs/English/documents/topics/specialneeds/fasd/FASD\\_Roundtable\\_Report.pdf](http://www.children.gov.on.ca/htdocs/English/documents/topics/specialneeds/fasd/FASD_Roundtable_Report.pdf)

# 2013 FASD LEGAL ISSUES CONSENSUS CONFERENCE HIGHLIGHTS:

- Keep those with FASD out of the criminal justice system as much as possible
- Provide stable placements and enhanced transition planning for children with FASD
- FASD-specific training for everyone in the child protection system
- Mandate training for judges, lawyers, and others in the system to recognize FASD
- Screen for FASD in the medical examinations of all children taken into care or for youth and adults in correctional facilities
- Provide access to rapid FASD assessment and diagnosis at critical points in the justice process, e.g. sentencing
- Adjustments to criminal laws for people with (neurodevelopmental) disabilities including FASD:
  - protections for adults with mental disabilities similar to Youth Criminal Justice Act
  - increased emphasis on habilitation as a goal of sentencing
  - recognize mental disability as a factor in the degree of responsibility of an accused
  - more flexibility in sentencing people with mental disabilities

# NEXT STEPS

Expert consensus identifies common concerns across Canada in terms of how the rights and needs of this disabled and vulnerable population are being addressed.

Common themes for priority action include

- Training
- Screening tools
- Review of effective/evidence-based practice
- Change in policy
- Development of FASD-informed programs
- Leadership engagement

# ACTION – NOW

Track FASD diagnosis or suspected cases of FASD

Use screening tools and assessment results to facilitate a diagnosis when FASD is suspected

Identify referral and diagnostic pathways

Develop

- Plan of care protocols for clients with/suspected FASD
- Plan of care protocols for clients with suspected FASD without prenatal history, considering neurodevelopmental disorder – cause unknown
- Develop FASD-informed program components that accommodate treatment, learning and the lifelong developmental needs

Coordinate community services with partners in justice, child welfare, addictions, education, mental health, and social services to contribute to stable lives

# RESOURCES

## **FASD | ONE**

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[www.fasdontario.ca](http://www.fasdontario.ca)

2013 FASD Justice Consensus Statement

<http://www.ihe.ca>

Screening tool

[www.asantecentre.org](http://www.asantecentre.org)

Research

[www.canfasd.ca](http://www.canfasd.ca)

Developmental disability services

[www.community-networks.ca](http://www.community-networks.ca)

Promising practice – justice Alberta

[www.peaksupport.ipage.com/fasd-justice-initiative](http://www.peaksupport.ipage.com/fasd-justice-initiative)

Community of practice

<http://www.fasdchildwelfare.ca/>