

Call to Action

- 32) We call upon the federal government to amend the *Criminal Code* to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

Offenders with FASD

There is another link between the substance abuse that has plagued many residential school Survivors and the over-incarceration of Aboriginal people. Fetal alcohol spectrum disorder (FASD) is a permanent brain injury caused when a woman's consumption of alcohol during pregnancy affects her fetus. The disabilities associated with FASD include memory impairments, problems with judgment and abstract reasoning, and poor adaptive functioning.¹⁴² It is a debilitating cognitive impairment, which children must live with for the rest of their lives, through no fault of their own. A study done for the Aboriginal Healing Foundation drew links among the intergenerational trauma of residential schools, alcohol addictions, and FASD.¹⁴³ The study concluded that the "residential school system contributed to the central risk factor involved, substance abuse, but also to factors shown to be linked to alcohol abuse, such as child and adult physical, emotional and sexual abuse, mental health problems and family dysfunction."¹⁴⁴

About 1% of Canadian children are born with some form of disability related to prenatal alcohol consumption, but estimates from Canada and the United States suggest that 15% to 20% of prisoners have FASD.¹⁴⁵ A recent Canadian study found that offenders with FASD had much higher rates of criminal involvement than those without FASD, including more juvenile and adult convictions.¹⁴⁶ The Commission believes there is a need to take urgent measures both to prevent FASD and to better manage its harmful consequences. There is a clear need in Aboriginal communities for more programming that addresses the problems of addiction and FASD.

Call to Action

- 33) We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

It is challenging for courts to deal with offenders with FASD, because obtaining an official diagnosis entails a long and costly process of multidisciplinary referrals. Even if trial judges have been educated about the symptoms of FASD, they are generally unable to take notice of FASD without evidence of a diagnosis.¹⁴⁷ Clearly, better diagnostic tools are