

**PRACTICE AND POLICY:
FETAL ALCOHOL SYNDROME/FETAL ALCOHOL EFFECT
IMPACTED OFFENDERS AND
THE CORRECTIONAL SERVICE OF CANADA**

by

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B.A., Simon Fraser University, 1997

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ABSTRACT

Until recently, there has been little acknowledgement or understanding of the problems faced by those affected by fetal alcohol syndrome/fetal alcohol effect (FAS/FAE). This is especially the case for offenders. Research indicates that those affected by FAS/FAE are far more likely to have trouble with the law than those who are not. Despite this, diagnosis of FAS/FAE is rare and therefore the disability remains hidden.

A review of Corrections Services of Canada (CSC) policy finds that there are avenues within the policy which could be useful in addressing the issue of FAS/FAE impacted offenders. To date, these avenues do not appear to be utilized, nor is there CSC policy dealing directly with FAS/FAE affected offenders. Seven interviews with corrections stakeholders indicate that the resources to address the needs of FAS/FAE affected offenders are scarce. This lack of resources results in keeping the disability invisible and prevents those affected from obtaining the assistance they need to live a pro-social lifestyle. The features of one program, the Genesis House Program, which is an exception to this lacking, are considered for future Corrections development.

DEDICATION

For David

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INTRODUCTION

Fetal alcohol syndrome/fetal alcohol effect (FAS/FAE) is a set of birth defects caused by prenatal exposure to alcohol. The resulting disabilities manifest themselves cognitively, behaviorally, and sometimes physically. Research suggests that many of those affected by FAS/FAE become involved in the criminal justice system due to their impaired cognitive abilities and poor behavior. It is possible that repeated involvement with the criminal justice system can be attributed to the impact of this disability in some cases. To reduce recidivism and help offenders affected by FAS/FAE live crime free lives, they require support and services to assist them in dealing with this disability. Offenders serving federal prison sentences are monitored and supervised by the Correctional Services of Canada (CSC). The CSC is tasked with incarcerating offenders, preparing them for release and supervising offenders in the community.

There are three main objectives of this thesis. First, this study is an analysis of CSC's policy as it pertains to FAS/FAE affected offenders. Various policy documents have been analyzed to assess their relevance and pertinence to FAS/FAE affected offenders. The second component is an exploration of the impressions and experiences of persons who have worked first-hand with offenders affected by FAS/FAE. This objective was achieved by interviewing various stakeholders who have worked with FAS/FAE offenders. These interviews helped to inform the examination of CSC policy as it pertains to FAS/FAE affected offenders. The final objective is a consideration of the

only existing federal corrections facility in the lower mainland, Genesis House, and how it operates within these CSC policies.

Due to the dearth of research on FAS/FAE impacted offenders, this research is necessarily exploratory in nature. Stakeholders who have experience working on the front lines within corrections were interviewed to determine the real world approaches utilized in managing FAS/FAE impact offenders. These interviews were coupled with an examination of the pilot Genesis House FAS/FAE program. This qualitative approach was employed as this was considered to be the best fit with the research topic.

The first part of this thesis is a literature review including a brief history of the “discovery” of FAS/FAE, as well as a consideration of the problems associated with diagnosis of FAS/FAE. The second part outlines the methodology used in this study. The third part begins with a brief overview of how offenders serving a federal prison sentence are processed. CSC policy pertaining to FAS/FAE offenders is then analyzed including data gathered from interviews with stakeholders and the Genesis House program examination. Lastly is the discussion section of the thesis which includes a consideration of the broader context of FAS/FAE offenders in the criminal justice system followed by a look at the policy challenges existing for addressing FAS/FAE offenders. This last section concludes with a consideration of three theoretical approaches to the issue of FAS/FAE.

THE HISTORY OF FAS/FAE

In Britain at the start of the eighteenth century, the infant mortality rate was higher than the birth rate. As a result, the College of Physicians set up a committee to study the effects of alcohol on babies born to alcoholic mothers. In this study, the researchers examined the children of alcoholic parents over time and found that parental drinking was “a great and growing Evil which was, too often, a cause of weak, feeble and distempered children, who must be instead of an Advantage and Strength, a charge to their Country” (Plant, 1985: 6). Although we know little of the methodology of this study, and their declaration of “feeble children” is clearly a moral and value-based statement, it seems that they were able to distinguish some characteristics of the children born to alcoholic parents which appeared to differ from children of non-alcoholic parents.

A link between alcohol as a teratogen and birth defects has been present in historical literature even earlier than 18th Century Britain. Researchers have identified literature from the time of Sparta, as well as Biblical Scriptures, which have identified the dangers of consuming alcohol during pregnancy. Centuries ago in Sparta, there were laws which stated that newly married couples were not to use alcohol in order to ensure a child was not conceived under intoxication. Similarly, a quote from the book of Judges 13:3 in the Old Testament has an angel warning the mother of Samson that she would bear a son and “Now therefore beware I pray thee and drink not wine nor strong drink” (Plant, 1985: 5).

Although not recognized by nomenclature and scientific study, the effects of alcohol on infants and children had been documented for many centuries. A lithograph titled “Gin Lane”, circa 1730, by English painter William Hogarth depicts “a young child falling out of the arms of a drunken woman; the child appears to show features of FAS.” (Conry and Fast, 2000: 6). Similarly, a painting by Henri de Toulouse-Lautrec titled “Au Salon de la rue des Moulins”, 1894, depicts “one young woman’s dress and demeanor set her apart from the rest, and she shows the typical facial characteristics of FAS.” (Conry and Fast, 2000: 6). The term FAS/FAE, fetal alcohol syndrome/fetal alcohol effect, was coined only 31 years ago, in 1973 by Jones and Smith (Golden, 1999: 272). A number of studies preceded Jones and Smith which examined the similarities of children born to alcohol mothers. It is only recently that the condition of FAS/FAE has come to be widely used to describe the neurological, physiological and psychological characteristics which collectively comprise this syndrome.

It has been suggested that the “discovery” of FAS was little more than moral entrepreneurship, or victim blaming on the part of physicians and researchers, the majority of which have been male. This is not surprising as the consumption of alcohol has long been considered a moral issue as well as a health issue. From a critical perspective as well as a feminist perspective, male physicians who discover the problems of children born to women who consume alcohol but do not have the power to prevent it or cure it are doing nothing more than committing an act of moral entrepreneurship (Armstrong, 1998). Although this is an intriguing argument and one that might be

pursued in another arena, such a discussion does little to ameliorate the quality of life for those who are suffering from the disability in their everyday lives and are the focus of this thesis.

The terminology used by academics and clinicians in the field of FAS/FAE research has evolved with ongoing research and diagnosis. The first term used to describe persons who had been exposed to alcohol in utero was “fetal alcohol syndrome”. Later, as clinicians were studying and diagnosing individuals it became apparent that there were variations in the presenting characteristics of FAS, one of which was that some people did not show the facial dysmorphology associated with FAS. Thereby the term “fetal alcohol effect” was adopted to describe these people who did not show facial dysmorphology. In 1996, the Institute of Medicine (IOM) examined the diagnostic criteria to date and suggested that FAE no longer be used as a diagnosis but subdivided into two groups: alcohol related birth defects (ARBD) to connote those displaying the physical characteristics, and alcohol related neurodevelopmental disorder (ARND) to connote those with neurodevelopmental issues. It was also suggested by the IOM (1996) that partial FAS (pFAS) be used to identify those for whom a history of maternal drinking could be confirmed, as well as having some of the facial dysmorphology components and at least one of the other diagnostic criteria for FAS (IOM, 1996).

Most recently, the term fetal alcohol spectrum disorder (FASD) which includes all of the above has been used as an umbrella term to cover the wide range of behavioral, cognitive and physical deficits of individuals formerly known as FAS. Moreover, studies have

shown that a diagnosis of FAS does not mean the person is more disabled than one who is diagnosed with FAE (pFAS), ARND or ARBD. One study examining deficits in executive functioning found that those diagnosed with ARBD performed the same as those diagnosed with FAS on certain tasks (Kodituwakku, Kalberg, & May, 2001). Despite the fleshing out of newer terms to describe the variations in FASD affected individuals, many academics continue to use the terms FAS and FAE. This may be due to the fact that without extensive testing or sophisticated equipment to confirm brain injury and activity via a magnetic resonance imaging (MRI), it is often difficult for researchers to know if they are dealing with someone with FAS, pFAS, ARBD, or ARND. Due to the continued usage of the terms FAS and FAE by most academics and researchers, for the purposes of this thesis, the term FAS/FAE will be used and differences between the two will be highlighted only when necessary.

DIAGNOSIS AND CHARACTERISTICS OF FAS/FAE

The term fetal alcohol syndrome (FAS) refers to a “pattern of defects in children born to alcoholic women” (Able, 1984: 1). A number of diagnostic systems have been developed (Astley and Clarren, 1997, Stratton et. al. 1996, Sokol and Clarren, 1989 in Conry and Fast, 2000, Able, 1984). However, all include at least three of the same criteria and some researchers have recently added a fourth. According to Able (1984), in order to be diagnosed as having FAS, three main criteria must be met. These are: 1) pre and postnatal growth retardation, 2) facial anomalies, and, 3) central nervous system dysfunction (Able, 1984: 1). The fourth criterion requires the confirmation, or strong suspicion that alcohol was consumed by the mother during pregnancy. Many now

consider this fourth criterion to be necessary for a full diagnosis of FAS (Conry and Fast, 2000:8). If only one or two of the criteria are met, a diagnosis of fetal alcohol effect, FAE, may be made. Without the evidence of maternal consumption of alcohol during pregnancy however, a diagnosis of FAE is tentative at best as many of the characteristics of FAE can also be observed in conjunction with other congenital disorders (Able, 1984: 2).

Three of the four criteria required for a diagnosis of FAS/FAE have a wide range of possible manifestations. The first criterion, pre and postnatal growth retardation, indicates that the infant with FAS/FAE will be small in weight and height at birth. The baby may also have a small head circumference at birth as compared to babies not affected by FAS/FAE. Babies born with FAS/FAE on average weigh less than 2500g at birth. A study by Sokol, Miller and Reed (1980) found that children born with FAS/FAE weighed on average 190g less than children born with no alcohol related complications. Many children born with FAS/FAE will not experience a “catch up” growth period as most small but otherwise healthy children do. As adults, many with FAS will be small in stature and weight as compared with the average size adult (Able, 1984: 1-2, and Streissguth and Connor, 2001: 507).

The second criterion, facial anomalies, consists of such characteristics as short palpebral fissures (length of eye slits), indistinct philtrum (ridge running between the nose and upper lip), narrow upper lip, flat elongated mid face, and low set ears. Joint, limb, cardiac and hearing impairments are also common in FAS/FAE individuals. Of

importance with regards to diagnosis is that most often, children born with facial features of FAS will outgrow these features as they progress through adolescents. By the time they become adults, many of the overtly identifying facial features of FAS will have disappeared (Able, 1984: 1-2, and Streissguth and Connor, 2001: 507).

The third criterion of central nervous system dysfunction includes seizures, fine or gross motor problems, hyperactivity, poor attention span, sleep disorders and behavioral difficulties (Able, 1984: 1-2, and Streissguth and Connor, 2001: 507). Brain damage caused by prenatal exposure to alcohol can lead to behaviors which may lead to an increased likelihood of becoming involved with the criminal justice system.

The features of FAS/FAE can be conceptualized along a continuum of impairment which stretches from those within the normal range to those displaying features and characteristics of FAS/FAE. This view of the problem is often contrasted to a more simplistic black or white perspective in which FAS/FAE is seen as something which is either present or absent in an individual. Unfortunately the use of a continuum can make diagnosis more difficult on occasion. There is a lack of standards and guidelines to follow with regards to diagnosis. This has the potential to lead clinicians to somewhat subjective judgments of uncertain quality in the diagnostic process (Clarren et. al., 2000: 309).

In 1997, a more objective and empirically derived method of diagnosis was devised called the 4-Digit Diagnostic Code (Astley and Clarren, 2001). This method of diagnosis

considers four feature areas each of which is rated on a 4-point Likert scale with a rating of 4 indicating a severe expression on that feature and a rating of 1 indicating no expression of that feature. The four feature areas are: 1) growth deficiency, 2) FAS facial phenotype (devised by using measures of palpebral fissure/inner canthal distance ratio, smooth philtrum, and, thin upper lip), 3) brain damage/dysfunction, and 4) gestational alcohol exposure. This method can be used for diagnosis and as a screening tool. It is currently being used to screen children entering foster care in some parts of Washington, as well as on inmates in a juvenile rehabilitation facility in Washington. Using this method, the researchers have found that, “As the magnitude of expression of the FAS facial phenotype increased from 1 (normal) to 4 (severe FAS), the proportion of patients with evidence of organic brain damage (structural, neurological and/or functional) increased significantly.” (Astley and Clarren, 2001: 154). This method of diagnosis has certain similarities to that of Able (1984), however, it appears Astley and Clarren have taken a more scientific approach which leaves less room for interpretation by the clinician and allows for a more objective and quantitative approach to diagnosis.

One of the difficulties in reaching a firm diagnosis of FAS/FAE is that there are a number of disorders and dysfunctions which share many of the characteristic behavioral traits as FAS/FAE. Some of these include attachment disorder, attention deficit/hyperactivity disorder, autism, oppositional defiant disorder and sensory integration dysfunction. As an example, the behavioral characteristics shared by FAS/FAE and oppositional defiant disorder (DSM IV) are: often loses temper, often argues with adults, (perceived as) defying or refusing adult requests or rules, often ‘deliberately’ does things that annoy

other people, often blames others for his own mistakes, is often touchy or easily annoyed by others, is often angry and resentful, is often spiteful or vindictive, and, often swears or uses obscene language.

One of the most common misdiagnoses due to overlapping symptoms with FAS is attention deficit hyperactivity disorder (ADHD) (Coles et. al., 1997). This may be unintentional as 70% of those diagnosed with FAS display hyperactivity (Majewski and Majewski, 1988), or it may be that it is intentional as ADHD, unlike FAS, is found in the DSM-IV and as such insurance may cover medical costs associated with ADHD but not those of FAS/FAE. Additionally, there may be a possible clinician bias in which diagnosis is procured due to the fact that FAS/FAE is not a diagnosis found in the DSM-IV, or perhaps because the clinician may lack the training or the confidence in diagnosing FAS/FAE. The issue of overlapping diagnosis is essential as it emphasizes the importance of determining the true etiology of the problem prior to any intervention. If the etiology is unknown, the person may be misdiagnosed which in turn only compounds their problems (Malbin, D.B., A Selection of Possible Overlapping Diagnosis and FAS/FAE, no date).

It has been suggested that adults with FAS or FAE seem to be at risk for other mental illnesses such as alcohol dependence, depression and psychotic disorders (Famy et. al, 1998). Given the link between substance abuse and criminal behavior, these people have a higher chance of becoming involved in the criminal justice system (Streissguth, 1997). Additionally, academic literature supports the hypothesis that incarcerated populations

have higher rates of mental disorder than community populations (Teplin, 1990; Motiuk & Porporino, 1991). Motiuk and Porporino (1991) studied randomly selected Canadian male federal offenders and found that those with mental illness were more likely than non-mentally ill offenders to be detained longer due to a lack of mental health services to meet their needs, released less frequently on full parole and readmitted more often for technical breaches of release conditions. Given this, it is possible that FAS/FAE may be considered a hidden mental illness and may account for a proportion of mentally ill or otherwise behaviorally problematic offenders.

Much of the research on individuals affected by FAS/FAE includes a distinction between primary and secondary disabilities. A primary disability is considered to be the physiological, neurological or organic result of being exposed to alcohol in utero, as in the three criteria outlined above. Secondary disabilities have been defined as, “those that arise after birth and presumably could be ameliorated through better understanding and appropriate interventions.” (Streissguth, Barr, Kogan, and Brookstein, 1997: 27).

A secondary disability is not part of the diagnosing criteria. It is a constellation of problems which often arise for an individual living with undiagnosed and unrecognized primary disability. Examples of secondary disabilities stem from “experiences of frustration, failures, and lack of acceptance by peers and adults” (Clarren et. al., 2000: 309). If severe and persistent, secondary disabilities can develop into a psychiatric disorder such as “high functioning autism, borderline personality disorder, depression, attention deficit hyperactivity disorder, and anti social personality disorder” (LaDue and

Dunne, 1996: 3). As stated by Coles et. al. (2000: 607), “earlier diagnosis of the effects of exposure would allow intervention in infancy and prevention of associated secondary disabilities”. It seems possible then that some offenders who are found to have such diagnosis as anti-social personality disorder, attention deficit hyperactivity disorder, or borderline personality disorder may in fact be offenders impacted with FAS/FAE. It seems possible that these offenders, having their lives affected by FAS/FAE and accompanying secondary disabilities, become diagnosed as depressed, anti-social personality disorder or attention deficit hyperactivity disorder thus adding to the statistics on mentally ill offenders without recognition of their true mental illness, FAS/FAE.

Protective factors are those that help diminish the secondary disabilities of someone affected by FAS/FAE and increase their chances of success in the community. Protective factors are such things as having a stable and nurturing family, not being a victim of violence, receiving developmental disabilities services, and being diagnosed prior to age six (Streissguth, 1997). With the presence of such factors, it has been found that the individual’s chances for successful community living are improved.

One of the most disturbing facets of FAS/FAE is that there is no known safe level of alcohol consumption during pregnancy. Consuming alcohol during pregnancy, does not guarantee that a child will be born with either FAS or FAE. In fact, a woman may consume alcohol while pregnant and have a perfectly healthy child. What is not currently known is when in the gestation period or at what amount, alcohol consumption will cause birth defects. It does appear however that with higher amounts consumed and at a greater

frequency, there is a greater risk. In addition, the term “Alcohol Related Neurodevelopmental Disorder” (ARND) refers to the condition affecting children exposed to alcohol in utero but at lower levels than FAS children. ARND children exhibit intellectual and behavioral deficits but not to the extent of FAS children (Jacobson and Jacobson, 1999). According to Sokol et. al, the threshold for FAS is if the mother consumes approximately 42 standard drinks (1 standard drink = .5 ounces of absolute alcohol) per week at the time of conception (Sokol et. al., 1988: 339).

It appears that some characteristics of FAS/FAE follow a dose-response pattern whereas others seem to be present at a certain threshold. As an example, Jacobson and Jacobson (1994) found that “for some behaviors, such as mental development, even the smallest dose of alcohol prenatally appears to have some adverse effect on the fetus, and the severity of the effect increases gradually with increasing levels of exposure.” (Jacobson and Jacobson, 1994: 31). Animal studies as well as long term studies in humans have found that binge drinking, where the fetus is exposed to a high blood alcohol concentration (BAC) over a short period of time which may later be repeated, produced the most severe cognitive and behavioral deficits. A pattern of binge drinking as opposed to a pattern of consuming the same amount of alcohol in a more continuous pattern may be more harmful as the high BAC associated with binge drinking may occur at critical points in the fetus’ development (Maier and West, 2001).

Several factors do influence the occurrence of FAS/FAE. Some of these factors are maternal nutritional health, physical health, amount of alcohol consumed, when alcohol is

consumed in the gestational period, duration of consumption, rate of metabolization of alcohol in mother's body, genetic susceptibility, variation in the vulnerability of different brain regions, and possibly race (Williams et. al. 1999; Conry and Fast, 2000; Maier and West, 2001). Recent animal studies suggest that vitamins C and E, beta-carotene, folic acid and plant based flavonoids may play a role in protecting a fetus from alcohol damage (Krangle, 2002). This seems to be a bold statement which may be dangerous as it could be construed to mean that consumption of such vitamins may negate the effects of alcohol consumption. It may also be that these findings may not transfer to humans as the results were found using animal trials.

As with many emerging areas of study, there is a great deal of myth and misunderstanding surrounding FAS/FAE. It is also likely that myth is propagated by the relatively small amount of research on the issue, as well as the complexity of the problems associated with this type of disability. One such myth is that FAE is a milder form of FAS. This is not the case. In fact, a person with FAE may be as impaired or even more severely impaired than someone with FAS in terms of their functional ability. However, due to the lack of outwardly appearing impairment, someone with FAE may not be identified as early in life as someone with FAS. As a result, someone with FAE may have as many or more secondary disabilities as someone with FAS. According to Clarren et. al. (1978: 64), "...the brain alterations may be the only distinct abnormality produced by in utero ethanol exposure." When such a person is not identified, and no interventions are put into place, the problems they experience may be more severe than that of someone with FAS who has been identified and has received assistance. Another

myth which contributed to the slow pace of the discovery of FAS/FAE was the long held belief that the placenta protected the fetus from such dangers as toxins and infections (Conry and Fast, 2000: 5). This is most certainly not the case, and it is now well known that that which is ingested by the mother is passed along to the fetus.

Current literature suggests that being exposed to alcohol in utero can lead to numerous problems from physical deformities/aberrations, central nervous system (CNS) problems, learning disabilities, behavioral problems, brain abnormalities, and mental retardation. Given the ethical implications of research which might cause FAS/FAE, only certain study designs lend themselves to this area of research. However, a considerable body of research on laboratory animals exposed to alcohol in utero has been instrumental in determining and confirming the teratogenic properties of alcohol. These studies show that animals exposed to alcohol in utero had rates of death, malformation, growth deficiencies, and behavioral and developmental abnormalities higher than those in the control groups (Streissguth, Barr, Martin, Darby. *The Fetal Alcohol Syndrome as a Model for the Study of the Behavioral Teratology of Alcohol*. University of Washington, no date).

Characteristics of, and the problems caused by FAS/FAE have been more extensively studied in terms of how they affect children and adolescents. There is much less research examining adults with FAS/FAE, however, FAS/FAE is a lifelong disability that can not be eliminated with drugs or treatment. As such, children and adolescents who are

affected by FAS/FAE will become adults who are affected by FAS/FAE. Some of these adults then become involved in the Canadian criminal justice system.

FAS/FAE OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM

FAS/FAE impacts a large portion of Canadian Society directly or indirectly. There is little agreement on the rates of FAS/FAE within Canada as well as on a global scale. In large part this is due to the issues of diagnosis. Rates are inherently problematic due to the cost, time and difficulty in getting a diagnosis. If only the diagnosed cases of FAS/FAE are considered in the calculation of rates, the rates would be extremely low. But without diagnosis, rates are difficult to acquire. Some research suggests that the national average for FAS or FAE cases in Canada is 1 in 6 live births (Coles, 1993: 256), whereas others suggest the national rate is approximately 1 in 1,000 births (Krangle, 2002). According to May and Gossage (2001), variance in reported rates are due to differences in diagnosing criteria, population studied and methodological issues. It has been estimated that the incidence rate in North America is between 1.4-9.8/1,000 live births (May and Gossage, 2001). A review by Able and Sokol (1987, in Single, 1992) of 19 epidemiological studies from around the world found that the universal estimated rate of FAS was 1.9 per 1,000 live births. Also, it is not clear what criteria were used by each of these researchers in order to arrive at their respective rates of FAS/FAE. According to Dr. Loock, a FAS pediatrician and researcher, "The prevalence of FAE is not as well known due to a lack of recognition and diagnosis, but it may be as high as 1 in 30 births and in communities with an unusually high rate of alcohol abuse, it may be 1 in 5 births." (McCreight, 1997).

Rates of FAS and FAE in Aboriginal communities in Canada have been found to be much higher than the estimated national average. A study of an Aboriginal community in British Columbia found a startling high rate of FAS and FAE in that community of 190 per 1000 children (Single, 1992: 2). This may be due to a higher rate of consumption of alcohol in Aboriginal communities, however, health initiatives such as the one in northern Manitoba in which children have been diagnosed via telelink between the Thompson Hospital and the FAS Diagnostic Center in Winnipeg may also contribute to the discovery of FAS cases (Square, 1999). A document produced by the Attorney General's office titled "People With Disabilities" (1991) notes that "A psychiatrist at the Matsqui prison estimates that thirty per cent of the population in corrections may be alcohol-affected." (Judges Handbook, 1991: G6-13).

A study at the University of Washington School of Medicine found that 60% of those with FAS and FAE get into trouble with the law, and other studies estimate that 23% to 50% of the prison population in Canada is affected by FAS/FAE (McLean, 2001). There is clearly some variability between these estimates and the wide variety of possible manifestations of FAS/FAE can make diagnosis or identification difficult. However, given these estimates it seems there must be a great number of federally incarcerated offenders who are affected by FAS/FAE regardless of whether or not they have been diagnosed. One of the reasons it has been difficult to get a firm hand on numbers of those in prison with FAS/FAE is that diagnosis is very time consuming, extremely expensive, and currently not part of the screening process in prisons.

The Processing of FAS/FAE Offenders

The process of diagnosis requires the clinician to obtain a great deal of information from the person as well as collateral information, testing and interviewing. A diagnosis requires an interdisciplinary team of people from such fields as medicine, psychology, speech/language pathology, occupational therapy, social work, public health and family advocacy. This team of specialists will generally participate in a preliminary team conference, team assessment including interviews with the child and caregiver, team deliberation, case discussion, feedback to parents, case discussion and a therapeutic debriefing with parents, case discussion and therapeutic debriefing with the child, and finally, staff debriefing (Clarren et. al., 2000: 310).

The problems associated with getting a diagnosis is one of the great hurdles for addressing the issue of FAS/FAE. The process of diagnosis is further complicated by the nature of some of the information required. For example, there is often a lack of reliable collateral information to verify maternal drinking during pregnancy. There are also problems with diagnosis simply due to the passage of time as attempting to diagnose children who, in many cases, have been separated from their birth parents and may have had foster placements. According to research, 80% of children with FAS are not raised by their biological family (Streissguth, conference presentation, 2004). Furthermore, diagnosing adults is especially difficult as they might have outgrown many of the outwardly visible physical facial features characteristic of FAS. Owing to an unstable lifestyle, it seems likely that offenders within the federal correctional system may not

have photos of themselves as children so these cannot be used to verify facial anomalies. As well, they may no longer be in contact with their birth parents.

One of the greatest difficulties for someone living with FAS/FAE is they are not able to connect the cause and effect of their behavior. Without the ability to consider outcomes and connect cause and effect, the rules and laws of our society would make little sense. In fact, it begs the question of whether someone impacted with FAS/FAE is capable of forming the 'mens rea', or intent, necessary to be considered guilty of an offence in a court of law. "The theory, if not the precise language, of criminal law demands that convictions take place only when there is a coincidence of *mens rea* (an evil intention) and *actus reus* (an evil action)." (Boyd, 1995: 20). As an example of lesser severity, an offender affected by FAS who participated in the Genesis House FAS Program (to be discussed in detail later) procured a bicycle in order to get to and from school. He was advised by the halfway house staff to wear his bicycle helmet for his safety and because it is the law that a bicyclist must wear a helmet. This offender scoffed at the idea of wearing a helmet for safety reasons as he did not intend to get hit by a car or fall off his bike and therefore, in his own mind, this would not happen (personal communication, Antrobus, 2003).

FAS/FAE impacted individuals may have well developed verbal skills but little understanding of the meaning of words and how they translate into action. In discussion with T. Antrobus (2003), the Manager of the FAS program at Genesis House, she stated that one of the participants of the program successfully participated in the Cognitive

Skills Program three times. This program aims to assist offenders to think about their thinking by teaching problem solving techniques etc. Each time he completed the program he was given a positive report in that he was a good participant in the class and was able to name the concepts and requisite steps to problem solving etc. However, despite participating thrice in a program that usually is taken only once, he still was not able to use the skills taught. This exemplifies the ability to “talk the talk but not walk the walk” as he could verbalize the right answers but was unable to translate this into action in his life.

Some people with FAS/FAE may have normal IQ scores, however this does not translate to their level of functioning in the world. Those with FAS/FAE may have difficulties forming friendships due to their lower level of functioning as compared to age appropriate peers. Maintaining friendships is also difficult as others may become annoyed by the behaviors of persons with FAS/FAE and soon part company with them. Those with FAS/FAE are often easily led by others they hold in high esteem, as a result, they easily fall into favor with those that use them for their own gain such as holding contraband while incarcerated, or committing an offence from which others will also benefit. As a result, they get caught again and again for their offending behaviors as well as transgressions or rule breaking in prison. As an example, two offenders both of whom were participating in the Genesis House FAS Program got caught for stealing a car. They had stolen the car and driven it by the halfway house waving as they drove by. They had been observed by halfway house staff and thus caught. When questioned as to why they stole the car, they responded that they had stolen it for someone else (another resident in

the halfway house) who needed it for a planned bank robbery (personal communication, Antrobus, 2003).

Those affected by FAS/FAE may perseverate on issues and fixate on a very narrow set of circumstances without understanding the “big picture”. They may have difficulty forming appropriate friendships with others due to their lower level of functioning and misinterpreting social cues. Those affected by FAS/FAE tend to be impulsive and this also applies to their criminal behavior. In contrast to offenders who do not suffer with brain damage, FAS/FAE offenders most often commit offences that are not premeditated (Streissguth, 1997).

These problems lead to a number of difficulties with regards to incarceration and re-release. Persons with FAS/FAE often make good inmates from a security point of view as they often respond well to the rigid structure of everyday life in an institution. Conversely, they may also be difficult to manage as they have problems with the unwritten rules of the ‘con code’. Research has found that offenders with FAS/FAE often have a difficult time adjusting to the uncertain nature of the prison environment (Boland et. al., 2002). Upon release, FAS/FAE affected offenders require a high degree of structure and guidance from people they feel they can trust. Although offenders who receive parole are released from institutions with a release plan which they are to follow while residing in the community on parole, offenders with FAS/FAE often do not understand this transition and the independence that comes with it can often be difficult

to manage. For these individuals, suspension of parole and a return to prison is not unlikely.

A COMPARATIVE RATIONALE

Within federal corrections, there are a number of special populations which today are recognized as significantly different from the majority of the prison population. These groups include, amongst others, female offenders, Aboriginal offenders, elderly offenders and mentally ill offenders. Each of these groups have been recognized by the managing ranks of CSC and have been provided with specialized programs, housing facilities, treatment, education, and support services. Time and money has been allocated in an attempt to address the needs of these offenders as they have been recognized as having needs different from the average male prison population. FAS/FAE affected offenders do not yet appear to have gained the legitimacy as these other groups, however it must be recognized that each of these groups did not emerge as unique populations overnight.

There are several parallels between the currently emerging interest in FAS/FAE offenders and groups that have come into their own over time. An example of such a parallel is between FAS/FAE affected offenders and female offenders. In Canada prior to 1938, female offenders were housed in male penitentiaries often in the attic of such prisons as Kingston Penitentiary for Men. At this time, female offenders were recognized as being somehow different from male offenders. In 1938 the first prison for women was opened in Canada due to the “reformist recognition that male and female prisoners could not be effectively controlled within the same institutions and with the same staff...” (Faith,

1993:129). Despite being housed in a facility separate from male offenders, the Kingston Prison for Women was designed on the same surveillance principles as men's institutions with the same architecture and militaristic style found to be ineffective for male offenders (Faith, 1993: 132). Since the opening of the Kingston Prison for Women, many task forces and commissions recommended its closure as it did not meet the needs of female offenders. It is interesting that the government of Canada spent so much time and money constructing the Kingston Prison for Women without doing any research as to why and how female offenders were different from male offenders and how these needs could best be met. In 1990, the Commissioner of Corrections made an announcement that the Prison for Women would be closed within 4 years and five regional facilities for female offenders would be built with a women centered approach (Faith, 1993:141). In the mid to late 1990's some of these promised five regional correctional facilities for women came into being.

From the time female offenders were officially recognized as being different from male offenders, it took approximately 60 years for female offenders to be recognized as to how and why they were different. Over the course of that time, it also became apparent that female offenders were in need of different facilities with a women centered focus including substance abuse counseling, counseling for sexual abuse, and child care programs at the prison.

Similarly, FAS/FAE offenders themselves are aware that they are different from the rest of the prison population. It has been only in the past few years that FAS/FAE affected

offenders have been recognized as existing within corrections. A specialized unit within an institution for FAS/FAE affected offenders is in the planning stages at this time. This is evidence that CSC is beginning to recognize that FAS/FAE offenders are different from the rest of the prison population, however very little has been done to address this population to date. In British Columbia, the only specialized program provided to a small number of FAS/FAE affected offenders on release has been the Genesis House program. Within institutions however, FAS/FAE impacted offenders are treated the same as all other offenders.

In viewing the parallels between female offenders and FAS/FAE affected offenders, it is encouraging that females have been recognized as a special population and are now treated from a female centered approach as opposed to being treated the same as all male offenders. The fact that such a paradigm shift has occurred with regard to the female offender population lends hope for FAS/FAE impacted offenders within the system of corrections that they too might achieve some reasonable level of recognition and differential treatment based on their disability. This will require time and money being spent in the name of FAS/FAE offenders, with new policies and procedures being created based on sound research and understanding of the requirements of this population of offenders.

The problem of FAS/FAE within federal corrections has yet to emerge as an issue dealt with via policy. Currently, there is no policy which specifically deals with FAS/FAE offenders. This can be viewed as either a positive or negative attribute. On the one hand,

having no policy in place means that initiatives can be attempted with regards to these offenders and various approaches tried with regard to their incarceration and eventual release. These various approaches can then be evaluated as to their effectiveness and those that are not successful can be discarded, meanwhile something will have been learned and this new knowledge can be employed in the next attempt thereby improving the approach used with these offenders.

On the other hand, the lack of policy could be seen as an unwillingness to recognize the problem or of an inability to deal with it by way of implementing appropriate policy. It is most likely that the former applies to the CSC's approach to dealing with FAS/FAE offenders. The field of study and research of FAS/FAE is still in its infancy and much research is needed in order to forge further understanding of those affected by FAS/FAE, and of how to address their needs. As such, it would likely be premature for CSC to implement new policy regarding these offenders. What appears to be needed at this time is both more research and initiatives to assist FAS/FAE offender. Further research is needed into FAS/FAE affected offenders and a consideration of how they are different from other offenders as well as how their needs can be met within the correctional system and beyond. Actionable initiatives such the Genesis House project need to continue and others created in order to develop services for FAS/FAE offenders and assist those affected with FAS/FAE who are currently in institutions or on parole.

Once policy becomes established, it becomes the norm of how to deal with a certain problem. This method then becomes the accepted standard of what to do with the issue at

hand. Many questions remain and will need to be answered before CSC will likely be willing to implement policy dealing with FAS/FAE offenders. It is not surprising that financial concerns will be a top priority when assessing what is the best approach to take with FAS/FAE offenders. Some things are known with regard to how FAS/FAE offenders need to be treated. For example, it seems safe to say that FAS/FAE offenders need a structured and supportive environment, they need assistance with the most basic life skills such as budgeting, job finding, etc. As well, in any learning environment, FAS/FAE offenders need to be presented with simple steps and much repetition of lessons. We know that they have certain behavioral and cognitive disabilities that leave them vulnerable as targets who are easily led by others, they are impulsive and do not understand the link between their actions and consequences. Although much more information is known about FAS/FAE affected offenders, the above mentioned characteristics are the major hallmarks of the disability.

Given what is known of FAS/FAE affected offenders, it is surprising that they are not already a group targeted for further study and intervention as it is likely that these offenders compose a large proportion of the “revolving door” population of prisons. It seems likely that in time, policy regarding the incarceration and release of these offenders will be created as they tend to be particularly problematic and require special interventions. This policy would be created in response to the issues faced by those working within corrections and trying to meet the needs of FAS/FAE offenders. Currently CSC appears to be taking some steps toward beginning to identify the issue of FAS/FAE offenders. According to CSC’s plans for 2003-2006, one of their goals is to

“develop a protocol for assessing the characteristics and behaviors associated with FAS/FAE, the types of interventions required and staff related training needs.” (www.tbs-sct.gc.ca/est-pre/20032004/CSC-SCC/CSC-SCCr34_e.asp). If this goal is met, it will no doubt be a precursor to further developments in the area of FAS/FAE in corrections and a protocol for dealing with FAS/FAE affected offenders will one day be the result. It is hoped that the development of practices in dealing with FAS/FAE affected offenders will follow a similar trajectory as that of any other specialized group of offenders such as sex offenders, female offenders or Aboriginal offenders. As an example, some years ago, sex offenders were not treated any differently from other types of offenders in that they were not afforded any specialized programming or treatment. Today, sex offenders are recognized as a special group of offenders with needs different from other types of offenders. As a result, sex offender treatment programs exist. These programs are run by psychologists and staff who have received specialized training on managing the risk of sex offenders.

METHODOLOGY

As stated in the Introduction, the objectives of this thesis are three-fold. First, this study is an analysis of CSC's policy as it relates to FAS/FAE offenders. The second component is an exploration of the impressions and experiences of persons having worked first-hand with offenders affected by FAS/FAE. The third objective is a consideration of the Genesis House program, as an exemplar, and how it operates within CSC policy. Therefore, there were two sets of data to be gathered. The first being the policy documents for the policy analysis, and the second being the experiences of persons working with FAS/FAE offenders, collected through interviews. The data gathered from the interviews were specifically from people who have worked within federal corrections with FAS/FAE offenders. These helped to inform the examination of CSC policy as it pertains to FAS/FAE offenders.

A proposal for this thesis was submitted to the Simon Fraser University Ethics Committee and received approval from the Committee on September 26, 2003. Minor amendments were submitted to the Simon Fraser University Ethics Committee in January 2004 and approval for the amendments were granted by the Simon Fraser University Ethics Committee on April 20, 2004. With approval in place, seven interviews were conducted with the various stakeholders over the course of 6 weeks with the final interview taking place on February 20, 2004.

Seven interviews were conducted and all are included in this study. Two interviews were with psychologists, two with parole officers, two with program providers and one with

the manager of the Genesis House program. The interview schedules for each of the four groups of interviewees was different as their roles in the correctional system are functionally different from each other (See Appendix B). However, some issues were covered with all interviewees, such as the training provided to them, and what changes they would like to see in order to be able to work more effectively with FAS/FAE offenders. As an example of their differing roles, CSC psychologists are tasked with administering actuarial tools and conducting interviews in an effort to assess an offender's risk. Additionally, psychologists may counsel offenders in order to assist them in dealing with problematic areas of their lives. These psychologists see offenders only in their offices or within the institutions, they do not meet with offenders at their homes, in the community or at a community residential facility. Therefore, they are not seeing the offender in any other setting than the clinical one. This is in contrast to the work of a parole officer who meets with offenders in a variety of settings.

The interview questions asked of the psychologists pertained to assessments and services available to FAS/FAE offenders, whether FAS/FAE offenders are sent to the Regional Treatment Center, staff training regarding FAS/FAE awareness, and policy related issues.

In contrast to the psychologist's role in CSC, the parole officer's interview contained questions about supervising FAS/FAE offenders in the community, how they meet CSC's goal of community safety and offender reintegration with FAS/FAE offenders, and FAS/FAE awareness training of parole officers and whether this is helpful to them. Parole officers work in the community with offenders who are on release from the

institution. They meet with offenders in their homes, at work, at community residential facilities or any number of different places. Parole officers also meet with family and friends of the offender and communicate with these people regularly. The work of the parole officer is to supervise the offender's progress in the community and ensure community safety during the reintegration process of the offender.

The duration of the interviews lasted from 50 minutes to two hours, varying with the degree of experience each subject had in working with FAS/FAE affected offenders. Most subjects answered all questions but in some instances, subjects were unsure and responded as such. Non-probabilistic sampling was used in acquiring subjects for the interviews. The subjects were a homogeneous group in the sense that they are all persons who have experience working with FAS/FAE affected offenders within the federal corrections system. Due to this commonality between all the subjects, the type of non-probabilistic sampling used was convenience sampling (Palys, 1997: 136-137). The exploratory nature of this research as well as the "newness" of the area of FAS/FAE in corrections, necessitated a less rigorous method than some other types of qualitative research.

The interviews were tape recorded in order for the researcher to revisit the context and exact wording used by the subjects. The researcher also took some notes during the interviews on themes that emerged and points of interest. A benefit to the open ended questions was that the subjects seemed to feel comfortable in exploring related issues as they emerged during the interview. For example, during an interview with a parole

officer, the topic of the types of girlfriends that some FAS/FAE impacted offenders tend to form relationships with was discussed. This was not an area covered by the interview schedule, however it is of interest in this exploratory study because the parole officer had made an observation that of the FAS/FAE impacted offenders who get involved in relationships with women, the women tend to be “motherly” types of partners who tend to act as the external brain for their partner. From a research perspective, it would be interesting to examine the differences between those offenders who become involved in relationships with “motherly” partners and whether this has an effect on their success in remaining crime free in the community.

Each subject was presented with an informed consent form prior to the interview commencing. All the subjects were satisfied with the parameters of the research and signed the consent form.

The subjects were interviewed in face-to-face interviews with the researcher. Subjects were presented with open ended questions. The reason for using all open-ended questions was to provide as much opportunity as possible for the subjects to expand their answers and provide as much description as they wished as well as leaving room to explore related areas not mentioned in the questions asked. This is beneficial as it leads to the discovery of other related information which may not have been discussed by the subject if they had been presented with close-ended questions (Palys, 1997: 78-79).

The use of face-to-face interviews is problematic in that there may be a reactive bias. This occurs when the subjects attend to the behavioral cues of the researcher which tells them whether they are "doing well" and this may alter their responses to be more favorable to what they believe the researcher is looking for (Palys, 1997: 155). A different but related drawback to qualitative types of research is that the information provided by the subjects is open to the interpretation of the researcher. In an attempt to minimize the possibility of this bias, all interviews were tape recorded such that the researcher was able to review the exact statements of the subjects as well as the context of the statements.

Due to the absence of quantitative aspects to this study, the range of available measurable outcomes is limited. Despite this, the gathering of impressions, opinions and experiences from the subjects is a rich source of information in an area of study in its infancy. The rationale for choosing qualitative data over quantitative data in this study was primarily because there is a dearth of empirical information available on FAS/FAE offenders, as well, it was a matter of fit. Due to the limited number of interviews and the activity of policy analysis, it seemed that qualitative data would better fit the stated purpose of the study. The limited amount of information pertaining to FAS/FAE offenders in general and specifically within CSC's policy led this researcher to conclude that a qualitative method would better inform this study.

Once all the interviews were completed, the researcher was able to review them for common themes and other areas of interest that emerged. One of the most common

themes between all respondents was that of the difficulty of working in an environment where not everyone was "on board" with regard to their understanding of FAS/FAE and appropriate treatment of FAS/FAE impacted offenders. It appears that there is a sentiment amongst some working within the correctional system that FAS/FAE offenders are seen to behave poorly, being argumentative, failing to abide by simple rules etc. because they choose to do so. They are perceived as "annoying" (Parole Officer B) by correctional staff and many believe they should be treated the same as all other offenders who behave poorly. It appears that there is a division between those CSC employees who have a good understanding of FAS/FAE and how it impacts behavior and those who do not. Those who lack this knowledge seem to view those with this knowledge as treating offenders with leniency. Some subjects stated that they are perceived by their co-workers as being too lenient with offenders suspected of being affected by FAS/FAE. Subjects stated that they feel that a different approach needs to be used with FAS/FAE offenders due to their disability and the behavioral manifestations of the disability.

Due to the necessity of confidentiality for research participants, no identifying information was included for the purpose of this study. Any identifying information, including gender, of the interviewees has been changed in order to protect the identities of the interviewees.

The emergent theme discussed above and other findings will be discussed in the following chapters.

OFFENDERS IN THE CORRECTIONAL SERVICE OF CANADA

This section will outline how one becomes an offender incarcerated in a federal institution. This will provide a basic overview of the purpose of the Correctional Service of Canada (CSC) and the path an offender might follow from committing an offence to his return to the community.

An offender who is caught for an offence and charged, will at some point appear in court to face these charges. If he pleads guilty, he could be sentenced to some sort of custody. The sentencing judge has the responsibility of deciding what kind of sentence the offender will receive. In the event an offender is given a sentence of 2 years or more, he will be processed under federal jurisdiction. If he is given a sentence of 2 years less one day, or less, he will be processed via provincial jurisdiction.

When an offender is sentenced to 2 years or more in prison, he becomes the charge of the federal corrections system, Correctional Services of Canada. The offender will serve his prison time in a federal institution. Once sentenced, the offender is sent to the Regional Reception and Assessment Center (RRAC) where he will remain for 30 days while being interviewed and assessed in order to determine his needs and to allow for the development of a correctional plan. Once this is completed, the offender will be placed at an institution.

There are three security levels of federal institutions, minimum, medium, and maximum. An offender is placed at the security level deemed to be necessary according to his behavior and needs. The institution at which an offender is placed is referred to as his

“parent” institution. Offenders are generally placed at higher security level institutions and cascade down to lower levels of security once they have demonstrated that their behavior is positive and conducive to less rigorous measures.

In addition to the regular institutions mentioned above, there is also the Regional Treatment Center (RTC) where offenders who have serious mental health issues are incarcerated. An offender may be incarcerated at any regular institution, and if a mental health issue emerges, he can be sent to the RTC in order to receive treatment. Once his mental health has improved and he is considered mentally stable, he will be returned to his parent institution.

While incarcerated, offenders are to abide by their correctional plan created by their case management team. The correctional plan outlines the areas of life which have been problematic for the offender in the past such as associates, substance abuse, employment, etcetera. The case management team devises the correctional plan to target the problematic areas of the offender’s life and require him to participate in such activities as employment, education, programs, and counseling. An offender’s participation in programs is usually required during his incarceration as well as while he is on release in the community. Once an offender has completed a program, a progress report will be written by the program facilitator and added to the offender’s file.

At the time deemed appropriate by the National Parole Board, the offender will be released from custody by the National Parole Board who determine if the offender’s risk

has been reduced to the point where he can be safely managed in the community. When released from prison, an offender will be on some type of conditional release such as day parole, full parole or statutory release. He will live in the community and will be supervised by a parole officer. A parole officer meets regularly with the offender and is involved in almost every aspect of his life. A parole officer will meet the significant people in his life including friends, family, and employer. He will be involved in any major event in the offender's life such as approving whether an offender can move to a new residence, meeting his new girlfriend, or granting him permission to travel outside of the area travel boundary. If required by the National Parole Board, or by the type of his release, an offender may live in a Community Residential Facility (CRF), otherwise known as a halfway house. He may also have to participate in programs prescribed to him by his case management team. An offender is supervised on parole until the time of his warrant expiry date after which time he has completed his sentence and is free from further supervision.

CSC POLICY

There are two areas of CSC policy which may be used to address the needs and circumstances of those offenders affected by FAS/FAE, however, there is no specific mention of this disability within CSC policy. The two applicable categories are offenders with "learning disability" or "intellectual disability". Given the prevalence of this problem and magnitude of its effects, another appropriate option might be to develop new policy which would specifically address the needs of FAS/FAE offenders. The creation of new policy will only be discussed briefly as it is outside the scope of this thesis.

The structure of CSC policy might be likened to a pyramid. At the top of the pyramid is the Mission Statement. This is supported by various documents which are to be consistent with the Mission Statement. The base of the pyramid can be said to be the Standard Operating Procedures which detail the actions that line staff are to perform in given situations, such as writing certain reports at particular times.

The policy set out by the CSC to deal with offenders with disabilities begins with the Mission Statement and Mission Document, followed by the Commissioners Directives (CD), Corrections and Conditional Release Act (CCRA) and lastly the Standard Operating Procedures (SOP). These documents provide the policy, procedure and instruction on how to deal with the myriad of situations which may arise in dealing with offenders with disabilities. The focus for this thesis will be upon broader administrative policy because it is this policy which determines the actions and procedures on the front lines. Thus, it is unnecessary to examine the SOP as they focus on only the finer points of day to day procedure. Each relevant section of the policies will be reviewed beginning with the Mission Statement. The impact of the policy on offenders will be considered and the efficacy of current policy discussed.

The Mission Statement

The Mission Statement is as follows:

The Correctional Services of Canada, as part of the Criminal Justice System and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-

abiding citizens, while exercising reasonable, safe, secure and humane control.

This Mission Statement is intended to convey the overall purpose of the work of the Correctional Services of Canada. All other policy, objectives and goals must stand in accordance with this statement and “promote the achievement of the Mission” (CSC, Commissioner’s Directive 1989: 001). Following from the Mission Statement is the Mission Document. This document is used to provide “clear direction to all staff of the Service in the exercise of their responsibilities, a strategic framework for the development of policies and programs, a basis upon which the Service will be held accountable, and, assistance in explaining to those outside the Service its role, activities and future direction.” (Correctional Services of Canada, Commissioner’s Directive, 1989: 001).

The Commissioner’s Directives

The Commissioner’s Directives 700 policy objective is stated as follows:

To help offenders become law-abiding citizens by recognizing them as individuals and actively encouraging them to deal with or solve their personal and social problems and to make the fullest use of their positive potential.

Offenders affected by FAS/FAE have sometimes insurmountable difficulties solving “their personal and social problems” because their “problem” is inherent within their physiology. FAS/FAE is organic brain damage that cannot be repaired or treated. The other manifestations of the disability such as poor short term memory and an inability to connect actions and consequence makes it difficult for such persons to reflect on their

situation. Additionally, they are often unable to address their secondary disabilities due to a lack of services and assistance for FAS/FAE offenders. Because this disability cannot be addressed from within, it is necessary to evaluate the external controls that may be imposed.

FAS/FAE impacted offenders have “positive potential” and being affected by FAS/FAE does not mean that the individual is destined to commit offences or lead a life of crime. What needs to be recognized is that the “positive potential” of FAS/FAE affected offenders can only be harnessed with a great deal of structure, support and consistency built into their daily lives. With these things in place, FAS/FAE offenders have the greatest chance of becoming “law abiding citizens”.

Commissioner’s Directive 700 policy objective is followed by a number of “components of case management” which state that the “case management process shall provide for the proper assessment, classification, counseling, program planning, and supervision of offenders throughout their sentence.” The second component of case management states that “case management shall be objective and dynamic and shall include: ongoing assessment of an individual offender’s needs and the development and implementation of individual program plans to meet those needs” (Commissioner’s Directive 700: 1). The case management team consists of CSC employees on the front line who work directly with the offender. For example, parole officers, psychologists, program facilitators and, sometimes, volunteers. Proper assessments and ongoing assessments at this stage are unlikely to occur as these front line employees often have limited knowledge of

FAS/FAE, are not qualified to diagnose offenders with FAS/FAE, and do not have the necessary resources. In the case of FAS/FAE offenders, it seems that the case management team is faced with an impossible task: to meet the needs of offenders without being given the tools to do so.

“Intellectual Disability”, “Learning Disability”, and FAS/FAE

Consideration of an offender’s special needs has been accorded an important place in CSC policy. According to section 700 of the Commissioner’s Directives (page 2-4),

The Service recognizes that some inmates or certain groups of offenders have special needs and recognizes that integration into the general inmate population is fundamentally important. These special needs groups may include: long term offenders, offenders with substance abuse problems, sex offenders, native offenders, female offenders, offenders with physical disabilities (including sensory disabilities), offenders with intellectual disabilities, offenders with learning disabilities, and, other special needs groups.

In defining the terms used in the above section, there are “Guidelines Relating to Offenders With Disabilities”. These guidelines define offenders with intellectual disabilities as “anyone functioning at or below the borderline range of intellectual ability as measured by psychometric testing.”. In addition, a learning disability is defined as,

a special educational disability that prevents an individual from performing to his/her potential in a normal school setting in one or more academic areas. Adults with learning disabilities are of normal intelligence, but experience significant learning problems that interfere with their education, career aspirations and chances to maintain suitable employment.

Offenders affected by FAS/FAE could fit into either category of “intellectual disability” or “learning disability” as some have IQ’s at or above the normal range and some below. The average IQ of someone affected by FAS/FAE is between 75 and 85 with the full range between 20 and 140+ (Russel, 2003). The problem for these offenders is that despite their level of measured intelligence falling at, above or below the normal range, this does not translate into an ability to live productively in the world. Studies have shown that for FAS/FAE affected individuals, cognitive functioning and adaptive behavioral functioning do not correlate. In fact, FAS/FAE affected individuals tend to consistently perform better on cognitive functioning tests than on adaptive behavioral functioning tests. The result of this is that they “look smarter than they can do” (Ory, 2004). Therefore, the cut off line for normal intelligence is not generally applicable to FAS/FAE offenders because it does not mean that they have the same abilities as a person of equal intelligence who is unaffected by FAS/FAE.

People with FAS/FAE may have other mental health problems such as attention deficit problems. FAS/FAE often leads people to have a difficult time in school settings because they have poor memory functioning, an inability to concentrate or follow through on tasks, and a lack of understanding of basic concepts. As many with FAS/FAE are not able to “perform to his potential in a normal school setting”, it seems this categorization of learning disabled may be applicable. In addition to meeting the other qualifications for learning disabled, FAS/FAE offenders often have difficulty maintaining employment due to their disability. They often have difficulty getting to work on time due to their distorted concept of time and as a result are not able to maintain any job for a sustained

period of time. Research has found that 86% of adults with FAS are unemployed (Spohr, 2004). Persons with FAS/FAE are able to perform well as long as the task is targeted to their skill level. If expected to learn a new task or information in a traditional school environment, persons with FAS/FAE need close monitoring, short structured learning sessions, and repetition.

Commissioner Directives 700 allocates responsibility regarding an offender's qualification as intellectual and/or learning disabled. The guidelines state,

Regional Deputy Commissioners shall ensure that procedures are in place within their region to identify offenders with intellectual disabilities; and, that all offenders with intellectual disabilities in their respective regions have access to educational, life skills and other programs which are specifically designed to meet the needs of this group, where a need for specialized programming has been identified.

In addition, this document states that "Directors shall ensure: that any cases of suspected learning disability are assessed by an appropriate educational specialist: and, that remedial educational service is made available to offenders whose learning disability is confirmed." (CD, Guidelines, 1990: 2-3).

In the case of a learning disability, the Commissioner Directives place the responsibility on the directors to ensure that the assessments are completed to identify offenders with intellectual disabilities and supports put into place to meet their needs via life skills and other appropriate programming. Similarly, the policy states that assessments are to be made, and appropriate remedial educational programs put into place for offenders with learning disabilities. According to the policy outlined above, it seems many FAS/FAE

affected offenders would be able to access services by qualifying as intellectual or learning disabled offenders. However, this would require the identification of FAS/FAE offenders as disabled in order to access any services. Yet, there are no screening or diagnostic tools in place in order to identify FAS/FAE offenders at this time. As a result, any FAS/FAE offender wishing to qualify as intellectually disabled or learning disabled can only do so on a platform other than FAS/FAE. According to Psychologist B, educational assessments are completed in certain cases where impairments are suspected, however no action is taken as a result of these assessments as there are no special programs for these impaired offenders.

Interview With Program Facilitator A

An interview with Program Facilitator A revealed some of the difficulties program facilitators have in managing FAS/FAE offenders in the classroom setting. He explained that FAS/FAE offenders tend to do very poorly in programs because they frequently fail to show up, are often late for class, disrupt the class, and appear to not pay attention. For these reasons, they are often removed from the program, or they finish with a poor performance report.

Program Facilitator A confirms that the current method of the cognitive behavioral model for programs does not work for FAS/FAE offenders as they do not learn in this way. He reports that these offenders need the skills being taught in the programs, however the current method of teaching is not effective. He suggests that programs need to be highly structured and provide a consistent routine as FAS/FAE offenders respond to this sort of

highly structured environment. He stated the components need to be broken down into smaller steps and a great deal of repetition of the material is needed on a consistent basis due to poor memory. He advises that very specific problems need to be discussed, as opposed to general problem solving skills which can be applied to a variety of situations. This would benefit FAS/FAE offenders as they are unable to generalize across situations.

Interview With Program Facilitator B

Program Facilitator B revealed a pilot project which currently provides learning disabled offenders the opportunity to complete some education courses while incarcerated. This program is specialized in that a teacher works with the individual offender to assess his needs and put into place interventions that will assist him to learn the required material. The following example was provided: A teacher will assist an offender with FAS/FAE trying to complete the requirements for a grade level by breaking down the information into smaller steps and presenting information in creative ways that are consistent with his abilities. The teacher provides many breaks due to the offender's limited attention span, and frequently repeats the lessons.

These interventions have been found to be successful with offenders with learning disabilities consistent with FAS/FAE characteristics, although this program is open to all learning disabled offenders. Program Facilitator B stated that he has learned a great deal about FAS/FAE due to his own learning initiatives, however, he was unaware of any training provided to teachers in the institutions. This program provider stated that he attended a conference last year on FAS/FAE and now feels "evangelical" about the issue

of FAS/FAE offenders. He opined that there are many offenders affected by FAS/FAE and he expressed frustration that FAS/FAE is suspected in many cases, but he must work without the certainty a diagnosis provides.

This pilot program is one of five in Canada which has been running for approximately two years. It is as yet unknown if funding for this program will continue past this current year.

Even if FAS/FAE offenders are to be identified as having a disability at the time of intake or at any point during their incarceration, there are no services or programs designed specifically for their needs. Schooling up to grade 12 is offered at most institutions, and core programs such as “Cognitive Skills” and substance abuse programs are offered, however these programs are designed to target ‘generic’ offenders, not offenders with disabilities. CSC programs are, on the whole, cognitively based and are taught in classroom settings with little regard for the impairments faced by offenders with disabilities. FAS/FAE offenders require services which are simple, structured, hands-on, and repetitive.

Commissioner Directive 840: Psychological Services

This portion of the Commissioner Directives deals with the provision of psychological services to offenders, which are available to offenders in all institutions and the community. The stated policy objective of this section is as follows:

To ensure the provision of psychological services to offenders in order to

assist them with the resolution of mental health problems and behavioral disorders and to help them learn and adopt socially acceptable behaviour patterns and to prevent or attenuate their relapse following intervention.

CSC psychologists provide assessment, therapeutic intervention, crisis intervention, and program development, delivery, and evaluation. The policy requires that “Problem behavior directly related to criminality and essential mental health needs shall be primary treatment targets”. Given this, it seems that FAS/FAE offenders might be high priority for psychological services as their impaired brain function can lead to further criminal behavior. FAS/FAE offenders also qualify as having mental health needs as they cannot function independently in society and may suffer from secondary disabilities many of which manifest themselves in mental health issues. Ninety-four percent of FAS/FAE affected adults have at least one co-morbid diagnosis. Research has found that fifty-two percent suffer from depression, forty-three percent have threatened suicide, twenty-three percent have attempted suicide, thirty-three percent suffer from panic attacks and twenty-nine percent suffer from psychosis (Streissguth, Barr, Kogan and Brookstein, 1996).

Interview With Psychologist A

CSC Psychologist A argues that the policy objective is adequate but the application of the policy is not. He points to several difficulties faced by psychologists in detecting FAS/FAE. One of the practical problems is that the psychologists do not see all intakes. He stated that correctional officers see all intake cases and determine if the individual needs to be seen by a psychologist. Therefore, some mental health problems may be missed. Even if it were the case that all intakes were screened by a psychologist, it may

be that offenders affected by FAS/FAE would pass undetected as there often are no physical features to identify them and their behavior, attitude and affect may be undifferentiated from non-FAS/FAE offenders.

Another challenge for psychologists is that as of 1995, intake psychological assessments became required by CSC for any offender meeting a number of criteria. One of these criteria is that of mental health including, amongst other disorders, organic mental disorder (Leis et. al.,1995:10). Despite this, FAS/FAE offenders largely are not being assessed by psychologists although other problems such as depression and self harm may be targeted. Psychologist A suggests that a lack of time and resources prevents more thorough screening. He states that there are always far more intakes than that which psychologists are able to process. He also points out that training to identify FAS/FAE has been limited and that in the past two years psychologists and other CSC staff have been given one and a half days of training on FAS/FAE, how to identify it, and the associated problems. It is a step forward that CSC is recognizing that FAS/FAE offenders are a specialized population that needs attention, however, it appears that further efforts are required to satisfy the stated policy objectives.

Interview With Psychologist B

Psychologist B advises that one of the pilot projects currently at RRAC is that nurses are screening new intakes for mental health issues. He questioned this new initiative as there is little to offer except for those with the most severe mental illness.

He stated that FAS/FAE offenders do at times end up at the Regional Treatment Center (RTC) but that it is usually not due to their being affected by FAS/FAE. He stated that FAS/FAE offenders' behavior often lands them in trouble with the other inmates and as a result they often end up in segregation. The psychologist stated that in the near future, a new housing unit is to open at RTC which would house some FAS/FAE offenders. The new unit is intended for the brain injured and will be a structured environment in which the behaviors of the offenders will be addressed. He stated that it is yet unclear whether an offender will have to be diagnosed as FAS/FAE prior to admission to the new unit but that this is unlikely as there is no diagnosing within CSC.

Beyond the lack of diagnostic procedures within CSC, Psychologist B also points out that there are no special programs being offered to FAS/FAE offenders. He stated that there needs to be something more for brain injured offenders and that this approach would also work with FAS/FAE offenders. He stated that an offender who presents as FAS/FAE will be treated according to his behaviors regardless of the fact he may not be diagnosed or otherwise labeled from the DSM-IV. Psychologist B reiterated that there has been little training provided to staff on FAS/FAE offenders and more is needed. He stated that it is very difficult to work in an environment where many do not know or understand what FAS/FAE is and therefore, as a group, they are unsuccessful at dealing effectively with these offenders. He stated that more needs to be done with these offenders with regard to hands-on learning, support from a rehabilitative focus, and structured release planning. He suggested that specific policy regarding FAS/FAE need be developed.

The Psychological Services policy helps to determine the level of service provided to FAS/FAE offenders. It states that “psychological services provided for essential mental health needs shall be comparable to those available in the surrounding community”. As there is very little support and services available to FAS/FAE individuals in the community, this could conceivably contribute to a chicken and egg conundrum in as far as CSC and the psychologist’s work with FAS/FAE clients. Because there are few services, programs, or support available in the community, then comparably, there need not be any within CSC. An opportunity for CSC to establish psychological services specifically for FAS/FAE offenders would be a great benefit to those impacted by FAS/FAE and would be spearheading the move to address FAS/FAE impacted offenders.

MANAGING FAS/FAE IN THE CSC

From Intake to Placement

At present time, there is no diagnosis available for offenders affected by FAS/FAE within CSC. As a result, there is no classification, counseling, or program planning for FAS/FAE offenders. If one is severely mentally ill, and severe cases of FAS/FAE may fall into this category, the offender may be screened into the Regional Treatment Center in order to serve their sentence at that facility. The Regional Treatment Center is a federal prison used to house severely mentally ill offenders. This institution is staffed by security staff as well as doctors, psychologist and psychiatrists. This facility has approximately 100 beds and severely mentally ill offenders can be transferred to this institution from across the province.

An example of such a scenario would be the case of David Trott. This offender committed the sexual assault and murder of a young girl. He was born to an alcoholic mother, had numerous foster placements, and struggled with substance abuse and depression (Mertl, 2002). Mr. Trott is reported to have suffered from a number of mental illnesses, one of which was FAS. The nature and severity of the crimes in this case are unusual, however the nature of David Trott's problems is less rare. Critics suggest that Mr. Trott was failed by the very sources that should have helped him such as social services, the youth justice system, and the mental health system (Canadian Press Newswire, 2000). As with David Trott, it is not unlikely that many cases of FAS/FAE "fall through the cracks". The reasons for this vary but may include a lack of awareness amongst professionals about FAS/FAE which results in a lack of recognition of the presenting symptoms, as well, a lack of resources may prevent identification of FAS/FAE cases. One of the main problem areas within corrections in dealing with FAS/FAE cases is mirrored in the larger community which is the lack of resources for these individuals.

Expertise in dealing with FAS/FAE offenders in the CSC seems limited. Staff at the Regional Treatment Center are trained to deal with offenders with mental disabilities, the rest of the CSC front line staff are not. Security and front line staff at all other institutions are not equipped with specific and focused training to assist them in day to day interactions with persons who are affected by FAS/FAE. This is problematic as the staff might be inclined to interact with and respond to an offender with FAS/FAE in the same manner and with the same expectations as s/he would interact with any other offender. Fortunately, there has recently been some staff training in British Columbia for

community parole supervisors with regards to case management of FAS/FAE offenders. In 2001, a one-day training session on FAS/FAE offenders was offered to community parole officers and psychologists. Given the estimated large number of FAS/FAE impacted offenders and the special needs they require, it seems further training for front line staff and institutional staff may be beneficial.

Managing FAS/FAE Offenders In The Community

Until very recently, there has been little recognition within the CSC that offenders affected by FAS/FAE may benefit from alternative programming and supports. Currently, offenders suffering from severe mental illness may be admitted to the Regional Treatment Center for assessment, treatment, and, to serve their sentence at that facility. Few if any of these are currently admitted due to FAS/FAE.

The Genesis House FAS/FAE Program

Once back in the community, the FAS/FAE offender faces the same dearth of programming and resources to deal with their affliction. The Genesis House FAS/FAE program is an exception to the rule, as it accepts and works with these offenders. Currently, it is the only program in British Columbia targeting FAS/FAE offenders. This program is run out of a federal halfway house and has six bed spaces dedicated to those offenders who are released from a federal institution on parole to reside in a community residential facility. The Genesis House FAS/FAE program has a small group of trained staff who better understand the needs and limitations of those affected by FAS/FAE. The

staff of the program have a high rate of daily contact with the FAS/FAE offenders residing there and they assist them to accomplish goals and acquire skills they will need in order to live a law abiding lifestyle once they have finished serving their time in the community on parole.

The referral process for this program is a complex and problematic. One potential problem is that FAS/FAE has never been flagged in CSC offender files even if the offender has a diagnosis of FAS or FAE upon intake. Because of this, the manager of the Genesis House FAS/FAE program developed several systems for identifying potential FAS/FAE cases. He attempted to attend the Regional Reception and Assessment Center (RRAC) in order to screen cases upon intake, however this was far too time consuming. He then asked parole officers to screen cases at intake, however this also failed as the parole officers were not willing to take on yet another task. They also did not feel qualified to screen and identify possible FAS/FAE offenders.

Faced with these challenges, the manager of the Genesis House FAS/FAE program delivered training to CSC staff on FAS/FAE himself. This training helped to increase staff awareness and in turn to identify cases as employees had a better understanding of the disability and how to identify FAS/FAE. He was then able to identify cases by calling institutional parole officers or community parole officers to discuss cases with them. At times he would receive a call from a concerned parent (most often an adoptive parent) of an offender who was worried that his or her son may have FAS/FAE. Similar

calls were received from CSC employees such as program delivery officers and native liaison workers who also contacted him regarding possible cases.

Once a possible case of FAS/FAE was identified, the file would be reviewed and discussed with the offender's parole officer in an attempt to determine if a placement at Genesis House FAS/FAE program would be appropriate. If it was determined that the offender either had a previous diagnosis of FAS/FAE, or presented symptoms consistent with FAS/FAE, the offender would be interviewed in the institution to discuss his upcoming release. His motivation to participate in the Genesis House FAS/FAE program would be assessed at the interview. If the offender agreed to reside at Genesis House, the parole officer would include this in the plan of residency upon release. In addition to much consultation, an adapted version of the FASNET screening tool is used by the manager for each suspected case. The FASNET screening tool was developed to be administered by laypersons who have a significant relationship with the offender. The resulting score indicates whether a high or low degree of symptomology consistent with FAS/FAE exists.

After an offender arrives at Genesis House, he is assigned a primary case worker with whom he will be in daily contact. The worker will assist him to identify goals and work towards them. While in the program, the offenders are subject to a high rate of contact with staff and their primary case worker, their time is structured and their needs identified such that the offender and case worker can work toward meeting these needs. Offender needs can be such things as learning when to eat and sleep. The circadian rhythms of

FAS/FAE offenders often do not work correctly and as a result they may forget to eat. Similarly, they may not sleep for days or may stay in bed for days and must be prompted to go to bed and get up. Other offender needs may be such things as obtaining medication or identification. Many offenders are released with only institutional identification. Obtaining identification such as a social insurance card can be especially challenging for someone with FAS/FAE.

The Genesis House FAS/FAE program has been in operation just over two years and is currently in the process of being formally evaluated in terms of its rate of effectiveness. One of the most problematic aspects has been dealing with diagnosis of FAS/FAE. Due to lack of funding, diagnosis for FAS/FAE is often not accessible. This has given rise to a need to identify offenders with FAS/FAE without engaging in the process of a diagnosis. Those cases included in the Genesis House program are assessed using the FASNET screening tool to verify the existence of characteristics which may have their etiology in FAS/FAE. It may be that, given the process of identifying offenders, a number of false positive identifications are made. Dunn (1994: 69), points out that “the way a problem is defined governs our ability to search out and identify appropriate solutions. Inadequate or faulty information at this stage of analysis may result in a fatal error: solving the wrong formulation of a problem when instead one should have solved the right one.” Without an accurate diagnosis it is possible that someone could be wrongly identified and processed as an FAS/FAE affected offender. The consequences of such a mistake are the inclusion of someone who might do well without the program at the expense of excluding someone in greater need.

The manager of the Genesis House FAS/FAE program explains that it is very difficult to establish support for FAS/FAE offenders upon warrant expiry. He stated that he and the offender will “go knocking on doors” of the social support agencies in the hope that they will appreciate the need of the offender and assist him. He stated that in an unusual case an offender was able to qualify for Level II disability which ensured that he would be provided a place to live. This provides some safety and structure for the offender as he will at least have a place to live regardless of his employment status. This is particularly important as FAS/FAE often impacts living skills so severely that holding a job is virtually impossible. One study found that 86% of adults with FAS were unemployed (Spohr, 2004). The question remains, is it advantageous to label offenders who likely will not receive any follow up assistance upon the completion of their sentence? At the very least, a positive aspect to receiving a label is that it may help the offender and others to understand some of the challenges faced by an individual affected by FAS/FAE.

Interviews With Two Parole Officers

Of all CSC employees, parole officers likely spend the most amount of time with offenders serving time on parole. They spend time with offenders in the contexts where the offender spends his time. For example, a parole officer would meet with an offender at his home or community residential facility (CRF), at his place of work or school and a parole officer meets and interviews the people the offender associates with such as his family and friends. It is likely that parole officers are one of the best sources for identifying the FAS/FAE type behaviors that an offender may exhibit.

The two parole officers interviewed for this research had received some training in identifying FAS/FAE offenders. One theme that emerged throughout these interviews was the fact that managing FAS/FAE cases is much more time consuming than managing otherwise equal cases. One parole officer proposed that CSC appoint special parole officers to deal exclusively with FAS/FAE cases, as the cases are so intensive. Such parole officers would require reduced case loads due to the time consuming nature of each case. This would require a commitment of resources on the part of management to allocate parole officers for this purpose.

Both parole officers interviewed agreed that FAS/FAE offenders are considered high needs and high risk cases. One opined that, FAS/FAE offenders are high risk for committing further offences due to the impulsiveness of FAS/FAE affected offenders and the lack of consequential thinking. The other parole officer stated that he felt that FAS/FAE offenders have a higher risk of having their parole suspended and being sent back to jail for breaching conditions.

The two parole officers also stated that housing is necessary for FAS/FAE offenders. Currently, voluntary residency at community residential facilities (CRF) is not available and this is something that is necessary as FAS/FAE offenders need the support of having housing available to them. It was also suggested that FAS/FAE offenders residing in a CRF should be separated from other offenders. A separate CRF for FAS/FAE offenders would meet this need, however, at this time the only CRF option for FAS/FAE offenders

is the Genesis House FAS/FAE program which also provides housing to non-FAS/FAE offenders.

All those interviewed stated that there is some tension between staff members who have some understanding and knowledge of FAS/FAE, and those that do not. All expressed frustration that other members of the offender's management team have considered them too lenient with the suspected or diagnosed FAS/FAE cases. This can be especially difficult when there is a difference in seniority between two employees on the case management team. Advocating for strategies that are effective for FAS/FAE offenders can create tension if others on the case management team do not have an understanding of the impact of FAS/FAE and considers the offender to be problematic as opposed to disabled.

Another point of consideration between interviewees was that the current model and method of program delivery is ineffective with FAS/FAE offenders. They confirmed that FAS/FAE offenders do not do well in group settings and benefit more from individual counseling. It was also a point of agreement that the cognitive model is not effective for these offenders. This is problematic from an operational standpoint as individual counseling is much more expensive than group participation. It was stated that an offender's program needs is a point of contention between those who understand FAS/FAE and those who do not. Those who do not understand it fail to see the benefit of providing such a service to an offender and does not understand the rationale behind

providing one to one counseling as opposed to putting an FAS/FAE affected offending in a group setting.

FAS/FAE AND THE CRIMINAL JUSTICE SYSTEM

The Canadian Criminal Justice System is rooted in several basic principles, such as the principle that a person is innocent until proven guilty and “the premise that individuals should not be convicted of an offence unless they deliberately choose to do something wrong” (Verdun-Jones, 1989: 187). Such values are long standing and the “criminal law is based on the Judeo-Christian ethic of free will and therefore persons will be found guilty only if they act intentionally or, recklessly.” (Parker in Linden 1996:41). Those who violate the law are subject to one or more sanctions based on the prevailing social, political and economic climates. The justifications underlying criminal sanction includes retribution, deterrence and rehabilitation (Manzer, 1985).

Mens Rea and Actus Reus

In order to be convicted of a criminal offence in Canada, one must meet two criteria: “i) that a certain event or state of affairs was ‘caused’ by the accused’s conduct (actus reus), and, ii) that this conduct was accompanied by a certain state of mind (mens rea)” (Verdun-Jones, 1989: 20). It is necessary for these two criteria to occur together in order for a person to be convicted of a criminal offence. Therefore, one cannot be convicted of an offence if he had the intention of doing it, but did not act on this intention. Conversely, one can not be convicted of an offence if he committed an act but did not intend to do so (Boyd, in Silverman et. al., 2000). It can be debated whether an offender

affected by FAS/FAE can be convicted in certain circumstances as they do not always have the “guilty mind” due to their inability to consider the potential consequences of their behavior.

Deterrence

The assumption that criminal behavior is both rational and voluntary is intrinsic to the Canadian legal system. This is the basis for the theories of specific and general deterrence. Specific deterrence refers to the unpleasant consequences to the individual resulting from criminal conduct, and the impact of this is preventing further illegal activity. The theory of general deterrence suggests that members of the public at large will be deterred from behaving criminally when they see the consequence of criminal behavior as levied toward an offender.

Both of these positions assume that an offender is aware of the consequences of his offending behavior, weighs the pros and cons of offending, and makes a rational, measured decision. This assumption can not always be made of someone who has a mental disorder or disability. An offender affected by a disability such as FAS/FAE is not always aware of the potential consequences of his behavior due to his mental disability. Often, he is not able to consider the pros and cons in a given situation in order to come to a logical course of action. Due to poor memory functioning and inability to generalize from one situation to another, offenders affected by FAS/FAE are often unable to learn from past mistakes. Therefore, deterrence has little impact on FAS/FAE

offenders as they do not learn from their own or other's experiences as they can not connect the consequences with the behavior.

The impact of FAS/FAE on an individual's cognitive abilities extends well beyond behavior and is evidenced in the everyday lives of these individuals. An example of this characteristic of FAS/FAE was provided through the interview with the manager of the Genesis House FAS/FAE program. She described how an offender in the program acquired a job and commuted by bicycle. She stated that she discussed with the offender the need to wear a bike helmet for safety reasons such as getting hit by a car. She stated that in response to her comments, the offender regarded her with a quizzical look and stated that he did not need to wear the helmet as he was not going to get hit by a car. When it was suggested to him that it could happen even if he did not think it would happen he simply stated that he was not going to be hit by a car because he was always careful and therefore did not need the helmet. Even when discussing the dire consequences of such a traffic accident, this offender could not be convinced. Because he did not intend to get hit by a car, he seemed to consider it impossible that he might be hit by a car; it was a connection he could not make.

Rehabilitation

The principle of rehabilitation has become a primary focus within corrections. The concept of rehabilitation is consistent with numerous changes that have taken place within the CSC over the past few decades. Behavioral modification programs are now the norm for all offenders serving a federal sentence. These programs range from Anger

and Emotions Management to Substance Abuse Programming, psychological counselling and Cognitive Living Skills. The basis of these programs is that people can learn better ways of dealing with life stressors. The programs offered to offenders are cognitively based; their purpose is to change the thinking patterns of offender in hopes that this will result in a behavioral change. These programs attempt to provide offenders with new skills to help them live a more pro-social and crime free lifestyle. The aim is to fix that which is broken.

Unfortunately, the very nature of FAS/FAE is organic brain damage, and it can not be “fixed”. This simple fact raises questions regarding the efficacy of requiring FAS/FAE offenders to participate in rehabilitative programming because they focus on the thoughts behind the behavior. Individuals impacted by FAS/FAE benefit most from a supportive one on one learning environment that focuses on simple and repetitive instruction targeting behavior. Their thinking patterns are resistant to change, therefore, rehabilitation must be closely tailored if it is to be effective in addressing the needs of FAS/FAE impacted offenders. Rehabilitation for FAS/FAE offenders would require an entirely different approach which would target not thinking, but behavior as well as other need areas. FAS/FAE offenders may not be able to benefit from CSC programs in their current form, however, FAS/FAE impacted offenders are in need of interventions and can benefit from appropriate interventions.

Mental Illness, FAS/FAE and Crime

Debate is ongoing regarding the degree of responsibility those with mental illness bear when facing criminal sanctions. It has been suggested that an offender's mental disorder may impact decision-making in the criminal justice system in areas such as diversion, fitness to stand trial, criminal responsibility of the accused, sentencing, and treatment of the offender (Verdun-Jones, 1989: 186-187). With respect to FAS/FAE offenders, mental illness has never been used successfully as a defense, however it has been considered a mitigating factor in a number of cases. Given the high correlation between mental health issues and FAS/FAE it may be that some offenders who have a mental illness may also be affected by FAS/FAE. A study of 400 FAS and FAE individuals found that over 90 percent of these individuals had mental health problems and almost all of them were seen by mental health professionals (psychiatrists, psychologists, social workers) at some time in their lives. The mental health issues identified within the population studied included "depression, suicidal threats and attempts, attention deficit problems, panic attacks and auditory and visual hallucinations" (Streissguth and O'Malley, 1997).

Much legal wrangling over time has led to provisions for mentally ill offenders and others who are not of "sound mind". An example of such a provision is the insanity defense. Although the insanity defense has never been used successfully in the case of an offender affected by FAS/FAE, it is important to consider in light of questions raised by the nature of FAS/FAE

Criminal Code of Canada, Section 16

Although the insanity defense is unlikely to be successfully applied to an offender affected by FAS/FAE it is important to note that under the definition of disease of mind, a person with FAS/FAE could fit this criterion. Section 16 of the Criminal Code of Canada defines the elements of the insanity defense. The case of *Cooper V. The Queen* (1980) set out the definition of “disease of the mind” which is a necessary component of the insanity defense as follows, “...in a legal sense ‘disease of the mind’ embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning...” (Verdun-Jones, 1989: 192). Section 16 (2) of the Criminal Code of Canada requires that one can be considered insane only if he is “incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong” (Verdun-Jones, 1989: 190). An FAS/FAE offender is likely to know that robbing a bank is wrong but due to poor impulse control and lack of consequential thinking he may commit the offence anyway. Additionally, medical evidence is necessary to prove that a disease of the mind existed in a given case (Verdun-Jones, 1989:190). An offender who does not have a previous diagnosis of FAS or FAE will not have the medical evidence to support a claim of disease of the mind and it is unlikely that a regular psychological assessment would unearth such a disability. Although there is evidence to suggest that FAS/FAE impairs thinking, it is unlikely that the insanity defense would be successful due to the ability of an FAS/FAE affected individual to appreciate and understand that certain behavior is wrong.

Personality Disorder

Personality disorder is a mental illness which has been regarded by the Supreme Court of Canada in several cases as constituting disease of the mind (Verdun-Jones, 1989: 193).

Personality disorders are defined in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorder) and a common example of such a disorder is the anti-social personality disorder. According to the DSM-IV, the current definition of anti-social personality disorder is “a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or early adolescence and continues into adulthood”. This label can be applied to FAS/FAE offenders. Some of the characteristics of anti-social personality disorder are lying, stealing, fighting, drug and alcohol use, “inability to sustain consistent work performance or to function as a responsible parent, and failure to accept social norms with respect to lawful behavior” (Cox, Roesch and Zapf in Linden 1996: 251). Although a person with FAS/FAE may exhibit the same behavioral trade marks of antisocial personality disorder, an important distinction is the etiology of the disorder. Someone affected by FAS/FAE behaves the way they do due to brain damage, whereas the origins of personality disorder are “assumed to stem from a psychological rather than physical origins (McCaghy and Capron, 1997:346).

FAS/FAE AND THEORETICAL MODELS

The issues raised by FAS/FAE, and those suffering with this disability, are more complex than can be neatly accounted for by one theory. Of the theories which can be used to address the issue of FAS/FAE offenders, three of these will be considered here.

Social learning theory, albeit popular and a practical approach for many social issues, has one of its central tenants as cognitive functioning, the ability to think and make choices (Cox, Roesch and Zapf, in Linden, 1996: 245). A more specific example from social learning theory can be used: the concept of modeling with regard to FAS/FAE.

“Modelling occurs from simple observation of others’ behavior being rewarded, whether in real life or in the media.” (Jackson in Jackson and Griffiths, 1991: 191). In order for modeling to occur, a person must observe the rewarding of others’ behavior, then reason that the behavior caused the outcome, then reason that if they behaved likewise, the same end would result. This sequence relies on a cause and effect relationship. Those affected by FAS/FAE often are not able to connect the cause and effect due to their organic brain damage. Those affected by FAS/FAE often do not learn from the consequences of their own behavior let alone learning from watching the result of the mistakes of others.

Therefore, social learning theory and specifically the concept of modeling can not be used as an explanation for FAS/FAE.

Positivism and the Medical Model

There are certain theories or models that are more useful when considering the issues of FAS/FAE and crime. One such theory stems from the Positivist School which holds the view that criminal behavior stems from individual factors based in the biological, psychological or physiological components of the individual. This school of thought spawned the view of ‘biological determinism’ which purports that the “causes of criminality were beyond the control of the individual” (Jackson chapter 7, in Jackson and Griffiths, 1991: 178). From this school of thought emerged the medical model.

According to the medical model, mental illness is considered to be an illness much the same as a physical impairment in any other part of the body (Menzies in Jackson and Griffiths, 1991 pg.199). Crime committed by anyone with a mental illness is due to this illness of the organism. The person is considered to be an organism which is somehow defective. This defect is considered inherent and is not something that can be changed. Although the positivist school and the medical model are somewhat myopic as there is no consideration of the social or environmental causes of crime, the medical model lends itself well to the area of FAS/FAE study as it is concerned with the individual and any mental impairments thereof. It is important to note however that having FAS/FAE does not *cause* one to commit crime.

The medical model tends to be somewhat simplistic in its view as it is not concerned with the greater context of environment or the social sphere surrounding an individual. The positivists' school of thought including the medical model has been criticized as "the individual in these accounts appears by and large as an isolated atom unaffected by the ebb and flow of social arrangements, social change, and contradictions in what is, after all, a society of social arrangements built around the capitalist mode of production" (Taylor, Walton and Young, 1996: 237). It is known that the secondary disabilities associated with FAS/FAE affected persons can be exacerbated or reduced if certain environmental or social conditions are in place. A person affected by FAS/FAE will have a better chance at living a normal life and avoiding the criminal justice system if s/he has a stable home environment, is not a victim of abuse, and has a diagnosis by age six (Streissguth, 1997). These conditions are known to affect the quality of life of

persons with FAS/FAE. Therefore, the medical model is not sufficient when applied to FAS/FAE as environment does play a role. Despite this, the medical model is an important vehicle for understanding FAS/FAE as the mental illness that results from prenatal exposure to alcohol is physical in nature as the brain is altered resulting in neurological damage.

A Sociological Perspective

A sociological perspective on the other hand, requires taking a step back from the issue of FAS/FAE impacted individuals to look at the broader issue of alcoholism and alcohol abuse and why so many people, specifically women of child bearing age, are abusing alcohol in our society. One of the questions to consider is, why it is that it is not common knowledge that alcohol consumption during pregnancy is dangerous?

Deprivation and poverty are often the backdrop for alcohol and drug abuse. This is not always the case, alcohol abuse occurs across socio-economic lines. This being said, women with the financial means, education and access to health care are less likely to bear children affected by FAS/FAE. The opposite is also true. Men and women abuse alcohol for a purpose. This purpose is to escape the reality of their everyday lives, even if it is only for a relatively short period of time. This escape dulls the senses and allows one to forget the problems and worries in their lives. Drug and alcohol abuse is pervasive and long lasting because it is difficult to stop using once the habit has been formed.

Alcohol abuse does not simply stop one day for an alcoholic woman just because she finds out she is pregnant. In some cases, such news would only compound her problems,

and, if to date she has used alcohol to help her deal with life stress then this pattern is likely to continue until such time that she willingly enters a re-habilitation program for her own reasons and with her own motivations. It has long been known that forced treatment for drug and alcohol dependency is not successful.

FAS/FAE tends to affect more individuals in communities where there is a high rate of alcohol consumption. Many Aboriginal communities in Canada experience disproportionate degrees of poverty, disenfranchisement, high crime rates, and high rates of alcohol consumption. For this reason FAS/FAE is a serious problem among Aboriginal communities and may, amongst other reasons such as discrimination, contribute to the high number of Aboriginal offenders in prison. Native communities have been severely impacted by alcohol abuse for decades and it has been estimated that between 50 and 60 percent of illness and death of Aboriginal people are alcohol related (Hartnagel in Linden, 1996: 117). Recognition amongst Aboriginal communities of the impact of FAS/FAE is beginning and some positive starts have been made. One of these is the Focus Class at the College of New Caledonia in Burns Lake, British Columbia. This program was designed for adults impacted by FAS/FAE in order for them to meet, support each other and share their experiences of living with the disability (Fong, 2004: B2, B3).

The ability to diagnose FAS/FAE falls under the domain of medical practitioners, not psychology or psychiatry or any other mental health profession. Currently, only a qualified doctor of medicine can diagnose an individual with FAS/FAE. Diagnosis is a

long and complex process involving a great deal of information gathering and various assessments of the individual. FAS/FAE does not appear in the DSM-IV and because of this, psychologists are not able to diagnose it. Interestingly, many of the coexisting disabilities experienced by many with FAS/FAE are in the DSM-IV and as such, psychologists can identify and diagnose an individual with related disabilities of FAS/FAE such as attention deficit hyperactivity disorder, anti-social personality disorder, conduct disorder, etc. If psychologists are able to identify and diagnose other disabilities, why not FAS/FAE? It may be that medical practitioners are engaging in empire building with regard to FAS/FAE offenders. By maintaining control over the ability to perform diagnosis of FAS/FAE, they are able to control much of the medical knowledge produced, finances gained, and status earned by doing the diagnosing. The result of this monopoly is that very few individuals are diagnosed with FAS/FAE. Although cost of diagnosis is a real issue, the reality for FAS/FAE affected offenders remains the same. If they do not obtain a diagnosis, then they are left in the dark as to their own understanding of why they are different from others and why they have the problems they do, and, without a diagnosis they are unable to access any assistance from mental health services or agencies mandated to deal with mental health issues.

At the present time, an analysis of CSC policy indicates that FAS/FAE offenders are not receiving any specific programs or skills targeted to their needs to assist their reintegration into society. If they are to receive any special programs or training while under sentence, then they must first be identified by some kind of diagnostic process at the beginning of their sentence. Given the problems faced by these offenders, if they

continue to go unaddressed, it seems that the CSC is not living up to their own stated policy objective. There appears to be some discrepancy between the Mission Statement and other CSC policy and the reality faced by FAS/FAE affected offenders. The CSC's self imposed mandate to identify, assess and assist offenders, especially those who have disabilities or other special needs, appears to continue to go unfulfilled with regard to FAS/FAE affected offenders. There is research and data enough to suggest that there is a significant number of offenders affected by FAS/FAE and that these individuals have needs that differ from the general prison population. By failing to address the needs of FAS/FAE offenders, the only guarantee is that these offenders will continue their behavioral patterns of offending behavior and return to prison. This does not contribute to the protection of society, and it is not encouraging or assisting offenders to become law-abiding citizens.

An interesting yet somewhat disturbing development in the field of FAS/FAE research is that of the four digit diagnostic code. Due to this development there is a move to simplify the screening and diagnosis of FAS by the use of one of the aspects of the four digit diagnostic code, photo imaging. Using this process, a picture would be taken of a person's face and a computer would measure various aspects of the face and compare the measurements to faces of individuals unaffected by FAS/FAE. This process may be successful however it has yet to be tested or implemented in Canada. This method of screening is worrisome for several reasons. First, it has been suggested that some of the facial features characteristic of a person affected by FAS are similar to certain facial features of unaffected persons of various ethnic backgrounds. As an example, some

Aboriginal persons have facial characteristics that may *look* like FAS facial characteristics, but are a normal variation for that ethnic group, not a result of FAS. Second, this type of prima facie recognition is troublesome as it harkens back to the work of Lombroso whose notion of atavism signaled a life of crime for those with certain physical characteristics such as low foreheads and tattoos (Jackson in Jackson and Griffiths, 1991: 180). Lombroso's work was later discredited as his methods were poor and unreliable and other explanations of criminal behavior were seen as more plausible. It has been suggested that the four digit diagnostic code is a positive step towards simplifying diagnosis. It appears that this method may be a more objective diagnostic method than the traditional gestalt method. Also, the four digit diagnostic code can be used as a screening tool as well as for diagnosis (Astley and Clarren, 2001).

The issue of labeling an offender as FAS/FAE is a tenuous one. However, labeling a disability by giving it a name and learning about it can be very powerful for an individual who is living with the disability. The ability to identify a problem is the first step towards conquering it, or at least some of its effects. In the case of FAS/FAE offenders, a label can be helpful as it may assist in accessing services or other supports which can help them to address some of their secondary disabilities. Psychologist A stated that in her opinion she feels that it would be very effective and helpful for an offender to have a diagnosis as a starting point for understanding why they are different from others and why they have the problems they do.

Howard Becker (1963:9 in L. Deutschmann, 1994:245) argues that “deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an ‘offender’. The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label.”. The concept of deviance as approached by Becker by extension calls into question who it is that is doing the labeling. Theories of power and control suggest that those in control of labeling others are those with the power to do so. Historically and currently, those who are labeled tend to be those who have the least power in society, those who are disenfranchised and have no means of refuting the label. This is certainly the case for FAS/FAE affected individuals as they are not organized as a group and do not have any method of generating a position of power within society. This is also true of FAS/FAE affected offenders in prison. Whether an FAS/FAE affected offender is deviant is of interest as much of the behaviors of FAS/FAE individuals stem from intentions other than what would be assumed by an outsider. As discussed earlier, FAS/FAE offenders do not always intend the logical outcomes of their behavior. Can one then justly lump these offenders in with other offenders who do not have brain damage?

FAS/FAE AND THE POLICY ANALYSIS

Definitions and Agenda-Setting

There has been much debate as to the definition of the term “policy”. Additionally there are different kinds of policy such as public policy, social policy, crime policy, etc. Some suggestions in the literature for defining policy are as follows, “Public policy is whatever

governments choose to do or not to do” (Dye, 2002: 1). This definition of public policy posits a top down model as governments are in a position of power to decide what will or will not be done. From this perspective, governing elites will allocate funds according to their perspective of what problems are in need of assistance while other problems or areas of need are left unaddressed. The process by which government officials define problems and choose which will be addressed is termed “agenda-setting”. Agenda-setting is a socially constructed event as problems are defined by their deviation from that which is considered normal (Howlett and Ramesh, 2003:121). Agenda-setting tells a great deal about those who are in positions of power, and to some extent the society they purport to represent, as there are an infinite number of problems to choose from yet only those taken into consideration are addressed. The manner in which selected issues are addressed is as important as the issues themselves. For example, the issue of alcohol addiction and misuse, and more specifically women consuming alcohol while pregnant, are issues infused with moral overtones. The approach taken to manage these issues is paramount. Perhaps women with addictions could be prohibited from bearing children if they use substances while pregnant, or, if they have a history of doing so? But who has the authority to decide? What about those women who argue they will do as they like with their bodies? These and many other questions must be considered when regarding public policy and the issue of pregnant women consuming alcohol.

Government Response and the Issue-Attention Cycle

The Canadian government has taken some steps to warn women of the dangers of consuming alcohol while pregnant. In 1992 the Commons Health Report recommended

labeling of alcoholic beverages, however nothing was done at that time (Bueckert, 2001). In 2001 a private members bill was passed in the House of Commons requiring labels on alcoholic beverages warning of the effects of drinking while pregnant. Labels might be helpful in terms of informing people about the dangers of consuming alcohol while pregnant and raising general awareness of the problem. Critics of this approach have raised the issue that a warning label does nothing to deter alcoholic women and that more needs to be done to help these women (Penni, 2001). Furthermore, there has been little government action on the outcome of alcohol consumption while pregnant, namely the problem of those affected by FAS/FAE.

Although cost and scarce public resources may restrict the attention devoted to FAS/FAE, it also seems that the issue-attention cycle may be shaping discussions around public policy. Downs (1972), argued that domestic issues come and go and the public's attention is only held for so long on any one issue before another issue takes its place. He termed this pattern, the issue-attention cycle. This model of agenda-setting ensures that the public puts pressure on government to take action on issues that are current and in the collective realm, however, when the issue fades, so does the pressure for government to take further action (Howlett and Ramesh, 2003: 129). This pattern was evidenced during media coverage of David Trott's murder trial. This offender sexually assaulted and murdered a young girl. He was reported to have several mental health issues among them FAS. At the time of this high profile case, FAS/FAE was mentioned frequently in the media. Such attention results in an increased interest and some further knowledge within the public sphere. However, this interest was not sustained, and other newsworthy items

captured the attention of people. Media companies operate in a competitive environment, and it seems there is an ongoing quest for the newest, most tantalizing set of events.

To be dealt with effectively, FAS/FAE must be addressed as a social problem, and as such, social policy needs to be developed to address it. Social policy is an appropriate avenue to pursue because the issues surrounding FAS/FAE are issues of widespread concern. The impact is felt by all of society and the response must be both systematic and collective. Responses to social problems must be on a scale much larger than that of individual problems; C. Wright Mills (1959: 8) explained the difference this way:

When, in a city of 100,000, only one man is unemployed, that is his personal trouble, and for its relief we properly look to the character of the man, his skills, and his immediate opportunities. But when in a nation of 50 million employees, 15 million men are unemployed, that is an issue, and we may not hope to find its solution within the range of opportunities open to any one individual.

Occurrences of FAS/FAE are not isolated events. This disorder occurs with regularity in populations or groups where drinking alcohol is common place. It is incurable and entirely preventable. FAS/FAE is a social issue and needs to be addressed for the betterment of society.

An Offender's Rights vs. Rights of Society

It has often been said, 'There is no pleasing everyone', and this is certainly the case when balancing the rights of the individual against the rights of society. Such issues are particularly "prickly" when considering the rights of criminals and those of society at large. "Crime policy seeks to effect compromises between basic social values that are in tension (e.g, liberty, security). In the larger sense, crime policy seeks to address the balance between fairness to the individual and the well-being of sociality as a whole." (Ekstedt,1991:75). Balancing issues of fairness to the FAS/FAE individual on trial for a criminal act and the well-being of society, it may be in the interest of justice to consider FAS/FAE a mitigating factor. The cognitive impairments characteristic of those with FAS/FAE is well documented and the impacts of these should be weighed at trial. Such acknowledgement could open the door for sentencing judges to order treatment programs, support, or living conditions for such an offender.

In a landmark case in 2001, Manitoba Judge L. Giesbrecht sentenced 25 year-old FAS affected Leonard Martin to two years in jail followed by three years probation for killing his roommate. Judge Giesbrecht stated that "The crimes committed by Mr. Martin should not be assessed against the standards of a normal person. His moral culpability must be judged in light of his disabilities and his intellectual impairment." (Canadian Press Newswire, 2001). Similarly, in Saskatchewan, Judge Mary Ellen Turpel-Lafond has made several rulings in which the Social Services Department is ordered to set up special programs or conditions for FAS/FAE offenders. The response to this method of dealing with FAS/FAE cases has been heavily criticized. Deputy Justice Minister John Whyte stated, "There comes a point when they (judges) give orders which require executive government to make expenditure decisions, design decisions, policy and

regulatory decisions which they haven't yet made, and courts don't have that authority over government." (Canadian Press Newswire, 2000). The assessments ordered are resource intensive, and there seems to be some reluctance to accept these rulings, and in fact, many of Judge Turpel-Lafond's decisions have been appealed.

Policy and Reality: The Conflict

The financial cost of diagnosing FAS/FAE offenders, designing specialized programs, and administration of programs has the potential to be significant. Much depends on securing hard data to confirm the seriousness of the problem. Paul Rock (1995: 5) states that, "Matters cannot be taken far without formal sanction. They cannot come properly into their own, and little money will be spent in their name, until they have been confirmed in the proper manner by a high official". It seems the prevalence of FAS/FAE in federal prison populations will not be assessed until the CSC has officially recognized the problem and the problem will not be officially recognized until its prevalence has been established.

One of the challenges to dealing effectively with FAS/FAE, beyond identifying those offenders so afflicted, is ensuring the policy delivers real benefit. Thomas and Robertson (1990: 195), argue, "a key concern in analyzing social policies involves determining who will receive particular types of benefits from the policies.". In the case of FAS/FAE offenders, the question becomes, what kind of benefit would these offenders derive from a correctional system which identified them as having a disability and provided specialized programming while serving a sentence? Then, upon reaching the end of their

sentence, the support system which has been so carefully developed is discontinued. This may be likened to having the rug pulled from underneath one's feet. Consistency of support is one of the most important aspects to dealing with someone with FAS/FAE. As such, it seems that offenders would gain most through diagnoses while incarcerated, however, only if their support network were to follow them beyond warrant expiry.

The labeling of an offender as FAS or FAE is most beneficial if they receive assistance during their sentence and follow up in the community upon the completion of their sentence. This would require an integrated partnership between federal and provincial bodies as well as corrections, social services, mental health, education and other sectors of government. At present, such an alliance does not exist. The 2000 Manitoba Prairie Northern Conference on Fetal Alcohol Syndrome stressed the need for a multidisciplinary approach to dealing with fetal alcohol syndrome by bringing together families, communities, educational institutions, medical practitioners, psychologist, social workers and others (Square, 2000). A multidisciplinary approach to FAS/FAE seems to be a positive departure point for further study leading to recommended policy action. Research into the consequences of the various alternatives can be the basis of policy development within a consideration of the political, legal and economic constraints (Dunn, 1994:69).

At the 2004 FASD Conference in Vancouver, a CSC representative spoke on a professional panel addressing the issue of FAS/FAE offenders. He stated that CSC recognizes that cognitive based programs are not effective for FAS/FAE offenders. He

stated that there is a need to invest in diagnosis, and, stated that there is a “significant” population in prison with FAS/FAE. It seems encouraging that CSC is openly recognizing that FAS/FAE affected offenders is a serious issue that needs to be addressed. This recognition needs to be followed up by action and steps towards addressing the multitude of issues regarding FAS/FAE offenders. To date, little such action has been taken.

The issue of FAS/FAE is not a glamorous one. It evokes sentiments of disappointment and even disgust in those affected as they repeatedly fail our culture of independence. FAS/FAE affected individuals tend to be viewed as lazy and difficult, and many parents, caregivers, educators, corrections staff, and others, believe that if they simply focused or tried harder, they could do better. We know that this is not the case, however further research is needed to increase our understanding of the issue of FAS/FAE. This is especially the case for FAS/FAE offenders. The dearth of research on FAS/FAE offenders will only contribute to the status quo, ensuring that little or nothing is done to ameliorate the situation for them. FAS/FAE offenders have the ability to be productive, law-abiding citizens, but in order to achieve this goal their abilities must be harnessed, not ignored.

CONCLUSION

FAS/FAE is a significant problem facing criminal justice practitioners of all levels. The exact dimensions of the problem are unknown, as research is lacking. However, it is clear that issues surrounding FAS/FAE demand action, attention, resources.

FAS/FAE possesses significant challenges to offenders suffering from this constellation of problems, such as poor memory, inability to generalize from one situation to another, no understanding of cause and effect, and an inability to live independently without some level of assistance. Debate continues as to the rate of offenders affected by FAS/FAE. Funding and resources needs to be allocated in order for such rates to be established, however, there is little impetus for allocation of resources if the problem can not be empirically confirmed. This is but one of the issues facing the CSC in their attempt to address the issue of FAS/FAE in federal institutions.

FAS/FAE offenders also challenge staff working in corrections because they often appear to be something they are not. They may have a normal range IQ, however this does not necessarily translate into ability. They often do not follow clear instruction or consistent rules, to the aggravation of staff. This may be because they often can not remember the rules or instruction, and they often do not understand the consequences of their behavior.

This exploratory research confirms that there is CSC policy in place which could deal with FAS/FAE affected offenders. However, it seems the policy has yet to be used to address the issues surrounding these offenders. Additionally, front line workers experience great difficulty in attempting to meet the needs of FAS/FAE offenders for

several reasons, including a lack of resources, as well as a lack of staff awareness concerning FAS/FAE. Another area of difficulty for those working with FAS/FAE impacted offenders in corrections is the tensions created when some staff members are “on board” as they have an understanding of how FAS/FAE impacts cognition and behavior of offenders and how best to address the needs of these offenders while other staff members do not have such an understanding.

FAS/FAE has largely been absent from policy discussion, and it appears that the issue of FAS/FAE raises many questions for policy makers. Most significant of the issues are where and how to begin addressing this problem. Specifically, the issue of whether or not to invest in diagnosis of offenders is a contentious issue due to the large cost.

Another issue is how to best manage FAS/FAE offenders in the event of a diagnosis. Specialized programs and services would have to be made available, and follow-up care for offenders who have reached the end of their sentence is almost impossible as there is little in the way of community services available to them.

The Correctional Service of Canada is mandated to “actively encourage(ing) and assist(ing) offenders to become law-abiding citizens” (Mission Statement) by providing the assistance they need to address their issues and problems. It seems very likely that FAS/FAE is chief among these issues for numerous offenders. Therefore, developing the ability to effectively manage FAS/FAE offenders of is of paramount importance to the CSC if it is truly and conscientiously fulfilling its mandate.

APPENDIX A

(Ethics Approval to be inserted here)

APPENDIX B

INTERVIEW QUESTIONS FOR PSYCHOLOGIST:

1. How are offenders processed at intake?
2. What determines whether an offender is sent to the Regional Reception and Assessment Center (RRAC) or to Regional Treatment Center (RTC)?
3. How does an offender at any point in his sentence get sent to RTC?
4. Do FAS/FAE offenders get sent to RTC? Should they be sent there?
5. What, if anything, should be done differently when processing FAS/FAE offenders?
6. Are there services and programs specifically for FAS/FAE offenders? Should there be such services?
7. FAS/FAE is not in the DSM-IV. Is this a problem or not for FAS/FAE offenders?
8. Do you consider a diagnosis of FAS/FAE to be a disability for the individual?
9. Policy objective (CD 840 – psychological services) states that the objective is to, “assist them with the resolution of mental health problems and behavioral disorders and to help them learn and adapt socially acceptable behavioral patterns and to prevent or attenuate their relapse following intervention.”. This seems like it would be a very difficult task when applied to FAS/FAE offenders. What is done currently to meet this stated objective with regards to FAS/FAE offenders?

10. Do staff in psychology have training in dealing with FAS/FAE clients? Should there be more training for them? For line staff?
11. What changes would be necessary for you to work more effectively with FAS/FAE offenders?
12. In your opinion, what is the risk posed by FAS/FAE offenders to society? What about their likelihood of successful reintegration?
13. As of 1995, intake psychological assessments became required by CSC for any offender meeting certain criteria. One of these criteria areas is that of mental health including, amongst other disorders, organic mental disorders. As FAS/FAE is considered by professionals in the field as an organic brain injury/disorder, why are FAS/FAE offenders not identified at this stage?
14. Do you consider the existing CSC policy in this area to be adequate?

INTERVIEW QUESTIONS FOR PAROLE OFFICER:

1. Are FAS/FAE offenders supervised differently in the community as opposed to other offenders? How so?
2. Are parole officers provided specialized training to work with FAS/FAE offenders? Is this training helpful or not?
3. In your opinion, what is the perceived risk presented by an offender with FAS/FAE?

4. With the paramount goal of community safety and safe reintegration of the offender, how does parole services meet this goal with regard to FAS/FAE offenders?
5. Very few FAS/FAE affected offenders have been diagnosed as such. How does having a diagnosis change your ability to work with an offender?
6. What services or programs are they referred to?
7. What changes would be necessary for you to work more effectively with FAS/FAE offenders?
8. Do you consider the existing CSC policy in this area to be adequate?

INTERVIEW QUESTIONS FOR GENESIS HOUSE FAS/FAE PROGRAM

MANAGER:

1. What is the Genesis House Program?
2. How are FAS/FAE offenders referred to your program?
3. Is there a consultation process prior to the release of the offender to your program?
4. How does the program meet the needs of these offenders?
5. What happens to the FAS/FAE offenders who participate in the program? Do they complete the program? Return to prison? Hit warrant expiry?
6. Are there supports available to the offenders after they leave the Genesis House program?

7. What changes would be necessary for your program to function more effectively in dealing with FAS/FAE offenders on release to the community?
8. How does your program contribute to the successful reintegration of offenders to the community and community safety?
9. Are you aware of any other programs in existence for FAS/FAE offenders?

INTERVIEW QUESTIONS FOR PROGRAM FACILITATORS:

1. One of the hallmarks of FAS/FAE is that although the person may have good verbal skills he is not able to apply cognitively learned skills to his own life. As CSC programs are cognitively based, how are these offenders needs being addressed through programming?
2. Do you feel any changes could or should be made to current programs in order to address the needs of FAS/FAE offenders?
3. Is training provided to program facilitators in how to deal with FAS/FAE offenders? Should such training be provided?
4. Do you consider a diagnosis of FAS/FAE to be a disability with regard to the capacity to learn in a classroom setting?
5. The goal of providing programs is to teach offenders skills to help them safely reintegrate into society and to decrease their risk of re-offending. If these programs are cognitively based, and FAS/FAE offenders do not learn cognitively, how is the stated goal being met?

6. From a financial perspective, do you think it is feasible to adapt current programs or create new programs to address the needs of FAS/FAE offenders taking into consideration the need for diagnosis, trained staff, and program development?
7. Do you consider the existing CSC policy initiatives in this area to be adequate?

Simon Fraser University

INFORMED CONSENT

By Participants In a Research Project or Experiment

Title of Project: Fetal Alcohol Syndrome/Fetal Alcohol Effect and Federal Corrections: A Retrospective Policy Analysis.

Intent of Project: The purpose of this thesis is to formulate an understanding of the experiences of various persons working within federal corrections as to their work with FAS/FAE affected offenders. Of interest is not official Correctional Services of Canada opinions nor those of the institutions with which the subject works, but rather the personal experiences and opinions of the subject. Interviews will be conducted which will be tape recorded however no identifying information pertaining to the subjects will be collected or used in this research. These experiences and impressions will assist in informing a consideration of the current federal policies which may apply to FAS/FAE offenders.

Name of Primary Investigator: Eva Silden, 604-420-1811

Name of Senior Supervisor: Dr. M. Jackson, 604-291-4040

Acting Director of the School of Criminology: Dr. Simon Verdun-Jones,
604-291-4305

Any information obtained during this study will be kept confidential to the full extent permitted by the law. Knowledge of your identity is not required. Materials will be maintained in a secure location. You will not be required to write your name or any other identifying information on research material.

Having been asked to participate in a research project or experiment, I certify that I have read the procedures specified in the information document describing the project. I understand the procedures to be used in this experiment and the personal risks to me in taking part in the project as stated below:

Risks and Benefits:
None.

I understand that I may withdraw my participation at any time. I also understand that I may register any complaint with the Director of the Office of Research Ethics or the researcher named above or with the Chair, Director or Dean of the Department, School or Faculty as shown below:

Department, School or Faculty: Criminology
Chair, Director or Dean: Simon Verdun-Jones (Acting Director)
8888 University Way, Simon Fraser University, Burnaby, British Columbia, V5A 1S6,
Canada

I may obtain copies of the results of this study, upon its completion by contacting:
Eva Silden at 604-420-1811.

I have been informed that the research will be confidential.

For the purposes of this interview, I did not approach or receive approval from the institution with which I am employed.

Name and signature of subject

Date

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