

**Carceral Abolition as Disability Justice for Incarcerated People
with Fetal Alcohol Spectrum Disorder (FASD)**

by

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Abstract

People with fetal alcohol spectrum disorder (FASD) are overrepresented in the Canadian carceral system (Flannigan et al., 2018a; Flannigan et al., 2018b; MacPherson et al., 2011; McLachlan, 2017). Reports indicate that their experiences in custody tend to be marked by higher rates of trauma, violence, and institutional struggles, contributing to continued contact with the carceral system over their lifetimes (Baldry, 2018; Standing Senate Committee on Human Rights, 2020). Despite this adversity, a review of the existing literature indicates that research about FASD and contact with the carceral system has not adequately critiqued the legitimacy of the carceral system itself. Exploration of possible alternatives to imprisonment for people with FASD has been limited. The experiences of people with FASD in the carceral system underscore the need for prison abolition and the development of robust alternatives to incarceration. Research demonstrates that community-based alternatives, such as restorative justice, can be successfully adapted to meet the needs of people with FASD (Blagg et al., 2019; Evans & Bourgon, 2020; Flannigan et al., 2022). Furthermore, these alternative justice strategies are a meaningful step toward achieving both prison abolition and disability justice.

Keywords: Fetal alcohol spectrum disorder, prison abolition, disability justice

Carceral Abolition as Disability Justice for Incarcerated People with Fetal Alcohol Spectrum Disorder (FASD)

People with fetal alcohol spectrum disorder (FASD) are over-represented in the Canadian carceral system (MacPherson et al., 2011; Olson & Sparrow, 2021). When in custody, they experience higher rates of trauma, violence, and institutional discipline than others, and they are more likely to be reincarcerated after their release (Dickson & Stewart, 2022; Standing Senate Committee on Human Rights, 2020). These issues are symptomatic of deeper concerns underlying the mainstream Canadian carceral system and engage several essential themes of human rights. However, the stigmas attached to both FASD diagnosis and incarceration have resulted in this community's ongoing oppression through incarceration receiving far less attention than it deserves.

This research paper builds upon a practicum placement hosted by the Manitoba-based organization Initiatives for Just Communities. It reviews existing research about the experiences of people with FASD in correctional settings to underscore connections with the movements for prison abolition and disability justice. This paper opens with a description of the practicum and the positionality informing the research, followed by a discussion of FASD in Canadian society. Theories of prison abolition and disability are outlined before being applied to the context of incarcerated people with FASD. Finally, the paper concludes with an explanation of why abolishing punitive, correctional approaches to justice and implementing non-carceral and restorative practices would advance the pursuit of disability justice.

Research

Practicum Placement

The placement site for this practicum report was Initiatives for Just Communities (IJC). IJC was incorporated as a charity in 2010 and runs four core programs in southern Manitoba (Initiatives for Just Communities, 2023). The organization works at the intersection of both disability rights and prisoner rights, providing support services for people who have intellectual disabilities, such as FASD, and for people currently or previously experiencing incarceration.

Several of IJC's core values applied to the research for this practicum-based paper. The first is that allies must amplify the voices of marginalized people, rather than speaking for them. The organization hosts Visions and Voices, a collective of public speakers and storytellers with FASD. The speakers share their life stories through public storytelling engagements to challenge stigmas and shift narratives about intellectual disability. (Initiatives for Just Communities, 2023). Many of the Visions and Voices members also speak about their experiences of incarceration. Another core value of IJC's work is restorative justice, which is incorporated into all its programs but particularly Open Circle and Circles of Support and Accountability (CoSA). These programs support the reintegration of incarcerated people into the community and facilitate building relationships and repairing harm (Initiatives for Just Communities, 2023). IJC exemplifies how organizations can work to advance justice for disabled and criminalized people in the community.

Research Methods & Positionality

This paper is written from the position of a settler Canadian student without lived experience of either incarceration or FASD. The research was undertaken from a perspective critical of the prison industrial complex and its relationship to colonization and oppression. The

research topic was prompted and shaped by the educational outcomes of a four-month practicum placement at Initiatives for Just Communities, focusing on reviewing and critically analyzing existing literature. These are aspects, and perhaps limitations, of this paper of which readers should be aware. Lived experience perspectives remain under-represented in academic research about FASD and intellectual disabilities in general (Reid et al., 2022a; Reid et al., 2022b). Responsible research requires consciously naming the privilege held by academics in relation to the broader community.

This framing of positionality is also necessary because objectivity in social science research is illusory (Holmes, 2020). Researchers' backgrounds and experiences influence what they study, why, and how (Holmes, 2020; Massoud, 2022). This is particularly important for a researcher choosing to write about marginalized communities in which they do not hold membership (Massoud, 2022). When researchers and academics do not acknowledge their positionality, their biases and perspectives remain unspoken. This notion applies equally to research based on literature review rather than direct community engagement (Holmes, 2020).

Word choice is another aspect of research that can be impacted by a researcher's positionality (Holmes, 2020). Efforts have been made throughout this paper to be conscious of words that may unintentionally perpetuate oppressive stereotypes and power dynamics, particularly concerning stigmatized communities. The language guide prepared by the Berkeley Underground Scholars provided helpful guidance, particularly with respect to respectful communication about incarcerated people (Cerda-Jara et al., 2019). The term *carceral system* is used in place of *criminal justice system*, recognizing that this system perpetuates injustice and harms many lives that it touches (Bryant, 2021; Cardoza, 2022; Cerda-Jara et al., 2019; Speri, 2019). Labelling words such as *prisoners*, *inmates*, and *offenders* have been avoided as much as

possible. Descriptive language, such as *incarcerated people* or *people in contact with the justice system*, has been used instead to avoid labels and better centre these groups' fundamental humanity (Cox, 2020; Harney et al., 2022). On the other hand, identity-first language is used where possible when referring to disability. This recognizes that disability is a culture and identity worthy of being named outright rather than euphemized (Best et al., 2022; Cox, 2020; Liebowitz, 2015). Some exceptions are made where necessary for grammar and flow purposes. Finally, this paper discusses prison and incarceration broadly, focusing on the broader phenomena associated with incarceration rather than individual systems. Where relevant, specific examples relate primarily to the federal context.

FASD and Stigma

Fetal alcohol spectrum disorder (FASD) refers to a diverse range of symptoms related to prenatal exposure to alcohol (Yousefi & Chaufan, 2022). FASD is a permanent brain injury that can have enduring impacts on cognitive, language, sensory and emotional functioning (Domeij et al., 2018; Flannigan et al., 2020; Moore & Riley, 2015). However, research on FASD has focused on perceived deficits associated with the disorder rather than strengths, contributing to misunderstandings and stigma among academics, service providers, and the public (Olson & Sparrow, 2021). As with other forms of intellectual disability, individuals with FASD are subject to deep-seated ableism and negative assumptions about their abilities (Aspler et al., 2018; Aspler et al., 2019; Ditchman et al., 2016). Research attention often focuses on individuals' deficits and impairments while ignoring their strengths and successes. FASD is also uniquely stigmatized because of its relationship to alcohol consumption during pregnancy and its overrepresentation in marginalized and oppressed communities (Aspler et al., 2018; Aspler et al., 2019; Dickson & Stewart, 2022; Wozniak et al., 2019). People with stigmatized identities frequently internalize

the stigma they experience (Sheehan & Ali, 2016). This self-stigmatization can be seen through increased self-consciousness, expressing acceptance and even agreement with negative stereotypes, and making choices that appear to confirm these expectations. Internalized stigma is correlated with a lower degree of well-being and, importantly, a higher likelihood of interaction with the carceral system (Ali et al., 2015; Sheehan & Ali, 2016).

The adversity faced by people with FASD is the result of both structural and interpersonal discrimination (Dickson & Stewart, 2022; Flannigan et al., 2020). Individuals with FASD report high levels of trauma and mental health conditions, with over 90 percent experiencing a concurrent mental health diagnosis or substance use disorder (Moore & Riley, 2015, p. 4). Histories of intergenerational and complex trauma related to experiences like racism, ableism, and social exclusion often result in post-traumatic stress (Dickson & Stewart, 2022; McLachlan, 2017; Marninwarantikura Women's Resource Centre, 2018). Symptoms of this post-traumatic stress response are also frequently missed or misinterpreted by service providers (Flannigan et al., 2021). Rather than acknowledging the resilience of people with FASD or taking action to dismantle the complex barriers they face, responses from both researchers and the community have continued to focus on medicalizing the condition, resulting in further harm. Depression, anxiety, and other mental health challenges are exacerbated, and can even be caused, by the widespread barriers and pervasive social exclusion that people with FASD experience daily (Green & Salmon, 2016; Roozen et al., 2022).

Likewise, the Canadian public does not accurately understand FASD as a disability, perpetuating stigma, misinformation, and discrimination on an interpersonal level (Aspler et al., 2018; Roozen et al., 2022). People with FASD are often excluded from social settings and peer groups, leaving them isolated and seeking meaningful connections (Aspler et al., 2018). As seen

with other groups who experience social marginalization, this increases their risk of being influenced or manipulated into making choices that bring them into conflict with the legal system (Brown et al., 2020; Longstaffe et al., 2018). People with intellectual disabilities like FASD are more likely than average to be criminally labelled and to be accused or suspected of crimes (Ditchman et al., 2016); this is connected to multiple intersecting factors, particularly stigma and lack of awareness of disability among police officers and other authority figures. When FASD is portrayed as inherently correlated with criminal behaviour, this stigma is particularly dangerous because it suggests that attempts at rehabilitation or support will be “hopeless” (Aspler et al., 2018, p. 111). The role of stigma is therefore highly relevant to the overcriminalization of people with FASD, and it increases the likelihood that a person with FASD will come into initial and continued contact with the carceral system.

FASD and Colonization

FASD is the most common cause of intellectual disability in Canada; while prevalence estimates vary, it is generally believed to affect between two and five percent of the population (Flannigan et al., 2018c; Popova et al., 2019). However, it is not diagnosed evenly across the population. Marginalized communities, such as those affected by poverty, colonization, and racism, frequently report disproportionately high rates of FASD diagnoses (Flannigan et al., 2018a). This is particularly true for Indigenous communities in Canada, and some communities in Manitoba report rates of FASD diagnoses that are several times higher than the national average (Banerji & Shah, 2017; Brownell et al., 2019; Flannigan et al., 2018a; Harvie et al., 2015).

The disproportionate rates of FASD diagnosis among Indigenous peoples are a direct result of colonization. As noted by Yousefi and Chauhan, alcohol has been both used as a tool of

the state to suppress Indigenous communities and promoted as a salve for recreation and relief (2018). Reproduction and community-building by Indigenous peoples have also been actively policed, including through the interrelated practices of residential schools, the Sixties Scoop, and forced sterilization (Truth and Reconciliation Commission of Canada, 2015; Yousefi & Chaufan, 2018). However, stereotypes about Indigenous peoples also drive “nonmedical labelling” of incarcerated Indigenous people as having FASD, even when they do not meet the diagnostic criteria, because of racial and cultural stereotypes (Tait et al., 2017, p. 111).

Indigenous peoples are similarly overrepresented in the Canadian carceral system, particularly individuals with FASD (Dickson & Stewart, 2022; Stewart, 2015). The mass incarceration of Indigenous peoples is another process of colonization (Truth and Reconciliation Commission of Canada, 2015). Approximately 30 percent of the federal correctional population is estimated to be Indigenous (Zinger, 2022); in Manitoba, this figure jumps to over 75 percent (Statistics Canada, 2023). Approximately half of the people detained in administrative segregation or special handling are Indigenous (Crozier, 2019). Public Safety Canada has raised concerns that up to half of Indigenous inmates in the federal correctional system may meet the diagnostic criteria for FASD (2010). These statistics support observations comparing correctional institutions to “new residential schools” (Macdonald, 2016). This context has been publicly identified for decades, by bodies such as the Supreme Court of Canada (*R. v. Gladue*, [1999] 1 SCR 688), the Truth and Reconciliation Commission (2015), and the Senate of Canada (Standing Senate Committee on Human Rights, 2020). However, despite the implementation of strategies like *Gladue* reports in the sentencing of Indigenous persons, the overrepresentation of Indigenous people in prisons has only worsened over time (LaForme, 2021; Ralston, 2021;

Statistics Canada, 2023; Zinger, 2019). It is clear that piecemeal criminal justice reform has not created meaningful change. Rather, the entire carceral system needs to be dismantled.

Human Rights Theory and Frameworks

Support for prison abolition as disability justice can be connected to several theories of human rights. Perhaps the most important is the principle of human rights as innate and inalienable. From a moral perspective of philosophy, human rights and dignity are inherent and exist regardless of their positivistic representation in law (Maritain, 1947; Nickel, 2019). These rights are universal and constant, applying equally to all human beings as a matter of birthright. This idea is reflected in the first article of the United Nations' *Universal Declaration of Human Rights* (United Nations General Assembly, 1948). Rather than remaining static, social and legal interpretations of human rights and justice ought to expand over time as they evolve to actualize the moral ideal (Nickel, 2019; Van Boven, 2018). Because they reflect the societies and global conditions in which they are developed, these understandings will always be imperfect (Maritain, 1947). While this imperfection could prompt pessimism, it can instead be regarded with the hope that equity, dignity, and justice will one day be achieved.

Disability Justice & Human Rights

The field of critical disability studies centres on framing disability as a core component of identity, rather than a deficit (Park et al., 1998). In the 1980s, social models of disability were developed to shed light on the structural forces that create and exacerbate barriers to social participation (Lawson & Beckett, 2020). However, disability studies scholars have illustrated how social models of disability do not adequately reflect embodied aspects of disability (Hansen & Philo, 2007; Lawson & Beckett, 2020). Social models have also neglected the lived experiences of people with neurodevelopmental and intellectual disabilities (Giri et al., 2021);

likewise, intellectual disability perspectives are frequently left out of mainstream conversations about disability stigma (Scior, 2016). Many critical disability scholars now advocate for the adoption of an integrated model of disability that incorporates both embodied and social aspects of disability from diverse perspectives (Hansen & Philo, 2007; Lawson & Beckett, 2020). Lawson and Beckett propose a complementary understanding of disability that integrates human rights articulated in the *CRPD* with the systemic focus of the social model (2020).

The rights of disabled people are now elaborated in international law with the adoption of the United Nations *Convention on the Rights of Persons with Disabilities (CRPD, 2007)*. Canada ratified the *CRPD* in 2010 (Harding & Wittingham, 2021). The rights outlined in the *CRPD*, including the right to dignity and protections from social exclusion and differential treatment, are meant to be universal. However, disabled people are frequently and systematically deprived of full enjoyment of these rights (Harding & Wittingham, 2021; Shelton, 2020). People diagnosed or labelled with intellectual disabilities have faced especially intense discrimination and marginalization, including forced sterilization, exclusion from employment, and incarceration in residential institutions and asylums (Scior, 2016; Wilt, 2022). However, for just as long, the community has resisted and rallied against this oppression (Berne & Sins Invalid, 2018; People First of Canada & Boulanger, 2008). These grassroots efforts have been transformed into the disability justice movement (Berne & Sins Invalid, 2018). Park et al. note that the disability justice movement sees the disabled body and mind as simultaneous “site[s] of oppression, [and] resistance” (1998, p. 214; citing Moss & Dyck, 1996). Core principles of disability justice include intersectionality, cross-movement solidarity, and the pursuit of collective liberation (Berne & Sins Invalid, 2018). These values shape disability justice organizers’ vision for a future of liberation for all and align powerfully with the broader pursuit of human rights and dignity.

Prison Abolition & Human Rights

Incarcerated people maintain entitled to their human rights while in custody. International and domestic human rights principles recognize the fundamental importance of the security of the person (Shah, 2018; Stanley, 2018), and human rights instruments such as the *International Covenant on Civil and Political Rights (ICCPR)* recognize that incarcerated people maintain their fundamental status as rights holders and are entitled to basic standards of humane treatment (Renzulli, 2022). Article 10 of the *ICCPR*, which recognizes the right to be treated with humanity and respect for dignity, is critical in the correctional context (*ICCPR*, 1966, s. 10). The United Nations and regional human rights bodies have built upon these guarantees with declarations, rules, and conventions requiring safety and dignity for incarcerated people. These include the United Nations Standard Minimum Rules for the Treatment of Prisoners, known familiarly as the “Mandela Rules” (2015), and the United Nations Office of the High Commissioner for Human Rights Basic Principles for the Treatment of Prisoners (1990). These documents establish minimum standards for prisons and detention centres and empower overseeing bodies to monitor imprisoned people's treatment and living conditions (Renzulli, 2022; Shelton, 2020).

These international human rights instruments are instrumental in mitigating the harms of prisons. However, they do not challenge the existence of prisons; instead, they legitimate their existence as they set standards without the goal of dismantling the institutions themselves (Renzulli, 2022). The very nature of imprisonment means that it is a violation of human rights (Stanley, 2018), but international human rights principles have not historically embraced prison abolition as a goal. Similarly, Canadian law legitimizes prisons by not only continuing to sentence people to terms of incarceration but also by giving deference to institutional decision-

making and policies, even in the face of gross rights violations (Kerr, 2014). The rights to liberty, security of the person, and equality guaranteed under sections seven and 15 of the *Charter of Rights and Freedoms* are infrequently applied in correctional institutions (Dhand & Joffe, 2020). The constitutional right to legal counsel is rarely afforded to incarcerated people during hearings for disciplinary action and parole (Jerome, 2022; Kuriyedath, 2021). While legal instruments assist in formally recognizing human rights, these situations show how they fall short when pursuing justice in a correctional environment.

The degree to which prisons and systems of punishment are intertwined with other social structures broadens the mission of the prison abolition movement (Renzulli, 2022). Social inequities such as lack of housing, barriers to mental healthcare, and entrenched poverty are all intertwined with criminal justice involvement (Ralston, 2021; Stewart & Glowatski, 2018). Therefore, bolstering social services and community support networks is integral to the goal of prison abolition. This aligns the prison abolition movement with other rights-based movements, such as harm reduction, disability justice, antiracism, and decolonization (Ben-Moshe, 2020; Ben-Moshe et al., 2014; McLeod, 2015). As is true in all social justice movements, the most important voices in the drive for prison abolition are those with lived experience. Incarcerated people have resisted their dehumanization through rebellion and protest for as long as prisons have existed (Scott, 2018). This history of collective dissent provides an important basis for pursuing prison abolition.

FASD and the Carceral System

Individuals with FASD are overrepresented in the Canadian carceral system; estimates indicate that between 10 and 25 percent of sentenced adults meet the diagnostic criteria for FASD, compared with between two and five percent of the general population (Flannigan et al.,

2018a; Flannigan et al., 2018b; MacPherson et al., 2011; McLachlan, 2017). In North America, approximately 40 to 60 percent of individuals with FASD have contact with the carceral system at some time in their life (Brown et al., 2014; Flannigan et al., 2018b). However, while this overrepresentation is widely recognized, further inquiry about their experiences in custody still needs to be fleshed out in research (Evans & Bourgon, 2020; Hutchinson et al., 2017; Tort et al., 2016).

What details are known about the experiences of incarcerated people with FASD are concerning. For instance, the prison environment is incompatible with common sensory, supportive, and structural needs associated with intellectual disabilities like FASD (Brown et al., 2020; Standing Senate Committee on Human Rights, 2020). Scott and Codd refer to this environment as “a monotonous road to nowhere” that is simultaneously tedious and dangerous (2010, cited in Scott, 2018, p. 130). Incarcerated people with FASD frequently face harsher discipline, more institutional charges, and higher levels of violence behind bars (John Howard Society of Ontario, 2020; Mullins et al., 2014; Standing Senate Committee on Human Rights, 2020). After serving a sentence, people with FASD have higher-than-average recidivism rates, meaning they will likely face these challenges multiple times in their lives (Brown et al., 2014; Tait et al., 2017). The adverse mental health outcomes widely experienced by people with FASD are exacerbated in correctional institutions (Senate Committee on Human Rights, 2020). Incarcerated people with intellectual disabilities, such as FASD, face higher rates of physical and emotional abuse, rights violations, assaults, and even torture (Baldry, 2018; Standing Senate Committee on Human Rights, 2020), and they are more likely to spend time in maximum security or segregation (Fritsch et al., 2022; Zinger, 2018). These issues affect incarcerated

Indigenous people disproportionately due to the compounding effects of ableism and racism in the carceral environment (Cox, 2020; Stewart & Glowatski, 2018).

The Stony Mountain Institution (SMI) study was one of the rare studies of the prevalence of FASD in the federal correction setting in Canada (MacPherson et al., 2011). Men who were newly admitted to federal corrections at the institution were screened and then diagnostically assessed for FASD by the research team (MacPherson et al., 2011). The results of the project were dramatic. Ten percent of inmates assessed in the study were diagnosed conclusively with FASD, while it was suspected but unconfirmed for a further 15 percent (MacPherson et al., 2011, p. 27). Finally, another 45 percent of inmates had another diagnosable deficit of the central nervous system that was not FASD but that impacted their daily life (p. 27). Combined, over 70 percent of inmates in the study presented with “moderate to severe” neurocognitive impairment (p. 27). The authors’ recommendations based on these findings included instituting FASD screening at admission to federal correctional institutions, with access to diagnostic services, and requiring corrections staff to be trained in understanding and accommodating FASD (MacPherson et al., 2011). These recommendations have not yet been implemented (Zinger, 2019).

While the SMI study had a limited scope, it provides important information about FASD and federal corrections. It suggests that most people incarcerated in Stony Mountain Institution could be living with a disabling impairment but without the institutional support that they need. While the study has not been replicated, more recent data from other sources appears to corroborate the authors’ findings. For example, the 2018 annual report of the federal Correctional Investigator indicated that up to eighty percent of women in federal institutions meet the diagnostic criteria for some form of psychosocial disability or significant mental health

condition (Zinger, 2018). The 2019 annual report estimated that between 10 and 23 percent of federal inmates meet the diagnostic criteria for FASD, consistent with the findings of the Stony Mountain Institution study (Zinger, 2019).

The lack of appropriate supports and resources for people with FASD in correctional institutions is well-documented (Public Safety Canada, 2010). Institutional pilot projects to support incarcerated people with FASD have been undertaken at a limited scale in recent years (Kerodal et al., 2021; Mela et al., 2022), however, little meaningful progress has been made in improving the correctional environment for people with FASD (Tait et al., 2017; Zinger, 2019; John Howard Society of Ontario, 2020). Moreover, the services and supports available to incarcerated people differ by jurisdiction and each institution's security level, resources, and policies (Correctional Service Canada, 2018). This leaves significant gaps in what few supports are available.

The Need for Decarceration

Individuals with FASD continue to suffer more acutely in custody than either the general incarcerated population or people with their diagnosis living in the community. In 2021, a Manitoba Provincial Court judge described conditions in one of the province's correctional centres as "hellish" for a person with FASD, which she attributed to the institution's failure to accommodate the disability (*R. v. Blair*, 2021 MBPC 4, p. 16). Such commentary reinforces that custodial sentences are especially harmful to people with FASD, yet judges continue to sentence people with FASD to incarceration.

The incarceration of people with FASD is only one example of the ways in which disabled people are systematically disadvantaged and excluded from social participation. Residential institutions and prisons have both acted to justify the continued marginalization of

disabled people, particularly those with intellectual disabilities or with needs labelled as complex (Wilt, 2022). Mental illnesses and intellectual disabilities are social constructs uniquely defined by their historical and social contexts (Park et al., 1998), and this is especially true for FASD, which carries an additional stigma rooted in racism and colonialism (Flannigan et al., 2020). Likewise, definitions of criminal activity are socially constructed (Bird, 2022), and in Canada, they are based on colonial and neurotypical ideals of behaviour.

The transition from incarcerating disabled people in asylums to prisons amounts to “transinstitutionalization” (Park et al., 1998, p. 221). These spaces are both physical and psychological institutions meant to “contain” and “segregate” disabled people (p. 223). The impact of this oppression is profound. Severing incarcerated people from their connection to social roles, meaningful connections with others, and their liberty conveys that lives are less valued when they are behind bars. The strict hierarchies, institutionalized violence, and culture of rights deprivations all perpetuate the social and physical deaths of incarcerated people, particularly those who are further othered on the basis of their disability (Noreau, 2019; Scott, 2018). In addition, the actions of disabled people are more closely and strictly supervised than others, particularly in these institutional environments (Baidry, 2018). As a result, situations that could otherwise be de-escalated or addressed organically are more likely to be escalated with criminal or disciplinary consequences. This is especially likely where individuals have multiple marginalized identities and more complex needs. For many, this pattern begins in adolescence and continues as a “pipeline” across the lifespan (Baldry, 2018, p. 61). These factors amount to systemic ableism and help to explain the over-representation of people with FASD in correctional institutions. Conditions in Canadian prisons have been noted to violate the human rights and *Charter* rights of incarcerated people, including recently in a report issued by a group

of independent Canadian senators (Senate of Canada, 2022). The continued application of this system, despite evidence of harm, constitutes a violation of these individuals' fundamental rights and undermines the guarantee in section 15 of the *Charter* of "equal[ity] before and under the law" (*Canadian Charter*, 1982, s. 15).

These harms also raise ethical questions about the role of the prison system in sentencing. In the *Criminal Code*, the primary considerations of sentencing are protecting society and promoting respect for the law (1985, s. 718). Principles like denunciation, deterrence, and separation from society are meant to uphold this overall objective, but their efficacy is largely unsupported by evidence. Specific deterrence through incarceration has been shown to have no meaningful impact on crime rates or recidivism but has profoundly harmful effects on criminalized individuals and communities (Deshman, 2022; Doob et al., 2014; Ling, 2021). Furthermore, the delayed and long-term punishment delivered by custodial sentences has proven ineffective in preventing recidivism, especially for people with FASD (Evans & Bourgon, 2020; Mullins et al., 2014). While prisons are dehumanizing to everyone, they are particularly brutal to the growing proportions of incarcerated people who are Indigenous, disabled, or both.

Restorative Justice Alternatives

In 2015, the Truth and Reconciliation Commission urged the federal and provincial governments to address issues related to FASD in the carceral system (Bell et al., 2019; Truth and Reconciliation Commission of Canada, 2015). Five years later, the Standing Senate Committee on Human Rights again implored the Government of Canada to take action (Standing Senate Committee on Human Rights, 2020). Despite this public attention, little progress has been made (Zinger, 2018; Zinger, 2019; Zinger, 2022). The lack of attention to meeting the needs of incarcerated people can be seen not as a flaw of these institutions but as a sign that they are

working as designed (Ben-Moshe et al., 2014; Jones, 2013). Prisons are structured on colonial hierarchies and values of supervision, punishment, and control. As Bird notes, prisons cannot be meaningfully decolonized because they are tools and products of colonialism and patriarchal power (2022). In order to advance decolonization, the carceral system itself must be dismantled. An equitable and accessible justice system cannot be premised on oppression (Ben-Moshe, 2020).

A well-supported alternative to punishment is restorative justice. The concept can be broadly defined as:

... an approach to justice based on the understanding that crime causes harm to people and affects the community. Under this approach, those who have caused the harm have a responsibility to repair it; those who have been harmed are central in deciding what is needed to repair it; and communities have a role to play in supporting victims and offenders, as well as addressing the root causes of crime. (Evans & Bourgon, 2020, p. 6)

The formal use of restorative justice practices in Canada has been documented since at least the 1980s, with diverse roots including Indigenous, Mennonite, and global traditions (Asadullah & Morrison, 2020; Tomporowski, 2014). Like retributive justice, restorative approaches are rooted in a belief in human agency (Van Wiltenburg, 2018). However, retribution assumes that individuals must be punished when their choices cause harm to others, and that this punishment must come from a central authority. In contrast, restorative justice practices are built on a foundation of empowerment. They trust that a person can and will work to repair the harm and pain caused by their actions when offered appropriate support to do so.

Although it is a relatively new application of the practice, restorative justice programming has been successfully adapted to meet the needs of people with disabilities like FASD who come into conflict with the law (Evans & Bourgon, 2020). These projects provide insight into the qualities of effective restorative justice intervention for people with FASD and for the wider community. For example, Blagg et al. have studied applications of restorative justice practices for justice-involved Aboriginal youth in Australia (2019). The authors found that restorative justice strategies work best when they are part of a more holistic approach to addressing community needs. Restorative justice programs cannot stand alone; they are no substitute for appropriate housing, food security, and social services. The authors further noted that applying Western cultural standards and structures to the youth's circumstances was unhelpful, and could cause further harm by perpetuating colonialism and devaluing Aboriginal ways of knowing. While this research was based in the Australian context, it has clear relevance for Canada as well.

More recently, Flannigan et al. reviewed the application of restorative justice by the Alexis Nakota Sioux Nation's FASD Justice Program in Alberta (2022). Their findings also emphasized the need to be flexible and creative, rather than formulaic, when designing restorative justice programming for individuals with FASD and with Indigenous communities. They echoed Blagg et al.'s observations that the objectives of restorative justice practices, such as supporting accountability and the repair of harm, cannot be meaningfully achieved without addressing the other factors in a person's life contributing to offending behaviour. More research on best practices in this area is needed, but these studies are a promising start.

These results also reflect the principles of transformative justice. Building upon the foundation of restorative justice, transformative justice holds that repairing harm is insufficient if

it does not contribute to building a more equitable and abundant future (Dubler & Lloyd, 2019). Focusing on individual reparation is insufficient when marginalized communities continue to suffer under existing systems of oppression (Piepzna-Samarasinha, 2020). Transformative justice is powerful because it demands imagination, hope, and flexibility. Likewise, adapting restorative justice to make it accessible to people with FASD may require re-imagining what restoration and accountability look like in practice and how they can be achieved. Strict models and procedures may be appropriate for some individuals with FASD but not for others. By not appropriately accommodating diverse needs and failing to be flexible and creative, a false impression may be created that people with FASD cannot meaningfully participate in restorative justice programming.

Abolishing carceral institutions will require a similarly creative approach. Simply dismantling prison buildings would leave individuals and communities in need without appropriate resources. Notwithstanding the harms associated with the prison system, in some cases, the carceral setting provides the first or only means for vulnerable people to access supports they need (John Howard Society of Ontario, 2020). This should not be seen as a benefit of incarceration. Rather, it is an indictment of the current state of Canada's social support networks. When mental health asylums and institutions were shuttered, the closures were undertaken without adequate investment in community resources and support for their former residents (Park et al., 1998). Programs and resources that could mitigate the harms of the correctional system often remain siloed and inaccessible in the community, further entrenching criminalized people in a cycle of incarceration (Malone, 2018). It is unjust if the only way a person can access the support and resources they need is to sacrifice their freedom. Instead,

abolition requires simultaneous investment in strong communities and ground-level supports that make communities safer and more dignified places for everyone.

Decarceration as Disability Justice

While restorative justice is being adapted for participants with FASD, it has not been approached with its full potential as a tool for achieving disability justice. The disability justice movement parallels the prison abolition movement in its broad scope and ambition. Just as prison abolition requires more than simply closing prisons, disability justice requires more than providing accommodations within existing systems. Both movements are working to dismantle the structures and attitudes of oppression that exist across society and to build instead a community of mutual accountability and care.

Social exclusion both enables and is enabled by carceral structures in Canadian society. The state's reliance on prisons to address social issues persists largely without question (Carrier & Piché, 2015), and so does the resultant segregation of incarcerated people. In contrast, one of the core tenets of disability justice is collective liberation (Berne & Sins Invalid, 2018). By explicitly prioritizing the needs of the most marginalized, such as those living at the intersections of disability, racialization, and poverty, the movement affirms these individuals' dignity and collective power. In contrast with the carceral systems that strip people of their liberty, their identities, and even their lives (Scott, 2018), disability justice is founded on uncompromising inclusion (Berne & Sins Invalid, 2018). This is especially important for incarcerated people with FASD, who are oppressed both because they are incarcerated and because they are disabled. Focusing on their experiences in the broader pursuit of prison abolition prioritizes the experiences of some of the most marginalized. It seeks to raise the tide by meeting the pressing needs, not those that are the easiest or most socially palatable. Decarceration is therefore an

indispensable component of disability justice. Incarcerated people with FASD must be empowered and supported “to gain access to their right not to be criminalised” (Baldry, 2018, p. 70).

Developing meaningful restorative justice programming as an alternative to incarceration also puts disability justice into practice. Well-developed restorative justice programming will empower people with FASD to participate in processes that acknowledge their agency and honour their strengths. The meaningful inclusion of people with FASD into the community requires that they, alongside their community members, be afforded equal opportunities to build relationships and mend harm. A vision of disability justice requires replacing punishment and segregation with this kind of inclusion and accountability.

In order to make effective restorative justice programming possible, community organizations and supports need to be strengthened through the reallocation of financial and human resources. Between federal and provincial jurisdictions, carceral institutions cost the Canadian state over 5 billion dollars per year (Statistics Canada, 2022). The funds that are poured into the carceral system would stretch incredibly far when redirected to the community. Community organizations and collectives, such as Initiatives for Just Communities, already provide day-to-day supports for people with FASD and those in contact with the carceral system on minuscule fragments of this prison budget. It is not an exaggeration to say that this funding would be life-changing. The reallocation of resources could also signify a form of restorative practice on the part of the Canadian state, as a step toward acknowledging and repairing the harm it has caused through incarceration.

Conclusions

The goals of prison abolition and disability justice can be harmonized to improve the well-being of justice-involved individuals with FASD. The symptoms and impairments associated with FASD make individuals more susceptible to interaction with the carceral system, and to social disadvantage and exclusion that further increase their likelihood of being criminalized (Standing Senate Committee on Human Rights, 2020). Addressing this compounded marginalization requires dismantling systems of oppression, and building new and more equitable systems built on justice and compassion to replace them. Investing in strengthening social services and programs is a complicated but essential component of repairing the harms caused by the prison industrial complex. It will require integrating and coordinating programs and systems to ensure that they work together to support the people who need them.

While restorative justice practices are slowly being tested for people with FASD, their potential to advance disability justice has been underexplored. This field deserves more research and academic attention. Of the gaps in the existing literature on this topic, perhaps the most noticeable is the lack of lived experience perspectives (Reid et al., 2022a; Tait et al., 2017). Future research should include interviews with individuals with FASD with past or present experience in correctional institutions and document their stories in their own words. Disabled survivors of the Canadian prison system have essential perspectives that have yet to be appropriately recognized and documented in academic research (Piepzna-Samarasinha, 2020, p. 247). It would also be beneficial to document the experiences of practitioners and participants in restorative justice programming for individuals with FASD to establish best practices.

The movement for prison abolition is fundamentally a movement for hope. It relies on the belief that harm can be repaired without punishment and without perpetuating oppression. It

imagines a future where accountability and compassion exist together. The movements for prison abolition and disability justice are closely intertwined, especially for people with FASD. They share the principle that every human being is worthy of dignity, inclusion, and rights.

Dismantling oppressive structures is integral to building safer communities and achieving this liberation for all. Repairing the harms inflicted through incarceration, especially on people with FASD, requires committed collective action from those who enjoy more privilege. A shift toward transformative approaches to justice would benefit not only disabled and criminalized communities but also the community at large.

References

- Ali, A., King, M., Strydom, A. & Hassiotis, A. (2015, November 15). Self-reported stigma and symptoms of anxiety and depression in people with intellectual disabilities: Findings from a cross sectional study in England. *Journal of Affective Disorders*, 187, 224-231.
<https://doi-org.uml.idm.oclc.org/10.1016/j.jad.2015.07.046>.
- Asadullah, M. & Morrison, B. (2021). 'Communities are not at the periphery, rather they are at the centre of Restorative Justice in BC': an inquiry into the praxis of restorative justice in British Columbia, Canada. *Contemporary Justice Review*, 24(2), 172-196. <https://doi-org.uml.idm.oclc.org/10.1080/10282580.2021.1881893>.
- Aspler, J., Zizzo, N. & Racine, E. (2018, November). Stereotyping and stigmatising disability: A content analysis of Canadian print news media about fetal alcohol spectrum disorder. *Canadian Journal of Disability Studies*, 7(3), 89-121.
<https://doi.org/10.15353/cjds.v7i3.452>.
- Aspler, J., Zizzo, N., Bell, E., Di Pietro, N. & Racine, E. (2019). Stigmatisation, exaggeration, and contradiction: An analysis of scientific and clinical content in Canadian print media discourse about fetal alcohol spectrum disorder. *Canadian Journal of Bioethics*, 2(2), 23-35. <https://doi.org/10.7202/1058140ar>.
- Baldry, E. (2018). 3: Rights of persons with disability not to be criminalised. In E. Stanley, (Ed.). *Human rights and incarceration* (pp. 53-77). Palgrave Studies in Prisons and Penology.
https://doi.org/10.1007/978-3-319-95399-1_3.

- Banerji, A. & Shah, C. (2017). Ten-year experience of fetal alcohol spectrum disorder; diagnostic and resource challenges in Indigenous children. *Pediatrics & Child Health*, 22(3), 143-147. <https://doi.org/10.1093/pch/pxx052>.
- Bell, M., Glowatski, K., Pitawanakwat, R. & Stewart, M. (2019, May 30). *FASD and TRC call to action 34.4: A consideration of evaluation methods*. Department of Justice Canada. <https://www.justice.gc.ca/eng/rp-pr/jr/fasd-etcaf/fasd-etcaf.pdf>.
- Ben-Moshe, L., Chapman, C. & Care, A. C. (Eds). (2014). *Disability incarcerated: Imprisonment and disability in the United States and Canada*. Palgrave Macmillan. <https://doi.org/10.1057/9781137388476>.
- Ben-Moshe, L. (2020). *Decarcerating disability: Deinstitutionalization and prison abolition*. University of Minnesota Press. <https://doi.org/10.5749/j.ctv10vm2vw>.
- Berne, P. & Sins Invalid. (2018). Ten principles of disability injustice. In Sins Invalid, *Skin, Tooth, and Bone: The Basis of Movement is Our People: A Disability Justice Primer* (pp. 16-22). <https://static1.squarespace.com/static/58d3f955d2b857698e8dff2/t/5c9930b508522954e2d3059a/1553543364713/Disability+Justice+Primer.pdf>.
- Best, K. L., Mortenson, W. B., Lauziere-Fitzgerald, Z. & Smith, E. M. (2022, April 25). Language matters! The long-standing debate between identity-first language and person-first language. *Assistive Technology*, 34(2), 127-128. <https://doi-org.uml.idm.oclc.org/10.1080/10400435.2022.2058315>.

- Bird, D. (2022). 7: Settler colonialism, anti-colonial theory, and “indigenized” prisons for Indigenous women. In K. Struthers Montford & C. Taylor (Eds.), *Building abolition: Decarceration and social justice* (pp. 110-121). <https://doi-org.uml.idm.oclc.org/10.4324/9780429329173>.
- Blagg, H., Tulich, T. & May, S. (2019). Aboriginal youth with foetal alcohol spectrum disorder and enmeshment in the Australian justice system: can an intercultural form of restorative justice make a difference? *Contemporary Justice Review*, 22(2), 105-121. <https://doi-org.uml.idm.oclc.org/10.1080/10282580.2019.1612246>.
- Brown, J., Long-McGie, J., Wartnik, J., Oberoi, P., Wresh, J., Weinkauff, E., Falconer, G. & Kerr, A. (2014). Fetal alcohol spectrum disorders in the criminal justice system: A review. *Journal of Law Enforcement*, 3(6), 1-10 (online). <https://canfasd.ca/wp-content/uploads/2018/01/Brown-2014-FASD-in-the-criminal-justice-system.pdf>.
- Brown, J., Asp, E., Carter, M. N., Spiller, V. & Bishop-Deaton, D. (2020). Suggestibility and confabulation among individuals with Fetal Alcohol Spectrum Disorder: A review for criminal justice, forensic mental health, and legal interviewers. *International Journal of Law and Psychiatry*, 73, 1-11. <https://doi.org/10.1016/j.ijlp.2020.101646>.
- Brownell, M., Enns, J. E., Hanlon-Dearman, A., Chateau, D., Phillips-Beck, W., Singal, D., MacWilliam, L., Longstaffe, S., Chudley, A., Elias, B. & Roos, N. (2019, September). Health, social, education, and justice outcomes of Manitoba First Nations children diagnosed with fetal alcohol spectrum disorder: A population-based cohort study of linked

administrative data. *Canadian Journal of Psychiatry*, 64(9), 611-620.

<https://doi.org/10.1177/0706743718816064>.

Bryant, E. (2021, December 1). *Why we say “criminal legal system” not “criminal justice system.”* Vera Institute of Justice. <https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system>.

Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. <https://laws-lois.justice.gc.ca/eng/const/page-12.html>.

Cardoza, N. (2022, May 9). *Why we are phasing out the term “criminal justice system.”* Anti-Racism Daily.

Carrier, N. & Piché, J. (2015). Actualité de l’abolitionnisme. *Champ Pénal*, 12.

<https://doi.org/10.4000/champpenal.9163>.

Cerda-Jara, M.; Czifra, S., Galindo, A., Mason, J., Ricks, C. & Zohrabi, A. (2019). *Language guide for communicating about those involved in the carceral system*. Underground Scholars Initiative, UC Berkeley. https://docs.google.com/document/d/10_XWnlhfftDma3GoWmn5A_iE0bU0TYnkjRVu9_FT6eE/edit.

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) [CRPD].

<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

- Correctional Service Canada. (2018, July 16). *Serving time*. <https://www.csc-scc.gc.ca/correctional-programs/002001-1000-eng.shtml>.
- Cox, A. (2020, July 23). The language of incarceration. *Incarceration*, 1(1). <https://doi-org.uml.idm.oclc.org/10.1177/2632666320940859>.
- Criminal Code*, RSC 1985, c C - 46. <https://laws-lois.justice.gc.ca/eng/acts/c-46/.html>.
- Crozier, C. (2019, May 31). ‘Yes, it’s torture’: Federal inmate on segregation and life on the inside. APTN National News. <https://www.aptnnews.ca/national-news/yes-its-torture-federal-inmate-on-segregation-and-life-on-the-inside/>.
- Deshman, A. (2022, September 16). *No, longer prison sentences do not reduce crime: Experts’ open letter in response to a recent CBC article*. Canadian Civil Liberties Association. <https://ccla.org/criminal-justice/no-longer-prison-sentences-do-not-reduce-crime/>.
- Dhand, R. & Joffe, K. (2020). Involuntary detention and involuntary treatment through the lens of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. *Manitoba Law Journal*, 43(3), 207-248. <https://journals.library.ualberta.ca/themanitobalawjournal/index.php/mlj/article/view/1204/1189>.
- Dickson, J. & Stewart, M. (2022). Risk, rights and deservedness: Navigating the tensions of Gladue, Fetal Alcohol Spectrum Disorder and settler colonialism in Canadian courts. *Behavioral Sciences & the Law*, 40(1), 14-30. <https://doi-org.uml.idm.oclc.org/10.1002/bsl.2536>.

- Ditchman, N., Kosyluk, K., Lee, E-J. & Jones, N. (2016). 3: How stigma affects the lives of people with intellectual disabilities: An overview. In K. Scior & S. Werner (Eds.). *Intellectual disability and stigma: Stepping out from the margins* (pp. 31-47). Palgrave Macmillan. <https://doi.org/10.1057/978-1-137-52499-7>.
- Domeij, H., Fahlstrom, G., Bertilsson, G., Hultcrantz, M., Munthe-Kass, H., Nehlin Gordh, C. & Helgesson, G. (2018, February 26). Experiences of living with fetal alcohol spectrum disorders: a systematic review and synthesis of qualitative data. *Developmental Medicine and Child Neurology*, 60(8), 741-752. <https://doi.org/10.1111/dmcn.13696>.
- Doob, A. N., Webster, C. M. & Gartner, R. (2014, February 14). The effects of imprisonment: Specific deterrence and collateral effects. *Criminological Highlights*. <https://www.crimsl.utoronto.ca/sites/crimsl.utoronto.ca/files/The%20Effects%20of%20Imprisonment%20Specific%20Deterrence%20and%20Collateral%20Effects.pdf>.
- Dubler, J & Lloyd, V. (2019, January 22). The end of punishment: Restorative justice, prison abolition and the Christian refusal of state violence. *Religion & Ethics*. <https://www.abc.net.au/religion/restorative-justice,-prison-abolition-and-the-refusal-of-state/10630778>.
- Evans, J. & Bourgon, N. (2020). *Exploring the use of restorative justice practices with adult offenders with fetal alcohol spectrum disorder*. Department of Justice Canada, Research and Statistics Division. <https://www.justice.gc.ca/eng/rp-pr/jr/efasd-etcaf/efasd.pdf>.

- Flannigan, K., Pei, J., Stewart, M., & Johnson, A. (2018a). Fetal alcohol spectrum disorder and the criminal justice system: A systematic literature review. *International Journal of Law and Psychiatry*, 57, 42–52. <https://doi.org/10.1016/j.ijlp.2017.12.008>.
- Flannigan, K., Unsworth, K., & Harding, K. (2018b, August). *FASD prevalence in special populations*. Canada FASD Research Network. Retrieved from <https://canfasd.ca/wp-content/uploads/publications/Prevalence-2-Issue-Paper-FINAL.pdf>.
- Flannigan, K., Unsworth, K. & Harding, K. (2018c, July). *The prevalence of fetal alcohol spectrum disorder*. Canada FASD Research Network. <https://canfasd.ca/wp-content/uploads/publications/Prevalence-1-Issue-Paper-FINAL.pdf>.
- Flannigan, K., Harding, K., Pei, J., McLachlan, K., Mela, M., Cook, J. & McFarlane, A. (2020, December). *The unique complexities of fetal alcohol spectrum disorder*. Canada FASD Research Network. <https://canfasd.ca/wp-content/uploads/publications/FASD-as-a-Unique-Disability-Issue-Paper-FINAL.pdf>.
- Flannigan, K., Kapasi, A., Pei, J., Murdoch, I., Andrew, G. & Rasmussen, C. (2021, February). Characterizing adverse childhood experiences among children and adolescents with prenatal alcohol exposure and Fetal Alcohol Spectrum Disorder. *Child Abuse & Neglect*, 112, 1-15. <https://doi.org/10.1016/j.chiabu.2020.104888>.
- Flannigan, K., Tremblay, M., Potts, S., Nelson, M., Brintnell, S., O’Riordan, T., Rasmussen, C. & Pei, J. (2022). Understanding the needs of justice-involved adults with fetal alcohol spectrum disorder in an Indigenous community. *Behavioural Sciences and the Law*, 40, 129-143. <https://doi-org.uml.idm.oclc.org/10.1002/bsl.2554>.

- Fritsch, K., Monaghan, J. & van der Meulen, E. (2022). 1: Resisting the criminalization of disability: Crippling disability injustice toward accessible decarceral futures. In *Disability injustice: Confronting criminalization in Canada* (pp. 3-46). UBC Press.
- Giri, A., Aylott, J., Giri, P., Ferguson-Wormley, S. & Evans, J. (2021, February 19). Lived experience and the social model of disability: conflicted and inter-dependent ambitions for employment of people with a learning disability and their family carers. *British Journal of Learning Disabilities*, 50(1), 98-106. <https://doi-org.uml.idm.oclc.org/10.1111/bld.12378>.
- Green, C. R. & Salmon, A. (2016). *FASD, stress and mental health*. Canada FASD Research Network. <https://canfasd.ca/wp-content/uploads/2016/05/FASD-Stress-and-MH-EN.pdf>.
- Hansen, N. & Philo, C. (2007, September 6). The normality of doing things differently: Bodies, spaces and disability geography. *Tijdschrift voor Economisch en Sociale Geografie*, 98(4), 493-506. <https://doi-org.uml.idm.oclc.org/10.1111/j.1467-9663.2007.00417.x>.
- Harding, K. & Whittingham, L. (2021, May). *Issue paper: Framing FASD using the UNCRPD*. Canada FASD Research Network. Retrieved from <https://canfasd.ca/wp-content/uploads/publications/UNCRPD-and-FASD-final.pdf>.
- Harney, B. L., Korchinski, M., Young, P., Scow, M., Jack, K., Linsley, P., Bodkin, C., Brothers, T. D., Curtis, M., Higgs, P., Mead, T. S., Hart, A., Kilroy, D., Bonn, M. & Bartlett, S. R. (2022, January). It is time for us all to embrace person-centred language for people in prison and people who were formerly in prison. *International Journal of Drug Policy*, 99, 1-6. <https://doi.org/10.1016/j.drugpo.2021.103455>.

Harvie, Fisher, G., Chudley, A. E., Proven, S., & Brown, T. (2015). *FASD and other cognitive challenges: what lawyers need to know*. Law Society of Manitoba, Education and Competence Department.

Holmes, A. G. D. (2020, September). Researcher positionality – a consideration of its influence and place in qualitative research – a new researcher guide. *Shanlax International Journal of Education*, 8(4), 1-10. <https://doi.org/10.34293/education.v8i4.3232>.

Hutchinson, G., Rose, J., Willner, P. & Bastick, T. (2017). Intellectual disability in a prison population with anger problems in Trinidad. *The Journal of Forensic Psychiatry & Psychology*, 28(4), 513-524. <https://doi.org/10.1080/14789949.2017.1301530>.

Initiatives for Just Communities. (2023). *About us*. <https://www.initiativesjc.org/wpblog/about-us/>.

International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

Jerome, A. (2022, June 28). 'Crisis' in federal correctional institutions due to parole programming backlog, lawyer says. Law360 Canada. <https://www.law360.ca/articles/37589>.

John Howard Society of Ontario. (2020, December 16). *Broken record: The continued criminalization of mental health issues*. <https://johnhoward.on.ca/wp-content/uploads/2021/01/Broken-Record.pdf>.

Jones, C. (2013, July 25). *The system isn't broken, it was designed this way: A critical analysis of historical racial disadvantage in the criminal justice system*. Hampton Institute.

<https://www.hamptonthink.org/read/the-system-isnt-broken-it-was-designed-this-way-a-critical-analysis-of-historical-racial-disadvantage-in-the-criminal-justice-system>.

Kerodal, A. C., Akca, D., Jewell, L. M. & Wormith, J. S. (2021, March 24). *A process evaluation of the Regional Psychiatric Centre's fetal alcohol spectrum disorder pilot project: Year 1 (July 2018 June 2019)*. Centre for Forensic Behavioural Science and Justice Studies, University of Saskatchewan.

<https://cfbsjs.usask.ca/research/evaluation-of-rpc-fasd-pilot-project-final-mar-24-2021.pdf>.

Kerr, L. (2014, September). Contesting expertise in prison law. *McGill Law Journal*, 60(1), 43-94. <https://doi-org.uml.idm.oclc.org/10.7202/1027719ar>.

Kuriyedath, T. (2021, December 1). Charter rights in prison: A legal analysis & prediction. *Gadfly Undergraduate Journal of Political Science*, 1, 1-16.

<https://journals.lib.sfu.ca/index.php/gadfly/article/view/2514/3032>.

LaForme, H. S. (2021, November 24). *Over-representation of Indigenous people in prison*. First Peoples Law. <https://www.firstpeopleslaw.com/public-education/blog/the-over-representation-of-indigenous-people-in-prison>.

Lawson, A. & Becket, A. E. (2020). The social and human rights models of disability: Towards a complementarity thesis. *The International Journal of Human Rights*.

<https://doi.org/10.1080/13642987.2020.1783533>.

Liebowitz, C. (2015, March 20). I am disabled: On identity-first versus people-first language.

The Body is Not an Apology. <https://thebodyisnotanapology.com/magazine/i-am-disabled-on-identity-first-versus-people-first-language/>.

Ling, J. (2021, February 28). *Houses of hate: How Canada's prison system is broken*. Maclean's.

<https://macleans.ca/news/canada/houses-of-hate-how-canadas-prison-system-is-broken/>.

Longstaffe, S., Chudley, A. E., Harvie, M. K., Markesteyn, T., Neault, D. & Brown, T. (2018, March-April). The Manitoba Youth Justice Program: empowering and supporting youth with FASD in conflict with the law. *Biochemistry and Cell Biology*, 96(2), 260.

<http://dx.doi.org.uml.idm.oclc.org/10.1139/bcb-2017-0078>.

Macdonald, N. (2016, February 18). *Canada's prisons are the 'new residential schools.'*

Maclean's. <https://macleans.ca/news/canada/canadas-prisons-are-the-new-residential-schools/>.

MacPherson, P.H., Chudley, A.E. & Grant, B.A. (2011). *Fetal Alcohol Spectrum Disorder (FASD) in a correctional population: Prevalence, screening and characteristics*, Research Report R-247. Report prepared for Correctional Service Canada.

<https://www.publicsafety.gc.ca/lbrr/archives/cn21451-eng.pdf>.

Malone, K. (2018, March 19). *Without screening or supports, offenders with FASD face*

revolving door of justice. CBC News Indigenous. <https://www.cbc.ca/news/indigenous/without-screening-or-supports-offenders-with-fasd-face-revolving-door-of-justice-1.4536103>.

- Maritain, J. (1947, June). Human rights and natural law. In J. Šopova (Ed.), (2018), *The UNESCO Courier*, 2018-4. <https://en.unesco.org/courier/2018-4/human-rights-and-natural-law>.
- Marninwarantikura Women's Resource Centre. (2018). *Fetal alcohol spectrum disorder (FASD) and complex trauma: A resource for educators*. http://www.fasdnetwork.org/uploads/9/5/1/1/9511748/fasd_complex_trauma.pdf.
- Massoud, M. F. (2022, July 26). The price of positionality: assessing the benefits and burdens of self-identification in research methods. *Journal of Law and Society*, 49(S1), S64-S86. <https://doi-org.uml.idm.oclc.org/10.1111/jols.12372>.
- McLachlan, K. (2017). Fetal Alcohol Spectrum Disorder in Yukon corrections: Final report to Yukon Justice: Estimating the prevalence of FASD, mental health, and substance use problems in the justice system. http://www.justice.gov.yk.ca/pdf/Corrected_McLachlan_Final_Report_to_Yukon_August_2017.pdf.
- McLeod, A. M. (2015, June). Prison abolition and grounded justice. *UCLA Law Review*, 62, 1156-1239. <http://scholarship.law.georgetown.edu/facpub/1490>.
- Mela, M., Wall, L., Buttinger, P., DesRoches, A. & Wrath, A. J. (2022, January 4). Rates and implications of fetal alcohol spectrum disorder among released offenders with mental disorder in Canada. *Behavioural Sciences and the Law*, 40(1), pp. 144-158. <https://doi-org.uml.idm.oclc.org/10.1002/bsl.2557>.

- Moore, E. M. & Riley, E. P. (2015, September 1). What happens when children with fetal alcohol spectrum disorders become adults? *Current Developmental Disorders Reports*, 2(3), 219-227. <https://doi.org/10.1007/s40474-015-0053-7>.
- Mullins, P., MacPherson, P., Moser, A. E. & Matheson, F. I. (2014). *Institutional adjustment of offenders living with Fetal Alcohol Spectrum Disorder (FASD) in a Canadian federal penitentiary: Research report R-284*. Correctional Service of Canada. <https://www.publicsafety.gc.ca/lbrr/archives/cn34356-eng.pdf>.
- Nickel, J. (2019, April 11). *Human rights*. Stanford Encyclopedia of Philosophy. <https://plato.stanford.edu/entries/rights-human/>.
- Noreau, S. (2019, February 20). *Canada's correctional system: An inside look*. Standing Senate Committee on Human Rights, Senate of Canada. <https://sencanada.ca/en/newsroom/ridr-canadas-correctional-system-an-inside-look/>.
- Olson, H. C. & Sparrow, J. (2021, April 8). A shift in perspective on secondary disabilities in fetal alcohol spectrum disorders. *Alcoholism, Clinical and Experimental Research*, 45(5), 916-921. <https://doi.org/10.1111/acer.14586>.
- Park, D. C., Radford, J. P. & Vickers, M. H. (1998). Disability studies in human geography. *Progress in Human Geography*, 22, 208-233. <https://doi-org.uml.idm.oclc.org/10.1191/030913298672928786>.
- People First of Canada & Boulanger, J. (Directors). (2008). *The freedom tour* [Documentary film]. People First of Canada. <https://www.peoplefirstofcanada.ca/the-freedom-tour/>.

Piepzna-Samarasinha, L. L. (2020). 22: Crippling TJ. In *Beyond survival: Strategies and stories from the transformative justice movement* (pp. 233-247). AK Press.

Popova, S., Lange, S., Pozynak, V., Chudley, A. E., Shield, K. D., Reynolds, J. N., Murray, M. & Rehm, J. (2019). Population-based prevalence of fetal alcohol spectrum disorder in Canada. *BMC Public Health*, 19(845). <https://doi.org/10.1186/s12889-019-7213-3>.

Public Safety Canada. (2010). *Fetal alcohol spectrum disorder and the criminal justice system*. Aboriginal Corrections Policy Unit, Public Safety Canada.

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ftl-lchl-spctrm/index-en.aspx>.

R. v. Blair, 2021 MBPC 4. <https://www.canlii.org/en/mb/mbpc/doc/2021/2021mbpc4/2021mbpc4.html?autocompleteStr=r%20v%20blair%20202&autocompletePos=3>.

R. v. Gladue, [1999] 1 SCR 688, 1999 CanLII 679 (SCC). <https://www.canlii.org/en/ca/scc/doc/1999/1999canlii679/1999canlii679.html?autocompleteStr=gladu&autocompletePos=1>.

Ralston, B. A. (2021). *The Gladue principles: A guide to the jurisprudence*. BC First Nations Justice Council & Indigenous Law Centre.

https://indigenouslaw.usask.ca/documents/publications/the-gladue-principles_ralston.pdf.

Reid, D., Beland, W., Richardson, L. & Flannigan, K. (2022a, September 21). What if?

Incorporating the voices of those with lived experience to change the focus of fetal alcohol spectrum disorder research. *Journal of Fetal Alcohol Spectrum Disorder*, 4(SP1), e162-170. <https://doi.org/10.22374/jfasd.v4iSP1.16>.

Reid, B., Brownstone, L., Stewart, M., Schofield, N. & Pitawanakwat, R. (2022b, September 21.)

Nothing about us without us: Essential considerations for collaborative FASD research.

Journal of Fetal Alcohol Spectrum Disorder, 4(SP1), e20-35.

<https://doi.org/10.22374/jfasd.v4iSP1.14>.

Renzulli, I. (2022). Prison abolition: International human rights law perspectives. *The*

International Journal of Human Rights, 26(1), 100-121.

<https://doi.org/10.1080/13642987.2021.1895766>.

Roozen, S., Stutterhiem, S. E., Bos, A. E. R., Kok, G. & Curfs, L. M. G. (2022). Understanding

the social stigma of fetal alcohol spectrum disorders: From theory to interventions.

Foundations of Science, 27, 752-771. <https://doi.org/10.1007/s10699-020-09676-y>.

Scior, K. (2016). 1: Toward understanding intellectual disability stigma: Introduction. In K.

Scior & S. Werner (Eds.). *Intellectual disability and stigma: Stepping out from the margins*

(pp. 3-13). Palgrave Macmillan. <https://doi.org/10.1057/978-1-137-52499-1>.

Scott, D. (2018). 6: Haunted by the presence of death: Prisons, abolitionism and the right to life.

In E. Stanley, (Ed.). *Human rights and incarceration* (pp. 129-151). Palgrave Studies in

Prisons and Penology. https://doi.org/10.1007/978-3-319-95399-1_6.

Senate of Canada. (2022). *Senators go to jail: When, why and what did they find?*.

https://sencanada.ca/media/lbcaty5i/220513_honkimpate_final2-med_res.pdf.

Shah, S. (2018). Categories of rights. In D. Moeckli, S. Shah & S. Sivakumaran (Eds.),

International human rights law (3rd ed) (pp. 13-147). Oxford University Press.

Sheehan, R. & Ali, A. (2016). 7: Self-stigma in people with intellectual disabilities. In K. Scior & S. Werner (Eds.). *Intellectual disability and stigma: Stepping out from the margins* (pp. 91-109). Palgrave Macmillan. <https://doi.org/10.1057/978-1-137-52499-7>.

Shelton, D. L. (2020). *Advanced introduction to international human rights law* (2nd ed). Edward Elgar Publishing Limited.

Speri, A. (2019, November 9). *The criminal justice system is not broken. It's doing what it was designed to do*. The Intercept. <https://theintercept.com/2019/11/09/criminal-justice-mass-incarceration-book/>.

Standing Senate Committee on Human Rights. (2020). *Human rights of federally-sentenced persons*. Senate of Canada. https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

Stanley, E. (2018). 1: Human rights and incarceration. In E. Stanley, (Ed.). *Human rights and incarceration* (pp. 1-23). Palgrave Studies in Prisons and Penology. https://doi.org/10.1007/978-3-319-95399-1_3.

Statistics Canada. (2023, February 23). *Table 35-10-0014-01: Adult admissions to correctional services*. <https://doi.org/10.25318/3510001401-eng>.

Statistics Canada. (2022, April 20). *Table 35-10-0013-01: Operating expenditures for adult correctional services*. <https://doi.org/10.25318/3510001301-eng>.

Stewart, M. (2015, November). *Environmental scan: FASD & the justice system in Canada*.

University of Regina, Canada FASD Research Network. <https://fasdontario.ca/wp-content/uploads/2014/01/FASD-Justice-E-Scan-Nov-2015-1.pdf>.

Stewart, M. & Glowatski, K. (2018). *Truth and reconciliation call to action #34: A framework*

for action. Canada FASD Research Network. <https://canfasd.ca/wp-content/uploads/2018/10/TRC34-A-Framework-for-Action.pdf>.

Tait, C. L., Mela, M., Boothman, G. & Stoops, M. A. (2017). The lived experience of paroled offenders with fetal alcohol spectrum disorder and comorbid psychiatric disorder.

Transcultural Psychiatry, 54(1), 107-124. <https://doi.org/10.1177/1363461516689216>.

Tomprowski, B. (2014). Restorative justice and community justice in Canada. *Restorative*

Justice, 2(2), 218-224. <https://doi-org.uml.idm.oclc.org/10.5235/20504721.2.2.218>.

Tort, V., Dueñas, R., Vicens, E., Zabala, C., Martínez, M. & Romero, D.M. (2016). Intellectual disability and the prison setting. *Revista española de sanidad penitenciaria*, 18, 25-32.

<https://dx.doi.org/10.4321/S1575-06202016000100004>.

Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission*

of Canada: Calls to action. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf.

United Nations General Assembly. (1948, December 10). *Universal Declaration of Human*

Rights, 217 A (III). <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

United Nations General Assembly. (1991, March 28). *Basic Principles for the Treatment of Prisoners: resolution / adopted by the General Assembly*, A/RES/45/111. United Nations Office of the High Commissioner for Human Rights.
<https://www.ohchr.org/sites/default/files/basicprinciples.pdf>.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), A Res 70/175, UNGAOR, 70th Sess, Supp No 49, UN Doc A/RES/70/175 (2015), 1.
https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

Van Boven, T. (2018). Categories of rights. In D. Moeckli, S. Shah & S. Sivakumaran (Eds.), *International human rights law* (3rd ed) (pp. 13-147). Oxford University Press.

Van Wiltenburg, C. (2018, June). *Theories of personhood: Capturing the legal subject in a dangerousness-based model of preventative detention* [Conference paper]. Canadian Institute for the Administration of Justice 2018 Conference, Ottawa, Ontario. <https://ciaj-icaj.ca/wp-content/uploads/page/2018/10/paper-ciaj-icaj-essay-prize2018.pdf>.

Wilt, J. (2022, August 26). *Making the invisible visible: An interview with Megan Linton about the harms of the institutional system, COVID-19, and disability justice*. Canadian Dimension. <https://canadiandimension.com/articles/view/making-the-invisible-visible-an-interview-megan-linton-about-the-harms-of-the-institutional-system-covid-19-and-disability-justice>.

Wozniak, J. R., Riley, E. P. & Charness, M. E. (2019, August). Diagnosis, epidemiology, assessment, pathophysiology, and management of fetal alcohol spectrum disorders. *The Lancet Neurology*, 18(8), 760-770. [https://doi.org/10.1016/S1474-4422\(19\)30150-4](https://doi.org/10.1016/S1474-4422(19)30150-4).

Yousefi, N. & Chaufan, C. (2022). ‘Think before you drink’: Challenging narratives on foetal alcohol spectrum disorder and indigeneity in Canada. *Health*, 26(5), 622-642. <https://doi.org/10.1177/13634593211038527>.

Zinger, I. (2018, June 29). *Office of the Correctional Investigator: Annual report 2017-18*. The Correctional Investigator Canada. <https://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>.

Zinger, I. (2019, June 25). *Office of the Correctional Investigator: Annual report 2018-19*. The Correctional Investigator Canada. <https://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20182019-eng.pdf>.

Zinger, I. (2022, June 30). *Office of the Correctional Investigator: Annual report 2021-2022*. The Correctional Investigator Canada. <https://www.ocibec.gc.ca/cnt/rpt/annrpt/annrpt20212022-eng.aspx#s13>.