

FASD INFORMATIONAL SHEET

FASD Dockets – Adult and Youth

The Provincial Court of Manitoba is establishing an FASD disposition docket for both youth and adults who have an FASD diagnosis. One of the goals of these dockets is to provide the accused with a court environment that takes into account the specific deficits identified in the FASD assessment report and how they might be related to the offender's moral blameworthiness or degree of responsibility for an offence. If there is a link between the deficits resulting from FASD and the offending behaviour, the Court would explore how the sentence imposed would best reflect and respond to that link.

The FASD Justice Program

The FASD Justice Program - the "FASD JP" (formerly the FASD Youth Justice Program or FASD YJP) is being expanded to offer supports to those accused who have an FASD diagnosis obtained outside the FASD YJP. As well, the program will now offer ongoing supports to those with an FASD diagnosis (regardless of how obtained) for adult offenders to 25 years of age.

The FASD JP will assist in obtaining a copy of an existing FASD assessment for youth or adults. It will also facilitate an assessment for **youth** who do not yet have a diagnosis. An accused must have an official FASD diagnosis to participate in the FASD court.

The following information describes the criteria to be eligible for consideration in the FASD JP, depending on individual circumstances.

- Resident of Winnipeg (or planning to reside in Winnipeg post-sentencing);
- Pending on criminal charges;
- Consent of the accused/guardian/legal counsel;
- Confirmation of maternal drinking*.

*The FASD JP workers strongly urge that counsel refrain from discussing maternal drinking with the mother of the accused unless she raises the topic. As this continues to be a difficult topic for many women to discuss, it is best that this topic be left to the FASD JP workers who have training and experience in this area. Of course, if information is volunteered, it would be helpful if FASD JP workers were advised accordingly.

If Your Client is a.....

1. Youth Accused with no diagnosis –

- With the consent of the accused/guardian a referral can be made to FASD JP.
- The FASD JP will screen the referral, and if the criteria are met, a clinic date can be scheduled. An FASD assessment will be completed and if an FASD diagnosis is confirmed a copy of the report will be provided to counsel.

- If an FASD diagnosis is confirmed, the accused will receive support from the FASD JP both before and after sentencing.
- The FASD JP worker will assist in linking your client with services in the community.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

2. **Youth Accused** who *already has a diagnosis* through FASD JP – And your client has become re-involved with new charges -

- The FASD JP worker will be available to provide continuing support for the accused with the consent of the accused and the guardian.
- The FASD JP worker will build upon previous supports and/or arrange new community support where appropriate.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

3. **Youth Accused** and he/she has been *diagnosed outside FASD JP* -

- A referral can be made to FASD JP. With the consent of the accused/guardian in writing, the FASD JP worker will assist in obtaining an assessment (if counsel does not already have it).
- The FASD JP worker will work with the accused to establish community supports.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.

- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

4. **Adult Accused** and he/she was *diagnosed through the FASD JP* -

- With the consent of the accused, in writing, a copy of the assessment can be provided to counsel by the FASD JP worker.
- The accused must be agreeable and willing to engage with the FASD JP.
- The FASD JP will be available to provide continuing support to the accused to age 25.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.
- Other community support workers who may be involved with the accused are also welcome to attend court.

5. **Adult Accused** and was diagnosed *outside FASD JP* -

- A referral can be made to FASD JP. With the consent of the accused/guardian in writing, the FASD JP worker will assist in obtaining an assessment (if counsel does not already have it).
- With the consent of the accused in writing, a copy of the assessment can be provided to counsel by the FASD JP worker.
- The accused must be agreeable and willing to engage with the FASD JP.
- The FASD JP will be available to provide continuing support to the accused to age 25.
- The matter can be disposed of on the appropriate FASD docket.
- Counsel must ensure a copy of the assessment and other relevant materials are provided to the Court in advance of the disposition date.
- The assessment will contain recommendations which can be considered by the sentencing Judge.
- The FASD JP worker can attend court with the accused.

- Other community support workers who may be involved with the accused are also welcome to attend court.

FAQ

1. *When/where will the FASD dockets be held?*

The in custody youth docket will sit every Thursday morning at the Manitoba Youth Center. *With the permission of the Court*, an in custody youth may be dealt with in courtroom 307- 408 York Avenue on the youth out of custody docket if the matter is lengthy, if there is limited availability on the MYC Thursday morning docket, and if there is availability on the afternoon 307 list.

An FASD docket will be held in Courtroom 307- 408 York Avenue every Thursday afternoon. This docket will alternate weekly between youth and adult matters. Subject to the comments in the first paragraph, the youth docket should deal with out of custody youth who have an FASD diagnosis. The adult docket can deal with individuals who are either in or out of custody. Those accused who are in custody should be adjourned as a must transport, and should appear personally.

2. *Can I refer my client to the FASD JP for an assessment if we have not decided whether or not the outstanding charges will be contested or disposed of?*

Yes, you can request an assessment and if the criteria are met, a clinic date will be arranged. However, the FASD JP will not begin the process of arranging services and supports until the accused has been convicted or has entered a guilty plea.

3. *Once my client has been convicted or has decided to enter a guilty plea, can the matter be referred to the FASD docket?*

Yes, however, please recognize that the FASD docket is a disposition docket. Pleas can be entered on that docket and the matter can proceed to disposition if the Judge has been provided with the assessment and any other relevant information in advance. Alternatively, pleas can be entered in another Court and the matter can be adjourned to the FASD docket for disposition.

4. *How will matters be scheduled?*

Matter should be scheduled through the Disposition Coordinator who will confirm that counsel have ensured the appropriate FASD assessment and any other material are available and will be filed in advance of the disposition date.

The youth email is: youthpcdispos@gov.mb.ca

The adult email is: earlypcdispos@gov.mb.ca

The phone number is: 204-945-6712 (for both)

The available dates for FASD courts will be available on the Court's website.

<http://www.manitobacourts.mb.ca/provincial-court/available-dates/fasd/>

5. Does the assigned Crown attorney have to consent to a matter being heard on the FASD docket?

No, counsel can simply request that the matter be adjourned to the docket. However, depending on the degree of involvement of the assigned Crown attorney, their schedule may have to be taken into account.

6. Will there be a specific Crown attorney assigned to these dockets?

Yes, the Crown's office will assign specific counsel to attend these dockets. However, that does not preclude other Crown attorneys from maintaining conduct of matters where they have had significant involvement, despite the fact that the matter has been adjourned for disposition on this docket.

7. Will the same Judge preside in the FASD docket every week?

Although the intention is to have a smaller rotation of Judges assigned to this docket, it will not be the same Judge every week.

8. Can any type of charge be dealt with on an FASD docket?

Yes, any type of charge can be adjourned to this docket for disposition

9. Will the FASD JP workers attend Court with the accused?

Yes, if the accused is involved in the program, it is the intention of the FASD JP to have a worker attend with the accused on the date of disposition. It is hoped that the additional consistency in scheduling will make it easier for any community support workers who may be involved with the accused to attend court as well.

10. Will there be any changes to the actual Court proceedings?

Because some Individuals with an FASD diagnosis are easily distracted, they often find certain aspects of the court process challenging. One goal of the Court is to provide an environment which is quieter than a normal court docket. Counsel will be asked to refrain from whispering, shuffling papers, texting on their cell phones, or coming in and out of the courtroom while a matter is being heard.

Counsel should consider it acceptable to wait in the hallway with their clients and any support people while other matters are being heard. It is hoped that a reduction in the number of people in the courtroom will assist the accused in understanding the proceedings.

Counsel will also be expected to address the specific deficits identified in the FASD assessment and should be prepared to discuss the nexus, if any, between the accused's deficits, the offending behaviour and their relationship to an appropriate sentence.

11. Will there be any changes to the supports available after sentencing?

The FASD JP will continue to work with your client after sentencing to facilitate community supports, if the client is willing to accept the supports. Because the community supports are largely voluntary, it is likely that while they will be referenced during submissions, the client's participation will not be specifically mandated by a Court order. It is more likely that a probation order may require an offender to "attend, participate and complete" any programming directed by the probation officer, giving all parties a needed degree of flexibility post-sentencing.

12. My client has an FASD diagnosis and I intend on referencing it during my submissions. Do I have to adjourn the matter to the FASD docket?

No. Although counsel will be encouraged to take advantage of the FASD docket and the resources available through the FASD JP, no one will be forced to participate. However, please remember that *wherever* you deal with the matter, if you reference a medical condition such as FASD, you should be prepared to provide supporting evidence and you should be prepared to address the nexus, if any, between the condition, your client's offending behaviour and the appropriate sentence.

13. Where FASD is suspected, can the Court force my client to obtain a diagnosis?

No. All participation in the assessment process, the follow up supports and/or the FASD court are voluntary.

14. My client is an adult but does not have a formal FASD diagnosis. Is there any way to obtain one?

The *Youth Criminal Justice Act* provides the Court jurisdiction to order an FASD assessment for youth when certain preconditions are met. The Court does not have similar jurisdiction under the *Criminal Code*. We are working with members of the medical community to try to establish some access to diagnosis for young adults. More information will be made available as this process evolves.

15. I understand that the sentencing Judge wishes to receive the materials in advance. Who is responsible for ensuring the Judge receives the assessment and other reports?

If a youth or adult is involved with the FASD JP then the FASD JP Coordinators will distribute the assessment reports to the Court. However, it is counsel's ultimate responsibility to make sure these reports as well as any other relevant material are before the Judge prior to the hearing date.

If a youth or adult is not involved with the FASD JP, but you have an assessment report (or you have asked FASD JP to obtain a copy of an existing report), then Defence counsel is responsible for distribution of the assessment reports to ensure judge, Crown and defence have background information for disposition, prior to the hearing date.