

# FASD Policy Alert



## Children's Rights in the Child Justice System FASD & General Comment 24

The United Nations [Convention on the Rights of the Child](#) (UNCRC) is an international agreement based on the premise that all children "should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity." All countries that sign the Convention are bound by international law to abide by its recommendations and priorities. Canada signed the UNCRC in 1991.

**The purpose of this policy alert is to bring this emerging global standard to the attention of Canadian policy makers, professionals, and to the FASD community.**

The UNCRC is founded on the recognition that children are human beings with their own individual rights. The Convention outlines a wide range of provisions to ensure the safety, health, and well-being of all children.

### Protecting Children's Rights in the Justice System

Several provisions of the Convention are focused on how a child should be treated and protected in the context of the youth justice system: [Article 37](#) is focused on issues related to the deprivation of liberty, and [Article 40](#) seeks to promote the child's dignity and worth in the administration of justice.

In September 2019, the [Committee on the Rights of the Child](#) released the updated [General Comment No. 24](#) (GC24) to clarify the duties of State Parties with respect to the rights of the child in the juvenile justice system. These updates were informed by emerging knowledge and evidence about child and adolescent development. GC24 emphasizes the importance of taking an individualized approach which differs from adults, focusing on prevention and early intervention, and recognizing the harms to the child that result from contact with the justice system.

### Children with Disabilities

A firm stance is taken in paragraph 28 of GC24 related to the treatment of children with neurodevelopmental disabilities (NDDs):

**Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.**

### FASD and the Justice System

Youth with FASD are disproportionately represented in the criminal justice system.<sup>1-5</sup> FASD a complex brain- and body-based disability stemming from prenatal alcohol exposure. This neurodevelopmental vulnerability is often compounded by high rates of early and ongoing environmental and co-occurring mental health difficulties.<sup>6</sup> The complex needs and challenges of children and youth with FASD may increase the risk for problematic behaviours and involvement in the justice system; youth with FASD who become involved in the system experience heightened risks, needs, and complexity.<sup>5,7-10</sup>

**However, it is important to recognize that not every individual with FASD will become involved in the justice system. Early identification and proactive, coordinated supports can bolster resilience and other protective factors that promote positive trajectories.**

**REFERENCES:** <sup>1</sup>Bower et al., 2018; <sup>2</sup>Fast et al., 1999; <sup>3</sup>McLachlan et al., 2020; <sup>4</sup>Popova et al., 2011; <sup>5</sup>Rojas et al., 2007; <sup>6</sup>Flannigan et al., 2020; <sup>7</sup>2019; <sup>8</sup>Kippin et al., 2018; <sup>9</sup>McLachlan et al., 2014; <sup>10</sup>2018



### CORE ELEMENTS OF GC24:



### RECOMMENDATIONS

#### Policy

Recognition is needed of Canada's legal obligation to abide by the provisions of the UNCRC. Amendments to Canadian law should be considered to ensure that legislation aligns with GC24 and the UNCRC broadly. Such amendments include increasing the minimum age of criminal responsibility, repealing provisions allowing children to be charged or sentenced as adults, and prohibiting criminal charges for children with FASD or other NDDs who commit an offence while under the age of majority.

#### Research

More evidence is needed in relation to children and youth with FASD in the justice system. Researchers should examine risk and protective factors to inform prevention work, develop methods for screening and identification, explore alternative measures for those who become involved, as well as build evidence-based supports to promote societal reintegration and long-term positive outcomes.

#### Practice

Professionals working in justice, forensic psychiatry and mental health, and child welfare and protection, should apprise themselves of their duties with respect to GC24. Ongoing professional training on FASD should be sought to incorporate an FASD-informed approach into practice, which will benefit both children with FASD as well as those with other complex needs. Pending any law reform efforts, justice system practitioners should align their practice with the Treaty body guidance by revising prosecution practice manuals, YCJA s. 23 review standards and forensic assessment practice standards.

### RESOURCES

- Other [General Comments](#) relevant to children and youth with FASD
- CanFASD issue paper on [FASD and Justice](#)
- FASD training for [Judicial/Legal](#) and [Solicitor General](#) professionals
- European Commission Strategy on [Child-Friendly Justice](#)