

# Legal experts debate jail for fetal alcohol offenders

Law group calls for decriminalization for those with brain disorder

By Janice Tibbetts, Postmedia News August 17, 2010

Federal and provincial justice ministers plan this fall to tackle the issue of whether people with fetal alcohol syndrome who commit crimes belong in jail.

Justice Minister Rob Nicholson on Monday told Canadian lawyers that the treatment of fetal alcohol offenders is "a huge problem in our system" and it will be on the agenda for a meeting in October with his provincial counterparts.

He was responding to a resolution, passed on the weekend by the Canadian Bar Association, which effectively calls for decriminalization of fetal alcohol offenders because deterrence does not work when brain disabilities are at play.

Fetal alcohol syndrome and other related disabilities, which are referred to as fetal alcohol spectrum disorder, are brain and central nervous system disorders caused by a mother drinking alcohol during pregnancy.

Damage includes impaired mental functioning, memory problems, impaired judgment and inability to control impulses and understand the consequences of actions.

Whitehorse lawyer Rod Snow, the incoming bar association president, said finding alternatives to incarceration would not necessarily preclude some sort of custody for fetal alcohol sufferers. However, repeatedly jailing offenders is not the answer because deterrence does not work for those without impulse control, says the resolution.

"Judges see people before them repeatedly who are probably there in large measure because of a permanent organic brain injury," said Snow.

The CBA is calling for increased funding of programs that replace criminalizing fetal alcohol offenders and to amend the Criminal Code to "accommodate the disability of those with FASD."

There are no firm statistics on the number of people with fetal alcohol syndrome who run into trouble with the law, largely because the disability is often undiagnosed, says a 2008 report from a Yukon conference on the issue.

The report concludes, however, that there is a much greater prevalence of crime among that segment of the population than there is among the general populace.

However, alternative programs to jail are scarce for fetal alcohol offenders, says the Yukon report.

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