

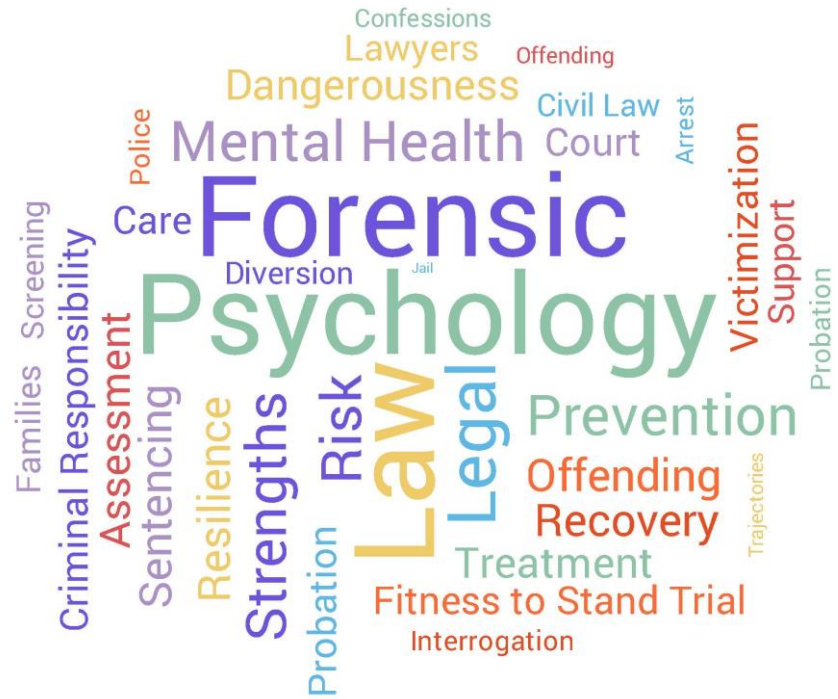
Fetal Alcohol Spectrum Disorder and the Criminal Legal System

Health Nexus
March 28, 2023



Kaitlyn McLachlan, Ph.D., C. Psych.
Department of Psychology, University of Guelph
Research Lead for Justice, CanFASD





WELCOME! |

Outline



FASD: A Brief Overview



Legal Relevance, Experiences
and Needs



Change into Action



FASD: A BRIEF OVERVIEW

FETAL ALCOHOL SPECTRUM DISORDER

- Diagnostic term used to describe neurodevelopmental impacts on the brain and body of individuals prenatally exposed to alcohol (PAE)
- Lifelong impacts and interindividual variability
- Individuals with FASD will experience some degree of challenges in their daily living and need support to reach their full potential
- Individuals are unique and have areas of both strengths and challenges

KEY MESSAGE

Alcohol is a potent teratogen and FASD occurs in the context of social determinants of health and in all populations where alcohol is used



PREVALENCE & COST

- Estimated prevalence is 4% (4 in 100)
- = 1.45 million Canadians
- 2-3% in US Midwest schools (1st grade)
- 2-9% in Canadian GTA schools (7-9 years)

NATIONAL POST

More than a million Canadians could have fetal alcohol spectrum disorder: study

Many children with FASD are misdiagnosed or not diagnosed at all. 'One of the risk groups is actually professional women who binge drink'

A new report found up to three per cent of Canadians could have fetal alcohol spectrum disorder. [See Research | Science | Sun](#)

Up to three per cent of Canadians — or about one million people — could have fetal alcohol spectrum disorder, and researchers say this is probably an underestimate.

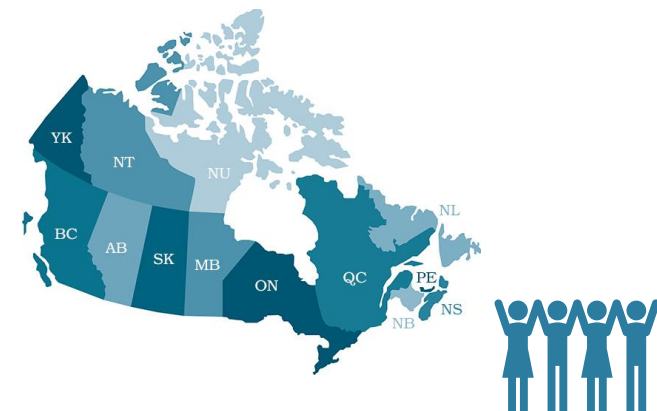
A report released on Tuesday by the Centre for Addiction and Mental Health updates current estimates of the prevalence of FASD prevalence in Canada to date. The results are based on a survey of 2,555 seven- to nine-year-olds in the Greater Toronto Area, one of the largest sample sizes used in a Canadian study and according to the team's lead researcher, Dr. Svetlana Popova, the first survey reflective of Canada's diverse population.

Filed under: News | Canada

Comment

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- 2-3% in US Midwest schools (1st grade)
- 2-9% in Canadian GTA schools (7-9 years)
- Estimated* lifetime cost of FASD = \$1-2 million per person
- Overall costs \$1.8 - 9.7B
- Justice-related costs among highest drivers





LEGAL RELEVANCE, EXPERIENCES AND NEEDS

KEY MESSAGE

There is wide variability across the pathways, experiences, and needs of individuals with FASD

“FASD does not *result* in criminality but rather...FASD *might* increase a cluster of risk factors, not the least of which is engagement in the justice system”

Flannigan et al., 2018. p. 50





Original Article

Difficulties in Daily Living Experienced by Adolescents, Transition-Aged Youth, and Adults With Fetal Alcohol Spectrum Disorder

Kaitlyn McLachlan✉, Katherine Flannigan, Valerie Temple, Kathy Unsworth, Jocelynn L. Cook

First published: 29 May 2020 | <https://doi.org/10.1111/acer.14385>

DIFFICULTIES IN DAILY LIVING EXPERIENCED
BY ADOLESCENTS, TRANSITION-AGED YOUTH,
AND ADULTS WITH FASD

AIM: PROFILE DIFFICULTIES



School
Disruption



Employment
Problems



Independent
Living Needs



Housing
Problems



Legal Problems
Victim



Legal Problems
Offending



Incarceration

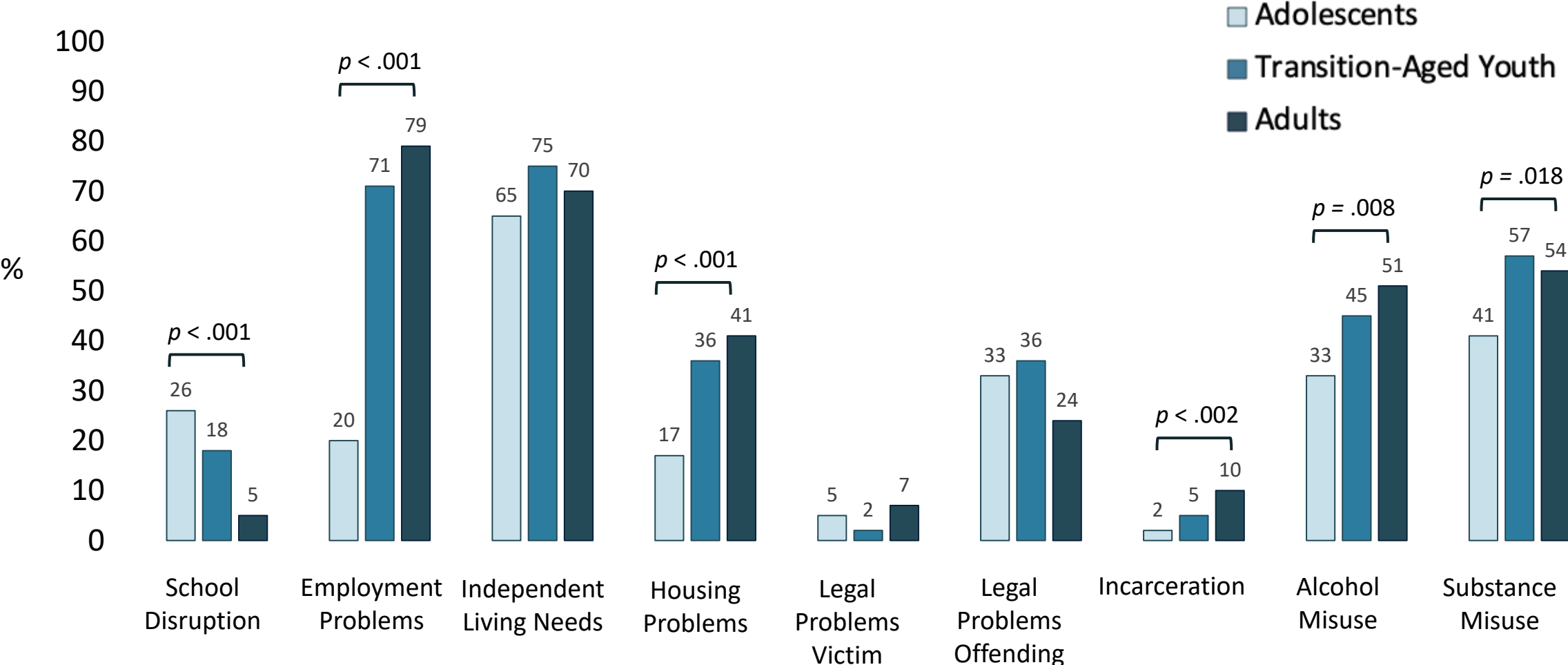


Substance
Misuse

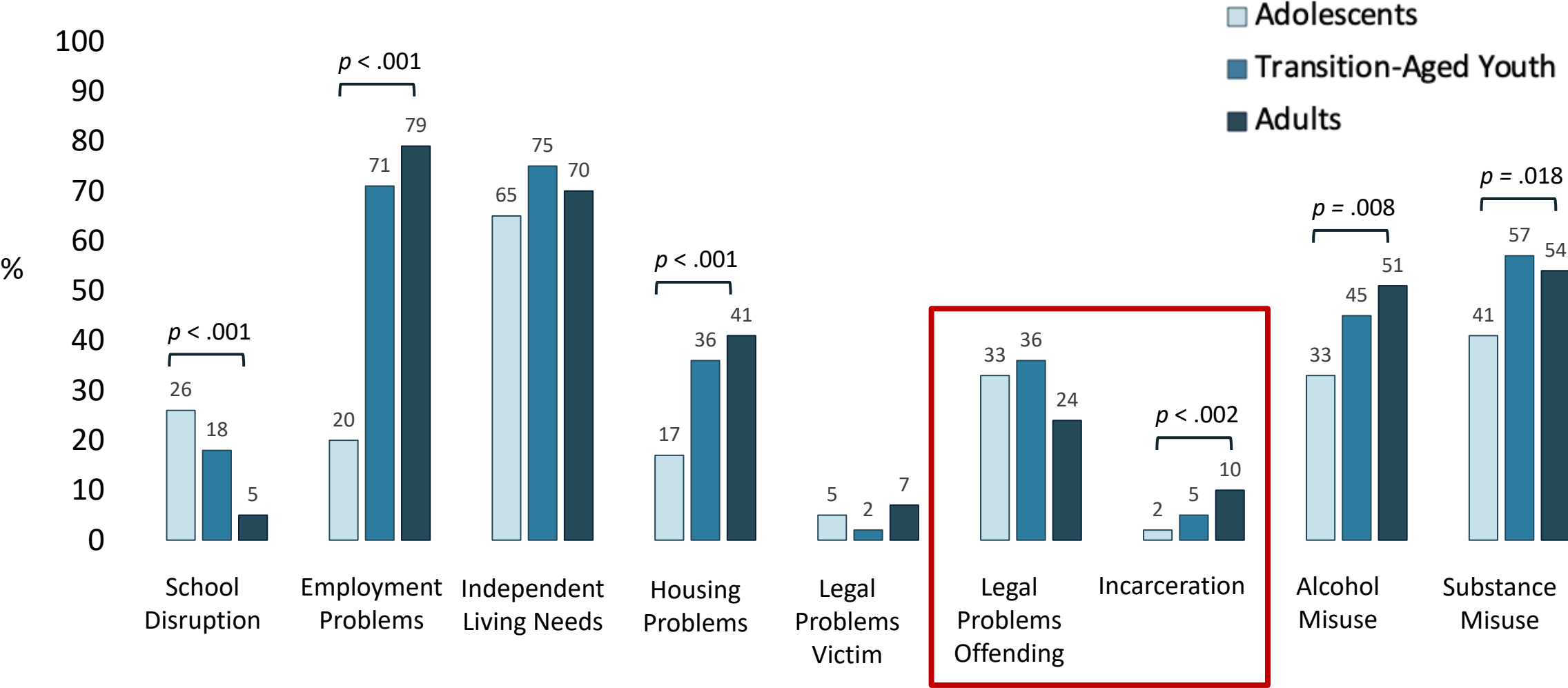


Alcohol
Misuse

RATES OF LEGAL DIFFICULTIES



RATES OF LEGAL DIFFICULTIES



N = 508, McLachlan et al., ACER, 2020

TAKE AWAYS



- Elevated rates of criminal legal system contact point to key gaps in early identification, prevention, and support
- Frequent referrals due in part to trouble with the law (26%) and made directly from the legal system (15%)
- Limitations: Current difficulties, differences in methodology, coarse measures
- Important to identify trajectories, risk, and protective factors to inform effective policy for improved outcomes

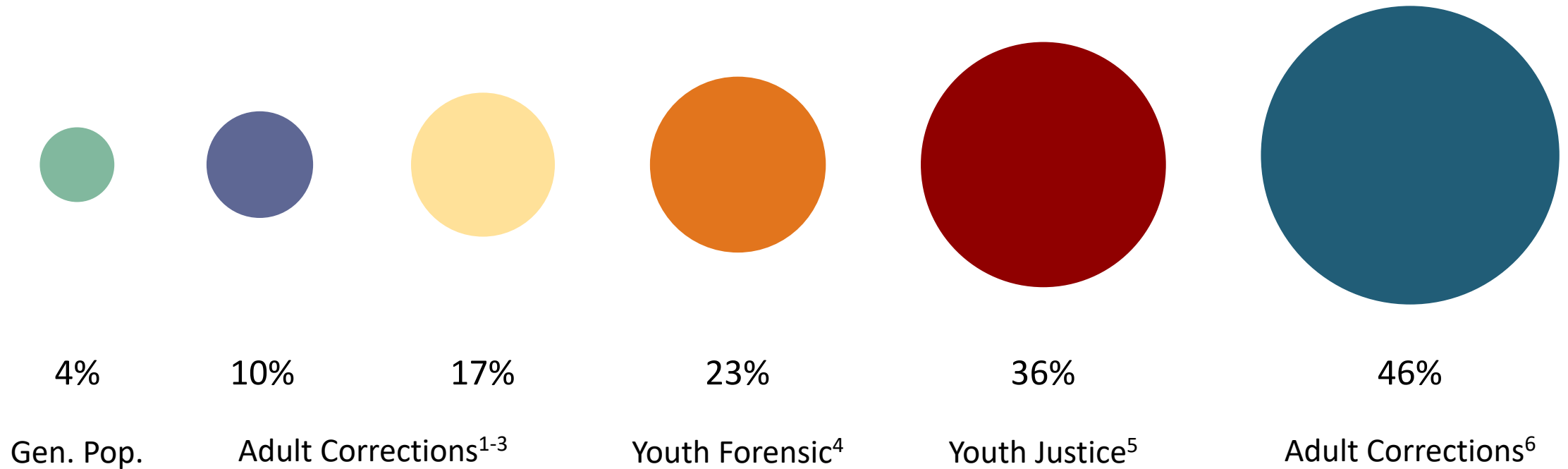
RATES IN LEGAL SETTINGS



4%

Gen. Pop.

RATES IN LEGAL SETTINGS



¹MacPherson et al., 2011; ²Forrester et al., 2015; ³McLachlan et al., 2019; ⁴Fast et al., 1999; ⁵Bower et al., 2019; ⁶Mela et al., 2022

FORENSIC & CORRECTIONAL PREVALENCE



30 - 60%

Have been in trouble with the law



19x

More likely to be incarcerated compared to youth without FASD



30x

Higher in correctional settings compared to the general population



Majority not previously identified

FASD AND FORENSIC CONTEXTS

- FASD has relevance across a range of adjudicative and forensic contexts
- FASD/PAE evidence among the most common forms of neuroscientific evidence
- Research is emerging but gaps remain in respect to trajectories, risk factors, and intervention



RELEVANCE

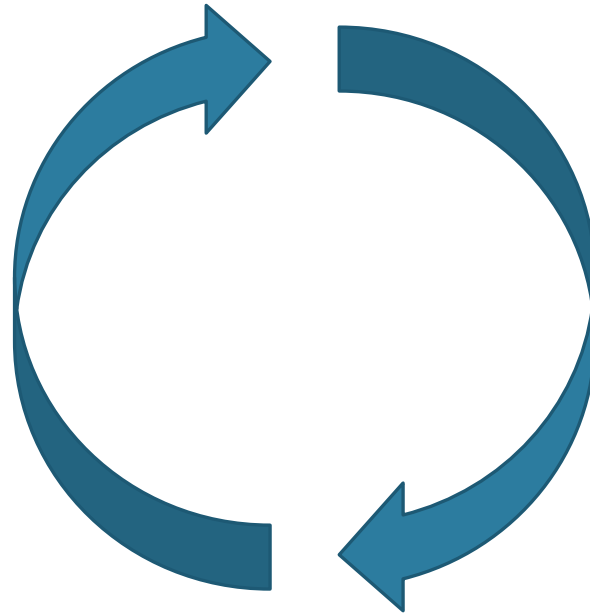


Corrado & McCuish, 2015 ; Chandler, 2016; Douds, et al., 2013; Freckelton, 2017; Flannigan et al., 2018; Gagnier et al., 2011; McLachlan et al., 2014, 2018; Reid et al., 2020; Roach & Bailey, 2009;

RELEVANCE



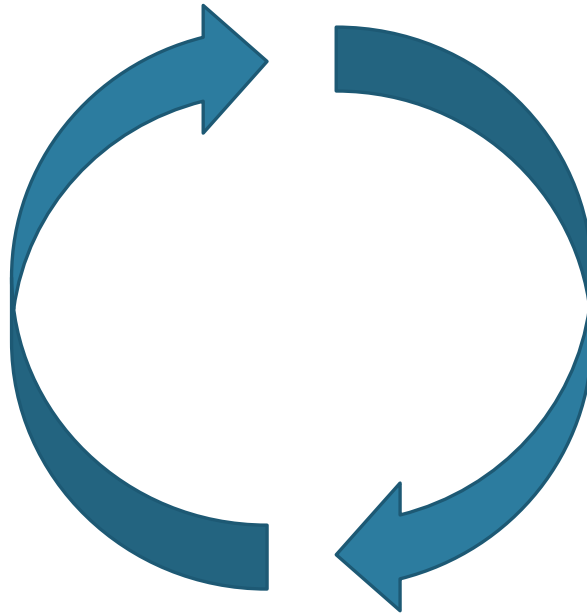
RELEVANCE



- Increased risk of poor rights comprehension
- High rates of false confessions

RELEVANCE

- Ability to meaningfully participate in legal proceedings may be limited



RELEVANCE



- Disability may not be recognized
- Programs delivered 'as usual' may not be effective
- Limited research on interventions in justice contexts

RELEVANCE



- Community based programs and supports are limited

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CANADIAN CASE LAW ($N = 350$)

- Considered in a wide range of cases, most commonly in sentencing decisions (76%)
- *Few cases* reported current FASD assessment; only half involved formal diagnosis
- Common themes:
 - Balancing mitigation/reduced culpability with need for public protection and lack of treatment options
 - Rethinking what rehabilitation looks like for people with FASD
- Highlighted lack of expert testimony, insufficient information linking deficits/needs to legal issue at hand (forensic nexus)

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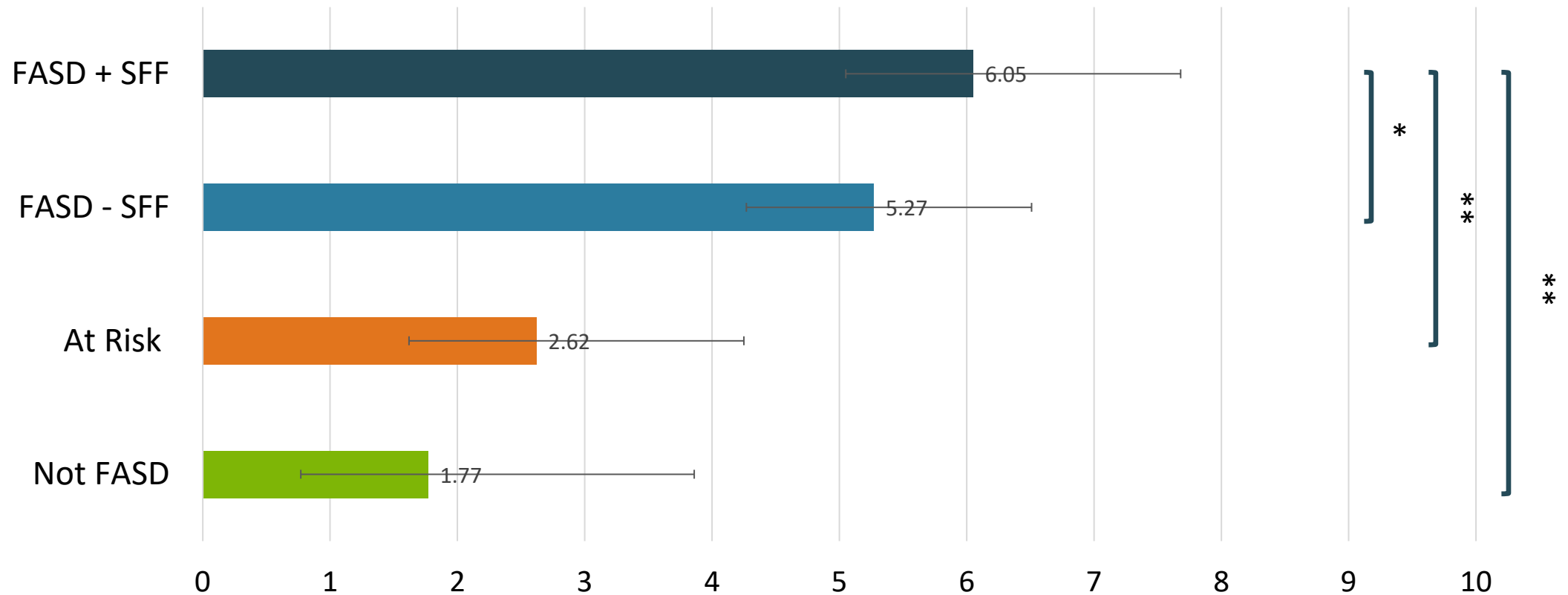




Neurodevelopmental Impairment

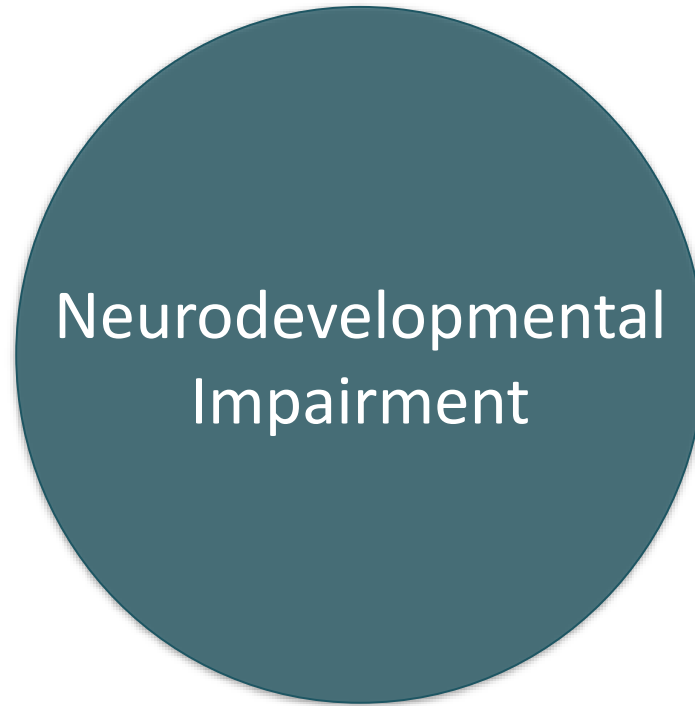
- Motor Skills
- Neuroanatomy/physiology
- Cognition
- Language
- Academic Achievement
- Memory
- Attention
- Executive Function
- Affect Regulation
- Adaptive Behaviour

AVERAGE NEURODEVELOPMENTAL DOMAINS IMPAIRED (N = 726)

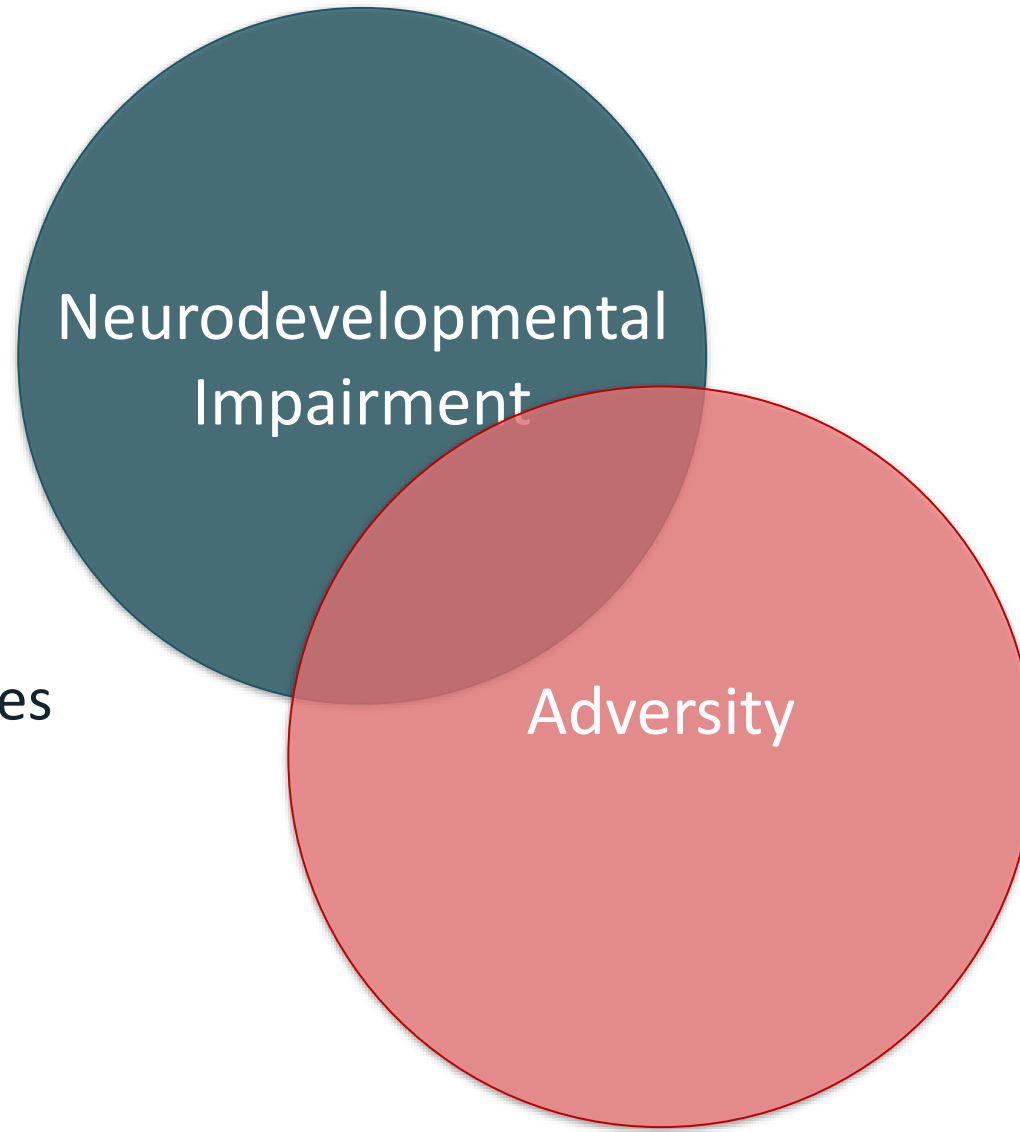


* $p = .001$; ** $p < .001$

- Reasoning
- Communication
- Decision-making
- Impulsivity
- Psychosocial immaturity
- Suggestibility
- 'lack of remorse'
- 'Inappropriate or maladaptive behaviour'
- Thinking flexibly
- Predicting consequences



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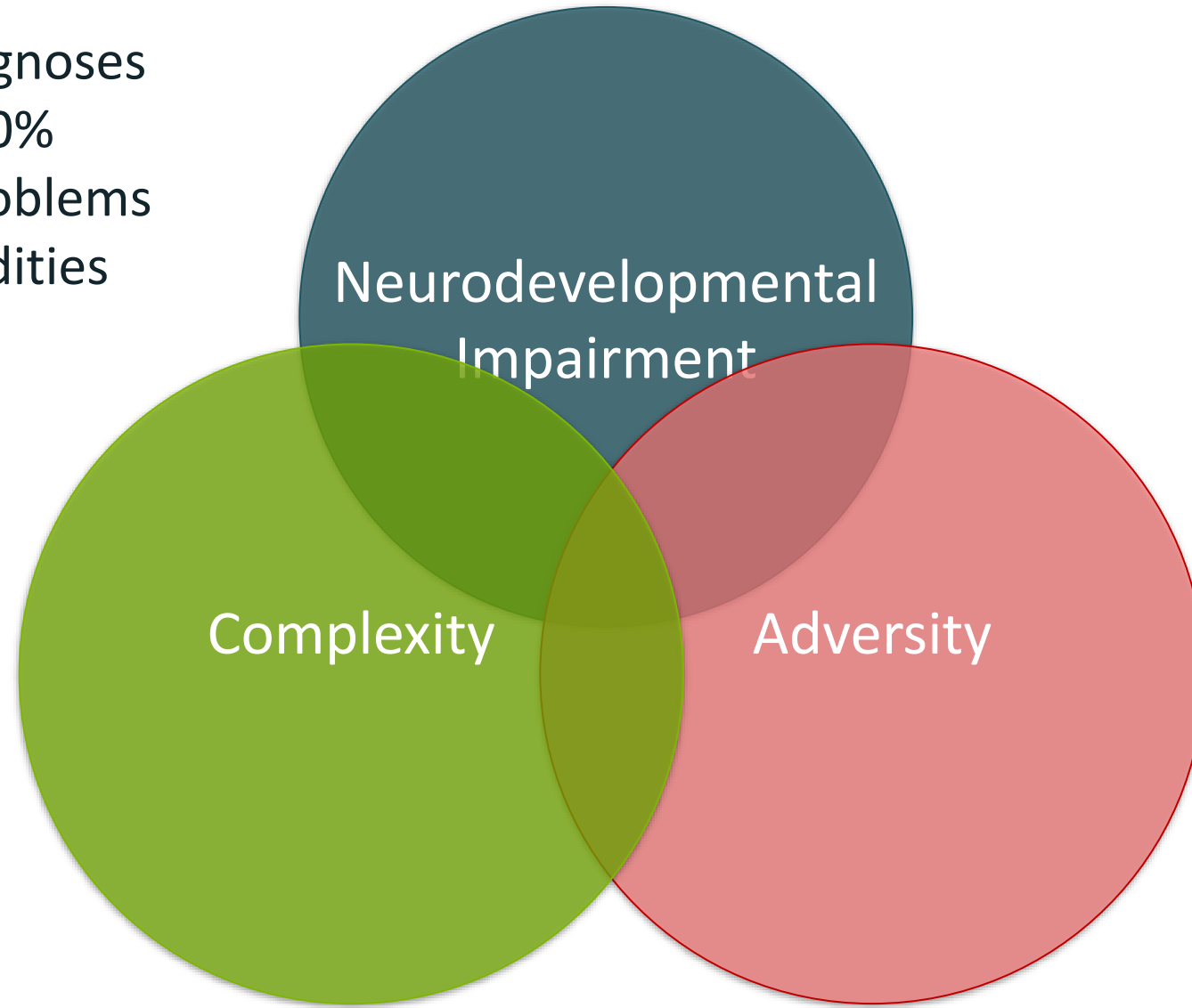


Neurodevelopmental
Impairment

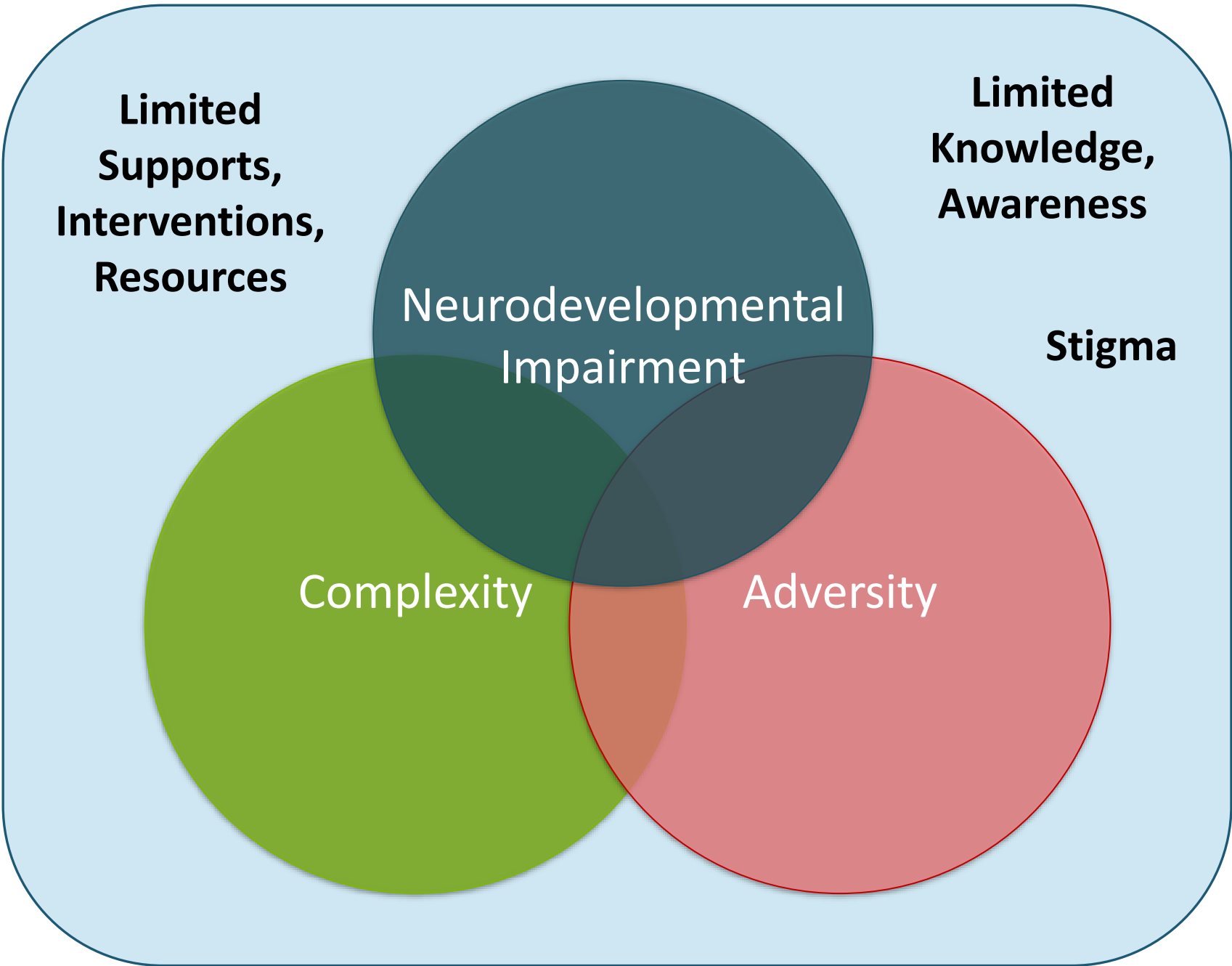
Adversity

- Prenatal exposures
- Caregiver disruptions
- Abuse, neglect, trauma
- Stressful household exposures
- School problems
- Employment challenges
- Precarious housing
- Depending living

- Mental health diagnoses
 - Estimates ~90%
- Physical health problems
 - 400 comorbidities



Andre et al., 2020; Kambeitz et al., 2019; Mattson et al., 2019; McLachlan et al., 2016, 2020; Flannigan et al., 2021; Pei et al., 2011; Popova et al., 2016; Reid et al., 2020; Streissguth et al., 2004;



**Limited
Supports,
Interventions,
Resources**

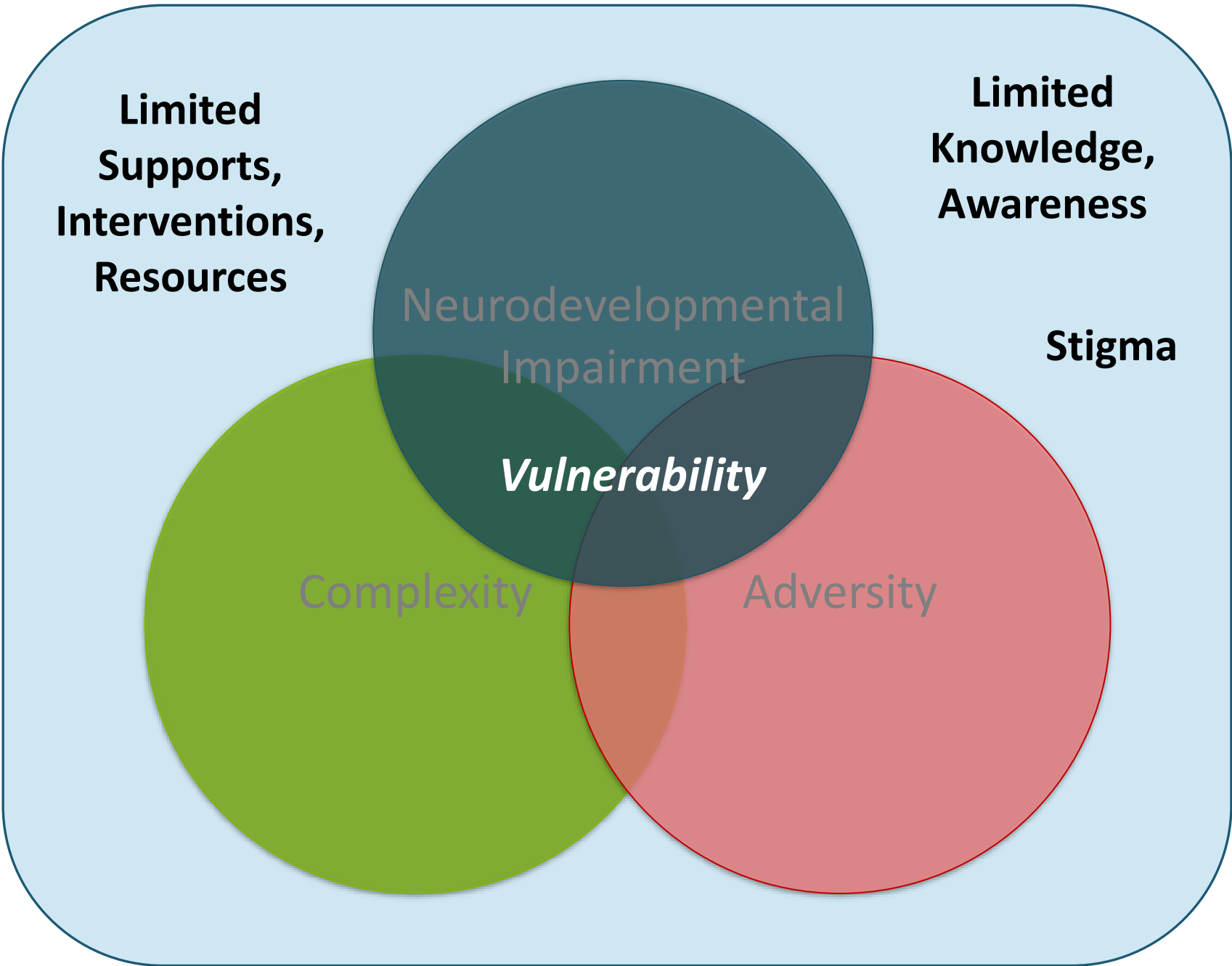
**Limited
Knowledge,
Awareness**

**Neurodevelopmental
Impairment**

Stigma

Complexity

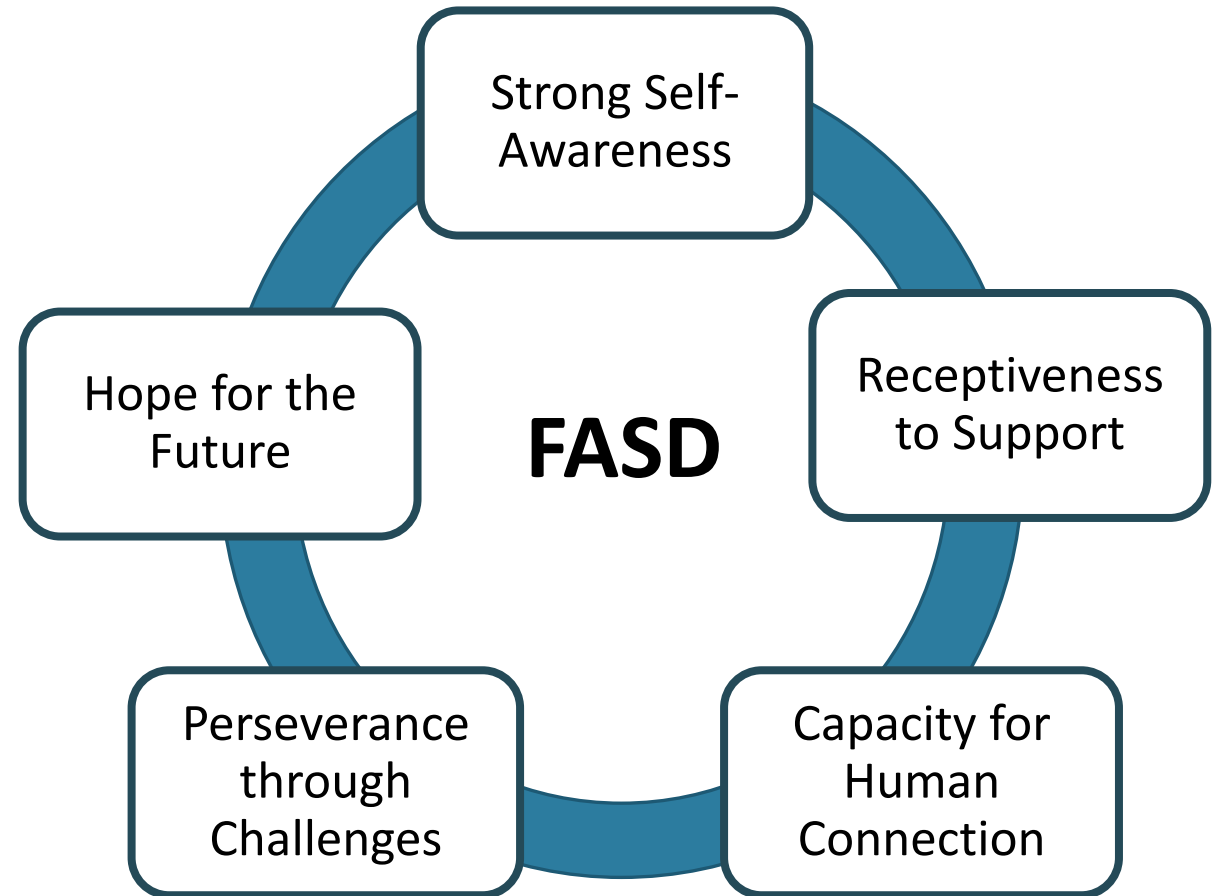
Adversity





BALANCING THE
NARRATIVE |

STRENGTHS AND ABILITIES



STRENGTHS & PROTECTIVE FACTORS IN CL-INVOLVED YOUTH

- Developing literature shows a range of strengths and protective factors, with methodological limitations and opportunities identified

INDIVIDUAL	FAMILIAL/RELATIONAL	CONTEXTUAL/COMMUNITY
Resilience	Structure/Supervision	Access to supportive education, employment
Hope	Supports	Supports
Personal Strengths (kind, artistic)	Stability/routine	Early diagnosis
Willingness to Change	Relationships	
Enculturation		

SYSTEM-LEVEL CHALLENGES

Under-recognition

Awareness, knowledge, skills

Diagnostic capacity

Lack of funding and resources

Communication and info-sharing

Limited research on interventions

Gaps in community-based programming





CHANGE INTO
ACTION

IMPROVING OUTCOMES

**Becoming
FASD-informed**

**Identification/
Screening**

**Adjust
Practice/
Accommodations**

**Comprehensive
Evaluation**

**Consultation &
Referral**

**Building Access to
Services and
Supports**

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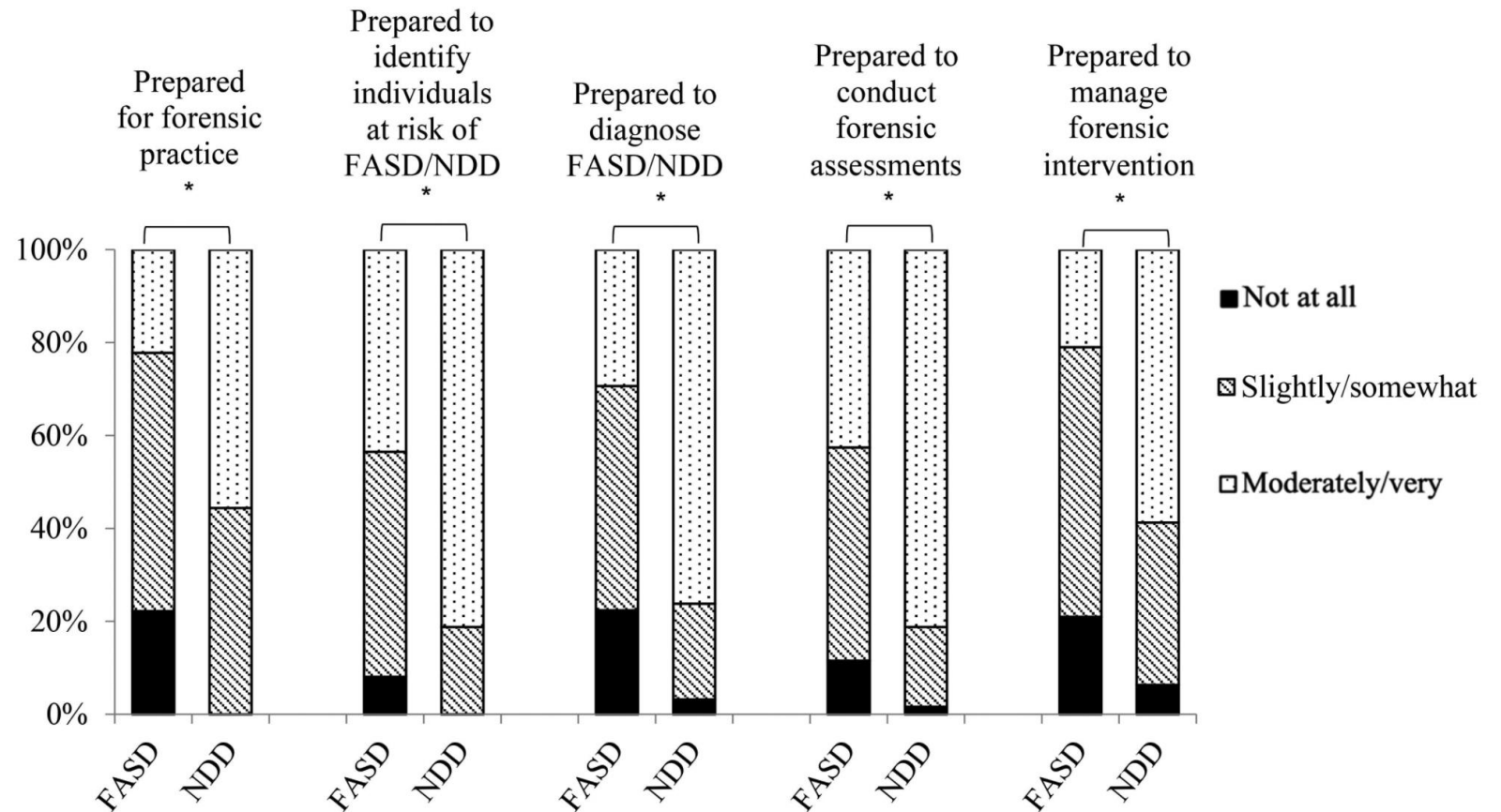
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KNOWLEDGE IN FORENSIC CLINICIANS

Key Finding:

Majority had FASD practice experience but felt inadequately trained and prepared for practice



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IDENTIFICATION CHALLENGES



Limited
overt
physical
features



Variable,
masked
deficits;
mis(sed)
diagnosis



PAE
confirmation



Stigma



Limited
diagnostic
capacity



Limited
professional
knowledge,
training

BENEFITS OF RECOGNITION

- Understanding strengths and needs
- Inform accommodations
- Guide FASD diagnostic assessment
- Inform assessment, supports, intervention planning

- Facilitate supports and connections for individuals, caregivers, and networks

- Inform program and policy decisions

IDENTIFICATION STRATEGIES



Build an FASD-informed team



Incorporate brief screening questions at intake



Invite conversations about FASD



Implement an FASD screening tool, process

SCREENING

- Range of FASD screening tools have been developed, implemented in legal contexts
- Review in progress highlights more than 11
- Limited evidence supporting validity or accuracy in legal/forensic contexts, practical implementation considerations



EXCITING ONGOING PROJECTS



Increasing Capacity to Identify and Support Individuals with FASD and Complex Neurodevelopmental Needs



IMPROVE LIFE.



**UNIVERSITY
OF ALBERTA**



**UNIVERSITY OF
SASKATCHEWAN**

Project Funding Provided by the BC Law Foundation

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PRO TIPS: MODIFYING TREATMENT



Plan for time to adjust to environment, staff, expectations



Share rules early and often



Maintain flexible and problem solving mindset



Allow time



Include family and other support systems



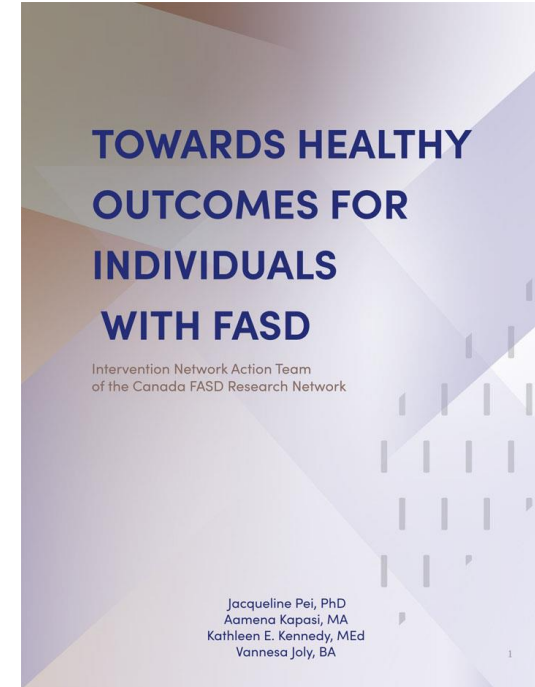
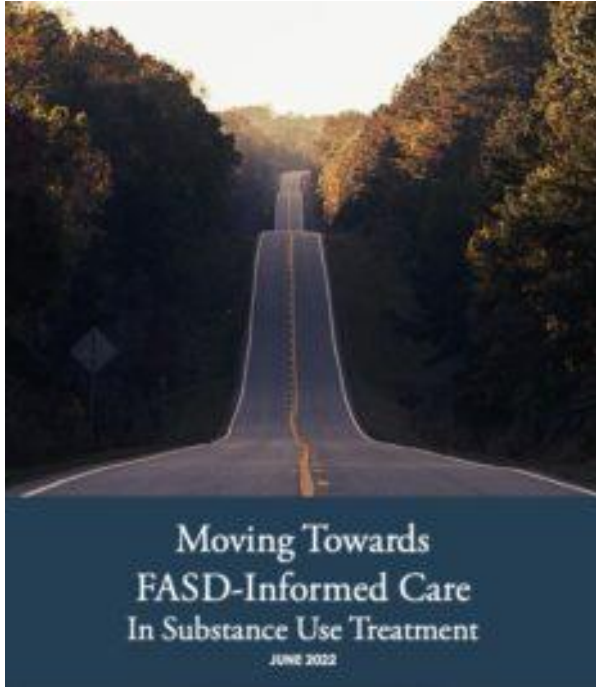
Incorporate multiple approaches to learning



Include client in treatment planning and creative problem solving



Consider need for environmental accommodations



RESOURCES

<https://canfasd.ca/topics/intervention/>

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TAKE AWAY MESSAGES



PAST & CURRENT STRIDES

- Recognition of FASD in the criminal legal system is a major public health issue
- Many aspects of the 'system' do not effectively address needs and lead to harm
- Important knowledge gaps remain for professionals across the legal system
- Promising programs, interventions, and alternative approaches to have been developed



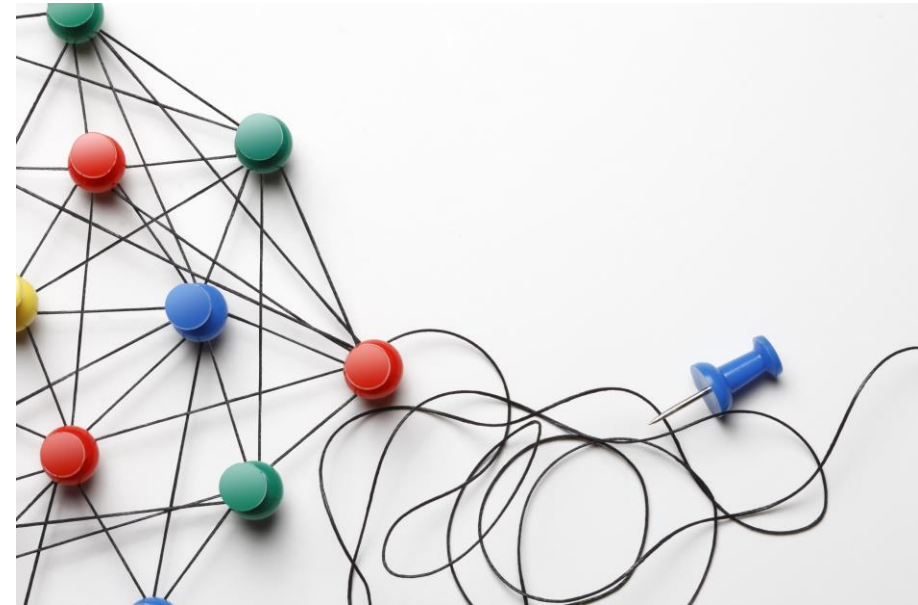
FUTURE NEEDS

- Research to inform decision-making, resource allocation, system change
- Partner-engaged, strength-based, collaborative approaches
- Improved identification and preventative support
- Enhanced evidence-based programming and interventions, alternative approaches to doing justice



ACKNOWLEDGEMENTS

- The PLAN Research and Policy Group Team
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- Supporting participants, families, agencies, and communities



Thank you!



<https://canfasd.ca/>



kmclac02@uoguelph.ca

 @DrKMclachlan

