

Justice system ponders decriminalization for fetal alcohol offenders

BY JANICE TIBBETTS, POSTMEDIA NEWS AUGUST 16, 2010



Federal Justice Minister Rob Nicholson.
Photograph by: Chris Wattie/Reuters,

NIAGARA FALLS, Ont. — 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.

"Obviously they have to get help one way or the other," Nicholson told reporters.

In a question-and-answer session with lawyers, Nicholson said the justice system's treatment of people with fetal alcohol syndrome is a "complex issue" and he did not provide possible solutions.

Fetal alcohol syndrome and other related disabilities, which are collectively 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 people who lack 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 ultimately 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.

Alternative programs to jail are scarce for fetal alcohol offenders, however, and it is rare for them to be found not guilty on account of a mental disorder because of the strict criteria, says the Yukon report.

"There are things being done now, but it's a little bit here, a little bit there," said Snow.