



February 23, 2021

RE: HB 2002 – Relating to public safety; declaring an emergency; providing for criminal sentence reduction that requires approval by a two-thirds majority.

Dear Chair Representative Janelle Bynum and members of the House Committee On Judiciary,

As the Future Generations Collaborative with the mission to promote a healthy Indigenous community through recognition and understanding the lifelong impacts of FASD, it is our privilege to offer the following testimony in response to Oregon House Bill 2002. HB 2002 carries the potential to address the intersectionality of neuro-trauma and environmental trauma as expressed through the profound challenges of coexisting disability and racial inequality. Considered from the broad context of harm reduction, this bill does more than just address Measure 11 and proposes much more than just the conversion of mandatory to presumptive sentencing. HB 2002 lays the landscape for harm reduction for individuals, families, and communities by creating collective safety in which a reciprocity of restorative justice informs the principles and delivery of "Justice Reinvestment" and "Reimagining Safety." Embedded within its language and its core components of approach, HB 2002 supports examination and exploration of practices authorizing the: imposition of "greater to lesser sentences"; program development; intensive supervision; funding capacity; training delivery; and data collection.

❖ **What does HB 2002 provide?**

Justice demands a "reimagining" that understands the ability to develop and deliver strength-based, culturally congruent, and responsive strategies within the context of different abilities and cognitive challenges. Effective justice and behavioral health practice also requires the ability to understand culpability as well as rehabilitative responses from the perspective of neurodevelopmental and neurocognitive challenges. This intersectionality of neurodevelopmental trauma with environmental trauma must inform the efficacy of an equitable approach. The existence of Fetal Alcohol Spectrum Disorder and its global impacts throughout the lifespan is a powerful example of a population that exists at precisely this intersection and, therefore, will significantly benefit from HB 2002 as it generates authorization of sentencing considerations, probationary orders, programming, training, and funding.

There are unique challenges associated with the presence of Fetal Alcohol Spectrum Disorder. Evidence reveals that a disproportionately high number of individuals with FASD are involved with Justice as "suspects, defendants, offenders, victims, or witnesses" (L. Burd). The American Bar Association (along with the Canadian Bar Association) recognizes that the impacts of FASD create cognitive and social functioning issues generating challenges as described in the ABA FASD Resolution. The focus of this resolution is to encourage "improvement in the civil, juvenile, and criminal representation for persons with FASD; increased access to FASD expert screening and assessment; attention to the overabundance of FASD affected persons in foster care; juvenile delinquency cases; adult criminal proceeding; and the use of FASD knowledge in court for the mitigation of sentencing, including therapy and comprehensive services to reduce the rates of recidivism" (ABA FASD Resolution).

❖ Why is HB 2002 helpful?

Expressions of FASD and its impacts within the context of Justice and incarceration reflects increases in:

- Rates of recidivism
- Vulnerability to victimization, including "being an accessory" (A. Wartnick)
- Vulnerability to becoming an offender or perpetrator
- Increased risk and rates of sexual abuse
- Increased risk and rates of domestic violence
- 50% of individuals with FASD have a history of confinement in jail, prison, treatment facility, or confinement in a psychiatric facility (A. Streissguth)
- Average age of a person with FASD who is in trouble with the law is 12.8 years
- 60% of adolescents and 70% of adults in incarceration who were screened resulted in a diagnosis of FASD (UW/Streissguth), representing a rate of incarceration 30 times that of the average population (S. Popova)
- FASD adds cost and social services of approximately 4.5 million per individual with an FASD (L. Burd)
- People with an FASD are vulnerable to suggestions and false confessions within court interviews and testimony (M. Marcus)

The impact and consequences of FASD reflect challenging expressions within Justice and Corrections:

- Lack of impulse control
- Inability to generalize or understand future consequences of current behavior
- Trouble understanding what constitutes criminal behavior
- Difficulty planning, connecting cause and effect

- Inability to learn from consequences as a result of challenges to memory storage and retrieval and therefore the inability to connect cause and effect
- Concrete thinking
- Challenges in empathizing, taking responsibility, making sound judgments
- Behavioral "echolalia" and vulnerability to peer pressure and influence... high levels of suggestibility
- A tendency towards explosive episodes with seemingly no rational trigger or antecedent
- Challenges of sensory overload
- Slower rates and different kinds and abilities in processing information
- Consider potential expressions with co-occurring issues such as ASD

❖ **How does HB 2002 align with recommendations?**

FASD presents its implications throughout the course of arrest, court, sentencing, and probationary orders. Certainly, Justice policies and protocols must consider the impacts of FASD on culpability and vulnerability. HB 2002 aligns with the ABA FASD Resolution within specific components of the House Bill authorizations, revealing the following pairing with FGC/FASD recommendations:

- "Impose a greater or lesser sentence."
 - HB 2002 provides for the potential to adapt, adjust, and design sentencing and probation orders... requires an understanding through screening assessment and diagnosis that can inform delivery through increased frequency of support and diminished time delivery (multiple supports of short duration).

- “Development program.”
 - HB 2002 provides the potential to redesign treatment delivery to align with the neuro-cognitive needs unique to individuals with an FASD... requires cognitive retailoring of treatment strategies for individuals with processing and sensorial needs of people with an FASD. Delivery strategies essential to success must be individualized, scripted for habituation, reinforced through positive mapping, and reinforced through experiential roleplay.
- "Post-prison supervision" (including housing and mentoring)
 - HB 2002 provides the potential for expanded delivery and design of social services in alignment with the neuro-cognitive challenges of an FASD... requires treatment and therapeutic support to provide an understanding of these neurocognitive challenges and considers the associated processing midbrain organicity that so often creates barriers and failures within social service systems
- Training and technical assistance contributing to “Reimagined Safety” and “Justice Reinvestment.”
 - Training and technical assistance with police officers and probation officers, providing strategies for de-escalation and understanding of mental health and neurocognitive challenges associated with FASD
 - Training and technical assistance in application of FASD understanding and service delivery with all legal professionals
 - Training and technical assistance in implementation and application of the American Bar Association Fetal Alcohol Spectrum Disorder Resolution
- Funding distribution for "Reimagined Safety" and "Justice Reinvestment."
 - Supporting the expansion of design and delivery of treatment and therapeutic methodologies to address the intersectionality of disability and ethnicity... requiring the duration of both outpatient and residential treatment to be expanded for sustained habituation

- Screening and diagnosis requiring appropriate referral and using diagnosis to inform strategies
- Providing frequency of case-coordinated Collaborative Circles of Care that understand and are structured to address the memory and processing deficits that require frequent repetition, multiple support (cheerleading) contacts of short duration
- "Data collection."
 - Identify and keep evaluative data that tracks both quantitative and qualitative outcomes using both “evidence-based practice” and “practice-based evidence” that includes anecdotal narrative
 - Review existing programs for appropriate components of replication
 - FASD Justice in Manitoba
 - Australia/FASD and the Law
 - Gladue Decision and the CBA FASD Resolution

Justice and court proceedings are uniquely positioned to create interventions and rehabilitation for FASD affected individuals. Often, involvement in the law creates the first potential place for these individuals to be recognized and identified. Therefore, courts have a powerful potential to change these individuals’ trajectory through court-ordered diagnosis, which, in turn, promotes the potential for behavioral and mental health treatments that can be appropriately aligned with, and reflective of appropriate interventions and delivery. Case-coordinated Collaborative Circles of Care reduce recidivism and can create positive, successful outcomes for safe communities (Lillies/Cousins/Kuerschner). Legal counsel and probation officers can serve as initial guides along with advocacy that provides the defendant support (including diagnosis) through referral and all court-related activity, informing current and future integration of service and resources. Perhaps most importantly, integrated Justice system, family-focused, community delivery emerges when this occurs, revealing a powerful potential to restore Justice. The cooperation and collaboration across services and community resources have been found to extend and enhance outcomes for the community as a whole, engendering

hope and promoting the delivery of promise. The study of scripting and skill development in cause and effect within the context of strength-based settings has offered anecdotal evidence that such interventions improve habituation of prosocial behavior, contributing to the evolution of community acceptance and practice of a restorative approach to Justice (SFN/YTG).

Having had the honor to participate with this delivery model in concert with the Multnomah County Department of Community Justice, the Future Generations Collaborative urges the passage of HB 2002. We are grateful to those who have authored and sponsored HB 2002. We appreciate the thought and consideration that they and so many have committed to the evolution of this bill's content. The FGC looks forward to the opportunity to participate and engage in successful process outcomes to benefit our current communities and for future generations.

In gratitude,

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❖ Attachments:

- Justice & FASD Engendering Hope and Delivering Promise
 - <https://drive.google.com/file/d/10MApxOTkrdKHuaq8ZufuLc7MxRT7cL3N/view?usp=sharing>
- American Bar Association Fetal Alcohol Spectrum Disorder Resolution
 - https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/fasd-resolution/
- FASD Screening and Assessment
 - https://drive.google.com/file/d/12_P7LgaAxfJEskgla_X4T9DTYfWV3Gu8/view?usp=sharing
- Presentation by Natalie Novick Brown, Ph.D. at Lewis & Clark Law School's American Bar Association FASD Resolution Summit 2019
 - <https://drive.google.com/file/d/1ecoNuKXJwZP4FpR9sZrgAK47AyJik0TY/view?usp=sharing>
- R. v. Gladue
 - <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1695/index.do>

❖ References/Contributions:

- Svetlana Popova, Ph.D.
- A. Streissguth, Ph. D.
- L. Burd, Ph. D
- Judge Anthony Wartnick
- Natalie Novick Brown, Ph.D.
- Judge Michael Marcus