‘NOW YOU SEE ME, NOW YOU DON’T’ -
SERVICE DELIVERY TO FETAL ALCOHOL SPECTRUM DISORDER (FASD)
OFFENDERS: A STUDY OF POLICY AND PRACTICE IN SASKATCHEWAN
COMMUNITY CORRECTIONS

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Bonny Lynn Gerger
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Bonny Lynn Gerger, candidate for the degree of Master of Arts in Justice Studies, has presented a thesis titled, ‘Now You See Me, Now You Don’t’ - Service Delivery to Fetal Alcohol Spectrum Disorder (FASD) Offenders: A Study of Policy and Practice in Saskatchewan Community Corrections, in an oral examination held on August 15, 2011. The following committee members have found the thesis acceptable in form and content, and that the candidate demonstrated satisfactory knowledge of the subject material.

External Examiner: Dr. Karen Todd, Regina-Qu'Appelle Health District
Supervisor: Dr. Allan Patenaude, Department of Justice Studies
Committee Member: Dr. Nicholas Jones, Department of Justice Studies
Committee Member: Dr. Richard Ruddell, Department of Justice Studies
Additional Committee Member: Prof. Hirsch Greenberg, Department of Justice Studies
Chair of Defense: Dr. Ulrike Hardenbicker, Department of Geography

*Not present at defense
ABSTRACT

FASD offenders involved in community corrections present a variety of challenges. One of the primary presenting challenges facing community corrections practitioners is how best to provide service to FASD offenders. What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving services from Saskatchewan Community Corrections? Utilizing case study methodology, this research explores the intersection of present day service delivery practice and proposed future practices in supervising offenders as demonstrated by the Strategic Training Initiative in Community Supervision (STICS) project. Interview sampling of two sub-groups of research participants was employed in an attempt to reconcile this method of proposed service delivery with specific aspects of ‘what works’ with FASD offenders. Conducting one-on-one interviews with those probation officers involved in the STICS project and the implementation of community corrections policies comprised the first sub-group. Interviews with those involved in the criminal justice system with FASD expertise (ie. lawyers, judges, police, etc.) comprised the second. Using a thematic network as a thematic analysis tool for qualitative data, this research identified limitations within community corrections and the STICS project that would need to be addressed to ensure success in reduction of recidivism and ensuring public safety in providing services to FASD offenders.
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CHAPTER 1 - INTRODUCTION

“The question is not what you look at, but what you see.”
Henry David Thoreau (1951)

Offenders involved in the criminal justice system come with a variety of challenges; some that are observable while some are not. One of the not so obvious challenges, physically, mentally and socially is Fetal Alcohol Spectrum Disorder. This disorder is generally identified by the acronym “FASD” and reflects individuals afflicted with this medical condition. Thoreau’s (1951) quotation aptly encapsulates the practice of professionals within the criminal justice system for not always recognizing FASD affected offenders. Only recently has there been acknowledgement or understanding of the problems faced by those affected by FASD. Furthermore, this medical condition has finally begun to be identified and acknowledged as impacting many offenders involved in the criminal justice system and their ability to disengage from the system (Fast & Conry, 2004; Miller, 2005; Roach & Bailey, 2009; Streissguth, 1998).

FASD is not just a childhood disorder but the result of predictable long-term disorder into adulthood; no one ‘just’ outgrows it. Progressive secondary disabilities including cognitive challenges and maladaptive behaviours developed in childhood present the greatest difficulties for management of these disabilities into adulthood (Streissguth, Barr, Kogan & Bookstein, 1996). There are social repercussions for those given this medical label and even more for the unrecognized afflicted since its effects are far reaching and life long. Research has indicated that those affected by FASD are far more likely to become involved with the law than those who are not (Streissguth et al., 1996; Conry & Fast, 2000; Chartrand & Forbes-Chilibeck, 2003; Connor, 2004).
Moreover, there remains a strong suspicion that FASD is, by and large unrecognized by professionals working in the criminal justice system including judges, lawyers, police, community corrections workers (probation), parole officers and institutional correctional workers and as a result, fair judicial treatment is less than forthcoming (Chartrand & Forbes-Chilibeck, 2003; Fast & Conry, 2004; Pauls, Bailey, Pearson, 2006). Within the criminal justice system, offenders suffering from FASD present significant and unique challenges since the legal system is not set up to deal with them in an effective manner. Moreover, within the context of the criminal justice system, individuals with FASD characteristics or diagnosis, who have been found guilty of an offence, are identified as “FASD offenders”. Resulting from their difficulties, FASD offenders ‘don’t get it’ and as a result “the person with FASD can be misunderstood in court, victimized in jails, and mismanaged in the transition back to the community, unless those working with the individual are aware of FASD and its implications” (Fast & Conry, 2004, p.161).

Within corrections, management of offenders is foremost. Risk assessment has become increasingly important, particularly as Canadian corrections is under enormous fiscal pressure due to what is perceived as high incarceration rates (Bonta, 2007). According to data released by Statistics Canada, Canada’s admittance rate for adults to a correctional service program in 2008/2009 was determined to be 371,800 adults (The Daily, October 26, 2010). On any given day in 2008/2009 an average of 37, 201 adults were in custody in Canada (Statistics Canada, 2010). Under community supervision orders, there were 18,404 adults serving a conditional sentence and approximately 84,281 more serving a probation order (Statistics Canada, 2010).
Significant numbers of incarcerated individuals are Aboriginal. In 2007, Aboriginal people accounted for 16% of the provincial population in Saskatchewan; however, they represented 72% of the total incarcerated population in Adult Corrections (Corrections, Public Safety and Policing [CPSP], 2008). On average, they accounted for 79% of the adult custody population and 62% of adult offenders under supervision in the community (CPSP, 2008).

In the interest of being responsive to the need to address risk, and reduce recidivism rates, in all but two Canadian provincial and territorial correctional systems, the use of evidence-based risk assessment tools has become a method of practice and service delivery to sentenced offenders to determine risk to re-offend (Bonta, 2007).

Faced with statistics demonstrating the increasing rates of persons incarcerated and serving community supervision orders, Canadian federal and provincial governments have become increasingly motivated to address the goal of reduced recidivism and protection of the public in a manner consistent with the most cost effective alternatives.

Given these challenges, the resulting implications for community corrections and program service delivery to FASD offenders are substantial. Even from the perspective of the ‘average’ offender, it is imperative to understand the individual offender in order to address their criminogenic needs and the underlying factors precipitating criminal behaviour. In addition to the many cognitive and behavioural impairments for those with FASD, individuals with FASD often come from socially and economically disadvantaged backgrounds and may suffer from co-morbid mental illnesses and substance abuse disorders that exacerbate these issues (Streissguth et al., 1996).
1.1 Purpose of this study

The overall purpose of this thesis was to analyze the needs of FASD offenders and the capability to meet those needs through the Strategic Training Initiative in Community Supervision (STICS) in Community Corrections in Saskatchewan. This involved three objectives: (1) provision of an analysis of FASD as it relates to the criminal justice system; (2) development of a framework of ‘what works’ with FASD offenders and successful service delivery to them from the perspectives of FASD subject matter experts within the criminal justice field; and (3) analysis of the impressions and experiences of probation officers who have participated in the STICS project and how well this model meets the needs of FASD offenders. Moreover, an additional purpose was to better understand the ability of policy and practice to meet this subgroup of offenders needs and reduce recidivism.

1.2 Historical context of FASD

Alcohol is the oldest and most widely used drug in the world (Hanson, 1995; McGovern, 2003; Vallee, 1998). Historically, the acceptability of alcohol has been intertwined with cultural, social, religious/moral and economic practices. It was reported to have been used as:

1. a reward for pyramid workers in Egypt;
2. a solvent for Opium in the cure-all known as “laudanum”;
3. a sacrament for Jewish or Christian religious ceremonies; and,
4. a substitute for contaminated water supplies.

In 18th century England, the so called ‘gin epidemic’ has been presented as one of the first examples of societal acknowledgment of the detrimental effects of alcohol on
fetal outcomes (Abel, 2001; Armstrong, 2003; Golden, 2005). The ‘gin epidemic’ was preceded by a time when distillation, although fairly common in Europe was rare in England due to a domestic monopoly. This monopoly kept the cost of distilled alcohol (gin) high compared to the more local production of beer and ale. In 1689, the English government banned imports of French wines and spirits and at the same time cancelled the domestic monopoly on distillation, subsequently providing opportunity to anyone who had the financial ability to pay the required duties to set up a distillery business. In effect, distillers could become producers and sellers of their product. As a result the cost of gin fell below the cost of beer and ale. Gin drinking became the alcohol of preference for the ‘inferior class’ (Abel, 2001).

Drinking cheap gin replaced the consumption of beer as the beverage of choice particularly among the poor and the working classes. As the underlying social problems of overpopulation and poverty were widespread at the time, social disorder was in part reflected by increased drunkenness. Reformers ignored the social causes of this disorder and instead focused on the symptom of drinking (Abel, 2001; Armstrong, 2003) and the subsequent “endangering of England’s wealth and security by enfeebling its labor force, and reducing its manpower by decreasing its population” (Abel, 2001, p. 402). This has been cited as one of the first historical references of the association between mothers who ingested alcohol and damaged babies (Jones & Smith, 1973).

Henry Fielding, an English Magistrate at the time, cursed the gin epidemic by stating, “What must become of an infant who is conceived in gin?” (Golden, 2005, p.20) Fielding’s comment did not interpret women’s abuse of alcohol as causing a problem in the fetal development but was instead a social commentary on crime, law and the
situation of the impoverished (Golden, 2005); the concern expressed was not biologically but socially motivated. The College of Physicians petitioned Parliament in 1735 to tax gin, claiming that gin was “a cause of weak, feeble and distempered children” (Armstrong, 2003, p.26). Again, this concern was not due to recognition of the effects alcohol itself had on the development of a baby but specifically on gin and the ‘lower’ classes that drank it and the resulting ‘feeble’ workforce (Armstrong, 2003; Golden, 2005). Medical knowledge of the time did not connect alcohol’s influence on fetal development but instead concentrated on maternal impressions such as ‘bad’ experiences or ‘disturbing’ thoughts (Armstrong, 2003; Golden, 2005). As a result medical knowledge of alcohol usage and fetal distress were not recognized.

The so called ‘gin epidemic’ was a result of economic policy associated with poverty and social unrest. Eventually, legislation enacted by Parliament resulted in the increase of gin pricing and a decrease in gin consumption. Coincidentally, this also brought about a previously non-existent concern for fetal well-being and maternal alcohol usage that lasted for almost a hundred years afterward.

It wasn’t until 1899 that a specific medical link was identified by British physician William Sullivan who compared the pregnancy outcomes of 120 alcoholic prisoners with 28 of their relatives and determined that the infant mortality rate among the alcoholic women was higher (Abel, 1990). Nevertheless, with the coming of the Prohibition Era in the United States during the 1920’s the issues of prenatal alcohol exposure and birth defects were virtually ignored (Cooper, 1991). However, the ‘social evil’ of alcohol became increasingly prevalent. During this time, medical ideas about alcohol and reproduction rested on broader notions of the role of heredity as a
determinant of both individual poverty and social destiny (Armstrong, 2003). Once again, the rhetoric of alcohol destroying the health of future generations was used to promote larger social agendas such as temperance (Golden, 2005).

In the 1940’s, initial research into the physical effects of alcohol began with animal studies that postulated prenatal exposure to alcohol might contribute to behavioural abnormalities, but researchers and scholars also argued that they were most likely the results of a ‘poor’ home and other ‘dysfunctional’ familial conditions (Cooper, 1991; Golden, 2005). Whether children suffered from ‘poor’ parenting or impoverished living conditions mattered less than the concern they would not become upstanding and independent citizens. The effects of alcohol on offspring were understood in terms of “drinking parents created damaged children, either by heredity or by example” (Golden, 2005, p. 23) not through prenatal ingestion.

Through the 1950’s, it was thought that a pregnant woman developed a “placental barrier” through which nothing that would hurt the baby could pass. As a result, there was little concern over what a woman may be exposed to during pregnancy (Golden, 2005). Into the 1960’s, the medical profession was advocating moderate alcohol use during pregnancy to help keep the expectant mother ‘calm and relaxed’ (Cooper, 1991). It became more socially acceptable for women to drink during this time period. According to Armstrong (2003), “whereas drinking had been a gender-segregated activity, now men and women drank together and incorporated cocktails into social life” (p. 69). Historically, as much as was known about alcohol and pregnancy, it would appear as much was also ‘selectively’ forgotten. Social problems have been demonstrated
to be products of the ‘rise and fall’ of the political and medical climate as illustrated by the process of medicalization.

Lemoine and colleagues (1968) described a pattern of anomalies occurring in the offspring of 127 women who had ingested alcohol during pregnancy. Although he and a number of colleagues published their findings in France, where they were given little acknowledgement for their discovery, American paediatricians found their results interesting and relevant to their work (Golden, 2005).

In 1973, Kenneth Lyon Jones and David Smith, two paediatricians at the University of Washington School of Medicine in Seattle, noted physical dysmorphology (physical facial anomalies) and developmental delays in eight children born to mothers described as ‘alcoholic’ (Jones & Smith, 1973). They were familiar with Lemoine’s work and noted the similarities between his and their case studies. They subsequently published three articles in the British medical journal, *The Lancet*, over the following year (Armstrong, 2003). In their second published article, Jones and Smith actually named the disorder “Fetal Alcohol Syndrome” and the acronym FAS subsequently became an accepted standard when discussing the disorder.

Jones and Smith’s (1973) research was based on findings of a total of eleven cases (six Native American, three African-American and two Caucasian children). These eleven cases were drawn from a sample of 55,000 cases (collective data from the Collaborative Perinatal Project of the National Institute of Neurological Disorders and Stroke [Armstrong, 2003]). The empirical foundation for the diagnosis of FAS hinged on: a total of eleven case studies and a “noncontrolled, retrospective cohort study” (Armstrong, 2003). That is not to say that other cases were not being ‘identified’, they
were. For the next several years, Jones and Smith (1973) received articles, letters and case reports from fellow physicians who documented similar physical, developmental and cognitive difficulties in children of women who had ingested alcohol during pregnancy.

Substances that could alter the ‘normal’ development of the fetus (i.e., thalidomide) are classified as “teratogens” by medical science. Through the discovery of FAS, alcohol began to be identified as a primary teratogen and precipitated the deconstruction of the belief that the placenta acted as a barrier for the fetus (Golden, 2005).

Identification of children who did not exhibit all of the FAS characteristics but had some of the FAS symptoms were diagnosed, instead, with Fetal Alcohol Effects (FAE). These children had deficits in one or more of the FAS areas but did not have the facial dysmorphology (Streissguth et al., 1996). FAE is not merely a ‘milder’ form of FAS. Individuals with FAE can be as severely impaired both cognitively and behaviourally as those persons diagnosed with FAS. Arguably they have the distinct disadvantage of not appearing physically ‘different’ (Conry & Fast, 2000). It is estimated that the incidence of FAE is 3-10 times that of those diagnosed with full FAS (Streissguth et al., 1996). One other category, Alcohol-Related Neurodevelopmental Disorder (ARND) was also established because neurobehavioural and cognitive deficits could occur separately from the physical anomalies (like FAE). However, for the diagnosis of ARND there must be confirmed maternal alcohol consumption (Streissguth et al., 1996). This is unfortunate for persons with FAE or FAS (now called FASD) and for physicians diagnosing FASD, according to Chartrand and Forbes-Chilibeck (2003). They noted that
“The range of FASD diagnosis creates a situation where a disability is very identifiable at one end of the spectrum and on the other, is often unnoticeable.” (p. 39).

Since the first modern day medical description of FAS in 1968, the priority assigned to the importance and prevalence of FAS has ‘ebbed and flowed’. As previously mentioned there was recognition of maternal alcohol use and social implications as far back as the late 1880’s but medical attention only occurred with Lemoine in 1968. Diagnosis is very challenging as, for example, the timeframe during pregnancy and the quantity of alcohol required to produce FAS/FAE has not been conclusively established (O’Leary, 2004). In the United States, studies have indicated that the potential of a child born with FAS is six times more prevalent in African women than in the general population and in Canada, as much as 3 times more prevalent among First Nations women than the rest of the population (Golden, 2005; Nanson, 1997; O’Leary, 2004). This outcome has been attributed to socio-economic status including class and racial discrimination (Golden, 2005; O’Leary, 2004).

Studies continue to be carried out in general obstetric clinic settings among populations that consist predominantly of those from low socioeconomic status (May & Gossage, 2006) and Abel (1995) noted that, “the major determinant for the occurrence of FAS is poverty” (p.441). As a result of colonization, residential schools and systemic racism, Aboriginal populations live with conditions of high poverty and chemical dependency issues, particularly alcohol abuse (Chartrand & Forbes-Chilibeck, 2003; Miller, 2005). Moreover, the structural link between poverty and crime and involvement with the criminal justice system is well documented (Abel, 1995; O’Leary, 2004). An example of this structural link is demonstrated within Aboriginal communities where
there can be socioeconomic and other difficulties such as substance abuse. FASD often occurs within situations of poverty, family upheaval, neglect and abuse, multiple drug use and poor health (Boland, Chudley & Grant, 2002).

With an estimated nine in 1,000 infants born in Canada (more than 3,000 infants born in Canada each year) affected by the disability, FASD puts a heavy social and economic burden on those with FASD, their families, communities, human service programs, and society as a whole (Public Health Agency of Canada, 2003). FASD is a life-long disability. While there is no cure, the disorder is totally preventable from a physical perspective; if a mother does not drink alcohol during pregnancy, the child is not born with FASD. Today, FASD is cited as the leading preventable cause of both cognitive and physical developmental disabilities, surpassing both Spina Bifida and Down Syndrome in Canada (Chartrand & Forbes-Chilibeck, 2003; Children’s Commission, 2001) and the U.S. (Chudley, Kilgour, Cranston & Edwards, 2007).

Additionally, Golden (2005) considered it “a major social and public health concern” (p. 9). Of all the substances abused, including heroin and cocaine, alcohol produces by far the most serious neurobehavioural effects in the fetus (Golden, 2005). These effects produce high personal care and family support needs with high financial costs. Based on the current Canadian population, people with FASD aged 0 to 21 years represent a potential annual cost of over $571 million (Public Health Agency of Canada, 2007).

People with FASD have brain damage that results in impaired mental functioning referred to as primary disabilities. Primary disabilities can include “learning deficiencies, attention and memory difficulties, language, developmental and motor delays, problems with organization, speed of information processing and response modulation”
(Streissguth, 1998, p. 18). These ‘hidden’ disabilities directly impact the ability to determine appropriate social and behavioural interactions, judgment, task persistence and in turn independent living potential.

Primary disabilities are measured by “general intelligence, mastery of reading, spelling, math, and level of adaptive functioning, representing the CNS (central nervous system) manifestations of FASD” (Streissguth et al., 1996). A group of leading experts in the FASD field from the University of Washington conducted a study of 473 individuals with FASD (Streissguth et al., 1996 cited in Streissguth & Kanter, 2002, p.33). They found:

1. The range of IQ of the individuals with FAS was from 20 to 120 with a mean of 79; average reading, spelling, and arithmetic standard scores of 78, 75 and 70 respectively with an average adaptive behaviour standard score of 61.

2. A normal IQ is 100, with a standard deviation of 15.

3. The range of IQ of individuals with FAE was from 42 to 142, with a mean IQ of 90; average reading, spelling, and arithmetic standard scores of 84, 81 and 76 respectively, and an average adaptive behaviour score of 67 (Streissguth & Kanter, 2002, p. 33).

This means that only 16% of all individuals with FASD legally qualify as having a cognitive disability and further, because 86% have an IQ in the ‘normal’ range, they would not qualify for any services for developmental disabilities regardless of their impaired mental, social or behavioural functioning as a result of organic brain damage (Streissguth et al., 1996).
Secondary disabilities are those that occur as a consequence of a primary disability. Secondary disabilities can be prevented or decreased by improved understanding of the issues that FASD brings and resulting in more appropriate interventions and supports. Secondary disabilities can encompass a variety of areas, but usually include:

1. Mental health problems (i.e., Attention Deficit Hyperactivity Disorder [AHDH], depression, suicidal ideologies);
2. Disrupted school experience (suspension, expulsion or drop out) due to behavioural issues or lack of academic functioning;
3. Involvement with the legal system (involvement with the police, charged or convicted of crime);
4. Confinement (inpatient treatment for mental health and alcohol/drug problems);
5. Inappropriate sexual behaviours (sexual touching/advances, promiscuity, exposure, compulsions); and
6. Alcohol/drug problems (i.e. five times more likely to have chemically dependency issues (Conry and Fast, 2000; Streissguth et.al., 1996).

The greatest identified risk factors relevant to FASD include: an IQ over 70 (but under 100); and exposure to violence (Streissguth et.al., 1996). Indeed, those with IQ’s of under 70 are more likely to qualify for supportive services by meeting criteria for accessing community and health services. Moreover, approximately 72% of individuals with FASD have been exposed to neglect, physical or sexual abuse (Streissguth et.al., 1996). Mitigating or protective factors include: early diagnosis, eligibility for supportive
services, a functional stable living environment and protection from violence (Conry & Fast, 2000; Streissguth et al., 1996). These secondary disabilities directly impact on an individual’s independent living capacity, employment possibilities, functional relationships, life-long pro-social choices, and choices that bring about involvement with the criminal justice system. Moreover, these adaptive functioning abilities are severely compromised placing individuals with FASD at high risk for victimization and criminalization. The extreme range in the abilities of people with FASD reflects the underlying organic brain dysfunction (i.e., brain damage). The resulting functional disabilities do not make common sense, but they do make “brain damaged” sense as discussed here.

The life-long neurological impairments prevalent in individuals with FASD including cognitive disabilities, impulsivity, and poor judgment increase their susceptibility to criminal behaviour and victimization. The Canadian criminal justice system is largely uninformed or misinformed and, subsequently, ill-prepared to deal with the challenges these individuals bring, particularly when sentencing offenders with FASD.

Given that the major determinant for the occurrence of FASD is poverty and related poverty-related risk factors, it would appear prudent to consider addressing these issues as a way of decreasing involvement in the criminal justice system. Blumer (1971) stated that “a social problem exists primarily in terms of how it is defined and conceived in a society” (p. 300). To prevent the continued occurrence of persons with FASD and their subsequent involvement with the criminal justice system, social problems such as poverty and alcohol use require attention. In law, the term “jurigenic” has been coined to
refer to the harmful effects of the ordinary judicial system. “The continued failure to recognize the impact of FASD on the individual and the continued incarceration and lack of appropriate alternate sentencing and probation plans can only be seen as jurigenic” (Chartrand & Forbes-Chilibeck, 2003, p. 49).

The individual with FASD involved with the criminal justice system needs to be viewed as a neurologically impaired person. They are vulnerable on many levels including: (1) victimization (by the system and by other offenders); (2) abuse and violence (both perpetrating and receiving); (3) having a lack of advocacy and supports; and (4) generally get ‘lost’ in the system. They have limited insight into their own lack of abilities and limitations. The ideal situation for an individual with FASD is to have a mentor or advocate who provides guidance, structure and order and essentially functions as an “external brain” (Chudley et al., 2007). Unfortunately, this approach is rarely possible or practical within community corrections and less so within a correctional institute.

In the criminal justice system, individuals are expected to change their behaviours as a result of positive or negative consequences, FASD individuals are at an extreme disadvantage from the beginning of the process to its end. The Canadian criminal justice system is based on the premise that individuals have the mental capacity to cognitively relate their actions with consequences. Offenders with FASD challenge this basic premise and illustrate that equal treatment under the law does not always amount to equality under the law.

Herein is found another challenge. While the need for recognition of equal rights for persons with FASD should be present, this does not negate the importance of
accountability for their actions or responsibility to obey laws. The question may be whether or not equal rights are equivalent to equal responsibilities or is a balanced response by the system, in recognition of individuals with FASD challenges more in keeping with the protection of equal rights? Given the growing challenges presented by offenders with FASD to the criminal justice system and *vice versa*, this question requires a timely answer.

### 1.3 Research questions

Saskatchewan Community Corrections is currently exploring program delivery provided to offenders. In 2007 and into 2008, Community Corrections piloted a cognitive-behavioural approach called the Strategic Training Initiative in Community Supervision (STICS) developed by James Bonta and a team of researchers from the Research and Policy Branch, Public Safety Canada. This research provides: (1) a look at present day policy and practice in Saskatchewan Community Corrections; (2) evaluates proposed policy and practice; and subsequently, (3) develop opportunities for policies that better provide the framework of services required for FASD affected offenders.

**Primary research question:**

What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving services and supervision from Saskatchewan Community Corrections?

**Secondary research questions:**

1. What are the key factors necessary in an effective service delivery program to address offenders with FASD?

2. What would the characteristics of these components look like?
3. How would these key factors be reconciled with current practices and policies in Community Corrections program delivery in Saskatchewan?

4. How would increased knowledge concerning FASD correlate with existing risk assessments tools in determining criminogenic factors to improve program service delivery within the community to FASD affected offenders?

5. In what manner would STICS reconcile with existing evidence-based practices in addressing the needs of and reducing recidivism among FASD offenders?

6. What needs to be in place to allow for the effective management of those offenders under the STICS initiative?

7. How does the provincial initiative (STICS) in Saskatchewan address the unmet needs of FASD offenders?

1.4 Operational definitions

1. Fetal Alcohol Spectrum Disorder (FASD) was defined as a result of the broad ‘spectrum’ of damage created by maternal alcohol usage. It is an umbrella term (rather than a medical diagnosis) used to collectively refer to range of sub-type disabilities including Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE) and Alcohol-Related Neurodevelopmental Disorder (ARND) which are medical diagnoses. On April 15, 2004, Canadian and U.S. fetal alcohol syndrome experts signed an agreement that the use of Fetal Alcohol Spectrum Disorders would be the official term used to describe these range of effects (Ott, Quinn & Thompson, 2004, p. 1).
2. Primary Disabilities refer to people with FASD who have central nervous system damage resulting in impaired mental (cognitive) functioning. They can include learning deficits, attention and memory difficulties, language, developmental and motor delays, problems with organization, speed of information processing and response modulation (Streissguth, 1998).

3. Secondary Disabilities occur as a result of the primary disabilities and are preventable. They can encompass a variety of challenges including mental health problems, disrupted school experience, involvement with the legal system, involuntary confinement in a mental health facility, inappropriate social functioning and chemical dependency issues (Conry & Fast, 2000; Streissguth et al., 1996).

4. Policy analysis for this research uses Dunn’s (2008) definition as a “process of multidisciplinary inquiry designed to create, critically assess, and communicate information that is useful in understanding and improving policies” (p.1).

5. Strategic Training Initiative in Community Supervision (STICS) Project is a piloted intervention undertaken by Saskatchewan Community Corrections. This initiative transfers knowledge from research findings into real world applications that utilize a cognitive-behavioural approach with selected offenders.

6. Governmentality is defined by Michel Foucault (1982) as “the conduct of conduct” which is simplified by Gordon (1991) as “a form of activity aiming to shape, guide or affect the conduct of some person or persons” (p.2). For the purposes of this thesis, it will be interpreted and referred to in the context of encompassing all those programs and strategies offered by government under the auspice of governing.
7. Medicalization as defined by Marcellus (2003) posits that “social problems as arising from individual lifestyles, cultural differences, or biological predisposition, rather than from impoverished social and economic circumstances, marginalization, and oppressive internal colonial policies” (p. 441). Throughout this thesis the term medicalization is employed when referring to FASD from this perspective; as a highly contested and uneven historical process with equivocal results connected to social inequality.

8. Demedicalization is also an uneven and historical process that involves “the diminishing cultural authority of medicine and the yielding of the power to diagnose social ills and individual disorders to other professions and authorities” (Golden, 2005, p.11). Within the criminal justice system, demedicalization mitigates the accountability of offenders with FASD as a way to shift blame for their actions due to their medical ‘condition’.

9. Risk Society has been used as a descriptive term for an approach to managing ‘problem’ populations and the threats that they pose. Risk refers to the uncertainty that surrounds future events and outcomes. The expression is used as a descriptor of the likelihood and impact of an event with the potential to influence the achievement of an objective. Within the context of this thesis, “risk society” will be accepted as a paradigm shift in that the “notion of risk is made autonomous from that of danger; risk does not arise from the presence of particular precise danger embodied in a concrete individual or group” (Castel, 1991, p. 287). As a result, risk will be defined as “the effect of a combination of abstract factors which render more or less probable the occurrence of undesirable modes of behaviour” (p. 287). Inherent risk is
conceived as the level of risk faced by an organization before any internal controls are applied. Residual risk is considered the level of risk faced after internal controls have been applied; controls will not eliminate the risk but help manage it.

10. New penology is considered an approach that seeks to manage the risk posed by so-called “dangerous” populations (Feeley & Simon, 1992) and protect society (Ancel, 1965) and is more focused on “dissuading the citizen from law breaking than with rendering the criminal incapable of harm; it is society and not law or sovereignty, that is seen as being attached or endangered by crime, or rather by the criminal” (Pasquino, 1991, p. 241). It is within this perspective that this thesis will be interpreted.

11. Thematic analysis, for the purposes of this thesis, thematic analysis incorporates the concept of thematic networks as described by Attride-Stirling (2001). Using this approach, thematic analysis systematically extracts common lowest-order words or concepts grouped into basic themes from the textual data. Basic themes are organized into middle-order or organizing themes which are then defined by a super-ordinate or a global theme. A global theme becomes the core of a thematic network and is both a summary of the main themes and a revealing interpretation of the data.

1.5  **Organization of the thesis**

This thesis increases our understanding of the unique challenges FASD offenders bring to the criminal justice system. Moreover, it gives a coherent analysis of the current policy and practice of service delivery to FASD offenders who are supervised by Saskatchewan Community Corrections.
Chapter Two reviews the literature and theories on criminal behaviour, practice issues and concerns that have arisen as a result of service delivery practice within the criminal justice system with a focus on community corrections. An exploration of the issues of unequal power dynamics is important to set the stage for a focused evaluation of policy and practice within community operations. The chapter then examines the concepts of risk society, ‘what works’ and risk assessment. As a society that has embraced and expanded upon the concept of risk society and the resulting high risk for recidivism that FASD offenders pose, sustained practice that works with FASD offenders is explained as a foundation for analysis in this research. This in-depth understanding of what works with FASD offenders informs the data analysis conducted in Chapter Four.

Chapter Three explains the methodology used in this research, as well as a background of the case study of the STICS project in Saskatchewan Community Corrections. By examining this case study and conducting interviews with two subgroups of participants, STICS participants and FASD professionals within the criminal justice system, this research will provide an understanding of policy and practice incorporated into service delivery to FASD offenders under a community order. Furthermore, it will to provide direction in addressing the needs of FASD offenders serving on a community order and reduce recidivism. This case study evaluation allows the researcher to explore the intersection of present day service delivery practice and proposed practices as demonstrated by the STICS project. Moreover, it can gain a more complete and comprehensive picture of what may be required from a service delivery perspective in meeting the criminogenic needs of FASD offenders.
Chapter Four presents the qualitative research findings of the case study and the interviews conducted with the two sub-groups of participants. Major themes from the interviews conducted will be discussed including those pertinent to both the group participating in the STICS project as well as the group of criminal justice professionals with an FASD expertise, using the concepts of “what works” (evidence based interventions) for general population offenders and what works for FASD offenders introduced in Chapter Two. This chapter will also analyze the STICS project to determine if it is a proposed practice that will reconcile with FASD offenders needs.

Chapter Five completes the thesis with a discussion of the implications of this research for Corrections, Public Safety and Policing (CPSP) Community Operations policy and practice. Recommendations for further consideration will also be discussed.
CHAPTER 2 - REVIEW OF THE LITERATURE

2.1 Introduction

In a democratic society, a criminal justice system should ensure just and fair treatment of all citizens who are subject to prosecution by the state. Justice should also be organized to respect and benefit the people it is to serve.

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability [Canadian Charter of Rights and Freedoms, 1982, S. 15(1)].

The application of the Charter principles includes respecting the needs of individuals by setting up mechanisms so that parties to legal proceedings are able to understand the meaning of the principles being applied to them and thereby have the ability to lawfully defend themselves. The fundamental justice provisions in Section 7 of the Canadian Charter of Rights and Freedoms (1982) should be adhered to without exception and all individuals should benefit from the provisions of legal rights stipulated by the Charter. However, for people with FASD, the application of legal rights does not extend the protection of those same legal rights. The integrity of the criminal justice system is compromised by the spectrum of difficulties experienced by a person with FASD and the fair delivery of justice.

It is difficult to estimate the exact prevalence of FASD in the Canadian population. The first Canadian report estimating the incidence of FAS for an entire province was conducted in Saskatchewan and published in 1996 (Habbick, Nanson,
In total, 207 cases of FAS were identified with 86% of these persons identified as First Nations. Additionally, the authors concluded that these statistics were very likely underestimated due to under-diagnosis throughout the province. Moreover, almost all epidemiological studies conclusively indicate that FAE has an incidence of 3 to 4 times higher than FAS (Health Canada, 2007).

Incidence of prevalence studies of FASD by the justice system have focused on individuals involved in the criminal system. Research from the Addictions Research Centre, Correctional Services of Canada (CSC) found that 10% of a sample of 91 male inmates entering a federal correctional institution in Manitoba met Canadian guidelines for a diagnosis of FASD. There were considerably more cases (18%) where FASD was suspected but not confirmed (MacPherson & Chudley, 2007). Fast, Conry and Loock (1999) found that 23% of a sample of youth remanded for psychiatric or psychological assessment had FASD (Fast, Conry & Loock, 1999). The significance of these findings illustrates that FASD is a very real complication when dealing with offenders within the criminal justice system.

Individuals with FASD appear in the legal system as offenders and/or victims. Cognitively challenged people with FASD do not fare well in verbally-based adversarial legal processes that demand mental agility, a good memory, quick responses, and the ability to readily employ a rich vocabulary to accurately depict or alternatively obscure the truth (Conry & Fast, 2000). Legal representation may address some of these concerns, however, FASD affected individuals may have difficulty explaining their circumstances or instructing counsel.
Research conducted by Kent Roach and Andrea Bailey (2009) indicates a growing criminal jurisprudence on FASD. Their findings indicated that awareness of FASD in court decisions has been increasing over the past fifteen years, and especially within the Canadian territories and Saskatchewan. Moreover, it is also consistent with arguments that more and more the failures of social policy and the effects of mental illness, substance addiction, poverty and despair are de facto criminal justice system responsibilities (Byrne, 2002; Conry & Fast, 2000; Fraser, 2008).

Much of the criminal behaviour typical of people with FASD appears as the result of maladaptive patterns (driven by secondary disabilities) such as impulsivity, poor emotional control, difficulty distinguishing cause and effect and difficulty understanding consequences and accountability. Lack of knowledge or failure to recognize individual FASD symptomatology may result in misinterpretation of secondary disabilities and misinterpretation of individual behaviours as uncooperative when in contact with the justice system.

The nature of FASD has been shown to be highly predictive of involvement with the law and potential for incarceration (Boland et al, 2002). The typical pattern of an FASD offender is as a non-violent offender with repeated offences of failed compliance with court orders; with system generated involvement to probation or parole conditions resulting in recidivism (Chudley et al., 2007). These offenders’ crimes are often unintentional, opportunistic and/or unduly influenced by peers and others.
2.2 FASD and the criminal justice system

2.2.1 Police

Involvement with the criminal justice system usually begins with the reporting of criminal incidents to the police. Police practices to detect developmental disability through standard communication and interrogation techniques, and the skills employed by investigating officers will directly determine the course of justice; whether the rights of the person with FASD are being considered (Pauls, Bailey & Pearson, 2006). People with FASD are highly suggestible and have a tendency to agree with ‘leading questions’ to please people in authority (Conry & Fast, 2000). They will give the answers they think the investigating officer wants to hear or refuse to answer as a way of coping with aggressive interrogative tactics that may be taken. Individuals with FASD can also have the tendency to confabulate or to fill in memory gaps to cover lack of knowledge. Even people without any intellectual disabilities are susceptible to suggestion and/or pressures placed upon them by the interrogation process (Pauls, Bailey & Pearson, 2006). Thus, the FASD individual’s inability to maintain integrity against the susceptibility of leading and/or suggestive questions should not be surprising. Many FASD individuals have a limited ability for abstract thinking as well as relating one question to another. For example, FASD offenders would not necessarily understand the consequences of providing the police with culpable statements (Conry & Fast, 2000).

Unless the police have been trained to recognize people with FASD, they will not understand or identify the cognitive and developmental disabilities being exhibited by a so-called “normal looking” person with FASD. It is unfortunate that most individuals affected with FASD do not have a formal diagnosis. Police officers may misinterpret the
responses and behaviours of an FASD individual as manipulative and non-cooperative or mistake cognitive disabilities with behaviours precipitated by substance abuse (Pauls, Bailey & Pearson, 2006). Officers with previous contact or experience with offenders however, might have unofficial knowledge of their FASD. If an offender confesses to a crime, all but the most scrupulous police officer and/or prosecutor are unlikely to look beyond the admission of guilt, particularly when it conforms to the police theory of the crime (Moore & Green, 2004). (See further Section 2.2.4 Sentencing).

### 2.2.2 Lawyers

Section 10 of the Charter states “Everyone has the right on arrest or detention (b) to retain and instruct counsel without delay and to be informed of that right”. Defense counsel for the FASD offender face at least the same, if not more, challenges than the police and prosecutors. The ability of an FASD offender to comprehend concepts such as waiving rights to counsel, instructing counsel, lawyer-client privilege and the implications of their plea is severely compromised by their cognitive disabilities (Fast & Conry, 2004, Roach & Bailey, 2009).

The ability of an FASD individual to provide their legal representative with instructions is not the issue; it is the ability to understand the consequences of those instructions (Conry & Fast, 2000). Defense lawyers have the duty and onus to raise concerns with the court to illustrate an FASD offender’s challenged capacity including issues with memory, cognition levels and/or communication abilities. If an FASD offender pleads guilty to a charge, his or her defense counsel needs to consider requesting a pre-sentence report to give full disclosure to the court and the prosecution illustrating the various aspects of the FASD individual’s level of functioning or lack thereof as well
as accessing any previous assessments that may document the FASD individual’s specific challenges (Conry & Fast, 2000; Moore & Green, 2004; Pauls, Bailey & Pearson, 2006;). The burden of proof does not rest with the defence however when representing an FASD offender, his or her counsel may be required to provide considerable evidence and expert testimony to illustrate the compromised thinking of an FASD individual.

2.2.3 Criminal responsibility and intent

The Diagnostic and Statistical Manual Revision IV (DSM-IV-TR) (2000) is the source upon which psychiatrists base their diagnosis. FASD is not formally recognized as a mental disorder in the DSM (Byrne, 2002), it is arguably one that should be (Pauls, Bailey & Pearson, 2006; Streissguth, et al., 1998). Our criminal justice system is based on the premise that individuals have the mental capacity to appreciate the nature and consequences of their actions, including the connection between an intentional act and consequential punishment (Conry & Fast 2000). This raises issues for FASD offenders surrounding ability to form intent, their fitness to stand trial and the potential for a defense of diminished responsibility.

Criminal responsibility is a result of a guilty act (*actus reus*) and a guilty state of mental intention (*mens rea*). The law makes an assumption that individuals appreciate the natural consequences of their choices resulting from criminal behaviour. Arguably, this twofold criteria is challenging for FASD offenders. The cognitive ability of FASD offenders to form intent, whether the degree of intent is specific or general, is dubious. For crimes that require specific intent, the mental state of an individual is particularly relevant. The prosecution must be able to demonstrate that the accused had the intent, not only to commit the act but had an appreciation for the specific result of the act (Conry &
Fast, 2000). Because of the potential for an FASD individual’s impaired understanding of a cause and effect relationship, or consequential sequencing, their ability to formulate mens rea, is called into question.

General intent is most commonly measured against the standard of a reasonable person acting in a rational manner. In other words, a reasonable person in the accused circumstances would have recognized the potential outcome of the actions taken (Pauls, Bailey & Pearson, 2006). Another, albeit less common test for culpability is the subjective test; in other words, what was the accused thinking at the time that he or she committed the criminal act? To measure an FASD individual’s ability to formulate a ‘cause and effect’ against a reasonable person’s ability is an oxymoron. “The construction and application of the law is arguably biased against persons with developmental disabilities who may not function or exercise judgment to the standard of the ‘reasonable person’, but whose actions are nonetheless judged according to that standard” (Pauls, Bailey & Pearson, 2006, p. 56). The constitutionality of the general intent (culpability) standard is questionable. If the underlying principle is the universality of rights (Sec. 15 of the Charter), implying that all citizens are legally evaluated equitably, then, the focus of any analysis of culpability should be on the act itself and not the actor (Pauls, Bailey & Pearson, 2006). Because of the cognitive disability associated with FASD, the use of the reasonable person standard of culpability prevents universality of rights.

Section 2 of the Criminal Code of Canada, R.S.C. 1985, c. C-46 defines “a person who is unfit to stand trial” as a person who is:

unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in
particular, unable on account of mental disorder to: a) understand the nature or object of the proceedings; b) understand the possible consequences of the proceedings, or; c) communicate with counsel.

Essentially this means that a trial is not considered fair and just if the accused is unable to understand the process or cannot participate fully. The concept of fitness to stand trial relates to the capacity of the accused to understand the proceedings and to instruct counsel (Pauls, Bailey & Pearson, 2006). The challenge for the court is to understand that an FASD individual may have the superficial appearance of competency since they appear to understand more than they actually do.

Diminished responsibility (or capacity) reflects the reality that there is a wide range of variations of mental and physical individual capacities and further, that these variations are relevant to the concept of criminal responsibility. Section 16(1) of the Criminal Code allows for a finding of not criminally responsible by reason of mental disorder when, on the balance of probabilities at the time of the act or omission, the person was “suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong” or “not criminally responsible on account of mental disorder.” This defense would require an evaluation by an expert examiner that would need to take into account the FASD individual’s reasoning capabilities, communication skills and understanding of abstract concepts (Conry & Fast, 2000; LaDue & Dunne, 1996a). While this may have potential use in court, the challenge is the unavailability of knowledgeable experts in the FASD field and the time required for these services (Fast & Conry, 2004; LaDue & Dunne, 1996a; Streissguth, 1998). The possibility exists that, as a result of the use of this
defence, FASD offenders may find themselves placed in a mental health facility that may or may not address their specific needs and challenges.

Section 672.24 C.C. allows the presiding judge the authority to raise the issue of FASD to ensure that the accused has the representation that may be necessary and to ensure the court can hear expert testimony about FASD. However, there are no provisions in the Criminal Code that would allow a judge to order an FASD assessment for sentencing purposes. Even if the assessment order would be considered professionally reliable, it has been determined that it exceeds the court’s jurisdiction by the Court of Appeal (Roach & Bailey, 2009). Alternatively, assessments may be suggested through the request for a pre-sentence report (PSR) by the Court however, these requests may be easier said than done in many jurisdictions. First, many jurisdictions do not have the resources to conduct specialized assessments pertaining to FASD. Second, the determination of who incurs the cost for the assessment is another challenge. Third, the information required to determine a diagnosis of FAS or FAE may not be available (re: maternal history). And last, the timeliness of such an assessment may delay the matters before the court.

2.2.4 Sentencing

The imposition of a sentence by the judge is one of the most critical points in the criminal justice system for offenders. Balancing of the principles of sentencing, and principles put forth in the Charter of Rights and Freedoms require FASD individuals’ needs to be prevalent. In Section 718 of the Criminal Code, the fundamental purpose of sentencing is stated as “to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just
sanctions.” The *Criminal Code* instructs courts to consider six objectives: denunciation, deterrence, separation of the offender (public safety), rehabilitation, reparations and instilling a sense of responsibility in the offender (s. 718). In a retributive based system, balancing the rights of the FASD individual with societal safety is no easy task. The principles of sentencing are based on cognitive functioning and reasoning abilities that may not be present in a person with FASD. The concepts of consequences, rehabilitation and deterrence may be beyond the scope of understanding of an FASD individual. There has been increasing judicial commentary that has rejected the concept of either general or specific deterrence as an appropriate consideration with respect to FASD offenders (Fraser, 2008; Moore & Green, 2004; Roach & Bailey, 2009).

Sentencing is seen to be an inherently individualized process and should be proportional to the gravity of the offence and the degree of responsibility of the offender. Section 721 (1) of the *Criminal Code* allows the possibility of a pre-sentence report for the purpose of determining the offender’s history, challenges and potential interventions to address recidivism. Arguably, a pre-sentence report would be useful to inform and educate the court of the challenges faced by the FASD offender and would help in the formulation of an appropriate disposition.

One of the most challenging due process issues is the widespread ignorance of, or insensitivity to, the cognitive and developmental disabilities particular to those associated with FASD (Conry & Fast, 2000; Pauls, Bailey & Pearson, 2006). Challenges facing the system in sentencing an FASD offender are compounded by a lack of community resources and/or supports (Conry & Fast, 2000; Moore & Green, 2004; Pauls, Bailey & Pearson, 2006). Case law indicates that while FASD has been viewed as a mitigating
factor due to the effects it has on an offender’s moral culpability, yet this criteria is not always reflected on sentencing. Paradoxically, diagnosis of FASD has also been shown to influence sentencing in a negative manner by increasing an offender’s custodial time (Fraser, 2008; Roach & Bailey, 2009). As a result of being considered high risk to reoffend, and deemed unlikely to be successful in the community, public safety is purported to necessitate an extended period of incarceration. Moreover, some judges believe rehabilitative programming within the correctional institutes is better than programs offered in the community (Roach & Bailey, 2009). As a result, the criminalization of offenders with FASD raises a valid concern.

Specific indictable offences under the Criminal Code carry a mandatory minimum sentence of a custody disposition, most requiring judicial discretion to fit the sentence to the crime. In major offences, the courts may consider the principle of the protection of society as outweighing rehabilitative sentencing principles even if the court is aware of the unique challenges that the FASD offender may present and impose a custodial sentence (Pauls, Bailey & Pearson, 2006). Within a correctional institute, FASD offenders have extreme difficulties in their ability to function effectively in the aggressive and often uncertain environment of prison (Boland et al., 2002). Due to lack of appropriate assessment and classification, the exact number of FASD affected offenders within correctional institutions is not known (Boland et al., 2002). However, some researchers argue that as much as 50% of the incarcerated Canadian adult population suffer from undiagnosed FASD (Miller, 2005). The same challenges that an FASD individual presents to the police and courts are also presented to the correctional facility.
Incarceration brings many potentially negative elements to an FASD offender including less support from family or peers, a higher risk for victimization and a higher risk for recidivism when released (Boland, Burrill, Duwyn & Karp, 1998; Connor, 2004). Because FASD offenders have cognitive and behavioural challenges, their ability to participate in treatment programming and access training opportunities while incarcerated and to successfully transition back into the community is compromised. The importance of diagnosis, screening of offenders, and training of correctional staff is primary to the delivery of services by corrections systems (Burd, Selfridge, Klug & Juelson, 2003). The only positive aspects of incarceration for FASD individuals are structure and predictable expectations. It is unfortunate that these two required elements for an FASD individual cannot be provided for within the community.

Section 718(3) of the Criminal Code specifically sets out the dispositions available in a sentencing hearing. The most appropriate sentence for an FASD offender may be one that attempts to change their living situation by increasing social supports within the community rather than attempting to change their behaviour (Fast & Conry, 2004). Offenders who receive community sentences including conditional sentences and probation orders will require a high level of supervision. Probation officers supervising FASD offenders would benefit from having a comprehensive understanding of the cognitive challenges and limitations faced by FASD individuals. These challenges and limitations can include but are not exclusive to: difficulties with timelines, lack of understanding of concepts (i.e., ‘keep the peace and be of good behaviour’), memory deficits, challenges with consent to any treatment recommendations, as well as challenges
to internalize and participate in rehabilitative or treatment groups designed for non-cognitively impaired offenders (Byrne, 2002; Chudley et al., 2007; Fast & Conry, 2004).

When serving a community disposition, FASD offenders may be seen as non-compliant or difficult to manage. Secondary disabilities of an FASD offender such as depression, alcohol and/or drug use, inability to live independently or maintain employment will affect the rehabilitative objectives of a conditional sentence or a probation order (Conry & Fast, 2000). Non-compliance may not be the problem rather the issue may be a lack of ability to understand and/or follow through with specific directives. It is unrealistic to expect that FASD offenders sentenced on a community order will not have difficulty abiding by their conditions given the nature of FASD. System generated breaches are common place for FASD offenders and are illustrated by the many charges on their criminal records (Roach & Bailey, 2009).

2.2.5 Precipitating factors

It has been widely recognized that First Nations people are disproportionately represented within the criminal justice system (Perreault, 2009). Aboriginal people comprise approximately 3% of the total Canadian population however they represented 18% and 24% of the male and female incarcerated populations, respectively, in 2007/2008 (Perreault, 2009). Aboriginal persons as a proportion of all adults admitted to provincial and territorial sentenced custody grew steadily from 13% to 18% from 1998/1999 to 2007/2008 (Perreault, 2009). Aboriginal offenders within correctional institutes are determined to have lower educational attainment, higher prevalence of substance abuse issues, lack of employment retention, and lack of social interaction skills as compared to non-Aboriginal offenders (Perreault, 2009). The highest level of
recidivism of Aboriginal offenders, both male and female is reported to be in Saskatchewan and Nova Scotia (Perreault, 2009). Among the cases of reported FASD offenders involved in the criminal justice system, 86% are of Aboriginal ancestry (Chartrand & Forbes-Chilibeck, 2003). The proportion of Aboriginal persons recognized with FASD is 10 times the national rate (Chartrand & Forbes-Chilbeck, 2003).

The challenge to the criminal justice system in response to the significant number of Aboriginal offenders with FASD disabilities is daunting. FASD is considered an epidemic in some First Nations communities (Miller, 2005). Boland and Duwyn (1999) reported that studies conducted in the Yukon Territory and in British Columbia conclude that for every one Caucasian with FASD there are 10.9 First Nations persons with FASD.

Given these systemic challenges experienced by Aboriginal offenders and the life-long neurological impairments prevalent in FASD individuals including cognitive disabilities, impulsivity, and poor judgment increase their susceptibility to criminal behaviour and victimization. The Canadian criminal justice system is largely uninformed or misinformed and, subsequently, ill-prepared to deal with the challenges these individuals bring, particularly when sentencing offenders with FASD.

2.3 Social constructionism and FASD

Social constructionism is a theoretical framework derived from the work of Karl Mannheim (1893-1947) and expanded by Berger and Luckmann in their work *The Social Construction of Reality* (1967) (Crotty, 2003). It is defined by the interaction of social phenomena within a given social context. Specifically, social constructionists look at the creation of an individual or group’s perceived social reality as a result of their interaction with their environment. Social constructionists (Blumer, 1971; Mead, 1934) argue that
seemingly objective and empirical knowledge is socially constructed. Knowledge is shaped by the answers we find to the questions we choose to ask; it is also shaped by the answers we want to find questions for, and by the solutions that present themselves to us even before we are aware of just what the problem is (Armstrong, 2003). By choosing the ‘playing field’ (i.e., individual, social, medical, moral) we contribute to the determination of the outcome.

From a medical perspective, a social constructionist viewpoint denies the historical continuities involved in the search to name and understand the subjective human experience of disease or syndrome (i.e., FASD). However, a positivistic model of medicine rejects the myriad of ways in which subjective and culturally rooted experiences shape the interpretation and meaning of a disease or syndrome (Golden, 2005). In other words, the meaning of FASD is shaped, in part, by “cultural concerns, legal debates, medical authorities, media analysis and political decisions” (Golden, 2005, p. 10).

Coined in the 1950’s, the term “medicalization” was used to refer to the increasing practice of attaching medical labels to behaviours considered socially or morally undesirable (Marcellus, 2003). Medicalization is defined by Marcellus (2003) as the process by which deviant health or behaviour conditions come to be defined and treated as medical issues. Medicalization posits “social problems as arising from individual lifestyles, cultural differences, or biological predisposition, rather than from impoverished social and economic circumstances, marginalization, and oppressive internal colonial policies” (Marcellus, 2003, p.441). Pitts (1968) argued that medicalization was “one of the most effective means of social control and that it is
destined to become the main mode of *formal* social control” (p. 391). While medicalization may not be a main mode of social control, the phenomenon of medicalization refers to a historical process or trend rather than an event.

Critics of medicalization argue that it allows ‘excuses’ of accidents of birth, heredity, environment and bio-pathology for an individual’s failure to fulfill societal expectations. Furthermore, it is an argument that suggests a “get-out-of-jail-free card” (Golden, 1999); through the creation of a diagnosis or a ‘labelled condition’ (i.e., FASD) for absolution from sanctions.

Demedicalization is not the opposite of medicalization and is in fact a bi-directional process. It is similar to medicalization as it is also a distinct and very contentious historical process. Both medicalization and demedicalization are shaped by social, political, and economic configurations of western society (Golden, 1999). Demedicalization describes the “diminishing cultural authority of medicine and the yielding of the power to diagnose social ills to other professions and authorities” (Golden, 1999, p 268). Moreover, it refers to a problem that no longer retains its medical definition (Conrad, 1992).

From the time of the naming of FAS(D) in 1973 to the 1990’s, FASD has been progressively demedicalized. As a result of its use as a rationale for appeal of death-row inmates and under the guise of public safety, politicians and legal professionals provided direction that reframed FASD as a social deformity related to gender, racial and economic issues. Initially, FASD was a syndrome diagnosed by doctors but progressed to an “alleged social construction deployed to excuse the misdeeds of individuals who claimed to be afflicted” (Golden, 1999, p. 271). This demedicalization process situates
individuals with FASD as criminally responsible as opposed to a neurologically impaired person with compromised control over their behaviours. While medical analogies are often widely accepted by the courts and in institutions, FASD illustrates an example in which this medical condition does not add support to a medical analogy but rather stresses the inappropriateness of legal concepts in relation to this specific cognitive disability.

2.4 The new penology and theoretical perspectives on the construct of ‘risk’

There are many ramifications to the utilization of the medical analogy in the field of penology. “Punishment requires a moral justification; treatment, while not being without moral constraints, requires an assessment of effectiveness” (Wilkins, 1974, p. 238). Almost universally, crime control and reduction are the goals of criminal justice policies. In the past three decades, criminal justice practitioners have seen the more benign goals of treatment and rehabilitation take a back seat to the more politically driven ideologies of deterrence, incapacitation and retribution (Garland, 2001). As a result of significant societal and economic changes, David Garland (2001) argues that the new politics of crime control have progressed to be socially and culturally conditioned, and have become increasingly more expressive and instrumental (p. 139). In contrast to ‘penal welfarism’ that had gone before, contemporary crime control policies are distinguishable by the resurrection of punitive sanctions, expressive justice, and the politicization of crime. In Doing Justice Better, David Cornwell (2007) concurs and stated that “One of the main difficulties that has arisen within criminal justice during the past decade is that in the wake of the vacuum left by the demise of the ‘justice model’, the purposes of criminal punishment have become heavily invested with a political
rhetoric that has deliberately set out to ‘emotionalize’ its crusading ‘war on crime’ (p. 24).

Feeley and Simon (1992) called this shift in language “the new penology”. This new language of penology reframes traditional criminological concerns that focused on the individual to “actuarial consideration of aggregates” (p. 449). As a result, this approach relies heavily on increased surveillance of offenders and imprisonment. New penology is not a theory but a method of reframing of issues that allows a strategic formation of knowledge and power. Crime and crime control become conceptualized as a managerial venture within government policies complete with forecasts of risk. The objectives of the new penology is not necessarily about punishing or rehabilitating but about identifying and managing “unruly groups” (Feeley & Simon, 1992, p. 455). While the new penology uses ‘old’ language terms such as rehabilitation and reintegration, the programs that are created under the new penology are not designed to address social or personal change but more realistically conceptualized as managing costs and controlling dangerous populations.

Michel Foucault’s *Discipline and Punish* (1977) provided an analysis of the practices of punishment and the links between the field of criminology’s role in power and control practices, and policies. Following this discussion, Foucault focused on what he termed to be the concept of “governmentality” which he defined as ‘the government of others and the government of one’s self’ (Foucault, 1982; Garland, 1997) which is simplified by Gordon (1991, p.2) as “a form of activity aiming to shape, guide or affect the conduct of some person or persons”. He examined the “forms of rule by which various authorities govern populations, and the technologies of the self through which
individuals work on themselves to shape their own subjectivity” (Garland, 1997 p. 174). Governmentality, as seen by Foucault, lays the groundwork for the state to develop “a society in which the central political issues of the time have to do with choices of the exercise, the techniques and the objectives of that very specific form of governmental power” (Garland, 1997, p.178).

Over the past decades there has been a governmental and societal shift away from ‘welfarism’ (Garland, 1997; Garland, 2001; Hannah-Moffat, 2005). In its place, more marketed, entrepreneurial, consumerist forms of social structures have been implemented (Garland, 1997). The concept of governmentality suggests an ideology for analyzing how crime is conceived as a problem and controlled as well as looking at the shift from ‘welfarist’ to ‘neo-liberal’ politics (Garland, 1997). It also provides a “modality that involves the enlistment of others, the shaping of incentives and the creation of new forms of cooperative action” (Garland, 2001, p. 125). Looking at the paradigm shift from welfarism to neo-liberalism within the theoretical framework of governmentality, allows an analysis with which to look at the evolving concepts of penology and the resulting correctional practices and policies.

From the concepts of the new penology and governmentality, the increasing influence of ‘managerialism’, ‘risk-management’ and ‘actuarial justice’ creates “logic of practice” (Garland, 1997, p. 184) from a business management perspective. And like other ‘business’ aspects, crime can be viewed as a calculable, avoidable, governable risk. To this end, crime is organized around economic forms of reasoning by government, in contrast to previous social and legal forms. Terms such as ‘risk’, ‘probability’, ‘targeting’ and ‘choice’ become common criminological terms (Garland, 1997; 2001).
Economic objectives such as compensation, cost-control, harm-reduction, efficiency and effectiveness become governmental crime control objectives (Garland, 1997; 2001). Moreover, economic technologies such as audit, fiscal control, and cost-benefit evaluations translate economic forms of calculation into the criminological field (Garland, 1997; 2001). Crime control becomes a business responsibility of government and could be seen as being more fiscally responsible to the taxpayer.

It follows that to be fiscally responsible a reduction in the cost of crime becomes important to government. This fiscal agenda focuses on assessment and minimizing risk rather than ensuring justice; it weighs the costs of crime against the cost of its prevention. This approach does not identify or address class, race, and gender relations that underpin the social forces that have affected the chronically high crime rates and the failure of previous criminal justice controls and practices (Garland, 1997; 2001). Moreover, what develops are short-term policies aimed at managing the immediate ‘problem’ of crime (and thereby managing risk and addressing public security) rather than working at longer-term socially based strategies aimed at reducing crime (Garland, 1997; 2001; Nash, 2000). Thus it fits that crime prevention efforts, such as addressing social inequities are often absent.

Yet, contrary to the development of this economic ideology, “increased and increasing resort to penal incarceration represents the most expensive and wasteful means of crime control” (Cornwell, 2007, p. 43). Correctional costs within the penal system and community, both in terms of capital investment and maintenance, are high (Bonta, 2007; Cornwell, 2007). Under the guise of the ‘public safety’ agenda, politicians cite the development of ‘tough on crime’ policies to address and manage recidivism, ignoring
evidence-based research that is contrary (Cornwell, 2007; Garland, 1997; 2001). This socio-political program is typified by a society that is “relatively affluent, educated, property-owning middle-class and a much less well-off and more socially deprived ‘underclass’ with lower levels of physical and environmental health, education, housing, employment and access to social amenities” (Cornwell, 2007, p. 42). This program is also completely contrary to the economic framework of governmentality, however, it is reconcilable with the underlying premise of control of the individual.

By focusing policy on economic costs and benefits and the subsequent control of the risk of the individual in the guise of public safety, a new form of Foucauldian “subjectification” (Garland, 1997, p. 188) evolves. From Foucault’s analysis, an understanding of the crime control field is shown to be about power relations and illustrates the impact of new knowledge and technology on power relations between governmental agencies, between government and individuals, as well as between individuals themselves. Garland (2001) furthers Foucault’s perspective by demonstrating that a different way of approaching social problems has emerged; one that is economic rather than social. “This way of thinking has shaped and developed how criminal justice practitioners make decisions, how they allocate resources and how they deploy their powers” (p. 188). It has created a culture of security consciousness (Garland, 1997) that is more committed to social control than to social provision, and more attuned to the private freedoms of the market than the public freedoms of universal citizenship (Garland, 2001). Crime control has become an instrument of social policy. However, it is important to recognize that Garland’s analysis is primarily based on the U.S. social system. Arguably, Canada has a more “evolved” social welfare system.
2.4.1 Policy and practice

The focus of this section explores and evaluates the concept of ‘risk’ in relation to criminal offenders, and the resulting implementation of risk assessment, policy and practice within Saskatchewan community corrections. This also included a focus on the social development of risk from a ‘governmentality’ perspective as developed and discussed by Michel Foucault, David Garland and other scholars. It then analyzes the resulting shaping of policy and practice in the name of public safety, precipitating the use of risk assessment in predicting offender risk level within community corrections. The examination proceeds to the evolution of risk assessment models, the effectiveness and limitations of these models: including race and gender bias, integrity of service delivery and the ethical considerations using this approach. Finally, the analysis shifts to the effectiveness and limitations of using a tool such as an offender risk assessment for the purposes of case management within adult corrections.

“Differentiating offenders in terms of their risk to re-offend has been a major preoccupation of corrections ever since Burgess developed a simple, actuarial measure in 1928 to assess who is a good risk for parole and who is not” (Bonta, 2007, p. 519). However, it wasn’t until the 1970’s that the development of objective risk assessment instruments began to appear (Bonta, 2007; Clements, 1996; Knight, Garner, Simpson, Morey & Flynn, 2006). These instruments yielded predictive accuracies that surpassed the clinical (and unscientific) judgments of social workers, psychologists and psychiatrists. “It is a truism in matters of justice that the failure to make valid distinctions between people will result in injustice just as surely as will the making of invalid or arbitrary ones” (Kane, 1996, p. 375).
2.4.2 Critical analysis of risk assessment models

The assessment of offenders and their risk to public safety has long been a goal of those who work with offenders, and is one of the central activities in the criminal justice system (Bonta, 1996; 2006). Underlying this approach is the concept that those who commit criminal acts are significantly different from the ‘average’ citizen in some way. Early criminologists looked for differentiating characteristics from a number of different perspectives. In the 1800’s Cesare Lombroso, an Italian physician, attempted to distinguish ‘criminals’ by describing “atavistic” features (Bonta, 1996; 2006). In the early 19th century, Sigmund Freud, a psychiatrist, outlined differences in personality structure (Bonta, 1996; 2006). Early sociologists categorized deviant behaviour as a function of social values and structures (Bonta, 1996; 2006). Although not a sociologist, Ernest Burgess (1928) conducted a study of parolees to provide an empirically based objective offender assessment tool to predict the safety of offender release back into the community. Within the field of criminology, this study is considered the origin of efforts to systemically and empirically develop an objective offender risk assessment tool (Bonta, 1996; 2007).

Risk assessment is a method of estimating the likelihood that a person will commit a crime or criminally re-offend. Effective assessment instruments are based on empirically based indicators, and grounded in a theory of criminal behaviour for the purposes of offender risk management (Bonta, 1996; 2006). Bonta (1996) has categorized risk assessment measures within a developmental ‘generational’ framework. Predated by Burgess, “first-generation” techniques are based on clinical intuition and professional judgment (Bonta, 1996; 2006; Gendreau, Little & Goggin, 1996).
The ‘first generational’ offender assessment involved decision rules not easily observable and difficult to replicate or validate and often considered ‘clinical’ in their approach. ‘First generational’ techniques of assessment are still used in some jurisdictions, and are commonplace among some corrections professionals (Bonta, 2006; Gendreau et al. 1996); however the validity of clinical prediction is questionable (Bonta, 2006; Monahan, 1996; Simourd, 2004). The most serious weakness of a clinical approach is “that the rules for collecting the information and formulating interpretations of the ‘data’ are subject to considerable personal discretion” (Bonta, 1996, p. 20). The interviewer has discretion to ask questions and look for information that they may think is important but may or may not be relevant. Guidelines and parameters for inquiry are often vaguely defined (Bonta, 1996). Consequently, the interviewer may overlook or overemphasize information based on their personal knowledge or assumptions of criminal behaviour rather than on empirically defensible theories of crime (Bonta, 1996). Clinical judgment is vulnerable to personal prejudice and bias, and is ethically questionable (Bonta, 1996; Monahan, 1996).

Into the 1970’s (and progressing from first generational methodology), second-generation risk assessments were introduced using an actuarial approach (Bonta, 1996; 2006; Simourd, 2004), which is defined by “explicit criteria for decisions that are validated by research” (Andrews & Bonta, 2003, p. 234). Actuarial tools use statistics to categorize individuals into population sub-groups with shared characteristics and similar levels of risk (Silver & Miller, 2002). This generation of risk assessment mainly consists of the gathering of information, of static or unchangeable factors such as criminal history, past substance abuse and age at time of assessment (Bonta, 2006; Bonta & Wormith,
Second generation actuarial risk scales outperform the subjective and clinically based judgments of first generational assessments in terms of predictive accuracy (Bonta & Wormith, 2008; Simourd, 2004). Further, they can also be useful in terms of classification purposes but are limited in the ability to contribute to the effective treatment planning and ongoing evaluation of offenders (Knight et al. 2006; Simourd, 2004). Second generation assessment instruments are argued by Silver and Miller (2002) to be more useful in classifying individuals rather than understanding why a particular individual behaves in a particular way and resolving their problems.

Second generational risk scales are based on empirical research and are able to differentiate lower-risk from higher-risk offenders (Bonta, 1996; 2006; Simourd, 2004). However, there are two main limitations of second-generation risk assessments. First, nearly all second-generation risk assessments neglect many factors (such as criminal attitude) which are theoretically relevant to criminal behaviour (Bonta, 2006). Second, the fact that they are predicated on static, historical factors (i.e., unchangeable) which prevents use of these instruments for facilitating change.

The matter of treatment and/or change is something that has been reviewed in the literature. Martinson (1974) published a review of offender treatment programs that presented the view that many of the treatment programs in place during the 1970’s, were not relevant to offender behaviour or effective at reducing recidivism. Resulting from this report, ‘nothing works’ became a prevalent ideology within corrections. One of the consequences (and arguably benefits) of the ‘nothing works’ ideology was that clinicians and researchers began to recognize that not all treatment programs were ‘created equal’ or were equally effective (Bonta & Wormith, 2008). The premise that people can change
is the basis for the purpose behind rehabilitation of offenders. Assessment must be capable of measuring change, if it is to contribute to offender rehabilitative efforts (Bonta & Wormith, 2008). This ideology behind the measurement of change is the fundamental distinction between second generation and third generation assessments.

The purpose of risk prediction is to use a scientific approach to make decisions about the degree of freedom granted to an offender (Bonta, 1996; 2006, Bonta & Wormith, 2008). There is a growing acknowledgement within criminology that if risk is to be ‘managed’, there is a need to deliver rehabilitation services (Andrews & Dowden, 2007; Bonta & Wormith, 2008; Simourd, 2004). Moreover, Bonta (1996) observed that “treatment services cannot be given to everyone because of the costs involved nor can they be randomly assigned as in a lottery” (p. 22). Offender ‘needs’ must be reconciled with treatment services to improve treatment outcomes (Belenko, 2006; Bonta & Wormith, 2008; Simourd, 2004).

Moving from ‘nothing works’ to ‘what works’, third generational assessments distinguish themselves from their predecessors in that they systematically and objectively measure an offender’s dynamic ‘criminogenic’ needs (Bonta, 2006; Gendreau et al. 1996; Simourd, 2004). They are actuarial based and include empirically supported risk factors driven by theoretical understandings of persistent criminal and violent behaviour or the psychology of criminal conduct (Bonta & Wormith, 2008). Third generational assessments are risk-needs assessments that include dynamic risk factors defined as changeable (Bonta, 2006; Gendreau et al. 1996; Simourd 2004). Examples of criminogenic factors include anti-social attitudes, peers, substance use and employment;
examples of non-criminogenic needs are self-esteem, anxiety and loneliness (Bonta & Andrews, 2007).

Third generation risk instruments provided direction as to what offender needs should be targeted in the delivery of interventions. They are also sensitive to changes in an offender’s circumstances (Bonta & Andrews, 2007). Third generation risk-need assessments offer an avenue of monitoring the effectiveness (or lack thereof) of programs and supervision strategies (Bonta & Andrews, 2007; Bonta & Wormith, 2008). Moreover, the use of assessment of dynamic risk factors provides a guide to correctional staff in developing and directing intervention and rehabilitative strategies in addressing those dynamic risk factors. Hypothetically, addressing dynamic risk factors should contribute to an offender’s reduction in risk and potential to recidivate (Bonta & Andrews, 2007). This is the primary focus of correctional programs, both institutional and community based.

Rehabilitation has come to be viewed largely in terms of reducing recidivism. There is some discussion within the criminological field concerning the assessment of dynamic risk factors as predictors of recidivism (Bonta & Andrews, 2007; Bonta & Wormith, 2008; Gendreau et al. 1996)). The actual importance and significance of individual offender differences has been questioned (Drake & Barnoski, 2009; Gendreau et al. 1996). Moreover, some methodologists express scepticism about dynamic risk factors predictive reliability (Drake & Barnoski, 2009; Gendreau et al.1996)). Dynamic risk factors may change over time subsequently employing a level of subjectivity in their measurement. Criminal justice professionals had been reluctant to consider the potential of assessment of criminogenic needs, enhancing the prediction of criminal behaviour
(Bonta, 1996; Gendreau et al, 1996). This denial of the benefits of assessment of dynamic risk factors potentially had serious ramifications (i.e., funding for resources) for correctional professionals attempting to implement treatment and assess risk of recidivism. Moreover, the emergence of the new penal ideology that is concerned with managing large numbers of offenders in a simplistic input-output, businesslike fashion, has added to the lack of interest in dynamic risk factors (Gendreau, et al. 1996). Although this debate initially occurred fifteen years ago, very little has changed.

Nevertheless, the integration of case management with dynamic risk-need assessment characterizes the fourth generation of risk assessment; these tools emphasize the link between assessment and case management (Andrews & Bonta, 2006). Fourth generation risk assessment instruments have developed over the past few years based on third generational assessment tools predictive value (Bonta & Andrews, 2007). “These new risk assessment instruments integrate systematic intervention and monitoring with the assessment of a broader range of offender risk factors previously not measured and other personal factors important to treatment” (Bonta & Andrews, 2007, p. 4). The risk-need-responsivity model that was developed with third generational assessment tools has been honed by fourth generation risk assessments. This model incorporates the general personality and social psychology of an offender, and “recognizes the personal, interpersonal, and relatively automatic sources of control over human behaviour as well as the power of cognitive-social-learning approaches to interpersonal influence in many social settings” (Andrews & Dowden, 2007, p. 439). An important part of the risk need responsivity model relates to the style of intervention, namely the importance of cognitive behaviour applications. Cognitive-behavioural approaches emphasize the
connection between cognition and behaviour, and suggest that dysfunctional behaviours may be altered through changes in dysfunctional attitudes, beliefs and thought processes (Allen, MacKenzie, & Hickman, 2001).

The risk-need-responsivity model has been empirically validated (Andrews, Bonta & Wormith, 2006; Bonta, Law & Hanson, 1998). The risk ‘principle’ involves the use of a validated risk tool to identify criminogenic needs; it also directs that treatment services should be reconciled with the risk level of the offender (Andrews, Bonta & Wormith, 2006; Andrews & Dowden, 2007; Ferguson, 2002). This is validated by research that low-risk individuals who receive intensive services have no change and possibly increases in recidivism; whereas high-risk offenders who receive intensive services demonstrate a reduction in recidivism (Andrews, Bonta & Wormith, 2006; Andrews & Dowden 2007; Ferguson, 2002). This premise is validated across programs including substance abuse related service programs (Belenko, 2006), sex offender treatment programs (Hanson, 2006), and treatment programs for mentally disordered offenders (Bonta, Law & Hanson, 1998).

The need principle focuses on the targeting of criminogenic needs (Andrews, Bonta & Wormith, 2006). Four primary dynamic factors have been identified as the key focus for the need principle; antisocial attitudes, antisocial associates (peers), antisocial personality pattern, and a history of antisocial behaviour (Andrews & Bonta, 2006; Andrews & Dowden, 2007). There are eight other dynamic and static factors determined to be relevant in addressing the ‘need’ principle including gender, age, criminal history, family/marital, employment, education, financial and substance abuse (Andrews & Bonta, 2006; Andrews & Dowden, 2007).
The responsivity principle looks at the styles, modes and strategies of service delivery applied to offenders based on their risk level and criminogenic needs. Matching correctional interventions with learning abilities, motivational level, and personality of offenders is foremost in reducing recidivism (Andrews & Dowden, 2007). “Responsivity may affect the offender outcome by being sensitive to offender characteristics that are more likely to engage the client, increase treatment completion, augment the acquisition of rehabilitative material, and reduce recidivism” (Wormith & Olver, 2002, p.450).

Criticisms remain in relation to the use of actuarial tools, regardless of the model employed. Critics of actuarial risk assessments acknowledge that they are superior to those based on clinical judgement, however, there are questions around some aspects of validity (Hannah-Moffat, 2005; Hannah-Moffat & Shaw, 2001; Rigakos, 1999; Zinger, 2004). The empirical data validating actuarial risk assessments use large samples of white, male offenders with no identified cognitive challenges (Zinger, 2004). Critics have argued that even though actuarial risk factors have recently been validated across different populations (Andrews & Bonta, 2003); this does not necessarily address potential discriminatory effects of risk assessment (Hannah-Moffat, 2005). Moreover, it does not speak to direct, indirect or systemic discrimination, and arguably contributes to that discrimination (Rigakos, 1999; Hannah-Moffatt, 2005). “Risk theorists do not concern themselves with the meshing of the liberal and conservative theories of crime” (Rigakos, 1999, p 137). Moreover, “risk society theory suffers from proclivities toward a fallacy of equality” (Rigakos, 1999, p 142). As has been discussed, FASD offenders, as a sub-group, do not have the same abilities as other offenders to address their dynamic needs. Actuarial risk assessments tools are described as politically motivated for social
control that discriminates against disadvantaged peoples including Aboriginals, cognitively challenged offenders and women (Hannah-Moffat, 2005). Moreover, they promote gendered and racialized social inequalities (Hannah-Moffat & Shaw, 2001; Hannah-Moffat, 2005).

2.4.3 Effectiveness of risk assessment

The underlying premise of the risk-need-responsivity model is the intention to be applied widely across offender populations regardless of race, gender, cognitive ability or social background. There is an assumption that “being human means that variation on attitudes, social support, behavioural history, and temperament will account for much of the variability in antisocial behaviour across a host of situational variables” (Andrews, Bonta & Wormith, 2006, p. 16). “The expectation is that male or female, Black or White, the predictive criterion validity of assessments of major risk factors will be evident in a variety of contexts” (Andrews, Bonta & Wormith, 2006, p. 16). Empirical validation for these instruments for institutional and community samples, for women and/or men with mental health issues, clients with history of abuse, poverty, Aboriginal and Black offenders has been substantiated (Andrews, Dowden & Rettinger, 2001). The greatest reductions in recidivism are found when human service delivery is in full adherence with the risk-need-responsivity principles of offender treatment (Andrews & Dowden, 2007).

As previously mentioned, empirical support for the risk-needs-responsivity model of service delivery is well validated however, there are a number of legitimacy and ethical concerns that need to be addressed including inter-rater reliability and validity (Austin, 2006; Byrne & Pattavina, 2006; Andrews & Dowden, 2007; Clements, 1996). “Reliability, like validity, needs to be evaluated with respect to the conceptualization of a
measure or procedure and of the intended clinical application” (Douglas & Kropp, 2002). Inter-rater reliability refers to the accuracy and consistency of the instrument being completed by those who are responsible for implementing and interpreting the results (Austin, 2006; Harris, 2006). The successful execution of any risk assessment is dependent upon the competency of the rater (Andrews & Bonta, 2006; Douglas & Kropp, 2002; Harris, 2006). However, reliability does not imply validity. Validity is designed to see how well the risk factors being measured actually predict recidivism (Austin, 2006; Harris, 2006).

Within corrections, there are potential difficulties associated with the use of risk assessments. Inaccurately assessing a person as high risk and depriving him or her of their freedom based upon their perceived risk level is unethical (Douglas & Kropp, 2002). Further, ethical considerations for appropriate risk assessment and service delivery need to consider factors addressing accountability and professional conduct. Under the risk-need-responsivity model, the engagement of clients in a positive, warm and respectful level is foremost in order to provide motivation for change (Bonta, Rugge, Scott, Bourgon, & Yessine, 2008).

The challenge of using the risk-need-responsivity model in correctional settings comes from a diverse workforce, with varying levels of competency, values and education (Bonta & Andrews, 2007). Conflicting criminal justice policies and management practices across jurisdictions add to the challenge (Bonta & Andrews, 2007). Assessment integrity drift over time is also identified and acknowledged as a problem (Bonta & Andrews, 2007).
Arguably the goal of risk assessment is violence prevention, not prediction (Douglas & Kropp, 2002). Under a prevention-based paradigm, “risk assessment should be considered successful when we can demonstrate reduced rates of violence in connection with risk assessment procedures” (Douglas & Kropp, 2002, p. 623). So, is risk assessment effective in the case management of offenders? According to the many researchers, there is promising potential that if implemented properly, utilizing the risk-need-responsivity principles and with the caveats previously mentioned, there can be success in reducing recidivism (Andrews, Bonta & Wormith, 2006; Andrews & Dowden, 2007; Douglas & Kropp, 2002). “If the courts are to do more than simply mete out “just deserts,” than they must pay attention to the principles of effective rehabilitation” (Bonta, 2007, p. 525). There is also an acceptance that prediction of criminal behaviour will never be perfect (Bonta, 2000) as human behaviour is far too complex.

2.5 Summary

“Policies and practices that have emerged are adaptations to the world in which crime control now operates” (Garland, 2001, p. 194). The political minefield of crime control and corrections policy has made most politicians and lawmakers reluctant to look at alternatives to present penal ideology of ‘getting tough on crime’. A perceived ‘soft-on-crime’ image by the public at election time is akin to the ‘kiss of death’ for a political career. The politicization of crime and of its subsequent punishment has become current in the Canadian correctional policy. The increasing incarceration rates in Canadian corrections is forcing politicians and criminal justice policy makers to re-evaluate the present methods of dealing with crime. However, they do not appear willing to contemplate the necessary philosophical and attitudinal shifts in thinking that are
essential if the situation is to be changed in any significant way. Continuing to lock away offenders at exorbitant fiscal and human costs appears unlikely to change.

Under the current public safety agenda, risk assessment has become a preferred methodology of managing offender risk. But risk assessment can be a double-edged sword; it can be used to justify the application of severe sanctions or to moderate extreme penalties (Bonta, 2002). It is a point to consider, whether risk instruments serve to identify (rather than classify) the high risk/dangerous offender or simply to serve as a justification of political decisions already made.

FASD offenders continue to be marginalized by the criminal justice system. As a consequence of the implementation of risk assessments in pre-sentence reports in Saskatchewan, when a risk assessment is completed on an offender affected by FASD, given their many cognitive challenges and their extensive criminal history, more times than not they are scored in the higher classifications often confirming to the court the need for incarceration. Given the many secondary disabilities of FASD offenders, this high scoring is not surprising. FASD offenders are an example of the unjust treatment within the criminal justice system to people who are marginalized due to their individual capacity over which they have no control. FASD offenders challenge the way our criminal justice system is set up to deliver services, assuming ‘fair’ due process without considering individual circumstances and abilities. Equal treatment under the law does not always amount to equality under the law. While the need for recognition of equal rights for FASD offenders should be present, this does not negate the importance of accountability for actions or responsibility to obey laws. A balanced response by the
criminal justice system in recognition of FASD offenders would be more in keeping with the protection of equal rights.

These are issues that will have to be addressed in the very near future as the prevalence of individuals with FASD involved in the criminal justice system is acknowledged as increasing. Alternative methods of service and program delivery will have to be considered sooner than later. The disheartening reality is the rate of increase of numbers of incarcerated offenders will dictate the immediacy of those alternatives and what they will look like.
CHAPTER 3 - RESEARCH METHODS

As stated in the Introduction, this thesis analyzes the needs of FASD offenders and the ability to meet those needs through the Strategic Training Initiative in Community Supervision (STICS) project in Saskatchewan. In addition, the thesis also aims to increase our understanding of the ability of policy and practice to meet this subgroup of offenders' needs and to theoretically reduce recidivism. As such, this thesis has three objectives. First, this research analyzes FASD as it relates to the criminal justice system. The second objective is to develop a framework of ‘what works’ with FASD offenders and further, what is required for a successful service delivery model to FASD offenders from the perspectives of FASD subject matter experts within the criminal justice field. The third component is an exploration of the impressions and experiences of Saskatchewan Community Corrections probation officers who have participated in the STICS project that was undertaken by CPSP in Saskatchewan and how this model meets the needs of FASD offenders. This study employed a case study methodology that was analyzed using thematic networks (see Attride-Stirling, 2001).

3.1 Context of the study

The STICS project is a program that translates research findings to practical applications. It was piloted in Saskatchewan Community Corrections in 2007 and 2008. This is a project that looks at ‘best practices’ in case management of offenders incorporating risk assessment, risk management and risk reduction through cognitive learning practices within community supervision service delivery. Dr. Jim Bonta, Public Safety Canada, and his colleagues argue the major factor of high-risk offenders to be targeted is the pro-criminal attitude identified through the comprehensive Saskatchewan
Primary Risk Assessment (SPRA). This is a relatively new risk assessment developed by Bonta in 2007 and has been incorporated throughout community corrections in Saskatchewan. Pro-criminal attitudes are defined by Bonta and colleagues ((2008) as “values, beliefs and cognitions that promote or facilitate violation of the law” (Module 4, p. 3). The goal of the probation officer is to replace pro-criminal attitudes with pro-social ones with the anticipated outcome of reduced recidivism. By utilizing cognitive-behavioural strategies including the ‘demonstration’ of thought-behaviour links, and modelling and teaching cognitive behavioural skills, Bonta and colleagues (2010) argue that pro-criminal attitudes are subsequently replaced with pro-social ones. This goal holds high expectations, however, Bonta argues that research has established that predictive accuracies of actuarial risk assessments surpass the previous subjective judgments of psychiatrists, psychologists and social workers; thus offering a ‘making it work’ premise that has potential for success.

The purpose behind researching the STICS project is to determine the potential for reconciliation between what works with offenders and what works with FASD offenders to reduce recidivism. To gain an understanding of the STICS project, the opportunity to participate and observe the STICS project training for staff became available to program managers in October, 2008 which was attended by this researcher.

This project incorporated volunteer probation officers to engage in the foundational aspects of the risk-need-responsivity (RNR) model of service delivery, specifically utilizing a cognitive-behavioural approach with selected ‘high risk’ offenders as assessed by the SPRA to address dynamic criminogenic risk factors and needs that were identified through risk assessment. Bonta and his colleagues ‘test-piloted’ a similar
project in Manitoba jurisdictions in 2006. This project provided the baseline for the STICS project in Saskatchewan. The three major goals of this project are: (1) to provide a model of community supervision that is RNR based; (2) to provide a means to implement the model (i.e., three days of training with quality assurances through ongoing supervision and support); and (3) to provide a high quality evaluation strategy (control and test groups).

The training entailed an overview of the RNR principles and the Saskatchewan Primary Risk Assessment (SPRA) currently being used in Saskatchewan community corrections. The majority of the training focused on the ‘how to’ aspects of building rapport in a therapeutic relationship with ‘high risk’ offenders, subsequent implementation of cognitive behavioural interventions and restructuring of thought processes and pro-social modeling and reinforcement with a focus on individualizing service delivery. This was an ambitious task given that probation officers are responsible for increasing caseloads and numbers of ‘high risk’ offenders. The caveat to this project was that each officer identified four ‘high risk’ cases from their respective caseloads that they would attempt to focus on utilizing these techniques for a period of six months. Four cases may be manageable however most probation officers are also responsible for upward of 50 to 60 other offenders, as well as writing pre-sentence reports for the courts on a regular basis. The dedication to this service delivery model by these selected probation officers was considerable and should be acknowledged.

Follow up and support for the voluntary probation officers entailed monthly meetings with each other and with a member of the Bonta team from Ottawa via teleconferences and in-person meetings for the first six months of the program. The
premise behind these monthly meetings was to maintain the integrity of the initial training and skill maintenance, to provide feedback and problem solve any outstanding challenges, to rehearse and provide feedback on skill development and to provide support and guidance. Probation officers were to provide tape-recorded offender meetings at the initial, the three month and the six month interval to demonstrate their skills. These tape recordings were to be sent to Dr. Bonta and his associates for review and provided the basis for feedback at the monthly meetings. This project has been concluded with preliminary results recorded by Public Safety Canada. Saskatchewan Community Corrections has recently indicated that the STICS project may be implemented throughout the province as a preferred method of service delivery.

The activities of the Saskatchewan Ministry of Corrections, Public Safety and Policing (CPSP), Adult Corrections, Community Corrections are guided by a vision statement of “promote safe communities by strengthening offenders’ ability to live and contribute in their communities”. The subsequent mandate is given as “provision of correction services as established in The Correctional Services Act and The Correctional Services Administration, Discipline and Security Regulations” while the Ministry’s mission statement is given as “Adult Corrections, in cooperation with its partners and stakeholders, provides effective services for individuals in conflict with the law that incorporate supervision, custody and rehabilitative programs resulting in reduced offending” (Sask Ministry of Corrections, Public Safety and Policing, 2011). These statements provide the overall framework for conducting the supervision of offenders on community orders. Policies and practice put into place within community corrections reflect these statements. Offender supervision and case management are driven by risk
assessments with the ultimate goal of the successful reduction of recidivism and ensuring public safety. The STICS project as tested within Saskatchewan Community Corrections was an attempt to determine if this method of service delivery would meet the vision, mandate and mission statements of Adult Corrections, CPSP.

3.2 Methodological paradigm

From a subjectivist epistemology, in which ethical conduct is based on the subjective or intuitive experience of an individual or group (Crotty, 2003), this research examines specific concerns and issues of practitioners within the field of corrections in relation to service delivery to FASD offenders. To explore the practice of service delivery to FASD offenders under Community Corrections supervision, this thesis employs a case study as its primary methodology. As a qualitative method that seeks to understand phenomena in an in-depth and holistic manner, the case study methodology will provide an understanding of policy and practice incorporated into service delivery to FASD offenders under a probation order. The case study method allows the researcher to explore the intersection of present day service delivery practice and proposed future practices as demonstrated by the STICS project. Moreover, case study methodology allows the opportunity to gain a more complete and comprehensive understanding of what may be required from a service delivery perspective in meeting criminogenic needs of FASD offenders.

A meeting was held with the Provincial Director of Community Corrections, Saskatchewan Ministry of Corrections, Public Safety and Policing. Approval was granted for the research to be conducted within the Ministry on May 1, 2010 (see Appendix A).
A proposal for this thesis was submitted to the University of Regina Ethics Committee on April 23, 2010. Minor amendments were submitted on May 25, 2010. Approval for the amendments and the thesis proposal were granted by the University of Regina Ethics Committee on May 27, 2010 (see Appendix B).

3.2.1 Data collection, strategy and analysis

Case study methodology involves the focused examination of a phenomenon within its social context (Creswell, 2007; Creswell, 2009; Green & Thorogood, 2004). Case study analysis allows the researcher the ability to answer questions of “how” and “why” and further, “allows one to examine the knowledge utilization process, and ultimately to recommend and design appropriate policy interventions” (Yin, 1981, p. 100). Moreover, a sociological case study analysis (Hancock & Algozzine, 2006) of detailed in-depth data collection is potentially rich in portraying the values and beliefs of an organization with regard to an issue as identified.

Case study analysis entails the process of sorting, categorizing, grouping and regrouping the data into themes. Generally this involves organizing the data in a way that best suits the issues being examined. A major strength of case study data collection is the ability and opportunity to use many different sources of evidence which is termed triangulation (Creswell, 2007; 2009; Hancock & Algozzine, 2006; Noaks & Wincup, 2004; Patenaude, 2000; Yin, 2009). The primary advantage of triangulation is the development of “converging lines of inquiry” (Yin, 2009, p. 115) that stems from multiple sources. By the establishment of themes based on converging several sources of data or perspectives from participants, than this process can be determined as adding to the validity of the research (Creswell, 2009).
Familiarization of the data allowed identification of re-occurring patterns of perception, concepts and themes. Thematic analysis must reflect the purpose of the research and respond to the research questions (Hancock & Algozzine, 2006). It also must strive to go beyond mapping of the profile of the data to achieving an interpretive understanding of meaning and impact (Attride-Stirling, 2001; Noaks & Wincup, 2004). These patterns, concepts and themes must evolve from a saturation of the collected data. As documents were “manipulated” repeatedly (Creswell, 2009; Yin, 2009), areas were highlighted and side notes were made that related to FASD and issues that were considered salient by the participants and were identified through the literature review as relative to FASD. These passages or segments were cut out and grouped corresponding to the research questions and FASD literature; this comprised the coding framework (Attride-Stirling, 2001) used in this analysis Master copies of the complete transcripts were also kept. Once collected, the data was analyzed using Attride-Stirling’s (2001) method of thematic network analysis (Figure 3.1). This permits the organization of research findings from micro to mezzo and macro levels using basic themes (micro), organizing themes (mezzo) and global themes (macro).

![Thematic Network Analysis](image)

**Figure 3.1 – Thematic Network Analysis (Attride-Stirling, 2001)**
Basic themes emerge directly corresponding to the research questions however word or content codes become apparent very early on. Organizing themes are then revised and condensed as data analysis progresses. The process of concept mapping (Attride-Stirling, 2001) is implemented in revisiting the themes and illustrates the correlation and relationship to one another. Evidence of what develops as a basic theme is demonstrated by commonly used words or phrases that give a description of the theme, explain a trend in the theme, list the strengths or limitations of a theme and/or expressed an opinion on a theme.

The next step taken in the analysis involves a review of the passages and notes made in each of the documents and segments selected, and choosing ones that appear particularly relevant to the specific themes that emerge. The main ideas expressed in the documents are noted and recorded. The analysis of the interview data utilizes a phenomenological form of content analysis whereby themes and structures emerged from the text developing a profile of each category and perceptions in regard to the emerging themes. Patterns and opinions can be noted by highlighting common phrases or words in the texts. All of these examples can give an understanding of the context that the subject matter is viewed.

Final data analysis involves the development of a preliminary content analysis table (see Table 4.1) utilizing basic, organizing and global themes. Similarities and patterns noted between the codes illustrate the connections and more salient themes that can emerge. Open ended data analysis continues, a method utilized to allow the themes to emerge from the data, keeping in mind the research questions by reflecting about the data, asking analytic questions and regularly making notations. It is also necessary to stay
connected to the case study genre. Throughout the process, reflection on the importance of the description of what is becoming observable is required. By utilizing open ended analysis, new and unexpected themes may be detected. Creswell (2009) also calls for a final step of analysis described as perceiving patterns to develop naturalistic generalizations from all of the data by finding correspondence between the previously created categories. These category relationships are also analyzed based on their level of relevance to the research objectives and questions; this comprised the coding framework that was used for this analysis. A thematic network (see Table 4.3) is then created to visualize the category linkages, their level of relation to the research and patterns in the data in preparation for developing a report outline (Attride-Stirling, 2001).

3.2.2 Interviews

As part of the case study research, semi-structured interviews with two groups of individuals were employed to generate additional information about FASD. A purposive sampling approach was used, which is conducive to conducting an in-depth study that will generate a reliable and valid data (Green & Thorogood, 2004). The following are limitations of interviews as a source of data. First, data collected by way of interviews provides access to what people say, not what they do. Second, what is collected is a reflection of the research context, not an essential truth about participant’s beliefs. Third, the analysis of interview data relies considerably on local contextual culture and linguistic knowledge. The strength of interview generated data lies in the analysis of the accounts given and the ability to reflexively appreciate the research context and the subsequent impact on the data collected (Green & Thorogood, 2004, p 104).
Two international conferences and one Canadian western conference pertaining to FASD were attended to increase the knowledge of the research topic. This ‘marketplace of ideas’ allowed attendance to seminars and plenary sessions focusing on the criminal justice system and FASD offenders facilitating interactions with professionals from within the criminal justice field across Canada and the U.S. Moreover, these interactions made with other participants and presenters established a dialogue, and were a critical part of the networking process (Morse, 2008). This allowed for future contact via email to enable participation in this research. This comprised the first subgroup of participants to be interviewed. Eighteen emails were sent to professionals that had indicated an interest in participating in this research, fourteen responded and eleven actively participated.

Interview tapes were designated with alpha-numeric codes to ensure the anonymity of the participants. Interview tapes were transcribed into text stored electronically on a computer flash drive and saved as hard copy and inventory files. Interpreting the data involved a process of systematically organizing the material and bringing meaning to it so that it can inform the investigator (Creswell, 2007; Yin, 2009). Transcribed interviews were initially grouped into two folders labelled “Sub-group A” and “Sub-group B”. Twenty interviews were conducted with two separate subgroups of participants during the months of June and July, 2010; and all are included in this study. Eleven interviews were conducted with professionals involved in the criminal justice system; nine interviews were conducted with probation officers who participated in the STICS project.

In the first subgroup consisting of 11 interviews with criminal justice professionals with an acknowledged FASD expertise (within their respective fields)
established by 10 to 30 years of experience working with FASD offenders: four interviews were conducted with lawyers; two with First Nations legal counsel, and two with legal counsel specific to FASD offenders. Participants also included two Provincial/Territorial Judges two correctional psychologists, and three educators from within the federal correctional system. These participants were from seven provinces and one territory. In the second subgroup of interviews, nine interviews were conducted with probation officers employed with the Saskatchewan Ministry of Corrections, Public Safety and Policing (CPSP) who were participants in the STICS project. These participants were deployed throughout Saskatchewan and worked in a variety of community corrections programs both in a rural and urban setting. Both subgroups were homogeneous from the perspective that they all had experience with FASD offenders. These participants had median years of experience of ten years. Convenience sampling was used due to: (1) the commonality between all participants in the two subgroups; (2) the exploratory nature of this research; and (3) the recent increased awareness of the area of FASD in community corrections.

Participants were informed that the interviews were tape recorded in order that the researcher may be able to revisit the context and exact wording used by the participants. The researcher also took notes during the interviews on themes that emerged and points of interest raised by participants. Open-ended questions allowed participants the ability to expand on relevant issues as they emerged during the interview. Open ended questions also allowed participants the opportunity to expand on their responses and to provide as much description as they felt necessary with an additional opportunity to explore related areas not included in the questions asked. Each participant completed an informed
consent form (Appendix D) prior to the interview. Consent forms were emailed to participants with a request to be faxed back to the researcher. All participants signed the consent form. Eighteen participants were interviewed via telephone with two face-to-face interviews taking place. Given the geographical locations of the participants, the ability to conduct fact-to-face interviews was considerably restricted. The use of telephone conducted interviews has limitations that may reduce the opportunity to engage on a more personal level with participants and may potentially inhibit the ability to ‘read’ response information (i.e., facial expressions, body language, other non-verbal cues). Alternatively, telephone participants indicated a comfort level in responding via telephone while in their natural field setting and given their respective time constraints. Participants were informed that results of this research would be shared as requested.

As previously mentioned, a drawback to this type of qualitative research is the information provided by the participants is open to the interpretation of the researcher. In an attempt to minimize the possibility of this bias, the tape recorded interviews were transcribed and reviewed by this researcher to determine the exact statements of the participants as well as the context in which they were given. While recognizing that the range of available measurable outcomes is limited due to the absence of quantitative aspects of this study, the accumulation of opinions, experiences and impressions from the participants is a rich source of data in an area of study that is relatively new.

The interview guide utilized for the two subgroups had minor variances for the STICS subgroup taking into account specific questions pertaining to Saskatchewan community corrections and the STICS project (see Appendices E and F). Some questions were asked of all participants, such as: (1) years of experience and their knowledge base.
of FASD; (2) their perspective on this issue within the criminal justice system; and (3) factors they would consider relevant in providing effective service to FASD offenders. Within the first subgroup, the participant’s respective roles and their experiences with FASD offenders within the criminal justice system were asked. In contrast, the second subgroup was front-line probation officers engaged with FASD offenders in a variety of settings and were asked questions specific to their involvement in the STICS project. No identifying information was included for the purpose of the study in an attempt to meet the confidentiality of the research participants.

The interviews lasted from a minimum of 20 minutes to a maximum of 50 minutes varying with the respondents’ experiences working in their respective fields, as well as their degree of experience working with FASD offenders. All participants answered all questions asked, however not all questions were asked of each participant depending on their respective responses, their roles and experiences. Both interviewer notes and tape recordings from the interviews were transcribed by the researcher.

3.3 Methodological limitations

“The Helsinki Declaration notes that ‘Every precaution should be taken to respect the privacy of the subject [and] the confidentiality of the patient’s information’” (cited in Green & Thorogood, 2004, p.60). As a primary criterion for ethical practice, social research ethics stresses confidentiality. First, information obtained during the research cannot be disclosed in other settings such as informal conversation (Green & Thorogood, 2004). Second, wherever possible, the identity of individuals must be protected in relation to any published accounts of the research (Green & Thorogood, 2004). Research participants are identified by an alpha-numeric designation (e.g., “A1 stated” or “B5
noted”) to preserve confidentiality. The final constraint on confidentiality is a legal framework consideration. An absolute guarantee of confidentiality cannot be given if there are moral and/or legal situations where breaching of confidentiality is required (i.e., harm to self or harm to others is a possibility, see Green & Thorogood, 2004).

Participation was strictly voluntary and participants were given the standard opportunity to: (1) refuse to participate; (2) refuse to answer any specific question or questions; and (3) cease participation at any point. The benefits for participants in choosing to participate include an opportunity to reflect upon and better understand how practices can be developed in providing successful services to FASD offenders within Saskatchewan Community Corrections.

3.4 Identification of assumptions and biases

There are several assumptions and biases involved in both the research methodology and the subject matter that must be addressed. Reality consists of both an objective and a subjective point of view. Mead (1934) observed that human beings create their own individual reality and sense of self through their relationship to and interaction with the social and natural world (Crotty, 2003). It is this reality that qualitative research seeks to understand through strategies designed to account for both objective and subjective influences on human behaviour.

A second assumption relates to power and knowledge. If we accept the premise of an interactive reality, the creation of human knowledge is an inherently social and cumulative process (Mead, 1934). As such, it is comprised of human values and beliefs. Human knowledge is created and understood through a very humanistic lens of values, beliefs, experiences and viewpoints, rather than as a product of an objective reality. It is
essential for investigators to recognize that if this is true, then, issues of bias and power are involved in research. Research is not apolitical just as knowledge is not value-neutral. If not acknowledged and dealt with, political issues of power and control through research can be detrimental to both research participants and the larger society. An understanding of Foucault’s (1977) concept of power and subsequently, Garland’s (2001) governmentality are illustrative here, for both encompass large systems of control and authority, as well as everyday accepted practices. An understanding of the micro-politics of power is imperative in order to comprehend system-level use of power. The domination and power that knowledge can bring about is used for positive purposes by exploring and expressing people’s knowledge as a method of empowerment (Garland, 1997). It is with this understanding that this research may have political consequences; primarily that it has the potential to alter the premise of policy or policies already in place.

Personal biases brought by the researcher also need to be acknowledged. Personal long term experience and subsequent acquired knowledge within the human services field can hardly be said to be an objective influence over the choice of research site, participants and subsequent questions asked. Moreover, as a government employee within the Ministry of CPSP employed as a Community Operations program manager, interpretation of the research data is acknowledged as being impacted by internal knowledge of challenges brought by present policies and practices. In addition, long term personal interaction with FASD clients, the challenges they bring and the deficiencies within the social ‘safety net’ and communities also are acknowledged as impacting on the interpretation of the data.
CHAPTER 4 - DATA ANALYSIS AND RESEARCH FINDINGS

Once the data was collected it was analyzed using Attride-Stirling’s (2001) thematic network analysis. The basis for the coding framework involved extracting codes from the text that were driven by the theory and research questions, albeit not exclusively; this permitted unexpected codes and themes to be described as they emerged. The data was comprehensive and provided a wealth of information for analysis relevant to the research objectives.

4.1 Analyzing Case Study Evidence

The types of data analyzed included the interview transcripts from two sub-groups of participants and the researcher’s notes made during the interviews. CPSP documents and the STICS training were cross-referenced as the interview data was analyzed. Data analysis began with a review of previous research. This step helped frame and prioritize the content of the data in order to determine what should be included and what could potentially be left out. As reported in Chapter 3, a total of twenty interviews were conducted. Each interview transcript was read repeatedly which helped to initiate the coding process and determination of relevant themes. Utilizing a coding framework based upon previous FASD research and cross referencing with research questions, the data was broken down and codes were alphabetically listed, organizing themes emerged.

All of the data was considered relevant either as a direct factor or as a related issue to an important factor; this is demonstrated in the thematic map in Figure 4.1. In regard to any ‘leftover’ data, there was very little that was excluded from the analysis. There were some sections of the interviews that were either inaudible or not very clear in
terms of content, meanings, or relevance. Consultation on the literature concerning the protocols of data analysis in qualitative research was continuous.

During the initial analysis of the data generated by the interviews, twelve basic themes emerged consistent with the approach taken by Attride-Stirling (2001). These themes directly corresponded to the research questions and were based on a number of word or content codes that became apparent very early in the analysis. These basic themes were revised and condensed as the data analysis progressed. The process of concept mapping (Attride-Stirling, 2001) was implemented by revisiting the themes and their relationship to one another. Evidence of what developed as a basic theme was demonstrated by commonly used words or phrases that gave a description of the theme, explained a trend within the theme, listed its limitations and/or expressed an opinion on that theme, for example, common words or phrases that were directly related to issues surrounding FASD and community corrections. This process was repeated for both sub-groups of respondents and subsequently cross-referenced.

The next step taken in the analysis involved a review of the passages and notes made from the interview data and selecting ones that appeared particularly relevant to the specific basic themes that emerged as a result of the interview discussions. The main ideas expressed in these documents were noted and recorded. The analysis of the interview data utilized a phenomenological form of content analysis whereby basic themes and structures emerged from the text and a profile of each category and perceptions in regard to the emerging organizing themes was developed. Patterns and opinions were noted by highlighting common phrases or words in the texts. These examples gave an understanding of the context in which FASD is viewed within the
criminal justice system, the challenges of services to FASD offenders within community corrections and perceptions relating to the relevance of the STICS project in relation to FASD offenders.

The analytic process utilizing Attride-Stirling’s (2001) concept of pattern interpretation, involved the development of a content analysis table (see Table 4.1) in which the resulting codes from each sub-group were organized into basic themes (Attride-Stirling, 2001). Each basic theme was grouped into organizing themes related to the primary questions of this research (see Table 4.2). Pattern matching between the codes illustrated relevant connections and contributed to the salient basic and organizing themes that emerged. Ongoing analysis of the responses to the open-ended questions led to the detection of new and unexpected themes and, in keeping with the case study method, observable trends were reflected upon to create basic and organizing themes.

Creswell (2009) calls for a final step of analysis described as perceiving patterns to develop naturalistic generalizations from all of the data by finding links between the previously created categories. These category relationships were also analyzed based on their level of relevance to the research objectives and questions. A thematic network (Figure 4.1) was created to visualize the category linkages, their level of relation to the research and patterns in the data in preparation for developing a report outline (Attride-Stirling, 2001).

4.2 Overview of findings

During the creation of the thematic table (see Table 4.2), the organization for reporting the research findings emerged, and was integrated into the final data analysis. This resulted in three distinct organizing themes that emerged from the data and
corresponded to the study objectives. These organizing themes are: (1) key factors required for service delivery to FASD offenders; (2) STICS program overview and practices; and (3) systemic and structural challenges.

The organizing theme of key factors required for service delivery to FASD offenders corresponds directly to the following secondary research questions:

1. What are the key factors necessary in an effective service delivery program to address FASD offenders?
2. What would the characteristics of these components look like?
3. How would these key factors be reconciled with current practices and policies in Community Corrections program delivery in Saskatchewan?
4. How would increased knowledge concerning FASD correlate with existing risk assessment tools in determining criminogenic factors improve program service delivery within the community to FASD affected offenders?

This organizing theme includes all forms of data but particularly data from interview segments that addressed categories of personal accounts of experiences with FASD offenders as well as knowledge of the challenges of primary and secondary disabilities FASD brings. These data were reported first by the definitions and characteristics of FASD primary and secondary disabilities and then through the basic theme of an FASD offender profile that emerged as a result of first hand experiences by research participants.

The second organizing theme of the STICS project directly corresponds with the three remaining secondary research questions:
1. In what manner would STICS reconcile with existing evidence-based practices in addressing the needs of and reducing recidivism among FASD offenders?

2. What needs to be in place to allow for the effective management of those offenders under the STICS initiative?

3. How does the provincial initiative (STICS) in Saskatchewan, address the needs and abilities of FASD offenders?

The data from this organizing theme pertained to the basic themes developed from the proposed practices of the STICS project, feedback from the research participants involved with the project, and the potential challenges of implementing this model of service delivery to FASD offenders in Saskatchewan Community Corrections. Also included is data regarding maintaining and improving the STICS model of service delivery and what would be needed to facilitate it with FASD offenders in Saskatchewan Community Corrections.

As a consequence of the comprehensive wealth of data collected (Geertz, 1973; Yin, 2009), a third organizing theme emerged and completed the evaluation of the challenges that FASD offenders bring to the criminal justice system while seeking the key objectives of the research. Moreover, this organizing theme represents the overarching issues relevant to community corrections workers providing services to FASD offenders. Data on attitudes and perceptions about FASD and FASD offenders, and racism and prejudices make up the basic themes that comprise the content of this organizing theme. Related issues with the identification of FASD offenders and the challenges they face within the criminal justice and other corollary systems tie into the experience of dealing with systemic issues relevant to FASD offenders. The connections
and relationships between the data are illustrated in the organization of twelve basic themes connected to three organizing themes that, in turn, were connected to the single global theme of services to FASD offenders in Saskatchewan community corrections as depicted in the thematic network map (Figure 4.1).

**TABLE 4.1 Data Categorization Table – Responses and Themes**

<table>
<thead>
<tr>
<th>Basic Themes</th>
<th>Sub-Group A</th>
<th>Sub-Group B</th>
<th>Common Responses</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>n = 11</td>
<td>n = 9</td>
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<td>Aboriginal(s)</td>
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<td>Gender Issues</td>
<td>First Nations</td>
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<td>Sub-Group B Specific Responses</td>
<td>Common Responses</td>
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### TABLE 4.1 (continued)

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<th>Basic Themes</th>
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<td>Cognitive Behavioural Theory Criminogenic Needs Gaps Homework Relationship Building Responsivity Risk Level and Assessment Timelines Tools Structure</td>
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<td>Peer Counselling Peer Tutors Wellness Courts</td>
<td>Cognitive Disabilities Strategy Mental Health Courts</td>
<td>Wellness/Mental Health Courts</td>
</tr>
</tbody>
</table>

### TABLE 4.2 – Thematic Table

**Organizing Theme #1 – Key Factors required for service delivery to FASD offenders**

1. How would increased knowledge concerning FASD correlate with existing risk assessment tools in determining criminogenic factors to improve program service delivery within the community to FASD affected offenders?
2. What are the key factors necessary in an effective service delivery program to address FASD offenders?
3. What would the characteristics of these components look like?
4. How would these key factors be reconciled with current practices and policies in Community Corrections program delivery in Saskatchewan?
   - Knowledge of FASD offender profile
   - CPSP practices
   - Services in the Community → Strategies
   - Improving and creating services

**Organizing Theme #2 – Strategic Training Initiative in Community Supervision (STICS) - program overview and practices**

1. In what manner would STICS reconcile with existing evidence-based practices in addressing the needs of and reducing recidivism among FASD offenders?
2. What needs to be in place to allow for the effective management of those offenders under the STICS initiative?
3. How does the provincial initiative (STICS) in Saskatchewan, address the needs and abilities of FASD offenders?
   - STICS practices → Risk assessment → Structure → Cognitive Behavioural theory → Relationship building
### TABLE 4.2 – Thematic Table (continued)

**Organizing Theme #3 – Systemic and Structural Challenges**

- Systemic issues → Identification and assessment → Criminal Justice system
- Racism and prejudices
- Attitudes and perceptions
- Demographics and disparities

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**Figure 4.1 Services to FASD offenders Thematic Network**
4.2.1 Key factors required for service delivery to FASD offenders

The need for an organizing theme examining key factors required for service delivery to FASD offenders became apparent during the analysis of the data. This organizing theme was directly correlated to the initial four secondary research questions (see Table 4.2). This organizing theme was supported by the basic themes of: FASD offender profile, CPSP practices, strategies, improving and creating services, and services in the community. These basic themes offered explanation and insight into the experiences presented by each of the research participants.

4.2.1.1 FASD offender profile

TABLE 4.3 – Basic Theme by Participant and Sub-Group: FASD Profile

<table>
<thead>
<tr>
<th>Sub-group A</th>
<th>Sub-Group B</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific CJ Professionals (n=11)</td>
<td>Specific Saskatchewan Probation Officers (n=9)</td>
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<td>Memory Deficit</td>
<td>Secondary Disabilities</td>
<td>Poverty</td>
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<td>Peers</td>
<td>Shame</td>
<td>Secondarid Disabilities</td>
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<tr>
<td>Poverty</td>
<td>Spectrum</td>
<td>Shame</td>
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<tr>
<td>Primary Disabilities</td>
<td>Structure</td>
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<td>Secondary Disabilities</td>
<td>Victimization</td>
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<td>Shame</td>
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Table 4.3 outlines the supporting data that formulates the basic theme of an FASD offender profile. When an offender has FASD, it not only influences the life of the offender whom the justice system serves, but also their families and the professionals who work with the offender and the communities in which these offenders live. FASD cannot be addressed if people do not know what it is, or how it may affect their work
with FASD offenders. It was enlightening and encouraging to learn that each one of the research participants recognized, albeit to varying degrees, the primary and secondary disabilities and the challenges that FASD offenders bring to supervision and treatment. Given that the first subgroup of participants are professionals with extensive experience in dealing with FASD offenders within the criminal justice system, their knowledge of primary FASD disabilities was substantially more evident than the second subgroup. Specific participants had a very clear understanding of the physiological damage prevalent in FASD offenders and had strong opinions about it:

the primary disability…you’re not gonna change impulsivity, you’re not gonna change his ability to reason and understand, remember and value…you’re not gonna change that stuff. Those are missing brain cells that are gone forever. List the primary disability, list the secondary disability, understand one is unfixable and the other is your way in (Research participant A1, 2010).

and

it’s obviously a developmental disorder there’s physical parts to it, there’s psychological parts to it, there’s mental health parts to it (Research participant A10, 2010).

The key concepts of the primary disabilities; cognitive impairment, impulsivity, language difficulties and memory deficits (Streissguth, et al., 1996) were discussed by all members of both subgroups. While the second subgroup of participants were not as familiar in understanding these terms as primary disabilities of FASD (albeit they were familiar with the brain damage element of FASD), they certainly had a familiarity with the resulting behaviours. They noted “They seem to be very…those clients can be very sporadic like they kind of act on what they’re thinking at that moment. They don’t think of consequences in the future a lot” (Research participant B3, 2010) and “There is no follow
through. I think that has to do with the memory and not knowing where to go and not knowing what to say…” (Research participant B9, 2010).

Participants also indicated a clear understanding of the ‘spectrum’ concept in regard to FASD. One participant noted that “the spectrum is large so they don’t all fall into one category…” (Research participant B4, 2010) while another stated “I sent a guy home with relapse prevention planning and he’s supposed to have FASD and he did the whole plan…but then you get another guy who is cognitively challenged with FASD that can’t do it” (Research participant B7, 2010). This was important insight and would be considered primary to recognizing the potential inability for an offender to meet the expectations and conditions that may be indicated on their respective community orders.

The resulting behaviours and thinking patterns of the primary disabilities of FASD were reported at length by participants in both subgroups. Data from both subgroups in relation to the secondary disabilities and resulting life difficulties for FASD offenders were repeatedly expressed with regard to:

1. repetitive involvement with the justice system as a youth and as an adult,
2. prevalence of addictions and other mental health issues,
3. gang involvement and negative peers,
4. literacy and education issues,
5. lack of employment and poverty, transiency and lack of appropriate living accommodations,
6. lack of positive external supports, and
7. exhibited and verbalized shame and,
8. ongoing victimization by peers.
Typical among their comments were:

…by the time they hit adulthood there are so many other confounding factors …you might be dealing with long histories of abuse and instability, negative peer relationships, substance abuse, all of these other things that can contribute to criminal behaviour (Research participant A5, 2010).

Some of these care home options might have been compromised or some bridges might have been burned along the way and if there isn’t a lot of family around, a lot of these cases end up with very limited options for residency (Research participant B1, 2010).

…like a lot of them have substance use, problems with memory, obvious they’re in conflict with the law…some have mental health problems, trouble holding down a job (Research participant B5, 2010).

Recurring themes emerged when participants were queried about service challenges and the needs of FASD offenders. As a result, all participants reported the paramount need for structure in the lives of FASD offenders including: a supportive living environment, life skills and mentorship. Structure in terms of providing direction and services was seen as crucial to addressing FASD offender secondary disabilities and providing services to FASD offenders.

Another common aspect of an FASD offender profile emerged. Both subgroups discussed the ‘invisibility’ of FASD offenders and the challenges this presents in providing services. Participants referred to the invisibility characteristic of FASD as “an inability to recognize any physical aspects of FAE or ARND as opposed to FAS simply by looking at an offender” (Research participant A1, 2010). That is, participants thought identification of FASD without obvious physical characteristics renders their other symptoms as invisible. Moreover, this was mentioned in relation to determining an FASD offender’s ability to participate in case planning based on the relatively short interaction time spent with an offender. One participant commented “you can’t look at them and
know they have anything wrong” (Research participant A4, 2010) while another stated, “I don’t really know how to pick out who can and who can’t (case planning)” (Research participant B7, 2010).

Participants, particularly in subgroup B discussed the possible benefits of implementing a type of screening tool to provide assessment criteria and case planning direction in regard to an individual offender’s difficulties and capabilities. “This knowledge would change the way we intervene and the expectations for change from the offender” (Research participant A3, 2010). Assessment and planning criteria for FASD individuals will be discussed further under the organizing theme of structural and systemic challenges.

In conjunction with the invisibility aspect participants discussed the propensity of FASD offenders to attempt to ‘mask’ their disability as a result of their perceived shame of having cognitive difficulties and their inability to fully function in society, adding to the invisibility feature.

Adult offenders as well are very reluctant to be identified. They haven’t been identified as youth then they want to get on with it, they want to be an adult, they don’t want to go back to being a kid. That’s what they see with diagnosis….very reluctant to get on that road. There is so much shame...” (Research participant A11, 2010).

There’s a real tendency for FASD offenders to agree, nod and agree, and they’ve got, a lot of them have very, very strong verbal skills and are very good at masking the degree of their disabilities. So we make assumptions about their level of understanding (Research participant A8, 2010).

Additionally, as one participant suggested, “No one wants to tell someone that they have any special needs. They want to hide it the best that they can” (Research participant B2, 2010). As a consequence, this inhibits the opportunity for those working with FASD
offenders to advocate on behalf of their cognitively challenged clients and limits the opportunity to access potential services that may be in the community.

4.2.1.2 Corrections, Public Safety and Policing (CPSP) Practices

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<tr>
<th>Sub-group A</th>
<th>Sub-Group B</th>
<th>Common Responses</th>
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<tbody>
<tr>
<td>Specific CJ Professionals (n=11)</td>
<td>Specific Saskatchewan Probation Officers (n=9)</td>
<td>Caseload(s)</td>
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Table 4.4 categorizes data collected regarding CPSP practices and was collected from the 11 participants in subgroup B, who were all employed by CPSP. As previously stated, subgroup A participants were from across Canada and were not familiar with Saskatchewan community corrections practices and policies. However, interestingly enough, one common concern that was expressed by both subgroups involved the concept of “caseload.” Even though participants in subgroup A were not involved in community corrections there was an acknowledgement of the excessive caseloads on probation officers and their capacity to meet the complex needs of FASD offenders. One participant noted that “… parole sic probation officers have large caseloads and so they schedule appointments with offenders on a regular basis; they schedule appointments long in advance and then if they don’t show up, they are in trouble” (Research participant A3, 2010).
Most probation officers employed by CPSP carry generalized caseloads of approximately 60 to 80 offender files, depending on whether they work in a rural or urban centre; the numbers are considerably higher in some regional centres. If they work in a rural centre, travel time can become a factor in meeting caseload demands. Offender monitoring in conjunction with caseload management, as set out by CPSP policies and standards (2011), are the primary focus of probation officer roles, however, there are other aspects to their job duties. They are also required to write various reports (e.g., pre-sentence reports) for the courts, monitor various programs (e.g., electronic monitoring), and act as liaisons on various community committees.

When CPSP policies and case management practices were addressed in the interviews with subgroup B participants, they indicated an overwhelming support for the Ministry’s public safety mandate. That is, the need for policies implementing risk assessments and supervision standards. However, they expressed frustration with the growing diversified responses required for the growing multi-faceted needs of offenders and more specifically FASD offenders.

We should have policies and standards set in place…but it just feels like you are making them fit into a box and that box does not accommodate anyone that has special needs. It just doesn’t seem like it wants to address anything other than this ‘cookie-cutter’ offender and it just doesn’t work anymore (Research participant B2, 2010).

Upon review and analysis of CPSP community supervision standards policies (CPSP, 2011, Administration, Section 11), offenders are required to be assessed for risk of general criminal recidivism using the Saskatchewan Primary Risk Assessment (SPRA) tool. An evidence-based risk assessment tool, the SPRA is structured using static and non-static (dynamic) factors to determine criminogenic needs. If an offender is not
considered medium to high-risk or a serious violent offender (based upon their offence as per CPSP policy), they are not to be a time management priority. It appears what is not taken into account for risk and specifically relevant to FASD offenders, are non-criminogenic needs such as cognitive disabilities or co-morbid mental health issues.

We don’t have you know, a targeted criteria on our risk assessment saying if this person has special needs or not. If it did that would allow you so much more freedom to say this person has a special need of some sort and in order to start working with them on their criminogenic factors, we really need to target this one before we more on (Research participant B2, 2010).

The participants were unanimous about expressing what they perceived necessary to meet CPSP standards: lower caseloads. Throughout the probation officer’s interviews it became apparent that they were very conscientious about attempting to meet CPSP standards. When they felt they were unable to do so, they expressed frustration with their perceived personal and/or professional inadequacies. “Sometimes you feel like you’re letting your client down and other times you feel like you’re letting your employer down because there’s not enough of you to go around” (Research participant B2, 2010).

Many participants discussed having previously worked with specialized caseloads such as a “crime reduction strategy” or an “intensive supervision” caseload. With such caseloads probation officers were able to meet standards and provide better services as caseloads were smaller: 20 to 30 offenders. This allowed them to have the capacity to develop a relationship with the offender, attempt to remove the barriers in their lives, and provide them with more structure and support. It also allowed them the opportunity to better exercise discretion and flexibility in their caseload management, something that appeared to be of key importance to the probation officer participants. One respondent noted
You actually get time to actually get to know them and you know you can build that relationship and actually follow through with that relationship, it’s not just...you know to build that trust. You become a pro-social support for them…” (Research participant B7, 2010).

When queried about the potential for any non-identified or ‘suspected’ FASD offenders on their caseloads, all participants in subgroup B indicated they believed they had offenders with FASD characteristics. Depending on their locations from across the province, some estimated as low as 5% of their caseload had offenders with FASD potential while others speculated it was as high as 90% of their caseloads. Indeed, one respondent noted that “Probably 90% of the clients on my caseload and I think that it’s quite under recognized and not often talked about in our profession and it should be” (Research participant B5, 2010) while a second respondent supported this view stating “I’d have to say in this area, probably 85% ... 80% definitely higher. It’s really sad, a lot of the reserves around here it’s almost all of the client base” (Research participant B7, 2010).

Most participants reported FASD offenders on their caseloads as falling within the 25 to 50% range. Most offenders did not have a formal diagnosis to substantiate the probation officer estimates. Probation officers reported that their working knowledge of FASD characteristics was gained by secondary education methods, training workshops and years of experience in the human service field that allowed them to recognize aspects of FASD that identified FASD offenders. They also suggested that their historical knowledge of the offender, the offender’s familial history, and the offender’s community within which they worked also contributed to their ability to determine whether an offender had FASD. According to one respondent “they were told that their parents were
drinking or just like the impulse control stuff, that makes you suspect that FASD may be a factor” (Research participant B8, 2010).

Upon review and analysis of CPSP policy relating to service providers (CPSP, 2011, Administration, Section10), it appears to provide authorization to contract a service provider for offenders with high needs. However, this resource to provide external support to offenders deemed in need appears contingent upon a number of factors. First, the offender has to be assessed as a high-risk and repetitive offender likely to re-offend. Second, many regional centres have not had the resources to recruit knowledgeable “pro-social” (Research participant B2) service providers willing to provide support within the community to offenders. Lastly, probation officers often see service providers as an added responsibility; one more person to supervise and monitor and more paperwork. As one respondent noted “Service providers have been so helpful but that’s a huge lack because we have no resources for service providers” (Research participant B9, 2010).

Nevertheless, as previously mentioned, both subgroups of participants continually indicated the need for positive role models/mentors, life skills coaches, or caregivers to provide support and structure within the community to FASD offenders. Indeed, “having a service provider and a one-on-one mentorship to help them attend their appointments and to help them meet the requirements of their order would be needed” (Research participant B5, 2010). Another participant supported this view commenting that, “I think the modelling thing is a huge thing…at least one positive person in their life which most offenders don’t” (Research participant B3, 2010).

The final common theme that was prevalent in subgroup B responses was the identification for more education about FASD and training on how to supervise FASD
offenders. The probation officer participants indicated that they wanted more knowledge about FASD. While they suggested that they knew the ‘basics’, they wanted more in-depth understanding of FASD, how it effects FASD offenders, how to work with them and be able to be a resource for the courts and the community regarding the prevalence of FASD within the offender population. Many participants felt they did not have an adequate understanding of FASD and given their estimates of the prevalence of FASD among their caseloads, they believe they required more knowledge to be able to work successfully with this sub-group of offenders. As one respondent noted, “Just more knowledge on their behaviour and how to slow things down so that they understand would be needed” (Research participant B8, 2010). This was mirrored by a second respondent,

Some more education and training on the issue. We need some case management practices that are specific to these individuals…we need assessments in order to know what we’re dealing with and where the strengths and challenges are” (Research participant B6, 2010).

4.2.1.3 Services in the community - Strategies

TABLE 4.5 – Basic Theme by Participant and Sub-Group: Services in the Community

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
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<td>Counsellor</td>
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<td>Treatment</td>
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</tbody>
</table>
Table 4.5 illustrates the outcomes and analysis of data collected that identifies the varying needs within the community while Table 4.6 illustrates the advocacy required to develop these services as well as the gaps within the community. As a consequence of recognizing the many challenges that primary and secondary disabilities bring for FASD offenders, when probation officers were queried about required services within the community to meet the needs of FASD offenders, participants from both subgroups replied FASD offenders need “assistance with everything”. As one respondent noted “..Assistance with everything, like just living skills, life skills in the community, meeting appointments, being able to manage life, let alone all obligations that are imposed by the court like reporting requirements or curfews or things like that” (Research participant A2, 2010). As discussed in Chapter 2, without adequate support and services located in the community, FASD offenders are almost predictably to reoffend or as one respondent stated “We are complicit in our client’s crimes if we don’t provide the structures for success” (Research participant A1, 2010). FASD offenders need a great deal of external supports to function in their daily lives, to give them direction and achieve success.

**TABLE 4.6 – Basic Theme by Participant and Sub-Group: Improving and Creating Services**

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adaptation</td>
<td>Advocacy</td>
<td>Advocacy</td>
</tr>
<tr>
<td>Advocacy</td>
<td>Awareness</td>
<td>Awareness</td>
</tr>
<tr>
<td>Awareness</td>
<td>Government</td>
<td>Money</td>
</tr>
<tr>
<td>Money</td>
<td>Money</td>
<td>Money</td>
</tr>
<tr>
<td>Politics</td>
<td>Programs</td>
<td>Money</td>
</tr>
<tr>
<td>Research</td>
<td>Resources</td>
<td>Resources</td>
</tr>
</tbody>
</table>

Participants identified that such structures need to include supportive and specialized services in counselling, education, employment as well as any specific treatment programs such as substance abuse. These services must be adaptable and
delivered in a manner that reflects an understanding of the challenges faced by both FASD offenders and their caseworkers. Moreover, service workers from different professional groups must work collaboratively. In doing so, they can model what would be a strong and effective support system and network. This was described by one participant as “the external brain” (Research participant A1, 2010). Dr. Sterling Clarren, a leading expert in FASD brain science from the University of Washington, explained the concept of an “external brain” as: a descriptor of intervention that acts as a modification for the organic brain abnormalities and deficits characteristic of FASD thinking (Streissguth & Kanter, 1997). This concept of an “external brain” is personified in a person with the capacity of a pro-social mentor or life skills supporter for an FASD offender. This support person requires a full understanding of all the potential idiosyncrasies of FASD offenders including the individual strengths of an FASD offender. According to one respondent there needs to be “more outreach in terms of support workers who are non-judgemental, understand the nature of the disability and are able to develop a good rapport with the individual and work on some strengths...unconditional support” (Research participant A3, 2010).

Appropriate housing is an overwhelming need for many FASD offenders. Due to their challenges with life skills (e.g., budgeting, maintain employment.), many FASD offenders take part in what is termed as “couch surfing” (Research participant B6, 2010). They often are transient and live wherever they can find a bed and usually for a short length of time. Participants discussed the need within the community for residential supportive care homes, including:

needed support of residency-like care homes...some care home options might have been compromised or some bridges might have been burned along the way...
and if there isn’t a lot of family around, a lot of these cases end up with very limited options for residency (Research participant B1, 2010).

supportive living environments...staffed to keep manipulation at bay and some kind of trusteeship with their paycheque...they need that extra support (Research participant B6, 2010).

TABLE 4.7 – Basic Theme by Participant and Sub-Group: Strategies

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peer Counselling</td>
<td>Cognitive Disabilities Strategy</td>
<td>Wellness/Mental Health Courts</td>
</tr>
<tr>
<td>Peer Tutors</td>
<td>Mental Health Courts</td>
<td></td>
</tr>
<tr>
<td>Wellness Courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cognitive Disabilities Strategy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Strategies to deal with this population in the community vary from within and between provinces and territories. Table 4.7 illustrates some of the strategies familiar to each sub-group. Many participants within subgroup B, and some within subgroup A, were familiar with the Cognitive Disabilities Strategy (CDS) initiated by the Government of Saskatchewan in 2003. The CDS is an inter-departmental government strategy developed for persons with a formally diagnosed cognitive disability who have significant behavioural and developmental challenges; FASD falls within this criteria.

The strategy strives to:

1. Improve the knowledge and skills of individuals, families, care providers and organizations providing services with the hiring of Cognitive Disability Consultants;
2. Establish a flexible funding pool to supplement or extend existing programs;
3. Provide better access to assessment and diagnostic services;
4. Strengthen FASD prevention and intervention; and
5. Enhance services for persons with a cognitive disability and their families.
The CDS management team within each community is formed with representation from a variety of agencies and government ministries including CPSP. Several of the probation officer participants indicated that they acted as the CPSP representative for their respective regions. The team is responsible for the intake process for CDS funding as well as providing program planning and follow-up. While the CDS provides an avenue of support within the community to FASD offenders, accessing such support not only requires a professional and/or organization referral it can also be cumbersome. “The process to get a client to go through it...like lots of work” (Research participant B3, 2010).

The amount of funding is dependent on an assessment of an individual’s Daily Living Skills Adaptation (DLSA) which, for FASD offenders, can be compromised in some areas and relatively high in others given an individual’s level of the spectrum disorder as explained in Chapter 2. Accessibility and availability of CDS to adults in many communities is minimal and as a result CDS is mostly accessed by families seeking support for their children. As a consequence, it is seldom accessed by an FASD adult and when it is, support is limited. Resources available within the community are focused on prevention and/or services to children as a priority. This speaks to the relatively short-sightedness of those providing the supports needed for people with FASD. As previously stated, children do not outgrow FASD; they grow to be adults with FASD and many become involved in the criminal justice system.

Participants from other Canadian jurisdictions discussed other avenues to address FASD offenders including “mental health courts” (Research participant A6) and “wellness courts” (Research participant A8). Like drug courts which gave rise to the term
“designer courts,” such interventions could take a more holistic approach to dealing with cognitively-challenged offenders. However, designer courts have experienced varying challenges. In one jurisdiction, while mentally ill offenders were diverted from the formal criminal justice system, these same mental health courts did not recognize FASD offenders as mentally ill as they lack understanding about FASD. One respondent commented

it’s part of a broader set of issues that where FASD fits within mental health is not at all clear, that a lot of mental health practitioners don’t really know what to do with organic brain damage; they don’t know how to deal with it, they’re not even sure that it’s actually mental health (Research participant A6, 2010).

Offenders who are successful in qualifying for entry into a mental health court can access housing (including supportive housing), specialized addiction treatment programs, mentors, and other need based services; these are all high need areas for FASD offenders. The jurisdiction that reported its use of wellness courts took an entirely different approach; any offender with or without a diagnosis of a suspected cognitive disability, including FASD, is granted access to the court.

where we’re not able to get those assessments, you know, we need to still be responding to what we are seeing and dealing with. So we may not be able to put the label on it, but we still know that there are cognitive impairments, so we respond accordingly (Research participant A8, 2010).

Court-ordered conditions are creatively developed services within the community that are readily available and accessible and, if there are services lacking, efforts are made to provide creative alternatives.

Within custody facilities, participants reported varying attempts to provide supportive and creative alternatives such as the ‘external brain’ companion for FASD offenders: peer counselling and tutors. Within one federal correctional facility, suspected FASD offenders are matched with offenders who have demonstrated an ability to provide
positive support to assist with daily living and educational support. The importance of this type of program is immense according to participants:

I believe the majority of individuals who end up in a correctional system are people who are affected by ARND or some form of FASD that doesn’t have any physical characteristics, you can’t look at them and know they have anything wrong (Research participant A4, 2010).

That’s why our thinking right now is that our best tool inside here (for FASD offenders) right now is probably going to be peer counsellors and tutors (Research participant A10, 2010).

Regional disparities in community supports for FASD offenders were very apparent in the ongoing dialogue with participants from varying parts of the country; moreover, they overwhelmingly acknowledged that every community, whether rural or urban, needed more resources. The lack of funds and political or community awareness and support were commonly cited by the participants as areas of need.

4.2.2 Strategic Training Initiative in Community Supervision (STICS)

The second organizing theme of STICS was directly correlated to the final three secondary research questions (see Table 4.2). When discussing the STICS project, respondents provided a number of common concepts that could be interpreted as basic themes within the organizing theme of STICS.

**TABLE 4.8 – Basic Theme by Participant and Sub-Group: STICS Practices**

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=0)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>(not applicable to this theme)</td>
<td>Cognitive Behavioural Theory</td>
<td>(not applicable to this theme)</td>
</tr>
<tr>
<td></td>
<td>Criminogenic Needs</td>
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<tr>
<td></td>
<td>Gaps</td>
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<tr>
<td></td>
<td>Homework</td>
<td></td>
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<tr>
<td></td>
<td>Relationship Building</td>
<td></td>
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<tr>
<td></td>
<td>Responsivity</td>
<td></td>
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<tr>
<td></td>
<td>Risk Level and Assessment</td>
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<td></td>
<td>Timelines</td>
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<tr>
<td></td>
<td>Tools</td>
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<tr>
<td></td>
<td>Structure</td>
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</tbody>
</table>
Table 4.8 profiles the specific themes of sub-group B in regard to the STICS project. Given that the STICS project (STICS Project, 2008) was designed as a method of training probation officers to engage offenders, data collection in relation to the STICS project from participants in subgroup B (nine probation officers actively involved in the project), showed remarkable similarity with the issues raised. Even though subgroup A was not familiar with the STICS project, it was interesting to find that both subgroups commented on the inappropriate use of cognitive behavioural practices to intervene with cognitively disabled individuals.

I think knowledge of what is FASD and awareness of the brain injury that you're dealing with, and the way in which brain injury influences behaviour and shapes behaviour changes the way we intervene and the expectations for change that we establish. For example, if I am to accept that somebody, due to the specific pattern of brain injury that they're dealing with, lacks a real insight into use and effect reasoning, then implementing change strategies that require a recognition of antecedent behaviours that lead to the trigger that leads up to the anger behaviour, for instance, is not an optimal approach to use, because this individual doesn't understand that this leads to this, in terms of their ability to functionally make meaning of that information on a day-to-day basis (Research participant A5, 2010).

The relevancy of these comments speaks to the premise of the STICS initiative in utilizing a cognitive behavioural model (STICS Project, 2008, Module 6) of engagement by a probation officer with an offender, and the challenges that such a model would present in working with an FASD offender in particular. Participants from subgroup B echoed this comment. While acknowledging the benefits of a cognitive behaviour approach with ‘normal’ offenders, the probation officers identified the challenges this would present working with FASD offenders; given their limited reasoning ability. FASD offenders need different modalities adapted to their learning capabilities:

If you can understand what triggers, if you can understand the vocabulary, and if you can understand how they relate to the offence, but a lot of the time, someone
with FASD they don’t understand the correlation between their offence and their behaviour (Research participant B2, 2010).

The way STICS is I don’t think works with FAS(D) people...because it’s so, it’s kind of abstract like it’s not simple, it’s not really concrete and that’s what people who have FASD need. It’s like that cognitive thinking behaviour link and I just don’t think they have the capacity to do that, to connect that. I would lose them after five minutes of sitting there and doing that (Research participant B9, 2010).

Moreover, participants also identified the challenges engaging FASD offenders in a cognitive behavioural model of service delivery, given both the complexity and time limitations involved.

Obviously the STICS is very lengthy and we can’t do that with every client so that’s definitely a constraint, like with 50% of our caseload with FASD we can’t be doing it with that many people. We’d have to have a caseload of 10 to do STICS (Research participant B3, 2010).

The time commitment to work with FASD offender is extreme right? I mean they don’t always get it and you need to slow things down and if we’re going to implement a CBT model kind of things, then we need to have the ability to do that to be successful (Research participant B4, 2010).

I think the process to do STICS it would take a lot longer but with an FASD client, and then getting them to engage and stuff would be a lot longer (Research participant B8, 2010).

Some participants saw STICS in a different light by using this opportunity to offer an alternative program to FASD offenders. Following the risk-need-responsivity (RNR) model within the STICS project (STICS Project, 2008, Module 5), some participants saw the responsivity factor as an opportunity to modify service delivery to the level of the offender regardless of their respective cognitive challenges:

Well, I don’t see why having the benefits of STICS wouldn’t translate to working with FASD clients. I think it would help us have a more strategic approach toward interventions, which I think would have a benefit and working harder at having responsivity, matching our interventions appropriately to the client. I think that the strategic approach and the awareness that working with STICS brings to our interventions and our case plans and that, I think that would be a benefit. Some of the cognitive behavioural concepts they would like to teach depending on their
client and the client’s reasoning and understanding and learning style and that kind of thing. I mean you might have to use different approaches and different methods and maybe a lot of repeating to get some of these concepts across and to reinforce the learning (Research participant B1, 2010).

With the STICS and the cognitive behavioural method and relapse prevention it’s more needs focused so it’s focusing more on their own responsivity and individual factors which FASD would be completely designing their case plan based on that (Research participant B5, 2010).

As a response to the RNR principle, probation officers indicated that FASD offenders present a unique challenge for the policies and practice mandated by STICS project (2008) when discussing risk, risk factors and risk assessment. Given the many challenges that FASD offenders experience in their lives, their respective risk scores are tallied on both dynamic and static factors (STICS Project, 2008, Modules 2-4). Subsequently, their criminogenic needs are often scored as high. As reported by the participants, this typically includes: (1) previous long-term involvement with the criminal justice system; (2) limited abilities to maintain employment and/or education placements; (3) difficulty engaging in pro-social positive family and peer supports; and (4) some level of addiction issues with alcohol and/or drugs. FASD offenders have limited ability to recognize their criminogenic needs much less able to recognize what ‘thinking’ precipitates the circumstances they often find themselves in and their involvement in the criminal justice system. This frustrated probation officers, one of whom expressed the common view:

You’re looking at criminogenic needs, you’re not looking at learning gaps, you’re not looking at you know, this person only learns through skills such as role play, this person is strictly visual, spatial kind of learner (Research participant B6, 2010).

Regarding responsivity, one probation officer interpreted STICS as a directive to exercise discretion in dealing with offender violations. However, upon review of the
STICS Project training manual, responsivity speaks to the ability to determine an offender’s specific challenges with a goal to develop a case plan specific to that offender (STICS Project, 2008, Module 5). The STICS directive allows probation officers to ‘think outside the box’ and as a consequence, allows them the ability to exercise creativity with policy in regard to the responsivity needs of offenders and subsequent service delivery:

My STICS program tells me that I am going to try something else. I am going to go out of the box a little bit. I’m going to say “listen, I do have to breach you on this, but I am going to recommend that no action be taken”. Or I might not breach at all and I am going to tell him “you know what? I want you to go to AA for maybe about 2 months and then I will re-refer you and we will see how that works”… and I am willing to go out of the box like that (Research participant B2, 2010).

This observation also spoke to the STICS project directive of relationship building. Analysis of data from subgroup B spoke to the potential of STICS to establish trust with offenders to build relationships (Module 5). Relationships and trust were identified as thematically relevant factors by both subgroups of participants. The ability to develop rapport with an FASD offender and the potential to influence future decisions are based on the trust developed and was seen as a key factor in reducing recidivism. This characteristic of the STICS project was interpreted as a positive aspect and particularly relevant to working with FASD offenders given they frequently have few positive external supports, family or peer supports and have limited ability to develop them. The probation officer takes on a role of a positive support through the relationship-building process. According to participants:

The one thing with STICS that I absolutely love and even though I don’t necessarily follow STICS to a tee, I follow this no matter what; the very first thing is when we have to do the check in…is develop that relationship. Develop that relationship so that they want to share that information with you because the more
information that you have the more insight that you have into their lives will give you a better opportunity to understand where they are coming from and what they need. They might not always tell you what they need, but they will either show you or let it slip in some way and you need to pick that up. But if that relationship isn’t there, they’re not going to give you nothing (Research participant B2, 2010).

I think that STICS would be beneficial because STICS puts a lot of emphasis on rapport with the client... (Research participant B8, 2010).

One final aspect of STICS that became apparent was the basic theme of the influence and relevance of structure in regard to timelines (STICS Project, 2008, Module 10). The probation officers appreciated the clearly defined structure of time and content to their individual offender sessions as developed and practiced in their STICS training. They reported that this aspect motivated them to have a more constructive-based focus for their time spent with offenders; this reduced reoffending behaviours better than a ‘check-in’ or review of the offender’s respective order(s) and conditions (Bonta et al, 2010). In relation to FASD offenders, the probation officers saw this aspect as a helpful directive in engaging them as they have difficulty staying focussed during reporting sessions.

Based on the data gathered from this subgroup and upon review of the STICS project training manual, the training of probation officers through the STICS program appears to have a potential to offer practice methods that have relevance and benefit to FASD offenders. It would also appear that probation officers are actively looking for policy directives when providing services specific to FASD offenders. However, as identified by the probation officers practicing the skills taught in the STICS training, there are some existing directives that would have limited success with FASD offenders. Using cognitive restructuring techniques often fail FASD offenders as such interventions
do not take into account their multi-faceted cognitive challenges. Probation officers also voiced concerns that given the time requirements needed to engage FASD offenders and to establish relationships as per the STICS model, caseloads present a significant time challenge and workload concern in meeting STICS’ project criteria.

At first glance, it may appear that some of these basic themes might be subsumed under other basic themes since some of these basic themes were not discreet to only one organizing theme. For example, systemic issues such as training needs and collaboration are discussed under the criminal justice system as well as under identification and assessment. The STICS project presents both as a basic theme and an organizing theme illustrating an anomaly for this thematic analysis.

### 4.2.3 Systemic and Structural Challenges

#### 4.2.3.1 Identification and assessment

As a result of the dialogues during the data collection, a third organizing theme was identified: systemic and structural challenges. This organizing theme became apparent as a result of the reoccurring basic themes of attitudes and perceptions, racism and prejudices, demographics and disparities and systemic issues including identification and assessment and criminal justice system challenges. These basic themes did not appear to have direct relevance to either the first or second organizing themes. Moreover, these basic themes collectively illustrated something greater than the sum of its parts.

### TABLE 4.9 – Basic Theme by Participant and Sub-Group: Identification Issues

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment(s)</td>
<td>Assessment(s)</td>
<td>Assessment(s)</td>
</tr>
<tr>
<td>Diagnosis</td>
<td>Diagnosis</td>
<td>Diagnosis</td>
</tr>
<tr>
<td>Misdiagnosis</td>
<td>Diagnostic Tool</td>
<td>Recognition</td>
</tr>
<tr>
<td>Prevalence</td>
<td>Recognition</td>
<td>Screening Tool</td>
</tr>
<tr>
<td>Recognition</td>
<td>Screening Tool</td>
<td></td>
</tr>
<tr>
<td>Screening Tool</td>
<td></td>
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</tbody>
</table>
Table 4.9 outlines the challenges reported by the participants pertaining to the identification of FASD. Setting the context, research participants interpreted the terms “assessment”, “diagnosis” and “screening” as actions taken to identify those people with FASD. Unlike many other medical conditions, FASD cannot be identified through a simple “yes or no” diagnostic test. It requires comprehensive testing by a multidisciplinary team of professionals including: physicians, social workers, psychiatrists and psychologists, as well as confirmation of maternal alcohol consumption during pregnancy. Diagnosing FASD is challenging and expensive (Rutman, LaBerge & Nevin, 2007). Many physicians and psychologists in Canada are not trained in such diagnostic procedures. Clinics that exist in Canada with the capability to assess and diagnosis FASD are rare.

Additionally, the cost of an FASD assessment can range anywhere from $2,000 to $4,000 and is not routinely covered by provincial or territorial health care plans. This creates a difficulty for those agencies that develop a ‘pass the buck’ culture; agencies resist the cost of the assessment particularly when it is court ordered (Roach & Bailey, 2009). The courts have suggested Health, Mental Health or Community Corrections should incur the costs. These agencies argue, by contrast, that the court system should incur the costs as they are the requesting agent. Moreover, courts request the assessment without fully understanding the logistics or availability of having an FASD assessment completed. Often times, the court requests a psychological assessment, again, not fully understanding the distinction between a mental disorder as per the DSM IV-TR and a physiological brain-damage disorder (Streissguth & Kanter, 1997). This was best stated by one participant who noted:
I think it is part of a broader set of issues that where FASD fits within mental health is not at all clear. That a lot of mental health practitioners don’t really know what to do with organic brain damage; so again, bi-polar, schizophrenia… those things they can deal with. They don’t know how to deal with FASD, they’re not even sure that it’s actually mental health. I am surprised at the number of mental health practitioners who really know nothing about FASD (Research participant A6, 2010).

Another participant pointed out “If there is no solution, then there is no problem” (Research participant A1, 2010). The point being; FASD is either ignored or completely misunderstood, there are no pharmaceutical solutions, no successful talk therapy, no amount of jail time and no probation order that will change brain cell damage.

Moreover, cognitive challenges are defined by most professionals including judges, policy makers, doctors and school systems by intelligence quotient (IQ) tests. An IQ score of 70 points is regarded as the cut-off point above which a person is not to be considered cognitively impaired. This cut-off point determines access to community supports, agency programming, and funding. An IQ score is only an accurate predictor of specific intelligent categories within the parameters of western cultural norms and presumes access to western education to be equally distributed across ethnic groups. It doesn’t factor in alternative educational criteria or learning opportunities such as life skills. As pointed out by Foucault (1977), whenever a person is reduced to a number, there are insidious forces at work that disconnect the powerful from the powerless. Research participants reported feeling that FASD offenders illustrate this proposition all too well.

By the time FASD offenders enter adulthood, the issues of abusive home life, addictions and poverty have led to their criminal behaviour. It becomes difficult to
associate cause or association contributing to criminal involvement from life
circumstances or FASD or a combination of both. According to one participant:

   By the time they hit adulthood there are so many other confounding factors that
   challenge our diagnostic abilities that might also contribute to incarceration. So
   you might be dealing with long histories of abuse and instability, negative peer
   relationships as a result, substance abuse, all of these other things that can
   contribute to criminal behaviour by the time you get them your going, ok, how do
   I decide? (Research participant A5, 2010).

   Many in the criminal justice system have questioned the need or relevance of an
   assessment. Whether or not the offender has FASD, it is argued that offenders should be
   as accountable for their offence as are all other citizens. This excludes those individuals
   determined not fit to stand trial for reasons of mental disorder. This argument fails as
   FASD is not an excuse or a set of behaviours based on informed choice; it is an
   explanation of behaviours attributable to a unique group of individuals. Arguably, the
   assessment and diagnosis of FASD should lead to positive changes in the life course and
   offer supports for those individuals diagnosed. Without examining all of the
   environmental factors such as: housing, health, economic, and social implications that
   influence an FASD offender’s ability to follow a community court order and generally
   function in life, and not identifying or addressing the service gaps, probation officers and
   other professionals will fall profoundly short of achieving successful interventions.

   Individual life circumstances are assessed for all offenders; FASD is just one more life
   circumstance for some offenders. An FASD assessment and diagnosis however, affords
   the FASD offender the ability to access any potential community funding and supports
   that may be available:

   Our experience has been that when we identify clients as either having FASD or
   likely having FASD we are often able to get very different and much better
   outcomes for them (Research participant A6, 2010).
We need assessments so that they can access the funding that is out there to have supports (Research participant B6, 2010).

What you are lacking is the stuff that is specific to them and a really good assessment will break down their particular needs and abilities in a way that you can create the sentence around them and you’re not doing it based on generalities but at the end of the day, where we’re not able to get those assessments, you know we need to still be responding to what we are seeing and dealing with (Research participant A8, 2010).

Another aspect of diagnosing FASD correctly that was raised is the concern for misdiagnosis and the potential for systemic marginalization. Diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), Attention Deficit Disorder (ADD), Oppositional Defiant Disorder (ODD), Asperger’s syndrome, and other behaviour symptoms could be characterized as behaviours that could well be FASD. One participant (Research participant A1, 2010) called these diagnoses as the “alphabet soup” of diagnoses. Some mental health professionals are so unfamiliar with FASD symptoms that they do not consider the possibility, nor do they want to ask the questions that would lead to an FASD assessment, particularly when the person is Caucasian. Recent research has suggested that rich, White people do not have fetal alcohol babies; their children are instead classified as suffering from attention deficit disorders (Boulding & Brooks, 2010). Moreover, more than one participant questioned whether other Canadian jurisdictions, apart from Saskatchewan, even question the probability of FASD:

Because we don’t have screening tools in place, we don’t have anything to officially recognize. We don’t have any programs that have been adapted to it, so really we don’t have a problem. It’s the ostrich in the sand, you know, head in the sand approach (Research participant A10, 2010).

And I suppose in other parts of Canada, I bet is not spared alcohol addiction without FASD. And I don’t think they see the same thing cause I don’t think other parts of Canada think, “oh, we have FASD problems,” it just isn’t done (Research participant A11, 2010).
Research participants reported the ability to recognize FASD challenged offenders by their behaviours, but struggled with the lack of a positive FASD diagnosis. In almost all jurisdictions, formal diagnostic referrals are seldom completed due to the costs and difficulty in arranging these assessments. Participants reported they are guessing at the likelihood for FASD and worked with the presumption that the offender has FASD challenges based on previous personal and family histories and repetitive behavioural patterns. This is seen in the comments of two participants:

I think there is a fairly high percentage that is affected. They may not get a diagnosis, but when you look at the families they come from, substance abuse very common, we’re seeing third generation, I mean I have been in the system long enough to see families with the third generation knowing that there’s been substance abuse throughout their lives (Research participant A9, 2010).

You can’t see it, can’t touch it and we see so many people who are impaired in one way or another. We can’t identify whatever it is, it’s blurry and they don’t see the distinction, they don’t see the importance of a diagnosis relative to the undiagnosed (Research participant A11, 2010).

This is not surprising given that within the criminal justice system it is estimated that approximately 95% of FASD offenders go undiagnosed (Native Counselling Services of Alberta, 2010). In most jurisdictions referrals for adults for an FASD diagnosis are seen as pointless given the complexity of the diagnostic tests required and the lengthy waiting time for a diagnosis resulting in priority being given to referrals for children (Research participant B6, 2010). To address the lack of capacity to obtain a diagnosis, probation officers discussed the potential for a screening tool as opposed to a diagnostic that could identify and validate the possibility of FASD symptoms in an offender. Such a screening instrument would validate the need for further assessments.
Ideally, for the sake of those working with FASD offenders, criteria for an effective screening instrument would be simple and would be quick to administer.

An adult FASD offender screening instrument has been developed and utilized, both within the community correctional service of British Columbia and within Nova Scotia correctional institutions. The utility of this instrument was identified by one participant who noted, “It’s actually been able to distinguish between offenders with FASD and offenders with central nervous system (CNS) deficits unrelated to prenatal alcohol exposure” (Research participant A4, 2010). Participants expressed that the benefit of a screening instrument would be the provision of understanding of the specific challenges an FASD offender. This would enable probation officers to tailor case plans, illustrate the relevancy of FASD to case planning, and access whatever community resources are available to the FASD offender. Moreover, it would provide the opportunity to educate other professionals working with the offenders about their individual challenges.

One last basic theme as identified in Table 4.10 is related to broader systemic issues involving the challenges of cross-agency information sharing, the lack of communication and collaboration between agencies and the barriers these practices created in the possible identification of an FASD offender. These are identified as systemic issues as they extend beyond the criminal justice system.
When an offender becomes involved in the adult system, accessing any previous young offender, family services or educational records, including any psychological or any other assessments that may have been completed, can be time consuming and difficult to obtain. Confidentiality and privacy rules often impede access to such records. Moreover, determining whether or not there is even historical information to access is often difficult. Moreover, freedom to share information is restricted by individual agency protocols/policies as well as provincial and federal legislation. However, the importance of sharing information relevant to an offender’s FASD cannot be understated:

We don’t have really good transitions built in and out of one system and into another (Research participant A6, 2010).

I’d be surprised if there are not significantly more sources of information out there that we simply aren’t able to tap into. There are common themes about getting the different systems to share information and work together (Research participant A8, 2010).

While maintaining privacy concerns, information sharing protocols need to adapt an integrated approach to allow a more comprehensive screening, diagnostic, assessment and service delivery for FASD offenders. This would benefit the agencies working with FASD offenders as well as the offender. With an array of public mandates, funding structures and professional practices, there are numerous opportunities for innovative and creative interventions for these individuals to be developed.

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integration/integrated services</td>
<td>Integration/integrated Services</td>
<td></td>
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<tr>
<td>Information sharing</td>
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<tr>
<td>Paradigm Shift</td>
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</tbody>
</table>

TABLE 4.10 – Basic Theme by Participant and Sub-Group: Systemic Issues (continued)
4.2.3.2 Criminal Justice System

Not every individual with FASD will become involved with the criminal or youth justice systems, but it is those individuals with FASD who have been failed by social systems in childhood who are most likely to become involved with the criminal justice system as adults (Conry & Fast, 2000). Moreover, because of the cognitive deficits associated with FASD, offenders with FASD will likely continue to be involved in the justice system throughout their lifetime and more often than not, as a result of system generated offences. These are not new criminal offences but are a result of a violation of an existing order. They will also experience barriers to program participation throughout the justice system. Table 4.11 illustrates the similarity of responses from both sub-groups when discussing FASD offenders and the criminal justice system.

TABLE 4.11 – Basic Theme by Participant and Sub-Group: Systemic-CJS

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges</td>
<td>Conditions</td>
<td>Conditions</td>
</tr>
<tr>
<td>Conditions</td>
<td>Discretion</td>
<td>Incarcerated</td>
</tr>
<tr>
<td>Discretion</td>
<td>Frustration</td>
<td>Judges</td>
</tr>
<tr>
<td>Frustration</td>
<td>Incarcerated</td>
<td>Lawyers</td>
</tr>
<tr>
<td>Incarcerated</td>
<td>Jurisprudence</td>
<td>Legal System</td>
</tr>
<tr>
<td>Jurisprudence</td>
<td>Legal System</td>
<td>Police</td>
</tr>
<tr>
<td>Legal System</td>
<td>Sentencing</td>
<td>Prosecution</td>
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<tr>
<td>Sentencing</td>
<td>Supervision</td>
<td>Sentencing</td>
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<tr>
<td>Supervision</td>
<td>Training</td>
<td>Supervision</td>
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<tr>
<td>Training</td>
<td></td>
<td>Training</td>
</tr>
<tr>
<td></td>
<td></td>
<td>System Generated Offences</td>
</tr>
</tbody>
</table>

Participants perceived that the criminal justice system is not responsive to the needs of FASD offenders. Members of sub-group A expressed more frustration with the system than the front-line probation officers. One participant observed significant inconsistencies in the criminal justice system not being prepared to respond to the needs of individuals with FASD:
It’s a really bad situation when the appeal was lost, I was appalled because the prevalence of FASD, the need for authority, the need for recognition that’s what really blew my mind and I really didn’t think it would proceed and then it did and they failed to interpret the rationalization of the court….it’s very disheartening. We’re warehousing FASD offenders (Research participant A11, 2010).

Within Canadian case law, FASD has been considered as both a mitigating circumstance in some instances and an aggravating factor in others (Roach & Bailey, 2009).

As one research participant noted, “The primary problem for the criminal justice system is: Where do offenders with FASD fit in terms of criminal legal responsibility” (Research participant A1, 2010)? The answer is ambiguous since the criminal justice system is premised on assumptions that people act in a voluntary manner determined by free will; that they make informed and voluntary choices both with respect to the exercise of their rights and the decision to commit crimes. It is also assumed that mental disorders can be treated so that an offender will eventually either be found fit to stand trial or to present no substantial dangers to the public and therefore be safely released into the community. This is contrary to the reality of the permanent brain damage in offenders with FASD. Given the stringent criteria associated with defences of Not Criminally Responsible on Account of Mental Disorder (NCRMD which was derived from the M’Naughton Rule) or Unfit to Stand Trial (UST), most offenders with FASD would not meet these thresholds. Even if an offender is found “fit,” his or her clinical reality may be closer to being “unfit” in terms of their ability to know when situations or actions are wrong. Two participants offered illustrations of the fitness issue:

It goes to the cognitive ability or disability. Usually the courts try to have sentencing meet the requirements of deterrence to prevent someone from doing the same thing again that just does not work the same way with individuals with FASD as a common characteristic. Commonly FASD people cannot link ‘cause and effect’ (Research participant A2, 2010).
The system is not geared... the whole hearing process, everything about it is not set up for the cognitively impaired. It was set up to deal with offenders who one day might be well enough to stand trial and I just don’t know why government can’t see that. I mean the ‘black and white’ system and the whole mental health, criminal responsibility, fitness, all that very ‘black and white’ wasn’t set up for FASD. I think the system needs to be entirely different if you’re dealing with somebody who’s permanently cognitive impaired vs. somebody whose mental health has potential for change (Research participant A11, 2010).

Professionals within the system cannot assume in any way that FASD offenders will fit into the same parameters as an individual with the ability to exercise informed free will and the determination to: (1) understand the system in which they are involved and (2) comply with anything that is initiated in that system.

Justice isn’t available for individuals with FASD because they’re deficit, they are unable to instruct counsel, or unable to understand the legal proceedings, they are easily influenced and so they can be led by police when they are making a statement and everything is that much more difficult for them to navigate the system (Research participant A4, 2010).

Participants were concerned because the criminal justice system has not consistently responded to this disability. Three of the main arguments advanced by the participants are: (1) it is difficult to identify; (2) there is a lack of awareness and understanding of FASD among justice professionals; and (3) financial costs. The challenge of identifying FASD offenders within the justice system affects all aspects of the correctional process. These challenges include: (1) that FASD is an “invisible disability”; (2) the short-time frame that offenders spend with criminal justice professionals at the provincial and territorial levels; and (3) it is difficult to order or conduct an FASD diagnostic assessment.

As reported by respondents, there are often no apparent physical characteristics that ‘flag’ the potential for FASD.
I believe the majority of individuals who end up in the correctional system are people who are affected by some form of FASD that doesn’t have any physical characteristics; you can’t look at them and know they have anything wrong (Research participant A4, 2010).

Individuals with FASD may appear “normal” and often have good verbal communications skills. Furthermore, participants noted that behaviours associated with FASD are also common among offenders that do not have FASD. FASD offenders may also have substance abuse and mental health problems including; anti-social personality disorders, conduct disorders, or attention deficit disorders that may misdirect a diagnosis of FASD. What occurs is a misinterpretation of behaviours exhibited by FASD offenders. Behavioural characteristics associated with FASD are seen by justice professionals as disobedience, non-compliance or aggressiveness. The involvement of police, defence counsel, Crown prosecutor, judges, or corrections workers with FASD offenders is limited. It often takes more than one professional to ensure FASD offenders have a full understanding of what is being said to them and what is happening during the justice process.

Even if the Court recognizes the probability of FASD, the Court’s ability to order an FASD diagnosis is limited. Assessments that can be ordered to evaluate fitness to stand trial and criminal responsibility issues under Section XX.1 of the Criminal Code cannot be ordered for sentencing purposes. If the probability for a FASD diagnosis is not raised by the Crown or defence attorneys the Court often does not see it as relevant. According to one respondent “If it’s not raised by Crown or defence, again largely defence, not only do people not know (FASD), but what they do is they interpret the behaviour in the wrong ways” (Research participant A6, 2010). However, with
appropriate awareness, judges do have the opportunity at sentencing to address the unique needs of the FASD offender.

There is a considerable lack of knowledge of FASD among criminal justice professionals across Canada. FASD cannot be addressed if people do not know how to recognize it or how to work with an FASD offender. This raises the issue of education of FASD among criminal justice professionals. Participants overwhelmingly voiced the lack of awareness and understanding by justice professionals. These individuals may have a cursory understanding of it, but comprehending what FASD means in terms of cognitive and behavioural ability to meet the expectations of the criminal justice system, is lacking. This concern was explained by one participant:

A lot of people have very incomplete information, you know. Something they heard at some point. FASD really has only got on the judicial radar in the last few years and so the level of understanding is very ‘hit and miss’. So there are some judges who really, really get it and other judges who don’t understand it at all. But also and as significantly and perhaps more significantly, many defence counsel don’t understand it either. So one of the big problems is that regardless of a judge’s level of understanding, the defence counsel don’t understand it that well. It often doesn’t get raised with the Court at all. The Crown’s level isn’t that great either (Research participant A6, 2010).

Justice professionals need to be aware and trained to understand the disability and how FASD impacts an offender’s ability to fully participate in the criminal justice system.

Some professionals have taken the initiative to address their lack of knowledge of FASD. At the Canadian Bar Association’s annual meeting in August, 2010, Resolution 10-02-A was put forth which proposes: (1) government allocation of funding for additional resources to alleviate the current practice of criminalizing FASD individuals; (2) policy development to prevent over-representation of FASD offenders within the criminal
justice system; and, (3) amendments to criminal sentencing laws to accommodate the
disability of FASD (Canadian Bar Association, 2010).

Knowledge of the spectrum disorder changes the ways in which we intervene and
our expectations for FASD offenders to change. According to one participant:

Somewhere you have to have people that start talking about it and then that starts
to educate the people around them as well. But if you don’t have anybody doing
that and its business as usual, then it simply doesn’t, it’s an issue that’s not
discussed. It’s very often referred to as an invisible disability and you know,
unless you’re got somebody pushing to ask some questions, it stays invisible
(Research participant A8, 2010).

4.2.3.3 Racism and Prejudices

As discussed previously, there is a disproportionate amount of offenders of
Aboriginal ancestry within the Canadian criminal justice system. In Saskatchewan alone
there were 1,731 adults in custody facilities and 8,256 adults serving a community
disposition order in 2009; 72% were of Aboriginal ancestry (Unpublished data).

<table>
<thead>
<tr>
<th>TABLE 4.12 – Basic Theme by Participant and Sub-Group: Racism and Prejudices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sub-group A</strong>&lt;br&gt;Specific CJ Professionals (n=11)</td>
</tr>
<tr>
<td>Aboriginal(s)</td>
</tr>
<tr>
<td>Gender Issues</td>
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<tr>
<td>Gender Roles</td>
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</tbody>
</table>

With FASD 35 times more prevalent in the Aboriginal population (Health
Canada, 2007), it is not surprising to find participants raising Aboriginal issues, as shown
in Table 4.12 while discussing FASD offenders. According to one participant:

I think it is huge. I work with a lot of aboriginal people… I think the extent of
FASD and other cognitive disorders among those who are charged and convicted
with criminal offences is huge…it’s enormous (Research participant A2, 2010).

Participants from both subgroups revealed some knowledge and experience working with
FASD offenders and the relevance of those experiences to Aboriginal peoples. This
included both personal and intergenerational experiences of Aboriginal peoples such as abuse at residential schools, depressed economic conditions on reserves, urban unemployment, and the development of chronic familial and inter-generational drug and alcohol abuse. As discussed in Chapter 2, these historical accounts of racism help to explain why many FASD offenders are Aboriginal. Participants commented about the lack of services to FASD offenders in communities throughout Canada and particularly Northern Saskatchewan, other rural jurisdictions and on First Nations. This was most relevant for members of subgroup B. The comments of two members of that subgroup were typical: “Some of our more remote northern communities where alcohol just kind of sets in and almost takes over the whole community and people aren’t educated.” (Research participant B3, 2010), and “It’s really sad, a lot of the reserves around here, it’s (FASD) almost all of our client base… reserves” (Research participant B7, 2010).

Participants in subgroup A identified issues relating to the lack of services and support for women. Screening instruments presently being piloted are used exclusively on men. There are questions as to whether or not these screening instruments would be valid with women: “What are some of the behavioural characteristics that are different between men and women who have FASD? There really is no research out there that talks about that” (Research participant A4, 2010). Moreover, gender issues around the societal perception of a ‘good’ mother and the admission of alcohol use during pregnancy stigmatizes women who have had an FASD child: “it’s the admission of maternal drinking…for mother to make that admission is devastating” (Research participant A8, 2010) and;

There is so much shame…shame is huge and that’s how the problems are when we first started thinking of course, there is maternal drinking…but you accept the
word of the mom no matter what other evidence is out there. When mom gets the first child identified, she never admits to other ones and I believe, that causes a lot of problems for her, with the family as well (Research participant A11, 2010).

4.2.3.3 Attitudes and Perceptions

TABLE 4.13 – Basic Theme by Participant and Sub-Group: Attitudes and Perceptions

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apathy</td>
<td>Apathy</td>
<td>Apathy</td>
</tr>
<tr>
<td>Community</td>
<td>Community</td>
<td>Community</td>
</tr>
<tr>
<td>Criminal</td>
<td></td>
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</tr>
<tr>
<td>Interpretation</td>
<td></td>
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<tr>
<td>Moral Obligation</td>
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<tr>
<td>Reframing</td>
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<tr>
<td>Relationship</td>
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<tr>
<td>Resistance</td>
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<tr>
<td>Social Mores</td>
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<tr>
<td>Social Responsibility</td>
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<tr>
<td>Traditional</td>
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</table>

Table 4.13 illustrates an interesting phenomenon demonstrated by each of the sub-groups, specifically the level of understanding of the more intrinsic issues related to FASD. It is often misconstrued that FASD offenders are violent criminals who present a serious risk to public safety (Moore & Green, 2004). It is important to note that as a result of their brain damage FASD offenders are, in fact, often victims. They are the offenders who are left dealing with the consequences of impaired capacity to understand their charges and often finding themselves with charges that are system generated, (e.g., fail to appear, fail to report). Participants were vocal about what they perceived as a social obligation and responsibility to respond as a community to develop and sustain appropriate supports for FASD offenders. Furthermore, given that FASD is a socially-created disability (Armstrong, 2003; Golden, 2005), there should be an acknowledgement of the moral accountability and obligation on the part of society to develop, provide, and
sustain services to meet FASD offender needs. Lack of acknowledgement was echoed by
two participants:

> I think it is the only right thing to do...I feel like we have a moral obligation
> because they can’t advocate on their own behalf. There’s no cure for MS but you
> have to accommodate people in the community living with it (Research
> participant A3, 2010).

> What we need to do now obviously is see it as a disability that needs to be
> accommodated...not comparing themselves as to what they can’t do rather seeing
> them as what they can do and do well (Research participant A9, 2010).

> While lamenting the lack of resources within communities, participants identified
> the underlying precipitating factors relevant to the lack of resources. These factors
> included: ignorance of FASD by the community, the criminal justice system and human
> services agencies, political agendas that did not support marginalized subgroups,
> community apathy and a lack of advocacy by those who understand the problem. This
> results in a lack of funding to create and sustain programs needed to address the needs of
> those with FASD. Indeed, according to one participant,

> Poverty, lack of education and damaged brains...there. That’s 80% of what we are
> dealing with. There are some people that are doing some things but the system is
> just not invested in the supports (Research participant A1, 2010).

> One Canadian study conducted in 2008 found that the annual costs associated
> with FASD, were $5.3 billion (Bedard, Johnston & Smutylo, 2009). It is important to
> note that these reported costs did not include the children living in institutions or
> individuals who were homeless or under judicial supervision. Indeed, if these costs were
> included, then, the final figure would be much greater. Many participants spoke of the
> cost of FASD, both from a societal perspective as well as a financial one:

> I think what it all comes down to is again, it (FASD) is so invisible, but the other
> thing is the cost needed to really put in place what’s needed is huge. You also
> have to factor in what the alternative is because if you don’t then you have to
think of what the cost is to the rest of society at large. I mean there is a huge cost to offending behaviour in terms of the victimization, you know? And we see a lot of offenders who started out as victims, so there is sort of a cycle to what we see in the criminal courts and if you don’t break that cycle at some stage, it just simply perpetuates itself, and that has a cost as well (Research participant A8, 2010).

As more than one participant pointed out, we are paying for the costs incurred by offenders with FASD one way or another.

4.2.3.4 Demographics and disparities

As an emergent basic theme, these topics of responses became apparent among both subgroups in discussing difficulties in providing services to FASD offenders.

**TABLE 4.14 – Basic Theme by Participant and Sub-Group: Demographics and Disparity**

<table>
<thead>
<tr>
<th>Sub-group A Specific CJ Professionals (n=11)</th>
<th>Sub-Group B Specific Saskatchewan Probation Officers (n=9)</th>
<th>Common Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demographics</td>
<td>Demographics</td>
<td>Demographics</td>
</tr>
<tr>
<td>Jurisdiction(s)</td>
<td>Populations</td>
<td>Populations</td>
</tr>
<tr>
<td>Regional Variations</td>
<td>Regional Variations</td>
<td>Regional Variations</td>
</tr>
</tbody>
</table>

Table 4.14 identifies one theme that emerged as a consequence of the regional differences of the research participants in subgroup A, as they hailed from seven different provinces and one territory. They were also employed, or actively involved, in every component of the criminal justice system and had connections to other professionals within that system throughout the country. As a result, the researcher was able to note considerable inter-provincial/inter-territorial variations in: (1) understanding of FASD and accompanying funding and resources and (2) dealing with FASD offenders and as a consequence increased activity in recognizing and identifying FASD.

A number of creative interventions have been implemented based on the FASD prevalence in different provinces/territories. Wellness courts have been introduced in Ontario and the Yukon Territory to meet FASD offender needs. These courts were
created in recognition of FASD offenders and the complexity of their disabilities and needs. Gladue courts have been implemented in Ontario to meet the growing numbers of Aboriginal offenders, many of whom suffer from FASD:

We have what we call Gladue courts in Toronto where we do some fairly extensive work with Aboriginal people before the Court. We've had a lot of experience working with people with FASD before the Courts (Research participant A6, 2010).

As a consequence, increasing numbers of FASD offenders are identified, assessed and provided access to services within the community. British Columbia and Nova Scotia have developed and introduced screening tools to identify FASD offenders, in community corrections and provincial institutions. As a result, offenders who have a positive FASD assessment have more opportunities to access community supports and resources.

The identification of FASD offenders among provincial correctional populations was reported by participants as the result of a growing recognition within corrections of the increasing numbers of FASD offenders. Further work is also being done to identify the prevalence of FASD within the federal correctional system by the development of a screening tool to be used upon intake. One participant shared:

We asked everyone who came into the institution for an 18-month period to participate and then everyone who did participate underwent a full FASD diagnostic assessment. So regardless of whether or not they were suspected or anything like that, they all went through the full assessment (Research participant A4, 2010).

Unfortunately this speaks to the lack of historical and current identification of FASD offenders. Arguably, this trend is as a result of three conditions: (1) the increase in numbers of Canadian correctional populations (both within the institutions and the community), particularly those of Aboriginal descent; (2) an overtaxed correctional
system; and (3) the financial costs to sustain the increasing number of offenders serving orders.

4.3 Relevance of organizing themes to the global theme

The three organizing themes of (1) key factors required for service delivery to FASD offenders; (2) STICS; and (3) systemic and structural challenges were examined during the thematic analysis of the data. Each organizing theme was supported by the basic themes which offered explanation and insight into the experiences presented by each of the research participants. These basic and organizing themes were explored in detail by analyzing the content of transcribed interviews of the research participants and by reflecting on the meaning and understanding of those words in relation to the overarching global theme of services to FASD offenders in Saskatchewan community corrections. The significance of the global theme is directly linked to the primary research question.

The organizing theme of “key factors” is the outgrowth of the interplay of the basic themes: FASD offender profile, CPSP practices, strategies, improving and creating services, and services in the community. Each of these basic themes contributes to the organizing theme by providing elements of knowledge needed to provide successful services to FASD offenders. They also illustrated challenges that are recognized as impacting the ability to providing those reported services.

In terms of the first organizing theme, fundamental knowledge of FASD characteristics and the resulting behaviours that this condition elicits in FASD offenders (as characterized by participants) was supported as a basic theme of FASD factors required for service delivery to FASD offenders. One participant pointed out that “not
only do people not know (FASD), but what they do is they interpret the behaviour in the wrong ways” (Research Participant A6, 2010).

The analysis of data transcripts from Subgroup B revealed that CPSP practices also became relevant in this regard. The perceived disconnection between expectations of community corrections supervision policies and the ability of FASD offenders to meet those policies were also perceived as relevant. According to this organizing theme, not only were services in the community essential but so, too, were the inclusion strategies for determining and providing effective services to FASD offenders. This included both improving existing and developing new services for FASD offenders. One participant suggested that “I really think that it (FASD) does require us rethinking the way that we sort of isolate our service delivery…I think that we really need to rethink that a little bit” (Research Participant A5, 2010). In this context, FASD was conceived as something that directly affected the behaviours of offenders and their ability to meet the conditions of their community supervision orders.

This organizing theme is associated with the global theme of implementing services to FASD offenders in Saskatchewan community corrections by: (1) illustrating the required knowledge of FASD offender characteristics; (2) discussing the relevancy of understanding of CPSP polices and the potential of those policies meeting FASD offender needs; (3) demonstrating the potential for strategies that have been proven successful working with FASD offenders; 4) describing the strengths and limitations of services that are presently available to FASD offenders within the community, and 5) critiquing those services with the intent to create more effective interventions that would reduce the recidivism of FASD offenders within the community.
In the second organizing theme, the STICS project was discussed by the Subgroup B as a project that had value when working with FASD offenders – a discussion that elicited detailed descriptions of the STICS practices as well as the strengths and limitations of that approach. According to the data, this project provided structure to time spent with FASD offenders as well as opportunity to develop relationship with the FASD offender.

Questions concerning the STICS project, which incorporates the completion of actuarial risk assessments, typically elicited comments around the challenges presented by FASD offenders and their potential to score low on such risk assessments given their many secondary disabilities. In this organizing theme, the cognitive challenges presented by FASD offenders were conceptualized as not being conducive to the STICS model of behavioural modification given that it is based in cognitive behavioural restructuring. As one participant responded “responsivity would be huge because of the cognitive limitations of FASD offenders” (Research Participant B9, 2010). A detailed discussion of the idealized features that should be proposed for the implementation of the STICS program typically concluded the participant’s response to this and related questions. As reported by one participant “there is flexibility within the model and you need to use it… your going to need a low (caseload) number” (Research Participant B4, 2010).

This second organizing theme related to the global theme of services to FASD offenders in Saskatchewan community corrections by providing an overview of the STICS project. It illustrated the positive aspects and challenges, and provided an avenue to explore the potential of reconciliation between this proposed service delivery method
within community corrections with what is known to be successful with FASD offenders given FASD needs.

The third and final, organizing theme of systemic and structural challenges also emerged from the analysis of the participant interviews. In order that an effective service delivery program be developed and delivered within community corrections, external systemic challenges were perceived as needing to be addressed. The conceptualization of a successful community corrections delivery model to FASD offenders was seen as directly impacted by systemic issues within the criminal justice system as well as the external systems that provide services to FASD offenders within the community. As one participant responded “it would just need to be a different approach to things because of their mental capacity…one of the only real ways to make a big change in it (the system)” (Research participant B4, 2010).

The need for FASD identification and assessment were viewed as the most essential factor in providing services to FASD offenders. Without a positive identification, services provided to FASD offenders were seen as ‘hit and miss’ in meeting their needs. As one participant stated, “By the time they hit adulthood there are so many other confounding factors that challenges our diagnostic abilities that might also contribute to incarceration” (Research Participant A6, 2010).

As reported previously, issues of racism and prejudice, attitudes and perceptions, and demographics and disparities emerged from the analyses. These basic themes became a necessary part of this organizing theme by illustrating critical aspects of understanding our Canadian society and acknowledging how those values shape our social systems. In order to address the global theme of services to FASD offenders in community
corrections in Saskatchewan, a recognition and understanding of these basic themes, which comprise the organizing theme of systemic and structural challenges, is necessary.

Systemic and structural challenges were an unexpected theme that emerged from the analyses of the data. However, given that the global theme of services to FASD offenders is presented within the context of a system (e.g., corrections and the criminal justice system), it is relevant. This organizing theme contributes to our knowledge of what is required to provide a comprehensive and successful service delivery to FASD offenders within Saskatchewan community corrections.

As described above, each of the organizing themes contribute to the global theme of providing services to FASD offenders within Saskatchewan Community Corrections. Moreover, the links between the organizing and global themes were elaborated upon and given meaning by text segments in the data. A core understanding of FASD was central in the conceptualization of service delivery to FASD offenders. This assumes the premise that if the characteristics of FASD are understood, individualized services to FASD offenders would be forthcoming. However, the impact of other systems outside of community corrections was also acknowledged.

The results presented throughout this chapter, utilized a descriptive format as opposed to a theory-building framework, since the methodology was exploratory in nature versus results derived from other methodologies where the goal is to produce new theories. The basic and organizing themes were extracted and coded during the analysis and in relation to the research objectives. Quotes from the transcripts were selected to illustrate the viewpoints, experiences, and knowledge expressed by the participants.
Selected quotes that offered alternative opinions to the majority were also included to offer a more balanced, developed and textual view of themes that emerged.

Issues raised in the transcripts that were not consistent with the research questions were disregarded (e.g., personal dialogue not related to the research). However, numerous basic and organizing themes emerged unexpectedly from comments made by some respondents. Among these themes were racism and prejudice, attitudes and perceptions, demographic factors and disparities, systemic issues including identification and assessments issues and criminal justice system challenges.
CHAPTER 5 - SUMMARY AND CONCLUSIONS

5.1 Summary

This thesis illustrated the challenges that FASD offenders encounter within the criminal justice system. It also provided an analysis of the current policy and practice of service delivery to FASD offenders serving a community order supervised by Saskatchewan Community Corrections.

The first chapter of this thesis provided the historical context of the ‘discovery’ of FASD and set the foundation for the research of this thesis. This was accomplished in three steps. The first step described the primary and secondary disabilities as a result of FASD, and the challenges presented by FASD offenders within the criminal justice system were highlighted. Second, the primary and secondary research questions of this thesis were presented. Finally, the operational definitions of terms and concepts used throughout this thesis were provided.

Chapter Two reviewed the extant literature on FASD as it relates to the criminal justice system. The prevalence of FASD in the criminal justice system was estimated, and the resulting practice issues and concerns that have arisen as a result of service delivery and practices to FASD offenders were identified. Special attention was placed on the impact of these offenders on community corrections in Saskatchewan. An examination of issues associated with disproportionate power relations precipitated a focused evaluation of policy and practice within community corrections. The chapter also examined the concepts of a ‘risk’ society, intervention strategies for FASD offenders, including ‘what works’ when providing services for a general population of offenders. The latter addressed public safety and risk management strategies. Practices that work with FASD
offenders were examined to provide a foundation for the analyses employed in this research. A preliminary understanding of effective intervention strategies with FASD offenders informed the data analysis presented in Chapter Four.

Chapter Three described the methodology used in this study. This researcher employed the case study method to examine perceptions of the STICS project that was piloted in Saskatchewan Community Corrections during 2007 and 2008. This qualitative examination utilized the case study methodology incorporating interviews with two subgroups of participants with a cross reference review of CPSP Ministry documents (STICS program manual, risk assessment and case management policies). Particular attention was paid to the relevance of this method of service delivery for FASD offenders. Special attention was placed on better understanding the policy, practices and challenges in providing service delivery to offenders with FASD characteristics supervised in the community.

Chapter Four presented the research findings through the lens provided by a thematic network analysis. The data was systematically grouped into clearly defined “clusters of themes” (Attride-Stirling, 2001, p.402). These basic themes provide understanding when read within the context of other basic themes grouped into a middle theme or organizing themes. The basic themes that became apparent from the data were grouped into three organizing themes directly derived from the primary and secondary research questions. The basic themes of knowledge of the FASD offender profile, CPSP practices, services in the community, strategies and improving and creating services were directly related to four of the secondary research questions in Chapter One creating an
organizing theme that illustrated key factors required for service delivery to FASD offenders as reported by research participants.

The second organizing theme was created based upon the participant’s responses regarding the STICS project, the STICS Project training manual, and the researcher’s participation in the STICS training workshop. The basic themes of risk assessment, structure, cognitive behavioural theory and relationship building were key basic themes derived from the data. These basic themes became an organizing theme from the remaining three secondary questions posed in this thesis. These questions (see Chapter One) directly corresponded to inquiry as to the ability of the STICS project to meet the needs of an FASD offender.

A third organizing theme became emerged from the data that did not have direct relevance to the other two organizing themes. Systemic and structural challenges became a third organizing theme. The basic themes that comprised these challenges included: systemic issues that included identification and assessment as well as specific issues with the treatment of FASD offenders in the criminal justice system, racism and prejudices, attitudes and perceptions, and finally demographic and disparities. These basic themes were repetitive throughout the data and as a consequence, became a third organizing theme.

An organizing theme’s role is to enhance the meaning and significance of the basic themes. Simultaneously, an organizing theme provides a dissection of the main assumptions underlying a super-ordinate theme or the global theme (Attride-Stirling, 2001). A global theme encompasses the principal metaphors in the data as a whole and provides an argument or position about a given issue or reality. The global theme of this
research, services to FASD offenders in Saskatchewan Community Corrections, was examined by the primary research question posed in this thesis: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? The basic themes and organizing themes provided supporting data to answer this question. The resulting answer was multi-faceted and comprehensive that is discussed further in this chapter.

The strengths of this study began with the fact that information and data came from actual practitioners in the field who work with offenders with FASD, the various agencies and government ministries, and the challenges and/or disconnects of the social and criminal justice systems. Due to the confidential nature of the study and the anonymizing of responses wherever possible, participants spoke freely and openly about their experiences and perceptions. Thematic network analysis provided an interpretative tool to better understand the experiences of practitioners within the criminal justice system in regard to working with FASD offenders; in a manner in which typical case study analysis would not. This study has the potential to provide managers and program designers with insight to which they would normally not have access due to their positions.

The primary limitation of the study was not a design feature but a limitation in the data. It was found that probation officers with extensive experience (more than 5 years) had quite different perceptions of FASD and FASD services than those with less years of experience. Most notably, these more experienced probation officers appeared jaded and were less enthusiastic about services that could be provided and change that would be
affected. This might be addressed in a future study by dividing probation officers into cohorts with more or less than five years of experience and to examine variations within both groups.

5.2 Conclusions

FASD offenders are a significant problem encountered by law enforcement, the courts, and corrections: both community and institutional operations. Given the lack of empirical research, the exact parameters of the impact of FASD offenders on the system are unknown. However, this thesis illustrated that FASD offenders and the challenges that they pose are worthy of further research to determine its impact upon the system, the efficacy of different intervention programs, the need for staff training, as well as the need for better assessment or diagnostic tools and funding for programs that respond to the unmet needs of these offenders particularly within the community.

This thesis began with a quote from Henry David Thoreau (1951) that directed the observer to look beyond what is initially presented by the person seated in front of them. FASD offenders challenge the operations of the criminal justice system because they often appear to be something they are not (i.e., a rational offender capable of understanding his or her situation). As discussed in Chapter Two, this creates challenges for the offender and their families as well as the operations of justice systems, as evidenced by the analyses of the respondent’s interviews.

In response to the primary research question: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? It would require a mechanism for providing probation officers with better knowledge of
FASD, the needs that accompany it, additional resources to then meet those needs and a way to properly identify offenders with FASD. Community corrections workers reported having experienced many challenges in attempting to meet the multi-dimensional needs of FASD offenders. Foremost was the lack of knowledge to meet the needs of these offenders. This was followed closely by the lack of community and justice system resources that would address those multifaceted needs.

As illustrated by the basic themes of the “invisibility” aspect of FASD and the resulting identification of FASD offenders were reported to be the primary barriers to providing appropriate service needs. To meet the RNR principles, there are a number of goals that FASD research should address, including: (1) an estimate of the prevalence of FASD within the community, as well as offenders in institutional and community corrections; (2) informing criminal justice professionals of the challenges posed by FASD offenders; (3) identification of the need for alternative service delivery methods; and (4) access to whatever community resources were available, and have been shown by empirical research to be effective.

The STICS project piloted in Saskatchewan Community Corrections has generated some positive preliminary results (Bonta, et al., 2010). The pilot program that incorporated the same RNR principles which are applied to offenders in general, successfully reduced recidivism (Bonta, et al., 2010). However, while some of the respondents in this study identified a number of positive aspects of the STICS project, there were also some challenges identified with this service delivery model when attempted with FASD offenders. Probation officers, for example, were provided with training that enabled them to enhance their skills, but there was a reported lack of
resources that compromised their ability to deliver services. In line with Latessa’s (2010) research, this thesis found that when probation officers’ abilities to undertake their job are compromised by a lack of resources there is a reported reduction in the integrity of the program. In terms of reducing recidivism and enhancing public safety, studies have shown that there is a strong relationship between program integrity and recidivism; the higher the integrity of the program, the lower the recidivism risk (Andrews & Bonta, 2010; Latessa, 2010). In response to the primary research question: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? In order to further reduce recidivism while utilizing the STICS service delivery model, increased resources that would result in decreased caseloads would enable the probation officers to better manage these offenders. Schlager (2009) has suggested that community corrections administrators have found that actuarial risk assessments provide a mechanism by which community corrections can more efficiently and effectively manage offender populations, allowing them to operate more efficiently and effectively, and this would appear to have relevance in regard to the management of FASD offenders in the community as reported by the basic theme founded in CPSP practices.

The second primary challenge identified by the interpretation of the data in regard to the global theme of the STICS project was the use of cognitive behavioural techniques with FASD offenders. Given the cognitive brain damage associated with FASD effects, these offenders can be very limited in their ability to engage in abstract thought. Foremost of these limitations is a lack of understanding of the cause-effect premise and
the cognitive restructuring that the STICS model requires. Depending on the extent of the damage experienced as a result of FASD, the engagement and understanding of these individuals can be severely compromised. Moreover, the STICS program mandates a time commitment and level of engagement with FASD offenders that is not always possible due to the increasing caseload responsibilities (i.e. caseload management requirements and reporting policies) expected of probation officers in Saskatchewan that were not previously required. One of the reasons why this occurs is that the management of FASD offenders is largely absent in the protocols established by the STICS project.

In response to the primary research question: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? It would include establishing protocols within the STICS project for managing FASD offenders.

Of more significance is the lack of awareness of the scope of FASD within the criminal justice system, particularly within community corrections, and the uniqueness of the challenges the disorder presents to the implementation of risk assessment and the implications that has for case management. It is therefore essential that professionals in the criminal justice system become more aware of FASD, the symptoms presented by FASD offenders and, most importantly, the resulting effects of FASD on an offender’s ability to meet supervision expectations as reported by the research participants. In response to the primary research question: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? Organizations tend to modify interventions to fit their operational capacities, but what needs to occur is
the creation of a sustainable strategic response to FASD through the integration of evidence based, and service delivery practices that are specifically oriented for FASD offenders. This is definitely an area for more inquiry given the limited research literature available on this subject.

The issue of the proper diagnosis of FASD is also contentious given the high costs of these assessments as illustrated by the resulting basic theme of systemic issues. Human service agencies need to develop a collaborative approach and acknowledge the challenge that FASD presents to their respective systems. A multi-agency diagnostic team has been implemented in northern Alberta, for example, to properly assess FASD in rural and remote communities (McFarlane, 2011). As Streissguth (2009, np) has pointed out “diagnosis provides visibility and visibility prompts solutions.” Diagnosed or not, the challenges of providing community corrections services to FASD offenders, and the specialized resources needed to support and manage their multi-level needs is an overwhelming task that relatively few community services are able to successfully deliver. In response to the primary research question: What would the components of a service delivery program include in order to most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections? More resources within the community to meet the needs of FASD offenders and accessibility to assessment and proper diagnosis of FASD are needed.

FASD is an incurable life-long brain disorder that increases the likelihood of an individual’s involvement with the criminal justice system. This is demonstrated by the preliminary research illustrating the growing number of offenders with FASD in community and correctional populations (Burd, et.al, 2003; Chartrand & Forbes-Chilibec,
2003; MacPherson & Chudley, 2007; Roach & Bailey, 2009). As the preliminary studies on FASD and the criminal justice system have shown (as discussed in Chapter Two) both institutional and community corrections are a revolving door for these offenders and without interventions that are based on empirical research, this situation will continue to be so.

5.3 Implications for Further Research

The criminal justice system is ill-prepared to deal with the challenges that FASD offenders present. Arguably, the system perpetuates a cycle of involvement in crime, sanctions imposed by the system, and the inability of these offenders to learn from their experiences. Common law justice systems such as Canada’s are founded on the notion of a rational, free-willed individual choosing healthy alternatives, but FASD offenders are not fully capable of making those judgments.

The research questions for this thesis were grounded in the need to determine whether program and service delivery to FASD offenders in Saskatchewan Community Corrections was appropriate. As such, the examination of the STICS project provided a context for this research. However, it is clear that further research in this area is warranted to: (1) determine the prevalence of FASD within the community as well as the criminal justice system, and more specifically within institutional and community corrections; (2) define the needs of FASD offenders while under the supervision of community corrections, and after their warrants expire; and (3) determine whether community corrections can meet those needs.

The logical next step for FASD research is to explore the advancement of community resources and to identify inter-organizational partners for this special needs
population. Unless the prevalence of FASD among both the general and correctional populations is recognized, government funding is unlikely to be forthcoming for the development of programs. Consequently, a ‘Catch-22’ situation exists where the resources to identify the seriousness of the problem and develop programming exist but in order to access such resources, initial resources are required.

5.4 Implications for Practice and Policy

There are a number of implications for policy development and suggestions for the improvement of operational practices that emerged from this research. These implications expand beyond the scope of community corrections. Both the causes of this disorder and conduct of FASD offenders prior to their entry into the justice system are not the responsibility of community corrections. Community corrections agencies are, however, required to manage the risk that FASD offenders pose once convicted and sentenced. In turn, these agencies must develop strategies to best utilize their resources to work with special needs populations, such as FASD offenders. For example, seeking out risk assessment tools that would take into consideration the cognitive challenges of FASD and supplementing resources including training with ‘hands on’ strategies for probation officers on working with offenders affected by FASD.

Due to the prevalence of FASD among correctional populations, a key first step is that further research into the improved identification of FASD offenders is conducted. This resulting knowledge would have substantial implications for practice and policy within corrections. As previously mentioned, the development of a standardized FASD screening instrument to assist in identifying characteristics associated with FASD needs to be undertaken and implemented. However, there will be significant financial costs
involved in identifying and diagnosing FASD offenders as well as the subsequent
development and administration of specialized programs to meet their needs. In order to
better inform legislators of the true costs to public safety, comprehensive cost benefit
analyses of FASD interventions should be undertaken. Agencies such as the Washington
State Institute of Public Policy have already conducted such analyses with special needs
offender populations, and their research has had a significant impact upon legislation in
that state.

Consideration also needs to be given to the treatment of FASD offenders once
they have been identified as having a disability. While under correctional supervision,
they are provided with specialized programming yet once their sentence is complete, that
support is typically discontinued and the offender is left on his or her own to find support
in the community. In the absence of formal government-sponsored programs, persons
with FASD whose warrants have expired have to rely upon supportive networks within
the community. Some ex-offenders lack these networks and are therefore at higher risk of
reoffending (Fast & Conry, 2004; Miller, 2005; Moore & Green, 2004; Roach & Bailey,
2009). If social factors associated with FASD such as poverty, addictions, homelessness,
and racism are not effectively addressed then Canadian taxpayers will pay a heavy cost
for the disconnected intervention systems that currently exist. There is also a substantial
human cost, not only for the FASD offender and their families but for the community in
terms of wasted social capital. Ideally, there needs to be acknowledgement of a collective
responsibility to address the needs of FASD offenders in order that the public safety
agenda of reduced recidivism is met by the justice system.
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**DVD/Videos:**


**Legislation:**


May 1, 2010

Bonny L. Gerger
39 Marigold Crescent
Moose Jaw, SK
S6J 1L2

Dear Ms. Gerger:

RE: THESIS RESEARCH - ‘Now You See Me, Now You Don’t’ – Service Delivery to Fetal Alcohol Spectrum Disorder (FASD) Offenders: A Study of Policy and Practice in Saskatchewan Community Corrections

This is to inform you are hereby approved and granted permission to conduct your master’s research within the Ministry of Corrections, Public Safety & Policing as discussed and documented in your research proposal.

Participation by employees of the Ministry is understood to be completely voluntary.

Carol Fiedelleck
Director, Community Corrections
Ministry of Corrections, Public Safety & Policing
306-787-3572
APPENDIX "B"

DATE: May 27, 2010

TO: Bonnie L. Gerger
38 Marigold Crescent
Moose Jaw, SK S6J 1L2

FROM: Dr. Bruce Plourde
Chair, Research Ethics Board

Re: Service Delivery to Fetal Alcohol Spectrum Disorder (FASD) Offenders: A Study of Policy in Saskatchewan Community Corrections (File # 8250910)

Please be advised that the University of Regina Research Ethics Board has reviewed your proposal and found it to be:

☑ 1. APPROVED AS SUBMITTED. Only applicants with this designation have ethical approval to proceed with their research as described in their applications. For research lasting more than one year (Section 1F), ETHICAL APPROVAL MUST BE RENEWED BY SUBMITTING A BRIEF STATUS REPORT EVERY TWELVE MONTHS. Approval will be revoked unless a satisfactory status report is received. Any substantive changes in methodology or instrumentation must be approved prior to their implementation.

☐ 2. ACCEPTABLE SUBJECT TO MINOR CHANGES AND PRECAUTIONS (SEE ATTACHED). Changes must be submitted to the REB and approved prior to beginning research. Please submit a supplementary memo addressing the concerns to the Chair of the REB. Do not submit a new application. Once changes are deemed acceptable, ethical approval will be granted.

☐ 3. ACCEPTABLE SUBJECT TO CHANGES AND PRECAUTIONS (SEE ATTACHED). Changes must be submitted to the REB and approved prior to beginning research. Please submit a supplementary memo addressing the concerns to the Chair of the REB. Do not submit a new application. Once changes are deemed acceptable, ethical approval will be granted.

☐ 4. UNACCEPTABLE AS SUBMITTED. The proposal requires substantial additions or redesign. Please contact the Chair of the REB for advice on how the project proposal might be revised.

Dr. Bruce Plourde

cc: Dr. Alan L. Patenaude – Justice Studies

*Supplementary memos should be forwarded to the Chair of the Research Ethics Board at the Office of Research Services (Research and Innovation Centre Room 109) or by email to research.ethics@uregina.ca

Phone: (306) 585-4776
Fax: (306) 585-4623
APPENDIX “C”  
Introductory Letter to Participants  

May 6, 2010  

Dear (participant):  


As a graduate student at the University of Regina, Master of Arts in Justice Studies Program, I am inviting you to participate in the final component of my thesis research. The purpose of this research is to seek semi-structured feedback from a broad variety of professionals involved in the criminal justice system with specific knowledge, experience and expertise in working with FASD offenders.  

In preparation for the interview, I have attached the following information with this letter:  

- Informed consent form. Please read through the form and if you are in agreement with the terms of consent please sign the form and return it to me by fax at (306) 694-3045.  
- Semi-structured interview guide. Please review this document as it will serve as the guide for the interview questions.  

Upon receipt of the signed consent form, I will contact you by telephone or email to arrange a suitable interview time and location or alternatively, an arranged telephone contact time. It is anticipated that the interview will take approximately 20 to 30 minutes. I can be reached at (306) 694-3506 or (306) 861-9290 should you have any questions or concerns. My faculty supervisor is Dr. Allan Patenaude, Associate Professor and Head, Department of Justice Studies, Faculty of Arts. He can be reached at (306) 585 4035 should you wish to contact him.  

Sincerely,  

Bonny Gerger  
Graduate Student  
Faculty of Justice Studies  
University of Regina
APPENDIX “D”

INFORMED CONSENT FORM

‘Now You See Me, Now You Don’t - Service Delivery to FASD Offenders: A Study of Policy & Practice in Saskatchewan Community Corrections

This thesis will explore what program components would need to be included to most effectively meet the needs of FASD offenders accessing services from Saskatchewan Community Corrections. In addition, this research will examine the efficacy of the Strategic Training Initiative in Community Supervision (STICS), and explore proposed future policy and practice and subsequently, develop future policies to better provide services to FASD affected offenders. For the purposes of this research you will be asked for your feedback regarding FASD offenders and/or the STICS program. It is anticipated that the interview will last between 30 and 45 minutes.

THIS IS TO CERTIFY THAT I, (print your name) _____________________
HEREBY AGREE TO PARTICIPATE AS A VOLUNTEER IN THIS RESEARCH PROJECT.

I understand the following terms and conditions:

1) I have the right to decline to participate in this research from the beginning, to refuse to answer any specific questions, and to stop participating in the research at any time. I understand that I shall not be penalized if I decline, nor shall I gain any favour if I agree to be part of the study;

2) I have been assured that anything that I say will be reported anonymously in the final document and that all efforts to protect my identity will be taken;

3) I may be asked to participate in possible follow-up interviews or phone calls with the researcher for clarification purposes;

4) I have been given the opportunity to ask whatever questions I desire throughout the interview process, and understand that all such questions will be answered to the best of the researcher’s ability.

Participant: _____________________________ Date: _____________

Researcher: _____________________________ Date: _____________

Questions concerning the study can be directed to the researcher or her research supervisor.

**Researcher Contact:**
Bonny Gerger, BHJ
Department of Justice Studies,
University of Regina
Phone: (306) 861-9290
Email: gerger@sasktel.net
Fax: (306) 694-3045

**Supervisor Contact:**
Dr. Allan Patenaude, Ph.D.
Department of Justice Studies,
University of Regina
Phone: (306) 585-4035
Email: allan.patenaude@uregina.ca
INTERVIEW GUIDE: The purpose of this research is intended to introduce readers to the challenges of FASD offenders and the ways in which this medical condition impacts on offenders sentenced to a community order. Moreover, to provide a look at present day policy and practice in Saskatchewan Community Corrections, analyze proposed future policy & practice and subsequently develop potential opportunity for future policies and best practices to better provide services to FASD affected offenders.

1. How would you describe your knowledge base of Fetal Alcohol Spectrum Disorder (FASD)?

Overall Rating: ☐ Exceeds Basic Knowledge ☐ Meets Basic Knowledge ☐ Some Basic Knowledge ☐ Minimal Basic Knowledge

Please explain:

2. What is your level of experience in dealing with and/or working with FASD offenders?

Overall Rating: ☐ High Experience ☐ Basic Experience ☐ Some Experience ☐ Minimal Experience

Please explain:
3. What would you say the level of awareness in the criminal justice system is in regard to the challenges that FASD offenders bring?

<table>
<thead>
<tr>
<th>Overall Rating</th>
<th>High Awareness</th>
<th>Basic Awareness</th>
<th>Some Awareness</th>
<th>Minimal Awareness</th>
</tr>
</thead>
</table>

Please explain:

4. How would increased knowledge concerning FASD (including primary & secondary disabilities) improve program service delivery within the community to FASD affected offenders?

<table>
<thead>
<tr>
<th>Overall Rating</th>
<th>Great Improvement</th>
<th>Basic Improvement</th>
<th>Some Improvement</th>
<th>Minimal Improvement</th>
</tr>
</thead>
</table>

Please explain:

5. What is your understanding of the extent of the problem of FASD in relation to offenders involved in the criminal justice system?

<table>
<thead>
<tr>
<th>Overall Rating</th>
<th>High Understanding</th>
<th>Basic Understanding</th>
<th>Some Understanding</th>
<th>Minimal Understanding</th>
</tr>
</thead>
</table>

Please explain:

6. What level of service needs do offenders with FASD have? What are these needs?

<table>
<thead>
<tr>
<th>Overall Rating</th>
<th>High Needs</th>
<th>Basic Needs</th>
<th>Some Needs</th>
<th>Minimal Needs</th>
</tr>
</thead>
</table>

Please explain:
7. What key factors would you deem necessary in an effective service delivery program to address FASD offenders needs?

Please explain:

8. Can you please describe the attributes/aspects of these factors?

9. How do these key factors reconcile with current practices and policies in Community Corrections program delivery in Saskatchewan?

Overall Rating: High Reconciliation ☐ Basic Reconciliation ☐ Some Reconciliation ☐ Minimal Reconciliation ☐

Please explain:

13. What would the components of a program include that would most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections?

Please explain:

14. Is there anything further you would like to add?
APPENDIX “F”
Interview Guide – Subgroup B

Service Delivery to FASD Offenders:
A Study of Policy & Practice in Saskatchewan Community Corrections

Name: ___________________________________________ Date: ________________
Position: ___________________________________________

INTERVIEW GUIDE: The purpose of this research is intended to introduce readers to the challenges of FASD offenders and the ways in which this medical condition impacts on offenders sentenced to a community order. Moreover, to provide a look at present day policy and practice in Saskatchewan Community Corrections, analyze proposed future policy & practice and subsequently develop potential opportunity for future policies and best practices to better provide services to FASD affected offenders.

1. How would you describe your knowledge base of Fetal Alcohol Spectrum Disorder (FASD)?

<table>
<thead>
<tr>
<th>Overall Rating:</th>
<th>Exceeds Basic Knowledge</th>
<th>Meets Basic Knowledge</th>
<th>Some Basic Knowledge</th>
<th>Minimal Basic Knowledge</th>
</tr>
</thead>
</table>

Please explain:

2. What is your level of experience in dealing with and/or working with FASD offenders?

<table>
<thead>
<tr>
<th>Overall Rating:</th>
<th>High Experience</th>
<th>Basic Experience</th>
<th>Some Experience</th>
<th>Minimal Experience</th>
</tr>
</thead>
</table>

Please explain:
3. What would you say the level of awareness in the criminal justice system is in regard to the challenges that FASD offenders bring?

<table>
<thead>
<tr>
<th>Overall Rating:</th>
<th>High Awareness</th>
<th>Basic Awareness</th>
<th>Some Awareness</th>
<th>Minimal Awareness</th>
</tr>
</thead>
</table>

Please explain:

4. How would increased knowledge concerning FASD (including primary & secondary disabilities) improve program service delivery within the community to FASD affected offenders?

<table>
<thead>
<tr>
<th>Overall Rating:</th>
<th>Great Improvement</th>
<th>Basic Improvement</th>
<th>Some Improvement</th>
<th>Minimal Improvement</th>
</tr>
</thead>
</table>

Please explain:

5. What is your understanding of the extent of the problem of FASD in relation to offenders involved in the criminal justice system?

<table>
<thead>
<tr>
<th>Overall Rating:</th>
<th>High Understanding</th>
<th>Basic Understanding</th>
<th>Some Understanding</th>
<th>Minimal Understanding</th>
</tr>
</thead>
</table>

Please explain:

6. What level of service needs do offenders with FASD have? What are these needs?

|-----------------|------------|------------|------------|--------------|

Please explain:
7. What key factors would you deem necessary in an effective service delivery program to address FASD offenders needs?  
Please explain:

8. Can you please describe the attributes/aspects of these factors?

9. How do these key factors reconcile with current practices and policies in Community Corrections program delivery in Saskatchewan?  

<table>
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<th>High Reconciliation</th>
<th>Basic Reconciliation</th>
<th>Some Reconciliation</th>
<th>Minimal Reconciliation</th>
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</table>

Please explain:

10. How does the provincial initiative (STICS) currently being assessed in Saskatchewan Community Operations take into consideration the needs and abilities of FASD offenders?  

<table>
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<th>Great Consideration</th>
<th>Basic Consideration</th>
<th>Some Consideration</th>
<th>Minimal Consideration</th>
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</table>

Please explain:

11. In what way would STICS reconcile with existing evidence-based practices in addressing the needs of reducing recidivism of FASD offenders?  
Please explain:
<table>
<thead>
<tr>
<th>12. What needs to be in place to allow for the effective management of FASD offenders under the STICS initiative?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>13. What would the components of a program include that would most effectively meet the needs of FASD offenders receiving existing services from Saskatchewan Community Corrections?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain:</td>
</tr>
</tbody>
</table>