

# The Way Forward for Fetal Alcohol

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I am relying on THE LAWYER'S BRIEF in your materials. The way forward in law has almost always been in small increments mostly because lawyers and judges are rarely given to bold , drastic or sudden changes. Even cases like ASKOV , STINCHCOMBE , or PETTUS v. BECKER , all stand on the shoulders of previous cases , or result from pressing social conditions that need a fix and the courts have been left to solve the problem.

The good news is that some brave judges and farsighted lawyers have created a valuable new tool for fairness in the legal system: the problem solving courts.

It is my belief that if we are fair to all of the legal system users, then we are successful. The legal system has not been fair to those with this brain based birth defect we call fetal alcohol. The fix , suggests Dr. Sterling Clarren , is in the external brain. Now the problem solving courts can and do rely on similar concepts.

The "problem solving" courts : drug court , domestic violence court, and the mental health court , offer a way forward because no changes to the criminal code were required. We have several successful courts operating now. Quickly let us sketch what is new, and how this is good for our clients with fetal alcohol spectrum disorder (FASD).

The judges who run these courts want to be there and have experienced a sea change in their personal legal philosophy. They see our past practices have failed. (Malbin : Trying Differently , Not Harder )

The judges have surrounded themselves with prosecutors and defence counsel of their choice , and all share a similar legal philosophy. (A health model )

The courts use the treatment option first. (Learning how to live with FASD : re: defining success )

The prosecutors choose their cases based on criteria the court has developed. (FASD assessments)

It is a program structured on learning to accommodate failure . (Malbin on learning theory , J.Lutke on the difference between non – compliance and non competence )

Each time the person comes to court it is the same judge, the same crown , the same defence counsel , and the same counseling staff. relationship , living with the shame of failure )

The person is made welcome and treated with respect. ( shame )

The focus of the program is : How are you doing in treatment ?....not "Are you still breaking the law ?" (Malbin )

The court fosters a personal relationship with all participants. (relationship)

The courts rely on a team approach. ( multi – disciplinary assessments )

Briefly, the problem solving courts want to solve the problem not punish. They believe public safety comes from a healthy population , not a fearful or shamed population. As suggested the bracketed words above – the crossover between problem solving courts and what the research on FASD suggests is enormous. The way forward is to use the therapeutic style in our problem solving courts when dealing with persons who have a brain based birth defect.

## RESOURCES AND ACKNOWLEDGMENTS

Judge Sheila Vander Veen: "The problem solving courts " at Therapeutic Jurisprudence website (2006)

Diane Malbin : Trying Differently , Not Harder

Dr. Sterling Clarren's work on the external brain

Deb Evenson : Making a Difference (2007)

Judge Jocelyn Palmer.....Vancouver's Drug court

John Hanbidge.....Crown Counsel London's Mental Health Court

[www.asantecentre.org](http://www.asantecentre.org) .....Canada's best FASD website

[www.fasdconnections.ca](http://www.fasdconnections.ca) Jan Lutke's website

[www.fasstar.com](http://www.fasstar.com) Theresa Kellerman's website

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