

Tips for Justice Professionals

Interacting with Individuals who have Fetal Alcohol Spectrum Disorder

Fetal Alcohol Spectrum Disorder (FASD)

Fetal Alcohol Spectrum Disorder (FASD) is a diagnostic term used to describe the impact of **prenatal alcohol exposure on the brain and body**. FASD is a **lifelong disability** and can affect people from **all social, cultural and economic backgrounds**. Individuals with FASD will likely experience some degree of challenge in their daily living related to memory, thinking, self-control and/or physical health, and **may need support to reach their full potential**. Each individual with FASD is unique and has areas of both strengths and challenges. FASD can be an invisible disability, so developing an understanding of how FASD can affect a person's daily life, can help you provide a more equitable service to the clients you work/come in to contact with.



FASD is a leading cause of developmental disability in Canada. Adverse outcomes can develop as a result of having FASD, which can lead to **early or continued contact with the justice system.**

Recently, Canadian researchers have found prevalence of 2-3% in elementary age children in the greater Toronto area (CAMH, 2018), and estimate a prevalence rate of **4% amongst the general Canadian population** (Popova et al., 2019). **A significant number of pregnancies in the general population in Canada are unplanned**, meaning that a large number of women in the early stages of their pregnancies - not knowing they are pregnant - may consume alcohol and unknowingly impact the fetus. Research suggests that there is **greater prevalence of FASD** in rural communities, child welfare and **justice systems**.

Stigma experienced by women who consumed alcohol during pregnancy have made getting support, diagnoses or assessments more challenging.

FASD results from being exposed to alcohol prenatally and can **often affect executive functioning processes**. These may include difficulty with or the inability to: a) **understand and apply abstract concepts** (time, money, planning for the future), b) **communicate thoughts/ideas**, c) **memory, learning, comprehension and attention**, d) **social skills**, e) **emotional regulation**, f) **motor skills**, g) **reasoning/judgement**, and cause **physical health problems**. It is important to remember that this list above may not apply to everyone who has FASD, but instead illustrative of the disabilities that may be associated with an FASD diagnosis.

Adverse outcomes are those which develop as a result of having FASD. These may be mental health problems (ADHD, conduct disorder, depression, anxiety, etc.), substance use/dependence, victimization, difficulties in school, employment, housing/homelessness, etc, which may lead to **early/continued contact with the criminal justice system**, when compared to those who do not have FASD.

As a legal/justice professional, you **likely need to make accommodations to better support the individual needs of your clients** who have or are suspected of having FASD. This is a resource designed to provide awareness and tips on how you may do exactly that!

Behaviours & Perceptions

Many characteristics of FASD overlap with characteristics associated with criminalized behaviours. This means that **individuals with FASD may be over-policed or criminalized for their behaviour when those behaviours actually indicate the presence of a disability**. It can be difficult to differentiate between what may be or is a disability, and what isn't, but what is important, is to **acknowledge how some typical FASD-related behaviours can be misinterpreted as willful criminal behaviours**.

Take a look at the table on page 3. As a legal/justice professional, you may observe one of the behaviours (column A), and perceive that behaviour as a purposeful indication of choice (column B), as it might be for someone who does not have FASD. For example, failure to attend a court-mandated probation meeting may be perceived as willful non-compliance or a disregard for the rules. For an individual with FASD, failure to appear in court may in fact be a manifestation of their disability (column C), in that they are unable to remember when the meeting is or manage their time appropriately to ensure they attend.

As **such perceptions can have serious consequences** for an individual involved in the justice system, it is **important to understand how FASD can impact a person's behaviours**, so that appropriate judgement and accommodations can be made.

Table 1- Common Perceptions of Individuals with FASD

Column A- Behaviour Observed	Column B- Perceptions of Behaviours	Column C- Manifestation of FASD Symptom
Non-compliance- Failure to appear, missing meetings, not abiding with conditions of release, etc.	Willful misconduct, stubborn, disregard for rules of court, indifference, disrespect	Memory issues, lack of understanding, struggles with abstract concepts (e.g., time), difficulty getting organized, communication problems
Repeating the same mistakes- recidivistic actions, correction not working	Willful misconduct, manipulative, doesn't care, hopeless	Cannot link cause to effect, cannot see similarities or generalize, memory issues, poor judgement, lack of impulse control
Disruptive behaviours- (fidgeting, talking, not paying attention)	Seeking attention, bothering others, willful misconduct	Sensory disabilities, over/under reactive to stimuli, sensory seeking behaviours, overwhelmed, short attention span
Lack of reactions- (appears to have no remorse, disregard for seriousness of situation)	Lack of remorse, doesn't care, not paying attention, negative attitude	Impaired ability to recognize or articulate emotions, dysmaturity, tendency to shut down when overwhelmed
Inappropriateness- (improper attire, unsuitable language, overly physical)	Disregard for rules of court, disrespect, defiance, attention seeking	Dysmaturity, poor judgement, lack of understanding, poor receptive language skills, concrete thinker
Lying- (giving inaccurate information, changing stories, false admissions of guilt)	Willfully lying, attention seeking, attempting to avoid punishment, unreliable	Confabulation, memory deficits, lack of understanding, poor receptive language skills, issues communicating

Best Practices for Legal/Justice Professionals

There are various **best practices that are recommended for legal and justice professionals when it comes to working with individuals with FASD**. Connections and collaboration with the other professionals, supported dealings with the justice system and through transitional periods, trained professionals who are trained to provide FASD-informed work, acknowledging the difficulty/lengthy path to a diagnosis, and acknowledging that individuals with FASD are at a higher risk of encountering the justice system and how FASD influences behaviour.

Best Practices for Legal/Justice Professionals

Collaboration, Connections & Interdependence Between Professionals



A network of professionals who are knowledgeable about FASD and how to best serve/assist individuals who have FASD, of all ages. Interdependence of service providers to improve delivery and access.

Trained FASD-Informed Professionals with Knowledge of Supports



FASD is a brain-based disability; delivery of supports and services should be cognisant of how FASD affects functioning and behaviours. Lack of FASD training affect equitable access. There is an overall lack of available services for individuals with FASD, and for many programs, leaving few alternatives to incarceration. Professionals should be disability framed and culturally appropriate.

Acknowledgment of Barriers in Path to Receiving a Diagnosis



Overall lack of diagnostic resources and services makes getting a diagnosis a difficult and timely process. Your client may be suspected of having FASD, or you may suspect them to have FASD, but until a formal diagnosis is received, many resources are not accessible.

Increased Risk of Individuals with FASD Entering the Justice System



Individuals with FASD are at an increased risk of entering the justice system due to the challenges they may face. It is important for professionals to be aware of this risk and the prevalence within their field.

Supported Dealings with Justice System & Transitional Periods



Individuals who are knowledgeable about FASD, who is responsible for guiding the individual with FASD through the legal process is imperative for success. This individual ideally should accompany all court and legal appointments, advocate for their client, manage their meetings and conditions, support and instruct the family on how to best support the individual, support their client in planning for the future and help the client gain access to appropriate programs/supports in the community or while incarcerated, among other individual needs. Support is especially needed during transitional periods like Community-Facility, Facility-Community, Youth-Adult, No conditions-Conditions, etc.

Communication

When working with a client who is diagnosed with or is suspected of having FASD, there are a few helpful **tips that will assist in communication**. Communicating with individuals with FASD whose brains may be neurodivergent, can seem demanding for someone who does not have difficulty communicating. **Patience is key** for a healthy working relationship, as is **providing accommodations** for those who may require them.

1. Consider your clients **preferred mode of communication**. This may be texting, emailing, phone calls, etc. Communicating in writing allows the person to refer back to that correspondence (if necessary), however, your client may not read/write the language well and prefer verbal communication. Texting can be great for younger clients, but not everyone has a phone. **Keep accessibility and literacy in mind**.
 - a. For example, during your first meeting/phone call, **ask your client what is the best way to reach them** from here on out. Also ask for a back-up contact method, just in case a phone is lost, out of minutes, etc.
2. Reminders! **Remind your client about your next correspondence** a day before, or the morning of via their preferred mode of communication, just like you may receive for a hair appointment or a car service.
 - a. For example, if texting or emailing, send a calendar reminder. If they prefer communication via phone, give them a call a day before their appointment.
3. Consider providing your client with **notes about what was discussed** during your communication, especially for important points (dates/times/conditions, etc.), what **their action items/next steps** are and when you will be in touch next. Alternatively, ask if the individual has a person they are comfortable with who would attend to be their note-taker.
 - a. For example, if you review their conditions, provide them with the table of conditions sheet (see appendix A). If they have tasks for the next meeting, provide a list of these.
4. If a client is **avoiding/failing to respond** to less direct methods of communication (texting, emailing), try calling/face-timing/video chatting so to **speak to the person directly, or speak to their support person**, if needed.
5. A client may say that they understand what you are saying, but **comprehension can be lacking for individuals with FASD**. If you suspect this is the case, ask your client to explain what you are speaking about back to you, instead of just asking that they understand.
 - a. For example, instead of asking your client if they know what guilty or remand means (prompting a yes or no answer), **ask them to describe in their own words** what guilty or remand means to them. This also provides you the opportunity to clarify/explain further, should you client be incorrect/inaccurate in their understanding of the word.
6. There may be times when your client is **not able to communicate or may not comprehend** the content/context of the information. If this is the case, look to a family member or support

person for assistance with communication.

a. For example, if you are having a hard time getting through to your client, ask a family member/friend/support worker to explain how you can communicate better.

7. It can be beneficial to **have your client sign a consent for the release of information** for a support person or a family member, so when you need to contact them, consent has already been given. Further, be sure to explain to your client the purpose of them signing the consent.

a. For example, in your first meeting, ask if they have anyone in their life who they would like you to contact in case of an emergency, or for advice/support.

8. **Communication and collaboration between the legal/justice professionals** involved in the individual's case/legal process are **vital to positive outcomes**. A network of professionals who are informed about the impacts of FASD and who work together towards the same goal (e.g. desistance, employment, etc.), create the best opportunity for succeeding in that goal!

Questioning & Interactions

Individuals with FASD are **more likely to experience comprehension and memory problems**, than those not affected by FASD. When asked to recall an event during any form of questioning, individuals with FASD are **at risk of confabulation** and providing an inaccurate representation of what actually transpired. Asking **careful worded questions**, and/or using **cognitive interview techniques** (if trained) can significantly improve recall.

1. Ask **descriptive questions using plain, unambiguous language**; be specific and direct. Avoid asking unnecessary questions, or those that are not directly related to the topic at hand.

a. For example, ask your client to **describe what transpired from start to finish**. After they tell you the main points, ask specific questions about each main point. You may need to **ask probing questions more often** than you usually do to get the information you need.

2. **Give plenty of time for the individual to process** the question asked and for a response. Ask if they understand the question, or if they would like you to rephrase the question.

3. **Visuals** may help individuals with FASD with recall. If they are having difficulty verbalizing what happened, **ask them to write down their thoughts or to draw a timeline**. You may also do this instead of them. When asking follow-up questions, be sure to reference the drawing/writing.

a. For example, if recalling a time when a physical altercation occurred, ask them to draw where it started (a friend's house), what happened next (they followed me home), etc., and then ask them to describe what happened at each location.

4. Use **active listening** methods and **repeat what they told you for clarification**.

a. For example, if you are told "I was at my friend's house when it started", repeat "So you were at your friend's house when the fight began, correct?"

5. Limit **visual and auditory distractions**.

a. For example, if a police officer is questioning someone who has FASD in public, ask them to sit in your car and turn off the music during questioning (emphasizing if they are not under arrest). If in a facility, take them to a **quiet room with plain walls, no background music and stationary chairs**.

6. It is important **not to ask leading questions**, even more so when interacting with individuals with FASD.

a. For example, instead of asking “Were you home on Monday night?” or “Did you use drugs/alcohol on Monday night?”, ask “Can you describe where you were on Monday night”, or “Can you describe what you were doing on Monday night?”.

7. Try your best to understand that the person who you are interacting with has a **cognitive disability that may affect how they interact with others** (whether its due to social skills, the inability to comprehend, or difficulty communicating thoughts), and often they may need support in order to understand what is being asked of them.

Court Proceedings

FASD diagnoses are becoming more recognized in the courtroom, and it is **important to accommodate individuals with FASD through the court process**. If working with an individual with FASD and they are required to appear in court, keep these tips in mind.

1. Request that the **court be considerate of your client’s disability** (diagnosed or suspected) and explain **how it affects their behaviour**, can lead to adverse outcomes and increase the likelihood of criminalization. This can assist with proportionality during sentencing and assigning conditions/alternate measures/restorative justice (mitigation).

a. Remember the behaviours and perceptions chart on page 2? Failure to appear, while perceived as an outright violation of specific conditions, may actually be due to memory issues or a lack of understanding caused by an FASD diagnosis.

2. A client may **understand their charges, but not comprehend the consequences or the gravity of their actions/choices**. Having support with court proceedings is crucial. This may be a case manager, family member, etc. Keeping this person informed can be great when the individual may have trouble recalling the conversation, but also when it comes to meeting conditions, gathering documents, preparing pre-sentence reports, and communicating your clients’ strengths/weaknesses.

a. For example, if a parent is active in their life and willing to help, ask them for assistance. This will lower the responsibility of the legal/justice worker and improve outcomes for individuals with FASD. Having a family member or a support worker involved in the court process who can ask the right questions and explain things can prevent an individual from unknowingly criminalizing themselves, or agreeing to something they may not be aware of.

3. A legal professional should be the only person giving legal advice. Legal professionals should **be cognisant of how FASD affects their client's life, and how certain accommodations can lead to better outcomes**. The typical advice you give may not be useful to an individual with FASD. Taking a bit of extra time to work with someone so they understand, can seem onerous, but greatly reduces the clients stress and better prepares them for what is to come.
 - a. For example, if discussing plea options, ask your client if they can explain to you what a plea is, and if they understand the long-term consequences associated with their choices. You may need to explain that by taking a plea deal, that it does not absolve them of the crime, but also has consequences.
4. Having to **call an individual with FASD to the stand** can be **overwhelming if they have trouble with memory/recall and/or the comprehension of questions**, as is common with FASD. Advocate for your client and choose options that are better suited to their cognitive abilities.
 - a. For example, ask if they can instead read a prepared statement instead of being questioned on the stand, which will lessen the likelihood of recall problems and confabulation. If this is not an option, practice questions with your client before, so they are as prepared as they can be.
5. Consider **creating a "court 101"** visual type resource to go over with your client before court.
 - a. For example, **explain language typically used** (defendant, crown, all rise, Your Honour, etc.), typical **routine** (judge is welcomed, stand up, sit down, wait for your case to be called, etc.), and **expectations** (if they have to speak, present evidence, (in)appropriate clothing choices, security, timing, etc.).

Probation, Parole, Programming & Conditions

Parole, probation and conditions **can be difficult for individuals with FASD to understand** and therefore, follow. When accounting for memory and comprehension difficulties, and trouble with abstract concepts, it is easy to see how these may be contravened. Here are some ideas for how to better accommodate individuals with FASD.

1. Abiding by conditions can be difficult for individuals with FASD, where memory, problem-solving skills, and impulse control can be affected. **Having a support worker or family member who can assist the individual in abiding by conditions**, can improve adherence.
 - a. For example, ask the individual if they have a preferred person who can help them in maintaining their conditions.
2. Consistency is key! Try to **schedule meetings or groups at the same time every week**.
 - a. For example, schedule meetings on the first Wednesday of the month at 3:00pm, or every second Tuesday (2nd day of the work week) at 2:00pm. The routineness of the meetings will be easier for the individual to remember.

3. **Consider your clients preferred time of meeting and their mode of transportation.**
 - a. For example, if your client is always late for their morning appointments, consider scheduling their appointments in the afternoon instead. If the reason for their lateness is because they always take the bus and cut it too close to their appointment time, help them figure out a new route/bus stop time, so they can be on time.
4. Schedule the next communication/meeting with your client and ask them (or a caregiver/support person) **to create a reminder in their phone or calendar**, or give them a print out of their next appointments. You can also call them the day before or morning of their appointment. **Remind them what they need to bring** (if anything). These reminders can be set up to send automatically if you are short on time.
 - a. For example, schedule the meeting in their phone calendar and set a reminder for 1 day before the meeting, a reminder for the morning of the meeting, and another reminder for them to leave the house, 1 hour before their meeting.
5. Again, **consider providing your client with notes or a recap about what was discussed during your communication, especially for important points** (dates/times/conditions, etc.), what their action items/next steps are, and when you will be in touch next. Alternatively, ask if the individual has a person, they are comfortable with who would attend to take notes for them.
 - a. For example, you can create a “meeting recap” template that you print out for every client who needs it. On the sheet, list what their tasks are on the left, and how that can achieve them on the right. If one of their tasks is to get a copy of their high school diploma, the task would be to call the department of education on [Tuesday].
6. Give your client multiple copies of their conditions. **Explain the conditions in plain and simple language, using story-like examples to reinforce explanations.** When possible, give conditions to a support person, case manager or family member to strengthen the network of individuals assisting in supporting the individual through their legal proceedings.
 - a. For example, use the table of conditions sheet to outline the formal condition, and what they can do to meet that condition (see appendix A).
7. Ask your client to **keep a copy of their conditions on them at all times**, for reference whenever needed. They can make a **picture of their conditions their phone background**, or keep a copy of the table of conditions in their wallet.
8. Current program delivery needs to be enhanced to better support those who have FASD. We all play an active role in this; although we may not be able to change the program wholly, we can all make a better effort to support those who need it.

Resources

Check if there is a vulnerable person registry in your area and if there is, recommend your clients be added for any future encounters. Such registry is designed to assist police officers when responding to calls, however, this can be problematic and officers may not check this or are not trained in how to interact with individuals who are neurodivergent.

If you are an individual with FASD who has already been in contact with the justice system, **consider creating or carrying a diagnosis card that you can present** if you are questioned by police or for when you are interacting with other justice professionals.

If you are a justice professional and are interested in receiving FASD-focused training or customized training, you can reach out to fasdNL at contact@fasdNL.ca.

Visit www.fasdNL.ca for more resources and information.



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Check out our
"FASD 101-
Introduction to
FASD" online, self-
paced course by
scanning below!



Check out our
shorter "Tips for
Legal/Justice
Professionals"
resource by
scanning below!



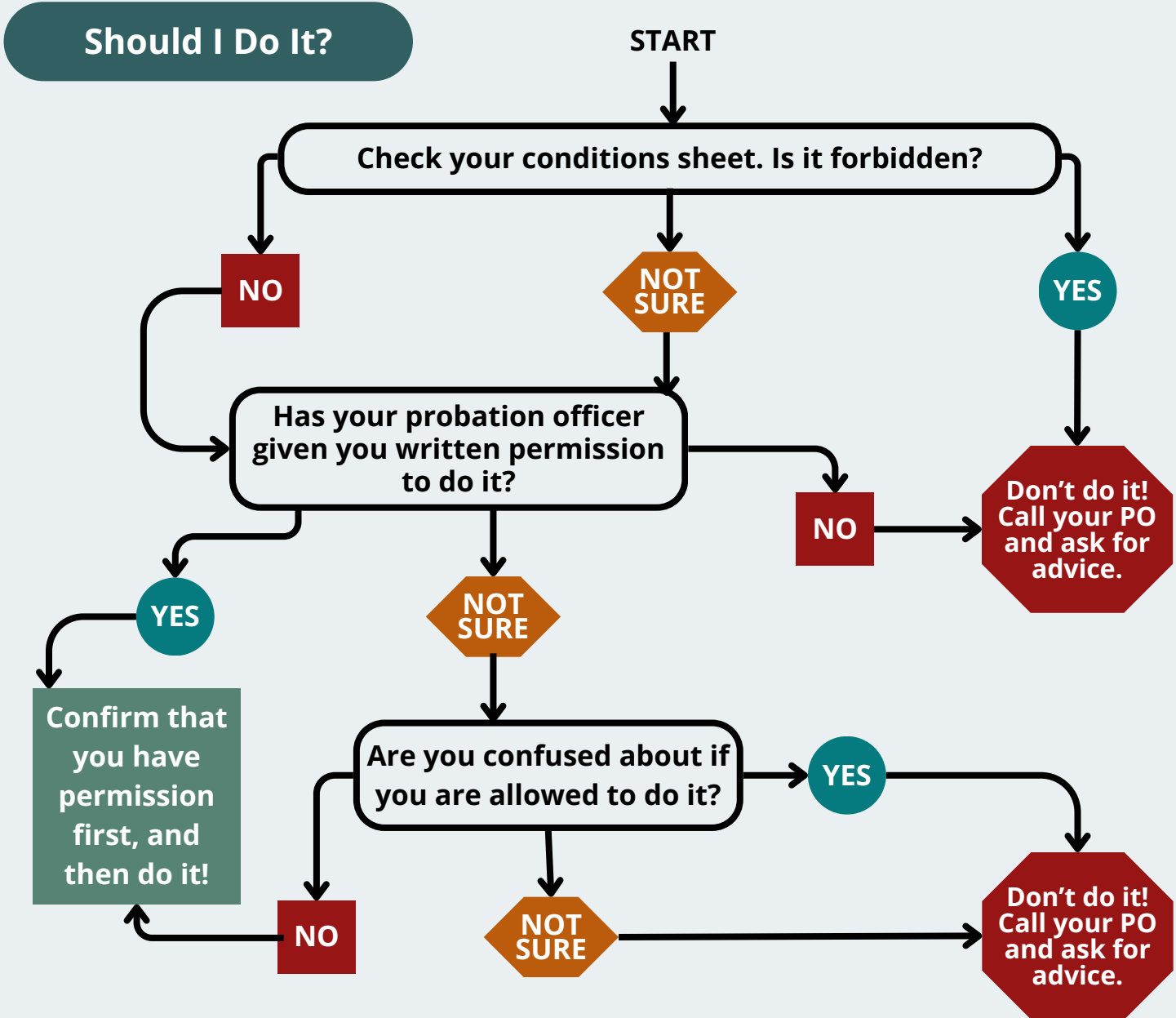
Appendix A- Table of Conditions Example

Condition Received	Task(s) Required to Abide - Plain Language
Keep the peace and be of good behaviour.	<ul style="list-style-type: none"> • Don't do anything that threatens a person (like swinging arms, saying you want to fight them, will "get them" or are "after them", etc.), or that may damage a person's property. If you are asked to leave somewhere, do so without putting up a fight. • This also means you shouldn't get any more charges.
Report to and be supervised by the provincial director or a person designated by the youth justice court within 10 days and thereafter as directed.	<ul style="list-style-type: none"> • Your probation officer will need you to call them with an update every Monday and Friday, and come in person for a check-in on Wednesday. You must make these meeting/call times or your probation/parole could be revoked. Forgetting or sleeping in are not valid reasons to miss a meeting/check-in.
Abstain from the possession and consumption of alcohol or other intoxicating substances, or the possession and consumption of drugs except in accordance with a medical prescription for you or legal authorization for you.	<ul style="list-style-type: none"> • You can't drink homemade or premade alcohol (beer, liquor, wine, etc.), and you can't have alcohol in your home. You are not allowed to consume or carry any legal or illegal drugs (marijuana, cocaine, etc.). • You are allowed to consume prescription drugs only if they are prescribed to you by a doctor. For example, methadone. You must be able to show proof of a prescription.
Seek, accept and complete any assessments and counselling that may be directed by the probation service including but not limited to alcohol and drug, mental health, addiction services and follow any recommendations, appointments and sessions.	<ul style="list-style-type: none"> • You must have a psychiatric assessment and after the assessment, attend 12 counselling sessions (1 per month). If you do not attend the assessment and sessions, your probation will be revoked. • Your probation officer will help you schedule the assessment and appointments.
Abide by a curfew to be set by your probation officer in consultation with your parents or your social worker while in the care of department of community services child welfare and (j) to prove compliance with the curfew condition by presenting yourself at the entrance to your residence should a peace officer and/or your probation officer attend there to check compliance.	<ul style="list-style-type: none"> • You must stay home at all times from May 8th- September 8th, 2024. You can leave only if you have permission from your probation officer for the following reasons: <ul style="list-style-type: none"> ◦ When at work and commuting to and from work ◦ When at school or commuting to and from school ◦ When attending a probation meeting, court date or counselling appointment ◦ One 4 hour period per week for personal errands (bank, grocery store, doctor/dentist appointment, etc.). • While at home, an officer will come to your house to check on you every day. You must answer the door within 3 minutes or your probation could be revoked. • If you need to leave the house for any reason, you must get permission from your probation officer first.

Appendix A- Blank Table of Conditions Example

Condition Received	Task(s) Required to Abide - Plain Language

Appendix B- Decision Tree Example for Client Conditions

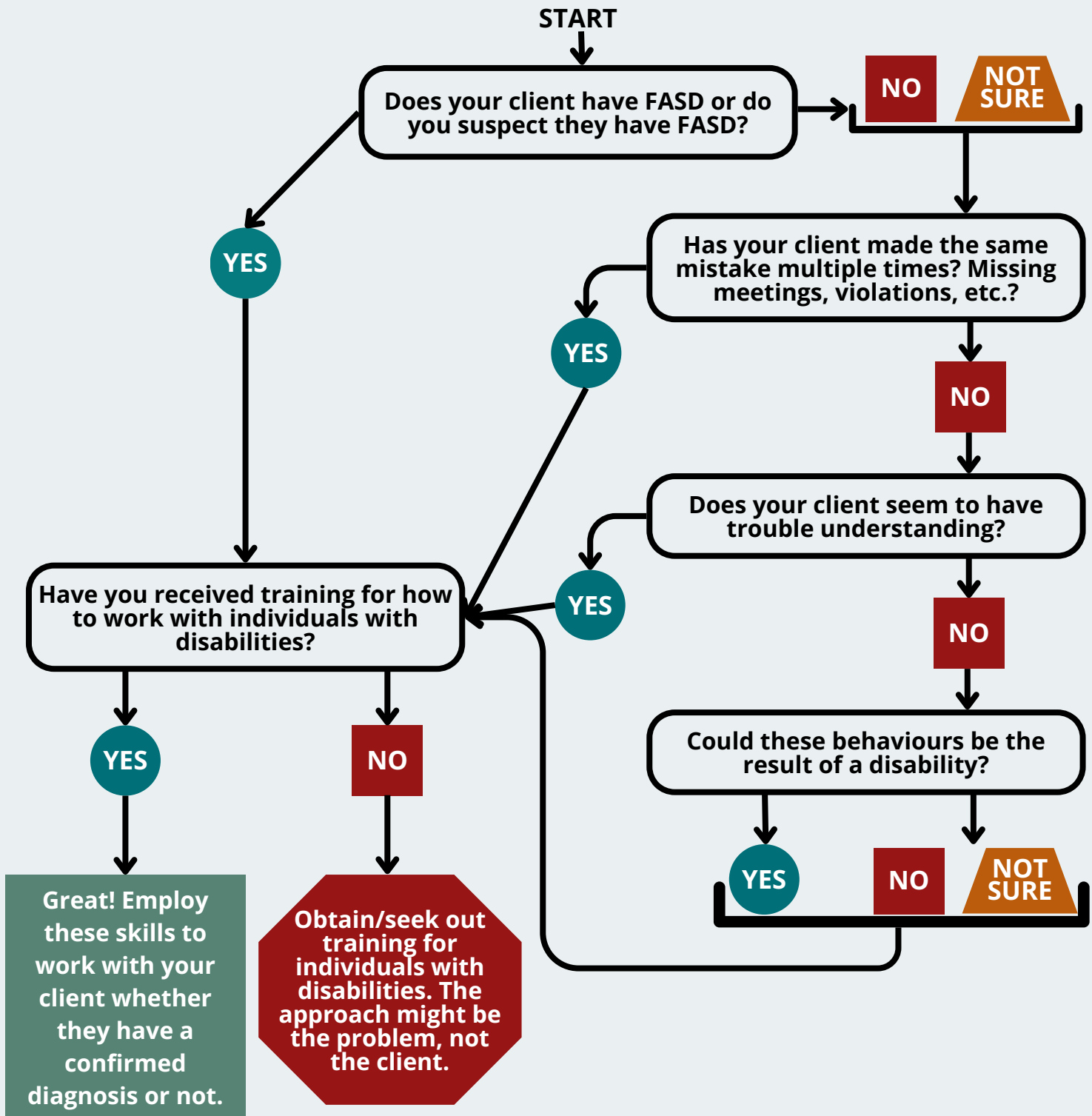


Tips

If you are not sure if you are allowed to do something, **always check with your probation officer** or a **trusted support person**.

Keep a copy of your conditions on you at all times, so you can check them if you need a reminder. You could take a picture and save it in your phone or keep a copy in your wallet or purse.

Appendix B- FASD Decision Tree for Justice Professionals



There is no harm in treating individuals as if they may have a disability, by using a different, informed approach that fits their individual needs.

If you are looking for accessibility training, **check out our “FASD 101-Introduction to FASD” online, self-paced course at www.fasdNL.ca**. Although it is FASD specific, you can learn accessible approaches which could be used for a variety of intellectual disabilities.