



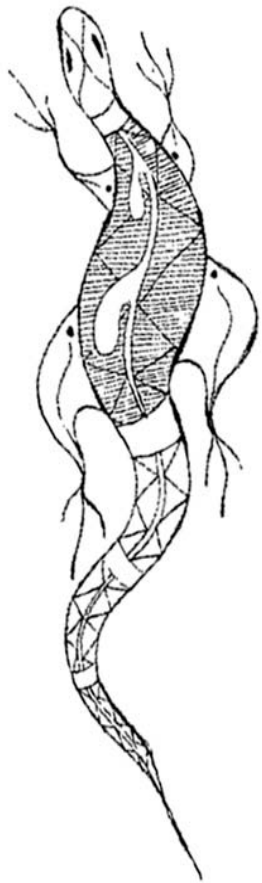
Indigenous young people, crime and justice conference

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54 King William St
Kent Town SA 5067





Crowne Plaza Hotel, Parramatta, NSW

31st August – 1st September 2009



***“A bridge too far: Considering relationships
between Fetal Alcohol Spectrum Disorders,
Child protection and the justice system”***

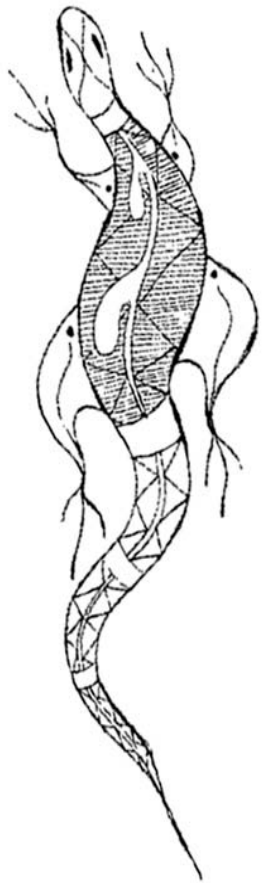


Overview

Background into Indigenous offending using the National Indigenous Drug and Alcohol Committees (NIDAC) report “Bridges & Barriers; Addressing Indigenous Incarceration & Health”

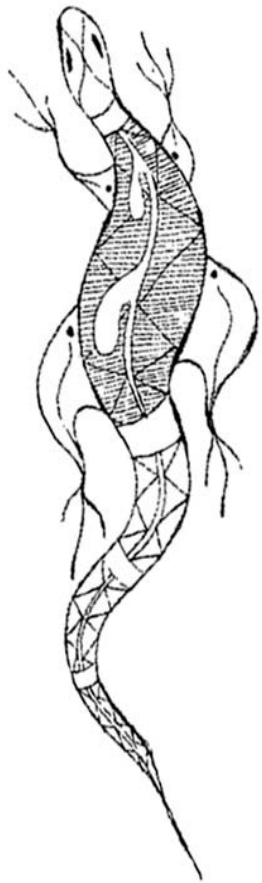
Fetal Alcohol Spectrum Disorders (FASD)

Juvenile justice and Child protection ways forward in addressing a human rights issue.





- **1998** The ANCD was established by the Prime Minister to provide independent advice to the Australian Government on alcohol and drug policy and issues



- **2004** The National Indigenous Drug and Alcohol Committee (NIDAC) is auspiced by the Australian National Council on Drugs (ANCD) to provide advice on addressing Indigenous drug and alcohol issues in Australia.
- NIDAC comprises members with specialist expertise in Indigenous alcohol and drug issues.
- NIDAC also gains valuable feedback from people working to address Indigenous alcohol and other drug issues across Australia.



- **NIDAC's Role**

- An independent voice for non-government and community sectors in the development of relevant policies and programs
- Provide expert policy and program advice to governments on Indigenous alcohol and other drug use and related harms.
- Monitor the implementation of the National Drug Strategy Aboriginal and Torres Strait Islander Peoples' Complementary Action Plan 2003-2009.
- Ensure policies, strategies and directions in the drug and alcohol field are consistent with the National Drug Strategy





- Bridges & Barriers: Addressing Indigenous Incarceration & Health

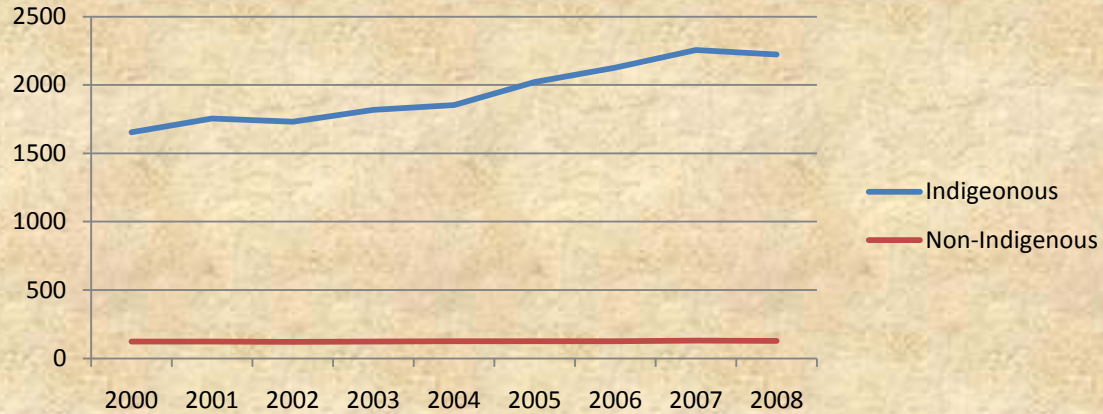
- www.nidac.org.au



Indigenous offenders in Australia

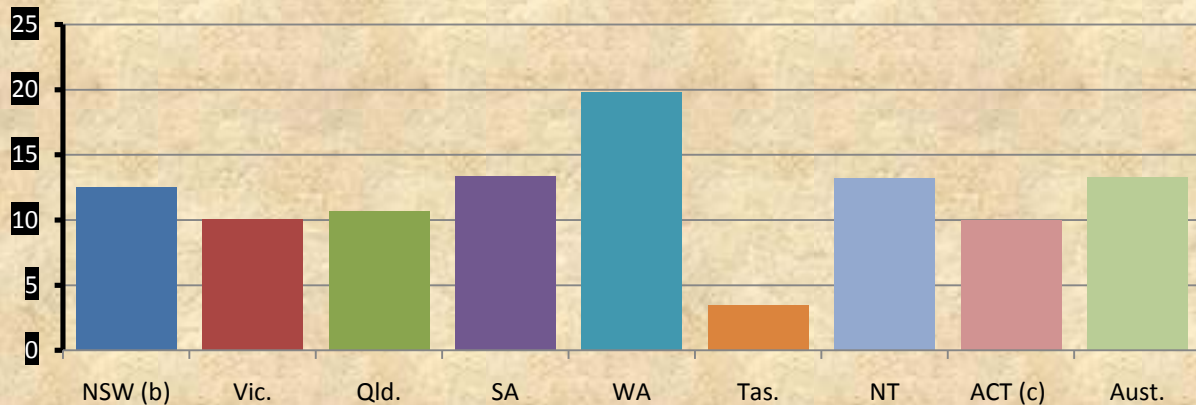
Indigenous and non-Indigenous prisoners, 1992-2006 (rate per 100 000 relevant persons)

Figure 2: Ratio of Indigenous to non-Indigenous age-standardised rates of imprisonment^a



Ratio of Indigenous to non-Indigenous age-standardised rates of imprisonment

(a)

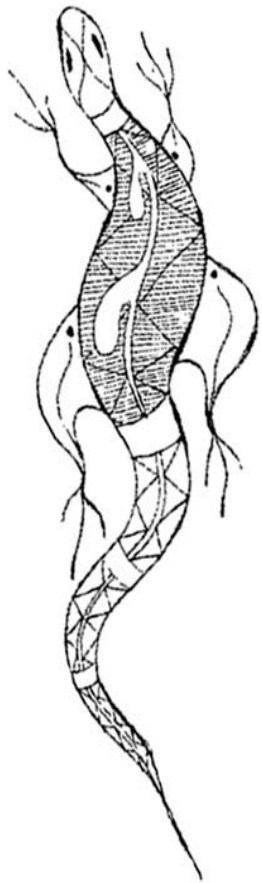


(a) Rate per 100,000 adult population.

(b) Data for NSW exclude ACT prisoners held in NSW prisons.

(c) Data for ACT include ACT prisoners held in NSW prisons.

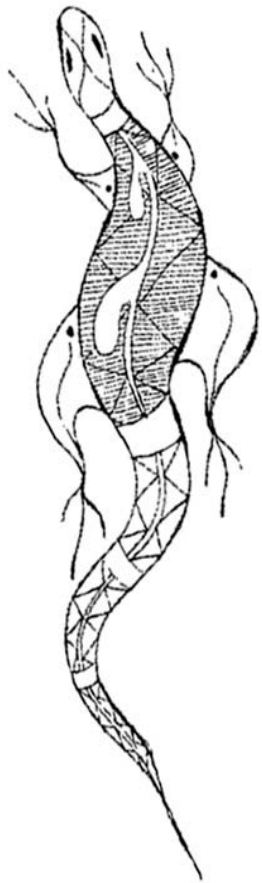
Source: ABS *National Prisoner Census 2008*





• Indigenous offenders in Australia

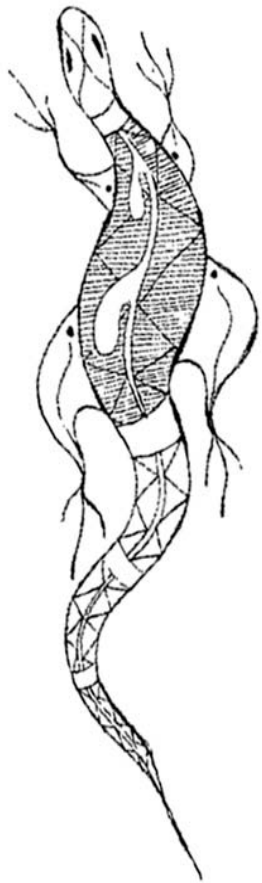
- Indigenous adults are 13 times more likely to be imprisoned
 - 31% of all adult female prisoners in 2007 were Indigenous
 - 24% of all adult male prisoners were Indigenous
 - 343 % increase in the number of Indigenous women in since the 1991 Royal Commission into Aboriginal Deaths in Custody
 - More than half of young people aged 10–17 years in juvenile corrective institutions in 2006 were Indigenous
 - The rate of reappearances in court by Indigenous offenders was 187 per cent higher than that for non-Indigenous juveniles
-
- Australian Bureau of Statistics 2007b
 - Aboriginal and Torres Strait Islander Social Justice Commissioner, 2005
 - Australian Institute of Criminology 2008a
 - Chen et al. 2005





- Indigenous offender health

- On arrest
 - 68 % of Indigenous adult police detainees tested positive to a range of drugs
 - In NSW, almost 90 % of Indigenous juvenile detainees compared to 40 % of non-Indigenous juvenile detainees tested positive to drugs
- In prison
 - The prevalence of tobacco smoking among Indigenous prisoners is more than double that of non-Indigenous Australians
 - Male Indigenous prisoners are more likely to be dependent on alcohol or cannabis

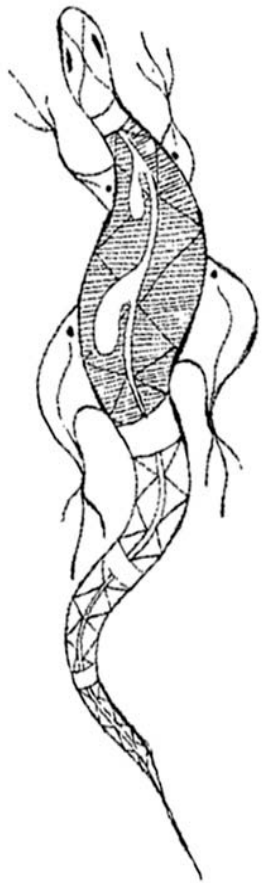




In Australian prisons

- High-risk behaviours for BBV transmission are more prevalent in prisons
- In one Australian jurisdiction approx 60% females and 50% males with a substance use disorder also have a mental health disorder
- Hep. C levels are approx 17 times greater than in the general community
- Male prisoners are at increased risk of suicide and death from overdose in the period immediately following their release

- Heale et al 2003,
- Australian Government National Drug Strategy 2008
- Kariminia, Law et al. 2007)





- **The system isn't working!**

- The reasons must be addressed to reduce incarceration rates
- Socioeconomic factors
- Cultural displacement, cultural well being issues
- Alcohol and other drug misuse
- Diversion barriers
- Fetal alcohol spectrum disorders and acquired brain injury





Treatment is far more effective

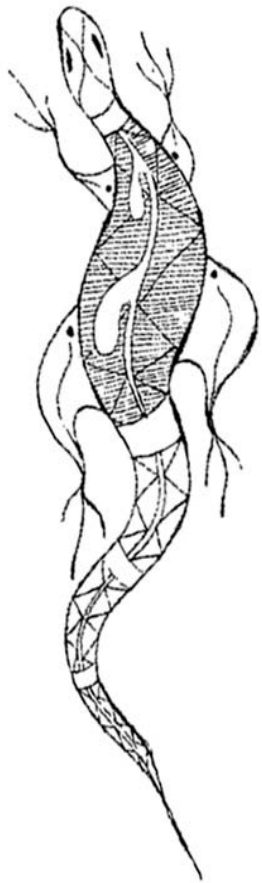
- The total cost per prisoner is approx \$269 per day.
- By comparison, the cost of residential rehabilitation is approx \$98 per day.
- Productivity Commission 2009
- Moore et al. 2007





- **Alternative ways of thinking are needed to break the cycle**

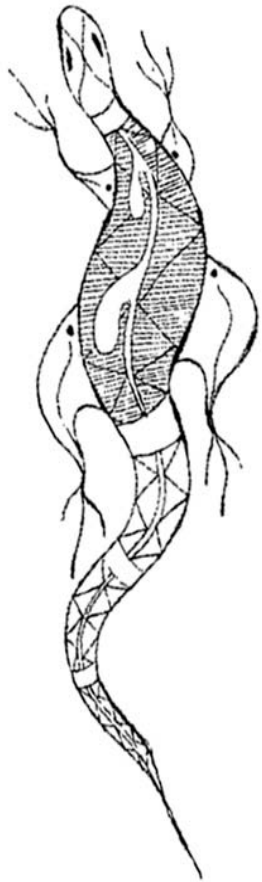
- Every Indigenous young person should have an individual education support fund
- Amend the eligibility criteria of current diversion programs
- Establish a network of Indigenous-specific residential rehabilitation centres for courts to utilise as a real and viable alternative to incarceration
- Improve the level of health services available to all Indigenous prisoners and juvenile detainees
- Identify and support Indigenous-specific programs and best practices that are effective in reducing offending and re-offending





• Key Short Term Recommendations

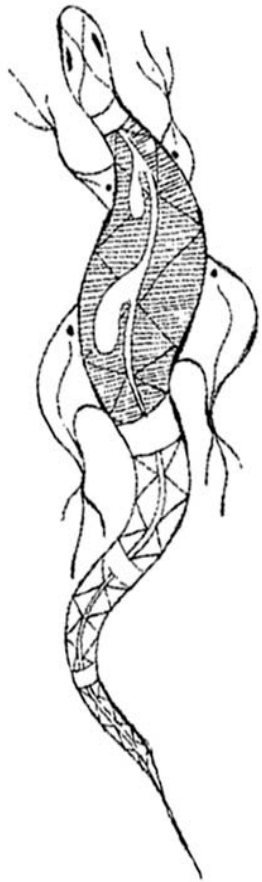
- An increased number of Indigenous-specific diversion programs, - with links to Aboriginal community-controlled health services in their region.
- Appropriate Indigenous-specific programs to assist family members with the return and re-integration of offenders into their community.
- Improve the level of health services available to all Indigenous prisoners and juvenile detainees by: providing health screening on reception; encouraging the take up of treatment after health screening; providing a continuum of health care and referral within and beyond the corrections system, and by allowing Indigenous health services access to prisoners and detainees.
- Provide every Indigenous young person with an individual education support fund to assist and promote their participation and retention within the education system.
- Amend the eligibility criteria of diversion programs to not rule out offenders who have: prior convictions related to AOD, selective multiple charges, and co-existing mental illness or health problems.





• **Key Long Term Recommendations**

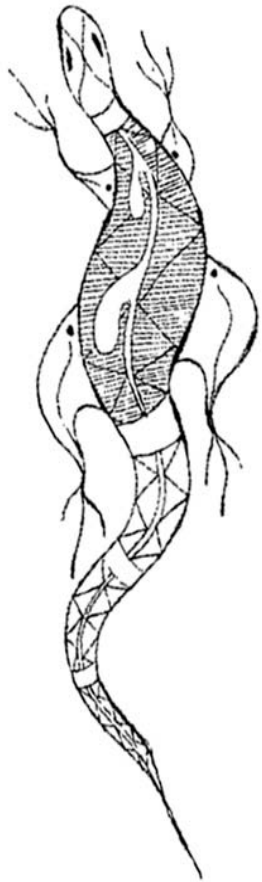
- Fund a network of community-based Indigenous youth wellbeing and activity centres with links to education and health services.
- Develop a national AOD campaign for Indigenous Australians to reduce demand and supply, as well as decrease the incidence of fetal alcohol spectrum disorder.
- Establish a ‘break the cycle’ network of Indigenous-specific residential rehabilitation centres for courts to utilise as a viable alternative to incarceration.
- Develop a national employment strategy to train and establish a specialist Indigenous workforce of psychologists, doctors and nurses which can provide substance misuse, mental health and general health services.





Fetal Alcohol Spectrum Disorder (FASD)

- The World Health Organisation (WHO) now recognises Fetal Alcohol Spectrum Disorder (FASD) as the leading cause of environment-related birth defects and intellectual disability in the Western world, surpassing both Spina Bifida and Down Syndrome. (WHO 1997)
-
- Fetal Alcohol Syndrome, Fetal Alcohol Effects (FAS/FAE), alcohol related birth disorder and alcohol related neuro developmental disorder (hereinafter referred to collectively as FASD) are entirely preventable conditions caused by the consumption of alcohol during pregnancy. Children who are born to women who consume alcohol during pregnancy are at risk of developing FAS. The consumption of alcohol is a voluntary act and hence FAS is preventable.





- Australian Bureau of Statistics (ABS) figures show 40% of indigenous females reporting recent alcohol consumption and 9% of these female drinkers reporting drinking at high-risk levels (compared to 3% of non-indigenous female drinkers) (ABS 1999) Other studies in the Northern Territory and Queensland show significantly higher levels of drinking at harmful levels by indigenous women (68% and 45% respectively of all female indigenous drinkers surveyed) (Quoted in 'Ways Forward' 1995)

- Fertility rates amongst Aboriginal women are significantly higher than for the non-indigenous population of Australia.





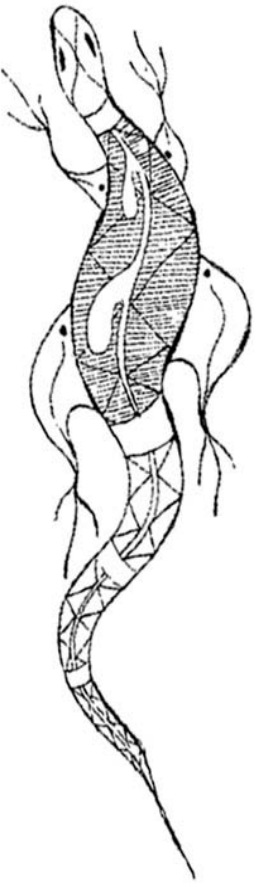
- Recent research at the University of Washington Fetal Alcohol and Drug Unit has revealed very high prevalence of secondary disabilities among a large group of over 400 patients with FAS. For those 12 years and over, the lifetime prevalence of mental health problems was over 90%; disrupted school experience – 60%; trouble with the law – 60%; confinement in a residential treatment or correctional facility – 50%; alcohol and drug problems – 35%; approximately 80% of those 21 or over had significant problems with employment and remained in some type of dependent living situation.





Rates of FASD and secondary disability as reported in overseas studies could be expected in Australia. These would be having severe impacts on all communities, but particularly in indigenous communities where rates of alcohol consumption are high and the fertility rates are also high. The future capacity of our indigenous communities could well be severely compromised by high rates of FASD and secondary disability.

These secondary disabilities can be ameliorated and the greatest protective factor for this is diagnosis of FASD before the age of 6 (Streissguth 1997) A diagnosis of FASD is vital in providing appropriate interventions for the affected child and for primary prevention of further FASD. The failure to diagnose the primary and secondary disabilities of FASD is extremely costly to society. Without the proper support services, the person has a 60% chance of ending up in a mental institution or gaol.





WHAT ARE THE CHALLENGES FOR YOUTH WITH AN FASD?

- FASD's effects on the brain can result in cognitive or behavioral deficits. These deficits may include mental retardation, learning disabilities, hyperactivity, attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.

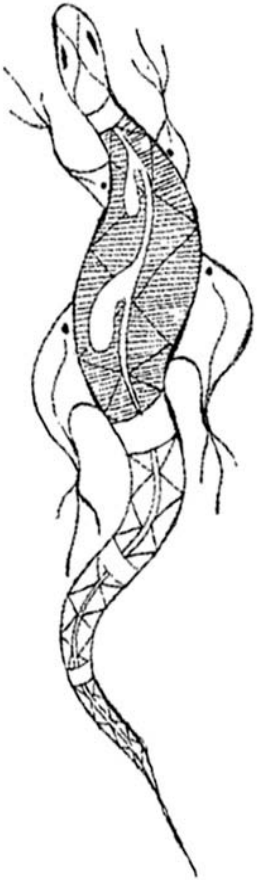




- Individuals with an FASD typically are impulsive and have trouble foreseeing the consequences of their actions. They may have a poor sense of personal boundaries. Many are very susceptible to peer pressure and can be easily led. Their judgment is often poor.

- FASD also presents challenges throughout the judicial process, from questioning through arrest, hearings, sentencing, and detention.

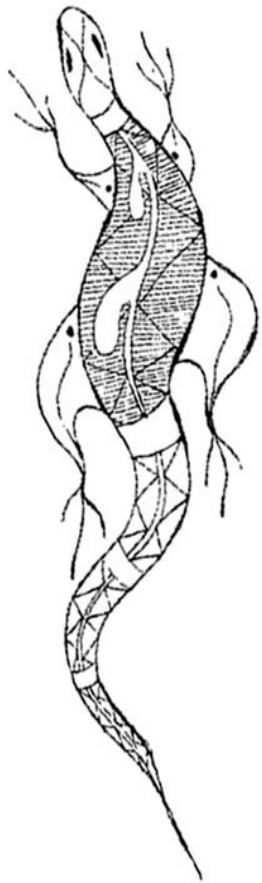
- Youth who have an FASD typically have memory problems, which can contribute to forgotten court dates or meetings with probation officers, judges, and lawyers.





- Once released from detention, youth who have an FASD may commit similar offenses and cycle through the system again and again.

- An estimated 50% of (Indigenous and non Indigenous) individuals with FASD will end up in institutional care, a mental health facility or prison. It has been proposed that Australia spends more than \$13 million a day on these individuals. In Tasmania, an estimated 57 babies were born with FASD during 2007. FASD is preventable yet many women are unaware of the risks of alcohol use in pregnancy. It is estimated that nearly 50% of women consume alcohol while pregnant.
<http://www.den.org.au/?articleID=137>





HOW CAN THE SYSTEM HELP YOUTH WITH AN FASD?

- Youth should be screened for FASD at all entry points into the juvenile justice system. Those who work in the system, especially lawyers and social workers, should look for a history of behavior that suggests an FASD. They also should ask questions about prenatal exposure to alcohol. When they suspect that an FASD is present, they should request a complete evaluation by clinicians qualified to diagnose an FASD.
- The evaluation should include assessments of possible co-occurring psychiatric disorders and adaptive behavior.





- Lawyers should be aware of FASD and use their knowledge to advocate effectively for their clients, particularly in proceedings related to:

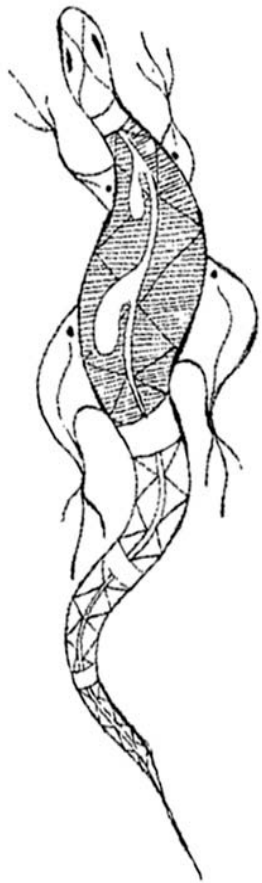
- Competency

- Diminished capacity

- Decisions to decline/remand/waive

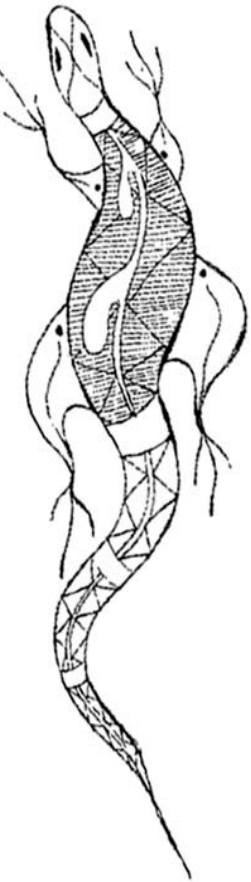
- Sentencing

- Treatment





- Throughout the judicial process, communication with young people who have an FASD should be concrete, simple, and repetitive. Youth with an FASD have trouble following multistep instructions and understanding figures of speech. Using frequent reminders, visual cues, and open-ended questions can help them follow rules and understand what is happening.



- FASD is not an excuse for breaking the law. However, all youth, including those with an FASD, deserve to be treated fairly by the juvenile justice system. Increased awareness and action at all levels of the system can offer a lifeline to young people with an FASD. In addition, the potential benefits to society, through decreased crime and costs, are tremendous.



Treatment is far more effective

- The total cost per prisoner is approx \$269 per day.
- By comparison, the cost of residential rehabilitation is approx \$98 per day.
- In conclusion as the above stats point out it is cheaper in the long run to invest in treatment and in this area Australia needs to wake up and give all juveniles the Human Rights they deserve.

ision 2009