TITLE:	Discrimination Against Indigenous Persons with Disabilities and the Criminal Justice System
SUBJECT:	Health, Justice, Social
MOVED BY:	Chief Keith Corston, Chapleau Cree First Nation, ON
SECONDED BY:	Alvin Fiddler, Proxy, Wapekeka First Nation, ON
DECISION:	Carried by Consensus

WHEREAS:

A. Under Article 21 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

B. FASD can affect every part of the developing brain. This can result in problems with learning, memory, storage and retrieval of information, adaptive behaviour, attention, impulse control, speech and language abilities, motor development, reasoning, and problem solving.

C. The justice system is not uniform in its treatment of Fetal Alcohol Spectrum Disorder (FASD), especially with respect to the taking of statements and sentencing. Increasingly First Nation people disabled by FASD are being forced pay for their disability with their liberty in the context of bail hearings.

D. The person with FASD is an innocent victim of maternal alcohol use during pregnancy.

E. Improving access to justice for individuals with FASD requires a better understanding of this disability and a concerted effort to keep FASD individuals out of the justice system. The justice system should not be used as a substitute for social services and supports for these most vulnerable citizens.

F. Failing to take FASD into account during sentencing is an injustice to both the offender and society at large. The offender is failed because he or she is being held to a standard that he cannot possibly attain, given his or her impairments.

Certified copy of a resolution adopted on the 6th day of December, 2012 in Gatineau, Quebec

SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Direct the AFN to work with other advocates to ensure that Section 11(e) of the Canadian Charter of Rights and Freedoms, related to proceedings in criminal and penal matters is properly respected and that the courts ensure that pre-trial release is extended to persons with Fetal Alcohol Spectrum Disorder (FASD) and principles of sentencing are amended to reflect the unique nature of this disorder.
2. Direct the AFN to advocate for research on how and when the courts are denying bail to First Nation persons with FASD.

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SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF