

FASD and the Justice System- Challenges and Recommendations

Judge Mary Kate Harvie
Provincial Court of Manitoba



Challenges in Justice System

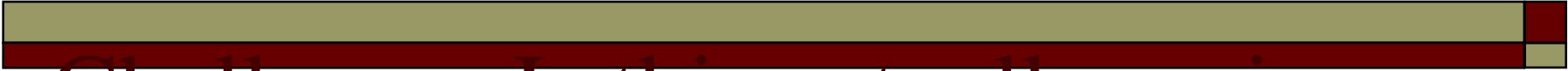
Some general comments:

- ❑ FASD – Known of but not well known.
- ❑ Until recently – limited information available to courts.
- ❑ Suspicion that youth and adult accused affected - but little hard information available – few assessments- therefore hard to know what to do about it



More General Comments

- ❑ Justice System not well designed to tackle a problem like this :
 - Time constraints – Courts busy;
 - Court relies on lawyers to present information.
 - If information not readily available to counsel – not making its way through to Courts
 - Little authority in Criminal Code to order assessment
 - Nothing being done!



Challenge: Is this actually an issue within the Justice system?

-One of the most frequently asked questions

An attempt to break cycle of lack of knowledge
– and answer question – **Manitoba FASD
Youth Justice Program.**



FASD Youth Justice Program Background Information

- ❑ Youth Criminal Justice Act (YCJA)- sec 34- allows for orders to be made
- ❑ Community Partnership and Collaboration.
- ❑ Began in September 2004 with Federal Funding.
- ❑ Ongoing Provincial Funding October 2006.



Goals of the Program

The 4 main program goals:

1. To assess youth involved with the criminal justice system that may have FASD
2. To provide recommendations to the courts for appropriate dispositions consistent with the YCJA
3. To build capacity within the youth's family and community while enhancing government and non-government FASD supports and services
4. To implement multidisciplinary interventions and reintegration plan with supports for youth affected by FASD and their families



Process

- ❑ Multiple sources of referral
- ❑ Screening of referrals
- ❑ When screened in-court order is requested
- ❑ Pre assessment data gathering/collation
- ❑ Assessment by clinical team (psychologist, geneticist, developmental pediatricians)
- ❑ Development of community plan
- ❑ Sentencing conference
- ❑ Community support/advocacy



Assessment Paired with Supports

- ❑ Young person is assigned a coordinator who prepares the youth and family for the assessment
- ❑ Coordinator continues to be involved throughout the case and after disposition
- ❑ Advocates and assists the youth and family
- ❑ Labor intensive



Challenge- Is this an Issue?

Answer- The Statistics Speak

- ❑ 332 Referrals- *speaks to the lack of availability of assessments*
- ❑ 94 Assessments
- ❑ 66 Youth received an FASD diagnosis
 - 55 ARND- *speaks to the invisibility of FASD*
- ❑ Average Age of Youth diagnosed was 15.5 years- *speaks to the fact that these youth are not accessing a diagnosis earlier in life- falling through the cracks and into the criminal justice system*
- ❑ Of those who did not receive a diagnosis- assessment report still forwarded to the Court-



Recommendations

- ❑ Preliminary numbers show this to be a real issue-
Access to assessments in community continues to be limited
- ❑ Program limited to youth- assessments ordered pursuant to YCJA provisions
- ❑ **Recommendation-** *Amend the Criminal Code allow Courts to order assessments*
- ❑ **Recommendation-** *Increase accessibility to Assessments in the community*



Challenge: What's the point of a diagnosis?

- ❑ A question raised for both youth and adult assessments
- ❑ “there’s nothing you can do”; “it’s permanent brain damage, isn’t it?”; “it’s a waste of time and money”;
- ❑ “it’s not an issue for the Court- this is a health issue”



Challenge: What's the Point?

Answer: Knowledge is Power

- ❑ Diagnosis alone not necessarily enough in the context of the Justice system
- ❑ Diagnosis with appropriate supports can make a huge difference
- ❑ Important to note- some of these youth involved in very serious crimes- including a serious auto theft problem



Characteristics of the Population Seen for Youth Justice Assessment- FASD group

Gang involved	65%
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Substance use	44%
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Attending school	35%
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IQ >70	44%
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Outcomes in FASD Group After Diagnosis/Intervention

- ❑ 68% - decreased severity of charges
- ❑ 32% - > 6 months between admissions
- ❑ 70% - decreased rate of charges
- ❑ 21% - > 6 months between admissions and no severe charges

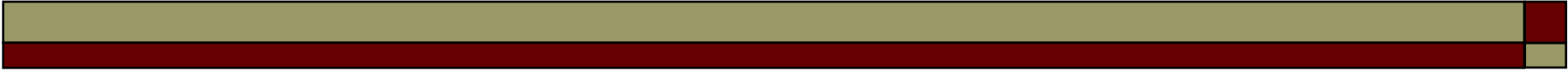


Recommendations

- **Recommendation-** *Need to recognize that diagnosis is not enough-*
- **Recommendation-** *Need for increased support to follow assessment- particularly for those involved in the Justice system- i.e. review the role of probation/parole officers*

Challenge: Accessing Appropriate Housing and Community Resources

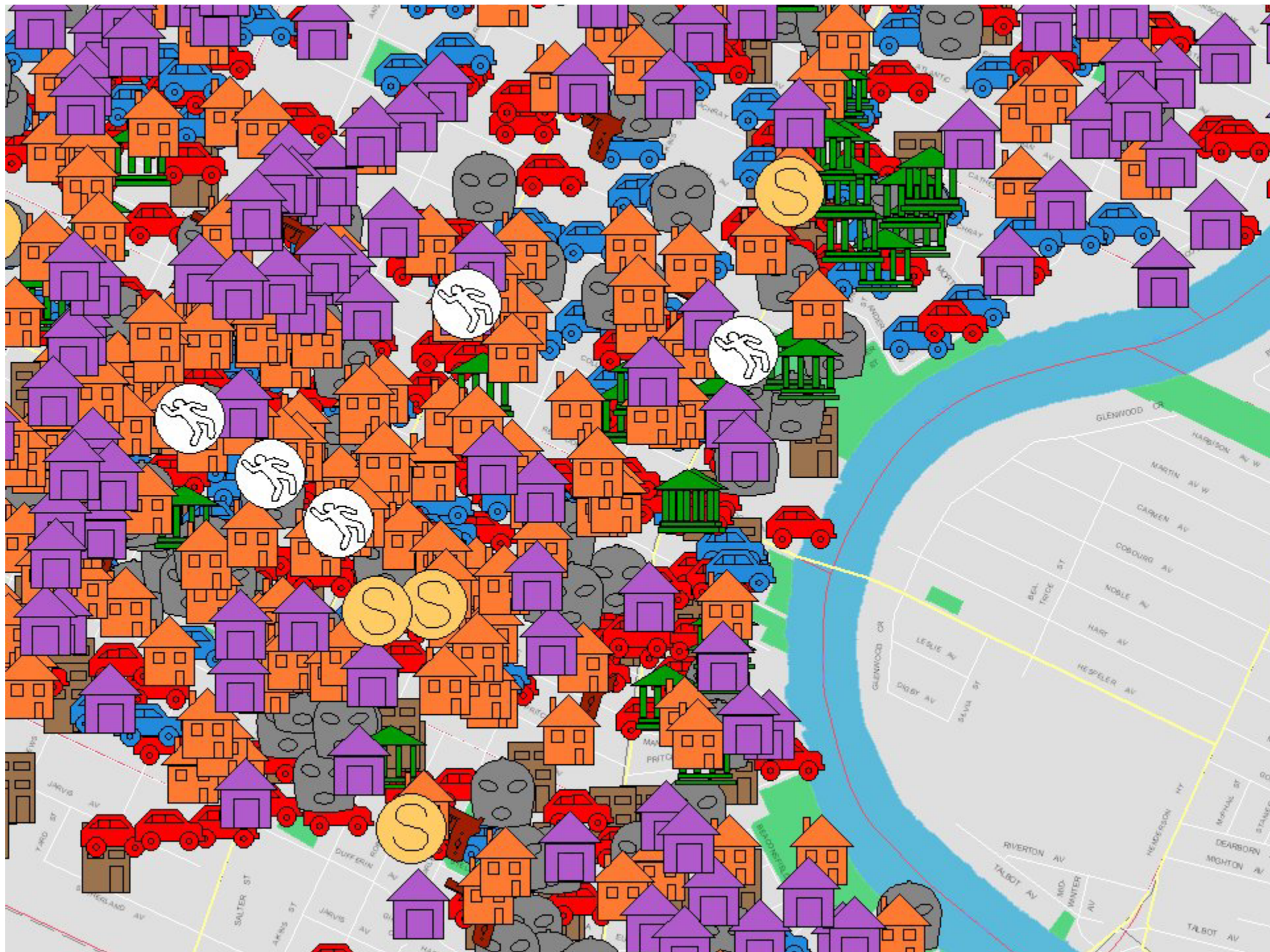
- ❑ Those on the front line identify appropriate housing as a huge challenge and priority
- ❑ Makes compliance with court orders an even greater challenge (i.e. “no contact with identified gangs members”)- may be next door neighbor
- ❑ Vulnerable youth (and adults) are returning to the scene of the crime....literally....
- ❑ **Recommendation-** *increased supports for affected individuals and families in high risk areas*
- ❑ **Recommendation-** *Need to re-evaluate existing supports that depend on IQ of less than 70*

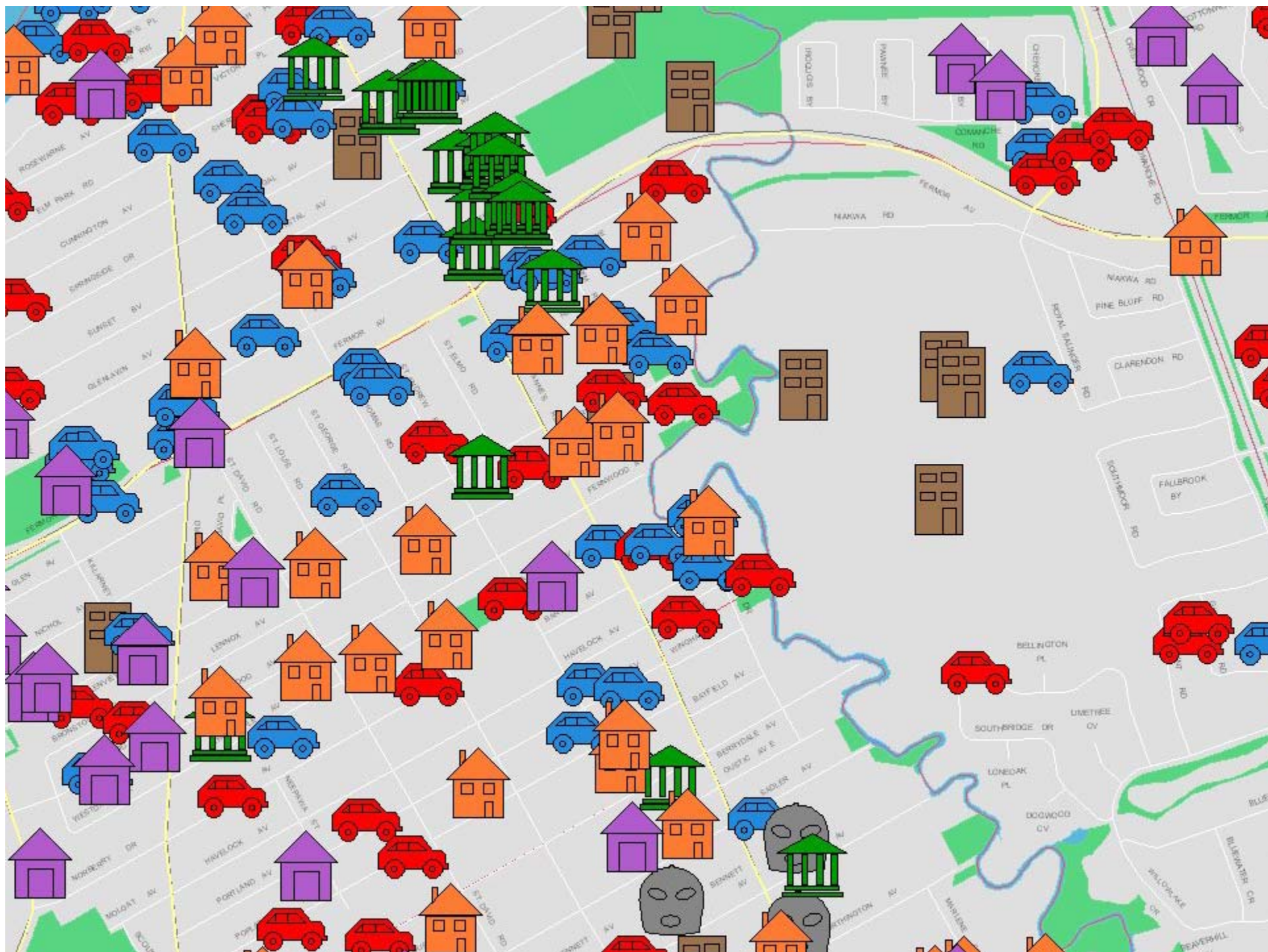


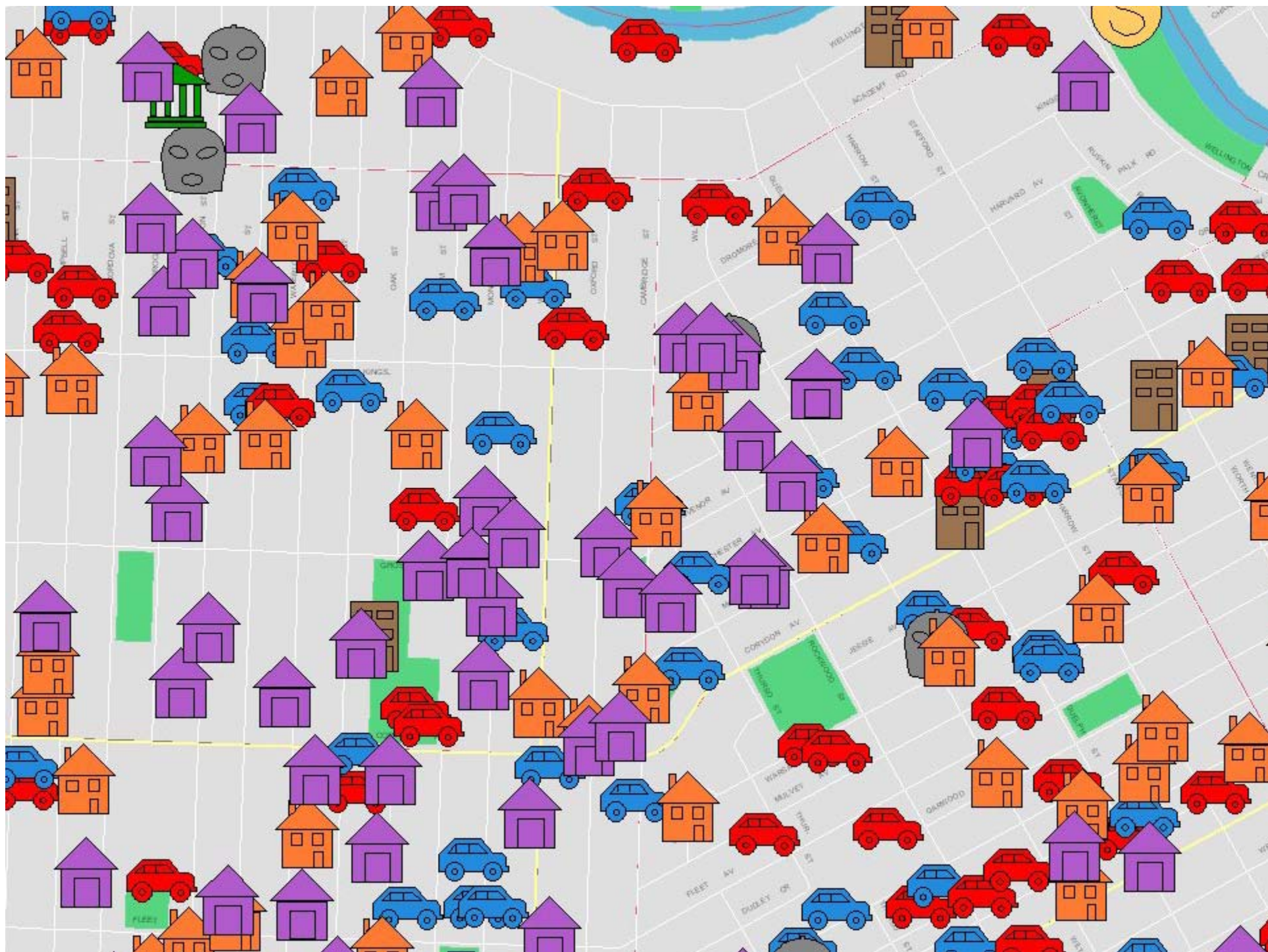
Crime Stats for District 3 Winnipeg

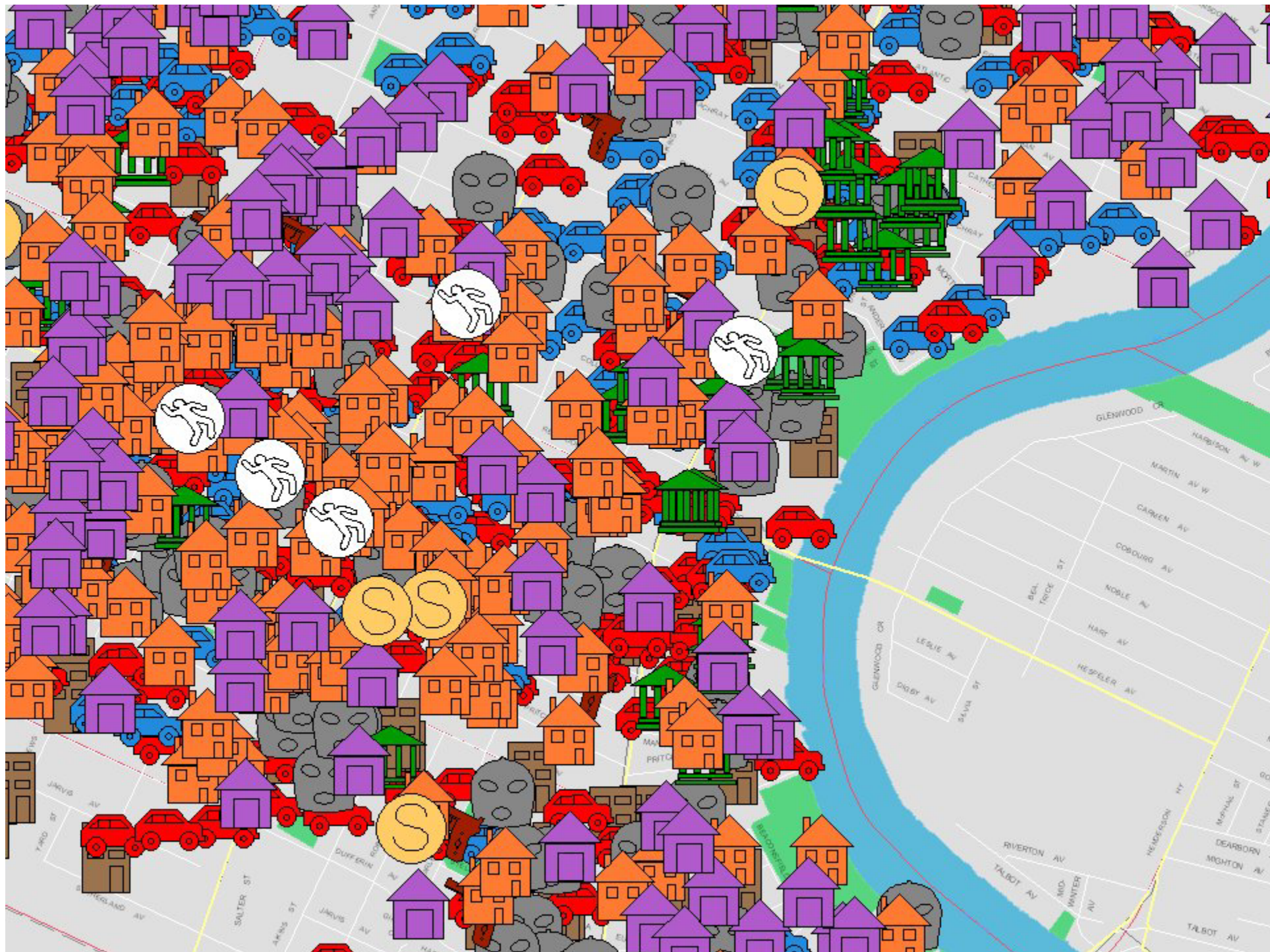
June 30/07- Dec 31/07

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<input type="checkbox"/>	Residential B+E	589
<input type="checkbox"/>	Commercial B+E	407
<input type="checkbox"/>	Other B+E	233
<input type="checkbox"/>	Robbery	217
<input type="checkbox"/>	Shooting	17
<input type="checkbox"/>	Sexual assault	14
<input type="checkbox"/>	Homicide	10











Recommendation

- ❑ For those become involved in the Justice system- getting untangled is a difficult task
- ❑ The written word rules the system; deadlines, appointments, court and probation appointments are the norm
- ❑ **Recommendation-** *FASD “friendly” half way houses ad group homes to allow for gradual re-integration into the community- and for support in following Court and parole orders*



Challenge: A hidden disability adds to Victimization-

- ❑ Diagnosis often shows vulnerability- i.e. easily lead and influenced; difficulty linking cause and affect; vulnerable to gang recruitment
- ❑ Can present as a “poor witness”- fidgeting, easily distracted in a courtroom setting
- ❑ can provide excellent evidence in the proper setting



Recommendation

- ❑ **Recommendation-** *increased training for Justice officials to remove the stigma of the “FASD” witness*
- ❑ **Recommendation-** *training for the practical application of the information- remove some of the stigma*



Challenge- Taking time to Make time in a busy criminal justice system

- ❑ Criminal justice system tends to be overloaded at all times-
- ❑ Little time left over for things such as FASD assessments- and yet “problem solving courts” across the country show statistical success
- ❑ Even less time for victims



Recommendation

- Change occurs when changes on a whole scale basis when change is mandated
- **Recommendation-** *amend the Criminal Code to require Courts to take into account and FASD assessment*
- **Recommendation-** *review the present sentencing process- to allow for greater victim participation and therefore greater community awareness*

What the Youth had to say about Sentencing Conferences.....

□ F.A.S.D. Assessment. Story

Before I had my f.a.s.d assesment I used to get into a lot of trouble and get kicked out of school lots I had trouble staying focused on the positive stuff I could be doing ive always thought like “Why be good and look stupid” while I was doing bad stuff it made me look even stupider.

Well I was sitting in jail on June 16th 2008 waiting for bail on my court case and a guy came to my cell and brought me up front and introduced himself and a person he was working with they told me about this f.a.s.d assessment thing they would have to do on me I had an choice to participate or not participate so I wanted to participate and they told me it would take awhile for the assessment would go through so I didn’t get bail instead I was sentenced to 60days (open custody) and 50 (Community) I had to sit in agassiz youth centre in Portage La Parie, MB and I was visited a few times by Teresa Brown & Jen

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What the Youth had to say about Sentencing Conferences.....

They came to tell me my assessment was coming very shortly and I was gonna be escorted to M.Y.C for my assessment since my sentence time was almost over but I had to do some more custody time but under remand time due to outstanding charges well it was august 14th 2008 and I was transferred to M.Y.C and I sat there for like 3 weeks until my assessment came up and they gave me the results and I found out from there I was F.A.S I knew it wasn't my fault it was my moms for doing drugs or drinking while I was a baby in her stomach.

Then when I appeared in court for my outstanding charges I was given a sentence conference which lots of my supports had to make a plan to keep me out of trouble and keep me busy every day while I was in the community.



What the Youth had to say about Sentencing Conferences.....

So they talked about my release plans but when they brought up school my school didn't go as planned like it was before I was not accepted in sisler high school but when they brought up my F.A.S.D. assessment papers the school had no choice but to let me back into school so they finally found out that I had a problem not staying focused on certain stuff I was always brought into negative behavior by my negative peers around me. I also had a problem learning on certain stuff I can learn easy using my hands and not my eyes or ears some people learn stuff very differently. We are all different I found out and nobody is the same nobody can ever be better then anyone els. Also while I was in the community I have gotten my drivers beginners course and im still going to school and programming like im supposed to. So from this I hope you can learn from my story I tell about my life and about F.A.S.



What the Youth had to say about Sentencing Conferences.....

So from this F.A.S.D. Assessment, I've Learned about how others learn differently and how others may not look like they are F.A.S or they may look like F.A.S & I also learned about different types of F.A.S and some other facts about learning some people may learn with Their (Hands,Ears,Eyes) Someone always has one of those ways to learn and its never the childs fault he was born like that it is the mothers fault they did bad stuff while being in pregnancy with a child.

So I hope others would learn about F.A.S and how it damages your child's brain.