Youth Justice and Other Legislation Amendment Bill 2014
Submission 011

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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

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The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

26 February 2014

Dear Research Director,

RE: Youth Justice and Other Legislation Amendment Bill 2014

We appreciate the opportunity to voice our views and serious concerns on the *Youth Justice and Other Legislation Amendment Bill 2014*. Sisters Inside Inc. is an independent non-government organization that exists to advocate for the human rights of women, their children, and young people in the criminal justice system. Sisters Inside does not support the criminalization and imprisonment of young people. Sisters Inside believes that Social Policy is the only way forward to address the fundamental issues that young people face in our community which includes lack of education and employment, homelessness, isolation, poverty, violence, discrimination, racism and stigma. Social Policy can reduce such issues in our community and the use of detention will reduce.

We have centered our submission around the policy objectives as outlined in the Explanatory Notes and the particular impacts any legislative changes will have on young people. The objectives we have discussed are:

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1. Permit repeat offenders' identifying information to be published and open the Childrens Court for youth justice matters involving repeat offenders;

2. Create a new offence where a child commits a further offence while on bail;

3. Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence;

4. Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention;

5. Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort;

6. Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning.

Youth Offending and Childrens Court of Queensland Annual Report 2011 – 2012

It has been suggested the purpose for this Bill is due to the fact that there is something out of control going on in Queensland Childrens Courts and drastic action such as the outlined proposals need to be introduced to control this issue. This is in fact untrue and misleading when you view the statistics available from credible sources.

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According to the Youth Justice Trend Summary in the Childrens Court of Queensland Annual Report 2011/2012,[1] this proposition is not supported.

> *"There was an overall decrease in the number of juveniles whose cases were disposed of in all Queensland courts in 2011-2012. The decrease was 6.9%, following a decrease of 8.6% in 2010-2011. The Childrens Court of Queensland dealt with 1,762 charges against 358 defendants. This was a decrease of 15.2% from the previous year. The Magistrates Court dealt with 5,840 juvenile defendants. Of these, 313 were committed to a higher court and 5,527 were finalised. There was a 6.3% decrease in the number of juvenile defendants before the Magistrates Court. The statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences. Whilst the number of juveniles appearing before the courts is decreasing, the number of offences alleged to be committed has increased."*

There appears to be a small percentage of young people charged with offences who are responsible for the commission of multiple offences. Given the statistics indicate that the issue is not able to be generalised to the youth population as a whole, Sisters Inside submits that the following propositions that are aimed at young people charged with offences as a cohort are arbitrary and unnecessarily punitive.

Clause 21 – Permit repeat offenders' identifying information to be published and open the Childrens Court for youth justice matters involving repeat offenders

Clause 21 has the effect of removing the prohibition of publication of identifying information about a child who is not a first-time "offender[2]". The section is

[1] Childrens Court of Queensland Annual Report 2011/2012
[2] For the purpose of this submission we use the word "offender" or "offending" where we would only use young person charged with offences or criminalised.

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proposed to apply in any proceeding before a Court where a child has been charged with an offence; and is not a first-time offender.[3]

Sisters Inside does not support the idea that naming and publically shaming children will be a deterrent and decrease youth offending. From our experience working with young people who have been involved with the justice system, it become apparent that many of them share similar stories. We find many of the young people are subject to Child Protection Orders, typically long term orders. Usually they are residing in Residential Care Facilities. Most of the young people have unresolved and ongoing trauma stemming from being removed from their families and forced to reside with around-the-clock careers, who are often inexperienced in dealing with Children suffering from extreme trauma. We find that again young people living in residential care are punished for their behavior by calling police and having child criminalized more often than young people living with their parents.

If these young people are further 'punished' and "shamed" by releasing their identifying particulars then we believe that the result will be the exact opposite of the supposed effect this proposed change is to bring about. We predict that by releasing identifying particulars of a young person's offences it will increase based on the effect shaming will have on young people.

We agree with the following statement by New South Wales Standing Committee on Law and Justice:

> *Naming juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to <u>increased</u> recidivism by strengthening a juvenile's bonds with criminal subcultures and their self-identity as a 'criminal' or*

[3] Youth Justice and Other Legislation Amendment Bill 2014, s299A.

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> *'deviant,' and undermining attempts to address the underlying causes of offending.*[4]

We believe that the young person will strengthen their associations with others who have been given the same label and continue to offend in order to punish themselves and to live up to the label they have been given by society. The isolation that this will cause a young person will have potentially devastating consequences. The humiliation and shame will be overwhelming and juveniles will either rebel and try and live up to the label or they will encounter such negative effects they may become crippling. For example, this kind of shaming may damage a young person's access to academic facilities or employment opportunities; they may be harassed or bullied by others in the community. It is foreseeable that if they are denied access to schools or work offending will continue. This has been an identified effect of publically naming youth offenders in the Northern Territory.[5]

The New South Wales Standing Committee on Law and Justice further stated that a young person who is charged with offences could adequately be punished for their crimes by mechanisms already in place under the Youth Justice Act.[6] Examples include, Youth Justice Conferences, in which the young person will often need to face their victim, victims' families and often their own family. Sisters Inside support the idea that the shame that flows from such a mechanism is sufficient to affect offending behaviours and additional mechanisms of identifying children and labelling them as recidivist offenders is unnecessary and harmful.

Clause 5 – Create a new offence where a child commits a further offence while on bail

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[4] Standing Committee on Law and Justice, The proh bition on the publication of names of children involved in criminal proceedings.
[5] Standing Committee on Law and Justice, The proh bition on the publication of names of children involved in criminal proceedings.
[6] Standing Committee on Law and Justice, The proh bition on the publication of names of children involved in criminal proceedings.

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Clause 5 has the effect of making a new offence of breach of bail an additional effect. The proposal states the section will apply to a child if the child is granted bail after being charged with an offence (the original offence); and a finding of guilt is later made against the child for an offence (the subsequent offence) committed while on bail for the original offence.[7]

We submit that this has the practical effect on a young person who is on bail for an original offence, then commits a subsequent offence, is punished twice upon a finding of guilt for the subsequent offence with an additional offence of breach of bail.

Subsection 2 of the proposed *section 59A*[8] states that the finding of guilt made against the child for the subsequent offence is taken to be an offence against this act. This means that the young person needs only be charged with the original offence and not found guilty of that offence. We submit if the young person is charged with an original offence and that does not result in a plea of guilty of a finding of guilt then the entire premise for an additional punishment for any subsequent offences has no basis.

The proposed amendments to create an offence of breach of bail for youth people will serve to further criminalise young people by doubling up on a punishment for a single offence.

Many young people we support who are granted bail find they have strict bail conditions, many with curfew and non contact conditions. We find that at times bail conditions can be too onerous on young people and may help explain why those conditions are being breached. Currently, if a young person is on bail for an offence (original offence) and they have breached a condition of their bail then a notice of exercise of power is brought before the Court and that child can be detained in custody and subsequently brought before the Court as soon as practicable. We submit that for any breach of condition of

[7] Youth Justice and Other Legislation Amendment Bill 2014, s59A
[8] Youth Justice and Other Legislation Amendment Bill 2014

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bail the current system of allowing a child to be detained and transported to the youth detention centre adequately addresses any issues with young people on bail and any further amendments or creating an offence of breach of bail would be unnecessarily punitive for young people.

There is insufficient information around why young people breach bail to warrant such drastic amendments to the Youth Justice Act. Furthermore, there is nothing that defines how a new offence of breach of bail would affect a young person at sentencing. We submit these issues need to be fully investigated and detailed before any such amendments are introduced in Queensland.

Clause 8 – Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence

Clause 8 seeks to amend section 148(3)[9] by stating this section does not prevent a court that is sentencing an adult from admitting evidence that the adult was found guilty as a child of an offence even if a conviction was not recorded; or receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.[10]

Section 148(1) of the Youth Justice Act[11] currently states:

> *In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.*

Sisters Inside opposes such an amendment being made to the *Youth Justice Act* that would allow a young person's history to be admissible on adult sentencing. This is

[9] Youth Justice Act 1992
[10] Youth Justice and Other Legislation Amendment Bill 2014
[11] Youth Justice Act 1992 s148(1)

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inconsistent with the principle of Youth Justice and that a young person's indiscretions should not follow one into adulthood.

We submit that the current law that permits finding of guilt be admissible if there is a recorded conviction adequately addresses the issues of adult sentencing principles. It is the discretion of a Childrens Court Magistrate or Judge to record a conviction. If a young person has a lengthy history in the Childrens Court that Magistrate or Judge may exercise his or her discretion to record a conviction. This current law allows that adult sentences can be influenced by this history. It is unnecessarily punitive for non recorded convictions to be admissible in adult sentences and would effectively increase the already ever growing prison population. This would only serve to further criminalise young people who have been affected by the criminal justice system in the past and continue to condemn them for their actions as a child.

Clause 20 – Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention

Clause 20 states the proposed section 276B[12] which applies to a child who has been ordered to serve a period of detention under a detention order; and will during the period of detention, turn 17 years; and from the day the child turns 17 years has to serve part of the period of detention for a period that is six (6) months or more; and will not within six (6) months after the transfer day, be required to be released.

Sisters Inside opposes this addition of this proposed section. Again, this transfer rule is at odds with the Youth Justice Legislation in a sentence received as a young person should follow a young person into adulthood.

If a sentencing Magistrate or Judge finds that the most appropriate penalty for an offence committed by a young person is a period of detention then that young person

[12] Youth Justice and Other Legislation Amendment Bill 2014

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ought to be subject to a period of detention and not imprisonment. The punishment needs to be sufficiently punitive for the offence. If a juvenile offender is sentenced under the Youth Justice Act to a period of Detention (irrespective of when they turn 17), that young person ought to be subject to that sentence.

The negative consequences that could potentially flow from such an automatic process as this can be devastating for a young person. 17 year olds may be considered an adult in the eyes of the law in Queensland, they are not considered adults in any other way until they have attained the age of 18. Transferring children to adult prisons will undo any progress made in detention such as programs and education that are focused on rehabilitation. It will also inevitably introduce and expose young people to people and situations they identify with, potentially increasing the risk of reoffending with a new cohort of people.

The proposal is based on the issue of overcrowding in the detention centers. Queensland is experiencing severe overcrowding in adult prisons. We view this proposal as a band aid for a bullet wound. We submit it is necessary to address the issues with the high numbers of both youth and adults who are currently being held in both detention centers and prisons on remand instead of transferring Children to already overcrowded prisons to alleviate stress on the youth detention centers. Overcrowding is a serious issue in Queensland and transferring children to crammed adult prisons to make room for more juveniles is maladaptive and counter-productive to any claims that the move will reduce offending. This is just a warehousing process – nothing more. No rehabilitation will be undertaken and the cycle of criminalization and imprisonment will continue to the detriment of the young person and the community as a whole.

Sisters inside oppose the removal of the Application of Judicial Review to any such decisions.

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Clause 34 – Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort

Clause 34 states the section overrides any other Act or law to the extent that, in sentencing an offender for any offence, the court must not have regard to any principle that a sentence of imprisonment should be imposed only as a last resort.[13]

This is at odds with one of the overarching principles of the *Penalties and Sentences Act*[14] which states:

> *(2) In sentencing an offender, a court must have regard to—*
>
> *(a) principles that—*
>
> *(i) a sentence of imprisonment should only be imposed as a last resort; and*
>
> *(ii) a sentence that allows the offender to stay in the community is preferable*

Sisters Inside opposes the proposal of clause 34 on the basis that removing someone's liberty should always be a last option. If there is an alternative that allows a person to remain in the community and be adequately sentenced for an offence then that option ought to by law be preferred over sentencing someone to a term of detention or imprisonment.

Firstly, the prospects of rehabilitation of young people if this provision was introduced would be drastically reduced. Secondly, the costs associated with such a proposition would not be feasible for Queensland to accommodate. Thirdly, this proposition is completely inconsistent with explanation for automatic transfers of young people to adult

[13] Youth Justice and Other Legislation Amendment Bill 2014 clause 34 (13)
[14] Penalties and Sentences Act 1992

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prisons. If the transfers are to alleviate overcrowding why would the Government seek to propose changes and effectively remove judicial discretion to sentence only the most serious offences to a period of detention? If youth detention centers are so overcrowded shouldn't the Government be finding ways to address the issue instead of removing the safeguards that detention or imprisonment is to be a last resort. This will increase numbers in detention centers and prisons, not decrease them. This will only further criminalise and allow for the detention of non-serious potentially non-criminal behaviour.

Clause 18 – Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning

Clause 18 seeks to remove a courts power in relation to boot camp orders. Sisters Inside supports the premise that a boot camp order shall continue to run until such a time that any breach hearing can be heard by the court.

We trust this will be of assistance to you.

Yours faithfully,

Debbie Kilroy OAM
CEO
For and on behalf of Sisters Inside Inc