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

Sisters Inside Submission to Legal Affairs & Safety Committee

Youth Justice and Other Legislation Amendment Bill (Qld) 2021

Date: 18 March 2021
To: The Committee Secretary of the Legal Affairs and Safety Committee
Via email: lasc@parliament.qld.gov.au

To the Committee Secretary,

Sisters Inside Inc welcomes the opportunity to provide a written submission to the Committee regarding the proposed *Youth Justice and Other Legislation Amendment Bill 2021* (Qld) ('the Bill').

About Sisters Inside

Sisters Inside is an independent community organisation that advocates for the human rights of women and girls in the adult and youth criminal legal systems. For almost 30 years Sisters Inside has offered support and services to criminalised women, girls and their children in both prisons and the community throughout Queensland. We also advocate for the rights of criminalised women, girls and their children nationally and internationally.

Sisters Inside has extensive frontline experience working with children in the youth legal system and young people who have 'graduated' to the adult criminal legal system, and is uniquely placed to advise the Committee on legislation and policy in relation to criminalised and imprisoned girls. For almost 3 years, our Yangah Program has supported girls in watch-houses and on remand in South East Queensland to secure bail and to meet their bail conditions. Since 2001, we have provided culturally competent support for 10-25 year old children and young people affected by criminalisation (their own, or their parents') to address their actual or potential homelessness and to re-engage them with education, training, family and community, through a variety of Queensland and Commonwealth Government funded programs.

Position Statement

The evidence overwhelmingly recognises the value of keeping children out of the youth legal system wherever possible. Sisters Inside enthusiastically supports the 4 'pillars' of the Queensland Youth Justice Strategy 2019-2023:

- *Intervene early*
- *Keep children out of court*
- *Keep children out of custody*
- *Reduce re-offending*[1]

Consistent with the evidence, the Strategy recognises **the failure of imprisonment as a means of crime reduction**, highlighting national and international trends away from imprisonment of children. According to the Strategy:

> *… children and young people who have been through detention are at more risk of committing offences when they return to the community*[2].

It also cites an Australian Institute of Health and Welfare (AIHW) study which found that 82% of children who were imprisoned nationally, returned within 12 months. Of particular concern is the high rate of imprisonment on remand: almost 2/3 of child prisoners in Australia are unsentenced and of these, 2/3 never receive a prison sentence[3]. Whether or not they are found guilty of any crime, these children (some as young as 10 years old) are permanently scarred by the trauma of their prison experience and dislocation from their cultural and emotional support systems.

There is also substantial evidence of the nexus between childhood and adult criminalisation: according to the Strategy, 31% of children in the Queensland youth legal system had a parent who had been in an adult prison, and studies in other jurisdictions have shown high rates of adult criminalisation amongst those with a history in the youth legal system[4]. **Accordingly, it is essential that any legislative changes to the Youth Justice Act (1992) continue to enable concrete and positive alternatives to criminalisation and imprisonment for children.**

Sisters Inside is strongly opposed to the proposed reforms. We contend that they are driven by social myths, including the unfounded belief that greater surveillance, punishment and stigmatisation will reduce 'offending' by children. These reforms will only punish and further marginalise and criminalise young people, without <u>any</u> substantive evidence that these draconian measures will prevent or reduce childhood criminalisation. To the contrary, they directly contradict the Youth Justice Strategy which was based on the findings of the 2018 *Atkinson Report* which identified a number of social, familial and individual causes of childhood criminalisation, and advocated for a 'long term holistic suite of solutions'[5]. In particular, the Bill threatens to worsen the existing discrimination against First Nations children; others living with multigenerational criminalisation; and those living in targeted locations that place them at increased risk of being targeted, surveilled and criminalised.

Sisters Inside is deeply disappointed at the contradiction between the Bill and recent tentative, evidence-based, positive changes in Queensland's response to criminalised and at risk children. It is sad that these are being lost in pursuit of ill-informed 'tough on crime' rhetoric, which is inconsistent with the evidence. In particular, it fails to recognise that recent years youth 'crime' rates have fallen in Queensland[6]. (We can confidently say, in relation to girls, that this is partly a result of the success of the Sisters Inside Yangah Program.).

Community safety and children's rights are interdependent. Text and public comment associated with the Bill implies a tension between community safety and child criminalisation. In fact, there is substantial evidence that taking a child-centred, human rights approach to early 'offending' can play a key role in helping children break out of family and community cycles of criminalisation. Respecting and meeting children's rights is essential to both short term and sustained community safety.

The proposed changes would unreasonably limit children's rights without commensurate community benefit. 'Tough on crime' approaches have already been

proven a failure. Throughout Australia, the youth legal system has a massive return (failure) rate. Nationally, the average return rate within 12 months of release from "sentenced supervision" (in prison or the community) rose from 50% in 2013-14 to 59% in 2017-18. Queensland has an even higher failure rate, rising from 55% in 2013-14 to 65% in 2017-18.[7] The punishment-focused reforms proposed in the Bill will not lead to greater community safety. In contrast, there is substantial evidence that investing in early intervention and prevention services for at risk children and their families contributes toward greater community safety over both the short and long term.

Sadly, the proposed Bill mainly panders to vigilante demands for a violent 'quick fix'. This, despite the lack of evidence of either a widespread youth 'crime' 'problem' or the efficacy of punitive approaches. Statistically, Queensland risks returning to being Australia's most 'backward state' with the Bill's proposed response to child 'crime'. As a state, we risk returning to the failed policies of the past, just at the time that innovative, human rights driven, early intervention and prevention strategies, particularly for Aboriginal and Torres Strait Islander young people, are beginning to bear fruit!

The reforms proposed in the Bill will cause significant immediate and long term harm, particularly to Aboriginal and Torres Strait Islander children. Queensland already leads the nation in the number of children under supervision on a given day, accounting for 34% of all children under supervision in Australia in 2018-19[8]. The Bill will only extend the carceral net, increasing the number of children in prison and increasing the risk of imprisonment amongst children granted bail. This, in turn, will result in redirection of resources from evidence-based early intervention and prevention, to the carceral system.

The particular threat to Aboriginal and Torres Strait Islander children

The proposed reforms will particularly target and harm Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander children are grossly over-represented in the child prison population. First Nations children (age 10–17) account for 5% of Australian children but 59% of the child prison population nationally[9] and approximately 58% of the cohort in Queensland[10]. Nationally, 78% of 10-13 year olds in children's prisons are Aboriginal and Torres Strait Islander[11] and 2018-19, First Nations children were 22 times more likely than other children to be in a children's prison[12]. The rate in Queensland is substantially higher First Nations children being approximately 30 times more likely to be in youth prison, and on remand, than other children[13]. This is hardly surprising since, according to a Queensland study, **First Nations children are 2.9 times less likely to receive a caution, and 2 times less likely to be diverted from court, than other children**[14].

Aboriginal and Torres Strait Islander children are massively overrepresented at all levels of the youth legal system. Our First Nations children continue to experience ongoing colonisation, the trauma of the Stolen Generations, and institutional and systemic racism. Their disproportionate criminalisation and imprisonment is a result of this marginalisation and serves to reinforce the intergenerational cycle of trauma and disadvantage. **More than ever, the proposed changes reflect and reinforce colonial values and practices.** This is also clearly apparent in the child 'protection' system.

Early criminalisation of First Nations children is closely associated with involvement with the child 'protection' system. The Special Rapporteur on the

Rights of Indigenous Peoples was distressed by the number of young people moving from out-of-home care to prison, and reported that:

> *Several sources, including judges, informed the Special Rapporteur that, in the majority of instances, the initial offences committed by children were minor and nonviolent. In such cases, it is wholly inappropriate to detain children in punitive, rather than rehabilitative, conditions. Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime. The Special Rapporteur was alarmed that several of the young children she spoke to in detention did not see any future prospects for themselves.*[15]

The nexus between the child 'protection' and 'justice' systems

The proposed reforms fail to acknowledge or address the contribution of other state systems, particularly Child Safety, toward the criminalisation of children in Queensland. (The failure to provide adequate public housing also plays a central role in many children's criminalisation.)

Much has been written about the crossover between intervention by child 'protection' authorities and childhood criminalisation[16]. In their 2018 report, the AIHW found that nationally, 55% of children in youth prison had also been engaged with child protection services. This is 'almost 10 times the rate for child protection service use for the general population'[17]. **Of the children who experienced both child 'protection' and youth prison, 81% experienced child 'protection' first**[18]. The 2018 *Atkinson Report* pointed to findings that **83% of children in the Queensland youth legal system were known to the child protection system[19].**

Over a 4 year period from 2014-18, Aboriginal and Torres Strait Islander children in Australia were 17 times more likely than other children to be under the supervision of both the child 'protection' and youth 'justice' systems in the same year[20]. The trend continues, with 54% of children in the youth legal system in 2018-19, having also been in the child 'protection' system during the preceding 5 years. Girls are particularly vulnerable to criminalisation through the child 'protection' system. In 2018-19, 71% of girls compared with 49% of boys, and 75% of First Nations girls compared with 68% of other girls, had been in both systems[21].

Sisters Inside has seen repeated situations where a girl's first 'criminal offence' is 'committed' in residential 'care'. These so-called 'offences' include 'theft' - taking blue tack without permission from the office to stick up a poster in their room or 'breaking in' to a locked fridge to get food, because they are hungry. And, this situation is frequently exacerbated by an accumulation of charges – for example, a young woman missing her train, and residential 'care' workers refusing to pick up her from the train station so she can get home in time to meet her bail curfew, and calling police 'on the dot' when she is not at the residential address by the curfew time. Collectively, this accumulation of charges, which would never even begin in most family settings, is too often seen as indication of recidivism.

This data highlights the role of individual and intergenerational trauma and familial instability in a child's behaviour and criminalisation. It also demonstrates that Child Safety often fails to provide effective support and stability for the children in their care – the Department certainly does a worse job of 'parenting' than parents in the general population.

The role of disadvantage in childhood criminalisation

Almost every study of childhood criminalisation has highlighted the almost universally social disadvantaged and marginalised background of criminalised children. Sisters Inside would be happy to supply a list of references in support of this claim, if the Committee is in any doubt about this claim!

The most recent Queensland Department of Youth Justice census from 2019 is typical. It shows that of the children surveyed, 53% had experienced or been affected by domestic and family violence, 80% had misused intoxicating substances, 46% had a relevant mental health and/or 'behavioural disorder' and 82% had totally disengaged from education, training and employment[22]. Similarly, according to the Youth Justice Strategy, 31% have a parent with a history of imprisonment, 58% had a 'mental health or behavioural disorder', 52% were totally disengaged from education; 20% of children in the Queensland youth legal system were homeless or had unsuitable accommodation and 17% had a diagnosed or suspected disability[23]. A 2017 WA study found that 89% of the children in the Banksia Hill Detention Centre had at least one severe 'neurodevelopmental deficit'[24], and in 2014 the Mental Health Commission of NSW estimated that about 70% of children who came into contact with the youth legal system were living with 'mental illness'[25].

These are children with complex, interrelated needs. Analysis of all criminalised and at risk 11-17 year olds involved in Sisters Inside's Reconnect Program over a 3 year period[26] found that almost 2/3 had 5 or more of the following characteristics. They:

1. had a family history of criminalisation (91% of participants);
2. had lived experience of violence (93% of participants);
3. were First Nations children (59% of participants);
4. had disengaged from education/training by age 16 (50%);
5. had childhood experience of Child Safety intervention (37%);
6. had experienced family homelessness (34%);
7. had a personal experience of homelessness (26%); and/or
8. experienced symptoms of the above - a history of mental health issues, including substance abuse (79%).

Our Submissions

Reforms must be consistent with children's human rights

Australia is a signatory to many relevant international human rights instruments, including the *Convention on the Rights of the Child; United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the *Havana Rules*); *Guidelines for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*); *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the *Beijing Rules*); the *United Nations Declaration on the Rights of Indigenous Peoples*; the *International Convention on the Elimination of All Forms of Racial Discrimination;* and the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (and the *OPCAT*). The Bill manages to contravene clauses from every one of these agreements. In particular, the instruments specific to children's rights highlight the importance of alternatives to prison, and only allow for use of imprisonment as a measure of last resort and for the shortest possible time.

Queensland's Human Right Act is based on these and other human rights instruments. The Act includes rights noted in the Statement of Compatibility, which call into question the compliance of the Bill. These include the right to: recognition and equality before the law; privacy; protection of families; treatment in best interests of a child; freedom of

movement; freedom of association; equality and non-discrimination. The Statement also addresses the right of Aboriginal and Torres Strait Islander peoples to maintain kinship ties and the right to liberty, to be presumed innocent until proven guilty, and to protection in a child's best interests. We note in particular that the Statement of Compatibility fails to identify some particularly pertinent human rights, including freedom from cruel, inhuman and degrading treatment and:

> *A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.* (Section 32.3)

This clause alone raises doubts about the legitimacy of most of the Bill.

We understand that, under the Act, human rights can be limited. However, any limitation must meet strict criteria including demonstrating that the limitation helps achieve an important purpose, and there is no less restrictive or reasonably available ways to achieve the purpose[27]. So if, for example, the goal was 'community safety' the Queensland Government would have to demonstrate (with compelling and irrefutable evidence) that these draconian laws are the only way to achieve community safety. Clearly, this is far from the case here therefore, Sisters Inside argues that the proposed reforms place an unreasonable limitation on children's rights, with no sustained community benefit.

In keeping with our international obligations and Queensland law, children should be at the centre of any youth justice legislation. Children in the youth legal system must be treated as children first and foremost. As detailed above, looking after children is looking after the community. Criminalising our most disadvantaged and marginalised children only serves as a pathway to ongoing (often intergenerational) cycles of criminalisation and imprisonment … too often interspersed with a cycle of family or sexual violence, homelessness, mental health issues and/or substance misuse.

Prison is no place for any human being. It is particularly harmful to children. And it is even more harmful to the many Aboriginal and Torres Strait Islander children already living with multi-generational trauma. And its harm is exacerbated for children with development disabilities and others under state control, who have already survived grief, loss and repeated failures by the state to meet their needs. Too often, the violence of their treatment in prison is not dissimilar to the neglect and abuse experienced in other parts of their lives. Prisons are totally ill-equipped to address childhood trauma and other needs, typically retraumatise these children, and may contribute to escalating the very behaviours which led to their imprisonment in the first place.

Labelling of highly disadvantaged children ('recidivist young offenders')

Sisters Inside is strongly opposed to the proposed amendment to Youth Justice Principles *to include a reference to the community being protected from recidivist youth offenders.*

Criminalised children are part of our community. They are entitled to protection from harm, including the enormous harm caused by criminalisation, imprisonment and disconnection from their family, culture and community. We have a responsibility to support and uplift these children by addressing the underlying causes of childhood criminalisation, in particular: trauma, racism, poverty and intervention by the Department of Child Safety, and associated symptoms such as mental health issues, substance use and disabilities.

Rather than further labelling and demonising these children, the Queensland Government should re-frame the rhetoric it deploys to describe children in the youth

legal system. Perpetuation of the narrative that children are 'recidivist high-risk offenders'[28], 'hardcore repeat offenders'[29] and 'hardcore youth criminals'[30], is harmful to both the child and the community. It builds community tension through framing children as a threat. It sets children and the community against each other when, in fact, better responding to children's rights and needs is the strategy most likely to keep the community safe. This language implies that these qualities are innate and intractable and fails to recognise the social and structural disadvantages that drive childhood criminalisation in Queensland. It also risks generating a self-fulfilling prophesy, with children thus labelled receiving heightened attention and surveillance from authorities and therefore being further criminalised for the most minor infractions (including 'crimes' which would normally not be detected or pursued when 'committed' by other children).

The Queensland Government should acknowledge and address the contexts in which children are criminalised. Instead of drafting laws that further punish, traumatise, and ostracise these children, the government should educate the community about the 'real' causes of criminalisation and prioritise resourcing of evidence-based strategies that address social disadvantages.

The purpose of the proposal is to increase involvement of parents, guardians or other persons in the child's life to support the youth on bail, assist the court or police in bail decision-making and compliance with bail conditions.

Treating an offence on bail as an aggravating factor in sentencing

The Youth Justice Strategy acknowledges that treating children in the same manner as adults is 'not the best way to reduce youth offending or re-offending'[31]. And with 82% of children returning to prison within 12 months, the evidence demonstrates that harsher penalties for children does not reduce re-offending or re-imprisonment[32]. This Bill fails to take account of the evidence which demonstrates children's lesser capacity to assess risk and pre-consider possible consequences of their actions, compared with adults. It also fails to recognise the ease with which this could lead to the criminalisation of simple mistakes, such as walking to school using an unauthorised route when wearing an ankle bracelet, or losing track of time when visiting friends and on a curfew.

In our experience criminalised children are likely to have many criminal charges pending at the same time and are highly likely to be charged with further offences while on bail. Too often, this is a direct result of higher than usual levels of surveillance, targeted policing and laying of charges for 'offences' which would not normally be detected or pursued amongst more advantaged children. This is underpinned by social factors (such as poverty and homelessness), intergenerational factors (such as trauma and criminalisation), familial factors (such as lack of safe, secure living arrangements) and individual factors (such as underdeveloped cognitive functions responsible for impulse control, planning and understanding consequences[33]). Given this context, this proposed amendment is highly unlikely to achieve the specific deterrence sought. To the contrary, it is like to add to the number of charges faced by children and increase their risk of imprisonment.

Presumption against bail

Sisters Inside is deeply concerned about the injustice of this proposal – after all, it is clearly discriminatory through proposing a standard not even applied to adults. This proposed amendment, in particular, works in direct contradiction to the evidence and the Youth Justice Strategy. As Sophie Trevitt of Change the Record said there is:

> *… no evidence that harsher bail laws reduce youth crime, but there is an abundance of evidence that creating a presumption against bail means more children behind bars for behaviour that a court has not even found them guilty of.*[34]

Police already have extensive discretionary power to refuse police bail. The inconsistent way this discretion is currently applied is already a matter of great concern. A failure to disallow any discretion will significantly increase the number of children in youth prisons and police watch-houses. Imprisonment, particularly of an untried child, should always be a last resort.

Children should not be imprisoned on remand. Imprisonment is traumatic, and even a short period of imprisonment has long lasting negative effects. Repeated studies over the last 30 years have demonstrated that imprisoning children on remand further entrenches them in the criminal legal system – first as a child and then, too often, as an adult. Imprisonment (whether sentenced or not) increases the likelihood of children's return to prison – often multiple times. This certainly does not improve community safety.

The injustice of child imprisonment on remand is highlighted, as detailed above, by the reality that most children who are imprisoned on remand do not ultimately receive a prison sentence. In the short term, any prison is a highly stressful environment which is, by its very nature, violent. (And, these children, who have not been found guilty of any crime, have even less access to programs and emotional support than sentenced child prisoners.) Over the long term, we have already identified the pipeline from childhood imprisonment to adult prison. And, in addition to being isolated from their family and community, children's health and wellbeing is further set back by the poorer quality of health, education, training and work opportunities in youth prisons than in the community.

Almost all girls in youth prisons have been sexually assaulted and, as a result, suffer from post-traumatic stress disorder[35]. We know that breach of a DVO is amongst the top 10 reasons for women's (particularly First Nations women's) imprisonment in Queensland[36]. After a lifetime of abuse, girls (and women) can strike out – at their main perpetrator or others. Community-disconnected, gender-ignorant and culturally-incompetent police too often fail to understand the context of this 'offending', and girls defending themselves against violence become targets of law enforcement – a phenomenon which is increasing being referred to as the 'sexual abuse to prison pipeline'[37]. In these circumstances, it would not be surprising if girls were charged with one of the designated charges – *assault occasioning bodily harm*. Girls also report being under duress to accompany their controlling partner in committing a crime (such as *unlawful use of a motor vehicle* or *attempted robbery.)* According to the Aboriginal and Torres Strait Islander Social Justice Commissioner:

> *In every prison and juvenile detention facility I visited, I heard similar stories of violence and abuse leading, indirectly and directly, to an offence …*[38]

Police and the courts must have the discretion to examine the circumstances of each case, before making the serious, life-changing, decision to imprison a child on remand.

The threat of bail revocation will not have the deterrent effect advertised by the drafters of this Bill. Children tend to react in the moment with little thought of the future. The principle of deterrence has little applicability in the youth legal system because it erroneously presumes that the child's criminalised actions are pre-meditated. Medical research demonstrates that 'that the adolescent brain is not a fully developed and functional organ, but rather a work in progress'[39]. The prefrontal cortex gradually matures between age 10 and 17 and is not believed to be fully developed until age 18 to 25[40]. During this period of development, children and young people are believed to

be especially reactive - seeking immediate reward, being impulsive and engaging in risk-taking behaviour[41]. For these developmental reasons, amongst others, children should not be held to the same criminal legal standards as adults.

Parent 'supported' bail

Sisters Inside has serious concerns about the proposal that parents (or others in a similar role) take a more formal role in bail surveillance and supervision. The evidence clearly shows that keeping children connected to their families and culture can play a critical role in building their capacity to be part of the community (and disengage from crime). This proposed reform risks serving to punish both children and their families, rather than reducing their risk of further criminalisation.

Parents shouldn't be prison officers. The Bill says that the purpose of this provision is to increase involvement of parents in supporting their child to meet their bail conditions. However, it equally says that they are responsible for 'assist[ing] the court or police in bail decision-making and compliance with bail conditions'. These functions are incongruous. Genuinely supporting a child involves making judgements about their best interests. Regardless of what the child has done, the parent may conclude that reporting a breach of bail to authorities is not in their child's best interest. And, if they do report their child, this may at best undermine their ability to provide emotional support, and at worst, lead to a significant deterioration in family relationships. Whilst the legal implications for failing to uphold this obligation are unclear, at the very least, the non-reporting parent becomes vulnerable before the law. The whole family also loses their privacy, particularly if the child is under electronic surveillance.

Bail should not serve to escalate family tensions: If a parent (for good reason) is unwilling to take on a policing role, this may in and of itself generate tensions within the family and put the child's connection with their family at risk. This is particularly relevant in situations where court processes are not culturally safe and respectful to First Nations families. This proposal also fails to consider the possible risk of reprisal against the family member who reports to authorities; the potential escalation of existing family tensions into domestic violence; and the possible use of intimidation and control by family members.

It is unfair for children without parental support to have reduced access to bail: Many criminalised children come from dysfunctional families, and more than half the children in prison in Queensland are or have been under the care of the state. For many, the state remains their 'parent'. Child Safety fails to fulfil anything like the usual role of a parent – too often children are placed in unsafe settings; are separated from their family and culture; lack the basic needs of life; and are not provided with suitable accommodation. Often, their criminalisation is a direct result of being in inappropriate care. As a result, there is often no-one in their lives ready and able to take on a parental role. The danger is that these children could be further discriminated against – their disadvantage could be construed as a risk factor in bail decisions – and they could end up in prison due to failure of the state to provide proper care.

Electronic tracking

This amendment is, perhaps, the most racist of the proposed reforms in the Bill. Sisters Inside is deeply disturbed by its possible immediate and wider implications**.** This is due to both its expected disproportionate impact on Aboriginal and Torres Strait Islander children, and its reflection of colonial values and practices.

This proposed reform can be expected to hugely disproportionately impact Aboriginal and Torres Strait Islander children, their families and their communities. The evidence clearly demonstrates that Queensland police cannot be trusted to exercise discretion in

a non-racist manner. As detailed above, First Nations children are almost 3 times less likely to receive a (police) caution, and 2 times less likely to be diverted from court, than other children[42].

Ankle monitors are deeply reminiscent of the ankle shackles which were used to control First Nations prisoners early in the colonisation process (and not far different from those still used sometimes today). At a psychological level, this measure can be expected to compound the trauma of children themselves and First Nations people more widely, through reminding them of the history of racism, murder, colonial vigilante groups, rape, abuse and other forms of inhumane treatment suffered by their ancestors.

We already have a national problem with white supremacism, and, in parts of Queensland, vigilantism. Ankle monitors are almost exclusively associated by the community with convicted dangerous sex offenders, and can be expected to function 'like a red rag to a bull', with reactionary elements in the community. Ankle bracelets are highly visible and will make children easier to identify by vigilantes and other community members. Marking out these children, who must be presumed innocent, can only be expected to place affected children (and, possibly, their families and communities) at increased risk of violence. Far from making the community safer, ankle monitors risk increasing community violence.

The Bill proposes introducing electronic tracking for children who have already established that they are entitled to bail. Adding electronic surveillance to the already often arduous conditions of bail, will increase the difficulties children face in meeting their bail conditions. In practice, ankle bracelets will effectively extend the carceral net. The extra conditions associated with wearing a tracking device increase the risk that young people will fail to fulfil their bail conditions, and end up in prison. They can be expected, for example, to have to plan their days in advance – where they'll go and by which routes; how they'll make it home in time for curfew; and how they'll ensure they have everything they need during 'lockdown'. It will certainly further alienate these children further from the community. They would clearly be less likely to go out in public to participate in education/training or find a job, and run the risk of discrimination when seeking housing or other services. And they have to carry the burden of stigma and shame, including the association with sex offenders.

The tracking devices will not prevent crime – knowing where a child is does not stop a crime from occurring. Sisters Inside is unaware of any research which demonstrates that electronic monitoring is effective in reducing crime amongst children: logic dictates that it would be more likely to escalate crime. This proposed reform would be an expensive and wasteful use of resources. Ankle bracelets would enable authorities to monitor and profile children and would increase interactions between children and police, thereby creating more opportunities for police to charge them with fresh offences.

Further, most criminalised children live in poverty. Maintaining a tracking device and associated equipment and keeping them in good working order takes time and resources. Many children, particularly those who are transient, homeless or escaping violence, will have difficulty accessing power to recharge the device (for several hours each day), internet access and a mobile phone so they can be contacted by authorities.

Children on bail, particularly those under the control of Child Safety, often lack a safe and stable home and many have little choice but to live in potentially violent situations. We believe that implementation of this proposal would inevitably lead to more children being charged with breach of bail offences (e.g. breach of curfew, failing to charge device) when they take the self-protective measure of leaving their accommodation

because it is unsafe or upsetting. This, too, would likely result in more children being taken into custody and held in the watch-houses and youth prisons.

Scanners and suspicion-less searches

The idea that police should be able to arbitrarily stop and search anyone, without reasonable suspicion that they are carrying a weapon or committing a crime sounds like it belongs in a police state. There is already substantial evidence of Queensland police profiling and targeting of children and young people, particularly Aboriginal and Torres Strait Islander children and other children of colour. This has been a key contributor to Queensland's particularly high rate of child imprisonment. This proposed extended police power continues a pattern of surveillance which seems more designed to add multiple minor charges to children's charge sheets, than to reduce crime.

This provision risks heightening tensions between police and young people in the targeted areas. Ironically, this may lead to children forming bigger groups in response to feeling insecure on the streets. Whether this is a wand search or a more invasive search is often irrelevant, since the former could easily lead to the latter. We are also concerned about the possibility that children carrying metal objects other than knives could be subjected, without cause, to more invasive searches. The evidence on the trauma caused by strip searching girls, particularly those with a history of sexual abuse, is well documented. And, according to the Australian Human Rights Commission, 'unjustified' strip searching is already being particularly widely reported amongst Aboriginal and Torres Strait Islander women and girls[43] - use of hand held scanners can be expected to only increase these numbers.

We also foresee the risk that children will legitimately assert their right to privacy and end up with further charges related to their interaction with police (*failure to follow a lawful direction* or *assault police*), which often say more about police attitude in their interactions with children than about the criminality of the child.

The alternatives

It is essential that any legislative changes to the Youth Justice Act (1992) strengthen Queensland's capacity to reduce the number of children in prison, address the underlying causes of their criminalisation, and provide concrete and positive alternatives to criminalisation and imprisonment for children.

Clearly, western measures to address 'crime' amongst Aboriginal and Torres Strait Islander children have been an abject failure. Despite First Nations children comprising the majority of children in prison in Queensland, the Bill fails to enshrine a role for First Nation Elders and communities in youth justice decision-making. It is only when responses pay respect to both children's human rights and their cultural identity that children and their families can begin to move out of the cycle of criminalisation and often violence, poverty and despair.

We submit that the proposed reforms are predicated on a mischaracterisation of the predictors of childhood criminalisation. Any genuine attempt to reduce child criminalisation and imprisonment must start with addressing **the drivers of child criminalisation which fall within the ambit of the Queensland Government**. Of particular urgency is addressing problems with the Child Safety system and ensuring access to safe, secure, affordable accommodation for children, young people and their families.

Imprisonment of children is fiscally and socially expensive – over both the short and long term. The direct cost of keeping a child in prison is $1,640 per night[44] - that is,

$600,000 to imprison a child for a year[45]. This does not take account of the harm done to children as a consequence of a period of imprisonment and associated long term costs to other state systems (e.g. housing, employment, health, child 'protection'). A failure to reduce the number of children in prison can be expected to have a multiplier effect in terms of the long term costs of ever-increasing imprisonment to future generations.

Imagine if the $184 million currently wasted annually on youth 'justice' in Queensland (or even just the 68% of this spent on children's prisons)[46] was reallocated to evidence-based, community safety strategies.

Rather than implementing the proposed draconian Bill, the Queensland Government should recognise and address the social, economic, structural and developmental factors that are responsible for childhood criminalisation. The youth legal process must respond to criminalised children's needs and provide long-term, comprehensive support to adequately address the causal factors underlying their behaviour. This is best achieved by funding genuine community-driven organisations to deliver wrap-around support services at the community level. These organisations should be adequately resourced to address fundamental needs like safe, affordable accommodation and health and wellbeing. Their youth workers should assist children on bail to comply with their conditions. Services should work alongside criminalised children, to advocate with the statutory systems affecting their lives including Youth Justice, Child Safety and Education. They could also provide safe spaces for these children to learn and grow, through facilitating sports, arts and other creative educational opportunities.

Attention must also be paid to availability of culturally-competent, trauma-informed, strength-based education and training opportunities; counselling and personal/family support; and drug and alcohol education and rehabilitation. Too often, these services are put out to tender in a manner that ensures that the mistakes of the past are repeated. Rather than drawing on the expertise of First Nations community controlled and other community-driven organisations, predetermined models of service are imposed by government. These typically require replication of the failed approaches of the past. Community-driven organisations are best placed to design and deliver services which are tailored to the particular needs of criminalised and at risk children, their families and their communities. It is critical that these 'experts' be given the opportunity to design programs, rather than being strait-jacketed by the constraints of narrow, predetermined approaches assessed according to their achievement of short term 'outcomes' rather than long term change. Funding should be for 7 - 10 years, to enable proper demonstration of their success compared with imprisonment.

In the short term, bail support programs delivered by culturally competent, skilled youth workers are more effective at increasing compliance with bail conditions than punitive approaches. These programs should receive greater funding and resourcing. Our Yangah Program is one example of a successful, community-designed model:

Best Practice Model: Sisters Inside's *Yangah* Bail Support Program for Girls

In 2018, the (then) Department of Child Safety, Youth and Women funded the Yangah Program with the objective of reducing the number of girls being held on remand in police watch-houses in SEQ and the Brisbane Youth Detention Centre (BYDC).

The Yangah Program facilitates girls' access to bail and offers ongoing support to meet bail conditions. In 2018 and 2019, Sisters Inside youth workers assisted girls to make 136 successful bail applications and supported over 350 girls in the community to meet their bail requirements. In 2020, the Program worked with fewer girls due to COVID-19: it worked with a total of 58 girls, 78% of whom (45 girls) were supported to access and/or maintain bail. The Program had a 100% success rate in keeping girls out of youth prison: none of these 45 girls returned to BYDC once they were being supported by Yangah Workers.

The Yangah Program works to improve the likelihood of a successful bail application through ensuring girls' access to suitable and stable community-based services and support including legal representation, accommodation, health services, social connection and employment, education, and training opportunities.

Yangah workers also provide post-release support to assist girls to comply with bail conditions and conditional bail programs. On average, Yangah workers provide support to 8-9 girls each week, assisting girls to meet their bail conditions in the community, and linking them into cultural healing opportunities.

Sisters Inside Yangah workers are available 24/7 to support girls in police watch-houses in SEQ, and also engage with girls in BYDC (e.g. through running an art group).

Conclusion

Queensland was only just beginning to 'catch up' with national and international evidence-driven trends away from imprisoning children. This Bill is in conflict will all the contemporary research on what it will take to reduce child, and as a result, adult criminalisation.

Sisters Inside strongly recommends that the Legal Affairs and Safety Committee rejects the *Youth Justice and Other Legislation Amendment Bill 2021* (Qld) in full. Enacting this Bill would only further diminish the wellbeing of children and undermine community safety.

If you would like to discuss this letter further or require further information, please contact me on (07) 3844 5066.

Yours sincerely,

Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc.

Endnotes

[1] https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf
[2] https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf
[3] Specifically, 63% of child prisoners on an average night in the June quarter 2019 were unsentenced. Cited in Australian Institute of Health and Welfare (2020a), *Youth Detention Population in Australia 2019*, Bulletin 148, February at https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2019/contents/table-of-contents, p1
[4] For example, a NSW Bureau of Crime Statistics and Research study of children appearing before the Children's Court for the first time found that at least 90% of Aboriginal and Torres Strait Islander children and 52% of other children, went on to appear before an adult criminal court. Cited in Aboriginal and Torres Strait Islander Justice Commissioner (2009) *Social Justice Report 2009*, Australian Human Rights Commission, Sydney at www.hreoc.gov.au/Social_Justice/sj_report/sjreport09/index.html, p42
[5] https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/youth-justice-report.pdf, p6
[6] Australian Bureau of Statistics, *Recorded Crime - Offenders, 2019-20 financial year*, https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release
[7] Productivity Commission (2021) *Report on Government Services 202, Part F, Section 17: Youth Justice Services*, Australian Government at https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/community-services/youth-justice, Table 17A:25
[8] Australian Institute of Health & Welfare (2020b) *Youth Justice in Australia 2018-19*, Australian Government at https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19/contents/summary, p5
[9] Justice Reform Initiative (2020) *Jail is Failing: The state of the incarceration nation: a briefing to Australia's Members of Parliament,* 6 September at https://www.justicereforminitiative.org.au/resources, p1
[10] https://www.aihw.gov.au/getmedia/29525c16-7dbd-458f-8458-6baf491305ad/Factsheet-YJ_2017-18_Qld.pdf.aspx#:~:text=On%20an%20average%20day%20in%202017%E2%80%9318%2C%20in%20Queensland%3A&text=1%2C623%20young%20people%20aged%2010,people%20to%20be%20under%20supervision
[11] Hurst, Daniel (2021) 'More than 30 countries condemn Australia at UN over high rates of child incarceration', *The Guardian*, 21 January at https://www.theguardian.com/australia-news/2021/jan/21/china-attacks-australia-at-un-over-baseless-charges-as-canberra-criticised-for-keeping-children-in-detention
[12] AIHW 2020b op cit p 41
[13] Aboriginal and Torres Strait Islander children were 31 times as likely to be in prison and 29 times as likely to be on remand as other Queensland child prisoners. Cited in Department of Child Safety, Youth & Women (2018) *Youth Justice Pocket Stats 2017-18*, Queensland Government at https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/youth-justice-pocket-stats.pdf
[14] Cited in Allard *et al* (2010) *Police diversion of young offenders and Indigenous over-representation*, AIC Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Canberra at https://www.aic.gov.au/crg/reports/crg-1507-08
[15] Cited in Australian Human Rights Commission Australian Human Rights Commission (2020) *Wiyi Yani U Thangani Report* at https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani, pp 273-4
[16] See for example: Walsh, T, (2019) 'From Child Protection to Youth Justice: Legal Responses to the Plight of "Crossover Kids"' *University of Western Australia Law Review* Vol 46(1):90; Colvin E, Gerard A & McGrath A, (2020) 'Children in out-of-home care and the criminal Justice system: a mixed-method study' AIC at https://www.aic.gov.au/crg/reports/crg-2216-17; Stewart F, Chalton A & Kenny A (2020) *Crossover kids – vulnerable children in the youth justice system (Report 3)* at https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-in-the-youth-justice-system-report-3
[17] Australian Institute of Health and Welfare (2019) *Young people in child protection and under youth justice supervision: 1 July 2014 to 30 June 2018* at https://www.aihw.gov.au/reports/child-protection/young-people-in-youth-justice-supervision-2014-18/contents/table-of-contents p19
[18] AIHW 2019 op cit, p6
[19] https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/youth-justice-report.pdf - Atkinson (stat from 2014)
[20] AIHW 2019 op cit, pg v
[21] Australian Institute of Health & Welfare (2020c) *Young people in child protection and under youth justice supervision 2018-19*, Australian Government, Canberra at https://www.aihw.gov.au/reports/youth-justice/young-people-in-child-protection/contents/summary pp 1,8. A key NSW study found that 81% of the young women and 57% of young men in child prisons

had experienced abuse and/or neglect, with most having been in the child 'protection' system (Indig et al 2011 cited in Cashmore, Judy (2011) 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents', *Family Matters* (Australian Institute of Family Studies journal), No 89 at www.aifs.gov.au/institute/pubs/fm2011/fm89/fm89d.html, pp 32-33)

[22] https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-census-summary-t2s.pdf

[23] Queensland Youth Justice Strategy 2019–2023, at https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf

[24] Bower et al (2017) 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' *British Medical Journal* pp 6-8.

[25] https://nswmentalhealthcommission.com.au/mental-health-and/the-justice-system

[26] The Reconnect Program provides intensive support to criminalised and at risk young people, who are also homeless or at risk of homelessness. The study covered all 68 young people who were substantially involved with the program between 1 July 2013 and 30 June 2016. All participants commenced their involvement at age 11-17, with a few being over 18 at the time of the study. Specifically, 64.5% had 5 or more of the risk factors.

[27] *Queensland Human Rights Act 2019*, Section 13.2 (c), (d) & (e) at https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2019-005

[28] https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2021/5721T195.pdf

[29] https://statements.qld.gov.au/statements/91549

[30] Queensland Government (2021) 'Tough new action to target repeat youth offenders' (Media Release), 9 February at https://statements.qld.gov.au/statements/91439

[31] https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf, p4

[32] Nationally 80% of children released from sentenced detention return within 12 months: Australian Institute of Health and Welfare (2018) *Youth Detention Population in Australia 2018* (Bulletin 145, December) p 2

[33] Luna, B. (2017) 'Neuroimaging and the adolescent brain: A period of plasticity for vulnerabilities and opportunities' in *United Nations Children's Emergency Fund (UNICEF), The Adolescent Brain: A second window of opportunity*.

[34] Change The Record (2021) Queensland youth justice 'reform' a dangerous step backwards for children and the community, 10 February at https://changetherecord.org.au/change-the-record/posts/queensland-youth-justice-reform-a-dangerous-step-backwards-forchildren-and-the-community

[35] Department of Justice and Attorney General (n/d) *Draft Youth Detention Centre Demand Management Strategy 2013-2023*, unpublished (obtained under RTI by ABC) at https://www.scribd.com/doc/240007412/Draft-Youth-Detention-Centre-Demand-Management-Strategy, p4 and Wordsworth, M. (2014) 'Qld youth detention centres operating "permanently over safe capacity" and system in crisis, draft report says', *ABC News*, 17 September at https://www.abc.net.au/news/2014-09-17/crime-boom-overwhelms-youth-detention-centres-in-queensland/5751540

[36] Breach of domestic violence protection orders was the tenth most common offence type for women in Queensland prisons in both 2014–15 and 2015–16, either on remand or sentence. In 2015–16, women in prison had two hundred and twenty-seven offences for these breaches on their records. (Data provided by Queensland Corrective Services, Performance and Reporting Unit to Sisters Inside on 13 December 2016 in response to an informal data request.)

[37] Martin, M. (2017) 'Advocates say Cyntoia Brown's case is part of the 'sexual abuse-to-prison' pipeline', *KUOW*, 3 December at http://archive.kuow.org/post/advocates-say-cyntoia-browns-case-part-sexual-abuse-prison-pipeline

[38] Australian Human Rights Commission 2020 op cit, p228

[39] Anthony Pillay (2019) 'The minimum age of criminal responsibility, international variation, and the Dual Systems Model in neurodevelopment' 31(3) *Journal of Child & Adolescent Mental Health* 229.

[40] Johnson, Blum & Giedd (2009) 'Adolescent maturity and the brain: The promise and pitfalls of neuroscience research in adolescent health policy' 45(3) *The Journal of Adolescent Health* 216-221.

[41] Shulman, E. *et al*, 'The Dual Systems Model: Review, reappraisal, and reaffirmation' (2016) 17 *Developmental Cognitive Neuroscience*, pp103–117.

[42] Cited in Allard et al 2010 op cit

[43] Australian Human Rights Commission 2020, p267

[44] Productivity Commission 2021:Table 17A:20

[45] Based on daily cost of $1,640 cited in Productivity Commission 2021:Table 17A:20

[46] Productivity Commission 2021: Table 17A:9. Percentages are calculated based on 2019-20 cost of "detention" ($125 million in Queensland and $584.5 million nationally).