



**Submission to the Senate Standing Committee on
Legal and Constitutional Affairs**

**Inquiry into the Value of a Justice Reinvestment
Approach to Criminal Justice in Australia**

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**Submission to the Senate Legal and Constitutional Affairs
Committee:
Value of a Justice Reinvestment Approach to Criminal Justice in
Australia**

The Women in Prison Advocacy Network (WIPAN) welcomes the opportunity to make a submission in response to the Senate Legal and Constitutional Affairs Committee's inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

About WIPAN

WIPAN is an advocacy-based not-for profit organisation managed and directed by a group of professional women dedicated to improving the status, wellbeing and prospects of women involved in the Australian criminal justice system by campaigning to raise awareness of the social, cultural, economic, and political inequalities that exist for these women. WIPAN also takes a grassroots approach to addressing these injustices by operating a voluntary post-release mentoring program that seeks to enhance the opportunities of female ex-prisoners by increasing their social capital, supporting their community reintegration, encouraging their autonomy, and learning from their lived experience. It is through this engagement with women with lived experience that WIPAN gains an invaluable insight into the inequalities facing women both inside the correctional system and in the wider community upon release. WIPAN involves these women in the organisations' work by seeking their input on submissions, articles or other documents produced, as well as encouraging them to actively participate in current debates surrounding the policies and laws that may affect them. A number of additional support strategies are also in place, such as our new resource *The Long Road to Freedom* (2012), *Self Help Guide for Women Prisoners* (2011, 2nd ed.), and a regular newsletter featuring contributions from women prisoners that assists in the empowerment of women in the criminal justice system.

Justice Reinvestment: An Innovative and Effective Approach to Criminal Justice

Justice reinvestment is a localised criminal justice policy approach that aims to reduce the number of people held in the formal correctional system by diverting a portion of the public funds initially intended to cover the costs of imprisonment into identified communities where there is a high concentration of offenders.¹ Under a justice reinvestment model, government funds and resources are shifted into community-based programs and support services that aim to address the underlying causes of offending and reoffending behaviour in marginalised high-crime communities.²

Rather than removing and isolating an offender from their community by confining them to a distant and segregated correctional centre, the justice reinvestment approach provides the local community with an opportunity to not only take some ownership of the problem but also to be an integral part of the solution. Justice reinvestment retains imprisonment as a last resort for serious or dangerous offenders, however where circumstances permit, it maintains that offenders should remain within their community;³ after all, the community is where the offending behaviour occurred and upon their release from prison, is usually where the offender will return. Thus offenders should be encouraged to develop some form of accountability to their local community and remain closely connected to it. Hence, the success of a justice reinvestment strategy strongly depends on the level of community cohesion.

Justice reinvestment evolved into a coherent strategy comprising a four-step process:

(1) Analysis and mapping

The first step is to identify which communities the offenders are coming from and the cost of their imprisonment, which involves detailed demographic and socio-economic data mapping that demonstrates how much money is being spent on imprisoning offenders from certain geographical locations. Once this data has been collected and a holistic analysis of the entire criminal justice system is made, what becomes apparent is the under-spending on education, health, housing and social services in comparison to

¹ Justice Reinvestment Now campaign available online at <<http://justicereinvestmentnow.net.au>>

² J. A. Butts and Evans, D. N. *Resolution, Reinvestment and Realignment: three strategies for changing juvenile justice*, New York Research and Evaluation Center, 2012

³ Australian Human Rights Commission, *Submission 70*, p. 9 cited in Commonwealth Senate Enquiry into Access to Justice, 2009, p.108.

the large cost of corrections. In 2007, Professor Tony Vinson published a study that analysed indicators of disadvantage, including imprisonment, to map the most disadvantaged areas in Australia. This could be used as a starting point to identify the most overrepresented Australian communities where justice reinvestment strategies could be piloted.⁴

(2) Development of options to generate savings and improve local communities

Once the high-crime areas have been identified, governments must begin to try and understand why there are such a large proportion of offenders and reoffenders localised within that community. Community consultations are crucial at this point. When the underlying issues have been uncovered, money can be invested in support services to address these issues. Having support services and programs readily available then allows sentencing judges to be more confident in sentencing offenders to community-based options, thus conserving resources and reducing unnecessary expenditure.

(3) Quantify savings and reinvest in high needs communities

Based on the data gathered during the first two steps, governments will then be able to calculate and project savings based on the reduction in imprisonment spending. Community projects and services can then be funded appropriately.

(4) Measure and evaluate impact

Being an evidence-based approach, justice reinvestment models require evaluation in order to determine whether they are operating effectively.

The concept of justice reinvestment originated in the United States of America and over the years has been successfully employed in a number of states including California, Pennsylvania,⁵ Wisconsin, Ohio, North Carolina, Oregon, Illinois, Florida and Texas. In the US, local counties are responsible for the sentencing of offenders, however the offenders themselves are usually sent to state prisons, the cost of which is then covered by the state. Traditionally there has been no financial incentive for counties to

⁴ Vinson, T. *Dropping off the edge: the distribution of disadvantage in Australia* 2007. See <http://www.australiandisadvantage.org.au/>

⁵ Council of State Governments Justice Center, *Justice Reinvestment in Pennsylvania: Final Summary and Policy Options for Consideration*, May 23 2012

invest in the local community in order to reducing criminal behaviour. However, under some justice reinvestment schemes the cost of imprisoning an offender is then ‘charged back’ to the counties, so if they choose not to incarcerate an offender they are then presented with the option to invest those funds into community-based programs targeting local marginalised areas. This type of scheme is evident in Oregon, where funds were reinvested into community service and restorative justice programs for youth offenders and resulted in a 72% decrease in juvenile incarceration rates. State governments soon realised that those who “minimise correctional costs can invest the savings in community-based treatment programs, victim services, housing services, education, employment, and risk prevention strategies”;⁶ thus ensuring the entire community, not only the offender, benefits from a justice reinvestment approach and the increased public safety it produces. However, some commentators have questioned whether the positive reforms that introduced justice reinvestment would still remain in place if the US economy were to fully recover from the effects of the 2008 recession and global financial crisis.⁷

Although justice reinvestment is an internationally recognised approach to criminal justice, there does not appear to be a great deal of literature available on the subject, and that which does exist is primarily concerned with reducing the number of young and/or Indigenous people coming into contact with the criminal justice system.⁸ Female offenders are a unique and distinct client group, and for this reason WIPAN suggests further research and inquiry be conducted on the value of a justice reinvestment approach specifically targeted at reducing the number of women in the criminal justice system. Furthermore, valuable insight can be gained by holding consultations, directly engaging women offenders from those identified communities.

⁶ D. N. Evans, *Pioneers of Youth Justice Reform: Achieving System Change Using Resolution, Reinvestment and Realignment Strategies*, 2012, 11.

⁷ Ibid.

⁸ E.g. Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system Mick Gooda Aboriginal and Torres Strait Islander Social Justice Commissioner Australian Human Rights Commission

Women in the Criminal Justice System and the Need for Justice Reinvestment

The criminal justice pathways of women offenders are complex, multifaceted and often a result of the cumulative effects of repeat exposure to violence (including sexual abuse) and trauma, mental health issues, and/or homelessness. A female offenders' criminality is also strongly associated with an illicit drug and/or alcohol dependency, far more so than for male offenders. This is generally because women are more inclined to abuse substances as a form of self-medication or coping mechanism for the psychological and emotional distress correlated with their historical trauma.

Evidence demonstrates that fewer women commit crime in comparison to men; with the crimes committed by females typically falling into the category of non-violent offences. In fact, between 1999 and 2009, the most common offence committed by women in NSW was shoplifting (15%), followed by non-domestic assault (9%), fraud (7%), and drug use/possession (7%).⁹ As a result of this gendered trend there are significantly less women than men serving lengthy sentences in custody for serious offences, with women currently comprising 7% of the overall prisoner population in NSW.¹⁰ Corrective Services NSW offers the following profile of women's sentence lengths:

The majority of female offenders are either serving short sentences of less than three months or are on remand...Statistics generated by the Corrective Services Corporate NSW Research, Evaluation and Statistics Branch state that 37.3% of female offenders serve sentences less than three months while 62.9% serve sentences less than six months.¹¹

According to further research, the average number of women in full-time custody on any given day in 2010/11 was 725.¹² Yet, this figure does not provide an accurate account of the actual number of women who cycle in and out of the criminal justice system each year.¹³ For instance, a total of 1,283 un-sentenced women were

⁹ Corrective Services NSW, Inmate Census 30th June 2010

¹⁰ Corrective Services NSW 2012, 'Facts and Figures', Corporate Research, Evaluation and Statistics, 12th edn, March 2012

¹¹ Corrective Services NSW, <www.correctiveservices.nsw.gov.au>

¹² Corrective Services NSW 2012, 'Female Offenders: A Statistical Profile', Corporate Research, Evaluation and Statistics, 4th edn, December 2012

¹³ See Baldry, E, 2010. 'Women in Transition: From prison to ...', *Current Issues in Criminal Justice*, 22(2): 1-15

received into NSW correctional centers during 2010/11¹⁴ and approximately 1,600 women prisoners were released back into the community throughout 2011; nearly half of which were released from remand. The reasoning behind their release was either they were found not guilty, did not receive a custodial sentence, or the period of their sentence matched the period already spent incarcerated.

Considering the large number of women regularly re-entering the criminal justice system, it is not surprising that NSW has the highest recidivism rate for women in Australia, with 41.1% of female prisoners having previously served a sentence in full-time custody.¹⁵ Yet women prisoners are often characterised as a 'low risk, high need' group of offenders, for they are likely to have a drug and/or alcohol dependency, mental health problem, cognitive impairment, and/or suffered some form of victimisation, abuse or trauma. The relatively short-term sentences women are receiving do not serve any tangible rehabilitative purpose, have not proven to deter offenders from re-offending, and have a minimum incapacitative effect; thus they do not adequately achieve the primary purposes of punishment. Instead, interim custodial orders infringe on women's rehabilitative prospects and negatively disrupt their lives by uprooting them from their homes and communities. Furthermore, imprisonment is shown to have a negative impact on a woman's ability to maintain stable employment, secure affordable housing, and continue a positive relationship with her children, family and support networks post-release.

Through the mentoring program, WIPAN is improving the well-being and prospects of women ex-prisoners upon their release and aiming to reduce their level of re-offending. Of the 31 women who engaged with the WIPAN mentoring pilot program, 93% were classified as recidivists based upon their repeat offending behaviour prior to entering the program.¹⁶ However, of the 20 women who stayed in the program for longer than 2 months, only one returned to prison during the pilot period.¹⁷ This evidence suggests that by providing women with positive guidance and support networks they are better equipped with the knowledge and skills to remain in

¹⁴ Corrective Services NSW 2012, 'Female Offenders: A Statistical Profile', Corporate Research, Evaluation and Statistics, 4th edn, December 2012

¹⁵ Corrective Services NSW, Inmate Census, 30th June 2010

¹⁶ Refer to the WIPAN Mentoring Pilot Program Report (2012), available at <www.wipan.net.au>

¹⁷ Note: The one woman who returned to prison was a unique case, as she had served *nine* previous custodial sentences with less than two months in the community in between, before reoffending and returning to prison. This time she completed the mentoring program and remained in the community for *14 months* before reoffending and being sentenced. On returning to prison, the mentee initiated and resumed contact with WIPAN and now has a postal mentoring relationship.

the community and out of the criminal justice system. Therefore, WIPAN supports a justice reinvestment model that builds community capacity, and provides for community-based interventions that specifically cater to women's complex needs. Furthermore, alternative sentencing options should seek to address the underlying issues related to women's unique criminal pathways, as well as to incorporate educational and employment training aimed at up-skilling women so that they may reach their full potential as productive members of the community. There is also a need for these programs to be available in various locations across the state, as women may be less inclined to relocate due to their parental or other care-giving responsibilities. Also, given that the most common serious offence for women in full-time custody during 2010 was an illicit drug offence (23.7%)¹⁸, WIPAN strongly believes that additional policies and programs are required to help women address their drug and/or alcohol addictions so as to not return to the detrimental prison environment.

It is important to remember that justice reinvestment is as much an economic policy as it is a public policy. Incarcerating an increasing number of women in Australian prisons each year is not cost-effective, particularly when the cost of supervising a community-based offender (\$24.48 per day) is a fraction of the cost to incarcerating an offender in secure full-time custody (\$209.29 per day).¹⁹ In 2010 the Productivity Commission reported that the total operating costs per prisoner per year totaled \$100,740 and furthermore, the total expenditure of correctional services in 2010/11 for NSW alone was \$1223 million.²⁰

The WIPAN pilot mentoring program operated on a \$95,000 annual budget.²¹ The cost of running the WIPAN mentoring program needs to be considered in the context of the cost of *not* running the program. In the simplest terms, if the program prevents one woman from returning to prison in a year of operating, it has paid for itself. If it achieves greater levels of crime prevention, it would be saving public funds. If it cultivates social capital, it would be a fruitful investment of public funds by an insightful government.

¹⁸ Corrective Services NSW 2012, 'Female Offenders: A Statistical Profile', Corporate Research, Evaluation and Statistics, 4th edn, December 2012; Corrective Services NSW, Inmate Census, 30th June 2010

¹⁹ Corrective Services NSW 2012, 'Facts and Figures', Corporate Research, Evaluation and Statistics, 12th edn, March 2012

²⁰ Corrective Services NSW, *Facts and Figures*, Corporate Research, Evaluation and Statistics, 12th edition, March 2012.

²¹ For more details, see the evaluation report on the WIPAN mentoring pilot program (2012) available at <www.wipan.net.au>

Therefore a cost-benefit analysis would reveal that despite the fact that the cost of investing in community-based programs such as the WIPAN mentoring program might be significant, it would be far more cost-effective than imprisonment given that community-based programs are known to have a long-term positive impact. Over and above these financial costs are the considerable social costs of imprisoning vulnerable women, many of whom are mothers and primary caregivers of dependent children who must then be placed into costly state care.

WIPAN supports and encourages Government to fund and implement justice reinvestment models throughout Australia. As a community we need to take hold of smart, targeted, evidence-based solutions to crime that will enable our communities to be safer now and in the future. Yes the State and Territories are largely responsible for criminal justice, although the Federal Government has a significant role in ensuring and driving reform. WIPAN urge the Government to acknowledge that continuing to incarcerate people is not the answer and it obviously is not working, given the recidivism rates throughout Australia, particularly the rates for women. It is time for change and to invest in our communities safety, lets make that happen through justice reinvestment.

If you have any further query or need clarification of any information provided in this submission, please do not hesitate to contact WIPAN at the details below.

We are most grateful for the opportunity to make this submission.

Yours sincerely,

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A Case Study

Like many vulnerable women in the Australian criminal justice system, WIPAN mentee Lisa* has a multitude of complex needs and requires ongoing support. Her involvement with the prison system began at the age of 19 when she was first incarcerated for a break, enter and steal offence. Now aged 48, Lisa has spent the majority of her adult life cycling in and out of gaol, having become institutionalized after serving a number of short-term custodial sentences for property related offences committed to support her long-term drug addiction which served as a form of self-medication in response to the abuse and trauma she experienced.

Unable to break the cycle of victimization and criminalization on her own, in 2012 Lisa was convicted for yet another break, enter and steal offence. This time she reached out to WIPAN's director, Kat Armstrong and called upon her for support during her upcoming sentencing date. During the hearing Ms Armstrong addressed the sentencing magistrate and provided valid reasons why alternative community-based sentences, as opposed to custodial sentences, were far more beneficial to a women like Lisa who the formal correctional system had previously failed to not only deter from reoffending, but also rehabilitate so that they may be able to positively reengage with their community.

As a result of WIPAN's insight the magistrate was exposed to a number of valuable rehabilitation programs and support services available to female offenders within the community. Lisa subsequently received a six-month community-based sentence under strict supervision of a parole officer. She was also referred to a drug-and-alcohol-rehabilitation program to finally allow her to address and overcome her substance dependency. In addition to this, Lisa entered the WIPAN's mentoring program to rebuild her social capital, strengthen her support networks and empower her to become an active and meaningful member of her community.

Based on Lisa's past recidivism, one could have assumed upon release she would have continued to reoffend and eventually return to prison. However, after coming into contact with WIPAN mentoring program she has begun addressing the issues behind her criminal activity, and has managed to remain in the community. This case study serves as evidence that community-based programs which address the underlying issues

* Pseudonym.

behind an offenders' criminal behaviour can be extremely effective in rehabilitating women and reducing their risk of recidivism. Thus, a justice reinvestment approach to criminal justice that sees Australian governments invest monetary funds into alternative offender programs, such as the WIPAN mentoring program, rather than the expansion of the correctional system would be an extremely innovative, valuable and cost-effective approach to reducing the level of crime in Australian society.