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New South Wales Law Reform Commission
GPO Box 5199, Sydney NSW 2001
E: nsw_lrc@agd.nsw.gov.au

Submission to the New South Wales Law Reform Commission Review of sentencing

On behalf of the Women in Prison Advocacy Network (WIPAN) I would like to thank you for allowing the opportunity to make a submission in relation to the review of the *Crimes (Sentencing Procedure) Act 1999* (NSW). In the interests of this paper, I believe it is important to first give a brief description of our organisation before addressing how the concerns put forth by the Law Reform Commission (LRC) relate to our area of work.

WIPAN is an advocacy-based 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. WIPAN takes a grassroots approach to addressing the social injustices that exist for many women in the criminal justice system; and campaigns to raise awareness of the cultural, social, economic and political inequalities that sustain these injustices. WIPAN operates a voluntary mentoring program that seeks to enhance the wellbeing 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 aims to empower these women by involving them in the organisation's work. This is done in a variety of ways, such as seeking their input for submissions/articles or other documents we produce, as well as encouraging them to actively participate in current debates surrounding the policies and laws that may affect them personally. A number of strategies are in place, such as our mentoring program, *Self Help Guide for Women Prisoners* (2011, 2nd ed.) and regular Newsletter featuring contributions from women prisoners that also assist in the empowerment of women in the criminal justice system.

Trades Hall Building
Lower Ground Floor
4 Goulburn Street
Sydney NSW 2000

PO Box 345
Broadway NSW 2007

02 8011 0699
02 8011 0690

info@wipan.net.au

The core argument this paper wishes to raise is the need for the LRC to consider sentencing as it specifically relates to women in the criminal justice system. It is crucial to recognise two things—first, that female criminal justice pathways are inherently complex and multifaceted, and therefore cannot be compared or equated to those of male offenders. Despite the fact that many legal processes surrounding the criminal justice system are said to be modelled on a gender-neutral premise, it is clear by observing the negative effect they have on female offenders that they are implicitly shaped by the life experiences and needs of men. WIPAN would propose a more gender-responsive approach to justice that will operate with women’s unique interests in mind, particularly in relation to the sentencing of female offenders. Second, and equally as important is for the LRC to recognise is the differences that exist *among* female offenders. Many approaches to criminal justice focus on maintaining a sense of formal equality under the law by treating all offenders as a homogenous group and thus subjecting them to uniform sentences. Without undermining the need to remain consistent, proportionate and transparent, WIPAN would argue that a more substantive approach to sentencing is urgently required to address the diverse needs of female offenders on a flexible, case-by-case basis.

The female prison population constitutes some of the most complex and vulnerable women in Australian society, and is the fastest growing prison population both domestically and internationally. New South Wales saw a dramatic rise in imprisoned women offenders in the decade between 1994 and 2004 with an increase of 101% resulting in women now comprising 7% of the state’s incarcerated prisoners. These statistics include a high number of women held on remand for lengthy periods of time. Perhaps even more troubling is the fact that Indigenous women now account for 30% of NSW female prisoners, indicating a larger racialised-overrepresentation than that of the male prisoner population¹.

Daly and Lincoln stress that when dealing with females who commit crime we must recognise the “blurred boundaries of victimisation and criminalisation”², since the personal histories of many women in the criminal justice system are riddled with traumatic experiences. In fact, criminalised women are said to have the highest rate of physical and sexual abuse perpetrated against them in the community. Often these women find themselves trapped in a violent cycle of harm, disadvantage and criminalisation and many

¹ NSW Corrective Services Data, 2012

² Daly, K. and Lincoln, R. 2006, ‘Inequalities of crime’, in A. Goldsmith, M. Israel and K. Daly (Eds.), *Crime and justice: A guide to criminology*, 3rd edn. Lawbook Co.: Sydney, pp. 252

resort to self-medication through substance use which may subsequently influence their offending behaviour. Other factors heavily relating to this issue are those surrounding the health, employment and housing options available to these women. The key findings of the 2009 NSW Inmate Health Survey revealed two-thirds of women were unemployed in the 6 months leading up to their incarceration, with 44% experiencing long-term unemployment of over five years³; just under half (45%) of women did not complete their year 10 school certificate or equivalent⁴; 55% reported growing up with an absent parent, whereas 30% were placed in care outside of the family unit before the age of 16⁵; 49% of women were mothers of dependant children themselves⁶; and just over one in ten participants lived in unstable accommodation or experienced homelessness in the year prior to their imprisonment⁷. In addition to these socioeconomic disadvantages, females experience higher levels of substance abuse and drug related offending than male prisoners, with 78% of women having used illicit drugs⁸ and 40% reporting hazardous or harmful levels of alcohol consumption in the previous year⁹. As a result of this, 22% of women had a history of juvenile detention¹⁰ with almost half (49%) having been previously incarcerated as an adult¹¹. It is concerning to note the high rates of mental illness and self-harm among female inmates, with 54% treated for a mental health problem—most commonly depression, anxiety or drug dependence—20% admitted to a formal psychiatric unit, and 27% having attempted suicide in the past¹². Therefore, in its review of NSW's sentencing laws, the LRC should question whether criminalising and institutionalising women who have previously been abused or experienced social disadvantage may further exacerbate their already traumatic lives and produce counterproductive consequences such as causing them to continue to reenter the criminal justice system through its revolving door.

³ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. and McNamara, M. 2010, '2009 NSW Inmate Health Survey: Key Findings Report', *Justice Health*, Sydney, pp.34

⁴ Ibid. pp. 32

⁵ Ibid. pp. 30

⁶ Ibid. pp. 38

⁷ Ibid. pp. 15

⁸ Ibid. pp. 107

⁹ Ibid. pp. 103

¹⁰ Ibid. pp. 41

¹¹ Ibid. pp. 42

¹² Ibid. pp. 16

The high rate of recidivism in NSW which sees a large number of female offenders re-enter the criminal justice system in the two years following their release draws attention to the problematic nature of women receiving relatively short custodial sentences—37.3% serve less than three months and 62.9% serve less than six months in prison¹³. Despite the fact that some would consider such short-term sentences less punitive, the reality remains that even these interim incarceration periods negatively disrupt the lives of these women, which may have detrimental effects on their ability to maintain employment and housing, as well as damaging relationships with children, family and friends. It is important to stress the great financial cost of not only imprisoning these women, but also placing their dependant children in state care. These concerns should be taken into account upon sentencing to ensure a woman's role as primary care giver to dependant children is acknowledged. However, this is not to say that childless women should be more suited to imprisonment; for it is in WIPAN's opinion that short custodial sentences serve no beneficial purpose as they infringe on the rehabilitation aspects of female offenders. Thus this lack of rehabilitative focus essentially highlights the inappropriateness of custodial orders and provides support for justice reinvestment¹⁴ into community-based interventions that specifically cater to woman's needs which incorporate educational and employment training aimed at up-skilling women to fulfil their potential as productive members of society. 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.

For these reasons alone the LRC must consider if and when it is necessary to impose custodial sentences on women, taking into account the impoverishing effects and traumatising experiences within institutionalised settings. If the LRC insists on maintaining custodial sentences for women, despite evidence of their detrimental consequences, there is a need to consult with other governmental departments—such as the Department of Community Services—to ensure these women are given access to adequate support and services upon release to aide in their community reintegration. To further situate my argument, I conclude this submission with a case study of a woman whose lived experience in the criminal justice system clearly demonstrates the need for immediate action.

¹³ Corrective Services Corporate NSW Research, Evaluation and Statistics Branch

¹⁴ Similar to the policy framework operating in Pennsylvania, USA

A female ex-prisoner named Lisa recently called upon WIPAN's director, Kat Armstrong, to provide support during an upcoming sentencing date of hers. Lisa is a 47-year-old woman who has spent the majority of her adult life in and out of prison, having served multiple short custodial sentences. She was first incarcerated for a break, enter and steal offence at the age of 19, and has recently been convicted of the same offence earlier this year. The sentencing magistrate called Kat Armstrong to the stand to provide reasons why community-based programs, as opposed to incarceration, would be far more beneficial in Lisa's circumstances seeing as the latter option had failed to rehabilitate her many times in the past. As a result of WIPAN's insight the magistrate was exposed to a number of valuable resources available to female offenders within the community, which he had previously been unaware of. Lisa subsequently received six months bail under strict supervision of a parole officer. In addition to this she was referred to a drug-and-alcohol-rehabilitation program to assist in overcoming her substance dependency, as well as WIPAN's mentoring program to strengthen her pro-social support networks. This submission suggests all magistrates and judges who sentence offenders should be provided with a register of all diversionary or alternative options to imprisonment available in the wider community. This will ensure the core issues surrounding female offending are treated in such a way that is not entirely disruptive to their lives.

A final point WIPAN would urge the LRC to seriously consider is the need to engage women in the process of this evaluation. Consultation with women currently involved in the criminal justice system as key stakeholders and consumers, as well as those with prior lived experience, will offer valuable insight to the LRC's review as well as allow these women to become part of the solution.

In this submission I have provided a general discussion on how female offenders are adversely affected by the issues surrounding the sentencing laws of NSW. If the LRC wishes an additional comment to be made specifically relating to one or more of the questions put forth in the four question papers, which the LRC believes is most relevant to the work of WIPAN, we are equipped with the experience and expertise to gladly do so via written or face-to-face consultation.

Yours sincerely,

Julie Zezovska
Women in Prison Advocacy Network (WIPAN)