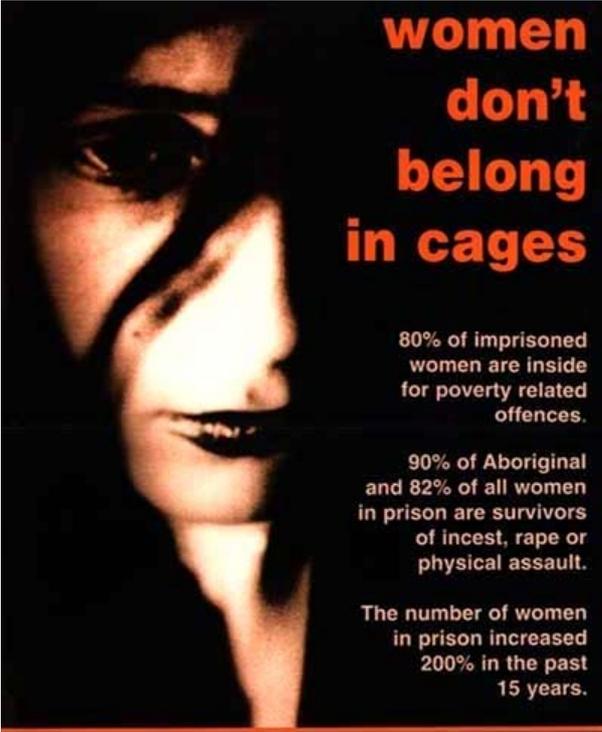


A Campaign to End the Sexual Assault of Women by the State



**women
don't
belong
in cages**

80% of imprisoned women are inside for poverty related offences.

90% of Aboriginal and 82% of all women in prison are survivors of incest, rape or physical assault.

The number of women in prison increased 200% in the past 15 years.

prisons are the real crime

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Sisters Inside Inc. is an independent community organization, which exists to advocate for the human rights of women in the criminal justice system and to address gaps in the services available to them. We work alongside women in prison in determining the best way to fulfill these roles.



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1. Introduction

Sisters Inside is conducting an Australian wide campaign against the strip-searching of women in prison. In this package, you'll find the relevant information to help raise awareness and for the issue to gain widespread coverage. For the campaign to be effective, we need the issue to get as much exposure as possible. You know what works best in your community, so feel free to be creative. Please let us know of anything that might be useful or that was successful so that we can share it with others in each state. Please also keep in touch to let us know how everything is going, or if there is anything we can do to assist. Thank you for your acts of humanity!

In strength and solidarity,
Sisters Inside

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Stop the Sexual Assault of Women by the State

May 7, 2005 (Brisbane, Queensland) – Sisters Inside Inc. is calling on Australian State governments to immediately put an end to the strip-searching of women in Australian prisons. The group is an independent community organization, which exists to advocate for the human rights of women in the criminal justice system in Queensland and elsewhere in Australia, and to address gaps in the services available to them. Sisters Inside continues to criticize the government for subjecting women to strip searches as a brutalizing and degrading practice that can only be experienced as sexual assault given its exploitative and dehumanizing nature.

“Women in prison often have histories of abuse, particularly sexual assault and/or incest. Strip searching a woman against her will only heightens and reinforces feelings of helplessness and humiliation”, states Debbie Kilroy, Director of Sisters Inside, as well as the recipient of the Medal of the Order of Australia and the co-winner of the national human rights medal. Ms. Kilroy, through her own experiences while in prison, describes strip searching as “degrading and dehumanizing practice”.

Strip searching women in prison has proven to be an ineffective way to prevent contraband and illicit drugs from entering the prison. Research has shown that more women actually become drug dependent while in prison than while in the community. “Despite the enduring failure to control contraband and despite the devastating effects strip searching has on women, correctional services nonetheless continue this exploitative practice” states Anne Warner, president of Sisters Inside.

According to Sisters Inside, strip searching, in practice and as a form of assault, infringes on human rights conventions and Australia’s International Treaty obligations, such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment Act and the Treatment and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). “Strip searches are in violation of these agreements as they are conducted without reasonable suspicion and are an unreasonable invasion of a woman’s person. They also constitute cruel inhuman and degrading treatment and, as a result of past abuses, women are affected disproportionately by the experience of strip searching”, adds Ms. Kilroy.

As an act often experienced as sexual assault that fails to prevent contraband and illicit drugs from entering the prison, and in addition to being in direct violation of several international human rights covenants, Sisters Inside Inc. stresses that in no way and in no context can strip searching of women in prison be any longer justified. To continue to do so clearly indicates the lack of respect and regard to dignity that the correctional services women in their care.

Contact: Debbie Kilroy, Director of Sisters Inside – Telephone: (07) 3844 5066 or visit our web site at www.sistersinside.com.au.

3. Key Messages

- Between 1995 and 2002, there was a 60% increase in the imprisonment rate for women in Australia. The imprisonment of Aboriginal women increased by 124%, and 1 of every 4 women in prison in 2002 was Aboriginal.¹
- In 2003, women in prison often experienced multiple disadvantages including low education and literacy rates, limited employment skills, inadequate housing, and scarce income, to name only a few², and the majority of women in prison are survivors of abuse, sexual assault and/or incest.
- Women in prison are commonly the sole primary caregiver for their children. For example, a Western Australia survey found that 43% of women in prison cared for children and almost half of the women were single mothers.³ In Victoria, 75% of women in prison were responsible for the care of their children.⁴
- In 2002, 15% of sentenced women in Australian prisons were convicted of drug related offences and there is evidence that substance abuse is more prevalent among women with prior histories of imprisonment.⁵
- Strip searches are justified by correctional authorities as a means to prevent contraband and illicit drugs from coming into the prison, even though strip searching is an extremely traumatic experience for many women, contraband items are rarely detected in this manner and drugs still get into the prison. It is clear that strip searches, done both routinely and randomly, are conducted without specific reasonable suspicion of the person about to be searched.
- Assault is the application of force to a person without their consent and includes the person's reasonable fear that force will be applied to them. Given the highly coercive and intrusive nature of the practice of strip searching, it would invariably constitute an act of assault. Furthermore, given the lack of any substantial findings of contraband items, strip searching cannot be justified and maintained as 'reasonable' and is also therefore discriminatory that strip searches be conducted under the pretense of 'suspicion'.
- Given that the overwhelming majority of women prisoners are survivors of sexual abuse and incest, strip searches are often experienced as a form of assault that traumatizes and re-

¹ Australian Bureau of Statistics (2004) *Australian Social Trends, Other Areas of Concern: Women in Prison*, No. 2, Canberra.

² Commonwealth Office of the Status of Women (2003) *The Health and Wellbeing of Women in Prison: Focus on Women*, No. 8, Canberra.

³ Department of Justice (2002), *Profile of Women in Prison: Main Findings of the Prisoner Characteristics and Needs Survey of Adult Female Prisoners in Western Australia*, Report by the Western Australian Department of Justice, Community and Juvenile Justice Division, Perth, p.60.

⁴ Armytage, P. (2001) Summary of the Outcomes from the Working with Female Offenders Forum held in Melbourne, July 2001' *Working with Female Offenders Forum: Throughcare - Summary of Proceedings*, ACT Corrective Services, Canberra, p.8.

⁵ Australian Bureau of Statistics (2003), *Prisoners in Australia, 2002 - Companion data*, Canberra, Table 12.

traumatizes women in an oppressive and demoralizing manner. Subjecting women to routine or random strip searches by people who exert considerable control over their lives constitutes an abuse of authority.

- Despite the personal and social value of maintaining contacts with family and friends, women in prison have reported that they are reluctant to receive visits as a result of the feelings of humiliation and the trauma experienced during strip searches. This inhibits the women's attempts to overcome drug addiction, past abuses and traumas.
- Strip searching as a mechanism for eliminating from prison is a demonstrated failure. If drug use amongst women in prison is truly a concern for correctional authorities, then efforts should be focused on the systemic reasons for such use rather than physically and coercively trying to drugs.
- Strip searching contravenes Australia's International Treaty obligations, such as the International Covenant on Civil and Political Rights (ICCPR) as they are conducted without reasonable suspicion. It is an unreasonable invasion of a woman's person, violating the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) since, as a result of their gender, women are affected disproportionately as it is experienced as assault. It contravenes the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment as it constitutes cruel, inhuman and degrading treatment.

For further information please contact Debbie Kilroy at Sisters Inside by phone at (07) 3844 5066 or e-mail admin@sistersinside.com.au or you can visit www.sistersinside.com.au

4. Background Information

Arguments against Strip Searching

Strip searches are justified by correctional authorities as a means to prevent contraband and illicit drugs from coming into prisons, even though it is extremely deleterious for the women who must endure this coercive practice and though these items are rarely detected in this manner. For example, there were 41,728 searches conducted in Brisbane Women's prison between August 1999 and August 2002, one of which was conducted on an infant. Only two of these searches discovered any significant contraband. Other contraband that was reported to be found through strip searches included cigarettes, earrings, a sanitary pad (no blood), a scratch on a cell wall from the window to the door, and a foul odour. There were only two instances of an unspecified drug reported as being found. It is difficult to ascertain how the sanitary napkin and the scratch are considered to be contraband, but correctional authorities have identified them as such. Now, in 2004, a woman is strip searched approximately every one and a half hours in Brisbane Women's Correctional Centre.

In spite of the practice of strip searching women to control contraband, drugs still get into the prison. In a survey of the women inside, 51% of women indicated that they are still using drugs within the prison and 84% say they are receiving no counseling or support to assist them with their drug abuse⁶. Despite the clear evidence of drug use within the prisons and the failure to detect any substantial contraband, strip searches continue to be justified as a necessary practice. It is clear that strip searches, done both routinely and randomly, are conducted without specific reasonable suspicion of the person about to be searched.

Strip Searches and Reasonable Force

Mandatory strip searching can be appreciated in the context of the law of assault. Assault is the application of force to a person without their consent and includes the person's reasonable fear that force will be applied to them. Given the highly coercive and intrusive nature of the practice of strip searching, it is evident that this practice, taken on its own, would invariably constitute an act of assault. What, however, might otherwise be regarded as an assault is no longer an unlawful act if there are circumstances that the law recognizes as justifying the use of "reasonable force".

What the law regards as reasonable force is always decided upon on a case by case basis and under specific circumstances. How can strip searching, as an application of force to a person without their consent, be justified as "reasonable force" unless it is justified on the basis of specific and reasonable suspicion that the particular person about to be searched has contraband secreted on her person? Given the lack of any substantial findings of contraband items, strip searching cannot be justified and maintained as 'reasonable'. Moreover, in light of this evidence, it is difficult to draw any conclusion other than that strip searching is used a means to subdue and control women by imposing on them what can only be felt as a humiliating and degrading experience.

In light of this, to continue to maintain that strip searches are necessary to keep the prison free from contraband and illicit drugs, either through reasoning that it is carried in by the women or passed on by visitors, is a prima facie case of discrimination. Women in prison are suspected

⁶ Kilroy D 'When Will They See the Real Us: Women in Prison' Australian Institute of Criminology Conference 2000

of carrying contraband by virtue of their confinement, and are not considered on an individual or case by case basis. By applying this blanket label, women are thereby subject to routine and systemic discrimination cloaked under an unsubstantiated rubric of "suspicion". It is the contention of Sisters Inside's that this is an inconsistent and partial application of the law, and should the control of contraband be a primary concern for correctional authorities, searches would apply equally to those who both reside and work within the prison environment.

Strip Search and Abuse

In addition to being a discriminatory assault on women, the pernicious nature of strip searches is exacerbated given that the overwhelming majority of women prisoners are survivors of sexual abuse and incest. These acts of assault traumatize and re-traumatize women in a controlling, demoralizing and cruel manner.

Research consistently reveals that women in prison have experienced physical and/or sexual abuse. For example, 64% of women in a Victorian prison had a history of physical or sexual abuse⁷; in 2002, research showed that 42% of women in Queensland prisons had histories of sexual abuse prior to the age of 16⁸; in 2001, 77% of women in West Australian prisons had experienced past abuse⁹, 89% of Australian women in prison have been sexually abused at some point in their lives and a significant number of women were abuse as children by people in a position of authority and trust¹⁰. A survey conducted in 1989 by the Women's House in Brisbane found that 70-80% of women in prison were survivors of incest. A 1992 an Australia wide survey¹¹ showed that of the 2,762 rapes¹² reported by women to the researchers, 43% of survivors were aged 16 or under at the time of the rape: 15.7% of survivors were aged 0-10 at the time of the rape and of this group, 47.8% of the perpetrators were family members, 14.3% were acquaintances: 27.2% of the survivors were aged 11-16 at the time of the rape and for this same group, 16.7% were family members. Only 22% of the perpetrators were strangers. The consequences of sexual and physical assault are widely documented, including death and permanent disability, injury and pain, major emotional trauma, stress related symptoms such as sleep disturbance and impaired thinking, depression and anxiety, eroded self-esteem, feelings of isolation, guilt or self-blame, and difficulties in relating to others.¹³

Research also shows that the controlled and punitive environment of the prison intensifies the psychological effects of having been subjected to sexual or physical assault. In a prison setting, women again find themselves in an authoritarian relationship where they lack control

⁷ Denton, Barbara (2001) *Dealing: Women in the Drug Economy*, Sydney: University of New South Wales Press.

⁸ Hockings B, Young M, Falconer A & O'Rourke P (2002) *Queensland Women Prisoner's Health Survey*, Brisbane: Queensland Department of Corrective Services.

⁹ WA Department of Justice (2002) *Profile of Women in Prison: A Report for the Western Australian Department of Justice, Community and Juvenile Justice Division*, Perth: Department of Justice.

¹⁰ Kilroy, Debbie (2001) "When Will You See the Real Us?" *Women in Prison Journal*, October 39.

¹¹ Easta, Patricia (1993) "Survivors of Sexual Assault: A National Survey" Patricia Easta (ed.), *Without Consent: Confronting Adult Sexual Violence*, 74-91.

¹² For the purpose of survey, rape was defined as penetration of the vagina, anus or mouth by any body part of the attacker or object used by the attacker without the consent of the victim

¹³ Australian Government Department of Family and Community Services Office for Women (2003) *The Health and Wellbeing of Women in Prison: Issues Impacting on Health and Wellbeing*, Issue 8.

and autonomy.¹⁴ Furthermore, the practice of strip-searching is particularly destructive given the women's experiences of past abuse. The strip-searching of women in prison is comparable to the very feelings of vulnerability and powerlessness, as well as the psychological harm caused by sexual assault.¹⁵

The picture painted by these statistics is that survivors of sexual abuse are overly represented in the prison population and that the overwhelming majority of women have experienced abuse at the hands of someone who they trusted and/or by someone who was in a position of authority over them. It also reveals that a significant number of these women were abused as children, again by people in a position of authority or trust. It is unequivocally cruel and inhuman to re-victimize these women by subjecting them to routine or random strip searches especially by people who exert considerable authority and control over their lives.

Strip searching has a disproportionate effect on women prisoners, particularly in light of their past experiences of abuse. Strip searches have been often described by women in prison as inducing past traumatic experiences of abuse and re-victimization, as they are placed in a situation where they cannot exercise any control over their person and body. What is particularly germane is that strip searches are mandatory should a woman in prison want to receive visits from family and friends; that is, visits with those people from the community who are a vital support for her successful reintegration back into society. Maintenance and support of strong family ties during imprisonment, particularly with children, is widely recognized as a necessity for a woman's successful adjustment into her community. Women in prison have reported that they are reluctant to receive visits as a result of the feelings of humiliation and the trauma experienced during strip searches.¹⁶ Demanding a strip search of a woman in order for her to visit with family and friends undermines and contradicts the very principles set forth by corrective services and, furthermore, demanding a strip search of a woman in order for her to receive a legal visit is a restriction of her right to access justice.

The deliberate demoralization of women prisoners is not merely found in the indignity and humiliation of the strip search alone. To offer women in prison sexual abuse counseling, psychiatric assistance for depression and other mental disabilities, programs to improve their self-esteem and to develop cognitive and assertiveness skills and then to use coercive and abusive practices such as strip searching, negates the very utility of the programs offered to those women. Stripping a woman of her dignity and sense of control results in the further entrenchment of helplessness and exacerbates depression, thoughts of suicide, and incidents of self-mutilation and, paradoxically, can result in a woman turning to drugs to sedate the mental anguish inflicted by such abusive treatment.¹⁷

¹⁴ Connor 1997 cited in Byrne, M. & Howells, K. (2000) *Key Issues in the Provision of Correctional Services of Women*, Paper presented at the Women in Corrections: Staff and Clients Conference, Australian Institute of Criminology and Department for Correctional Services, SA, Adelaide, 31 October - 1 November, 2000, p. 4.

¹⁵ Pereira, C. (2001) "Strip Searching as Sexual Assault", *Women in Prison Journal*, 2, 17-23.

¹⁶ Amnesty International Report (1999) "Not Part of My Sentence", *Violations of Human Rights of Women in Custody*, 24-25.

¹⁷ In a study of 100 women surveyed by Sisters Inside in South East Queensland Prisons, 42% of the women have attempted suicide (with a total of 150 attempts spread through the group); 41% have self-harmed (with a total of 331 self-harm experiences); 40% received no support; 23% believed the self-harm and attempted suicides were due to the abuse they had experienced.

Alternative Practices

If drug use amongst women in prison is truly a concern for correctional authorities, then efforts should be focused on the systemic reasons for such use, rather than continuing with a strip searching regime that not only fails to address the issue, but undermines the likelihood of women addressing their drug use and healing from past experiences of abuse. Emphasis should therefore be placed on addressing the reasons why women use drugs rather than physically and coercively trying to prevent the use of drugs. Strip searching as a mechanism for ridding eliminating from prison is a demonstrated failure and sexual assault by the State.

Strip Searching and International Law

As a debasing, unreasonable and discriminatory practice, strip searching contravenes Australia's International Treaty obligations, such as the International Covenant on Civil and Political Rights (ICCPR), ratified in Australia on 13 November 1980, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in Australia on August 27 1983 and the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment (CAT) ratified in Australia on 7 September 1988 (referred to here as the Convention Against Torture).

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person

Article 10.1 ICCPR

No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7 ICCPR

No-one shall be subjected to arbitrary and unlawful interference with his privacy, family, home or correspondence ...

Article 17.1 ICCPR

Everyone has the right to protection of the law against such interference or attacks

Article 17.2 ICCPR

The ICCPR makes reference to prisoner's human rights based on the following provisions: That prisoners will be treated with humanity and respect and that they shall not be subject to cruel, inhuman or degrading treatment or punishment. Furthermore, ICCPR codifies the right of people not to be arbitrarily interfered with and to the protection of the law against such interference.

A punishment is cruel if it does not contribute to acceptable goals and results in purposeless and needless pain and suffering. One indicator of cruel punishment is where the permissible aims of punishment (deterrence, isolation to protect the community and rehabilitation) can be achieved as effectively by punishing the offence less severely.¹⁸ Two important principles emerge from the international standards on the treatment of prisoners. Firstly, individuals are sent to prison as a punishment, not *for* punishment and secondly, despite having lost their right

¹⁸ Sieghart, Paul (1983) *The International Law of Human Rights*, Clarendon Press, 166.

to freedom, prisoners' rights do not stop at the prison door.¹⁹ "While the law does take [the prisoner's] liberty and imposes a duty of servitude and observance of discipline for [her] regulation and that of other prisoners, it does not deny [her] right to personal security against unlawful invasion".²⁰

Mandatory strip searching is in breach of the ICCPR principles as women in prison are routinely punished through the random and mandatory strip searches that are conducted without reasonable suspicion and that violate her right to personal security against unlawful and unreasonable invasion.

Strip searching also violates the provisions set forth by the Convention Against Torture as it constitutes cruel, inhuman and degrading treatment. Strip searching, as an unjustifiable and dehumanizing practice, is an unlawful interference with the privacy and well being of the prisoner and violates the obligation to treat women prisoners with humanity and respect for the inherent dignity of the human person.

Subjecting a woman prisoner to a mandatory strip search constitutes and reinforced her powerlessness and loss of dignity. The strip searching of women, and particularly women who are survivors of sexual assault, is an antiquated practice that can only result in the further degradation and humiliation of women. Corrective services are clearly in breach of Australia's obligations under the ICCPR and the Convention Against Torture.

The arbitrary, capricious and oppressive strip searching of women is also in breach of Australia's commitment to the rights of women. The CEDAW committee, which is comprised of 23 experts of high moral standing and competence, has articulated that discrimination against women includes gender based violence, that is, violence that is directed against a woman as a result of her gender, or that affects women disproportionately. As a large majority of women from prison are survivors of sexual abuse and/or incest, strip searches impact women disproportionately. A strip search, as an assault, is an act of violence towards a woman's person. The frequency at which strip searches occur on women further reinforces gender subordination and violence directed towards women.

Strip Searching and the Judiciary

The US Supreme Court, with respect to the Eighth Amendment of the US Constitution, has outlined that punishment includes more than just physically barbarous punishment. In the 1910 case of *Weems v United States* 217 US 349, the Court observed that the prohibition against cruel punishment was not confined to punishment involving torture or lingering death, but acquires wider meaning as public opinion becomes enlightened about humane justice. In *Estelle v Gamble* 429 US 97 (1996), the Court held that the prohibition against cruel and unusual punishment embodies broad and idealistic concepts of dignity and civilized standards of humanity and decency against which penal measures must be evaluated. In *Jordan v Gardner* 986 F. 2d 9th Cir 1993, the Court declared that "pat searches" of women prisoners by male guards amounted to cruel and unusual punishment. The judge said that intrusive probing searches by men in positions of authority constitute and reinforce gender subordination and

¹⁹ O'Neill, Nick & Robin Handley (1994) *Retreat From Injustice: Human Rights in Australian Law*, Federation Press.

²⁰ Coffin v Reichard 143 F. 2d. 443 (1944) at p.445.

offend our concepts of human dignity, whether or not the woman prisoner had been sexually abused prior to imprisonment.

In *Denmark et al v Greece*, the European Monitoring Center on Racism and Xenophobia (EUCM) stated that the notion of inhumane treatment covers at least such treatment which deliberately causes severe suffering, mental or physical, which in the particular situations is unjustifiable. In Europe, treatment has been held to be degrading in a number of cases: denial of exercise to prisoners whether convicted or on remand, taking a person through the town wearing handcuffs and prison dress, close body searches, and the forced administration of medicine to a mentally disabled prisoner.

In *Ireland v United Kingdom*, the Court noted that the use of "unjustifiable" had given rise to misunderstanding as it did not have in mind the possibility that there could be a justification for the infliction of inhuman treatment.

In *Tyrer v United Kingdom*, the European Court of Human Rights (EUCt) held that punishment does not lose its degrading character merely because it is believed to be, or actually is, an effective deterrent or an aid to crime control.

5. Media Contact List for Australia*

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6. Members of Parliament and List of Senators

The Parliament of Australia web-site can be found at:

<http://www.aph.gov.au>

An updated list of Members of Parliament can be downloaded at:

<http://www.aph.gov.au/house/members/>

A list of Senators is regularly updated at:

<http://www.aph.gov.au/senate/senators/contacts/los.pdf>

Other information about senators is available at:

<http://www.aph.gov.au/senate/senators/index.htm>.

**Note: If you do not have access to the internet,
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