About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the Legal Aid Commission Act 1979 (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and private practitioners. Legal Aid NSW also administers funding for a number of services provided by non-government organisations, including 36 community legal centres and 28 Women’s Domestic Violence Court Advocacy Services.

Legal Aid NSW represents children across all areas of law, including criminal law, family law and care and protection proceedings. The Children’s Legal Service (CLS) of Legal Aid NSW advises and represents children and young people under 18 involved in criminal cases in the Children’s Courts. CLS lawyers also visit juvenile justice centres and give free advice and assistance to young people in custody.

Legal Aid NSW welcomes the opportunity to make this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues Paper 3: Child Safe Institutions.

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INTRODUCTION

Legal Aid NSW shares the view that good child safe policies and practices are needed to reduce potential risks and keep children safer in institutions.

This submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues Paper 3: Child Safe Institutions focuses on three key aspects of policies and practices in which reform is needed to reduce potential risks and keep children safer in institutions, namely:

1. The routine strip-searching of young people when they are admitted to a detention centre and while in detention in NSW,

2. 'Ordinary' and ‘frisk’ searches conducted by police and strip-searches of young people in police custody,

3. Standards, policies and guidelines that apply to the out-of-home care sector in NSW, particularly in relation to calling police and laying charges, and

4. Background checks for out-of-home carers, including checking a prospective employees previous contact with the care and protection system.

1. ROUTINE STRIP-SEARCHING OF YOUNG PEOPLE IN DETENTION

Juvenile Justice NSW currently conducts routine strip searches of young people in detention. Legal Aid NSW does not support this practice and considers that the routine strip searching of young people in detention should be replaced with a rigorous risk-based approach to strip searching. Juvenile Justice NSW has policies and procedures outlining when and how strip-searches are to be conducted. Legal Aid NSW considers that the strip-search policies and procedures in operation in NSW and other Australian jurisdictions should be reviewed to ensure that they are ‘child safe’.

The NSW Juvenile Justice Operations Manual Resource section on Strip Search, Juvenile Justice Centres (Annexure A) sets out when a routine strip search should be conducted on a young person in juvenile detention,1 providing that:

"A wand and strip search must be routinely used when a detainee:

- is first admitted to a centre
- returns to a centre from court appearance or medical appointment
- returns to a centre from day or overnight leave
- returns to a centre form a special activity outside the centre such as training or work experience
- prior to returning to a unit within the centre following a visit by a family member or significant other
- detainees (including under 16 year males and young women) should only be strip searched prior to court where there is ‘reasonable believe’ that the detainee may be concealing contraband and/or weapons.

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The Juvenile Justice NSW *Operations Manual Resource* describes a strip search as a 'visual examination of the upper body after removal and searching of upper garments, followed by visual examination of the lower body after return of the upper garments and the removal and searching.'

The procedure for conducting a strip search is outlined in the *Searching Detainees procedure* (Annexure B) as follows:

16. Always conduct a strip search with detainee partially clothed.
17. Conduct search in following order:
   - Top half of clothing removed and searched
   - Top half of body checked for contraband
   - Top half of clothing (one layer) returned and shirt put on by detainee
   - Bottom half of clothing removed and searched
   - Bottom half of body check for contraband
   - Bottom half of clothing returned and put on by the detainee
18. Maintain a high level of sensitivity throughout search procedure.
19. Consider detainee's privacy, decency, sexual assault history, cultural difference and respect.
20. Never touch detainee at any time during strip search procedure.
21. Ensure staff members are same sex as detainee, or if not possible:
   - Staff member conducting strip search much be same sex as detainee and second staff member (observer) of opposite sex (note: this staff member doesn't observe detainee).
   - Searching staff remain in second officer's (observer) sight at all times during search procedure. Second officer is:
     - A witness to searching procedure and
     - Responsible for ensuring search procedure is conducted correctly

While the procedure does contain a number of safeguards outlined at points 18 and 19 in particular, Legal Aid NSW is concerned that strip searches are an inherently confronting and potentially humiliating experience for young people, even when they are conducted with respect and in accordance with this procedure. Legal Aid NSW appreciates that there need to be systems in place to ensure that contraband and illicit substances are not brought into detention centres to ensure the safety of all young people in detention, but questions the necessity and efficacy of routinely strip-searching young people.

The *Women in Prison* report prepared by the Queensland Anti-Discrimination Commission in 2006 states that:

> Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating experience for any human being, male or female. Even if a strip-search is conducted in a totally professional and impersonal manner, the humiliation is compounded by the fact that prisoners then have to be supervised and relate on a daily basis with prison officers who have observed them in a naked and vulnerable state. In our western society where public nakedness is far removed from the accepted norm, this immediately reduces the dignity of any relationship between the prison guard and prisoner.

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3 NSW Juvenile Justice, Attorney General and Justice, *Searching Detainees procedure 2 November 2012*, emailed 27 September 2013, 6-10
However, for a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatis e women who have already been greatly traumatised by childhood or adult sexual abuse. The vast majority of female prisoners who spoke to the ADCQ said strip-searching diminished their self-esteem as human beings and greatly emphasised feelings of vulnerability and worthlessness. Strip-searching can greatly undermine the best attempts being made by prison authorities to rehabilitate women prisoners, through programs and counselling to rebuild self-esteem, cognitive and assertiveness skills.

The 2009 NSW Young people in custody health survey found that:

- 60% of young people in detention had experienced childhood abuse or neglect
- 9.9% had been a victim of sexual abuse as a child and 34.9% were the victim of physical abuse as a child.
- 81% of young women and 57% of young men reported a history of abuse.
- 61% of young women had been physically abused, and 39% of young women had been sexually abused.  

The research also noted that young men were more likely than young women to under-report their experience of trauma.  

A Legal Aid NSW report on its high service users published in June 2013 found that:

- 80% of high service users were children and young people who were 19 years and under
- There appeared to be a strong relationship between high legal aid service use and experiencing abuse or neglect at home, with 72% of high service users experiencing abuse or neglect at home or witnessing violence at home

As outlined in the Women in Prison report, strip searching can ‘re-traumatis e’ people who have been the victim of sexual abuse.  

Some go further and describe the practice as ‘sexual assault by the state’.  

McCulloch and George make the following observation in their article on strip searching in women’s prisons:

While strip searches are normalised within prison, prisoners, especially female prisoners, experience them as a form of sexual violence or coercion. Outside of the prisoner-prison officer relationship, the coerced removal of clothes would constitute sexual assault.

Strip searches are a normalised part of the experience of custody for young people in NSW. Legal Aid NSW considers that this ‘norm’ should be interrogated and investigated by the Royal Commission, both in relation to current practices in NSW as well as in other jurisdictions in Australia. The Royal Commission may wish to explore the policies and procedures in place in

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7 Anti-Discrimination Commission Queensland, Women in Prison, March 2006, [7.3]
9 P Scraton and J McCulloch, The Violence of Incarceration (Routledge 2009) ch 6, 109
other jurisdictions and countries to inform its position in relation to routine strip-searching of children in detention.

**An example of a risk-led approach – The United Kingdom**

The United Kingdom has adopted a risk-based approach to strip-searching young people in detention. The only exception to this approach is for boys in Young Offender Institutions (YOIs) who continue to be routinely strip searched upon initial reception, when they return from a non-prison escort and for all transfers out of a YOI. The Howard League for Penal Reform has called for the Government to adopt a risk-based approach to all strip searches for some time, asserting that ‘the automatic strip-searching of children amounts to routine inhuman and degrading treatment in children's prisons’.

Lord Carlile conducted an independent inquiry for the Howard League into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes in the UK. The Carlile Inquiry report released in 2006 observed that:

> Within the custodial context a strip search is more than just the removal of clothes for a visual inspection. It is a manifestation of power relations. A strip search involves adult staff forcing a child to undress in front of them. Forcing a person to strip takes all control away and can be demeaning and dehumanising.

The Report concludes that:

> The Inquiry was given no substantial evidence from any of the establishments that strip searching carried out in the young offender institutions or secure training centres was necessary for security reasons.

The Carlile Inquiry observed a distinct difference between the content of strip-searching procedures and the first-hand accounts provided by children about their experience of strip searches in custody. The Report also contains a number of confronting case studies from...

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11 The Howard League for Penal Reform, *Statement submitted by the Howard League for Penal Reform, a non-governmental organisation in consultative status with the Economic and Social Council, UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 5th Periodic Review of the United Kingdom of Great Britain and Northern Ireland* (9 October 2013) <http://www.cypnow.co.uk/digital_assets/Howard_League_submission_to_the_UN_CAT_5th_period_review_of_the_UK.pdf>

12 Lord Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes, 2006* [180]

13 Lord Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes, 2006* [178]

14 Lord Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes, 2006* [160-162]
young people detailing their experience of strip-searches. Legal Aid NSW appreciates that these findings are not necessarily indicative of the experience of young people in NSW or elsewhere in Australia but considers that they highlight the importance of looking behind the policies and procedures to consider actual practice, particularly with reference to the direct experience of young people in detention.

Legal Aid NSW notes that the Inquiry also found that 'some staff working in all types of penal institutions lacked appropriate education and training.' The report highlighted the United National Rules of the Protection of Juveniles Deprived of their Liberty, in particular, rule 82, which states that, 'The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.'

Legal Aid NSW does not have a detailed knowledge of the training and education requirements for youth officers who work with young people in detention in NSW. Juvenile Justice NSW appears to have a comprehensive Induction Training and Assessment program which, if successfully completed, can qualify participants for a Certificate IV in Youth Justice. However, the Royal Commission may wish to consider making recommendations in relation to training and educational attainment for staff working in detention centres in Australia.

The Carlile Inquiry recommended that:

- Policy, practice and procedure should be the same in all the establishments holding children
- Strip searching is not necessary for good order and safety
- Searches should be conducted based on the good practice the Inquiry found in local authority secure children's homes
- Searches could be reduced by at least 50% by applying a more evidence based approach, without risk to security or safety being significantly increased.

The Howard League obtained data through a freedom of information request on the number of strip searches of 15-17 year old boys conducted on reception in government operated young offender institutions in England and Wales over the course of a year. In one year, 11,713 boys were strip searched and illicit items were found on 77 occasions, including when a strip search had been conducted following a risk-assessment. That is, an illicit item was found in 0.66% of

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15 Lord Carlile, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes, 2006, [160-167]
16 Lord Carlile, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes, 2006, [60]
17 Lord Carlile, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes, 2006, [60]
18 Lord Carlile, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes, 2006, 59
searches, although there was no information recorded about what type of illicit item was found.\textsuperscript{19} The Howard League also reports that during a six month pilot trialling a risk-led approach to strip searches in a male YOI in 2010, there was no increase in contraband finds.\textsuperscript{20}

The British Government is currently reviewing their policy in relation to strip searching young men and has recently committed to pilot a risk-led approach for the under-18 male YOI estates for a period of three months and will consider the longer term policy following this trial period.\textsuperscript{21}

**Australian studies**

In their paper on strip searching in women’s prisons, McCulloch and George outline the findings of a three-year pilot conducted by Corrections Victoria in 2002 to reduce the number of routine strip-searches. The paper indicates that the number of strip-searches fell from 21,000 to 14,000 a year and the study found that “despite the massive reduction in strip searches and a significant increase in urine testing, there was a forty per cent reduction in urine positives and a reduction in the number of ‘refusals’ to urine tests. Moreover, although the number of strip searches had dramatically reduced, the same amount of contraband was seized. Only one item was seized during a routine strip search and four items were seized in target strip searches. The contraband seized comprised prescription medication and syringes.”\textsuperscript{22}

Legal Aid NSW is not aware of any studies that have been conducted to assess the efficacy of strip-searching of young people in detention in NSW. Nor does Legal Aid NSW have access to statistics about the number of strip searches conducted each year in NSW detention centres. However, the Juvenile Justice NSW annual report indicates that there were 5,343 admissions to juvenile detention in NSW in 2010/2011.\textsuperscript{23}

Based on this figure and factoring in court appearances, family visits, activities, leave and medical appointments, it can be anticipated that many thousands of strip searches are conducted on young people in detention in NSW each year. Legal Aid NSW considers it unlikely that the amount and type of contraband seized could justify the number of strip searches that are conducted on young people in detention each year in NSW.

Legal Aid NSW considers that the Royal Commission offers an important opportunity to investigate and consider the appropriateness and effectiveness of routine-strip searching of children in detention in Australia.

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\textsuperscript{22} P Scraton and J McCulloch, *The Violence of Incarceration* (Routledge 2009) ch 6, 119

2. POLICE SEARCHES

Legal Aid NSW is concerned that some police officers continue to abuse their powers when searching children and young people on the street and at the police station. Legal Aid NSW is concerned not only about the effect that these searches have on young people, but also about their potential to lead to charges being laid on a young person when a direction to comply with an inappropriate or illegal search is not followed. Legal Aid NSW considers that there is considerable scope to strengthen ‘child safe’ practices and procedures within the NSW Police Force.

Legal Aid NSW considers that a court order should be required before a strip search of a child can be conducted by police. This would ensure that a rigorous assessment of the need for the search is made by the court before a search is conducted and would ensure that searches of this nature are conducted only when absolutely necessary. Additionally, Legal Aid NSW considers that there may be scope to develop more stringent disciplinary processes for police who fail to comply with the legislation and Code of Practice\(^{24}\) in relation to strip searches. The legislation or the Code of Practice could also be strengthened to require police to check any alerts on the police system before conducting a search and require the police to consider a defendant’s sexual assault history before conducting a strip search.

**Ordinary searches and frisk searches**

In NSW, section 30 of the *Law Enforcement Powers and Responsibilities Act* (LEPRA) empowers police to carry out a frisk search or an ordinary search on a person, including a young person. Section 30(2) of LEPRA provides that ‘in conducting a frisk search, a police officer or other person may, if the police officer or other person has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothes after the coat or jacket has been removed’. Section 3 of LEPRA defines ‘frisk search’ and ‘ordinary’ search as follows:

**frisk search** means:

(a) a search of a person conducted by quickly running the hands over the person’s outer clothing or by passing an electronic metal detection device over or in close proximity to the person’s outer clothing, and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

**ordinary search** means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and

(b) an examination of those items.

Legal Aid NSW is aware that some young people are being subject to searches which are categorised by police as an ‘ordinary’ or ‘frisk’ search but which would more appropriately be categorised as a strip search. Legal Aid NSW is frequently advised by its clients that police ask

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\(^{24}\) NSW Police Force, *Code of Practice for Crime* (9 October 2013)

them to hold out the waist of their pants and underpants for police to be able to look down their pants or for girls or young women to be told to lift up their shirt and hold the bottom of their bra out from their body when conducting an 'ordinary' or 'frisk' search. It is not uncommon for these procedures to be carried out in a public place. The Children's Legal Service has argued that these types of searches fall within the definition of a strip search, but to date, Magistrates have not accepted this argument. It is arguable that there is not sufficient clarity in LEPRA or Code of Practice for Crime NSW around the extent of the search allowed pursuant to section 30 of LEPRA. In the view of Legal Aid NSW, this practice is more invasive than section 30 of LEPRA allows and is a significant violation of a young person's privacy. As outlined above, Legal Aid NSW considers that legislation and the NSW Police Code of Practice for Crime should clearly specify what does not fall within the scope of an 'ordinary' search and a 'frisk' search. Legal Aid NSW considers that any search that reveals an intimate body part should be characterised as a strip search and the appropriate precautions taken to ensure the privacy and dignity of the person being searched as set out in section 32 of LEPRA.

In a journal article written in 2002, the then Director and Principal Solicitor of the National Children's and Youth Law Centre commented that:

> Searches are not harmless. They are an invasion of bodily integrity, an invasion of privacy, and an open door for new charges – frequently resist arrest, offensive language and assault police. Searching a person is confrontational, and it is no wonder that some young people offer mild resistance to being searched.

In addition to being an inappropriate use of search powers, searches such as these have the potential to escalate if young people do not follow police directions during the search. The case studies outlined below highlight this issue. These matters came to the attention of the Children's Legal Service because 'assault police' and 'resist arrest' charges were brought against the young people.

**Strip searches**

In NSW, the requirements for conducting strip searches are outlined in sections 31 and 32 of LEPRA.

Legal Aid NSW is concerned that strip searches of young people continue to be carried out by police without reasonable grounds and in a manner that does not maintain the privacy or dignity of the young person being searched. These concerns are not new and have been highlighted in national forums for many years. For example, the Australian Law Reform Commission Report, *Seen and Heard: Priority for Children in the Legal Process*, found that:

> Evidence given by young people at focus groups suggests that sometimes police do not conduct strip searches in an appropriate manner. One boy said he had been strip searched on a main street at 10pm one night. No attempt was made to conduct the search in a private place. We heard of one girl who, after being detained for an alleged motor vehicle offence, was strip searched in a cell with other juveniles present, some of them boys. The search was conducted by a male officer. These concerns have been raised in a number of other inquiries.

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We have come across a number of cases where searches have been conducted without recourse to the protections accorded by regulations. Particular concerns have been expressed about public searches of young people on the street, sometimes involving the full removal of clothing or more than a pat down or frisk.

Evidence given to the ALRC's inquiry into complaints against the AFP and the National Crime Authority confirms that AFP officers frequently fail to comply with the requirements of the Crimes Act when strip searching people, especially women. Unnecessary or illegally conducted strip searches has been identified as a particular problem for Indigenous girls.

In considering police searches of children, the ALRC concluded that:  

A strip search is an invasive procedure that is potentially traumatic for an adult, let alone a child who may already be intimidated by the physical environment. These searches should only be conducted when absolutely necessary for evidentiary purposes and not as an exercise in humiliation. The Commissions consider that strip searches should only be performed on young suspects pursuant to a court order.

The ALRC recommended that:  

Recommendation 220 The national standards for juvenile justice should provide that a child may be strip searched only pursuant to a court order. The child should have the right to oppose the application for the order and should be legally represented in the proceedings. Strip searches should only be conducted by a qualified person of the sex of the suspect's choosing. If the suspect does not wish to exercise this choice, the search should be conducted by a person of the same sex as him or her.

Recommendation 221 Children charged with federal offences should only be strip searched pursuant to a court order. The child should have the right to oppose the application for such an order and should be legally represented in the proceedings. Strip searches should be conducted by a qualified person of the sex of the suspect's choosing. If the suspect does not wish to exercise this choice, the search should be conducted by a person of the same sex as him or her.

Implementation. Section 3ZI of the Crimes Act should be amended to this effect.

NSW Legal Aid is concerned that the requirements for conducting strip searches are outlined in sections 31 and 32 of LEPRA are not always followed. These case studies highlight the experience of two Children's Legal Service clients when strip searches were conducted unlawfully:

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Case study 1 - Jane

Removed prior to publication.

Case study 2: John

John was arrested at his house for an alleged breach of bail and a number of other charges arose from the arrest. John was taken to a Police Station and placed in the police cells at the station. His support people, his father and a worker from Barnardos, met him at the police station. After his support people left the police station, John was removed from the police cells and was asked by the Custody Manager to remove his clothing. John was told that this was a necessary search that had to be conducted before he was transported from the police station.

John complied with this request and removed all items of clothing and stood naked in the custody area of Police Station. At this time, John was standing approximately 1-2 metres from the desk in the custody area and was in full view of police in the custody area. John was also in full view of at least two adults who were in custody in the police cells at that time.

A complaint was made on John's behalf to the NSW Ombudsman. The NSW Ombudsman oversaw the Police investigation of the matter. A "sustained" finding was made against the officer concerned, and it was recommended that he undertake formal counselling. In addition, a memorandum was sent to all officers at the Local Area Command reminding them of the need to comply with s33(2) of LEPRA when conducting strip searches on children.

John brought civil action against NSW Police.

Many young people who come into contact with police, such as 'Jane', have a history of trauma and abuse. There is a considerable body of research which details the impact of trauma on the developing brain. The Northern Territory Children's Commissioner outlines the impact of trauma on the brain and a person's responses to subsequent stressful situations in the paper *Vulnerability, risk and justice for children and young people in the Northern Territory*.\(^{29}\)

There is another key neurological change that takes place in response to overwhelming trauma that has serious behavioural, social and legal implications. The brain's stress management systems, in particular the amygdala, sometimes known as the brain's sentry, can become overly sensitised to the possibility of danger even where objectively, danger does not exist – instead of accurately distinguishing between safety and danger, it becomes permanently switched on to the danger setting. It unnecessarily marshals psychological and physical resources to ensure the safety of the individual who exists in a permanent state of alertness and chronic stress.

*Traumatized children reset their normal level of arousal. Even when no external threats exist, they are in a persistent state of alarm.* (Bruce Perry 2006, p.32)

The NT Children's Commissioner concludes.\(^{30}\)

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\(^{29}\) H Bath, 'Vulnerability, risk and justice for children and young people in the Northern Territory' (Paper presented at the Criminal Lawyers Association of the Northern Territory Conference 2013, Bali, 27 June 2013) 9

\(^{30}\) H Bath, 'Vulnerability, risk and justice for children and young people in the Northern Territory' (Paper presented at the Criminal Lawyers Association of the Northern Territory Conference 2013, Bali, 27 June 2013) 10
The most significant impact then, is the loss or impairment of the ability to regulate emotions and impulses in a safe, socially appropriate, and adaptive way. For example, a minor frustration can rapidly escalate into rage; anxiety descends into terror; sadness morphs into overwhelming grief.

Strip searches, particularly when they are conducted illegally or in a humiliating manner, can re-traumatise young people and cause significant stress for a young person.
3. **THE CRIMINALISATION OF CHILDREN IN OUT-OF-HOME CARE**

Legal Aid NSW has observed a tendency for a child's contact with the criminal justice system to increase when they enter a residential out-of-home care facility. These observations are supported by research findings which are outlined below. Increased contact with the criminal justice system can lead young people in out-of-home care to be exposed to the issues addressed above, namely adverse contact with police and periods of detention. Legal Aid NSW considers that part of providing a 'child safe' environment for children in out-of-home care involves putting in place guidelines and systems to minimise young people's contact with police and the criminal justice system. Legal Aid NSW considers that uniform National Best Practice Guidelines should be developed to address the following issues:

- Behaviour management in residential care
- Conflict resolution
- When to call the police, and
- The question of whether charges should be laid for assaults and property damage that were a result of emotional disturbance.

**The link between out-of-home care and the criminal justice system: research findings**

In December 1996 and March 1999 respectively, the New South Wales Community Services Commission ("the CSC") published a discussion paper and report examining the drift of children in the out-of-home care system into the juvenile justice system. The CSC found that:

- children in out-of-home care were being readmitted into the juvenile justice system more often than children who were not in out-of-home care (specifically, 70% of children in care re-offended compared to 59% of the general juvenile detainee population)
- a young man in out-of-home care was 13 times as likely to enter a juvenile detention centre than if he was not in out-of-home care, and
- a young woman in out-of-home care was almost 35 times as likely to enter a juvenile justice centre than if she was not in out-of-home care.

While noting that the risk factors that precipitated a young person's entry into care were similar to those that predicted later contact with the juvenile justice system, the CSC noted "increasing concerns that experiences within the care system exacerbate, or at least fail to reduce, these risk factors."

The CSC outlined in its discussion paper a number of potential issues contributing to the drift from care to the juvenile justice system, which it identified through consultations and discussion groups held with representatives of organisations involved in care, advocacy and rights for children.

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31 The CSC no longer exists as a stand-alone body. In December 2002 it was amalgamated with the NSW Ombudsman and a new statutory division, known as the Community Services Division, was established to carry out the community services functions for the Ombudsman: [http://www.ombo.nsw.gov.au/show.asp?id=171](http://www.ombo.nsw.gov.au/show.asp?id=171) accessed on 9.8.11.


33 CSC 1996 Paper (see Note 10), p.8

34 CSC 1999 Report (see Note 10), p.14
Issues outlined by the CSC included:

- Problematic behaviour that would be a disciplinary matter in a family home could lead to criminal charges in group homes. Staff would call police after incidents such as malicious damage and assault, and an altercation would take place which then resulted in additional charges of resisting arrest, assaulting police and offensive language.
- When a child's placement broke down, the Department of Community Services sometimes put out a warrant for a child, resulting in their apprehension and detention.
- Incidents were reported where children in care would be returned to a residential facility under bail conditions after a court hearing. These bail conditions could involve keeping to a curfew or staying within a particular facility. If a child breached these conditions, it was possible staff would report the breaches to the police which could then result in detention.
- Carers were sometimes required to make a statement to the police in order to lodge a claim for victim’s compensation, which operated as an incentive for them to contact police in matters of physical aggression or assault.
- Many services had explicit policies about using the police as a 'natural consequence' and as a substitute for imposing their own disciplinary action.
- The staff of some funded services were reportedly simply "not up to it" and as a result sought assistance from the police to deal with the behaviour of young people.

The last-mentioned issue – of carers' inadequate responses to young people with challenging behaviours – was in line with the findings of an Inter-departmental Committee on Juvenile Justice report also published in 1996 that found that service provision was contributing to the problems of young people in care with challenging behaviours because staff were ill-equipped to manage challenging behaviour, in part because of a lack of training. The Inter-departmental Committee report also found that there were inadequate resources to accommodate young people with challenging behaviours and high support needs.

In its report the CSC made a number of recommendations including the following:

The Department of Community Services should, as part of its behaviour management policy, include specific guidelines about the use of police and criminal charges in behaviour management in substitute care. These guidelines should stipulate:

- conditions under which police may be called;
- the level of authorisation required to call police;
- the obligation of the service to have developed behaviour management plans;
- the obligation for follow-up after police intervention, to minimise the risk of re-occurrence of such incidents; and
- the requirement for staff training in the application of the policy and plans.

This recommendation built upon the observation the CSC made in its discussion paper that calling police after an incident in care should be an option of last resort and used only in exceptional circumstances.

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35 CSC 1996 Paper (see Note 10), pp.16-20
37 CSC 1999 Report (see Note 10), p.10
Recent academic findings

Since the publication of the CSC report in 1999, it appears that little progress has been made in reducing the proportion of children in care that ultimately come into contact with the criminal justice system. In 2008 the Report of the Special Commission of Inquiry into Child Protection Services in New South Wales ("the Wood Report") found that 28% of males and 39% of females in juvenile detention had a history of out-of-home care. A report of the Create Foundation in the same year found that one year after leaving care, almost half of the young people will have committed a crime.

In a more recent examination of 111 NSW Children's Court files, Katherine McFarlane found that 34% of the young people appearing before the court were, or had recently been, in out-of-home care, and that children in care are 68 times more likely to appear in the Children's Court than other children. McFarlane's research also indicates that:

- young people in care are still being charged for relatively minor property damage offences that occur in the care environment, despite the fact that they are often residing in homes "engaged by the state to provide professional behaviourist techniques to mitigate the child's allegedly 'challenging' behaviour or psychiatric issues"; and
- the practice of relying on police and the justice system in lieu of adequate behavioural management is still in use.

The experience of Children's Legal Service (CLS) clients

The recent findings set out above reflect the experiences of a number of CLS clients. Last year Legal Aid NSW conducted a study of the top users of legal aid services between 2005 and 2010. The study found that 80% of its high service users are under 19 and clients of the CLS, and that one of the typical characteristics of these high service users is a history of out-of-home care.

The clients in out-of-home care who the CLS sees most often are those living in residential facilities. Often these clients have been reported to the police by carers for relatively minor assault offences, property damage offences or "breach of AVO" offences. This has resulted in a criminal charge being laid in relation to behaviour that one might expect would be dealt with as a disciplinary matter if occurring in a family home.

Case Study A (Annexure C) provides a good example. Prior to entering out-of-home care "William", the subject of the case study, had had no interactions with police whatsoever. Since entering out-of-home care, William's contact with the juvenile justice system has been constant. A glance at William's offence history shows that all of his charges are a result of interactions with carers or other young people also living within the care facility. He has quickly accumulated a lengthy criminal history, including time in custody, despite the fact that most of his offences are ultimately dealt with by way of a section 32 Mental Health (Forensic Provisions) Act order.

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38 Wood Report (see Note 6), p.556
41 K.McFarlane (see Note 20), p.346.
42 K.McFarlane, (see Note 20), p.347.
43 S 32 provides that if the defendant is developmentally disabled or suffering from a mental illness or mental condition the Magistrate may make an order dismissing the charge and discharging the defendant into the care
in recognition of William's intellectual disability and mental health problems. The incidents that have involved police intervention range from the serious (threats to kill a carer accompanied by physical violence) to the relatively minor (breaking pot plants, punching holes in doors and kicking furniture).

Case Study B (Annexure C) shows a similar pattern in the case of "Chris", whose contact with the juvenile justice system commenced the very day he was placed in the care of the Minister and has since escalated dramatically, occurring for periods on a daily basis. Since the time of his Community Services placement in March this year, Chris has been charged with numerous offences, has been arrested for breach of bail continuously and has spent a large amount of time in juvenile detention.

It is evident from his personal history that Chris's behavioural issues predate his placement in the care of the Minister. Despite this fact, Chris was not once charged with a criminal offence while living with family. Like William, many of Chris's offences relate to malicious damage occurring within the residential facility where he lives, or anti-social behaviour directed at carers or co-residents.

Case Study C (Annexure C) outlines the offence history of "Jessica", and shows another common pattern of police intervention experienced by children in out-of-home care – one involving a combination of bail and AVO breaches. For example, a physical fight with another young person in the TV room of the residential facility in which she was living resulted for Jessica in a breach of bail and charges of common assault and breach AVO. Jessica's offence history also shows that she has spent time in custody as a consequence of breaching curfew conditions and "obey reasonable directions of carer" conditions.

The case of Jessica highlights how bail and AVO conditions are often imposed on juveniles in out-of-home care to control their behaviour, rather than to ensure the safety of the community or attendance at court. The "obey reasonable directions of carer" bail condition is a typical example of this practice. CLS solicitors know of cases where carers have made specific requests to the court for certain bail conditions to be imposed, or have specifically requested charges to be laid in relation to an incident that has occurred in a residential facility. Similarly, solicitors have heard of care workers using occupational health and safety mandates to apply for AVOs against young people as a way of dealing with their behaviour.

It is notable that the lengthy interactions with the juvenile justice system experienced by the subjects of these three case studies – including time in custody – have occurred despite the fact that the court has never ultimately imposed a custodial sentence for any of the offences proven.

Legal Aid NSW considers that these case studies highlight the need for Best Practice Guidelines to limit young people’s exposure to criminal charges when in out-of-home care.
4. CARE AND PROTECTION HISTORY OF CONTRACT STAFF IN OUT OF HOME CARE

Legal Aid NSW is aware of some occasions where an employee of a non-government agency (NGO) delivering out-of-home care services has previously had their own children removed. Legal Aid NSW understands that a working with children check and a criminal history check is conducted as part of the recruitment process for Family and Community Services (FACS) employees but is not aware of the arrangements in place when carers are contracted by an NGO. The Royal Commission may wish to consider whether the background checks conducted to screen all staff and carers providing out-of-care to young people, whether they are government or non-government employees, should be expanded to include a search of the care and protection history of the employee. In the view of Legal Aid NSW, it is concerning that people who may have previously been found by a court to be incapable of providing adequate care for their own child, can be employed to care for children in out-of-home care.

The Special Commission of Inquiry into Child Protection Services in New South Wales recommended that:44

The Commission for Children and Young People Act 1998 should be amended to require background checks as follows:

a) in respect of DoCS and other key human service agencies all new appointments to staff positions that work directly or have regular contact with children and young persons (that is, permanent, temporary, casual and contract staff held against positions including temporary agency staff)
b) any contractors engaged by those agencies to undertake work which involves direct unsupervised contact to children and young persons, and, in the case of DoCS, access to the KiDS system or file records on DoCS clients
c) students working with DoCS officers
d) children’s services licensees
e) authorised supervisors of children’s services
f) principal officers of designated agencies providing OOHC or adoption agencies
g) adult household members, aged 16 years and above of foster carers, family day carers and licensed home based carers
h) volunteers in high risk groups, namely those having extended unsupervised contact with children and young persons.

This recommendation does not specify what is included in a 'background check'. The Royal Commission may wish to consider whether a care and protection history check should be included in the pre employment background checks for potential out-of-home carers.

CONCLUSION

The terms of reference give the Royal Commission considerable scope to investigate child sexual abuse and other related unlawful or improper treatment of children in Australian institutions. This submission outlines laws, policies, practices and systems that require reform to better protect against and respond to child sexual abuse and related matters, including the re-traumatising of victims of sexual abuse, in institutional contexts. These reforms include:

- replacing routine strip-searching in juvenile detention with a rigorous risk-based approach to strip searching

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• requiring police to apply for a court order before conducting a strip search of a child or young person
• clarifying the scope of ordinary, frisk and strip searches in relevant legislation
• introducing stringent disciplinary processes for police who fail to comply with the legislation and Code of Practice in relation to searches
• requiring police to check any system alerts and consider a defendants sexual assault history before conducting a search
• developing uniform National Best Practice Guidelines for out-of-home care that address behaviour management, conflict resolution, contacting police and laying charges with a view to minimising young people’s contact with police and the criminal justice system
• extending background checks for out-of-home carers to include a care and protection history check for prospective carers

Legal Aid NSW considers that the Royal Commission offers an important opportunity to investigate and make recommendations in relation to best practice laws, policies and procedures in juvenile detention, police custody and out of home care to keep children safer in institutions.
ANEXURE A

Operations Manual Resource
Strip Search
Juvenile Justice Centres

NSW Government
Juvenile Justice
Attorney General & Justice

Strip Search

A strip search involves visual examination of the upper body after removal and searching of upper garments, followed by visual examination of the lower body after return of the upper garments and the removal and searching of lower garments. For safety and security purposes a wand search MUST be conducted prior to a strip search.

Routine strip search

A wand and strip search must be routinely used when a detainee:

- is first admitted to a centre
- returns to a centre from court appearance or medical appointment
- returns to a centre from day or overnight leave
- returns to a centre from a special activity outside the centre such as training or work experience
- prior to returning to a unit within the centre following a visit by a family member or significant other
- Detainees (including under 18 year males and young women) should only be strip searched prior to court where there is "reasonable belief" that the detainee may be concealing contraband and/or weapons.

The use of strip searching during initial admission and subsequent re-entries to a detention centre is justified to protect the safety, security and good order of the centre by detecting contraband and illicit items (including drugs and potential weapons) and preventing their entry into the detention centre.

Apart from the circumstances above, a strip search should not be used routinely and must be based on the principles of reasonable belief outlined below.

Non-routine / one-off strip search

A non-routine one-off strip search may be authorised by a Unit Manager, Duty Manager / Shift Supervisor/Assistant Unit Manager or a more senior officer only when:

- a clothed body search has failed to find an object detected during a wand search; or
- there is "reasonable belief" (below), following a wand and clothed body search that a detainee possesses an illicit object or substance; and
- the detainee has been repeatedly asked by searching staff, the Unit Manager, and other staff called to assist, to surrender the suspected contraband, but refuses to cooperate.

Series of random strip searches

There is only one other occasion when a strip search may legitimately be performed. It may happen as part of a series of random strip searches of a detainee, authorised by the Manager or an Assistant Manager for a brief and definite period of time (usually no more than a few days), following the detainees being found, WHILE IN CUSTODY, in possession of an illicit object or substance.

The reasons and frequency for such random strip searches must be recorded in the detainee’s CIMS Case Notes and signed by the approving officer, in addition to an instruction in the Unit Log Book for the unit in which the detainee resides.
ANNEXURE B

Searching Detainees procedure 2 November 2012

Searching Detainees

When to use this procedure

Use this procedure to search a detainee:

- as part of routine; or
- when there’s ‘reasonable belief’ detainee may be in possession of contraband.

Note: Juvenile Justice has a duty of care to its clients and its staff. This duty may be jeopardised if dangerous/other illicit objects/substances are brought into a Juvenile Justice Centre. To minimise entry of such objects/substances into centres staff may need to search detainees under well-defined circumstances and conditions.

When not to use this procedure

Never use this procedure unless the reasons described in this procedure exist.

Search procedures must never be used to harass/intimidate a detainee.

Detainees should not be searched outside of published routine, unless approval is given following a staff report indicating a reasonable belief that a detainee has an illicit object/substance (contraband).

The circumstances and types of searches that can be conducted are described in more detail below.

Before using this procedure

If you have not used this procedure before you must understand:

- Duty of care
- National standards and united nations rules
- Delegation to approve searches
- Legislation
- Principles of searching
- Rules for searching
- Refusal to be searched

Types of searches and reasons for their use

With appropriate approval centre staff may perform searches under the circumstances and using the methods outlined below.

- Hand and clothed body search
- Strip search
- Routine strip search / non-routine / one-off strip search
- Series of random strip searches

Start using this procedure

Juvenile Justice
Attorney General & Justice
Searching Detainees procedure 2 November 2012

Your responsibilities

Find your role. Find what you need to do.

<table>
<thead>
<tr>
<th>Role</th>
<th>When required</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Staff</td>
<td>Always</td>
<td>All Staff steps</td>
</tr>
<tr>
<td>Unit Manager</td>
<td>Always</td>
<td>Unit Manager steps</td>
</tr>
<tr>
<td>Assistant Unit Manager</td>
<td>In the absence of / or directed by the Unit Manager</td>
<td>Unit Manager steps</td>
</tr>
<tr>
<td>Shift Supervisor</td>
<td>In the absence of / or directed by the Unit Manager</td>
<td>Unit Manager steps</td>
</tr>
<tr>
<td>Duty Manager</td>
<td>In the absence of those listed above and after-hours</td>
<td>Unit Manager (in consultation with Assistant Unit Manager/Shift Supervisor) steps</td>
</tr>
<tr>
<td>Assistant Manager (G)</td>
<td>Always</td>
<td>Assistant Manager (G) steps</td>
</tr>
<tr>
<td>Senior Coordinator</td>
<td>Always</td>
<td>Senior Coordinator Court Operations steps</td>
</tr>
</tbody>
</table>

Procedural steps

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>All staff</td>
<td><strong>Wand and clothed body search</strong></td>
</tr>
<tr>
<td></td>
<td>1. <strong>Conduct</strong> a wand search before a clothed body search. A wand search won’t find illicit substances unless there’s metal content/wrapping.</td>
</tr>
<tr>
<td></td>
<td><strong>Before starting wand and clothed body search</strong></td>
</tr>
<tr>
<td></td>
<td><strong>People you need:</strong></td>
</tr>
<tr>
<td></td>
<td>    Assistant Unit Manager</td>
</tr>
<tr>
<td></td>
<td>    Shift Supervisor</td>
</tr>
<tr>
<td></td>
<td><strong>1. <strong>Contact</strong> Assistant Unit Manager/Shift Supervisor for a non-routine wand and clothed body search (i.e. search based on ‘reasonable belief”), and:</strong></td>
</tr>
<tr>
<td></td>
<td>      • request approval to conduct wand and clothed body search;</td>
</tr>
</tbody>
</table>
Searching Detainees procedure 2 November 2012

- explain reasons for search;
- request a second trained staff member attend to observe/conduct search.

2. Don’t conduct any part of search until there’s a second trained officer present.

For both routine and non-routine searches:

- ensure you’re in an area where security and privacy can be maintained (this isn’t necessary when search consists of a wand search only).
- ensure detainee is separated from other detainees in area before being searched so contraband items can’t be exchanged.
- inform detainee they’ll be given a wand and clothed body search.
- explain wand and clothed body searching procedure to detainee before starting, unless detainee is familiar with centre procedure.

3. Ask detainee if they have any items of contraband.
4. Allow them to hand over such items/place them in an evidence bag before search begins.
5. If this is a non-admission search/a non-return search:
6. inform detainee they may be punished under Misbehaviour provisions/referred to police if contraband is voluntarily declared and handed over at this stage
7. inform detainee decisions regarding punishment will consider fact they voluntarily provided contraband to staff.

Proceeding with wand search

1. Direct detainee to remove all articles from their pockets and turn pocket lining out.
2. Direct detainee to face away from you.
3. Direct detainee to raise their arms up and to the side with palms of their hands facing upwards.
4. Direct detainee to place their legs and feet apart with feet flat on the ground. This should be at a distance where detainee is still comfortable/can maintain their balance.
5. Provide detainee with a low stool (kept especially for this) to stand on, if available. This lowers chances wand will detect metal embedded in floor.
6. Direct detainee to remain with arms outstretched and legs apart for entire wand search.
7. Move wand across and over detainee’s body:

   - Right-side of body:
     - start at side of detainee’s right foot
     - move wand up right side of detainee’s body to their right armpit
     - move wand along underside of detainee’s right outstretched arm, around their right hand, then across top of right arm, to neck.
Searching Detainees procedure 2 November 2012

- Head area:
  - move wand over detainee’s head, passing right ear, over and around head area, down past their left ear to neck.
- Left side of body:
  - move wand along top of detainee’s left arm, over hand, then along underside of their left arm
  - move wand down left side of detainee’s body, to side of their left foot.
- Inside legs and crotch
  - move wand from inside of detainee’s right foot, up along inside right leg, past crotch area, and down inside left leg to left foot.
- Back of body
  - move wand (holding it lengthwise and flat across detainee’s body) up along back of detainee’s body.
- Soles of shoes
  - direct detainee to raise each of their feet and move wand across sole of each shoe.
- Front of body
  - direct detainee to face you;
  - move wand (holding it lengthwise and flat across detainee’s body) from head down along front of detainee’s body.

Proceeding with clothed body search

People you need:

- Unit Manager

1. Conduct wand search before starting this procedure. Detainees are to remain dressed for a clothed body search.
2. Direct detainee to remove extra layers of clothing such as jackets, jumpers, sloppy joes and shoes.
3. Put on a pair of puncture-resistant gloves.
4. Ensure you’re standing at a safe distance from detainee and in sight of second officer.
5. Direct detainee to remove all articles from their pockets and turn pocket linings out, if not already done during wand search.
6. Direct detainee to remove following items and place them on a table/another flat surface:
   - outer jacket/jumper
   - shoes and remove inner soles (to be shaken by detainee)
Searching Detainees procedure 2 November 2012

- socks – turned inside out
- wrist watch and any jewellery.

7. Search all removed clothing in front of detainee.
8. Use protective equipment at all times when conducting this procedure – eg: gloves, ruler.
9. Pay close attention to:
   - collars, cuffs, facings, lapels, seams and linings of clothing
   - heels and linings of shoes.

10. Search detainee’s upper body:
    - Hands:
      - direct detainee to face you
      - direct detainee to move their hands out to side of their body with fingers spread apart
      - check detainee’s hands for contraband.
    - Head area:
      - direct detainee to bend their head forward
      - direct detainee to run hands through their hair – from back to front or direct detainee to raise their head, open mouth and remove any false teeth
      - look into mouth cavity and direct detainee to run a finger around/ between teeth and gums
      - direct detainee to turn their head to each side and pull ears forward
    - Neck and torso:
      - direct detainee to stand facing away from you with their feet apart and arms raised from sides
      - carefully pat down detainee, starting at back of head
      - follow a direct course around collar ensuring nothing is hidden inside/ under shirt collar
      - place both hands on base of detainee’s neck covering shoulders with palms open and pressing firmly
      - pat down back and side to belt line
    - Arms:
      - detainee should still be facing away from you
      - place one hand under detainee’s armpit and other hand on top of their shoulder
      - carefully pat down entire length of both sleeves to cuff /end of shirt
      - repeat procedure with other arm

11. Search detainee’s lower body:
• Waist and legs:
  o detainee should still be facing away from you
  o **direct** detainee to release belt line and turn it out
  o **search** belt line
    - from back of waistline, carefully **pat down** over buttocks and sides of hips and legs
    - if detainee is wearing long trousers, starting at either leg, **place** both hands around leg and carefully **pat down** from top down
    - **search** any trouser turn-ups or cuffs
    - **repeat** this on other leg

• Feet:
  o detainee should still be facing away from you
  o **direct** detainee to lift one leg at a time to display soles of their feet and toes
  o **direct** detainee to wiggle their toes (to release anything held there)
  o **direct** detainee to replace any items of clothing/jewellery removed (if such such items are allowed in centre).

12. **Wearing** protective equipment **place** items in sharps container/secure evidence bag, if contraband items were found.

NOTE: All protective equipment is located in Drug Search Kit

13. **Seal** container/bag.

14. **Label** it with:
  - detainee’s name and date of birth
  - contraband item found (if unknown, a description, e.g. green vegetable matter, white powdery substance)
  - day, date and time of search
  - your name, as searching officer.

15. **Give** evidence to Unit Manager to be secured by Assistant Manager (Generalist)

Strip search

16. **Always** conduct a strip search with detainee partially clothed.

17. **Conduct** search in following order:
  - top half of clothing removed and searched
  - top half of body checked for contraband
  - top half of clothing (one layer) returned and shirt put on by detainee
  - bottom half of clothing removed and searched
  - bottom half of body checked for contraband
  - bottom half of clothing returned and put on by the detainee.

18. **Maintain** a high level of sensitivity throughout search procedure.
Searching Detainees procedure 2 November 2012

18. Consider detainee’s privacy, decency, sexual assault history, cultural difference and self-respect.
19. Never touch detainee at any time during strip search procedure.
20. Ensure staff members are same sex as detainee, or if not possible:
   - Staff member conducting strip search must be same sex as detainee and second staff member (observer) of opposite sex (note: this staff member doesn’t observe detainee).
   - Searching staff remain in second officer’s (observer) sight at all times during search procedure. Second officer is:
     o a witness to searching procedure and
     o responsible for ensuring search procedure is conducted correctly

Before starting a strip search

People you need:

- Assistant Unit Manager
- Shift Supervisor

1. Contact Assistant Unit Manager/Shift Supervisor for a non-routine strip search (i.e. search based on “reasonable belief”), and:
   
   - request approval to conduct strip search
   - explain reasons for search
   - request a second trained staff member attend to observe/conduct search.

2. Don’t conduct any part of search until there’s a second trained officer present.
3. For both routine and non-routine searches:
   
   - ensure you’re in an area where security and privacy can be maintained (this isn’t necessary when search consists of a wand search only)
   - ensure detainee is separated from other detainees in area before being searched so contraband items can’t be exchanged
   - inform detainee they’ll be given a wand and clothed body search
   - explain wand and clothed body searching procedure to detainee before starting, unless detainee is familiar with centre procedure.

4. Ask detainee if they have any items of contraband.
5. Allow them to hand over such items/place them in an evidence bag before search begins.
6. If this is a non-admission search/a non-return search:
7. Inform detainee they may be punished under Misbehaviour provisions/referred to police if contraband is voluntarily declared and handed over at this stage
8. Inform detainee decisions regarding punishment will consider fact they voluntarily provided contraband to staff
Proceeding with strip search

People you need:

- Unit Manager

1. **Put on** a pair of puncture-resistant gloves.
2. **Ensure** you’re standing at a safe distance from detainee and in sight of second officer. **Don’t touch** detainee at any time during this search.
3. **Direct** detainee to remove all articles from their pockets and turn pocket linings out, if not already done during wand search.
4. **Direct** detainee to remove following items and place them on a table/another flat surface:
   - outer jacket/jumper
   - shoes and remove inner soles (to be shaken by detainee)
   - socks – turned inside out
   - wrist watch and any jewellery.
5. **Search** all removed clothing in front of detainee.
6. **Use** protective equipment at all times when conducting this procedure – eg. gloves, ruler.
7. **Pay close attention to**:
   - collars, cuffs, facings, lapels, seams and linings of clothing
   - heels and linings of shoes.

**NOTE:** Footwear shouldn’t be returned to detainee until entire search is completed.

8. **Direct** detainee to remove extra layers of clothing such as jackets, jumpers, sloppy joes and shoes.
9. **Begin** upper clothing search:
   - **direct** detainee to remove their upper layer of clothing.
     Undergarments (eg. bras, singlets etc) can be left on until overgarments are searched
   - **direct** detainee to place upper layer of clothing on table
   - **direct** detainee to move away from table
   - **search** all removed items of clothing in presence of detainee and **use** protective equipment (eg. ruler)
   - **pay particular attention** to collars, cuffs, facings, lapels, seams and linings of clothing
   - **direct** detainee to remove undergarments for searching when all upper clothing has been searched

10. **Search** detainee’s upper body:
    - Hands:
      - **direct** detainee to face you
      - **direct** detainee to move their hands out to side of their body with...
Searching Detainees procedure 2 November 2012

- Finger's spread apart
  - **check** detainee's hands for contraband

- **Head area**:
  - **direct** detainee to bend their head forward
  - **direct** detainee to run hands through their hair – from back to front
  - **direct** detainee to raise their head, open mouth and remove any false teeth
  - look into mouth cavity and **direct** detainee to run a finger around between teeth and gums
  - **direct** detainee to turn their head to each side and pull ears forward

11. **Visually inspect** detainee's top half of body.
12. **Direct** detainee to put on their upper clothing (one layer only).
13. **Begin** lower clothing search:

- **direct** detainee to remove their lower layer of clothing.
  - Undergarments (e.g. underpants, bras) can be left on until overgarments are searched
  - **direct** detainee to place clothing on table
  - **direct** detainee to move away from table
  - **tell** detainee they can turn away from you for privacy

14. **search** all removed clothing in front of detainee and use protective equipment (e.g. ruler)
15. **pay particular attention** to pockets, linings, seams and facings in clothing
16. **conduct** search of clothing in this step as quickly as possible (still ensuring a thorough search) so detainee can be searched and clothing returned as soon as possible to reduce embarrassment
17. **direct** detainee to remove undergarments for searching when all lower body clothing has been searched.
18. **Search** detainee’s lower body:

- if detainee is wearing long shirt/clothing that comes below waist:
  - **ask** detainee to lift clothing to waist-line and hold it there while you search lower body
  - **do this** as quickly, but thoroughly, as possible to reduce embarrassment.

19. **Visually inspect** lower half of detainee’s body, including:

- between toes (ask detainee to wiggle toes);
- soles of foot (ask detainee to lift one leg at a time to display soles)
- inner parts of legs and pubic area

20. **Don’t direct** detainee to lift genitalia, squat or part buttocks
21. **direct** detainee to put on their lower layer of clothing
22. **allow** detainee to place all remaining clothing on
23. return their shoes and socks and any items detainee may’ve had in their pockets and is allowed to keep.
24. Wear protective equipment, place items in sharps container/secure evidence bag, if contraband items were found.

Note: All protective equipment is located in Drug Search Kit

25. Seal container/bag.
26. Label it with:
   - detainee’s name and date of birth
   - contraband item found (if unknown, a description, e.g. green vegetable matter, white powdery substance)
   - day, date and time of search
   - your name, as searching officer.

27. Give evidence to Unit Manager to be secured by Assistant Manager (Generalist)

After a search

If items of contraband were found:

1. ensure sharps (syringes and needles) are placed in a puncture-resistant container
2. inform Unit Manager of search result.
3. Ensure Unit Manager receives sealed container with contraband intact.

<table>
<thead>
<tr>
<th>Unit Manager</th>
<th>Wand and clothed body search</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Conduct training and instruction sessions with supervising/searching staff in centres.</td>
</tr>
</tbody>
</table>

Non-routine search

1. Approve search if you decide reasons for it are adequate and reasonable in view of search principles.

Note: For non-routine wand and clothed body searches this may be done after search is completed.


After a search

People you need:
- Assistant Manager (Generalist)
- Logistics officer
- Senior Coordinator Court Operations
Searching Detainees procedure 2 November 2012

- Regional Director

1. **Report** any contraband items found to Assistant Manager (Generalist)/Logistics Officer/Senior Coordinator Court Operations.
2. **Check** search staff placed sharps (syringes and needles) in a puncture-resistant container.
3. **Check** items are placed with detainee's stored property and recorded accurately by Admissions Officer, if items found are:
   - unauthorised for use within centre, but
   - not items that should be forfeited (& personal property of detainees).
4. **Complete** an Incident Advice on CIMS if directed by Assistant Manager (Generalist)/Senior Coordinator Court Operations.
5. **Refer** any other incident reports to Security & Intelligence Unit and Regional Director/Assistant Regional Director.
6. **Submit** Incident Advice and any other incident reports to CIMS In tray of Assistant Manager (Generalist)/Senior Coordinator Court Operations.
7. **Check** Search Register has been completed correctly (JJ-A059).
8. **Direct** staff to enter additional information in Search Register before signing, if there's more information needed.
9. **Sign** appropriate section confirming search was conducted in accordance with departmental procedures, when Search Register is accurately completed.

**Non-routine / one off strip search**

People you need:

- Assistant Manager (Generalist)

1. **Decide** if reasons for non-routine search are adequate and reasonable in view of search principles.
2. **Verbally approve** search.
3. **Sign** Search Register following verbal approval. Declare basis of “reasonable belief” in Register (JJ-A059).
4. **Report** any contraband items found to Assistant Manager (Generalist).

**Note:** Contraband items found need an Incident Advice per procedure manual (Incident – General Information).

5. **Check** search staff placed sharps (syringes and needles) in a puncture-resistant container.
6. **Check** items are placed with detainee's stored property and recorded accurately by Admissions Officer, if they're unauthorised for use by detainee but shouldn't be forfeited.

<table>
<thead>
<tr>
<th>Assistant Manager (G), Senior Coordinator Court</th>
<th>Wand and clothed body search</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Juvenile Justice</strong></td>
<td><strong>Juvenile Justice</strong></td>
</tr>
<tr>
<td><strong>Attorney General &amp; Justice</strong></td>
<td><strong>Attorney General &amp; Justice</strong></td>
</tr>
</tbody>
</table>

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Searching Detainees procedure 2 November 2012

| Operations | 2. **Ensure** a procedure is in place for regular checking/maintenance of wand metal detectors.  
3. **Ensure** all staff who conducted searches are trained in use of wand metal detectors/regular refresher training sessions. |

Legislation

**Children (Detention Centres) Act 1987:**
4. Objects of the Act
14. Functions of the Director General
17. Private Property
17A. Detainees not to be supplied with or allowed alcohol, tobacco or adult films
20. Complaints of misbehaviour
21. Punishments for misbehaviour
21. Prohibited punishments for misbehaviour
37B. Trafficking in alcohol, drugs or other things

**Children (Detention Centres) Regulation 2010:**
cl.5. Admission of detainees
cl.8. Health and medical attention
cl.9. Maintenance of well being of detainees
cl.13. Books, newspapers, magazines and other printed material
cl.14. Radios and other electronic equipment
cl.15. Unauthorised possession of property
cl.16. Disposal of property
cl.17. Records to be kept concerning property
cl.33. Articles not to be conveyed between visitors and detainees
cl.34. Refusal and termination of visits
cl.35. Searching of visitors
cl.40. Inspection of face coverings by visitors
Part 7. Maintenance of order
Part 8. Misbehaviour

Change log

<table>
<thead>
<tr>
<th>Date</th>
<th>Reason for change</th>
<th>Details of change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 September 2009</td>
<td>All Juvenile Justice Centre Procedures have been changed to reflect the staffing restructure within Juvenile Justice Centres.</td>
<td>The position of Unit Coordinator has been deleted and replaced with Shift Supervisor or Assistant Unit Manager.</td>
</tr>
<tr>
<td>24 February 2010</td>
<td>Children (Detention Centres) Regulation 2010</td>
<td>Updated legislation references</td>
</tr>
<tr>
<td>Date</td>
<td>When not to use this procedure</td>
<td>Corrected description to enable searching detainees for routine and when suspicion of contraband exists.</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>02 November 2012</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Juvenile Justice
Attorney General & Justice
ANNEXURE C

Removed prior to publication.