

TESTIMONY OF ALISON BEYEA, ESQ.

LR 3255 – Ought To Pass

**An Act to Implement the Recommendations of the Juvenile
Justice System Advisory Assessment and Reinvestment Task Force**

Joint Standing Committee on Criminal Justice
and Public Safety

March 4, 2020

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Alison Beyea, and I am Executive Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to support this legislation, while also urging you to broaden it.

First, I want to acknowledge the hard work that went into this bill. Several members of this committee sat on the Juvenile Justice System Assessment and Reinvestment Task Force¹ with me. For the past nine months, we met monthly to discuss the issues facing youth and systems tasked with care for youth in our state. We spent many hours talking and debating how Maine can develop alternatives to imprisoning its youth. The task force comprised stakeholders whose expertise was matched only by their diversity of professional background. At our final meeting last Tuesday, the Center for Children's Law and Policy (CCLP) presented a lengthy report on Maine's youth justice system – almost certainly the most thorough study of its kind ever done in Maine. The report is not only a wealth of knowledge about Maine and other states that are similar to Maine, but a good guidepost for where to go from here.

This bill resulted from negotiations after this long collaborative process. It is not perfect. No one person or organization came away with everything for which they would wish. But, as an

¹ Maine Juvenile Justice System Assessment & Reinvestment Task Force, Website, *available at* www.mainejjtaskforce.org/about. The taskforce was created by the 129th Legislature's LD 1108, which is *available at* <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0812&item=1&snum=129>

organization that has been calling for reinvestment in community-based supports, the ACLU is heartened at the sizable sum of money appropriated for community organizations. We appreciate that this bill recognizes the size and scope of investment needed to build up supports so that communities—not institutions—are caring for our kids. When we invest in communities and in families in our state, and stop investing so much in the prison system, we will see the need for secure facilities recede.

The bill also imposes requirements that the DOC report back to this committee regularly. We support this requirement. In the 128th Legislature, we saw the good that pouring sunlight on what is happening at Long Creek when the Joint Standing Committees of Health and Human Services and Criminal Justice and Public Safety gathered together to discuss their joint responsibility to the children behind bars at Long Creek. We recommend, if the committee keeps the financial structure of the bill the way it is, that the Department of Corrections report to both the HHS committee and this committee. The only real way the legislature can monitor DOC's progress in implementing best practices for justice involved youth is through exactly this type of reporting requirement.

While we are supportive of the direction in which this bill would move our state, and the resources it would provide for young people, we also share some of the concerns of the young people you will hear testify today. We would be remiss if we did not address those issues, and we hope the committee will heed the words of those who have been through the juvenile legal system and who have particular insight into what is needed to care for and heal kids who are drawn into the juvenile system. We also hope the committee will carefully consider the CCLP report's findings.

CCLP Report Findings

The CCLP report's findings are harrowing, and confirm some of our worst expectations. We learned that “[i]n 53% of cases, the reason for detention was to ‘provide care’ for youth.”² Perhaps more revealing is that “72.7% of detention stays lasting longer than 30 days were for youth awaiting placement.”³ Moreover, “[i]n 47% of cases, youth were held in detention for 3

² Maine Juvenile Justice System Assessment Final Report at 8, Center for Children's Law and Policy et al. (2020) (hereinafter CCLP Report), available at <https://irp-cdn.multiscreensite.com/de726780/files/uploaded/Maine%20Juvenile%20Justice%20System%20Assessment%20FINAL%20REPORT%202-25-20.pdf>

days or less, suggesting they were not significant public safety risks.”⁴ We also learned that “low risk youth staying substantially longer than high risk youth.”⁵ In short, we are sending kids to prison because of the lack of community-based programs and services to provide supervision.

Another major finding is that an overwhelming proportion of incarcerated youth have a recent history of mental or behavioral illness. The report found that 69% of youth currently committed in Long Creek received behavioral health services through MaineCare the year before they were committed, with 55% experiencing residential stays and 16% with psychiatric hospital stays (some youth experienced both).⁶ As a result, the juvenile justice system has become the default provider of behavioral and mental health services for Maine youth.

Still another concerning conclusion is that “youth who identified as Black or African American were detained at a rate of almost 8 times their rate in the population and were committed at a rate of more than 5 times their rate in the population.”⁷ Relatedly, the report found that although Black or African American residents make up only 1.6% of the population, 23% of detained youth identified as Black/African American.⁸ Many other such findings are summarized early in the report, and analyzed in detail throughout its pages.

Some of these problems are easier to understand – but no easier to stomach – when one considers how little Maine spends on the continuum of community-based services. Two examples of such programs are Multisystemic Therapy (MST) and Functional Family Therapy (FFT). MST is an intensive family and community-based treatment for justice involved youth.⁹ FFT is a family-based prevention and intervention program that has been applied successfully in a variety of contexts to treat a range of justice-involved youth and their families.¹⁰ According to the CCLP report, although these programs are “[s]ome of the most effective community-based interventions,” they “have been reduced or eliminated because of reimbursement rates.”¹¹

³ CCLP Report at 37.

⁴ CCLP Report at 8.

⁵ CCLP Report at 8.

⁶ CCLP Report at 50, 105-106.

⁷ CCLP Report at 117.

⁸ CCLP Report at 33.

⁹ Jeff Latimer, *Multisystemic Therapy as a Response to Serious Youth Delinquency*, JustResearch no. 12 (2015), available at www.justice.gc.ca/eng/rp-pr/jr/jr12/p5d.html

¹⁰ Thomas L. Sexton and James F. Alexander, *Functional Family Therapy*, Office of Juvenile Justice and Delinquency Prevention, U.S. DOJ (2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/184743.pdf>.

¹¹ CCLP Report at 59.

Specifically, “486 youth had received MST services between 2015 and 2018.”¹² But “just 59 youth received the service in 2019.”¹³ And “FFT providers reported serving 305 youth between 2015 and 2018 (a yearly average of 76), but only served 31 youth in 2019.”¹⁴ These are some of our best tools for diverting youth from the prison system. I urge the committee, and the legislature, to reinvigorate them.

Concerns with the Bill

Stated below are some concerns that we have about this legislation, and avenues we hope the committee will pursue.

First, the bill does not go far enough. The CCLP report’s ultimate goal, listed after 46 short, medium, and long-term goals or solutions, is to “[a]chieve removal of all youth from Long Creek.” This goal is no different from the demand that formerly incarcerated youth have made. It is no different from the demand that we, the ACLU, made more than two years ago, after a report revealed serious and troubling problems at Long Creek.¹⁵ The bill before you does not propose or incentivize closing Long Creek. But if we truly love our youth, and want our youth to not only survive but also flourish, we must imagine a Maine free of youth prison.

And, not only does the bill not close Long Creek, but it urges the Department of Corrections to open up to four new facilities, in addition to Long Creek. While there are genuine disagreements as to whether new secure facilities would be needed if Long Creek is closed, we cannot support the building (even if it is remodeling of existing buildings) of new places to incarcerate children while also keeping Long Creek open. That would take us in the wrong direction.

To the extent the bill does address Long Creek, it proposes a modest, a gradual reduction in Long Creek’s population over three years’ time. There is no mechanism written into the bill to hold DOC accountable if it does not meet its goals. There is no consequence or enforcement mechanism in the bill. Without that, these benchmarks are merely aspirational.

¹² CCLP Report at 60.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *ACLU Of Maine Calls For Closure Of Long Creek Youth Prison*, Press Release, Dec. 14, 2017, www.aclumaine.org/en/press-releases/aclu-maine-calls-closure-long-creek-youth-prison#:~:text=

With regard to the appropriations, as stated above, we approve the move to significantly increase resources to communities. The proposed appropriations of \$1,000,000 to the Department of Health and Human Services starts the necessary process of building the infrastructure that some stakeholders insist is the reason we incarcerate youth. As stated earlier, between half and three quarters of the young people incarcerated at Long Creek are there awaiting placement in less secure facilities. Although not enough, this new appropriation will significantly expand these alternative placements, reducing the number of kids in prison.

The bill also proposes appropriations of \$2,500,000 to the Department of Corrections. While we are fully supportive of the amount of money that the bill designates for community services, we ask that you consider carefully whether the Department of Corrections is the correct agency to receive these funds. It is our belief that in order to truly shift our culture out of a culture of incarceration-as-the-answer-to-normal-childhood-behavioral-development, we must not only *invest* in communities and families, but also *divest* from the old ways of doing things. By giving the Department of Corrections \$2.5 million to spend on community programs, there is no incentive to spend less on incarceration. Instead, this frees up more resources currently spent on outside programming to put towards Long Creek.

Conclusion

Finally, we enthusiastically support the amendments proposed by Maine Youth Justice.

Thank you for your time and attention.