



**TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF
LD 246, AN ACT TO ESTABLISH THE OPTION OF SENTENCING ALTERNATIVES
FOR PRIMARY CAREGIVERS**

Committee on Judiciary
February 25, 2025

Dear Senate Chair Carney, House Chair Kuhn, and Distinguished Members of the Judiciary Committee,

GLBTQ Legal Advocates & Defenders (GLAD Law) is a nonprofit legal organization that works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. We appreciate the opportunity to submit this testimony in support of LD 246, An Act to Establish the Option of Sentencing Alternatives for Primary Caregivers.

GLAD Law has long worked to defend family integrity as a constitutional baseline. When parents are convicted of crimes, it is imperative that the state do all that it can, consistent with the law's purposes, to avoid interfering with, or effectively severing-by-separation, the unique parent-child relationship.

More than 14,000 children in Maine have a parent or guardian who served time in jail.¹ Those children and caregivers face steep barriers to maintaining their relationship. For example, Maine State Prison visiting policies explain that would-be visitors may take up to six weeks or longer to have their applications processed, may visit only during specific hours offered four days a week (two of which are school days), may “embrace or kiss briefly at the beginning and end of the visit[,]” and may not move around the visit room during the visit.²

The harms of parental incarceration disproportionately impact Black and Brown families, with a study of incarcerated Maine parents finding that 11 percent were Black or African American and 4 percent were Native American.³ And while precise data on the children of incarcerated LGBTQ parents are unavailable, a survey of incarcerated LGBTQ people conducted by one organization found that forty-four percent of respondents reported having a child.⁴

¹ Annie E. Casey Foundation, “Children Who Had a Parent Who Was Ever Incarcerated in Maine” (2023), <https://datacenter.aecf.org/data/tables/9688-children-who-had-a-parent-who-was-ever-incarcerated#detailed/2/21/false/2043,1769,1696,1648,1603/any/18927,18928>

² Maine Department of Corrections, *Maine State Prison Resident Handbook*, 13-16 (2021), <https://legislature.maine.gov/doc/8912>

³ Jillian Foley, Erica King & Casey Benner, *Breaking the Cycle: Interrupting Generational Incarceration in Maine*, Cutler Institute 4-5 (2020), <https://placemattersmaine.org/wp-content/uploads/2021/01/BreakingtheCycle.pdf>

⁴ Jason Lydon et al., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey* 19 (2015), <https://www.issuelab.org/resources/23129/23129.pdf>

The parent-child bond can be powerful and enduring, even when stressed. Children rely on their parents to quickly and warmly respond to their needs, promoting the child's healthy attachment. Feeling safe, secure, and loved is critical for all children, including very young children.⁵ Relationships between children and parents that are warm, open, and communicative drive higher self-esteem, better school performance, and fewer negative outcomes such as depression or substance use.⁶ Incarceration and the associated trauma it imposes on both caregivers and children disrupts that relationship, putting children at increased risk of homelessness, depression, anxiety, and other mental and behavioral health issues, economic instability, low educational attainment and lower graduation rates, and juvenile or criminal legal system involvement.⁷ A report from the Muskie School of Public Service noted that "[i]ncarcerating mothers of young children is particularly problematic as it disrupts a key parental bond during critical years of development."⁸

Additionally, parental incarceration leads to many children being uprooted from their homes to the homes of another parent, a friend or family member, or state care.⁹ In Maine, the Department of Health and Human Services reported in January 2025 that 56 children in foster care were known to have one or both parents incarcerated in snapshot data of one month alone.¹⁰ In some cases, incarceration leads to the permanent termination of parental rights. *See In re Alijah K.*, 2016 ME 137, ¶ 16 (stating "a parent's incarceration is but one factor to be considered by a court faced with a termination petition, but it is a factor—a factor that may, in some cases, lead a court to terminate that parent's rights").

The impact of parental incarceration falls heavily among LGBTQ youth and adults, as it does among other communities. The incarceration of a primary caregiver can strike at the heart of a LGBTQ child's stability, particularly if substitute caregivers are not equipped to affirm their LGBTQ identity, provide a welcoming home, access appropriate healthcare, and/or advocate where needed with community institutions.

⁵ Zero to Three, "Promoting Early Development: Building a Strong Foundation," <https://www.zerotothree.org/issue-areas/early-development/>

⁶ American Psychological Association, *Parents and Caregivers Are Essential to Children's Healthy Development* (2009), <https://www.apa.org/topics/families/parents-caregivers-kids-healthy-development#:~:text=When%20infants%20attach%20successfully%20to,%2C%20emotional%2C%20and%20cognitive%20development>

⁷ Jillian Foley, Erica King & Casey Benner, *Breaking the Cycle: Interrupting Generational Incarceration in Maine*, Cutler Institute 2 (2020), <https://placemattersmaine.org/wp-content/uploads/2021/01/BreakingtheCycle.pdf>; Elizabeth I. Johnson & Joyce A. Arditti, "Risk and Resilience Among Children with Incarcerated Parents: A Review and Critical Reframing," 12 *Annual Review of Clinical Psychology* 437, 440-41 (2023), <https://www.annualreviews.org/docserver/fulltext/clinpsy/19/1/annurev-clinpsy-080921-081447.pdf?expires=1740448729&id=id&accname=guest&checksum=B5AC9E731EB650BAB7741537B5AC6EC8>; Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families, & Communities* 3 (2016), <https://assets.aecf.org/m/resource/doc/aecf-asharedsentence-2016.pdf>

⁸ Jillian Foley, Erica King & Casey Benner, *Breaking the Cycle: Interrupting Generational Incarceration in Maine*, Cutler Institute 2 (2020), <https://placemattersmaine.org/wp-content/uploads/2021/01/BreakingtheCycle.pdf>

⁹ Leah Wang, "Both Sides of the Bars: How Mass Incarceration Punishes Families," Prison Policy Initiative (2022), <http://prisonpolicy.org/blog/2022/08/11/parental-incarceration/>

¹⁰ DHHS Office of Child and Family Services, "Monthly Legislative Report: Monthly Snapshot of Children in DHHS Custody – Point in Time" (2025), <https://legislature.maine.gov/doc/11581>

While less research and attention has been given to adults who depend on caregivers who become incarcerated, there is no doubt that a caregiver's incarceration can detrimentally affect older adults and adults with disabilities – particularly in light of the dearth of resources to fill the gaps created by the absence of an adult's primary caregiver. We note that LGBTQ older adults in particular may depend on the support of a trusted, affirming family member or friend as caregiver in light of concerns about discrimination in long-term care and other facilities.¹¹

By passing LD 246 and like legislation, Maine would establish the importance of continuity for caregivers and those who depend on them, whether children or adults. For parents and children who meet the bill's standards, the bill creates the possibility of maintaining or even strengthening the parent-child bonds that are so important to development and so protective for children. It would also support people from all walks of life who depend on a primary caregiver, whether a person needs care because of an accident, serious illness, the effects of diminishing mental capacity, or disability.

Additionally, LD 246 would help Maine join the ranks of other states that have taken action to address family separation caused by incarceration, including through legislation permitting access to alternative-to-detention programs.¹² And advocates in at least one other state have identified significant economic benefits that could be realized through using alternative sentencing programs for some primary caregivers.¹³

No parent or caregiver is perfect – but each plays a unique and irreplaceable role in the lives of their child or adult dependent. Incarceration of a caregiver exacts a heavy price from Maine's children, older adults, and adults with disabilities. LD 246 represents an important step forward for families at risk of injury and instability from the incarceration of a parent and the cascading effects over time on children and other dependents. We respectfully urge your support for this important bill.¹⁴

¹¹ See, e.g., GLAD Law, "Transgender Woman Reaches Landmark Settlement with Maine Assisted Living Facility That Denied Her a Room" (June 13, 2022), <https://www.glad.org/transgender-woman-reaches-landmark-settlement-with-maine-assisted-living-facility-that-denied-her-a-room/>

¹² Emma Ruth, "How 12 states are addressing family separation by incarceration — and why they can and should do more," *Prison Policy Initiative* (2023), <https://www.prisonpolicy.org/blog/2023/02/27/caregivers/>

¹³ Sarah Durand, "New KYFREE Report: Prioritizing Alternatives to Incarceration for Primary Caregivers Could Add \$740 Million to Kentucky's Economy," *Kentucky Forum for Rights, Economics, and Education*, <https://www.kyfree.org/commentary/new-kyfree-report-prioritizing-alternatives-to-incarceration-for-primary-caregivers-could-add-740-million-to-kentuckys-economy>

¹⁴ We acknowledge that the Criminal Law Advisory Commission's testimony suggested that the ten-day deadline for filing a motion in the existing bill could lead to confusion. We encourage the committee to consider any amendments necessary to make the bill feasible.

Sincerely,

Hannah Hussey
Staff Attorney

Mary Bonauto
Senior Director of Civil Rights and Legal Strategies

GLBTQ Legal Advocates & Defenders
Portland, Maine