

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 546 – Ought Not 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 26, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede, and I am Policy Counsel 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 the ACLU of Maine and GLBTQ Legal Advocates & Defenders (GLAD), I am here to oppose this legislation.

First, I want to acknowledge the hard work that went into this bill. The bill sponsor and several members of this Committee sat on the Juvenile Justice System Assessment and Reinvestment Task Force.¹ The ACLU and GLAD were also part of the process. The task force met monthly between May of 2019 and February of 2020 to discuss the issues facing youth and systems tasked with care for youth in our state. At the task force's February 2020 meeting, 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 not only includes a wealth of knowledge about Maine and other states that are similar to Maine, but also offers useful guideposts for where to go from here.

Though the title of this bill suggests the intent to implement all the recommendations of the task force, the body of the bill implements only some of its recommendations. This is not a criticism of the sponsor—the scope of the problem, and the approaches needed to solve it are enormous. They are far beyond what one bill could achieve, and we do not want any legislators, however they decide to vote on this bill, to believe that the work is at an end. 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.

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>

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.

While we are supportive of the direction in which Representative Brennan wishes to move our state, and the resources this bill dedicates to young people, we also share some of the concerns of the young people you will hear testify today, namely: LD 546 does not go far enough. It provides for opening new facilities without closing Long Creek, it does not include any accountability measures should the Department of Corrections not comply with the bill's terms, and it invests more money in the Department of Corrections rather than shrinking its footprint in children's lives. 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 that system.

We also hope the Committee will carefully consider the CCLP report's findings.

CCLP Report Findings

The CCLP Report, published in February of 2020, sets forth the most recent assessment of Maine's juvenile justice system and proposals for reform. Many of the deficiencies identified in the report arise from the absence of community-based, therapeutic services for children in Maine. The report reveals 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, the report showed that public safety is often not the primary reason for detention: "[i]n 47% of cases, youth were held in detention for 3 days or less, suggesting they were not significant public safety risks"⁴ and "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 or housing.

Another major finding was that an overwhelming proportion of incarcerated youth have a recent history of mental or behavioral health difficulties. The report found that 69% of youth currently committed to Long Creek received behavioral health services through MaineCare the year before they were committed, with 55% experiencing residential stays and 16% psychiatric hospital stays (some youth

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>

³ CCLP Report at 37.

⁴ CCLP Report at 8.

⁵ CCLP Report at 8.

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 The report also found that “LGBTQ+ youth are at increased risk of substance use, homelessness, school dropout or suspension or expulsion, depression, and suicide as a result of social stigma, family rejection, and discrimination.”⁹ Moreover, “LGBTQ+ youth are overrepresented in the juvenile justice system, and when confined in juvenile facilities are at least seven times as likely to be sexually assaulted by other youth as heterosexual youth who are confined.”¹⁰ Similarly disturbing, “[y]outh with disabilities are often referred to law enforcement for behavior that is a manifestation of their disabilities, and often remain in secure custody for long periods because of a lack of less restrictive community or home-based programs and services.”¹¹ 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 the serious deficiencies in Maine’s overall system for providing children’s family and behavioral services. A comprehensive report in 2018 acknowledged that “[c]hildren’s behavioral health services [in Maine] are not available immediately (or at all),” “[t]he quality of behavioral health services is not consistent,” and “[c]oordination with other child-serving agencies and transition to adult services is inadequate.”¹² Years later, wait lists continue for necessary therapeutic supports in the community.¹³ The absence of quality assurance staff at DHHS¹⁴ means that the available programs face little consequence for denying

⁶ CCLP Report at 50, 105-106.

⁷ CCLP Report at 117.

⁸ CCLP Report at 33.

⁹ CCLP Report at 68.

¹⁰ *Id.* See also Wilber, S. (2015). Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System: A Guide to Juvenile Detention Reform. <http://www.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>

¹¹ CCLP Report at 68.

¹² Me. Dep’t of Health & Human Servs., Office of Child & Family Servs., Children’s Behavioral Health Services Assessment Final Report (Dec. 15, 2018), available at <https://www.maine.gov/dhhs/ocfs/cbhs/documents/ME-OCFS-CBHS-Assessment-Final-Report.pdf>.

¹³ See Children’s Behavioral Health, State of Maine Child and Family Servs., <https://www.maine.gov/dhhs/ocfs/dashboards/childrens-behavioral-health.shtml> (click “Number of Children on Waitlist and Avg. Days”).

¹⁴ See Children’s Behavioral Health: An Update on System Improvement Efforts, Me. Dep’t of Health & Human Servs., Office of Child & Family Servs. (Dec. 2020), available at <https://www.maine.gov/dhhs/ocfs/cbhs/documents/CBHS%20Annual%20Report%202020%20FINAL.pdf> (stating that “OCFS previously had a group of staff dedicated to children’s behavioral health quality assurance, but those

services because of manifestations of a child's disability. The CCLP Report explains that community-based services are some of our best tools for diverting youth from the prison system. We urge the Committee, and the Legislature, to invest in community-based services.

Concerns with this Bill

Although we are deeply sympathetic with its aims, we are asking the Committee to vote that this bill *ought not to pass* in its current form.

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."¹⁵ This goal is no different from the demand that formerly incarcerated youth have made. It is no different from the demand that the ACLU made more than three years ago, after a report revealed serious and troubling problems at Long Creek.¹⁶ The bill before you does not propose or incentivize closing Long Creek. But since we all want our youth to flourish, and not merely survive, we must imagine a Maine free of youth prison.

Second, not only does the bill not close Long Creek, but it urges the Department of Corrections to open up two to four new facilities, in addition to Long Creek. This, in spite of the fact that there are only 28 children currently incarcerated at 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.

Third, there is no mechanism written into the bill to hold DOC accountable if it does not meet the bill's enumerated goals. The bill imposes reporting requirements on DOC, but neglects to include consequences or enforcement mechanisms for failure to abide by that requirement. Without that, the benchmarks the bill seeks to establish are merely aspirational.

Fourth and perhaps most troubling, the bill also proposes appropriations of \$1,500,000 to the Department of Corrections. While we are fully supportive of spending this amount of money on community services for children in our state, we disagree that the Department of Corrections is the correct agency to receive these funds. In order to truly change our broken and ineffective culture of incarceration, we must not only *invest* in communities and families, but also *divest* from the old ways of doing things.

positions were eliminated by the previous administration" and "there is limited monitoring of the quality of services delivered or their fidelity to evidence-based models").

¹⁵ CCLP Report at 136.

¹⁶ *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=

Conclusion

There are currently 28 children incarcerated at Long Creek. There are more than 150 staff members keeping Long Creek open. Our state spends \$18 million a year to keep this system going. In order to adequately fund community solutions to youths' needs, we ask the Committee to close Long Creek, and repurpose the funds used there for services that are healing rather than traumatizing. Because this legislation does not go far enough, and because it calls for further investment in the corrections system, we ask that you vote ought not to pass.

Thank you for your time and attention.