



TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 1897 – Neither for Nor Against

**An Act To Prevent the Use of Prone and Supine Restraints, Chemical Sprays
and Electroshock Devices on Juveniles Held in Department of Corrections Facilities**

Joint Standing Committee on
Criminal Justice and Public Safety

Feb 11, 2022

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. Joined by coalition partners MaineTransNet, GLBTQ Advocates & Defenders (GLAD), EqualityMaine, and Maine Prisoner Advocacy Coalition (MPAC), we urge you to transform this bill into one that would close Maine's only youth prison.

Last summer, it came to light that staff at the Long Creek youth prison were using prone restraints, where youth are forced to lie face down while restrained.¹ Youth are often handcuffed during these restraints with "pressure applied to the backs of their legs."² Prone restraints are known to cause serious injury or death. As a result of the revelations, the state retained the Center for Children's Law and Policy (CCLP) to study the alleged incidents. The CCLP study revealed that not only were staff at Long

¹ Editorial Board, *Troubling reports of Long Creek restraint use: The state's youth prison should not stay open if it is still using dangerous techniques it was warned about in 2017*, Portland Press Herald, Sept. 14, 2021, available at <https://www.pressherald.com/2021/09/14/our-view-troubling-reports-of-long-creek-restraint-use/>.

² *Id.*

Creek using prone restraints, but also tasers and pepper spray.³ This bill proposes to ban those things. We are sympathetic with the bill sponsor's efforts. However, the bill does not go far enough. As the youth who were incarcerated at Long Creek have shown, the best way to stop these practices for good is to close Long Creek altogether.

The Long Creek prison continues to represent an irresponsible use of state resources, especially when considering the harm that the facility causes to young people and staff. This harm is disproportionately borne by Black children, LGBTQ children, and children with disabilities, who carry the trauma inflicted by this system into adulthood. Closure is the only path forward. Indeed, two years ago, the CCLP itself recommended "removal of all youth from Long Creek."⁴ Last session, the Legislature followed this recommendation and both chambers passed a bill to close Long Creek and redirect funding to community integration services.⁵ We implore you to build on your own work and, once again, recommend the closure of Long Creek.

The CCLP's Earlier Findings

The CCLP's recent report is not the first. A CCLP from two years ago reveals that "[i]n 53% of cases, the reason for detention was to 'provide care' for youth,"⁶ and that "72.7% of detention stays lasting longer than 30 days were for youth awaiting placement."⁷ 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

³ Mark Soler, Lisa Macaluso, and Regina Mitchell, *CCLP Report on Causes of Recent Disturbances at Long Creek Youth Development Center*, at 21, Nov. 2021, Center for Children's Law and Policy, available at https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/CCLP%20report%20on%20incidents%20at%20Long%20Creek%20-%20FINAL_0.pdf.

⁴ Maine Juvenile Justice System Assessment Final Report at 136, Center for Children's Law and Policy et al. (2020) (hereinafter 2020 CCLP Report), available at <https://irp-cdn.multiscreensite.com/de726780/files/uploaded/Maine%20Juvenile%20Justice%20System%20Assessment%20FINAL%20REPORT%202-25-20.pdf>; see also 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>

⁵ LD 1668, "Resolve, To Develop a Plan To Close the Long Creek Youth Development Center and Redirect Funding to Community Integration Services for Adjudicated Youth", available at <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280080747>

⁶ Maine Juvenile Justice System Assessment Final Report at 8, Center for Children's Law and Policy et al. (2020) (hereinafter 2020 CCLP Report), available at <https://irp-cdn.multiscreensite.com/de726780/files/uploaded/Maine%20Juvenile%20Justice%20System%20Assessment%20FINAL%20REPORT%202-25-20.pdf>; see also 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>

⁷ 2020 CCLP Report at 37.

days or less, suggesting they were not significant public safety risks”⁸ and “low risk youth staying substantially longer than high risk youth.”⁹ In short, we knew two years ago that we are sending kids to prison because of the lack of community-based programs and services to provide supervision or housing. Now we know that we subject those kids to pepper spray, tasers, and prone restraints.

Another major finding from the CCLP’s last report is that an overwhelming proportion of incarcerated youth have a recent history of mental or behavioral health difficulties. The report found that 69% of youth who were 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 experienced both).¹⁰ Then and now, the juvenile justice system has become a major provider of behavioral and mental health services for Maine youth. However, the justice system is not equipped, nor intended, to be a healthcare provider.

Still another concerning conclusion was 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.”¹¹ 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.”¹² As a consequence, “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.”¹³ Moreover, “[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.”¹⁴ Many other such findings are summarized early in the CCLP’s 2020 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 DHHS report from 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

⁸ 2020 CCLP Report at 8.

⁹ 2020 CCLP Report at 8.

¹⁰ 2020 CCLP Report at 50, 105-106.

¹¹ 2020 CCLP Report at 117.

¹² 2020 CCLP Report at 68.

¹³ *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>

¹⁴ 2020 CCLP Report at 68.

inadequate.”¹⁵ Years later, wait lists continue for necessary therapeutic supports in the community.¹⁶ The absence of quality assurance staff at DHHS¹⁷ means that the few programs that are available for youth face little consequence for denying services because of manifestations of a child’s disability. The CCLP has long explained 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 these services, and to divest from Long Creek.

Why Closure is the Legislature’s Best Option

The CCLP has already recommended “removal of all youth from Long Creek.”¹⁸ There were serious problems at Long Creek long before the recent events that led to this bill and there will still be insurmountable problems until it is closed.¹⁹ We all want our youth to flourish, and not merely survive. To do this, we must imagine a Maine free of youth prison.

We urge this committee to recommend for passage a bill that would direct the Department of Corrections (“DOC”) to create a plan to close the Long Creek prison by a specific date. The plan must include individual transition plans for remaining committed youth committed, a workforce development plan for Long Creek staff developed in coordination with the Department of Labor; a process for establishing a community reinvestment fund; and options for moving juvenile services out of the DOC and to another agency serving youth. We also recommend that the bill empower your committee to study the selection of an entity to manage and distribute corrections funds to community-based integration

¹⁵ 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>.

¹⁶ 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”).

¹⁷ 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 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”).

¹⁸ 2020 CCLP Report at 136.

¹⁹ Center for Children’s Law and Policy, Long Creek Youth Development Center Conditions Assessment Narrative Report, Sept. 2017, available at https://www.aclumaine.org/sites/default/files/field_documents/report-long_creek_youth_development_center_-_conditions_of_confinement_assessment.pdf (describing stories of abuse by Long Creek staff against residents and documents resident-on-resident violence, inappropriate use of force, failure to provide legally mandated education and special education services, children suffering from pervasive, severe mental illness do not get and cannot get the treatment they need, and a generally unsafe environment for the incarcerated children.)

services for youth. Crucially, this bill must ensure that after Long Creek's closure, its budget is not administered by DOC, a condition favored by numerous formerly incarcerated youth.

Recognizing the interrelated nature of our housing and youth justice crises, we urge this committee to require that the Long Creek facility be repurposed for use as a community center with supportive housing. We urge you to require the DOC to submit a report that includes its findings and recommendations, including suggested legislation, to this committee by a specific date. DOC has already proven its desire and capacity to produce such a report: on March 7th of 2021, it responded to the movement to close Long Creek by publishing an "Action Plan" and presenting it to your committee. We urge you to turn this bill into one that would give the DOC an opportunity to build on its own work.

Conclusion

There are currently 30 children incarcerated at Long Creek. There are more than 150 staff members keeping Long Creek open. Our state spends over \$10 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. This bill, although clearly well-intentioned, does not go far enough. We ask that you build upon your work from last session by transforming this bill into one that would close the Long Creek youth prison.

Thank you for your time and attention.