Vera INSTITUTE OF JUSTICE

Testimony of Vera Institute of Justice Submitted to the Maine Legislative Committee on Criminal Justice and Public Safety in Opposition to LD148

March 13th, 2023

Good morning. My name is Lindsay Rosenthal, and I am the Director of the Vera Institute of Justice's Initiative to End Girls Incarceration (EGI). Thank you, Criminal Justice and Public Safety Committee Chairs Senator Beebe-Center and Representative Salisbury and all the committee members for your time this morning. I am here to offer testimony against LD148, which represents a step backwards in efforts to bring Maine's juvenile justice system in line with best practice for fostering public safety and advancing the well-being of girls and gender expansive youth.

The Vera Institute is a 60-year-old national nonprofit that brings data, evidence, and solutions to transform the criminal legal and immigration systems until they are fair for all. EGI works to zero out the country's confinement of girls and gender expansive youth. Through partnerships in jurisdictions in several states, including Maine, we aim to create reforms and programs that will better support the well-being of young people in their communities, address the root causes of their incarceration, and permanently close the doors to girls' juvenile detention and placement facilities.

From 2018 to 2020, Vera worked with the Maine Department of Corrections (DOC) towards ending girls' incarceration statewide by working to keep girls and other young people in the community and provide appropriate services. This approach reduced detention and placement admissions by 80 percent and 60 percent respectively, and for nine months in 2020 there were no girls at Long Creek Youth Development Center (Long Creek).[1] This progress built on years of success in Maine that reduced youth involvement in the justice system by cutting the number of youth committed or detained at Long Creek from just over 130 in 2011 to fewer than 30 at the end of 2021.[2] In April of this year, there were only 3 girls detained and 2 girls committed to the Department of Corrections.[3]

LD 148 threatens to reverse this progress by adding two purposes for detention to the Maine Juvenile Code:

1. to provide physical care for a juvenile who cannot return home because there is not a parent or other suitable person willing and able to supervise and care for the juvenile adequately, and
2. to prevent a juvenile from committing juvenile crimes or criminal offenses if released, whether conditionally or unconditionally.

I would ask the Committee to consider the following:

1) Decades of evidence, including data on Maine's juvenile legal system, shows that incarcerating young people to "provide care" is both harmful to young people and does not

serve public safety. Research shows juvenile correctional facilities are ineffective and counterproductive in reducing future unlawful behavior among youth who do not pose a threat to public safety, with studies consistently finding high rates of recidivism in the years following release and an *increase* in risk levels after incarceration.[4] A 2017 study of recidivism rates in Maine's juvenile justice system by researchers at the University of Southern Maine found that "low risk committed youth who were reassessed prior to release *increased* in risk score, placing them at greater risk of recidivating upon release than they were prior to commitment."[5] Given these poor outcomes, the National Research Council recommends that youth incarceration should be used "sparingly and only in response to serious offenses" and finds that incarceration is "not ordinarily needed to hold youth accountable."[6] It certainly should not be used to "provide care" for young people who may be facing homelessness, commercial sexual exploitation, or mental health challenges, but do not pose a threat to public safety.

Not only is incarceration in facilities like Long Creek counterproductive for protecting public safety, it also exacerbates mental health challenges and disconnects youth from school and family, both of which, research shows, protect against incarceration and many other negative outcomes.[7] A 16-year follow-up study published in *Pediatrics* found that boys and girls who have been detained at any point by the juvenile justice system are respectively 3 and 5 times more likely to die from preventable causes before reaching young adulthood.[8]

2) Adding "provide care" as a reason for detention will increase the inappropriate incarceration of young people in Maine, reversing recent progress made through LD546, An Act to Implement the Recommendations of the Maine Juvenile Justice Systems Assessment and Reinvestment Task Force, which was supported by the Governor and the Department of Corrections. In 2021, after a comprehensive review of best practices and the data on youth incarceration in Maine through the Maine Juvenile Justice Systems Assessment and Reinvestment Task Force—including data showing that 53% of children detained at Long Creek were detained to "provide care"—this legislature took the necessary, praiseworthy step of passing LD546 to end the practice of detaining youth to "provide care."[9] LD546 also required the DOC and the Department of Health and Human Services to work together to provide services—including behavioral health services, family support, housing, and restorative justice—to divert young people from the justice system and reduce the rate of youth detention and commitment. LD546 was supported by the Governor and the DOC as a "thoughtful and balanced" approach to juvenile justice reform in Maine.[10] Maine needs to hold firm to the path of building the services needed to meet young people in the community and keep them safe there, rather than resorting to the harmful practice of incarcerating them for their own protection. The Committee should not only reject LD148's proposal to reverse progress, but also take proactive steps to ensure the full implementation of LD546 and bring Maine's juvenile legal system in line with best practices and evidence on youth incarceration.

3) In July of 2022, the United States Department of Justice (DOJ) found Maine in violation of the Americans with Disabilities Act because of inappropriate reliance on secure institutions, including Long Creek, to respond to young people with disabilities and mental health service needs.[11] By using detention to "provide care," LD148 would set Maine on a path towards further violations rather than remedying the problem. LD148 would change the juvenile code to allow young people to be incarcerated "to provide physical care for a

juvenile who cannot return home because there is not a parent or other suitable person willing and able to supervise and care for the juvenile adequately." This would allow incarceration of young people with overlapping mental health and housing needs, including young people involved in the child welfare and behavioral health systems, who do not have a permanent, stable living environment because of their mental health needs. In its findings letter regarding their investigation into the state's practices, the DOJ stated, "Our meetings with children at Long Creek, facility staff, and attorneys representing young people similarly echoed that the State's lack of community-based behavioral health services leads to unnecessary and prolonged incarceration…Maine is using Long Creek as a de facto children's psychiatric facility instead of providing more integrated treatment options."[12] This is unacceptable: children experiencing homeless and/or who have mental health service needs should not face a different standard of justice and be incarcerated for reasons that other children would not be. Maine's reliance on incarceration to address needs and protect young people's safety is ineffective and inappropriate. LD148 would only serve to worsen the crisis.

4) LD148's proposal to revise the juvenile code to allow detention to prevent criminal offenses is unnecessary and potentially violates federal law on status offenses. The language, as written, is unclear in its purpose. However, it has the potential to significantly expand inappropriate use of detention and reverse the progress Maine has made in recent years to bring detention practices into closer alignment with national best practice. For example, LD148 could be construed to permit detention of youth for status offenses in order to prevent crimes, which would violate provisions to deinstitutionalize youth charged with status offenses under the Juvenile Justice and Delinquency Prevention Act.[13]

5) In weighing LD148's proposal to expand the incarceration of youth in Maine, the Committee should bear in mind that this will also exacerbate existing racial disparities for young people in Maine. Black, Native American, and Latinx youth are disproportionately harmed by reliance on incarceration nationwide. In Maine, research by Vera and New York University found the per capita rate of confinement of Black girls is 10.8 times that of white girls (2,539 admissions per 100,000 Black girls compared to 218 admissions per 100,000 white girls). The per capita rate of confinement of Native American girls is 2.1 times that of white girls (455 admissions per 100,000 Native American girls compared to 218 admissions per 100,000 white girls).[14]

LD148 would mark a step backwards for public safety, the well-being of Maine's girls and gender-expansive youth, racial equity, and the state's hard-earned advances in juvenile justice reform over the past ten years. I strongly urge you to oppose LD148 and would welcome the opportunity to discuss the matter further.

Thank you,
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[1] In 2018, Vera selected a team of Maine stakeholders, led by the DOC and Cumberland County District Attorney's Office, to receive no-cost technical assistance through a competitive process to end girls' incarceration in Maine. Since then, the state has made considerable progress towards that goal, which includes cutting total annual detention admissions to girls' units by 80% (from 140 admissions in 2018 to 29 admissions in 2020) and cutting the annual number of new commitments for girls by 66% (from nine admissions in 2018 to three admissions in 2020). Now, each month an average of only three girls are admitted to detention after arrest. In 2020, only three girls were committed to residential placement after a delinquency finding; there were 9 months in 2020 with zero committed girls. By 2020, the average monthly admissions to detention for girls was an average of 2.7 admissions every month and a total of 29 detention admissions throughout the year. In the first two months of 2021, there were a total of seven admissions to girls' detention units. See DOC (Juvenile Services), *Division Overview: 2020 Snapshot* (Augusta, ME: DOC, 2020), perma.cc/B6EC-6PZB.pdf.

[2] DOC, "Juvenile Justice System Overview" (presentation, Maine Juvenile Justice System Assessment & Reinvestment Task Force meeting, Portland, ME, December 18, 2019).

[3] DOC (Division of Juvenile Services), *April Snapshot Report* (Augusta, ME: DOC, 2022), perma.cc/67BR-EBKC.

[4] A review of the literature on juvenile corrections by the Annie E. Case Foundation concluded that "backed by an array of evidence the case against America's youth prisons and correctional training schools can be neatly summarized in five words: dangerous, ineffective, unnecessary, wasteful and inadequate." See Richard A. Mendel and the Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (Baltimore, MD: The Annie E. Casey Foundation, 2011), aecf.org/resources/no-place-for-kids-full-report. For more additional sources, see Samantha Harvell, Chloe Warnberg, Andreea Matei, et al., *Closing Youth Prisons: Lessons from Agency Administrators* (Washington, DC: The Urban Institute, 2020), perma.cc/S6Y9-D24T; Patrick McCarthy, Vincent Schiraldi, and Miriam Shark, "The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model," *New Thinking in Community Corrections*, no. 2 (2015), perma.cc/J88N-KAA4; and Edward P. Mulvey, "Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders," *OJJDP Juvenile Justice Face Sheet* (2011), perma.cc/WM59-QC4U.

[5] Robyn Dumont and Erica King, *Youth Recidivism: Diversion to Discharge in Maine's Juvenile Justice System* (Portland, ME: University of Southern Maine, 2017), perma.cc/L8EB-QGDT.

[6] National Research Council, *Reforming Juvenile Justice: A Developmental Approach*, (Washington, DC: The National Academies Press, 2013), doi.org/10.17226/14685. It should be noted that even for youth charged with serious offenses there is no evidence that long periods of incarceration are more effective than community programs; see Mulvey, "Highlights From Pathways to Desistance," 2011.

[7] Urban Institute, *Closing Youth Prisons*, 2020; National Research Council, *Reforming Juvenile Justice*, 2013; and Mendel and Annie E. Case Foundation, *No Place for Kids*, 2011.

[8] Linda A. Teplin, Jessica A. Jakubowski, Karen M. Abram, et al., "Firearm Homicide and Other Causes of Death in Delinquents: A 16-Year Prospective Study," *Pediatrics* 134, no. 1, (2014), perma.cc/XEQ5-XXMY. Note that this study should not be interpreted to say that detention causes premature death. The study is cited as evidence that detention does not provide long-term solutions to the underlying challenges girls and youth face.

[9] See Maine Center for Juvenile Law and Policy, Maine Prosecutors Association, and Maine Juvenile Justice Advisory Group, "2021 Changes to the Juvenile Code" (presentation for legal practitioners on recent changes to the juvenile legal code in Maine), docs.google.com/presentation/d/14Ie4yJf7uJrraIqdblmd05SCa-3cSgn78OFk8g2SFg8/edit#slide=id.p. Previously, detention was permitted "to provide physical care of a juvenile who cannot return home because there is no parent or other suitable person willing and able to supervise and care for the juvenile adequately," a provision repealed in LD546.

[10] Kevin Miller "Mills vetoes 'fundamentally flawed' bill to close Long Creek youth prison," *Press Herald*, June 24, 2021. perma.cc/6N6C-N9GW. For text of the Governor's veto letter describing LD546 as "a more thoughtful and balance approach" to reform of the juvenile legal system, see *Janet T. Mills to the Members of the 130th Legislature on LD 1668*, June 21, 2021, cloudup.com/i4XC79LV6NI.

[11] DOJ, "Justice Department Finds Maine in Violation of ADA For Over-Institutionalization of Children with Disabilities," Press release, June 22, 2022, perma.cc/EX9G-5ZG9.

[12] Kristen Clarke, "Re: United States' Investigation of Maine's Behavioral Health System for Children Under Title II of the Americans with Disabilities Act," U.S. Department of Justice, Civil Rights Division (Disability Rights Section), June 22, 2022, perma.cc/A3HP-ARX4.

[13] Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415; 88 Stat. 1109) as amended by Public Law 115-385, enacted December 21, 2018, perma.cc/PCV9-2HP2. For best practice on status offenses, see The Annie E. Casey Foundation, "What Are Status Offenses and Why Do They Matter?" April 6, 2019, perma.cc/G8ZC-5252.

[14] Vera Institute of Justice, Care, *Not Confinement: A Better Solution for Maine's Girls* (New York: Vera, 2021), perma.cc/TV8V-96JQ.