

May 2, 2023

***Submitted Electronically***

Senator Pinny Beebe-Center  
Representative Suzanne Salisbury  
Joint Standing Committee on Criminal Justice and Public Safety  
100 State House Station, Room 436  
Augusta, ME 04333

**RE: LD 1779, An Act to Develop a Continuum of Care for Youth Involved in the Justice System and to Develop Alternatives for Juveniles Incarcerated in Long Creek Youth Development Center**

Dear Senator Beebe-Center, Representative Salisbury, and members of the Criminal Justice and Public Safety Committee,

My name is Jill Ward, and I am a resident of Portland, Maine. I have worked on juvenile justice policy and reform for more than 20 years and for the past decade have served as a policy consultant on juvenile justice and children's issues both nationally and here in Maine. Currently, I am Director of the Maine Center for Youth Policy at Maine Law. I have been involved in recent efforts to reform Maine's youth justice system, including serving as one of three co-chairs of the 2019 Maine Juvenile Justice System Assessment and Reinvestment Task Force.<sup>1</sup> My testimony represents my personal views only and not the position of the University of Maine School of Law or the University of Maine System.

One of the main areas of my work has been educating policy makers, stakeholders and the public about the harmful effects of justice system involvement, particularly incarceration, on children and youth and the ineffectiveness of the punitive youth prison model to reduce recidivism and produce positive outcomes for young people and their communities. The following information summarizes work in this area consistent with LD 1779.

**State and National Trends**

In the last decade, jurisdictions across the country have enacted reforms to close and/or repurpose youth prisons, remove youth from confinement in youth prisons, and increase investment in community-based alternatives to incarceration. Kansas, Connecticut, New Jersey, Virginia, Wisconsin, Texas, New York, Illinois, and Utah have substantially reduced their reliance on incarceration, closed or repurposed large youth prisons, and shifted investments to community-based alternatives to incarceration – all without compromising public safety. Just last month, New Hampshire moved forward with replacing the remaining youth prison there with a small, 12-bed therapeutic residential option.<sup>2</sup> That state has also reformed its laws to create incentives for comprehensive needs assessments and planning to successfully serve and hold youth accountable in their communities.

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<sup>1</sup> For more information see, [www.mainejtaskforce.org](http://www.mainejtaskforce.org).

<sup>2</sup> *Hampstead Hospital best site to replace Sununu Youth Services Center*, Concord Monitor, April 28, 2023. Retrieved at: <https://www.concordmonitor.com/Future-Youth-Development-Center-50791424>

At the federal level, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is focusing efforts on assisting states in establishing community-based alternatives to incarceration,<sup>3</sup> including investing millions of dollars in grants to support state efforts to close and repurpose youth prisons. This includes supporting a robust planning process to help redirect state resources to more effective alternatives to incarceration and community-based programs for system-involved youth, and to address economic concerns such as the re-employment of prison workers and the economic impact of youth prison closures on communities.<sup>4</sup>

## Maine Reform Process

Maine is on a similar reform path. In May of 2019, the Maine Juvenile Justice System Assessment and Reinvestment Task Force was established to work with the Center for Children’s Law and Policy (CCLP) to conduct an assessment of the state’s juvenile justice system. From July 2019 to February 2020, with input and guidance from task force members, the CCLP analyzed data, reviewed policies, procedures and programs used in the juvenile justice system, interviewed more than 100 stakeholders from across the state, conducted six focus groups with youth, including tribal youth and youth detained and committed at Long Creek, and gathered community input from four town hall forums and a community survey distributed statewide and accessible online. It was a tremendously thorough and collaborative undertaking which has resulted in more information than we have ever had about Maine’s current system coupled with a comprehensive compilation of best practices, policies and programs from across the country. Released at the end of February 2020, the CCLP report provides a roadmap with 45 short-, mid- and long-term recommendations for Maine to fundamentally transform the juvenile justice system, to ensure that our youth have access to a robust continuum of community-based care, and, **with the report’s final recommendation, to “*achieve the removal of all youth from Long Creek.*”**

Since the report’s release, the 130<sup>th</sup> Legislature enacted some of the recommended reforms and the Courts and the Department of Corrections have worked to implement those reforms to further reduce unnecessary use of detention and confinement. Initiatives such as Regional Care Teams,<sup>5</sup> an increased investment in juvenile services and the development of small more therapeutic residential alternatives have also helped to move the state towards the goal of removing all youth from Long Creek and away from the youth prison model.

Despite these efforts, there remain large gaps in the continuum of care for justice-system involved youth that prevent Maine from making this critical shift. One key finding of the CCLP’s review of the state’s juvenile code, and possible disincentive to the development of a robust continuum of alternatives to incarceration, was that “***Maine currently lacks a strong presumption of keeping youth in the community in state law, and it also lacks the limits on the use of confinement as a disposition that are common in other state codes.***”

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<sup>3</sup> New OJJDP Initiative Promotes Community-Based Alternatives to Youth Incarceration (June 2022). Retrieved at: <https://ojjdp.ojp.gov/blog/new-ojjdp-initiative-promotes-community-based-alternatives-youth-incarceration>

<sup>4</sup> See OJJDP FY 2023 Community-Based Alternatives to Youth Incarceration April 2023 Solicitation. Retrieved at: <https://ojjdp.ojp.gov/funding/opportunities/o-ojjdp-2023-171614>

<sup>5</sup> See more information about the Place Matters project and Regional Care Teams here: <https://placemattersmaine.org/regional-care-teams/>

Additionally, in July 2022, the U.S. Department of Justice issued a letter outlining its determination that Maine unnecessarily segregates children with mental health and/or developmental disabilities in psychiatric hospitals, residential treatment facilities, and at Long Creek Youth Development Center, in violation of the Americans with Disabilities Act (ADA).<sup>6</sup> Similar to findings in the 2020 system assessment, the investigation found that ***“Maine does not ensure access to the community-based services it offers, resulting in needless institutionalization and risk of such institutionalization.”***

As a remedy, the Department of Justice suggests ensuring access to community-based services, addressing waitlists for services, providing crisis services instead of a law enforcement response, allocating necessary resources to support community alternatives and develop policies and practice that prohibit the refusal of these services. These recommendations are consistent with those in the Place Matters and CCLP reports and reflected in LD 1779 and several other bills before this and other Committees this session.

### **The Harms of Incarceration and the Failure of the Youth Prison Model**

As the Committee considers LD 1779 and other similar bills that support Maine’s shift away from the young prison model and towards a more responsive, effective and developmentally appropriate continuum of care, it is important to understand what the research says about incarceration and its limited effectiveness in increasing public safety and improving youth outcomes.

Research has demonstrated negative impacts of any justice system involvement on youth from formal system processing to confinement. Rather than providing a public safety benefit, formal system processing often has the opposite result: youth who have had some justice system involvement are more likely to reoffend than those who were effectively diverted from the system.<sup>7</sup> Re-offense rates are similarly higher for those youth who are confined as compared to those who are diverted or managed in the community.<sup>8</sup> Adjudicating and incarcerating our children is not making us safer and is, in fact, contributing to a variety of other harms, including increased risk of abuse and trauma, a lack of fairness, harm to families, and negative developmental and educational impacts; all at a higher cost than community-based alternatives.

Ineffective: Research has demonstrated that “residential placements generally fail to produce better outcomes than alternative sanctions, cost much more, and can actually increase reoffending for certain youth.”<sup>9</sup> One of the most statistically sound and

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<sup>6</sup> The letter and press release are available here: <https://www.justice.gov/opa/pr/justice-department-finds-maine-violation-ada-overinstitutionalization-children-disabilities>

<sup>7</sup> Juvenile Justice Resource Hub, “Community-Based Alternatives: Key Issues,” retrieved at: [http://jjie.org/hub/community-based-alternatives/key-issues/#\\_edn6](http://jjie.org/hub/community-based-alternatives/key-issues/#_edn6); citing Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg, “Formal System Processing of Juveniles: Effects on Delinquency,” Campbell Systematic Reviews (January 29, 2010), 38. Available at <https://bit.ly/30md72U>. See also National Juvenile Justice Network, “Emerging Findings and Policy Implications from the Pathways to Desistance Study,” (Washington, DC: 2012). <http://bit.ly/14jXkQl>.

<sup>8</sup> Richard A. Mendel, “No Place for Kids: The Case for Reducing Juvenile Incarceration” (Baltimore: The Annie E. Casey Foundation, 2011), 10. Available at: <http://www.aecf.org/noplaceforkids>. Also see Richard A. Mendel, “Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice,” (Washington, DC: American Youth Policy Forum, 2001), 8, available at <http://bit.ly/1DtNfjz>, which states that studies of youth sent to large juvenile correctional institutions in the past 30 years have found a 50-70 percent recidivism rate within one to two years of release; James Austin, Kelly Dedel Johnson, and Ronald Weitzer, “Alternatives to the Secure Detention and Confinement of Juvenile Offenders” (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, September 2005).

<sup>9</sup> *Re-Examining Juvenile Incarceration High cost, poor outcomes spark shift to alternatives.* (April 2015) PEW Center of the States. The PEW Charitable Trusts. Available at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

comprehensive studies from 2013, and updated in 2015, found that “incarceration as a juvenile increases the probability of recidivism as an adult by between 22 and 26 percent.”<sup>10</sup> Incarcerating youth interferes with the “aging out” of delinquency upon young adulthood by disrupting natural engagement with families, school, and work. As a result incarcerated youth are 41% more likely to have entered adult prison by age 25. Alternatively, a 2019 study analyzed pretrial outcomes for 340 detained youths and 517 community-supervised youths and found that being placed in detention increased the likelihood of recidivism for low-risk youth by 28 percent within two years of release.<sup>11</sup> Another study found more than 8 out of 10 youth who had participated in a community-based program remained arrest free and 9 out-of-10 were at home after completing the program, at a cost that is a fraction of what it would have cost to incarcerate these youth.<sup>12</sup> The findings highlight how high-need youth have been safely and successfully supported in their homes with the help of intensive community-based programs.

Counter to the principles of adolescent development and the juvenile justice system: There is a rich body of research on adolescent development and evidence-informed programs that effectively reduce juvenile delinquency. The National Academy of Sciences (NAS) conducted an exhaustive four year study on juvenile delinquency documenting findings that youth are less able to regulate their own behavior in emotionally charged contexts, are more sensitive to external influences (e.g. peer pressure) and they show less ability to make judgment and decisions about the future.<sup>13</sup> This research underscores the historic, long-standing legal and policy basis for separate state juvenile justice systems that are predicated on the notion that children are different from adults; that they have the capacity to change, and are capable of rehabilitation as they are still growing and developing. Incarceration by its very nature runs counter to these principles.

Breaks up families: Removing youth from their homes and communities and placing them in correctional settings disrupts the healthy psychological development of youth by disconnecting youth from their parents or parent figures, from peers who model and value academic success and positive social behavior, and from participation in activities that require critical thinking and independent decision-making.<sup>14</sup> Youth are often placed in facilities far from their families, with limited access and visits. Families are often not included in the treatment plans for youth even though the research confirms that the most effective programs in juvenile justice draw on family strengths.<sup>15</sup>

Interrupts education: Incarceration also puts kids further behind in school. A 2014 study found that “both state and local juvenile justice systems are failing profoundly in providing adequate, effective education in the south and the nation.”<sup>16</sup> Approximately two-thirds of young people do not return to school after release from secure custody.<sup>17</sup>

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<sup>10</sup> Anna Aizer and Joseph Doyle. *Juvenile Confinement, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges*. The Quarterly Journal of Economics. 130 (April 2015).

<sup>11</sup> Ogle, Meghan R., and Jillian J. Turanovic. *Is getting tough with low-risk kids a good idea? The effect of failure to appear detention stays on juvenile recidivism*. Criminal Justice Policy Review 30, no. 4 (2019): 507-537.

<sup>12</sup> *Safely Home: Reducing youth incarceration and achieving positive outcomes for high and complex need youth through effective community-based programs*. (June 2014). Youth Advocate Programs, Inc. Available at: <http://www.yapinc.org/Media/ArticleID/138/New-YAP-Juvenile-Justice-Report-Garners-National-Attention>

<sup>13</sup> *Reforming Juvenile Justice: A Developmental Approach*. (2012) Washington, D.C.: National Academy of Sciences.

<sup>14</sup> *Ibid*.

<sup>15</sup> *Family Comes First*. (2013) Washington, D.C.: Campaign for Youth Justice.

<sup>16</sup> *Just Learning*. (2014). Atlanta, GA: Southern Education Fund.

<sup>17</sup> *Juvenile Reentry*. (2014) Washington, D.C.: Federal Interagency Reentry Council. Available at: <http://csgjusticecenter.org/wp-content/uploads/2014/06/Juveniles.pdf>.

Results in sicker adults: Youth incarceration also leads to poorer health and wellness outcomes as adults. Results of a study published in *American Pediatrics* found that “child incarceration independently predicted adult mobility limitations, adult depression and adult suicidal thoughts,” confirming the link between younger age at first incarceration and worse adult health.<sup>18</sup>

Expensive: The average state cost for the secure confinement of a young person is now \$588 per day, or \$214,620 per year, a 44 percent increase from 2014.<sup>19</sup> Annually, it costs states billions per year to incarcerate children and youth. In Maine, it is estimated that Long Creek spends more than \$250,000 per child at an annual cost of \$18.6 million.

Unsafe: Nationally, not a week goes by without a headline in a newspaper citing abuse of an incarcerated youth. Youth face physical abuse, excessive use of force by facility staff, sexual abuse, over-reliance on isolation and restraints, staff on youth violence, and youth on youth violence.<sup>20</sup> And, abuse continues to increase despite the fact that juvenile crime has been decreasing steadily since the 1990s. Surveys of youth are consistent with these data reports. U.S. Department of Justice surveys of committed youth showed that 42% of youth were somewhat or very afraid of being physically attacked, 45% said staff used force when they didn’t need to, and 30% said staff place youth in solitary confinement or lock them up as discipline.<sup>21</sup> Another study found more than half (56%) of youth in custody reported experiencing one or more of the types of victimization, including 29% reporting being beaten up or threatened with being beaten up since coming to their facility.<sup>22</sup> Just last month, the Bureau of Justice Statistics (BJS) released a new report on incidents of sexual victimization in juvenile facilities which found 1,263 substantiated incidents of sexual victimization perpetrated by youth and 499 perpetrated by staff over a six-year period of 2013–18.<sup>23</sup> Lawsuits against Long Creek in recent years and some of the first hand testimony from formerly incarcerated youth make clear that Maine is not immune to this trend.<sup>24</sup>

Unfair: The justice system disproportionately impacts youth of color, girls, LGBTQ youth, and youth with disabilities. For example, according to the latest data from the U.S. Department of Justice, Black youth are nearly five times more likely than their white peers to be incarcerated for similar offenses. Latino youth are 1.8 times more likely to be incarcerated than white youth and Native American youth are 3.2 times more likely to be incarcerated than white youth.<sup>25</sup> In Maine, most recent data indicate that youth of color

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<sup>18</sup> Barnet, E. et al. (April 2019). *What Is the Relationship Between Incarceration of Children and Adult Health Outcomes?* *American Pediatrics*. Volume 19, Issue 3, Pages 342–350.

<sup>19</sup> *Sticker Shock 2020: The Cost of Youth Incarceration*. (July 2020). Justice Policy Institute. Washington, D.C. Available at: [http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker\\_Shock\\_2020.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf)

<sup>20</sup> *Maltreatment in Youth in U.S. Correctional Facilities*. (2015). Baltimore, MD: The Annie E. Casey Foundation. Available at: <https://www.aecf.org/resources/maltreatment-of-youth-in-us-juvenile-corrections-facilities>.

<sup>21</sup> *Conditions of Confinement: Findings from the survey of youth in residential placement*. (2010). Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

<sup>22</sup> *Nature and Risk of Victimization: Findings from the Survey of Youth in Residential Placement*. (2013). Washington, D.C. Office of Juvenile Justice and Delinquency Prevention. Available at: [https://www.nijin.org/uploads/digital-library/Nature-and-risk-of-victimization\\_OJJDP-Bulletin\\_June-2013.pdf](https://www.nijin.org/uploads/digital-library/Nature-and-risk-of-victimization_OJJDP-Bulletin_June-2013.pdf)

<sup>23</sup> *Substantiated Incidents of Sexual Victimization Reported by Juvenile Justice Authorities, 2013–2018* (2023). Washington, D.C.: Bureau of Justice Statistics. Available at: <https://bjs.ojp.gov/library/publications/substantiated-incidents-sexual-victimization-reported-juvenile-justice>

<sup>24</sup> See, Ali v. Long Creek, et al. (2018).

<sup>25</sup> *Unbalanced Juvenile Justice*. (2015) Haywood Burns Institute. Oakland, CA. Available at: <http://data.burnsinstitute.org/#comparison=2&placement=1&racess=2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2011&view=map>.



are more likely to be detained or committed than their white counterparts and that that these disparities have worsened over time.<sup>26</sup> Although only about 5 percent of people in the United States identify as LGBTQ, some estimates suggest that as many as 30 percent of the youth in Long Creek over the last several years identify as LGBTQ.

Consider this conclusion from a comprehensive 2016 report published by the National Institute of Justice documenting the failure of the youth prison model and its inherent imperviousness to reform:

***“The failure of youth prisons to help young people get back on track, as well as their failure to protect public safety, flows from inherent flaws in the model itself. Adult-style prisons that emphasize confinement and control are devoid of the essentials required for healthy adolescent development — engaged adults focused on their development, a peer group that models prosocial behavior, opportunities for academic success, and activities that contribute to developing decision-making and critical thinking skills. At the same time, these facilities provide too many of the elements that exacerbate the trauma that most confined youth have already experienced and reinforce poor choices and impulsive behavior. Maltreatment is endemic and widespread.”<sup>27</sup>***

As the Committee considers this bill and other legislative proposals around youth justice reform, the development of a comprehensive continuum of care and/or best practices with respect to closing or repurposing youth prisons, I would be happy to answer any further questions or provide additional information.

Respectfully submitted,



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<sup>26</sup> *Data Snapshot of Youth Incarceration in Maine*. Justice Policy Center, Urban Institute (April 2020). Available at: <https://www.urban.org/research/publication/data-snapshot-youth-incarceration-maine>

<sup>27</sup> McCarthy, P., Schiraldi, V., and Shark, M. (2016). *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*. *New Thinking in Community Corrections* (October 2016). National Institute of Justice, Harvard Kennedy School. Available at: <https://www.ncjrs.gov/pdffiles1/nij/250142.pdf>.