

September 28th, 2021

Maine State Legislative Committee on
Criminal Justice and Public Safety
c/o Committee Chairs Charlotte Warren and Susan Deschambault
2 State House Station
Augusta, ME 04333-0002

Greetings Representative Warren and Senator Deschambault,

The Vera Institute of Justice submits this letter to the Committee on Criminal Justice and Public Safety regarding the continued confinement of youth at the Long Creek Youth Development Center. Founded in 1961, Vera is a national organization that works to transform the criminal legal and immigration systems until they are fair for all. Our work includes providing technical assistance to communities and juvenile justice providers across the country with the goal of permanently closing the doors to girls' juvenile detention and placement facilities. From 2019-2021, Vera worked with the Maine Department of Corrections (DOC) to analyze data about girls in custody in Maine and implement measures that would reduce the number of girls and gender expansive youth at Long Creek, and ultimately get that number down to zero. Maine has made tremendous progress towards that goal, as there are now only three girls in the DOC's custody (two detained girls and one committed). In response to the recent incidents and unsafe conditions at Long Creek, we commend Commissioner Liberty for committing to providing a public update in November regarding the plan to move young people out of Long Creek, specifically where they might locate alternate facilities. However, we believe that state's regional care teams must now engage in individualized release planning for all youth at Long Creek, and that the DOC should release all youth who do not present an immediate and ongoing threat to public safety based on these thorough individualized assessments. We believe that review will show that the girls at Long Creek do not need to be there, have never needed to be there, should be moved out, and the girls' unit should be permanently closed as a first step towards closing Long Creek altogether. In the extremely rare instance that a girl requires confinement, DOC already has the staff secured STEPs unit; essentially the state has already implemented for girls what it plans to implement for all youth through LD546 in the near future. DOC should follow through on its commitment to end girls' incarceration and make incarceration of girls at Long Creek a thing of the past.

Background and Detailed Recommendations

Maine's Efforts to Reduce Girl's Incarceration: The DOC has already prioritized girls within its diversion efforts, including through investing in the new Youth Advocate Program (YAP) diversion effort, and planning with regional care teams. It has cut total annual detention admissions to girls' units by 80% (from 140 admissions in 2018 to 29 admissions in 2020) and cut the annual number of new commitments for girls by 66% (from 9 admissions in 2018 to 3 admissions in 2020).¹ In 2020, there were nine months with *zero* committed girls.²

Despite this progress, there is more work to be done. The recent reports of violence at Long Creek underscore this. Earlier this month, Disability Rights Maine reported instances of corrections officers using prone restraints on young people, despite warnings of serious bodily harm and training that

discouraged this technique.³ Disability Rights Maine describes one instance in August where the restraint was used six times in one hour.⁴ The findings in the letter build upon years of public concern regarding the conditions in Long Creek and research highlighting the harm of incarcerating young people. Numerous studies indicate that incarceration is harmful to young people and should be avoided whenever possible. A foundational review by the Annie E. Casey Foundation of evidence on youth incarceration concluded that “backed by an array of research the case against America’s youth prisons and correctional training schools can be neatly summarized in five words: dangerous, ineffective, unnecessary, wasteful and inadequate.”⁵

Recommendations: Several of these recommendations represent hastening of actions the DOC has already committed to, while others encourage the Department to act more decisively to ensure that girls’ circumstances and needs are kept front and center as part of the response to the Long Creek revelations. Vera is available to offer support and no-cost technical assistance to the process as needed. Specifically:

1) **Increase transparency regarding recent risk determinations.** The DOC should be more transparent regarding its recent statements and determinations about whether to keep youth in custody at Long Creek. In the Department’s September 17th press release, the DOC indicated the number of youth at Long Creek had increased and 80 percent of youth in the facility now were considered “high risk” to public safety. The letter referenced “acuity” of treatment needs as well as severity of charge as two factors used to determine a designation of “high risk” but did not explicitly state what that designation of “high risk” was based upon. Candidates include higher scores on the Department’s Risk Assessment Instrument (RAI), a tool used for determining whether youth should be detained or can be safely released to the community, the Youth Level of Services/Case Management Inventory (YLS/CMI), a nationally validated assessment tool utilized by the DOC that considers a broader set of factors, or another alternate process for assigning risk. During Friday’s hearing, Commissioner Liberty stated that there were 38 youth at Long Creek, including 20 detained and 18 sentenced youth. He provided charge information for about half of the detained youth, nine of the 20, detained youth who were charged with a variety of felonies that ranged in severity. He provided charge information for most but not all of the sentenced youth, 15 of the 18. This information provides an incomplete picture both because it doesn’t represent all the young people in custody at Long Creek, and because determinations of risk should not be based on charge alone.

The Department’s public statement that 80 percent of Long Creek youth would be considered “high risk” would be a significant departure from trends that have been consistent in the state over time. Recent data in the Center for Children’s Law and Policy (CCLP) assessment showed more than half of detained youth were detained in order to “provide care”, not because of public safety concern, and that the YLS/CMI classified a majority of youth at Long Creek as low to moderate risk showing they could be released to the community without a public safety concern.⁶ The Department should immediately:

- Release data and process used to designate 80 percent of young people at Long Creek now “high risk.”
- Provide RAI, YLS/CMI, and charge data for all youth currently at Long Creek.
- Break out all data by gender, race, and status (detained, committed, shock sentence).
- Provide data on length of stay.

The Department must be as specific and transparent as possible in how these determinations regarding public safety risk are being made so that as many young people as possible can be released quickly given the unsafe conditions at Long Creek. We note that there are evidence-based models to safely serve youth charged with felony offenses in the community.⁷

At Friday's hearing, CCLP stated that they would review risk data for youth in custody as part of their current scope of work for the Department and that a report could be expected by the end of November. We are pleased to know that a comprehensive view of this data will be included in the November report. In the meantime, we and our partners at New York University are able to immediately analyze the data outlined above regarding girls if requested and could deliver that analysis at no cost by the end of October.

2) Utilize the regional care teams to engage in expedited release planning for all youth to move as many as possible out of the facility within 30 days. The Department created and effectively utilized the Regional Care Teams to safely release many young people to the community due to the COVID-19 pandemic and should continue to utilize this process. The September 22nd letter to this Committee from the Office of Children and Family Services stated that some young people held at Long Creek are awaiting slots in the state's residential treatment continuum and that efforts are underway to make these services available by the end of the year. During the hearing, Commissioner Liberty noted as well that seven of the 20 detained youth were in custody awaiting treatment in a community-based program and otherwise would not be held at Long Creek. We note that Runaway and Homeless Youth providers and community-based programs in the state offer an array of services that can be helpful to both young people and their families. These providers should be engaged to advise on community-based options for release planning alongside the Regional Care Teams' process to find other safe placements for young people currently at Long Creek and address the capacity challenges underscored through the testimony of Disability Right's Maine at Friday's hearing.

3) Permanently Close the girls' unit at Long Creek. Through our work with the Department of Corrections they made a public commitment to end girls' incarceration in Maine. This commitment was based on the reality that girls at Long Creek are typically detained to protect their own safety or due to treatment needs, and/or for chronic misdemeanor offenses, not due to public safety concerns. Our past data analysis showed that the majority of girls (85 percent) held at Long Creek are categorized as low or medium risk according to the YLS/CMI and that nearly a quarter of girls are detained despite a risk assessment recommendation not to detain.⁸ The overwhelming majority of girls involved in Maine's juvenile legal system can be safely served in the community.

Through LD546, the DOC already is committed to moving young people out of Long Creek into smaller facilities as a first step on the path to closing Long Creek. However, this plan has already been implemented for girls through the opening of the STEPS program, which is a 6-bed staff secure facility though it did not result in the girls being removed entirely from Long Creek. When the Department opened STEPS without closing the girls' unit at Long Creek, it actually increased its capacity to incarcerate girls, when capacity was already well underutilized. We believe Maine does not have an ongoing need for capacity to incarcerate any girls, whether at STEPS or Long Creek. However, in the unlikely event that a girl needs some form of secure confinement, the Department has STEPS, which it can use both for detention and commitment. Given the unsafe conditions at Long Creek, exceptionally low numbers, and the exorbitant cost to operate the girls' unit, the DOC should simply close the girls'

unit once the girls currently detained at Long Creek are moved out, hastening that path for reform already put forward in LD546. Doing so seems in line with the Department's thinking as of Friday's hearing regarding accelerating planning for LD546.

As a reminder, the fiscal cost to operate Long Creek, with a 164-bed capacity, is \$12 million - \$300,000 per incarcerated youth. The cost of STEPS is \$2.2 million for a 6-bed facility that has not reached capacity since it opened.

Conclusion

The recent incidents at Long Creek unfortunately follow a long, well documented history of violence at juvenile facilities. The renewed attention to the conditions at Long Creek presents an opportunity for the state to make things right and heed to what the research and community voices have known for a long-time: youth who do not pose an immediate, ongoing public safety risk should be served through safer, more effective community-based solutions.

We stand ready to help the state in its planning process to remove young people from the girls' unit at Long Creek and to develop appropriate community-based options for girls and other youth.

¹ 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 7 admissions to girls' detention units. See: Department of Corrections Juvenile Services, "Division Overview: 2020 Snapshot," available at:

https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/OVSNAPAdvanced_20201231_0.pdf, accessed: April 19, 2021

² Department of Corrections Juvenile Services, "2020 Juvenile Population Counts," available at:

https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/OVSNAPAdvanced_20201231_1.pdf, accessed: May 8, 2021

³ Grey, Megan, "Advocacy group says Maine youth prison still uses dangerous restraints," *The Press Herald*, September 10, 2021. Available at: <https://www.pressherald.com/2021/09/10/advocacy-group-says-youth-prison-still-uses-dangerous-restraints/>; "Long Creek wouldn't need a leadership shakeup if it was closed," *Bangor Daily News*, September 18, 2021, available at: <https://bangordailynews.com/2021/09/10/maine-focus/maines-youth-prison-continues-to-use-dangerous-tactics-watchdog-says/>

⁴ Associated Press, "Incidents prompt leadership to leave, criminal charges possible at Maine's youth prison," September 17, 2021, available at: <https://wgme.com/news/local/incidents-prompt-leadership-to-leave-criminal-charges-possible-at-maines-youth-prison>

⁵ 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." ¹ See Annie E. Case Foundation, *No Place for Kids*, (2011). available: <https://www.aecf.org/resources/no-place-for-kids-full-report/>

⁶ Center for Children's Law and Policy et al., "Maine Juvenile Justice System Assessment," (2020). available at: <https://www.mainejjtaskforce.org/>

⁷ See discussion of evidence-based community alternatives for youth charged with felonies in Pilnik, L. & Mistrett, M. (2019) "If Not the Adult System, Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults," Campaign for Youth Justice (Washington, DC). available at: http://cfyj.org/images/ALT_INCARCERATION_FINAL.pdf

⁸ Vera Institute of Justice and New York University analysis of datasets utilized for the Center for Children's Law and Policy assessment cited above.