

LD 320 – Ought To Pass

**An Act To Provide the Right to Counsel for Juveniles and
Improve Due Process for Juveniles**

Joint Standing Committee on Judiciary

February 24, 2021

Senator Carney, Representative Harnett and distinguished members of the Joint Standing Committee on Judiciary,

Good Morning. My name is Mary Bonauto. I am an attorney at the Maine office of GLBTQ Legal Advocates & Defenders, which works primarily in New England and for equal justice under law without regard to sexual orientation, gender identity or HIV status. I am happy to be here supporting Rep. Morales's bill.

GLAD's work has long been deeply connected to supporting LGBTQ children and families so they can live their lives and contribute to their communities with the same legal protections and responsibilities as others, and without harassment and discrimination because of their overlapping BIPOC and other identities. On a weekend in November 2016, I was notified that a young transgender individual had committed suicide while in detention at Long Creek. I was stunned, and because we had also just received disturbing letters from two gay individuals committed there, I asked a volunteer at the facility to please connect me with young people there. With what I saw, there was no option to look away.¹

Most of the young people I met at Long Creek were members of the LGBTQ community. Researchers and experts identify LGBTQ young people, particularly when they are girls and/or BIPOC, as also overrepresented in the juvenile justice system. The reasons include rejection from their own families, disproportionate physical and sexual abuse, dual involvement with state child welfare systems, heightened scrutiny and school discipline for expressing same-sex attraction, transgressing gender norms, or defending themselves against harassment, are

¹ During this time, There was a mandatory PREA mandatory audit under the Prison Rape Elimination Act (which required DOC staff to use the PREA screening tool with fidelity, and to train staff and residents on refraining from harassing behavior and comments, including as to LGBTQ young people); a study to examine suicide protocols since so many young people had been making suicide attempts, a JJAG-funded assessment of Long Creek policy and practices conducted by the Center for Children's Law & Policy. Later I served on the Juvenile Justice Reinvestment Task Force which issued its report on February 2020. See PREA Audit of Long Creek Youth Development Center, Sept. 2017, <https://www.maine.gov/corrections/sites/maine.gov/corrections/files/prea/Longcreek%202017%20Final%20PREA%20Report.pdf>; Susan Sharon, Review Shows Deficiencies in Maine Youth Prison Following Transgender Teen Suicide, MainePublic, July 13, 2017 at <https://www.mainepublic.org/post/review-shows-deficiencies-maine-youth-prison-following-transgender-teen-suicide>; CCLP, LCYDC Conditions Assessment Narrative Report, Executive Summary, <https://www.glad.org/wp-content/uploads/2017/12/Executive-Summary-Long-Creek-Youth-Development-Center-Conditions-of-Confinement-Assessment.pdf>

among the commonly cited drivers of justice involvement.² They are born into families all over the State and are therefore of every racial, ethnic and socioeconomic background.³

I spent time with these young people and got to know them as we sorted out myriad issues of life in a restrictive, regimented system like Long Creek. They were engaged, but also suffering and trying to survive.⁴ I saw in them what I've seen 30+ years of lawyering: limitless potential and promise for young people, especially when they have genuine opportunities to

² See generally, National Academies of Sciences, Engineering, and Medicine. (2019). *The Promise of Adolescence: Realizing Opportunity for All Youth*. Washington, DC: The National Academies Press. doi: <https://doi.org/10.17226/25388>, at 133, at <https://www.nap.edu/download/25388> (hereafter, National Academies, *The Promise of Adolescence*); Bianca D.M. Wilson et al., Disproportionality and Disparities Among Sexual Minority Youth in Custody (Springer 2017), available at: <https://link.springer.com/article/10.1007/s10964-017-0632-5>; Center for American Progress, Movement Advancement Project, Youth First, *Unjust: LGBTQ Youth Incarcerated in the Juvenile Justice System*, at 5 (June 2017), <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>; Caitlin Ryan, Family Acceptance Project, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children* (2009), http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf; Caitlyn Ryan, David Huebner, Rafael Diaz, Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay and Bisexual Young Adults*, *Pediatrics* 123 (1), 346-52 (2009). Angela Irvine, Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Queer, Gender Nonconforming, and Transgender Youth in the Child Welfare to Juvenile Justice Crossover Population*, *Journal of Gender, Social Policy & the Law*, 24(2) 243-61 (2016); Office of Juvenile Justice and Delinquency Prevention, *LGBTQ Youths in the Juvenile Justice System* (2014); available at: <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>; GLSEN 2016, *Educational Exclusion: Drop out, push out and the school to prison pipeline for LGBTQ youth* (New York 2016), available at: https://www.glsen.org/sites/default/files/Educational%20Exclusion_Report_6-28-16_v4_WEB_READY_PDF.pdf

³ We have little data on LGBTQ young people in Maine. According to the MIHYS data, 13.6% of young people identify as LGB and 1.6% who identify as transgender (another 1.6% say they are unsure). That survey shows that LGBT high school students report less support from adults and more violence and discrimination at school, home and in the community. See MIHYS infographics on LGBT Student Health and Health Disparities of Maine Transgender Youth, attached, and available at <https://data.mainepublichealth.gov/miyhs/files/Snapshot/2019MIYHSLGBTInfographic.pdf> and <https://data.mainepublichealth.gov/miyhs/files/Snapshot/2019TransgenderInfographic.pdf> (both attached). It is important to disaggregate the data on race as well, but GLAD does not have that information.

⁴ It is important to look at the context surrounding the commitment of many young people who end up as justice involved. As a 2018 report on DHHS explained:

“When a child needs behavioral health services but is unable to access them because of a waitlist, or the services are simply not available, the child’s symptoms and behaviors may escalate. This can lead to destabilizing behaviors, including regression, self-harm, and aggression, which, in turn, can escalate and cause school disruption, use of crisis services, and ultimately emergency room visits and possibly hospitalization or juvenile justice involvement.”

Children’s Behavioral Health Services Assessment Final Report at 25, Maine Dep’t of Health and Human Services (Dec. 15, 2018), available at <https://www.maine.gov/dhhs/ocfs/cbhs/documents/ME-OCFS-CBHS-Assessment-Final-Report.pdf>

succeed, when they have adequate financial and social and familial supports, and when they are not injured and held back by discrimination and bias.

They were all adolescents from 16-20 years old. Many experts in many fields– in health fields, child welfare, corrections - see this as a precious time in life when, in the words of the National Academies of Sciences, young people can “redirect and remediate maladaptation in brain structures and behavior from earlier developmental periods” – even with the burdens of Adverse Childhood Experiences - – into “resilience.”⁵

That means we need to take great care when we consider ordering secure confinement for a young person at this crucial juncture in their development given the harm this causes. Among our highest duties is the care of and concern for our young people. Other testifiers have said the same, including Liz Blackwell Moore, Carlann Welch and Megan Sway.

GLAD strongly supports all of LD 320 and remains interested in hearing and working with the sponsor to address any concerns.⁶

We urge you to end the one year minimum for confinement at a juvenile corrections facility, and to support the counsel and review provisions that will give young people an advocate and a voice in their care and their life’s course. The young people I worked with at Long Creek each lingered too long, to their and our collective harm. For example, one had no programming at all and aged out at 21.

Another young person had tried to make himself busy, and had earned college credits, worked in the laundry, and had completed every program Long Creek could offer,⁷ but his progress to living his life was “on hold.” He could not attend SMCC for a course in skilled trades and he was not allowed to work. To DOC’s credit, they worked with him and me after I brought forward relevant health information and background on his charges. After a forensic risk evaluation and deep dive on this young person, he was allowed the lifeline of some partial community integration and could at last work and go to school outside of Long Creek.

To be clear though, we all know from the data provided in the February 2020 Report to the Juvenile Justice Assessment and Reinvestment Task Force, “length of stay” remains an issue. Moreover, confinement that extends beyond 3 to 6 months is counterproductive to them and to

⁵ National Academies, *The Promise of Adolescence*, at 32.

⁶ As to age, past practice shows that young people who could fall within the ambit of corrections jurisdiction often have a trauma history that is more appropriately served elsewhere. s one of the young men I worked with testified in 2019, he could barely cope himself with Long Creek at age 17. Moreover, what does it say that competency is generally assumed at age 14 15 MRSA sec. 3318-A (8) (using age 14 as the factor for shifting burdens of proof to demonstrate competency).

As to the factors for guiding the Juvenile Court’s decision to withhold an institutional disposition, LD 320 asks that the court consider the age of the young person and whether the offense was a misdemeanor (Class D or Class E offense if committed by an adult). Notably, recent DOC data shows that 67% of young people committed at Long Creek in Dec. 2020 were there for misdemeanor offenses and the rest for felonies. Fact Sheet, Maine Youth in Confinement, January 2020 (sic) (attached).

⁷ These groups included Aggression Replacement Training, Interpersonal Violence Group, Risk Reduction Group, most of The Seven Challenges, Career Prep and Transition, Restorative Justice Stay Free Group, Cooking Matters and Helping Men Recover.

public safety.⁸ This bill would allow **all** young people incarcerated at Long Creek to have an advocate in their corner able to articulate their concerns and ask for a closer look at their circumstances as appropriate.

I will never forget the young people I met. One young person from Aroostook, 16 when I met him, had a very difficult time at Long Creek and was discharged at age 18. He succeeded in taking his life within just a few months of discharge. His is not the only example of failed community integration, or of young people moving from the juvenile system into the adult system.

Please provide young people the voice and review they need and deserve. Due process and fundamental fairness demand as much. And this is about our young people, our treasure and our future. Please vote ought to pass.

Thank you and we respectfully request your support for this bill.

Truly yours,

Mary L. Bonauto
GLAD Attorney

⁸ Center for Children’s Law and Policy et al. (2020), Maine Juvenile Justice System Assessment, at 83-84 (detained youth); 101-104 (committed youth), available at <https://irp-cdn.multiscreensite.com/de726780/files/uploaded/Maine%20Juvenile%20Justice%20System%20Assessment%20FINAL%20REPORT%202-25-20.pdf>