



**Testimony of GLBTQ Legal Advocates & Defenders (GLAD)
In Support of L.D. 1304,
An Act To Ease Financial Burdens for Juveniles Involved in the Justice System**

April 17, 2019

Committee on Judiciary

By Mary L. Bonauto of Portland, GLAD Civil Rights Project Director

Dear Chairpersons Senator Carpenter and Representative Bailey, and Members of the Committee on Judiciary,

GLBTQ Legal Advocates and Defenders (“GLAD”) is a nonprofit organization working within New England and nationally to end discrimination based on sexual orientation, gender identity and expression, and HIV status through litigation, public policy advocacy, and education.

LGBTQ youth are disproportionately likely to become involved in the juvenile justice system due to their increased risk of rejection from their own families, harassment and discrimination in school and elsewhere, and resulting challenges they face, including poorer mental health and increased risk of homelessness.¹ Because of this, GLAD has a particular interest in juvenile justice reform and strongly supports L.D. 1304 – An Act To Ease Financial Burdens for Juveniles Involved in the Justice System.

No one wants a juvenile justice system predicated on anything but fairness. For the system to work, it must be fair to offenders and victims of crimes, as well as to society as a whole. However, one critical way that the Maine Juvenile Code (MJC) falls short of this promise is the disproportionate impact that restitution orders have on poor youth.

Poverty is not a crime and it should not be treated as one. Yet the current MJC permits a judge to factor a child’s ability or agreement to pay restitution into the decision whether to incarcerate them,² effectively ensuring that more poor children will end up behind bars. When a child is ordered to pay restitution and is unable to do so, the MJC permits the juvenile court to hold the child in contempt and incarcerate them as a result.³ No one—least of all a child—should be locked up over their inability to pay.

¹ 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>

² 15 M.R.S.A. §3313, sub-§2, ¶F.

³ 15 M.R.S.A. §3314, sub-§7.

In case after case going back half a century, the U.S. Supreme Court has recognized the fundamental unfairness of jailing people over an inability to pay. In 1970, the Court ruled in *Williams v. Illinois*⁴ that extending a sentence because a person is too poor to pay a monetary sanction violates the right to equal protection under the Fourteenth Amendment. A year later in *Tate v. Short*,⁵ the Court found it unconstitutional to impose a fine as a sentence and then automatically convert it into “a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.” Then, in *Bearden v. Georgia*,⁶ the Court ruled that the Fourteenth Amendment bars courts from revoking probation for a failure to pay a fine without first inquiring into a person’s ability to pay and considering whether there are adequate alternatives to imprisonment.

Restitution can play a role in restorative justice, helping juveniles understand the effects of their actions and helping victims become whole.⁷ However, monetary sanctions, such as restitution, have a disproportionate impact on the poor, with some researchers equating such sanctions to “drawing blood from a stone.”⁸ Because of differing poverty rates among demographic groups, restitution is likely to disproportionately harm people of color in Maine as well.⁹ Courts in other New England states have similarly recognized the futility and immorality of requiring restitution payments from those who simply cannot afford them.¹⁰ Maine should recognize what the Supreme Court and numerous other states already have: *de facto* criminalization of poverty must stop.

GLAD also recognizes that rehabilitation is a core purpose of the Maine Juvenile Code.¹¹ However, Maine’s current restitution statutes set up poorer children up for failure by requiring them to pay more than they can reasonably be expected to and then incarcerating them when they cannot make payments, no matter how hard they try. Moreover, some poorer youth come of working age while at Long Creek¹², and they may have de minimis work experience and little prospect of stable housing, both of which make the transition to independent living, let alone paying restitution, extremely challenging.

⁴ 399 U.S. 235 (1970).

⁵ 401 U.S. 395 (1971).

⁶ 461 U.S. 660 (1983).

⁷ Stacy Hoskins Haynes, Alison C. Cares & R. Barry Ruback, *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, and Effect on Recidivism*, 13 CRIMINOLOGY & PUB. POL’Y 31 (2014).

⁸ Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AMER. J. OF SOCIOLOGY 6, 1753–99 (May 2010).

⁹ The 2018 Maine Report of *Talk Poverty* shows 12.4% of youth under age 18 living below the poverty line and of those, children in African American, Latino and Native American families are disproportionately represented. <https://talkpoverty.org/state-year-report/maine-2018-report/>. For the challenges facing youth more generally and how Maine might respond, see Mara Sacher, Erica King, Jill Ward, *Place Matters*, available at: <https://usm.maine.edu/sites/default/files/cutler/Place%20Matters%20CoC%20FINAL.pdf>.

¹⁰ See, e.g., *Commonwealth v. Henry*, 55 N.E.3d 943 (Mass. 2016).

¹¹ *State v. J.R.*, 2018 ME 117, ¶ 11, 191 A.3d 1157, 1161 (2018).

¹² Maine DOC data shows that as of July 1, 2016, of the 82 youth then committed at Long Creek, nearly half were age 16 or 17 at the time of commitment. ME Dept. of Corrections, Profile of Youth Committed to Long Creek Youth Development Center as of July 1, 2016 (January 19, 2017).

Formal restitution can be more effective at rehabilitation than incarceration or probation (although restorative justice measure such as informal restitution are more effective still).¹³ But for someone who has made mistakes and is attempting to turn their life around, poverty can be the single greatest hurdle to rehabilitation.¹⁴ Adding more financial strain to an already desperate situation has been shown to be counterproductive. Children, especially poor children, are *more*—not less—likely to recidivate if courts impose monetary sanctions.¹⁵ The higher the restitution ordered, the greater the likelihood of recidivism.¹⁶ Restitution has a role in the justice system, but for the poor, it is more likely to be an obstacle, rather than a guidepost on the path to rehabilitation.

Notably, this system fails victims as well, promising them restitution payments that will never come. Research on restitution suggests that only approximately half of victims to whom restitution was ordered actually receive the full amount of restitution owed them.¹⁷ It is also not cost-effective. A 1996 study of restitution orders in the federal courts showed that it cost about \$2,000 and required 55 hours of taxpayer-funded public official time to implement one order.¹⁸ While Maine data is not readily available, the costs are certain to be substantial and are likely to outweigh the value of any restitution actually recovered. These figures do not mean that restitution should *never* be imposed, but that Maine must be strategic about its implementation and avoid requiring restitution from impoverished children who will simply never be able to pay it.

Moreover, restitution payments make the most sense in cases where the recipient of the restitution is an *individual* who has been harmed by a crime. Such payments allow the offender to play a direct role in making the victim whole financially and emotionally. By contrast, a government entity cannot “feel” injured or whole, so restitution payments made to a state or city are more akin to fines. Commentators have noted that fines rest on shaky penological ground and create a troubling conflict of interest for judges and other actors in the justice system.¹⁹

GLAD has witnessed first-hand the despair and hopelessness induced in a young man incarcerated at Long Creek who had a large restitution order (over \$1,000, primarily for property damage at a courthouse). He had barely three weeks of work experience at Five Guys before his discharge at age 18, was homeless upon release, and was unable to

¹³ R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 MINN. L. REV. 1779, 1812 (2015).

¹⁴ Wendy Heller, *Poverty: The Most Challenging Condition of Release*, 13 GEO. L. REV. 219 (2006).

¹⁵ Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15(3) YOUTH VIOLENCE AND JUVENILE JUSTICE 325 (2017).

¹⁶ *Id.*

¹⁷ R. Barry Ruback, Alison C. Cares, & Stacy N. Hoskins, *Crime victims’ perceptions of restitution: The importance of payment and understanding*, 23 VIOLENCE AND VICTIMS 697–710 (2008).

¹⁸ Matthew Dickman, *Should Crime Pay?: A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CALIF. L. REV. 1687, 1708–1709 (2009).

¹⁹ Katherine Beckett & Alexes Harris, *On cash and conviction: Monetary sanctions as misguided policy*, 10 CRIMINOLOGY & PUB. POL’Y 509 (2011).

get a job before his death three months after discharge. This crushing restitution order only burdened him and made no one whole.

L.D. 1304 addresses the failures of the Maine Juvenile Code outlined above by:

1. Removing from consideration a child's ability or agreement to make restitution from the decision to commit them to an institution;
2. Capping the amount of restitution a child can be ordered to pay at \$800 (although GLAD would support a lower cap) and requiring the court to hold a hearing to determine their financial capacity, i.e. ability to pay; and
3. Removing incarceration from the options available to the ability of a court to incarcerate a child over their inability to pay.

These changes will increase the fairness of the Maine Juvenile Code and bring it more in line with its rehabilitative purpose.

By capping restitution orders and linking them to ability to pay, L.D. 1304 stands for the principle that no child should be locked up because of their inability to pay restitution. GLAD agrees and urges that the Committee on Judiciary to advance this bill and to give consideration the following amendments: (1) lowering the cap; and (2) limiting restitution to payments for individuals rather than to state or local governments.

Respectfully Submitted,



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GLBTQ Legal Advocates & Defenders