

TODD R. COLLINS
District Attorney

STATE OF MAINE



KARI WELLS-PUCKETT
Deputy District Attorney

CHRISTIANA REIN
MATTHEW HUNTER
CHARLES FYLER
Assistant District Attorneys

OFFICE OF THE DISTRICT ATTORNEY
AROOSTOOK COUNTY
PROSECUTORIAL DISTRICT NUMBER 8

Reply To:

144 Sweden Street
Caribou, ME 04736-2353
207-498-2557
FAX 207-493-3493 _____

27 Riverside Drive
Presque Isle, ME 04769-2730
207-764-0504
FAX 207-764-2046 _____

26 Court Street, Suite 101
Houlton, ME 04730
207-532-4294
FAX 207-532-1504 _____

Friday, March 19, 2021

Committee on Criminal Justice and Public Safety
c/o Legislative Information
100 State House Station
Augusta, ME 04333

VIA Email to: CJPS@legislature.maine.gov

RE: **Public Hearing on LD710 PART F**

Good day members of the Committee on Criminal Justice and Public Safety.

Thank you for this opportunity to present testimony on the proposed legislation affecting Maine's Criminal Code before you today. I am offering this testimony individually as the District Attorney for Aroostook County and not on behalf of any other organization or other prosecutorial district.

I write in opposition of **LD710 PART F** as it is currently written, yet in support of the general proposition behind this part of the Bill.

As written, the Bill seeks to clarify the required mental state for conviction of these sex offenses. The Bill establishes "knowingly" as the necessary mental state of a defendant, presumably in accordance with *State v. Asaad*, 2020 ME 11. *Asaad*, however, does not mandate that the Legislature adopt a knowing mental state; rather the Law Court in *Asaad* made the finding that the defendant acted with a knowing mental state and upheld the conviction without deciding whether a "reckless" state of mind would also be a sufficient mental state for conviction. Instead, they left that as a question to be answered by the Legislature.

I urge this Committee to answer the Law Court's questions and to set the mental state for these offenses as a "reckless" state of mind rather than a "knowing" one.

As a practical matter, many of the cases that trigger these statutes involve the voluntary consumption of alcohol, marijuana, prescription, and recreational drugs – not just by the victim, but also by the offender. If the Legislature adopts a "knowing" mental state, then the prosecution and the defense of a fair majority of these cases will not focus on whether a victim acquiesced to the sexual touching, conduct, or act, but will focus on the defendant's sobriety and whether the offender could have acted knowingly – even if their intoxication was voluntary. The "*I was too wasted to know that he / she didn't want to have sex with me, so I did, anyway – sorry,*" defense is a huge step backwards in Maine's efforts to reduce sexual violence and should be rejected by this Committee.

Setting the mental state as a “reckless” state of mind, however, alleviates this backwards public policy by making the relative intoxication of the offender legally irrelevant – just like every other Class C and Class D Assault crime in Maine.

Pursuant to Title 17-A, section 37, paragraph 2, provides: “[w]hen recklessness establishes an element of the offense, if a person, due to self-induced intoxication, is unaware of a risk of which the other person would have been aware had the person not been intoxicated, such unawareness is immaterial.” A “knowing” mental state, however, allows intoxication to be a legal defense to the offense.

Maine has been strong and consistent in protecting victims of sexual abuse and assault while holding offenders responsible for their conduct, but LD710 Part F moves Maine away from that previous ideal. Maine should not protect offenders from drunkenly groping, molesting, and violating victims who do not consent to those acts. Maine should continue its proud protections of our most vulnerable persons and require a “reckless” state of mind for these offenses.

Thank you for your time and your consideration. If you would like me to answer questions at the work session for this Bill, just let me know and I will endeavor to appear before you and answer your questions.

Be Well and Stay Safe,

A handwritten signature in blue ink, appearing to read "Todd R. Collins".

Todd R. Collins
District Attorney, Aroostook County