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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 and LD439**

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 and LD439** as they pertain to amending Maine's sexual assault statutes involving victims under the ages of 14 and 12.

As written, the Bills significantly modify the "age of consent" for sexual activity explicitly ties the age of consent to the age of the offender rather than on the age of the victim. The age of consent is an objective measure that is established by the youngest involved party, not the oldest.

These Bills explicitly reverse that standard and tie the age of consent of any child directly to the age of the older person, such that if the older person is 13, then they can have "consensual" sex with any child older than 10; if the older child is 12 then they can engage in "consensual" sex with a 9-year-old; if they are 11, then they are allowed to have "consensual" sex with an 8 year old; and so on. Imagine the implications if a 10-year-old child is able to "consent" to sex with a 13-year-old but not a 15-year-old, or a 20-year-old. It would make the definition of "consent" meaningless.

If a child who is 0 - 13 years old is too young to consent to sexual conduct and sexual acts, then what difference does the age of the offender make?

The Bills improperly focuses on the age of the offender, rather than the victim. In doing so, the Bills also fail to take into consideration significant differences in body size, physical and mental development, emotional development, and educational levels among other significant differences that likely exist between a 9 and a 12-year-old.

The unintended consequences of this law will be tremendously harmful. The new law *will* effectively lower the age of consent to (*n* -3), where *n* is the age of the offender. No one will question the circumstances – the differences in maturity – physical size / strength – coercion or threats. It *will* result in suspicions of sexual assault not being investigated – since it will codify the "kids will be kids" mythology. It *will* reduce referrals, both in family and out, since (*n* -3) will no longer be a crime and not abuse – just normative sex play. So, law enforcement (and DHHS) won't even know about these situations to get involved, investigate, determine the circumstances, and provide intervention, services, and justice for victims. Juvenile justice systems won't be able to intervene and put a juvenile on the right track and get services for them. The State won't have an opportunity to know if the juvenile offender is also a victim of abuse and to provide the same intervention, support, and justice for *their* victimization.

These Bills, rather than breaking cycles of violence and recidivism, will promote them – and we'll be left to deal with the unhealed trauma of both the victim and the offender.

These Bills are presumably based on the Law Court case of *State v. Fulton*. Fulton is an Aroostook County case. There is more to this case than in published reports. Fulton is 3 years, 7 months and 16 days older than his victim. This change in the law would have had zero impact in the Fulton case.

The Law Court in Fulton unfortunately ignored (as do these Bills) the impact and trauma on child victims. The victim in the Fulton case needed to be heard and to be listened to. That child victim needed the space to be heard and to heal.

Often, when we charge a juvenile offender with a sex crime, we are open to the strong possibility that the juvenile offender may also be the victim of abuse. We were open to that possibility with Fulton – but his attorney refused to cooperate / talk / negotiate / work out the case in any shape or form. Rather, he feigned outrage, demanded a trial, and threatened that the child victim was too weak and would break under cross examination– none of which was either helpful or true, so we had a trial, and his client was convicted.

After the unsuccessful appeal, Fulton filed a post-conviction-review citing all the failures to negotiate and seek alternative resolutions to a conviction. We didn't fight the PCR – he was right – his attorney was ineffective. We were willing to negotiate had the defendant's attorney taken a different tact, but we were not willing to call our child victim a liar or ignore *their* reality.

Ultimately, Fulton entered a plea to a new misdemeanor – with the victim's input and consent – for the same sentence and the felony was dismissed.

Juvenile justice can be hard. But Maine's prosecutors are up for the task. And there are sufficient safeguards within the juvenile justice system to protect both offenders and victims from undue harm.

This is not a widespread problem that needs correcting – in my District, over the last 6 years, we had 9 cases where we charged a juvenile offender with the statutory offenses that are under review today. Every one of those juvenile offenders was at least 5 years older than their victim(s). Even the juvenile in the Fulton case was more than 3 years older than the child victim.

If the Legislature wants to limit the reach of the Justice system for individuals 17 or younger, then modifying the jurisdiction of the juvenile code is how that should be done and not by modifying the statutes on sexual assault in a confusing and inconsistent manner.

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,

Todd R. Collins
District Attorney, Aroostook County