MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 22, 2021

Senator Susan Deschambault
Representative Charlotte Warren
Committee on Criminal Justice & Public Safety
100 State House Station, Rm. 436
Augusta, ME 04333

RE: LD 710: An Act Regarding the Maine Criminal Code

Dear Senator Deschambault, Representative Warren, and Members of the Committee on Criminal Justice & Public Safety,

MACDL supports in part and opposes in part passage of this Criminal Law Advisory Committee bill, LD 710.

In that Part A of LD 710 proposes the creation of a new felony crime—Class C Endangering the Welfare of a Child—when other crimes and penalties can be employed, MACDL opposes Part A.

In that Part B of LD 710 would prevent the prosecution of people for Gross Sexual Assault if they are less than three years older than their victim—a change that would prevent juvenile defendants from being charged with this Class A offense if, say, a 16-year-old juvenile defendant had sex with a 13-year-old, MACDL supports Part B of this bill. MACDL feels—as was expressed in its testimony in the 129th Legislature (attached below)—that this provision of the current bill (formerly LD 44) could be much stronger and prevent any juvenile under the age of 14 from being prosecuted for Gross Sexual Assault based solely on the age of the victim, pursuant to 17-A M.R.S. § 253(1)(B&C) (2020). MACDL thus attaches a renewed proposed amendment to Part B that would reflect its position that no child under the age of 14 should be prosecuted for Class A Gross Sexual Assault if the sole basis for the Class A designation is the age of the victim. (The same proposed amendment has been attached to MACDL's testimony in support of LD 439.)

To the extent that Part C of LD 710 merely simplifies matters by combining various different jurisdictions as "other jurisdictions," MACDL takes no position.

The logic behind Part D of this bill—that conditions of release are effective at the time of notice to the defendant, regardless of whether or not the defendant actually is released—makes sense. If, for example, a defendant is charged with Aggravated Assault against a domestic partner and bail is set at $10,000—i.e. an amount the defendant cannot pay—the condition that he have no contact with the complaining witness should be applicable and enforceable against him while he is in custody. MACDL would encourage CLAC, however, to take a closer look at 15 M.R.S. § 1092 (2020), the crime of Violation of Conditions of Release. It would make sense that an element of the offense should be added to include that the defendant had actual notice of the condition which he is alleged to have violated. This would require the State to prove beyond a reasonable doubt that such notice was actually provided by

the judicial officer, the law enforcement officer, or employee of the county jail or prison to the defendant.

MACDL takes no position on Part E of this bill.

Because Part F would establish a requirement that the State must prove beyond a reasonable doubt that a defendant actually had knowledge that a victim of certain sex crimes did not acquiesce to the sexual act, sexual touching, or sexual contact—thus establishing a mens rea requirement for what has been until now a "strict liability" offense—MACDL supports this proposal. The Maine Supreme Judicial Court, most recently in *State v. Assad*, 2020 ME 11, but also in *State v. Fulton*, 2018 ME 3, has expressed concern over the criminalization of sexually-based conduct absent a mens rea element, heeding U.S. Supreme Court warnings against the codification of strict liability crimes—particularly when those crimes are punishable by many years in prison. The proposed Part F would address these concerns for several sexually-based crimes.

Thank you for your attention to this matter and for allowing me to speak with you all today. I would be happy to answer the questions of the Committee.

With appreciation,

Tina Heather Nadeau, Esq.
MACDL Executive Director

LD 710: An Act Regarding the Maine Criminal Code

Criminal Law Advisory Commission's Current Proposed Amendment to 17-A M.R.S. § 253

PART B

Sec. B-1. 17-A MRSA §253, sub-§1, ¶B, as amended by PL 2003, c. 711, Pt. B, §2, is further amended to read:

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years and the actor is at least 3 years older than the other person. Violation of this paragraph is a Class A crime; or

Sec. B-2. 17-A MRSA §253, sub-§1, ¶C, as enacted by PL 2003, c. 711, Pt. B, §2, is amended to read:

C. The other person, not the actor's spouse, has not in fact attained 12 years of age and the actor is at least 3 years older than the other person. Violation of this paragraph is a Class A crime.

Maine Association of Criminal Defense Lawyers' Proposed Amendment to 17-A M.R.S. § 253:

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years and the actor has in fact attained the age of 14 years and is at least three years older than the other person. Violation of this paragraph is a Class A crime; or

C. The other person, not the actor's spouse, has not in fact attained 12 years of age and the actor has in fact attained the age of 14 years and is at least three years older than the other person. Violation of this paragraph is a Class A crime.

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February 20, 2019

Senator Susan Deschambault
Representative Charlotte Warren
Committee on Criminal Justice & Public Safety
100 State House Station, Rm. 436
Augusta, ME 04333

RE: LD 44: An Act Regarding the Maine Criminal Code

Dear Senator Deschambault, Representative Warren, and Members of the Committee on Criminal Justice & Public Safety,

MACDL opposes LD 44 in its current form and proposes an amendment to Part B the proposed legislation (*attached*).

The Criminal Law Advisory Commission's proposed changes to the Gross Sexual Assault (GSA) statute do not sufficiently address the problem highlighted by the Maine Supreme Judicial Court in its opinions in *State of Maine v. Dylan Fulton* (2018) and *State of Maine v. Edward C.* (1987) (*attached*). The *Fulton* opinion is the impetus behind CLAC's proposal to this Committee. In both opinions, the Law Court expressed sincere concerns that the plain language of 17-A M.R.S. § 253 would allow the prosecution of children who were intended to be *protected* by such a statute. Children under the age of 14 can be prosecuted under the GSA statute for engaging in a sexual act with a child.

In 1987, the Law Court wrote in its opinion regarding a juvenile appeal: "[The juvenile defendant] argues that the purpose of the gross sexual misconduct statute is to criminalize the exploitation of children, not to penalize the children themselves. Such a construction implies a class of protected individuals that would include Edward C. just as it includes any other child under the age of fourteen. While we find much merit to this argument, the plain language of the statute compels us to hold that a child under fourteen years of age can be prosecuted for gross sexual misconduct." *State v. Edward C.*, 531 A.2d 672, 673 (Me. 1987). The Law Court held that because they could not "read an age limitation" into the plain language of the statute, that it would be up to the Legislature to address the injustice highlighted in Edward C.'s appeal.

No legislation was proposed over the next 30-plus years to address the problem highlighted in Edward C.

In the 2018 *Fulton* opinion, writing for the Court, Justice Hjelm explained that the problem of *Edward C.* persisted: "By the plain terms of the statute, any person—regardless of age—can be prosecuted for this crime. Thus, the concern we acknowledged in *Edward C.* persists and may call for an examination of whether parameters should be legislatively imposed on the universe of juveniles who may be considered truly culpable for the conduct proscribed by section 253(1)(C) and brought into the juvenile justice system." *State v. Fulton*, 2018 ME 3, ¶ 7, 178 A.3d 1225. The Court expressed concerns that the plain language of the statute "does not account for any . . . developmental considerations that are central to the question of juvenile culpability for conduct that, depending on the particular circumstances, can range from benign to dangerous and damaging." *Id.* at ¶ 10.

CLAC's proposal to this Committee is simply to add to the current statute that in order to be prosecuted as committing the crime of GSA against a child under the age of 14 or 12, the actor (defendant) needs to be more than three years older than the victim. This is simply not enough to remedy future injustice.

In early 2017, I was appointed to represent Dylan Fulton, then 19 years old, in a direct appeal from a juvenile adjudication in which the court had found that Dylan had committed the crime of GSA, Class A. At the time of the alleged incident, Dylan was just *10 or 11 years old.* The alleged victim was 7 or 8 years old. More than six years after the offense allegedly occurred, the alleged victim's grandmother reported it to the Department of Health and Human Services and subsequently the Maine State Police. The Aroostook County District Attorney's Office decided to charge Dylan with GSA against a child under the age of 12. The case proceeded in the Juvenile Court. Following an adjudicatory hearing, the court found against Dylan. Our appeal was unsuccessful. Dylan is now 21 years old; he is pursuing post-conviction review of his adjudication.

Dylan's adjudication, because it is a felony-level offense, is not confidential and never has been confidential. His court record is open for public inspection and dissemination. His name will forever be linked to this juvenile crime, a crime he was alleged to have committed at 10 or 11 years old. In addition, although it is not required in Maine for non-bound over juvenile defendants, in the majority of states, Dylan would be required to register as a sex offender. In nine states, he would be a lifetime sex offender. The impact of this adjudication cannot be overstated. Housing, employment, education: every facet of his life has, can, and will be impacted by the adjudication against him. Dylan, by virtue of this adjudication, is marked as a predator, a pariah. This is not justice. This is not in keeping with the overarching goal of rehabilitation of the juvenile code. This is pure, illogical, cruel punishment. Our children—all of our children—deserve better than this.

CLAC's proposed amendment would do nothing to prevent the injustice in *Fulton* from happening again. There must be a bright-line prohibition against bringing these "statutory rape" charges against children under the age of 14.

Additionally, the legislative intent behind creating a sentencing enhancement for assaults that take place within "safe children zones"—subsection 7—was to punish adults who use schools as hunting grounds for their victims. This enhancement would disproportionately affect children who find themselves accused of sex crimes and should not be applicable to juveniles.

Our proposed amendment to CLAC's bill is intended to reflect the lessons of psychology, juvenile development, and brain science that have established definitively that children, particularly young adolescents and those younger still, are different. Child psychologists agree that young children and adolescents are not sexual deviants; they are not predators. The GSA law as it is currently written was intended to punish adult sexual predators who target and abuse young children harshly. The diminished culpability of children as well as the fact that the vast majority of children who engage in sexually inappropriate behavior are they themselves victims of sexual abuse support these changes.

We ask this Committee to amend LD 44 to incorporate the changes we are recommending so that the needed Legislative fix to 17-A M.R.S. § 253—a fix that would ensure that the intended protected class of this statute cannot be prosecuted by it—can finally be realized.

With appreciation,

Tina Heather Nadeau, Esq.
Executive Director

531 A.2d 672
Supreme Judicial Court of Maine.

STATE of Maine
v.
EDWARD C.

Argued Aug. 31, 1987.
|
Decided Oct. 2, 1987.

Synopsis

In juvenile adjudicatory hearing, the Superior Court, Penobscot County, found 13–year-old juvenile guilty of gross sexual misconduct, and juvenile appealed. The Supreme Judicial Court, Glassman, J., held that child under 14 years of age could be prosecuted for gross sexual misconduct.

Affirmed.

Attorneys and Law Firms

***672** R. Christopher Almy, Dist. Atty., Philip Worden, (orally), Asst. Dist. Atty., Bangor, for plaintiff.

***673** Logan, Kurr & Hamilton, Harold C. Hamilton (orally), Bangor, for defendant.

Before McKUSICK, C.J., and NICHOLS, WATHEN, GLASSMAN, SCOLNIK and CLIFFORD, JJ.

Opinion

GLASSMAN, Justice.

In a juvenile adjudicatory hearing, the District Court, Bangor, found Edward C. guilty of gross sexual misconduct in violation of 17–A M.R.S.A. § 253(1)(B) (1983). On appeal, Edward C. contends that section 253(1)(B) does not apply to a sexual act between two children, both under the age of fourteen. Because of the plain language of the statue, we must affirm the decision of the District Court.

The evidence before the juvenile court was sufficient to support the finding of that court that in March 1985, Edward C., age thirteen, while babysitting an eight-year-old girl, had sexual intercourse with her.

On appeal, Edward C. argues that the purpose of the gross sexual misconduct statute is to criminalize the exploitation of children, not to penalize the children themselves. *See State v. Stevens,* 510 A.2d 1070, 1072 (Me.1986) (construing 17–A M.R.S.A. § 252(1)(A)). Such a construction implies a class of protected individuals that would include Edward C. just as it includes any other child under the age of fourteen. While we find much merit in this argument, the plain language of the statute compels us to hold that a child under fourteen years of age can be prosecuted for gross sexual misconduct.

The "fundamental rule" in statutory construction is that the legislative intent as divined from the statutory language controls the interpretation of the statute. *Raymond v. State,* 467 A.2d 161, 164 (Me.1983). Unless the statute reveals a contrary intent, the words "must be given their plain, common and ordinary meaning." *Id.* (citing *State v. Vainio,* 466 A.2d 471, 474 (Me.1983), *cert. denied,* 467 U.S. 1204, 104 S.Ct. 2385, 81 L.Ed.2d 344 (1984)). We will not look beyond clear and unambiguous statutory language. *State v. Hood,* 482 A.2d 1268, 1270 (Me.1984). To determine legislative intent when there is an ambiguity in the statute, the court may look beyond the words themselves to the history of the statute, the policy behind it, and contemporary related legislation. *Mundy v. Simmons,* 424 A.2d 135, 137 (Me.1980); *Walker v. Walker,* 111 Me. 404, 408, 89 A. 373, 374 (1914) (citation omitted).

Section 253(1)(B) provided, in pertinent part, that

> A person is guilty of gross sexual misconduct
>
> 1. If he engages in a sexual act with another person, not his spouse, and
>
> ....
>
> B. The other person has not in fact attained his 14th birthday. [1]

The statute clearly provides that any "person" can commit gross sexual misconduct. [2] The statute does not require that this person be of a minimum age. In contrast, related statutes, which criminalize sexual abuse of minors between the ages of fourteen and sixteen (17–A M.R.S.A. § 254(1) (1983), amended by § 254(1)(A) (Supp.1986)) and sexual contact with minors under fourteen (17–A M.R.S.A. § 255(1)(C) (1983 & Supp.1986)) do specify that

the perpetrator be of a certain age. [3] When section 253 is read in the context of these related provisions, it appears that the Legislature, by its omission, did not intend ***674** to place an age requirement on the actor that engages in a sexual act with a person under the age of 14 years that is not his spouse.

If the Legislature intended that all children under fourteen years of age that engage in sexual acts be viewed as victims, it is within the province of the Legislature to amend the statute to bring the language in line with this intent. We cannot read an age limitation into the statute. The language of section 253(1)(B) requires us to hold that any person, regardless of age, can be prosecuted for gross sexual misconduct.

The entry is:

Judgment affirmed.

All concurring.

All Citations

531 A.2d 672

Footnotes

1 Section 253(1)(B) was amended, effective February 28, 1986, to read:

> A person is guilty of gross sexual misconduct
> If he engages in a sexual act with another person and
> ....
> B. The other person, not his spouse, has not in fact attained his 14th birthday.

2 The criminal code defines person as "a human being or an organization." 17–A M.R.S.A. § 2(20) (1983).

3 The requirements of section 254(1), presently section 254(1)(A) (sexual abuse of minors), are that the perpetrator be nineteen years old and five years older than the victim. Section 255(1)(C) (unlawful sexual contact) requires that the perpetrator be three years older than the victim.

178 A.3d 1225
Supreme Judicial Court of Maine.

STATE of Maine
v.
Dylan FULTON

Docket: Aro–17–66
|
Argued: September 14, 2017
|
Decided: January 18, 2018

Synopsis

Background: Juvenile offender was adjudicated in the Presque Isle Juvenile Court, O'Mara, J., of the juvenile crime of gross sexual assault. Juvenile offender appealed.

The Supreme Judicial Court, Hjelm, J., held that juvenile court did not deprive juvenile offender of due process by denying his motion for production of Department of Health and Human Services records without conducting an in camera review.

Affirmed.

Attorneys and Law Firms

Tina Heather Nadeau, Esq. (orally), The Law Office of Tina Heather Nadeau, PLLC, Portland, for appellant Dylan Fulton

Todd R. Collins, District Attorney, and Carrie L. Linthicum, Dep. Dist. Atty. (orally), Prosecutorial District 8, Presque Isle, for appellee State of Maine

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

Opinion

HJELM, J.

[¶ 1] Dylan Fulton appeals from a judgment adjudicating him of the juvenile crime of gross sexual assault (Class A), 17–A M.R.S. § 253(1)(C) (2017); *see also* 15 M.R.S. § 3103(1) (2017) (defining "juvenile crime"), entered by the Juvenile Court [1] (Presque Isle, *O'Mara, J.*) following an adjudicatory hearing. We affirm the judgment.

[¶ 2] Contrary to Fulton's contention, the evidence—viewed in the light most favorable to the State, *see State v. Milliken*, 2010 ME 1, ¶ 19, 985 A.2d 1152—was sufficient for the court to rationally find beyond a reasonable doubt that the State proved every element of the offense and that the crime occurred within the period of limitations, *see* 17–A M.R.S. § 101(1) (2017); 15 M.R.S. § 3105–A (2017).

[¶ 3] Fulton also asserts that the court deprived him of due process when it denied his motion for production of Department of Health and Human Services records without conducting an *in camera* review. The court did not abuse its discretion denying Fulton's motion, *see State v. Dube*, 2014 ME 43, ¶ 8, 87 A.3d 1219, because even if Fulton had filed the motion pursuant to M.R.U. ***1226** Crim. P. 17A(f), [2] rather than 22 M.R.S. § 4008(3)(A–1) (2017), he would not have made the preliminary showing of relevancy, admissibility, and specificity required by Rule 17A(f). *See also State v. Marroquin–Aldana*, 2014 ME 47, ¶ 34, 89 A.3d 519; *Dube*, 2014 ME 43, ¶ 9, 87 A.3d 1219 (when a defendant does not satisfy the requirements of Rule 17A(f), "a trial court may restrict [the defendant's] right to compulsory process without impairing his constitutional rights to due process and to confront witnesses.").

[¶ 4] Finally, Fulton argues that the investigative and adjudicatory processes and the outcome of this case do not comport with the policies of the Juvenile Code. *See* 15 M.R.S. § 3002 (2017). Because this argument was not raised in the Juvenile Court, we review for obvious error and find none. *See State v. Corrieri*, 654 A.2d 419, 422 (Me. 1995).

[¶ 5] Although we summarily dispose of Fulton's essential challenges on appeal, we write to address one aspect of the latter argument: that the reach of the juvenile offense of gross sexual assault at issue here is too broad because it allows for the prosecution of minors who may be too young to be appropriately subject to the juvenile justice system.

[¶ 6] As Fulton acknowledges, thirty years ago we rejected a similar challenge to the since-repealed crime of gross sexual misconduct, *see* 17–A M.R.S. § 253(1)

(B) (1983),[3] which criminalized a sexual act committed against a person younger than fourteen years old and not the offender's spouse, but without setting a minimum age of the offender. *See State v. Edward C.*, 531 A.2d 672 (Me. 1987). In that case, the juvenile—who was thirteen years old at the time of the offense—argued that the Legislature's purpose underlying that statute was to "criminalize the exploitation of children, not to penalize the children themselves." *Id.* at 673. We concluded that there was "much merit in this argument" but that the plain language of the statute could not be read to set a minimum age of the accused. *Id.* at 673–74.

[¶ 7] The same is true with respect to the definition of gross sexual assault found in section 253(1)(C), which states: "A person is guilty of gross sexual assault if that person engages in a sexual act with another person and ... [t]he other person, not the actor's spouse, has not in fact attained 12 years of age." By the plain terms of this statute, any person—regardless of age—can be prosecuted for this crime.[4] Thus, the concern we acknowledged in *Edward C.* persists and may call for an examination ***1227** of whether parameters should be legislatively imposed on the universe of juveniles who may be considered truly culpable for the conduct proscribed by section 253(1)(C) and brought into the juvenile justice system.

[¶ 8] The concern is particularly acute because section 253(1)(C) criminalizes the conduct—the actus reus—by itself. Therefore, unlike nearly all other statutes that define major crimes, this offense is nominally a strict liability crime because it does not require the State to prove any culpable mental state. *See State v. Proia*, 2017 ME 169, ¶ 11 n.3, 168 A.3d 798; *State v. Morrison*, 2016 ME 47, ¶ 4 n.1, 135 A.3d 343. The absence of an explicit mens rea requirement in section 253(1)(C) does not mean, however, that the Legislature intended the statute to apply even when the proscribed conduct is not accompanied by culpability. To the contrary, sexual offenses that do not include an explicit mens rea element are still intended to criminalize conduct that is inherently aberrant and, at least impliedly, signifies fault. *See State v. Saucier*, 421 A.2d 57, 59 (Me. 1980) (recognizing that the former gross sexual misconduct statute, which had no mens rea requirement, was "based on the premise that one person cannot accidentally or innocently induce another person to engage in sexual intercourse by means of a threat").[5]

[¶ 9] Not every child, however, who engages in the conduct proscribed by section 253(1)(C)—something that is sufficient for a prosecution and adjudication of that crime—does so with the fault that the Legislature has impliedly attributed to that conduct. As was explained at Fulton's dispositional hearing by the forensic psychologist who performed a court-ordered evaluation of him, *see* 15 M.R.S. § 3309–A(4) (2017), considerations of human sexual development allow a distinction to be drawn between juveniles who are at least twelve to fourteen years old, and those who are younger,[6] because there are material differences between those groups in terms of motivation, intent, and responsiveness to treatment for inappropriate sexual behavior. The psychologist explained that although age is a factor relevant to the question of culpability and risk of re-offense, there are other material factors to be considered such as exposure to domestic violence, emotional or mental health issues, and a history of other sexual misconduct.[7]

***1228** [¶ 10] Section 253(1)(C), however, does not account for any of those developmental considerations that are central to the question of juvenile culpability for conduct that, depending on the particular circumstances, can range from benign to dangerous and damaging. This raises the question of whether the Legislature in fact intended section 253(1)(C) to apply even against a child who engages in the conduct prohibited by that statute, but whose age and other characteristics do not properly warrant a prosecution and adjudication because of the absence of culpability. These and other factors, such as the profound impact a sexual assault can have on a victim, illustrate the complex and dynamic nature of the matrix that the Legislature may choose to identify in its determination of who should be subject to a juvenile adjudication pursuant to section 253(1)(C), which presently provides no limitations.

[¶ 11] For these reasons, the Legislature may wish to review section 253(1)(C) to consider how that statute is most effectively and appropriately applied in juvenile cases to achieve the purposes of the Juvenile Code, *see* 15 M.R.S. § 3002.

The entry is:

Judgment affirmed.

All Citations

178 A.3d 1225, 2018 ME 3

Footnotes

1 When exercising its jurisdiction over juvenile matters, the District Court is referred to as the Juvenile Court. *See* 15 M.R.S. § 3101(1), (2)(A) (2017).

2 The Maine Rules of Unified Criminal Procedure apply to proceedings involving juvenile crimes. *See* 15 M.R.S. § 3309 (2017); M.R.U. Crim. P. 1(b)(3).

3 Title 17–A M.R.S.A. § 253(1)(B) (1983) was repealed and replaced by P.L. 1989, ch. 401, § A–4 (effective Sept. 30, 1989) (codified at 17–A M.R.S. § 253(1)(B) (2017)), which designated the same conduct as a form of gross sexual assault, and that replacement statute has since been amended, most recently by P.L. 2003, ch. 711, § B–2 (effective July 30, 2004) (codified at 17–A M.R.S. § 253(1)(A), (B), (C) (2017)).

4 In this way, Title 17–A M.R.S. § 253(1)(C) (2017) stands in marked contrast to many of the sexual offenses established in Title 17–A. For example, a number of the other definitions of gross sexual assault are directed against persons who are in adult employment or in adult familial or professional relationships with the victim at the time of the offense. *See, e.g.*, 17–A M.R.S. § 253(2)(E–G) (2017) (applicable to teachers, supervisors, or other adults with authority over the victim); 17–A M.R.S. § 253(2)(H) (2017) (applicable to parents, step-parents, or guardians); 17–A M.R.S. § 253(2)(I) (2017) (applicable to mental health physicians or licensed social workers where the victim is a patient or client of that person); 17–A M.R.S. § 253(2)(J) (2017) (applicable to owners or operators of specific facilities or institutions from which the victim receives services and is recognized as having an intellectual disability or autism); 17–A M.R.S. § 253(2)(K) (2017) (applicable to owners, operators, or employees of specific facilities from which the victim receives mental disability services or care and the mental disability is reasonably apparent or known to that person); and 17–A M.R.S. § 253(2)(L) (2017) (applicable to a caregiver employed to care for the victim who is of advanced age or suffers from a physical or mental disease, disorder or defect, and is unable to care for him- or herself). This contrast is further demonstrated by a number of formulations of the crime of sexual abuse of minors, such as those directed against persons who are at least five or ten years older than their victims, *see, e.g.*, 17–A M.R.S. § 254(1)(A) (2017) (applicable to offenders at least five years older than their victims who are either fourteen or fifteen years of age); 17–A M.R.S. § 254(1)(A–2) (2017) (applicable to offenders who are at least ten years older than the victim, who is either fourteen or fifteen years of age); or against persons who are at least twenty-one years old and employed at an educational facility where the victim, either sixteen or seventeen years old, is enrolled, 17–A M.R.S. § 254(1)(C),(E) (2017).

5 This observation should not be seen as an assertion that the State is required to prove a culpable state of mind an as element of a sexual offense that, as defined by statute, does not include such an element. Rather, the discussion in the text relates to the reasons why the Legislature has enacted those statutes as it has.

6 The evidence indicated that Fulton was approximately ten to twelve years old at the time of the offense.

7 In its dispositional order, the court did not state whether it accepted the analysis offered by the forensic evaluator, and Fulton did not move for the court to issue findings beyond the limited explanation it provided for the disposition imposed, which was an indeterminate and fully probated commitment to the Department of Corrections until age twenty-one. *See* M.R.U. Crim. P. 23(c). Therefore, our reference to several portions of the expert's testimony presented in this case should not be seen either as an adoption of her opinion or a diminishment of differing views regarding the measure of culpability that should—or should not—be attached to juvenile sexual misconduct in various circumstances. We describe this testimony merely to explain, as we discuss in the text, that, at least in the view of some experts, the question of juvenile culpability rests on considerations that may be different from those that are germane to adult prosecutions.