

12-1-2005

Can't Do the Time, Don't Do the Crime?: Dixon v. State, Statutory Construction, and the Harsh Realities of Mandatory Minimum Sentencing in Georgia

Suzanne Smith Williams

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Suzanne S. Williams, *Can't Do the Time, Don't Do the Crime?: Dixon v. State, Statutory Construction, and the Harsh Realities of Mandatory Minimum Sentencing in Georgia*, 22 GA. ST. U. L. REV. (2005).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol22/iss2/5>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CAN'T DO THE TIME, DON'T DO THE CRIME?: DIXON V. STATE, STATUTORY CONSTRUCTION, AND THE HARSH REALITIES OF MANDATORY MINIMUM SENTENCING IN GEORGIA

INTRODUCTION

In 1994, the Georgia legislature passed the Sentence Reform Act (“Act”) mandating sentencing guidelines to prohibit lenient punishment for offenders convicted of violent crimes referred to as the “seven deadly sins.”¹ In 1998, the legislature amended the Act to prohibit lenient sentencing for first-time offenders when the offense was one of the violent felonies enumerated within the Act.²

The legislature amended the Act in 1998 to deal specifically with *State v. Allmond*.³ In *Allmond*, the Georgia Court of Appeals upheld the trial court’s ten-year sentence that required only eight years of confinement for a first-time offender found guilty of six counts of armed robbery and two counts of possession of a firearm during a felony.⁴ There, the Georgia Court of Appeals held that the First Offender Act gave the sentencing court discretion in sentencing a first-time offender, even when the offense was one of the enumerated seven deadly sins.⁵

With the 1998 amendment the legislature mandated that, contrary to the *Allmond* court’s interpretation, “it is the expressed intent of the General Assembly that persons who commit a serious violent felony specified in the ‘Sentence Reform Act of 1994’ shall be sentenced to

1. See O.C.G.A. § 17-10-6.1 (2005) (establishing mandatory minimum ten-year sentencing for murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery).

2. O.C.G.A. § 42-8-66 (2005).

3. See HB 1164, 1998 Ga. Gen. Assem. (codified as O.C.G.A. § 42-8-66 (2005)); see generally *State v. Allmond*, 484 S.E.2d 306 (Ga. Ct. App. 1997), *overruled by* *Fleming v. State*, 504 S.E.2d 543 (Ga. Ct. App. 1998).

4. *Allmond*, 484 S.E.2d 306, 307.

5. See *id.* at 307 (holding that O.C.G.A. § 17-10-6.1(b) does not limit the court’s discretion in sentencing first time offenders under more lenient first offender guidelines).

a mandatory term of imprisonment of not less than ten years and shall not be eligible for first offender treatment.”⁶

In light of the Act’s limitation on judicial sentencing discretion, Georgia’s provisions regarding aggravated child molestation proved especially problematic in one recent Georgia case.⁷ Code section 16-6-4(c), defining aggravated child molestation as simple child molestation accompanied by either sodomy or injury to the child, works with Code section 16-6-4(d)(1) to mandate ten-year minimum sentencing according to the Act.⁸

The 1998 amendment allows no safe harbor for first-time offenders convicted of aggravated child molestation regardless of any mitigating circumstances.⁹

Should a prosecutor decide to charge a defendant with aggravated child molestation when the victim sustains even a slight and arguably predictable injury, and the jury finds that the State has proven the injury requirement of Code section 16-6-4(c), the court has no discretion regarding the minimum ten-year sentence.¹⁰ The Act essentially grants the prosecutor discretion that was once left to the courts.¹¹ One commentator opined that, at least in federal courts, mandatory sentencing guidelines have turned prosecutors into the “800-pound gorilla[s] of the criminal process.”¹² While federal and

6. HB 1164, § 1(3), 1998 Ga. Gen. Assem. (adding O.C.G.A. § 42-8-66 to the First Offender Provision, removing first offender treatment for serious violent felony convictions as defined in the Sentence Reform Act).

7. O.C.G.A. § 16-6-4(c), (d)(1) (2005); see *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004).

8. O.C.G.A. § 16-6-4(a) (2005) (defining simple child molestation as the commission of “any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person”); O.C.G.A. § 16-6-4(c) (2005) (providing that “[a] person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy”); O.C.G.A. § 16-6-4(d)(1) (2005) (providing in pertinent part that one convicted “of aggravated child molestation shall be punished by imprisonment for not less than ten nor more than 30 years” under the mandatory sentencing provisions of O.C.G.A. §§ 17-10-6.1 and 17-10-7).

9. HB 1164, § 2, 1998 Ga. Gen. Assem. (codified as O.C.G.A. § 42-8-66) (2005) (“No person convicted of a serious violent felony as defined in . . . this Code section shall be sentenced as a first offender . . .”)

10. See *Dixon*, 596 S.E.2d 147.

11. See William J. Powell & Michael T. Cimino, *Prosecutorial Discretion Under the Federal Sentencing Guidelines: Is the Fox Guarding the Hen House?*, 97 W. VA. L. REV. 373, 382 (1995) (analyzing the prosecutor’s role under the Federal Sentencing Guidelines).

12. *Id.* at 384.

state sentencing guidelines have attempted to create uniformity, some members of the judiciary question the wisdom of leaving sentencing discretion in the hands of prosecutors.¹³

Under the Act, Georgia prosecutors enjoy a felony sentencing discretion privilege that was once left to the judiciary, provided they can prove the elements of the deadly sin that predicates the mandatory sentence.¹⁴ Mitigating or unique circumstances have no relevance in determining sentence length under the Act.¹⁵ Additionally, under the current statutory scheme governing mandatory minimum sentencing, a juror may vote to convict, unaware of the sentencing consequences that accompany the verdict.¹⁶

Though Georgia's statutory rape law contains a "Romeo and Juliet" exception that affords misdemeanor rather than felony punishment in cases involving an offender not more than three years older than a 14-year-old or 15-year-old consensual partner, complications arise when even slight injuries accompany nonforcible sexual relations between teenagers covered by the provision.¹⁷ Under the current statutory scheme, even slight injuries, including those routinely sustained by a female during first-time sexual intercourse,

13. *Id.* (quoting Judge McNichols of the Eastern District of Washington: "Congress has thus shifted discretion from persons who have demonstrated essential qualifications to the satisfaction of their peers, various investigatory agencies, and the United States Senate to persons who may be barely out of law school with scant life experience and whose common sense may be an unproven asset.").

14. *See* O.C.G.A. § 17-10-6.1 (2005).

15. *See id.*

16. *E.g.*, Andrew Jacobs, *Student Sex in Georgia Stirs Claims of Old South Justice*, N.Y. TIMES, Jan. 22, 2004, at A14.

Although a jury acquitted Mr. Dixon of rape, sexual battery, aggravated assault and false imprisonment, they found him guilty of statutory rape, a misdemeanor, and because of the girl's injuries, the more serious charge of aggravated child molestation. Bound by Georgia's sentencing laws, the judge gave Mr. Dixon the minimum 10 years. After learning of the sentence, five of the jurors said that they would not have voted to convict Mr. Dixon if they had known that he would spend so much time in prison.

Id.

17. O.C.G.A. § 16-6-3(b) (2005) (providing misdemeanor qualification for statutory rape when a "victim is 14 or 15 years of age and the person so convicted is no more than 3 years older than the victim"); O.C.G.A. § 16-6-4(c), (d)(1) (2005); *see also* Byron Williams, *The Incarceration of Marcus Dixon*, Mar. 8, 2004, <http://www.workingforchange.com/article.cfm?ItemID=16557> (explaining "Romeo and Juliet" laws as decriminalizing the behavior or minimizing the offense to misdemeanor status for consensual teenage relations).

specifically tearing or bruising of the hymen, may substantiate a claim of aggravated child molestation and elevate what would normally constitute misdemeanor statutory rape to felony aggravated child molestation.¹⁸ The unique facts of *Dixon v. State* prompted the Georgia Supreme Court to reevaluate Dixon's conviction in light of the sentencing conflict between Georgia's aggravated child molestation and statutory rape provisions.¹⁹

This Comment will examine the Georgia Supreme Court's decision in *Dixon*.²⁰ Part I will provide the factual background of *Dixon* and the Floyd County jury decision that sent Marcus Dixon to state prison for a term of no less than ten years.²¹ Part II will discuss the court's statutory construction analysis, giving special consideration to the court's finding that in cases of conflict, the more recent statute should prevail in order to best effectuate legislative intent.²² Part III will discuss the court's statutory construction analysis, focusing on the rule of lenity.²³ Part IV will discuss the constitutionality of the mandatory minimum sentence accompanying a conviction under Code section 16-6-4(d)(1) under the unique facts of the *Dixon* case.²⁴ Lastly, this Comment will examine the sufficiency of proposed legislative clarifications to Code sections 16-6-4 and 17-10-6.1 prompted by the *Dixon* case.²⁵

I. BACKGROUND: *DIXON V. STATE*²⁶

In May 2004, the Georgia Supreme Court overturned a Floyd County jury decision that sent Marcus Dixon, an African-American high school senior with a 3.96 grade point average, to prison for no

18. See O.C.G.A. § 16-6-4(c), (d)(1) (2005); *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004).

19. See *Dixon*, 596 S.E.2d at 147. Compare O.C.G.A. §16-6-3(b) (2005), with O.C.G.A. § 16-6-4(d)(1) (2005).

20. See *infra* Parts II, III.

21. See *infra* Part I.

22. See *infra* Part II.

23. See *infra* Part III.

24. See *infra* Part IV.

25. See *infra* Part V.

26. *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004).

less than ten years.²⁷ In addition to being a scholar, Dixon was also an athlete.²⁸ Because of the charges, Marcus Dixon suffered permanent expulsion from high school and lost a football scholarship to Vanderbilt University.²⁹

Dixon's accuser, a 15-year-old white high school sophomore, three months from her sixteenth birthday at the time of the incident, claimed that Dixon raped her.³⁰ Dixon, age 18 at the time of the incident, argued that the sex was not forcible, but rather was invited by his accuser.³¹ Dixon claimed that his accuser selected the place for their physical encounter after declining his invitation to go together to his empty house.³² In Dixon's version of the encounter, he maintains that he used a condom, had no trouble with insertion, and that his accuser was in no pain during intercourse.³³ According to Dixon, his accuser worried that someone would see them together.³⁴

Dixon's accuser recounted a different version of the incident.³⁵ She claimed that Dixon attacked her while she was cleaning a classroom trailer working as a part-time custodian after school.³⁶ Dixon's accuser alleged rape two days after the incident and claimed that Dixon "held her arms with his hands for approximately thirty minutes and took off her shoes, (button-fly) jeans, and underwear with his knees and elbows while holding her arms."³⁷ During cross-examination, Dixon's accuser was unable to explain how Dixon managed to disrobe her with his knees and elbows.³⁸

27. *Id.* at 148; Jacobs, *supra* note 16.

28. *See* Jacobs, *supra* note 16.

29. Williams, *supra* note 17. Marcus Dixon is currently enrolled at Hampton University in Hampton, Virginia, where he received a full scholarship to play football. Norman Arey, *Marcus Dixon Enrolls at Hampton University*, ATLANTA J. CONST., Aug. 17, 2004.

30. Williams, *supra* note 17.

31. *Id.*; *see* Brief of Appellant at 2 n.1, 3, Dixon v. State, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072) (noting that Dixon is less than three years older than his accuser: his date of birth is September 16, 1984; her date of birth is May 5, 1987).

32. Jacobs, *supra* note 16; Brief of Appellant at 3, Dixon v. State, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

33. Brief of Appellant at 3, Dixon v. State, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

34. Jacobs, *supra* note 16.

35. *See id.*

36. *Id.*

37. Brief of Appellant at 4, Dixon v. State, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

38. *Id.*

The jury acquitted Dixon of rape, sexual battery, aggravated assault, and false imprisonment charges but found him guilty of statutory rape and aggravated child molestation, with the latter conviction based on injuries claimed by Dixon's accuser.³⁹ The accuser's injuries, referred to by the court as "slight," included a split lip, arguably resulting from chapped lips, bruising on her arms, which three witnesses testified to seeing the day before the incident, and vaginal bruising consistent with a first-time sexual experience.⁴⁰ Unbeknownst to the jury, the aggravated child molestation conviction carries a mandatory ten-year minimum sentence in Georgia.⁴¹

Though the Floyd County jury acquitted Dixon of the rape charge, that verdict is not dispositive of a finding of consensual sex.⁴² The Georgia Supreme Court, addressing the consent issue, noted that the jury acquittal on the rape charge "means only that the State failed to prove the elements of force beyond a reasonable doubt, and not that the activity was wholly consensual."⁴³ In a concurring opinion, Justice Hunstein further stressed that the court's decision to overturn Dixon's conviction was "not based in any manner upon the acquittal of the defendant on the rape and sexual battery charges."⁴⁴

39. *Dixon v. State*, 596 S.E.2d 147, 148 (Ga. 2004). Dixon was not charged with simple child molestation. Brief of Appellee at 2-3, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

40. *Dixon*, 596 S.E.2d at 148; Brief of Appellant at 5, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072); Jacobs, *supra* note 16; Reply Brief of Appellant at 6, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072) (noting that at trial, the nurse who examined Dixon's accuser testified she observed injury "consistent with intercourse or penetration"). *But see Dixon*, 596 S.E.2d at 153-54 (Hines, J.J., dissenting).

The majority summarily dismisses the harm proved to have been suffered by the teenaged victim as "slight vaginal injuries." In fact, the evidence showed these "slight vaginal injuries" to be a tearing of the hymen and the bruising of the vaginal orifice. But despite mischaracterizing these injuries, the majority's analysis does not depend on their "slight" nature to relieve Dixon from punishment for his conviction of aggravated child molestation. Rather, the majority declares the injuries, which make the act of child molestation aggravated, to be irrelevant.

Id.

41. O.C.G.A. § 16-6-4(d)(1) (2005); *see Jacobs*, *supra* note 16.

42. *Dixon*, 596 S.E.2d at 148.

43. *Id.*

44. *Id.* at 151 (Hunstein, J.J., concurring). Justice Hunstein further stated that the "acquittal represents only the fact that the state failed to carry its burden of proving beyond a reasonable doubt that the sexual intercourse was against the will of the victim. It did *not* establish that the sexual intercourse alleged by the victim was consensual." *Id.*

However, Dixon's ten-year sentence, given his relative age to that of his accuser, seemed exceptionally harsh, considering that the prosecution had failed to prove a crime of force as a matter of law.⁴⁵ Though the Floyd County trial court concluded that all sexual intercourse involving someone under the age of 16 constitutes child molestation as a matter of law, Dixon's appellate counsel contended that no Georgia court "has held that the act of uncontested intercourse is, as a matter of law, also an act of child molestation."⁴⁶ The unique facts of *Dixon* resulted in widespread social outcry that "justice was not served the day Marcus Dixon went to jail."⁴⁷

Because Dixon was an African-American defendant raised by a white family in a rural and predominantly white Georgia community, many of Dixon's supporters claimed racial inequities in the state criminal system.⁴⁸ Though he did not raise the issue on appeal, Dixon claimed that consensual sex led to a rape charge because his accuser believed "that her daddy was a racist and that he would kill both of us if he knew she was with a black man."⁴⁹

In summing up discriminatory claims, Dr. Joseph Lowery of the Southern Christian Leadership Conference addressed Dixon supporters outside the Georgia Supreme Court, remarking that "[i]f the young lady was black and Marcus Dixon was white, I don't think we would be here."⁵⁰ Notably, however, Dixon's counsel chose not to include allegations of racial discrimination as grounds for appeal.⁵¹

45. *Id.* at 148; *see Jacobs, supra* note 16.

46. Brief of Appellant at 9, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

47. John Lewis, 'Equal Justice' Only An illusion, *ATLANTA J. CONST.*, Jan. 26, 2004.

48. *Jacobs, supra* note 16; *Lewis, supra* note 47; *Williams, supra* note 17.

Until his incarceration, Marcus Dixon was a classic case of a local boy makes good. A heartwarming story of a young man who beat the odds, Dixon was born to a teenage, drug-addicted mother and a father whose whereabouts were unknown. When he was 10 years old, he was taken in by his little league coach, Ken Jones, and his wife, Peri, who are white . . . Marcus Dixon's story should be earmarked for the Disney movie of the week—not Court TV.

Lewis, supra note 47.

49. *Jacobs, supra* note 16; *see also* Brief of Appellant at 4-5, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

50. Dr. Joseph Lowery, Southern Christian Leadership Conference, Address to Marcus Dixon Supporters Gathered at Georgia Supreme Court (Jan. 21, 2004), *quoted in Jacobs, supra* note 16.

51. *See* Brief of Appellant at 32, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072); *American Morning* (CNN television broadcast Jan. 22, 2004) (featuring David Balser, attorney for

Rather, Dixon's primary arguments on appeal involved rules of statutory construction, the rule of lenity, and cruel and unusual punishment prohibitions under the United States and Georgia Constitutions.⁵²

II. STATUTORY CONSTRUCTION: THE SENTENCING CONFLICT ARISING UNDER GEORGIA CODE SECTIONS 16-6-3(B) AND 16-6-4(D)(1)

While the wording of Code section 16-6-3(b), Georgia's statutory rape sentencing provision, and Code section 16-6-4(d)(1), Georgia's aggravated child molestation sentencing provision, are not plainly at odds, the Floyd County jury finding required the trial court to sentence Dixon under the felony provision provided by Code section 16-6-4(d)(1), rather than under the misdemeanor provision provided by Code section 16-6-3(b).⁵³

Code section 16-6-3(b) provides that a statutory rapist "shall be punished by imprisonment for not less than one nor more than twenty years . . . [but] if the victim is 14 or 15 years of age and the [offender] . . . is no more than three years older than the victim, such person shall be guilty of a misdemeanor."⁵⁴ Code section 16-6-4(d)(1), however, provides that one convicted "of aggravated child molestation shall be punished by imprisonment for not less than ten nor more than thirty years . . . [and is] subject to the sentencing and punishment provisions of [section 17-10-6.1]."⁵⁵ Pursuant to Georgia case law, if there are conflicting statutory provisions, courts must construe statutes to further consistency.⁵⁶

In *State v. Collins*, the Georgia Supreme Court affirmed a Court of Appeals reversal of a forcible rape conviction when the defendant

Marcus Dixon: "We're not suggesting that the jury found Marcus guilty because he's black and she was white. No one's argued that. No one contends that.")

52. Brief of Appellant at 1, 34-35, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

53. See *Dixon v. State*, 596 S.E.2d 147, 150 (Ga. 2004); O.C.G.A. § 16-6-3(b) (2005); see also O.C.G.A. § 16-6-4(d)(1) (2005).

54. O.C.G.A. § 16-6-3(b) (2005).

55. O.C.G.A. § 16-6-4(d)(1) (2005).

56. *State v. English*, 578 S.E.2d 413, 418 (Ga. 2003) (finding that when possible, the court should "reconcile any potential conflicts in the statute, so as to make them consistent and harmonious").

was charged with both statutory rape and forcible rape and the state failed to prove force.⁵⁷ In *Collins*, “[a] jury convicted [the defendant] of rape, statutory rape, and incest involving a 12-year-old girl.”⁵⁸ The Georgia Supreme Court reversed the rape conviction and held “that the state must prove the element of force to obtain a conviction for forcible rape of a victim,” regardless of her age.⁵⁹

The *Collins* court reasoned that a minor’s inability to give legal consent to sexual relations may supply the “against her will” element of forcible rape.⁶⁰ But the inability to consent, by itself, does not prove the element of force required for a rape conviction.⁶¹ Significantly, the court noted that if the judiciary assumes that force is shown every time there is an allegation of sexual conduct involving a victim “below the legal age of consent, the same rule would apply to the child entering kindergarten and the sexually active high school student.”⁶²

Further, in *Collins*, Justice Hines concurred in the opinion but wrote separately to stress that the sentencing differences in Code section 16-6-3(b) clarify that there are different grades of punishment for statutory rape, which depend solely on the age of the perpetrator.⁶³ Those sentencing differences reflect the legislature’s determination that nonforcible sexual relations between teenagers less than three years apart in age are not felonious in nature and therefore are subject to only misdemeanor punishment.⁶⁴ Significantly, the majority in *Dixon* cited Justice Hines’s conclusion from *Collins* that “[i]t would be anomalous and a circumvention of express legislative intent to allow the State to obtain conviction and the consequent minimum ten-year punishment prescribed for forcible rape for the conduct of

57. *State v. Collins*, 508 S.E.2d 390, 390 (Ga. 1998).

58. *Id.*

59. *Id.* But see *id.* at 398 (Hunstein, J.J., dissenting) (“[T]he idea of severing the two elements from each other was clever lawyering, but poor law.”).

60. *Collins*, 508 S.E.2d at 391.

61. *Id.* (noting that to assume the element of “force from the victim’s age in all forcible rape cases would, as a practical matter, eliminate the crime of statutory rape”).

62. *Id.* at 392.

63. *Collins*, 508 S.E.2d at 393 (Hines, J., concurring).

64. See *id.*; see also O.C.G.A. § 16-6-3(b) (2005).

sexual intercourse between teenagers when the legislature has determined that conduct to be misdemeanor in nature.”⁶⁵

On appeal to the Georgia Supreme Court, Dixon argued that his conviction for aggravated child molestation could not stand because the State had not alleged or proved simple child molestation, as defined by Code section 16-6-3(a).⁶⁶ Unlike in *Collins*, the court did not fully address the appellant’s claim that the elements of the crime cannot be proven conclusively.⁶⁷ The court found that the State could not prove aggravated child molestation without first proving the lesser-included offense of child molestation.⁶⁸

A. *The Dixon Court’s Reliance on the More Recent Statutory Provision*

In *Dixon*, appellant’s counsel relied on Georgia precedent to show that the more recent and more specific misdemeanor statutory rape provision, in comparison to the felony aggravated child molestation statute, addresses consensual sex between teenagers less than three years apart, when the younger has reached the age of 14 or 15.⁶⁹ Because the statutes regarding statutory rape and aggravated child molestation are part of the same legislative framework intended to limit adults’ sexual exploitation of children, the statutes must be read together.⁷⁰

65. *Collins*, 508 S.E.2d at 393. *But see* *Dixon v. State*, 596 S.E.2d 147, 151-52 (Ga. 2004) (Hines, J., dissenting). Justice Hines maintained that the court has created the conflict between the statutory rape and aggravated child molestation statutes; that in reality, they are two separate and distinct offenses with different elements; and that the elements establishing aggravated child molestation were met. *Id.* at 152. Justice Hines distinguished his *Collins* concurrence from the *Dixon* majority’s use of it, maintaining that the concurrence supported “no connection between the legislative framework concerning the crimes of rape and statutory rape, and the legislative definition of aggravated child molestation.” *Id.* at 152 n.21.

66. Brief of Appellant at 11-12, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072) (arguing that because Code section 16-6-4(a) defines aggravated child molestation in terms of Code section 16-6-3(a), “[a]ccordingly, all acts of aggravated child molestation necessarily involve an underlying act of child molestation.”).

67. *See Dixon*, 596 S.E. 2d at 149 (finding that if Dixon’s conduct were to establish child molestation, then the statutory rape provision would have “no exclusive application,” because any sex between teenagers would establish child molestation).

68. *Id.* at 150.

69. Brief of Appellant at 20, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

70. *Id.* at 13.

The court agreed that the more recent and more specific statute governing a particular offense should prevail when the statutes are “part of a coordinated scheme, relating to the same subject matter”⁷¹ Because the legislature revised Code section 16-6-3(b) in 1996 to eliminate court discretion in charging an offender no more than three years older than a 14-year-old or 15-year-old victim with either a felony or a misdemeanor, the Georgia Supreme Court found that the 1996 revision was the definitive statute regarding nonforcible sex between teenagers.⁷²

In holding that the more recent statute prevails, the *Dixon* court relied on *Jenkins v. State*.⁷³ *Jenkins* involved conflicting Code sections, 17-8-76(a) and 17-10-31.1(d).⁷⁴ The appellant argued that because Code section 17-8-76(a) bars a parole argument in the sentencing phase of a death penalty trial, the state was not allowed to include the parole issue in its address to the jury, even though Code section 17-10-31.1(d) allows such an argument.⁷⁵ In *Jenkins*, a unanimous court found that though the statutory provisions appeared to conflict, Code section 17-10-31.1(d), the more recent legislation, must prevail over Code section 17-8-76(a).⁷⁶

Relying on *Jenkins*, the *Dixon* court reasoned that allowing the state to prosecute nonforcible sex between a 14-year-old or 15-year-old and a partner no more than three years older as either misdemeanor statutory rape or felony aggravated child molestation would frustrate legislative intent, eradicating an exclusive and narrow application of the statutory rape provision.⁷⁷ Because Code section

71. *Dixon*, 596 S.E.2d at 148.

72. *Id.* at 149.

73. *Id.* at 150; *Jenkins v. State*, 458 S.E.2d 477 (Ga. 1995).

74. *Jenkins*, 458 S.E.2d at 478.

75. *Id.*

76. *Id.* (“The rule for construing statutes which may be in conflict is that the most recent legislative expression prevails.”).

77. *Dixon v. State*, 596 S.E.2d 147, 149 (Ga. 2004).

It would be entirely incongruous with the intent of the legislature, when it eliminated the discretionary aspect of the statute and mandated that conduct meeting the misdemeanor statutory rape criteria be punished only as a misdemeanor, if the State retained the discretion to prosecute the exact same conduct as either misdemeanor statutory rape or felony child molestation.

Id. at 150.

16-6-3(b) is the most recent legislative pronouncement regarding sex between teenagers no more than three years apart, the *Dixon* court found that the misdemeanor statutory rape sentencing provision, Code section 16-6-3(b), trumps the felony sentencing provision of Code section 16-6-4(d)(1).⁷⁸ Thus, the court found that the more recent statute regarding specific conduct should prevail.⁷⁹

B. The Dixon Court's Reliance on the More Specific Statutory Provision

Given the legislation governing specific conduct, nonforcible sex between a 14-year-old or 15-year-old and a partner no more than three years older, the *Dixon* court found that it would undermine legislative intent if the same conduct could be prosecuted as felony aggravated child molestation.⁸⁰ In reaching this conclusion, the *Dixon* court relied in part on *Gee v. State*.⁸¹ There, on appeal to the Georgia Supreme Court, the defendant contended that the trial court erred in failing to instruct the jury that either a fine or imprisonment or both were appropriate under a state statute regarding sentencing of a drug offender with previous convictions.⁸² In *Gee*, the trial court instructed the jury on only the imprisonment portion of the statute.⁸³ The Georgia Supreme Court held that the trial court erred in determining that "the definition of felony would take precedence over the specific punishment prescribed" by the statute governing the offense.⁸⁴ The *Gee* court noted the following:

Statutes prescribing punishment are strictly construed, and must be construed together. They never are construed against an accused or a convicted person beyond their literal or obvious meaning . . . If a statute creating or increasing a penalty is

78. *Id.*

79. *Id.*

80. *Id.*; see O.C.G.A. § 16-6-3(b) (2005).

81. *Dixon*, 596 S.E.2d at 149; *Gee v. State*, 171 S.E.2d 291 (Ga. 1969).

82. *Gee*, 171 S.E.2d at 296 ("[T]he statute makes this offense a felony and at the same time provides that [the defendant] may be punished by the imposition of a fine.").

83. *Id.*

84. *Id.*

capable of two constructions, it should be construed so as to operate in favor of life and liberty . . . Where a crime is penalized by a special law, the general provisions of the penal code are not applicable.⁸⁵

Further, in *Vines v. State*, the Georgia Supreme Court held “a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent.”⁸⁶ In *Vines*, the Georgia Supreme Court reversed the appellate court’s reinstatement of an indictment alleging that the defendant’s sexually explicit phone conversation with a 14-year-old victim constituted child molestation under Code section 16-6-4.⁸⁷ Specifically, the *Vines* court addressed whether the state proves the elements of child molestation when the victim and the offender have contact only by telephone.⁸⁸

Because two other statutory provisions dealt more narrowly with the alleged conduct, and because the state’s construction of Code section 16-6-4 was overly broad, the court ruled for the dismissal of the defendant’s indictment.⁸⁹ The *Vines* court reasoned that the defendant’s conduct could be better classified under either the disorderly conduct statute or the statute targeting lewd telephone calls.⁹⁰ The Georgia Supreme Court found that in enacting Code section 16-6-4, the legislature could have determined there was a risk of psychological injury to a child who hears sexually explicit language over the telephone yet chose not to punish such conduct under the statute.⁹¹

Because both the statutory rape and aggravated child molestation provisions are part of a common scheme, Georgia courts should read both provisions together in order to best effectuate the legislature’s

85. *Id.* (quoting 24B C.J.S. *Criminal Law* § 1979 (1962)).

86. *Vines v. State*, 499 S.E.2d 630, 632 (Ga. 1998).

87. *Id.* at 631.

88. *Id.* at 631-32.

89. *Id.*

90. *See id.* at 632.

91. *Vines*, 499 S.E.2d at 632 (“The unambiguous words of a criminal statute are not to be altered by judicial construction so as to punish one not otherwise within its reach, however deserving of punishment his conduct may seem.”) (quoting *Waldroup v. State*, 30 S.E.2d 896 (Ga. 1944)).

intent.⁹² Georgia case law reflects this presumption.⁹³ The legislature designed both Code sections 16-6-3 and 16-6-4 to limit sexual exploitation of children.⁹⁴ But in *Dixon*, the court reasoned that “[i]f the conduct at issue . . . also qualifies as child molestation, then the misdemeanor statutory rape provision would have no exclusive application, because any instance of sex between teenagers would also constitute child molestation.”⁹⁵

Because Marcus Dixon’s sentence was predicated on conduct falling under Code section 16-6-4(d) felony, aggravated child molestation, but was more specifically and recently addressed by the 1996 amendment to Code section 16-6-3(b), the court found that the statutory rape misdemeanor classification and sentence should prevail under a statutory construction analysis.⁹⁶

III. STATUTORY CONSTRUCTION: RULE OF LENITY APPLICATION

The rule of lenity, a rule of statutory construction, provides that “[w]here any uncertainty develops as to which penal clause is applicable, the accused is entitled to have the lesser of two penalties administered.”⁹⁷ In short, where the conduct that constitutes one offense also establishes grounds for a more harshly punished offense, the defendant is subject only to the lesser of the two punishments.⁹⁸

92. *Id.*; see *Bowman v. State*, 490 S.E.2d 163 (Ga. Ct. App. 1997) (noting that the Georgia child molestation and statutory rape statutes exist to penalize sexual exploitation of minors under age 16).

93. *Dixon v. State*, 596 S.E.2d 147, 148 n.2 (Ga. 2004) (finding that “the entire system must be construed as a whole to determine the intent and purpose of the laws as applied to each particular case or state of facts” in holding that custody of children should lie with maternal rather than paternal grandparents, even though the father conveyed parental authority to the latter when father was incarcerated for killing the mother of the children (citing *Lucas v. Smith*, 41 S.E.2d 527 (Ga. 1957))).

94. See O.C.G.A. § 16-6-3 (2005); see also O.C.G.A. § 16-6-4 (2005); HB 377, 1995 Ga. Gen. Assem. (codified as O.C.G.A. § 42-8-66) (2005).

95. *Dixon*, 596 S.E.2d at 149.

96. *Id.*

97. *Curtis v. State*, 118 S.E.2d 264, 273 (Ga. Ct. App. 1960), quoted in *Gee v. State*, 171 S.E.2d 291, 296 (Ga. 1969); see *United States v. McLemore*, 38 F.3d 1160, 1165 (11th Cir. 1994), cited in Brief of Appellant at 31, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072) (“[W]hen a criminal statute is ambiguous as to application to certain conduct, the statute must be construed narrowly against the state and in favor of the defendant.”).

98. See *Brown v. State*, 581 S.E.2d 35, 35-36 (Ga. 2003).

Dixon's appellate counsel argued that teenagers similarly situated to Marcus Dixon should be sentenced under the misdemeanor statutory rape provision rather than as violent sex offenders under the felony aggravated child molestation statute.⁹⁹ Dixon's counsel reasoned that absent "fair warning," application of the felony sentence proves exceptionally harsh.¹⁰⁰ In *Dixon*, the Georgia Supreme Court agreed that the rule of lenity subjected Dixon to only a misdemeanor sentence "due to the conflicting nature of [Code sections 16-6-3(b) and 16-6-4(d)] with respect to their prescribed punishments"¹⁰¹

The ruling in *Dixon* finds support in the Georgia Supreme Court's earlier decisions.¹⁰² In *Brown v. State*, the court held that when the same conduct subjects a defendant to misdemeanor or felony punishment, the rule of lenity requires that the defendant receive only the misdemeanor sentence.¹⁰³ There, a jury convicted the defendant under a statute making it a felony for a person "knowingly to manufacture, deliver, distribute, dispense, possess with the intent to distribute, or sell a noncontrolled substance upon . . . [t]he express or implied representation that the substance is a narcotic or non-narcotic controlled substance."¹⁰⁴

On appeal, Brown, who sold fake crack cocaine to a police informant, argued that Code section 16-13-30.2, which made "knowingly manufactur[ing], distribut[ing], or possess[ing] with intent to distribute an imitation controlled substance" a misdemeanor, also governed the facts of her case.¹⁰⁵ The court found Brown could

99. Brief of Appellant at 31-32, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

100. *Id.* at 32-33.

101. *Dixon v. State*, 596 S.E.2d 147, 150 (Ga. 2004).

102. *See, e.g.*, *Brown v. State*, 58 S.E.2d 35 (Ga. 2003) (holding that the rule of lenity mandated a misdemeanor rather than a felony sentence in the case of conflicting sentencing provisions regarding the distribution of fake noncontrolled substances); *Chandler v. State*, 364 S.E.2d 273 (Ga. 1988) (holding that revocation of probation rather than felony punishment for escape applies when the offender failed to return to a detention center following permitted temporary leave to seek employment). *But see* *State v. Tiraboschi*, 504 S.E.2d 689 (Ga. 1998) (reversing trial court's sustaining of defendant's demurrer and holding that the defendant could be indicted and tried, but not sentenced, for vehicular homicide, as well as felony murder for causing the death of another while fleeing the police).

103. *Brown*, 58 S.E.2d at 37.

104. *Id.* at 36 (citing O.C.G.A. § 16-13-30.1(a)(1)(A) (2005)).

105. *Id.* at 36 (citing O.C.G.A. § 16-13-30.2 (2005)).

be sentenced only under the misdemeanor provision because the conduct predating her indictment and conviction fell under both the felony or misdemeanor provisions.¹⁰⁶

The *Dixon* court found that the rule of lenity supported Dixon's claims on appeal.¹⁰⁷ The court's opinion, however, focuses primarily on its statutory construction analysis, determining that the sentencing provisions of Code section 16-6-3(b) should prevail over the mandatory minimum sentence in Code section 16-6-4(d) because the former is the more recent and more specific legislative pronouncement.¹⁰⁸

IV. CONSIDERATION OF MANDATORY MINIMUM TEN-YEAR SENTENCE UNDER FEDERAL AND STATE CONSTITUTIONAL PROVISIONS

While the Georgia Supreme Court decided *Dixon* under statutory construction and rule of lenity analyses and declined to address the issue of whether Dixon's ten-year sentence was cruel and unusual under federal or state constitutional provisions, Dixon's counsel made a strong argument that the felony sentence under the unique facts of *Dixon* was unconstitutional under either provision.¹⁰⁹

Addressing the constitutionality of the sentence, Dixon's counsel relied on proportionality, arguing that the sentence should fit within society's view of the offender's conduct.¹¹⁰ At least one Georgia court has considered legislative history and enactment when determining society's view of punishment for a particular offense.¹¹¹ In *Fleming v. Zant*, the Georgia Supreme Court held that executing the mentally retarded is unconstitutionally cruel and unusual, noting that objective evidence such as polls, studies, and sentencing jury determination data is important in ascertaining society's view of a

106. *Id.* at 37.

107. *See Dixon v. State*, 596 S.E.2d 147 (Ga. 2004).

108. *See id.*

109. U.S. CONST. amend. VIII; GA. CONST. art. I, § 1, para. XVII; Brief of Appellant at 34-41, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

110. Brief of Appellant at 35-36, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

111. *Fleming v. Zant*, 386 S.E.2d 339, 341 (Ga. 1989) (noting that determinations of cruel and unusual punishment change with society's standards of decency).

particular punishment.¹¹² But the court found that legislative enactments are the best means for determining whether society views a particular punishment as cruel and unusual.¹¹³

In *Fleming*, the court found that a 1988 amendment to Code section 17-7-131(j), mandating life imprisonment rather than the death penalty for a mentally retarded defendant, applied despite the fact the legislature passed the amendment more than ten years after the court sentenced the defendant.¹¹⁴ The court found that the amendment, passed by elected officials, reflected Georgians' belief that executing the mentally retarded made no "measurable contribution to acceptable goals of punishment."¹¹⁵

In the last ten years, the Georgia legislature has modified the Criminal Code to allow misdemeanor sentencing for nonforcible sex between teenagers less than three years apart.¹¹⁶ Further, the Child Protection Act of 1995 mandates harsher felony sentencing for aggravated child molestation.¹¹⁷ The sentencing differences between Code sections 16-6-3(b) and 16-6-4(d)(1) demonstrate the legislative view that consensual sex between teenagers should be treated less harshly than "immoral or indecent" sexual acts perpetrated by adults against children under age 16.¹¹⁸ Dixon's appellate counsel argued that since the legislature clearly provided misdemeanor status to Dixon's offense, sentencing Dixon under the felony provision rather than the misdemeanor provision solely because of incidental injury to the victim was unconstitutionally cruel and unusual.¹¹⁹

Additionally, Dixon's counsel argued that while the sentencing provisions of sections 16-6-3(b) and 16-6-4(d)(1) may be facially valid, the court could still find that Dixon's sentence was unconstitutional as applied.¹²⁰ Dixon's counsel relied in part on *Hart*

112. *Id.* at 341, 343.

113. *Id.* at 341.

114. *See Fleming*, 386 S.E.2d 339.

115. *Id.* at 342.

116. O.C.G.A. § 16-6-3(b) (2005); Brief of Appellant at 36-38, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

117. HB 377, 1995 Ga. Gen. Assem.

118. *See* O.C.G.A. § 16-6-3(b),4(a) (2005).

119. Brief of Appellant at 38, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072).

120. *Id.*

v. Coiner, in which the Fourth Circuit held that while West Virginia's recidivist statute, which mandated a life sentence for three separate convictions of imprisonable offenses, was facially constitutional, the statute as applied to a defendant convicted of perjury, writing a \$50 bad check, and transporting \$140 of forged checks, was unconstitutional.¹²¹ In *Hart*, the defendant did not contend that the West Virginia recidivist statute was unconstitutional, but rather that his punishment was excessive and disproportionate in relation to the nonviolent nature of his offenses.¹²² The *Hart* court found that the recidivist statute was unlikely to achieve the legitimate legislative purpose of deterrence under the facts of the case.¹²³

Had the Georgia Supreme Court not decided *Dixon* on other grounds, the *Hart* argument could apply to the *Dixon* case considering the mandatory nature of Code section 16-6-4(d)(1).¹²⁴ In *Dixon*, appellate counsel did not argue that the ten-year mandatory minimum sentence under Code section 16-6-4(d)(1) was facially unconstitutional; but rather that in light of legislative determination that consensual sex between teenagers should be treated as a misdemeanor, Dixon's mandatory ten-year prison sentence was unconstitutional as applied to his case.¹²⁵ To further this contention, Dixon's counsel juxtaposed Dixon's conduct with arguably more egregious conduct predicated less severe sentences.¹²⁶

Though not referenced in the appeal, societal outcry supports a finding that Dixon's sentence was above and beyond society's view of the appropriate punishment for nonforcible sex between

121. *Hart v. Coiner*, 483 F.2d 136, 138-39 (4th Cir. 1973) (noting that had the conviction involved a bad check of one cent less than \$50, the offense would have been punished by confinement in the county jail, instead of prison, and thus would not substantiate an imprisonable offense under the recidivist statute).

122. *Id.* at 139.

123. *Id.* at 143.

124. See O.C.G.A. § 16-6-4(d)(1) (2005).

125. Brief of Appellant at 38-39, *Dixon v. State*, 596 S.E.2d 147 (Ga. 2004) (No. S04A0072). The legislature based its determination to treat sex between teenagers more leniently than other sexual offenses on contemporary society's view of sex between teenagers. *Id.*

126. *Id.* at 39-40 (noting that a conviction under Code section 16-5-3(a) for involuntary manslaughter during the commission of an unlawful act receives a one to ten-year sentence; a conviction under Code section 40-6-393 for first-degree vehicular homicide receives a three to ten-year sentence).

teenagers.¹²⁷ U.S. Representative John Lewis called on the Georgia Supreme Court to “have a sense of righteous indignation in this case.”¹²⁸ Representative Lewis’s justification was that the jury acquitted Dixon of all major charges and that “youthful indiscretion should not be punished in Georgia by 10 years in jail, recision [sic] of the right to vote and pointing a promising young man toward a future in jail.”¹²⁹

Because the court decided Dixon on other grounds, however, it is difficult to analyze whether current statutory provisions, specifically Code section 16-6-4(d)(1), are unconstitutionally cruel and unusual as applied to the *Dixon* case.¹³⁰

V. PROPOSED LEGISLATION TO ADDRESS DEFENDANTS SIMILARLY SITUATED TO MARCUS DIXON¹³¹

The Georgia General Assembly should clarify the purpose and grounds for applying mandatory minimum sentencing to aggravated child molestation by either excluding or including nonforcible sexual relations between teenagers, when a 14-year-old or 15-year-old has sexual relations with a partner no more than three years older, but sustains anticipatable injury during the encounter.¹³²

While the Georgia Supreme Court clarified statutory application under the unique facts of *Dixon*, the statutory rape and aggravated child molestation statutes remain in conflict under certain, albeit rare, fact patterns.¹³³ Perhaps the greatest inconsistency between the provisions results when nonforcible sexual relations between a 15-year-old and 18-year-old that stop short of sexual intercourse, but

127. Lewis, *supra* note 47.

128. *Id.*

129. *Id.*

130. Dixon v. State, 596 S.E.2d 147, 151 (Ga. 2004) (holding that the court “need not address Dixon’s contention that his sentence is unconstitutionally cruel and unusual” because the court bases its decision on lack of legislative intent for prosecution of conduct meeting requirements of misdemeanor statutory rape under the aggravated child molestation statute).

131. See SB 620, 2004 Ga. Gen. Assem. (proposed by Sen. Vincent Fort).

132. See *Dixon*, 596 S.E.2d at 151.

133. *Id.* at 150-51.

create even slight injury such as bruising.¹³⁴ Such a case would trigger ten-year mandatory minimum sentencing under the aggravated child molestation statute.¹³⁵ In contrast, if the same 15-year-old and 18-year-old had consensual sexual intercourse, and that encounter produced no injury, then only the one-year misdemeanor sentence would apply under Georgia's statutory rape provision.¹³⁶

In March of 2004, Senator Vincent Fort proposed Senate Bill 620 to amend Code sections 16-6-4 and 17-10-6.1 to give Georgia courts sentencing discretion for some offenders convicted of aggravated child molestation.¹³⁷ The proposed bill would have amended the aggravated child molestation provision by incorporating legislative intent expressed in Code section 16-6-3(b), Georgia's statutory rape provision, which gives misdemeanor status to non-forcible sex between a 14-year-old or 15-year-old victim and an offender no more than three years older.¹³⁸

The suggested aggravated child molestation provision would allow for discretionary sentencing of one to 30 years for an offender who is not more than three years older than a 14-year-old or 15-year-old victim.¹³⁹ Further, the amended provision would remove the specific offense of teenage sex from the ambit of the Act, meaning that an offender similarly situated to Marcus Dixon would not be subject to the mandatory sentencing provisions of Code section 17-10-6.1.¹⁴⁰

Because the Georgia Supreme Court did not decide the *Dixon* case until May 2004 and Senator Fort introduced his bill on March 12, 2004, perhaps the Senate Judiciary Committee decided to await

134. *Id.*

The conflicting nature of the statutory scheme relating to sexual conduct, especially with respect to teenagers, may lead to inconsistent results. Under the current statutes, it is entirely possible that teenagers could be convicted of aggravated child molestation and receive the concomitant ten-year minimum sentence if they willingly engage in sexual activity but stop short of the actual act of sexual intercourse, so long as one experienced slight pain or received even minor injuries incidental to the act.

Id.

135. *Id.*

136. *See id.*; *see also* O.C.G.A. § 16-6-3(b) (2005).

137. SB 620, 2004 Ga. Gen. Assem.

138. *See id.*; *see also* O.C.G.A. § 16-6-3(b) (2005).

139. SB 620, 2004 Ga. Gen. Assem.

140. *See id.*

the court's ruling before addressing the merits of the proposed legislative amendments.¹⁴¹ Because the Senate Judiciary Committee declined to discuss Senator Fort's bill, it is a "dead" bill.¹⁴²

While Senate Bill 620 is not currently viable, Senator Fort or another senator could resubmit the proposed bill for consideration in a future legislative session.¹⁴³ Given the *Dixon* court's urging that the legislature "make a more recognizable distinction between statutory rape, child molestation, and the other sexual crimes, and to clarify the sort of conduct that will qualify for the ten-year minimum sentence accompanying a conviction for aggravated child molestation," the legislature may decide in the near future that amending Code sections 16-6-4(d) and 17-10-6.1 is the best way to clarify legislative intent.¹⁴⁴

CONCLUSION

The *Dixon* case presented novel legal issues for the Georgia Supreme Court.¹⁴⁵ While it appears that the court ultimately decided the case on a purely statutory construction platform, the decision does not eliminate potential for confusion or abuse in applying Code sections 16-6-3(b) and 16-6-4(d)(1).¹⁴⁶

Though it has not been contended that the mandatory minimum sentencing provision of Code section 16-6-4(d)(1) is facially unconstitutional, there is a strong argument that the statute may be unconstitutionally cruel and unusual as applied to sexual intercourse when an offender is no more than three years older than a 14-year-old or 15-year-old partner, and the younger sustains an injury consistent with first time sexual intercourse.¹⁴⁷

141. Telephone Interview with Jill Anderson Travis, Legislative Counsel, Georgia General Assembly, in Atlanta, Ga. (Oct. 29, 2004) (stating that the Senate committees may refuse to discuss proposed legislative enactments when a judicial pronouncement on the matter is pending).

142. *Id.*

143. *Id.*

144. *Dixon v. State*, 596 S.E.2d 147, 150 (Ga. 2004).

145. *See infra* Part I.

146. *See infra* Parts II-IV.

147. *See infra* Parts III, IV.

To resolve prosecutorial and judicial confusion, the Georgia legislature should clarify its intent regarding punishment of teenage offenders in cases of nonforcible but predictably injurious sexual relations with other teenagers no more than three years younger than the offender and at least 14 years of age.¹⁴⁸ The legislature should reevaluate the interaction between the misdemeanor statutory rape provision and the felony aggravated assault provision.¹⁴⁹

Suzanne Smith Williams

148. *See infra* Part IV.

149. *See infra* Parts II-IV.