

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 748

6
7 H.P. 528 House of Representatives, February 27, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Nadeau of Lewiston

Cosponsored by Representative Rolde of York, Senator Carpenter of
Aroostook and Speaker Martin of Eagle Lake.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Concerning the Courtroom Use of
18 Videotaped Testimony of Juveniles.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 15 MRSA §1205, sub-§1, as enacted by PL 1983, c.
23 411, is amended to read:

24 1. Emotional or psychological well-being of a
25 person. On motion of the prosecution and in camera
26 hearing, the court expressly finds that there is a
27 risk that the emotional or psychological well-being
28 of the person would be substantially impaired if the
29 person were to testify at trial; and

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STATEMENT OF FACT

2 Current law permits a child under 14 years of age
3 who has been the alleged victim of sexual abuse to
4 testify outside of the courtroom in a criminal case
5 concerning that abuse if the judge in the case makes
6 a certain finding.

7 The child's out-of-court testimony is subject to
8 certain conditions, including the recording of the
9 testimony by videotape or other means and the right
10 of the defendant's attorney to cross-examine the
11 child. The child is spared the usual requirement of
12 providing testimony describing sexual abuse in a
13 courtroom open to the public and in front of a jury.

14 The finding that the judge must make under cur-
15 rent law to permit the child to testify out of court
16 is that the emotional or psychological well-being of
17 the child will in fact be substantially impaired if
18 the child were to testify in court. Current law is
19 unrealistic in requiring a finding that must meet the
20 high standard of certainty. This strict requirement
21 causes the law which seeks to protect child sexual
22 abuse victims from the damage of testifying in court
23 to be unusable.

24 The purpose of this bill is to lessen the high
25 standard of certainty that impairment of the child
26 will occur before out of court testimony may be or-
27 dered to the more realistic standard of a risk of im-
28 pairment. Requiring the court to find that a child
29 is at risk of psychological or emotional impairment
30 will permit the court to make a finding that coin-
31 cides with the abilities of psychological experts to
32 predict the impact of testifying in court on a child
33 witness; these experts can testify concerning the
34 risk of harm to the child, but cannot state that a
35 child will in fact be impaired by the experience.

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