

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1187

H.P. 886 Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk Presented by Representative ANTHONY of South Portland. Cosponsored by Representatives THISTLE of Dover-Foxcroft and JOSEPH of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Facilitate the Use of Testimony of 2 Young Victims of Sex Offenses. 3 4 Be it enacted by the People of the State of Maine as 5 follows: 6 15 MRSA §1206 is enacted to read: 7 §1206. Admissibility of statements made by minors 8 describing sexual conduct A statement made by a person under the age of 14 years describing any incident involving sexual interg 10 course, a sexual act or sexual contact performed with or on the minor by another, shall not be excluded by the hearsay rule as evidence in criminal proceedings 11 12 13 14 in courts of this State if:

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1 1. Trustworthiness of statements. The court 2 finds, at an in camera hearing, that the time, con-3 and circumstances of the statement show tent particularized guarantees of trustworthiness; 4 5 2. Opportunity for cross-examination. The minor 6 either: 7 A. Testifies at the proceedings pursuant to sec-8 tion 1205; or Is unavailable to testify at the proceedings 9 Β. pursuant to section 1205, provided that when the 10 minor is unavailable to testify, such statement 11 may be admitted only if there is corroborative 12 13 evidence of the act; and The State gives the defendant suffi-14 3. Notice. cient notice prior to the proceedings in which the 15 statements will be presented that it 16 intends to 17 present statements pursuant to this section. 18

STATEMENT OF FACT

19 An estimated one in 5 females and one in 11 males are sexually victimized as children. These children 20 21 often further victimized by having to tell what are happened to them in a courtroom in front of strangers 22 and their abuser. Our system of justice is 23 designed 24 adults, rather than for children, and it is imfor 25 portant to adopt a system for the needs of children to the degree possible, while also protecting the due 26 process rights of adults accused of crimes. 27 Creating hearsay exception with careful safeguards is one 28 а such way. This bill allows trustworthy, out-of-court 29 30 statements by children describing the sexual conduct 31 come into evidence in the testimony of those to to 32 whom the statements were made.

33 As with all recognized exceptions to the hearsay rule, this bill requires sufficient indicia of reli-34 35 ability as to the accuracy of the making and reporting of the statements before those statements may be 36 admitted into evidence. "Particularized guarantees 37 38 of trustworthiness" is the constitutional standard

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enuciated by the United State Supreme Court in Ohio v. Roberts (448 U.S. 56, 1980) to determine the admissibility of hearsay statements which do not fall within already recognized hearsay exceptions.

This bill preserves the accused's right to crossexamination by providing the opportunity to question the child regarding the prior statements. Only if it is impossible for the child to testify can the child's reliable statements be admitted without any cross-examination and then only if they are not the sole evidence upon which the accused can be convicted.

13 This bill also requires that the State give the 14 accused sufficient notice of its intentions to 15 present the hearsay statements of child victims so 16 that attacks on the accuracy or reliability of the 17 statements can be prepared.

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