

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 275

H.P. 209

House of Representatives, January 18, 2007

### An Act To Protect Child Victims of Sexual Abuse

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative EDGECOMB of Caribou.  
Cosponsored by Senator PLOWMAN of Penobscot and  
Representatives: HARLOW of Portland, LANSLEY of Sabattus, McFADDEN of Dennysville.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §1205, sub-§2**, as repealed and replaced by PL 1985, c. 495,  
3 §1, is amended to read:

4 **2. Examination and cross-examination.** Pursuant to order of court made on such a  
5 motion, ~~the statement is made under oath, subject to all of the rights of confrontation~~  
6 ~~secured to an accused by the Constitution of Maine or the United States Constitution and~~  
7 ~~the statement has been recorded by any means approved by the court, and is made in the~~  
8 ~~presence of a judge or justice. :~~

9 A. When the statement is testimonial, the statement is made under oath, subject to all  
10 rights of confrontation secured to an accused by the Constitution of Maine or the  
11 United States Constitution and the statement has been recorded by any means  
12 approved by the court and is made in the presence of a judge or justice; or

13 B. When the statement is not testimonial, the statement was made in circumstances  
14 having sufficient guarantees of trustworthiness, the person to whom the statement  
15 was made testifies in open court and the person to whom the statement was made is  
16 subject to all the rights of confrontation secured to an accused by the Constitution of  
17 Maine or the United States Constitution.

18 **SUMMARY**

19 This bill amends the law concerning the admissibility of out-of-court statements by  
20 certain victims of sexual assault in criminal prosecutions. This bill is consistent with the  
21 most recent United States Supreme Court decisions concerning the admissibility of  
22 nontestimonial statements: Crawford v. Washington, 541 U.S. 36 (2004) and Davis v.  
23 Washington, No. 05-5224 (June 19, 2006).

24 This bill allows the admission of statements made by the victim to another person  
25 when the statements are not considered testimonial. The bill allows the person to whom  
26 the statement was made to repeat the statement in testimony in open court if the statement  
27 was made in circumstances having sufficient guarantees of trustworthiness, and the  
28 person testifying can be confronted and cross-examined as required under the  
29 Constitution of Maine or the United States Constitution. This will allow a child's  
30 therapist, for example, to whom the child disclosed the conduct to testify in court about  
31 the child's statement about that conduct, and the statement can be admitted as allowable  
32 hearsay. The therapist must be subject to cross-examination and all other rights secured  
33 to the accused. This bill applies to statements made by a victim who has a developmental  
34 disability as well as to children under 16 years of age. Whether the circumstances have  
35 sufficient guarantees of trustworthiness is determined by the facts of each case.