

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 25

H.P. 20

House of Representatives, January 5, 2009

An Act To Protect Child Victims of Sexual Abuse

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 SHERMAN of Aroostook and
Representatives: AYOTTE of Caswell, SUTHERLAND of Chapman.

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2 **Sec. 1. 15 MRSA §1205, sub-§2**, as repealed and replaced by PL 1985, c. 495, §1, is
3 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 secured~~
6 ~~to an accused by the Constitution of Maine or the United States Constitution and the~~
7 ~~statement has been recorded by any means approved by the court, and is made in the presence~~
8 ~~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 United
11 States Constitution, and the statement has been recorded by any means approved by the
12 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 was
15 made testifies in open court and the person to whom the statement was made is subject to
16 all the rights of confrontation secured to an accused by the Constitution of Maine or the
17 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.

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