

# MAINE STATE LEGISLATURE

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L D 765

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Date

(Filing No S-115 )

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**REPORT A**  
**JUDICIARY**

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**STATE OF MAINE**

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**SENATE**

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**131ST LEGISLATURE**

8

**FIRST SPECIAL SESSION**

9

COMMITTEE AMENDMENT "A" to S P 324, L D 765, "An Act to Permit Recordings of a Protected Person to Be Admissible in Evidence"

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Amend the bill by striking out the title and substituting the following

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**'An Act to Establish an Exception to the Hearsay Rule for Forensic Interviews of a Protected Person'**

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Amend the bill in section 1 in §358 in the first line (page 1, line 3 in L D ) by striking out the following "Admissibility of recordings" and inserting the following 'Recordings'

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Amend the bill in section 1 in §358 by striking out all of subsection 3 (page 1, lines 22 to 36 in L D ) and inserting the following

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**3. Exception to hearsay rule. This section establishes an exception to the hearsay rule under the Maine Rules of Evidence, Rule 802, for the recording of a forensic interview of a protected person. A party seeking to offer all or a portion of a recording of a forensic interview of a protected person into evidence shall file a motion in limine. After providing all parties the opportunity to be heard on the motion, the court shall determine whether, in addition to satisfying all of the other requirements of this section, the following criteria have been met**

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A The interview was conducted by a forensic interviewer,

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B Statements made by the protected person during the forensic interview were not made in response to suggestive or leading questions,

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C A relative of the protected person was not present in the room during the substantive phase of the interview,

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D An attorney for any party in a proceeding with the protected person was not present in the room with the protected person during the interview,

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E The recording is both visual and audio.

1 F The recording is a fair and accurate representation of the statements made by the  
2 protected person and has not been altered except for purposes of admissibility.

3 G In a criminal matter, the protected person is available to testify or be cross-examined  
4 by any party and is called as a witness by the party offering the recording in evidence  
5 immediately following the presentation of the recording to the trier of fact and made  
6 available for cross-examination, unless all other parties expressly waive the  
7 requirement that the witness testify, and

8 H The portion of the interview to be admitted in evidence is relevant pursuant to the  
9 Maine Rules of Evidence, Rule 401, and is not otherwise inadmissible under the Maine  
10 Rules of Evidence

11 In the event that the protected person was the subject of more than one forensic interview,  
12 the exception to hearsay established under this subsection does not apply to statements  
13 from more than one forensic interview related to the same event or incident'

14 Amend the bill in section 1 in §358 by striking out all of subsection 5 (page 2, lines 3  
15 to 8 in L D )

16 Amend the bill by striking out all of section 4 and inserting the following

17 '**Sec. 4. 22 MRSA §4019, sub-§9**, as enacted by PL 2013, c 364, §1, is amended  
18 to read

19 **9. Confidential records ~~except recordings of forensic interviews~~.** The files, reports,  
20 records, communications and working papers used or developed in providing services  
21 under this section are confidential and are not public records for purposes of Title 1, chapter  
22 13, subchapter 1 ~~Information~~ Except for recordings of forensic interviews, which are  
23 governed by subsection 9-A, information may be disclosed only to the following in order  
24 for them to carry out their duties

25 A The department, department employees, law enforcement agencies, prosecuting  
26 attorneys, assistant attorneys general who are involved in adult and child protective  
27 cases, medical professionals and other state agencies that provide services to children  
28 and families;

29 ~~B The attorney for a child who is the subject of confidential records, and~~

30 ~~C A guardian ad litem appointed under section 4005 for a child who is the subject of~~  
31 ~~confidential records'~~

32 Amend the bill in section 5 in subsection 9-A in the 2nd line (page 2, line 33 in L D )  
33 by inserting after the following "govern recordings of forensic interviews" the following  
34 'used or developed in providing services under this section'

35 Amend the bill in section 5 in subsection 9-A in paragraph A in the 2nd line (page 2,  
36 line 37 in L D ) by inserting after the following "involved in" the following 'adult and'

37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
38 number to read consecutively

39 **SUMMARY**

40 This amendment, which is the majority report of the committee, changes the bill title  
41 and requires the party requesting that all or a portion of a recording of a forensic interview

1 of a minor or of an adult who is eligible for adult protective services, referred to in the bill  
 2 as a "protected person," be admitted into evidence file a motion in limine and that the court  
 3 allow all parties to be heard on the issue of whether the recording meets the requirements  
 4 for the statutory exception to the hearsay rule established by this legislation. The  
 5 amendment removes the provision of the bill requiring a court to admit the forensic  
 6 interview recording into evidence if a forensic interviewer certifies that the recording is  
 7 true and complete and meets all of the statutory requirements to fall within the exception  
 8 to the hearsay rule under the Maine Rules of Evidence, Rule 802.

9 The amendment also clarifies that all of the other Maine Rules of Evidence apply to  
 10 the admissibility of the recording and that

11 1 To fall within the hearsay exception, statements made by the protected person during  
 12 the forensic interview may not have been made in response to suggestive or leading  
 13 questions,

14 2 Statements from more than one forensic interview of the same protected person that  
 15 relate to the same event or incident do not fall within the hearsay exception, and

16 3 In a criminal matter, the party offering the recording into evidence must call the  
 17 protected person as a witness immediately following the playing of the recording and the  
 18 witness must be available for cross-examination, unless all other parties to the case  
 19 expressly waive this requirement.

20 In addition, the amendment provides that the records of a child advocacy center,  
 21 including a recording of a forensic interview, may be disclosed to assistant attorneys  
 22 general who are involved in adult protective cases.