

MAINE STATE LEGISLATURE

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L D 765

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REPORT B

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JUDICIARY

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STATE OF MAINE

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SENATE

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131ST LEGISLATURE

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FIRST SPECIAL SESSION

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COMMITTEE AMENDMENT " 3 " 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 in subsection 1 by striking out all of paragraph C (page 1, lines 10 to 14 in L D) and inserting the following

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'C "Protected person" means a person who at the time of a recording of a forensic interview

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(1) Has not attained 17 years of age,

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(2) Is 17 years of age and the court finds that requiring the person to testify on direct examination about the incidents or events described in the forensic interview would create a substantial likelihood that the person would suffer severe emotional trauma, or

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(3) Is an adult who is eligible for protective services pursuant to the Adult Protective Services Act '

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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

COMMITTEE AMENDMENT

1 addition to satisfying all of the other requirements of this section, the following criteria
2 have been met

3 A The interview was conducted by a forensic interviewer,

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

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

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

10 E The recording is both visual and audio,

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

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

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

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

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

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

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

29 **9. Confidential records except recordings of forensic interviews.** The files, reports,
30 records, communications and working papers used or developed in providing services
31 under this section are confidential and are not public records for purposes of Title 1, chapter
32 13, subchapter 1 ~~Information~~ Except for recordings of forensic interviews, which are
33 governed by subsection 9-A, information may be disclosed only to the following in order
34 for them to carry out their duties

35 A The department, department employees, law enforcement agencies, prosecuting
36 attorneys, assistant attorneys general who are involved in adult and child protective
37 cases, medical professionals and other state agencies that provide services to children
38 and families,

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

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

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

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

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

8 **SUMMARY**

9 This amendment, which is a minority report of the committee, changes the bill title and
 10 amends the definition of "protected person" from the bill to include persons who have not
 11 attained 17 years of age, persons who are 17 years of age and who would suffer severe
 12 emotional trauma if they were required to testify on direct examination about the incidents
 13 described in the forensic interview and adults who are eligible for adult protective services
 14 It also requires the party requesting that all or a portion of a recording of a forensic
 15 interview of a protected person be admitted into evidence file a motion in limine and that
 16 the court allow all parties to be heard on the issue of whether the recording meets the
 17 requirements for the statutory exception to the hearsay rule established by this legislation
 18 The amendment removes the provision of the bill requiring a court to admit the forensic
 19 interview recording into evidence if a forensic interviewer certifies that the recording is
 20 true and complete and meets all of the statutory requirements to fall within the exception
 21 to the hearsay rule under the Maine Rules of Evidence, Rule 802

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

24 1 To fall within the hearsay exception, statements made by the protected person during
 25 the forensic interview may not have been made in response to suggestive or leading
 26 questions,

27 2 Statements from more than one forensic interview of the same protected person that
 28 relate to the same event or incident do not fall within the hearsay exception, and

29 3 In a criminal matter, the party offering the recording into evidence must call the
 30 protected person as a witness immediately following the playing of the recording and the
 31 witness must be available for cross-examination, unless all other parties to the case
 32 expressly waive this requirement

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