

MAINE STATE LEGISLATURE

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Date 5/22/23

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REPORT C

JUDICIARY

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

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

Amend the bill by striking out the title and substituting the following
'An Act to Establish an Exception to the Hearsay Rule for Forensic Interviews of a Protected Person'

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'**

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

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

- (1) Has not attained 13 years of age,
- (2) Is at least 13 years of age and has not attained 18 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
- (3) Is an adult who is eligible for protective services pursuant to the Adult Protective Services Act'

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

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 conducted by a forensic interviewer if the following conditions have been met

COMMITTEE AMENDMENT

1 A During a pretrial hearing conducted outside the presence of the jury, the party
 2 seeking to offer the recording into evidence must demonstrate to the reasonable
 3 satisfaction of the court that

4 (1) The portions of the recording to be admitted in evidence are reasonably reliable
 5 and are not based on hearsay,

6 (2) The portions of the recording to be admitted into evidence are relevant and
 7 material to the issues in the case,

8 (3) The probative value of those portions of the recording that will be admitted is
 9 not substantially outweighed by the danger of unfair prejudice, confusing the
 10 issues, misleading the jury, undue delay, wasting time or needlessly presenting
 11 cumulative evidence, and

12 (4) An attorney for any party in the proceeding, including the prosecuting attorney
 13 or any attorney from a district attorney's office or from the Office of the Attorney
 14 General, was not present in the room with the protected person during the forensic
 15 interview

16 B If the case in which the recording will be admitted is a criminal matter, all persons
 17 present during the forensic interview, including the protected person, must be present
 18 and available to testify and to be cross-examined The party offering the recording into
 19 evidence shall call the protected person as a witness immediately following the
 20 presentation of the recording to the trier of fact, unless all other parties expressly waive
 21 the requirement that the witness testify

22 In the event that the protected person was the subject of more than one forensic interview,
 23 duplicative statements within those recordings may not be admitted except as authorized
 24 by the Maine Rules of Evidence, Rule 801(d)'

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

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

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

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

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

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

41 ~~C A guardian ad litem appointed under section 4005 for a child who is the subject of~~
 42 ~~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" in the bill to include persons who have not
 11 attained 13 years of age, persons who are 13 to 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 protective services It
 14 also requires the party requesting that a recording of a forensic interview of a protected
 15 person be admitted into evidence demonstrate to the reasonable satisfaction of the court
 16 during a pretrial hearing that

17 1 The portions of the recording to be admitted in evidence are reasonably reliable and
 18 are not based on hearsay,

19 2 The portions of the recording to be admitted in evidence are relevant and material
 20 to the issues in the case,

21 3 The probative value of those portions of the recording that will be admitted is not
 22 substantially outweighed by the danger of unfair prejudice, confusing the issues,
 23 misleading the jury, undue delay, wasting time or needlessly presenting cumulative
 24 evidence, and

25 4 A prosecutor was not present in the room during the forensic interview

26 The amendment removes the provision of the bill requiring a court to admit the
 27 recording into evidence if a forensic interviewer certifies that the recording is true and
 28 complete and meets all of the statutory requirements to fall within the exception to the
 29 hearsay rule established by this legislation

30 In addition, under the amendment

31 1 A recording of a forensic interview may not be admitted into evidence in a criminal
 32 case unless all of the persons who were present during the forensic interview are available
 33 to testify and to be cross-examined The person offering the recording into evidence in the
 34 criminal case must call the protected person as a witness immediately following the playing
 35 of the recording and the protected person must be available for cross-examination unless
 36 all other parties to the criminal case expressly waive this requirement, and

37 2 Duplicative statements in more than one forensic interview of the same protected
 38 person that relate to the same event or incident may not be admitted into evidence except
 39 as authorized by the Maine Rules of Evidence, Rule 801(d)