

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

**Sec. 1. 15 MRSA §1205, sub-§2**, as repealed and replaced by PL 1985, c. 495, §1, is amended to read:

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

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

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

### **SUMMARY**

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

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