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Date: (Filing No. S-)

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

COMMITTEE AMENDMENT “ ” 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) .