

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Date:

(Filing No. S-)

JUDICIARY

Reproduced and distributed under the direction of the Secretary of the Senate.

**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 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. 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:

- A. The interview was conducted by a forensic interviewer;
- B. Statements made by the protected person during the forensic interview were not made in response to suggestive or leading questions;
- C. A relative of the protected person was not present in the room during the substantive phase of the interview;
- 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;
- E. The recording is both visual and audio;

COMMITTEE AMENDMENT

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.