

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

S.P. 324 - L.D. 765

**An Act to Establish an Exception to the Hearsay Rule for Forensic Interviews
of a Protected Person**

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

Sec. 1. 16 MRSA §358 is enacted to read:

§358. Recordings of protected person

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Forensic interview" means a fact-finding conversation conducted by a forensic interviewer using an evidence-based practice.

B. "Forensic interviewer" means an individual who meets the qualifications in subsection 2.

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

(1) Has not attained 18 years of age; or

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

2. Qualifications of forensic interviewer. In order to be qualified as a forensic interviewer, an individual must:

A. Be employed by a child advocacy center or affiliated with a child advocacy center;

B. Have completed a minimum of 32 hours of specialized instruction on an evidence-supported interview protocol; and

C. Participate in ongoing education in the field of child maltreatment or forensic interviewing.

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;
- F. The recording is a fair and accurate representation of the statements made by the protected person and has not been altered except for purposes of admissibility;
- G. In a criminal matter, the protected person is available to testify or be cross-examined by any party and is called as a witness by the party offering the recording in evidence immediately following the presentation of the recording to the trier of fact and made available for cross-examination, unless all other parties expressly waive the requirement that the witness testify; and
- H. The portion of the interview to be admitted in evidence is relevant pursuant to the Maine Rules of Evidence, Rule 401, and is not otherwise inadmissible under the Maine Rules of Evidence.

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

4. Recordings of protected persons preserved. A recording of a protected person that is made part of the court record must be preserved under a protective order of the court in order to protect the privacy of the protected person. The court shall maintain a copy of the recording as part of the court file for 20 years.

Sec. 2. 22 MRSA §4019, sub-§1, ¶B, as enacted by PL 2013, c. 364, §1, is amended to read:

- B. "Child advocacy center" or "center" means a community-based center that provides multidisciplinary services for children and families affected by child sexual abuse and other child abuse and neglect, including a center in another jurisdiction.

Sec. 3. 22 MRSA §4019, sub-§1, ¶D is enacted to read:

- D. "Forensic interview" has the same meaning as in Title 16, section 358, subsection 1, paragraph A.

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

9. Confidential records except recordings of forensic interviews. The files, reports, records, communications and working papers used or developed in providing services under this section are confidential and are not public records for purposes of Title 1, chapter

13, subchapter 1. ~~Information~~ Except for recordings of forensic interviews, which are governed by subsection 9-A, information may be disclosed only to the following in order for them to carry out their duties:

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

B. ~~The attorney for a child who is the subject of confidential records; and~~

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

Sec. 5. 22 MRSA §4019, sub-§9-A is enacted to read:

9-A. Recordings of forensic interviews confidential. The following provisions govern recordings of forensic interviews used or developed in providing services under this section. Recordings of forensic interviews are confidential and are not public records for purposes of Title 1, chapter 13, subchapter 1. Information may be disclosed:

A. To the department, department employees, law enforcement agencies, assistant attorneys general who are involved in adult and child protective cases, prosecuting attorneys, medical professionals and other state agencies that provide services to children and families in order for them to carry out their duties;

B. To the attorney for a child who is the subject of confidential records;

C. To a guardian ad litem appointed under section 4005 for a child who is the subject of confidential records;

D. In a matter under Title 18-C or 19-A, upon specific request for the recording of the forensic interview by the parties or on the court's own motion. A court may order disclosure of the recording of a forensic interview in accordance with section 4008, subsection 3, paragraph B if the court finds that access to the recording is necessary for the determination of an issue before the court and that the necessity of access to the recording outweighs the potential effect on the alleged victim. The court shall follow the following procedure.

(1) Before ordering disclosure of the recording, the court shall require that an investigating law enforcement agency, if any, has been given an opportunity to indicate its position on disclosure of the recording.

(2) If the court determines based on the pleadings that the recording is necessary for the determination of an issue before the court and that the necessity of access to the recording outweighs the potential effect on the alleged victim, the court shall order the department, pursuant to section 4008, subsection 3, paragraph B, to provide a copy to the court for in camera inspection. The court shall conduct an in camera review of the recording in order to make a determination about who should be entitled to view the recording.

(3) If the court determines that the recording should be disclosed, the court shall consider whether a guardian ad litem should be appointed in the case if one is not already appointed. If there is a guardian ad litem, the court shall consider whether to restrict access to the recording only to the guardian ad litem.

(4) The court shall issue a protective order of confidentiality ordering who is allowed to view the recording and how and where viewing will occur. In making its determination, the court shall weigh whether the parties are represented by counsel and whether restricting viewing of the recording will be unduly prejudicial to a party. The recording may not be copied, reproduced or disseminated in any way.

(5) If the recording is admitted pursuant to Title 16, section 358, subsection 3, the court shall admit the recording under seal; and

E. In a criminal matter, to a defendant pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16(b)(6). Before releasing the recording, the prosecutor shall request that the court issue a protective order of confidentiality ordering who is allowed to view the recording and how and where viewing will occur. In making its determination, the court shall weigh whether the defendant is represented by counsel and whether restricting viewing of the recording will be unduly prejudicial to the defendant.