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MAINE PROSECUTORS ASSOCIATION
SHIRA BURNS, EXECUTIVE DIRECTOR

“An Act to Permit Recordings of a Protected Person to Be Admissible in Evidence”
Before the Joint Standing Committee on Judiciary
Public Hearing Date: March 15, 2023
Testimony in Support of LD 765

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association and am here to testify in support of LD 765.

This bill came about with the leadership of Senator Carney prioritizing our children in the State of Maine to safeguard them against continued trauma while adhering to all of a defendant’s constitutional rights. Unfortunately, but fortunately, this is not groundbreaking legislation. The language was actually derived from looking at statutes in many other states that protect their children throughout the judicial system and allow prior child statements into evidence. This bill doesn’t go as far as many other states that have broader statutes of admissibility of children’s statements, but this is a great next step from what we already have in statute that allows for accommodations in court for child testimony and other statutes that directly state certain evidence is admissible in court.

“One of the greatest difficulties for prosecutors of sexual assaults against children is balancing the defendants’ 6th Amendment right to confrontation with the negative effects that testifying has on child victims. Requiring a child to testify in court about past sexual abuse in front of a room full of strangers, as well as his or her abuse can be painful, frightening, and difficult. Research shows that testifying in court is traumatizing for children, and that this trauma can diminish the quality and reliability of a child’s testimony.”¹ This proposed legislation is a balance of both. It allows for the admissibility of recorded forensic interviews, which are conducted by competently-trained professionals who employ techniques developed through years of research as part of a larger investigative process that greatly aids in the discovery of crucial facts,² but requires the availability of the witness to be cross examined. Many courts throughout our country have weighed in on this process and all agree, if the witness is available for cross examination, the process is constitutional. In *State v. Adams*, the Maine Supreme Judicial Court said “when the declarant is available for cross-examination at trial, a defendant’s Sixth Amendment right to confront the witness is not compromised.”³ Our own Maine Supreme Judicial Court has weighed in on what is considered “available” for confrontation clause purposes.⁴

¹ From on the Stand to on Tape: Why Recorded Child Victim Testimony is Safer, More Effective, & Fairer, 22 UC Davis J.Juv. L. & Pol’y 39, Winter, 2018.

² *Id.*

³ 2019 ME 132.

⁴ *State v. Gagne*, 2017 ME 63 and *State v. Adams*, 2019 ME 132.

Furthermore, when certain evidence is deemed admissible pursuant to statute,⁵ the Maine Supreme Judicial Court has already ruled how the Maine Rules of Evidence interplay with any statutory exception to the hearsay rule.⁶ This proposed legislation will provide a direct route of admissibility of a forensic interview into evidence, but the evidence will still be analyzed for admissibility through the other rules of evidence.

This is a policy decision for our lawmakers on how to help address child sexual abuse and the trauma associated with it. Prosecutors around the state will make good use of this statute to hold offenders accountable and minimize the trauma children face in interacting with the court system.

For these reasons, the Maine Prosecutors Association is in support of LD 765.

⁵ 16 M.R.S. §§ 356, 357, 451, 453, 454, and 15 M.R.S. § 1205

⁶ *State v. Jones*, 2019 ME 33.