

Senator Carney's Proposed Amendment  
To Errors & Inconsistencies Bill – For Public Hearing

*Amend the emergency preamble of the bill by adding the following language:*

Whereas, Public Law 2023, chapter 193, An Act to Establish an Exception to the Hearsay Rule for Forensic Interviews of a Protected Person, established an exception to the hearsay rule for the recordings of forensic interviews of minors and of certain adults with disabilities conducted at child advocacy centers, as long as specific due process protections are diligently followed; and

Whereas, trial courts across the State have reached disparate decisions regarding the applicability of Public Law 2023, chapter 193 to cases that were pending on October 25, 2023, the date that the law took effect; and

Whereas, citizens of the State rely on the Legislature to enact statutes that will be interpreted consistently; and

*Amend the bill by adding Part B as follows:*

**PART B**

**Sec. B-1. 16 MRSA §358**, as enacted by PL 2023, c.193, §1, is amended 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.

**5. Applicability.** Notwithstanding Title 1, section 302, this section applies to cases pending on the effective date of this subsection.

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

## SUMMARY

Part B of the amendment clarifies that it is intent of the Legislature that the exception to the hearsay rule in the Maine Revised Statutes, Title 16, section 358, which was enacted by Public Law 2023, chapter 193, applies to proceedings that are pending on the effective date of this Errors Bill legislation.