

# **MAINE STATE LEGISLATURE**

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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**Legislative Document**

**No. 765**

S.P. 324

In Senate, February 21, 2023

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**An Act to Permit Recordings of a Protected Person to Be Admissible  
in Evidence**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read "DAREK M. GRANT".

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.

Cosponsored by Representative HENDERSON of Rumford and

Senators: BEEBE-CENTER of Knox, BENNETT of Oxford, DUSON of Cumberland,

Representatives: CLOUTIER of Lewiston, LEE of Auburn, MILLETT of Cape Elizabeth,  
MOONEN of Portland, POIRIER of Skowhegan.

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

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

3           **§358. Admissibility of recordings of protected person**

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

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

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

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

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

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

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

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

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

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

22          **3. Admissibility of recording.** A recording of a forensic interview of a protected  
23           person is admissible as evidence and is an exception to the hearsay rule pursuant to the  
24           Maine Rules of Evidence, Rule 802 in the courts of this State if:

25           A. The interview was conducted by a forensic interviewer;

26           B. The interview is relevant pursuant to the Maine Rules of Evidence, Rule 401;

27           C. A relative of the protected person was not present in the room during the substantive  
28           phase of the interview;

29           D. An attorney for any party in a proceeding with the protected person was not present  
30           in the room with the protected person during the interview;

31           E. The recording is both visual and audio;

32           F. The recording is a fair and accurate representation of the statements made by the  
33           protected person and has not been altered except for purposes of relevancy pursuant to  
34           the Maine Rules of Evidence, Rule 401; and

35           G. The protected person is available to testify or be cross-examined by any party in a  
36           criminal matter.

37          **4. Recordings of protected persons preserved.** A recording of a protected person  
38           that is made part of the court record must be preserved under a protective order of the court

1       in order to protect the privacy of the protected person. The court shall maintain a copy of  
2       the recording as part of the court file for 20 years.

3       **5. Certification of forensic interview recordings.** Forensic interview recordings are  
4       admissible as evidence in the courts of this State in accordance with subsection 3. The court  
5       shall admit copies of the recordings if certified by the forensic interviewer to be true and  
6       complete and to have met all requirements in subsection 3 and the forensic interviewer  
7       identifies the location of the interview and the identity of the individuals in the recording  
8       in the certification.

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

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

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

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

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

19       **9. Confidential records except recordings of forensic interviews.** The Except for  
20       recordings of forensic interviews, the files, reports, records, communications and working  
21       papers used or developed in providing services under this section are confidential and are  
22       not public records for purposes of Title 1, chapter 13, subchapter 1. Information may be  
23       disclosed only to the following in order for them to carry out their duties:

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

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

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

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

32       **9-A. Recordings of forensic interviews confidential.** The following provisions  
33       govern recordings of forensic interviews. Recordings of forensic interviews are  
34       confidential and are not public records for purposes of Title 1, chapter 13, subchapter 1.  
35       Information may be disclosed:

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

40       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.

## SUMMARY

This bill creates a comprehensive assessment for courts to apply in evaluating whether to admit forensic interviews into evidence in criminal and civil cases by specifying the requirements for those interviews to be admissible into evidence.

The bill also clarifies who has access to forensic interviews. The bill establishes a process for civil cases that mirrors how Department of Health and Human Services records

1       are accessed in other cases. The bill codifies the current practice used in criminal cases and  
2       follows the criminal rules of procedure.