

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 765

S.P. 324

In Senate, February 21, 2023

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

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in dark ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

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;

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

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

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

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

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

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

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

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

38 SUMMARY

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

42 The bill also clarifies who has access to forensic interviews. The bill establishes a
43 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.