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Legislative Document

No. 1445

H.P. 1039

House of Representatives, April 24, 2013

An Act To Facilitate Children's Testimony

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TYLER of Windham.
Cosponsored by Senator BURNS of Washington and
Representatives: KAENRATH of South Portland, KINNEY of Limington, MORIARTY of
Cumberland, Senators: MASON of Androscoggin, PLUMMER of Cumberland.

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

2 **Sec. 1. 15 MRSA §1321** is enacted to read:

3 **§1321. Child witnesses in certain sex crime cases**

4 **1. Testimony of a child outside of the presence of the defendant.** A court may
5 allow a child who is 10 years of age or younger to testify outside of the presence of the
6 defendant pursuant to this section in a criminal proceeding concerning a crime under Title
7 17-A, chapter 11 or 12 in which the child is the alleged victim.

8 **2. State's motion to allow child testimony outside of presence of defendant;**
9 **hearing.** Prior to trial and with reasonable notice to the defendant, the State may move
10 the court to allow a child to testify outside of the presence of the defendant under
11 subsection 1. Upon motion by the State, a court shall conduct a hearing to make the
12 findings under this subsection at which the defendant may be present, except for that
13 portion of the hearing in which the child testifies if the court determines that an
14 examination of the child is necessary to make the required findings under this subsection.
15 A court may allow the simultaneous presence of the child and defendant at the hearing to
16 observe the child's demeanor in the presence of the defendant if the court determines that
17 the observation is necessary to make the required findings under this subsection. A court
18 may not grant a motion to allow a child to testify outside of the presence of a defendant
19 unless the court finds by clear and convincing evidence that:

20 A. There is a substantial likelihood, established by expert testimony, that the child
21 would suffer emotional trauma from testifying in the presence of the defendant;

22 B. The trauma, as established under paragraph A, would be caused by the presence
23 of the defendant and not by the courtroom or proceedings generally;

24 C. The trauma, as established under paragraph A, is at a level sufficient to
25 substantially influence the child's testimony or adversely affect the child's well-being;

26 D. A less restrictive method of obtaining the testimony that can adequately protect
27 the judicial process and the well-being of the child does not exist; and

28 E. The interests of the State in protecting the judicial process or the well-being of the
29 child outweigh the constitutional rights of the defendant.

30 The findings made under this subsection must be based upon the particular facts of the
31 case and be narrowly construed to protect the constitutional rights of the defendant.

32 **3. Requirements for testimony outside the presence of the defendant.** The
33 requirements for testimony of a child outside the presence of the defendant under
34 subsection 1 include:

35 A. The testimony must be conducted in a room within the courthouse and be
36 televised live by way of 2-way closed-circuit television or comparable equipment;

37 B. The attorney for the State, the attorney for the defendant and a child advocate for
38 the child must be present in the room in which the child gives the testimony when the
39 child is present in the room;

1 C. Only necessary court personnel may be in the room in which the child is
2 testifying;

3 D. The jury may not be present in the room in which the child is testifying but must
4 be present in the same room as is the defendant;

5 E. The court may be in the room in which the child is testifying or the room in which
6 the defendant and jury are located at the discretion of the court. If the court is not
7 present in the room in which the child is testifying, provisions must be made that
8 allow the court to conduct the proceedings and address objections and motions and
9 perform other necessary court duties;

10 F. Persons other than those expressly permitted may be present in the room in which
11 the child is testifying at the discretion of the court only upon a showing of compelling
12 need;

13 G. The televised image must include to the extent possible all persons in the room in
14 which the child is testifying. If it is not possible to include all persons in the room in
15 which the child is testifying, the court shall explain to the jury the identities and
16 location of all persons in the room;

17 H. Measures must be taken to allow constant communication between the defendant
18 and the defendant's attorney during the testimony and to liberally allow court recesses
19 for the defendant to consult in person with the defendant's attorney;

20 I. The television or comparable equipment must be capable of making an accurate
21 reproduction and the operator of the equipment must be competent to operate the
22 equipment;

23 J. The court, defendant and jury must be able to adequately observe and hear the
24 child;

25 K. Adequate measures must be taken concerning any recording or reproduction of
26 the testimony to protect the privacy of the child pursuant to state law; and

27 L. The court shall impose reasonable guidelines upon the parties for conducting the
28 testimony to avoid trauma to the child or abuse of the procedure for tactical
29 advantage.

30 **4. Exception.** The provisions of this section do not apply if the defendant is an
31 attorney pro se or if a positive identification of the defendant by the child is required.

32 **SUMMARY**

33 This bill allows a court, by motion from the State, to allow the testimony of a child
34 who is 10 years of age or younger and the alleged victim of a sexual assault or sexual
35 exploitation outside of the presence of the defendant if the court finds by clear and
36 convincing evidence that the protection of the judicial process or the well-being of the
37 child outweighs the constitutional rights of the defendant to confront the defendant's
38 accuser. This bill requires that testimony by a child victim outside the presence of the
39 defendant must be televised by live, 2-way closed-circuit television with adequate
40 provisions including that the court, jury and defendant can hear and observe the child.

1 This bill does not allow testimony of a child outside of the presence of the defendant if
2 the defendant is an attorney pro se or if a positive identification of the defendant by the
3 child is required.