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4 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

5  
6 THE PEOPLE OF THE STATE OF ) Case No.  
CALIFORNIA, )  
7 )  
8 Plaintiff, ) NOTICE AND MOTION UNDER  
9 vs. ) EVIDENCE CODE 782 TO  
10 ) ADMIT PRIOR SEXUAL  
11 Defendant. ) KNOWLEDGE & ACTS OF  
12 ) VICTIM  
Date:  
Time:  
Dept:  
\_\_\_\_\_ )

13 TO THE DISTRICT ATTORNEY OF \_\_\_\_\_ COUNTY:

14 PLEASE TAKE NOTICE that on the date and time indicated  
15 above the Defendant will move the court pursuant to  
16 Evidence Code § 782 to admit the testimony of (Insert name  
17 of witness). Said motion will be based upon the attached  
18 Memorandum of Points and Authorities and the attached  
19 Declaration of (Insert name of declarant).  
20

21 Dated:

22 \_\_\_\_\_  
23  
24 Attorney for Defendant

25 **SUMMARY OF FACTS**

1 Set forth brief summary of your facts

2  
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4  
5 **I**

6 **GENERAL RULES ON ADMISSIBILITY OF**  
7 **SEXUAL HISTORY TO ATTACK CREDIBILITY**

8  
9 **A**

10  
11 **THE SECTION 782 WRITTEN DECLARATION**

12  
13 Attached to this motion, and incorporated by reference,  
14 is the Declaration of (Insert name of declarant). This  
15 declaration, based on information and belief, is an offer  
16 of proof, in compliance with Evidence Code section  
17 782(a)(2), by which the defendant seeks a hearing and  
18 ruling on the admissibility of the prior sexual conduct of  
19 the complaining witness. The offer of proof is specific in  
20 that it describes the purpose of the testimony, the name  
21 of the witness(es) and the precise content of the testimony  
22 to be elicited. (See Semsch v. Henry Mayo Newhall Memorial  
23 Hospital (1985) 171 CA3d 162, 167; People v. Schmies (1996)  
24 44 CA4th 38, 53.) \*If appropriate add a sentence or two to  
25

1 the effect that it includes corroborating notes by the CPS  
2 worker and/or police reports, depending on your case.\*\*

3 Certain other pleadings, such as a petition for writ of  
4 mandate and affidavits in support thereof in the civil  
5 context, must be based on personal knowledge. Star Motor  
6 Imports, Inc. v. Superior Court (1979) 88 CA3d 201, 204.

7  
8 However, a declaration in support of a Evidence Code  
9 section 782 motion need only be made upon "information and  
10 belief." The reasoning is that (1) there is a longstanding  
11 judicial acceptance that motions in support of "probable  
12 cause" to admit or discover evidence require only  
13 information and belief; and (2) the statute controlling the  
14 motion does not demand a higher standard of proof. (City of  
15 Santa Cruz v. Municipal Court (1990) 49 C3d 74, 86-88,  
16 Jalilie v. Superior Court (1988) 195 CA3d 487, 489-490;  
17 People v. Memro (1985) 38 C3d 658, 676.) The above-cited  
18 cases involved "Pitchess" motions under Evidence Code  
19 section 1043(b). Each attorney for the defendant sought an  
20 order to inspect an arresting officer's personnel file for  
21 evidence of citizen complaints and excessive force. All  
22 three cases held that good cause for discovery and a  
23 judicial in camera inspection (which is nearly identical to  
24  
25

1 the section 782 procedure at issue here) can be established  
2 upon a written declaration based on information and belief,  
3 provided that the requested evidence is shown to be  
4 relevant and material.

5  
6 As stated in City of Santa Cruz, supra:

7 "Of course, it is true that an affidavit is  
8 normally presumed to state matters personally  
9 known to the affiant and lacks evidentiary  
10 value, in a variety of civil contexts, when  
11 based on information and belief or hearsay.

12 [Citations omitted.]

13  
14 It is decidedly not true, however, that an  
15 an affidavit upon information and belief is an  
16 anomaly in the law, bereft of legal significance.

17 On the contrary, as the United States Supreme  
18 Court has stated, "the value of averments on  
19 information and belief in the procedure of the law  
20 is recognized." [Citation omitted.] Indeed, there  
21 are numerous exceptions to the general rule  
22 prohibiting affidavits on information and  
23 belief either where the facts to be established  
24 are incapable of positive averment, or where  
25 expressly prohibited by statute. [Citations  
omitted.]

1  
2 Thus, courts have long held that affidavits on  
3 information and belief may be sufficient in  
4 a variety of contexts where the facts would  
5 otherwise be difficult or impossible to  
6 establish. (49 C3d at p. 87.)  
7

8 The City of Santa Cruz court went on to list these  
9 situations, which include: disqualification of a trial  
10 judge, change of venue, quashing service, and issuance of a  
11 search warrant. In the context of supporting evidence for  
12 petitions for writ of habeas corpus, our state high court  
13 has similarly held, "where access to critical information  
14 is denied to one party, where it is unreasonable to expect  
15 a party to obtain information at the pleading stage. . .the  
16 general rule requiring pleading of facts should not be  
17 enforced in a draconian fashion to defeat the ends of  
18 justice." (People v. Duvall (1995) 9 C4th 464, 485.) In  
19 the instant case, at this stage, it is impossible for  
20 Defendant to establish the facts set forth in counsel's  
21 declaration in any other manner. \*\*State why, e.g., the  
22 information is contained in a police report or CPS report,  
23 the authors of which have refused to sign declarations\*\*  
24  
25

1 No specific standard of proof was required by the  
2 drafters of the so-called "rape shield" law in section 782,  
3 which simply requires that the written motion called for be  
4 supported by an affidavit containing "an offer of proof".  
5 The court should decline to redraft the statute to impose a  
6 more burdensome requirement of "personal knowledge", where  
7 the Legislature has conspicuously failed to do so. (Id.,  
8 at p. 88.) Had the legislature "intended to abrogate the  
9 use of affidavits on information and belief and to require  
10 affidavits based on personal knowledge, it is reasonable to  
11 assume that it would have done so explicitly." (Id., at p.  
12 88.)  
13  
14

15 Adjudged against the offer of proof held sufficient to  
16 have required the trial court to hold an Evidence Code §782  
17 hearing in People v. Daggett (1990) 225 CA3d 751, the offer  
18 of proof in this case triggers such a hearing as well. In  
19 Daggett, the defendant made an offer of proof that the  
20 victim had been molested at age five by two older children  
21 and that he had pending juvenile charges against him. In  
22 finding the trial court had erred in refusing to hold a  
23 hearing based on such an offer, the reviewing court stated:  
24  
25

"Here Daggett's offer of proof was that he

1 learned from an inspection of the prosecutor's  
2 file Daryl told a mental health worker and  
3 Doctor Slaughter that he had been molested  
4 by two older children, ages eleven and eight,  
5 when he was five years old. This should have  
6 been sufficient for the court to have ordered  
7 a hearing to determine whether the acts of  
8 prior molestation were sufficiently similar  
9 to the acts alleged here. The court erred when  
10 it failed to do so." (Id., at p. 757.)  
11

12 Inferentially, such an offer of proof could only have been  
13 based on the information and belief of defense counsel who  
14 could not possibly have had any personal knowledge of what  
15 Daryl had told a mental worker. Thus, based on Daggett and  
16 City of Santa Cruz, the offer of proof herein which states  
17 on counsel's information and belief that **\*\*give a brief**  
18 **summary of the offer of proof\*\*** is sufficient to warrant an  
19 Evidence Code § 782 hearing.  
20  
21  
22  
23

24 **B**

25 **EVIDENCE OF CHARACTER**

**UNDER EVIDENCE CODE SECTION 1101**

1 The prior sexual conduct of the complaining witness,  
2 which is evidence of a person's character or trait of  
3 character, is admissible under Evidence Code §1101(c) to  
4 support or attack his or her credibility. The prohibition  
5 stated in subsection (a) applies to character evidence only  
6 when it is offered to prove the conduct of a complaining  
7 witness on a specified occasion.  
8

9 In our case, the defense seeks to attack the alleged  
10 victim's credibility, and is thus entitled under section  
11 1101(c) to employ evidence of her prior sexual conduct, her  
12 prior acts of deceit, her prior false allegations and her  
13 prior lying as evidence to attack her credibility. \*\*Use  
14 what is appropriate\*\*  
15

16 C

17 **EVIDENCE CODE SECTION 1103(c) DOES NOT BAR ADMISSION**  
18 **OF THE ALLEGED VICTIM'S PRIOR SEXUAL CONDUCT BECAUSE**  
19 **SUCH EVIDENCE WILL NOT BE OFFERED TO PROVE HER CONSENT.**

20 Evidence Code §1103(c)(1) states, as a general  
21 proposition, that "opinion evidence, reputation evidence,  
22 and evidence of specific instances of the complaining  
23 witness's sexual conduct ... is not admissible by the  
24 defendant in order to prove consent by the complaining  
25



1 witness." However, Evidence Code §1103 does NOT bar  
2 evidence of a victim's sexual conduct (nor cross-  
3 examination of her concerning such conduct) when the  
4 evidence is offered to attack her credibility. [Evidence  
5 Code §1103(c)(3) & (4); People v. Chandler (1997) 56 CA4th  
6 703, 711; People v. Blackburn (1976) 56 CA3d 685, 689-690.)

7  
8 Once the defendant makes a sworn offer of proof  
9 concerning the relevance of the sexual conduct of the  
10 complaining witness to attack her credibility, the  
11 protections of section 1103 give way to the procedural  
12 safeguards of section 782. This is so, even though it is  
13 the underlying issue of capacity to consent which is being  
14 challenged. People v. Rioz (1984) 161 CA3d 905, 916.

15  
16 **D**

17 **EVIDENCE CODE SECTION 352**

18 Generally, cross examination to test the credibility of  
19 a prosecution witness should be given wide latitude.  
20 (People v. Belmontes (1988) 45 Cal.3d 744, 780.)  
21 "[C]ross-examination is the principle means by which the  
22 believability of a witness and the truth of his testimony  
23 are tested.'" (Farrell L. v. Superior Court (1988) 203 CA3d  
24 521, 526.) "In sex cases, broad cross-examination of the  
25

1 prosecuting witness on prior sexual experiences,  
2 fabrication and sexual fantasy should be allowed." (People  
3 v. Francis (1970) 5 CA3d 414, 417.)

4  
5 In People v. Reeder (1978) 82 CA3d 543, 550 the court  
6 held that "in criminal cases, any evidence that tends to  
7 support or rebut the presumptions of innocence is  
8 relevant", since "it is fundamental in our system of  
9 jurisprudence that all of a defendant's pertinent evidence  
10 should be considered by the trier of fact." (Id., at p.  
11 552.) The court found that defendant had the right to show  
12 he believed what others had told him about the co-defendant  
13 and the proffered evidence supported his defense of such  
14 intense dislike for his co-defendant as to preclude him  
15 from engaging in a criminal conspiracy with him (Reeder,  
16 supra, at p. 550) and stated:

17  
18 "Evidence Code Section 352 must bow to the  
19 due process right of a defendant to a fair  
20 trial and to his right to present all  
21 relevant evidence of significant probative  
22 value to his defense. In Chambers vs.  
23 Mississippi (1973) 410 U.S. 284, 93 S.Ct.  
24 1038, 35 L.Ed.2d 297, it was held that the  
25 exclusion of evidence, vital to a

1 defendant's defense, constituted a denial of  
2 a fair trial in violation of constitutional  
3 due-process requirements." (Id., at p.  
4 553.)

5 **E**

6 **CASES ADMITTING SEXUAL HISTORY**

7 The following cases permitted a defendant to delve into  
8 the prior sexual conduct of the alleged victim.

9 People v. Hernandez (1964) 61 CA2d 529, 535 involved  
10 the crime of statutory rape and a trial court which  
11 prevented the defendant from developing an offer of proof  
12 as to a reasonable belief that the prosecutrix had reached  
13 the age of legal consent. The appellate court spoke about  
14 the relationship between the defense of "honest and  
15 reasonable mistake of fact," and Penal Code section 20,  
16 which requires the joint operation of act and intent before  
17 a crime can be committed. The court held that the accused  
18 was permitted to present evidence as to why he held a good  
19 faith belief that the complainant appeared to be over 18  
20 years of age. Presumably, such evidence would have  
21 included the prior sexual conduct of the complainant.

22 People v. Dolly (1966) 239 CA2d 143, 146, involved a  
23 rape charge where the complainant allegedly a lacked mental  
24  
25

1 competency. The court acknowledged that the accused may  
2 present evidence of his non-criminal intent based on an  
3 honest and reasonable belief that the victim did not lack  
4 capacity to give consent. The defendant's evidence would  
5 presumably have included the prior sexual conduct of the  
6 complainant--however the defendant in Dolly declined to  
7 testify and presented no defense before the trial court.  
8

9 People v. Varona (1983) 143 CA3d 566, 569, involved  
10 charges of rape and oral copulation. The trial court  
11 committed reversible error by not admitting evidence of the  
12 complaining witness's prior sexual conduct. There, the  
13 disputed evidence was that the alleged victim was on  
14 probation for prostitution and typically plied her trade in  
15 the area where the crimes were supposedly committed. Such  
16 evidence should have been admitted to prove consent on the  
17 part of the complainant.  
18

19 In People v. Rioz (1984) 161 CA3d 905, one of the  
20 defendants testified that he was told by the victim that  
21 the cost for the sex act would be a certain sum. He agreed  
22 to pay her at a later time. At trial he wanted to admit  
23 her statements to him about the request for payment, as  
24 bearing on his belief that the sex act was consensual. The  
25

1 reviewing court made a clear distinction between the  
2 evidence that the victim was a prostitute to impeach her  
3 credibility and evidence that she had made statements of  
4 price for certain acts. The first was viewed as  
5 impermissible character evidence, the second was viewed as  
6 permissible impeachment of the complaining witness denial  
7 of consent. The court said:

9            "We emphasize again the necessity that a  
10            defendant advancing a defense of consent  
11            bears the burden of affirmatively offering  
12            to prove, under oath, the relevance of the  
13            complaining witness' sexual conduct to  
14            attack her credibility in some way other  
15            than by deprecating her character. It is  
16            not enough that a defendant alleges the  
17            complaining witness is a prostitute, has  
18            been convicted of prostitution, or engages  
19            in any particularized aspects of that  
20            profession unless the complaining witness  
21            has testified she did not consent to sex  
22            with that defendant and the defendant had  
23            presented evidence by his own testimony or  
24            otherwise which directly challenges the  
25            complaining witness' denial of consent and

1 the defendant offers to prove, by sworn  
2 affidavit, that her prior sexual conduct is  
3 sufficient to attack her credibility as  
4 distinguished from her character." (Id., at  
5 p. 918.)

6  
7 In Daggett, supra, as noted above, the appellate court  
8 reversed the defendant's conviction due to the trial  
9 court's failure to allow him to present evidence that the  
10 victim had been molested by older children when he was  
11 five. The court held:

12  
13 "A child's testimony in a molestation case  
14 involving  
15 oral copulation and sodomy can be given an aura  
16 of veracity by his accurate description of the  
17 acts. This is because knowledge of such acts may  
18 be unexpected in a child who had not been  
19 subjected

20 to them. In such a case it is relevant for the  
21 defendant to show that the complaining witness  
22 had been subjected to similar acts by others in  
23 order to cast doubt upon the conclusion that the  
24 child must have learned of these acts through  
25 the defendant. Thus, if the acts involved in the  
prior molestation are similar to the acts of which

1 the defendant stands accused, evidence of the  
2 prior molestation is relevant to the credibility  
3 of the complaining witness and should be  
4 admitted." (225 CA3d at p. 757.)

5  
6 Finally, in Chandler, supra, the reviewing court found  
7 error in the trial court's ruling disallowing an attack on  
8 the victim's credibility with the testimony of two  
9 witnesses who testified at the Evidence Code §782 hearing  
10 that they had previously traded drugs for sex with her.  
11 (56 CA4th at p. 711.)

## 12 II

13  
14 **THE DEFENSE MAY INTRODUCE ALTERNATIVE EXPLANATION**  
15 **OF A VICTIM'S SEXUAL KNOWLEDGE WHEN THE PROSECUTION**  
16 **INFERS THE VICTIM MUST HAVE GAINED THAT SEXUAL**  
17 **KNOWLEDGE FROM BEING MOLESTED BY DEFENDANT.**

### 18 A

19  
20 **DUE PROCESS REQUIRE THAT EVIDENCE OF**  
21 **DEFENDANT'S ALTERNATIVE EXPLANATIONS OF**  
22 **THE CHILD'S KNOWLEDGE OF SEX**  
23 **BE ADMITTED BEFORE THE JURY.**  
24  
25

1           In child molest cases, the conclusion is routinely  
2 drawn that the victim got his or her knowledge of sex from  
3 the defendant while being molested. We learned the hard  
4 way in the infamous McMartin case in Los Angeles that this  
5 conclusion is not always true. Children can be "taught"  
6 such matters by being repeatedly questioned using questions  
7 full of information about sexual acts. Children can  
8 "learn" such matters in a number of ways although this fact  
9 is often overlooked. If no alternative explanation is  
10 permitted by the court, juries will automatically presume  
11 that the defendant provided the child with knowledge of sex  
12 through the alleged illegal acts.

15           As quoted above, in People v. Daggett, supra, the  
16 appellate court recognized this presumption and its  
17 inherent dangers and found that the defense should have  
18 been allowed to elicit the victim's prior sexual history to  
19 refute it. The failure to allow the defendant to establish  
20 the victim's alternative source of knowledge compelled  
21 reversal. (225 CA3d at p. 758.)

24           \*\*add whichever following sections apply to your case\*\*

25           **B**



1           A CHILD WHO WATCHES OR LISTENS TO PORNOGRAPHIC  
2           MATERIAL OUT OF SHEER CURIOSITY IS NOT ENGAGING IN  
3           "SEXUAL CONDUCT" WITHIN THE MEANING OF PENAL CODE §  
4           782, AND THUS THE SOURCE OF THE CHILD'S KNOWLEDGE IS  
5                                    NOT PRIVILEGED.

6  
7           Evidence Code § 782 limits the admissibility of a  
8           complaining witness's prior sexual conduct. It requires a  
9           detailed offer of proof by the defendant as to necessity  
10          and relevancy. The Code requires support by a formal  
11          affidavit, and provides for an in camera hearing to  
12          question the witness with regard to such offer of proof  
13          before the jury is permitted to hear the evidence.

14  
15          Defendant contends that Evidence Code § 782 does not  
16          apply, since the prior sexual conduct of the alleged victim  
17          is not the subject of his inquiry. He only wants to show  
18          that complainants' sexual knowledge came from a source  
19          other than the criminal acts the defendant is alleged to  
20          have committed with her.

21  
22          By watching a video, reading a book or listening to  
23          phone message services, a person such as the complaining  
24          witness is simply engaged in an educational process. The  
25          subject matter of those media is irrelevant. If the topic

1 happens to be sexual, then that person is simply educating  
2 him or herself about sex.

3 Learning is a neutral act which does not become sexual  
4 in nature until one turns to physical activity with the  
5 intent of arousing the passions of self or others.  
6

7 As a neutral act, complainant's viewing of a  
8 pornographic videos or seeing sexual acts are not "sexual  
9 conduct" within the meaning of Evidence Code § 782.

10 Therefore such evidence is not protected and should be  
11 admitted if not otherwise prohibited by objections as to  
12 relevancy (Evidence Code § 350) or time consumption and  
13 undue prejudice (Evidence Code § 352).  
14

15 In Rubio v. Superior Court of Orange County (1988) 202  
16 CA3d 1343, 1348 the court ruled that, where a child had  
17 watched a videotape of her parents making love prior to  
18 allegedly being molested by a third party, the defendant  
19 was entitled to in camera viewing of the tape before an  
20 admissibility ruling to determine whether his right to due  
21 process outweighed the parents' constitutional privacy  
22 interests and their marital privilege.  
23  
24  
25

1 The defendant in Rubio was trying to show the jury that  
2 a young child's knowledge of sexual acts and techniques  
3 came from a source other than the charged criminal acts.

4 Rape shield laws such as California's Penal Code § 782  
5 often conflict with a defendant's Due Process and  
6 Confrontation Clause rights. Where a rape shield law  
7 curtails the defendant's effort to generate doubt as to his  
8 participation in the abuse of children, Sixth and  
9 Fourteenth Amendment rights should outweigh any competing  
10 concerns.  
11  
12

13 **C**

14 **MOTHER'S OBSESSIVE BEHAVIOR**

15 **AROUND ISSUE OF MOLESTATION IS ADMISSIBLE**

16 **TO SHOW ALTERNATE SOURCE OF SEXUAL KNOWLEDGE.**

17  
18 What about the situation where a mother constantly is  
19 checking her daughter/son for evidence of molestation.  
20 This could be a beginning of a false accusation or a source  
21 of knowledge for the child. This issue was ruled upon in  
22 the case of People v. Scholl (1964) 225 CA2d 558, where the  
23 court held that it was improper to not allow cross  
24 examination on the possible existence of a morbid fear of  
25

1 sexual acts in the mind of the mother as to make the charge  
2 a creature of that morbidity.

3 Since this does not entail sexual conduct of the minor,  
4 it does not have to comply with Evidence Code § 782.

6 **III**

7 **EVIDENCE OF PRIOR FALSE ALLEGATIONS**  
8 **IS ADMISSIBLE TO IMPEACH COMPLAINANT.**

9 It has been repeatedly held that a victim's prior false  
10 charges of sexual assault are admissible on the issue of  
11 his/her credibility.

12 See People v. Wall (1979) 95 CA3d 978, 987-989  
13 [reversible error to exclude testimony of victim's ex-  
14 boyfriend that she had threatened to make a false  
15 accusation of rape against him where her credibility was  
16 the sole issue for the jury to determine]; People v. Randle  
17 (1982) 130 CA3d 286, 294 [error in denial of motion for new  
18 trial based on newly discovered evidence that on two prior  
19 occasions at same location as charged offense, alleged  
20 victim had falsely claimed to be the victim of purse snatch  
21 and kidnap]; People v. Varona (1983) 143 CA3d 566, 569-570  
22 [reversible error in rape and oral copulation prosecution  
23 where trial court excluded evidence that victim was on  
24  
25

1 probation for prostitution]; People v. Adams (1988) 198  
2 CA3d 10, 18 [error to exclude evidence that rape victim  
3 falsely accused others of rape]; People v. Burrell-Hart  
4 (1987) 192 CA3d 593, 597-599 [same]; People v. Franklin,  
5 supra, 25 CA4th at p. 335 [same].  
6

#### 7 IV

#### 8 THE USE OF VICTIM'S UNCHARGED ALLEGATIONS 9 FOR THE PURPOSE OF IMPEACHMENT IS AN ISSUE 10 OF WEIGHT, NOT ADMISSIBILITY.

11 The People may question whether the prior allegations  
12 made by complainant are false, and whether can they be  
13 introduced until so proven. In Andrews v. City and County  
14 of San Francisco (1988) 205 CA3d 938, the plaintiff sued  
15 the city because he was beaten up by an Officer Ramirez.  
16 During the trial the officer testified that he was a  
17 patient man and performed his duties in a calm and straight  
18 forward manner. The defense knew of four instances  
19 involving persons in custody whose testimony about their  
20 specific instance would reasonably and logically tend to  
21 disprove Officer Ramirez's characterization of himself.  
22  
23

24 The trial court excluded the evidence. It was  
25 concerned about a series of "mini trials" that would have

1 to be conducted in order to establish that each and every  
2 one of the incidents were true. The Court of Appeal held  
3 that, while it appreciated the trial judge's time-pressure  
4 concerns, it did not perceive them as "...constituting  
5 sufficient justification for keeping out all of the  
6 misconduct incidents." (Id., at p. 947.) The court  
7 further stated:  
8

9 "In every case where prior similar  
10 misconduct is admitted, the defendant may be  
11 expected to bring forth a contrary version  
12 of the events. However, the fact that the  
13 jury must resolve conflicting versions  
14 cannot justify the exclusion of all such  
15 evidence on this ground alone." Id., at  
16 987.

17 The Court of Appeal recognized that whether they were  
18 true or false, complaints of police brutality were a  
19 question for the jury. Similarly, in the case at bar,  
20 it is not for the trial court to determine whether a prior  
21 allegation of sexual misconduct is true or false. That is  
22 a jury question.  
23

24 In People v. Lankford (1989) 210 CA3d 227, 233-234 the  
25 State was permitted to introduce evidence that the

1 defendant had a pending trial for robbery. This evidence  
2 tended in reason to impeach the defendant's statement that  
3 he had not had any "incidents" since his release from  
4 parole.

5  
6 If the pending charge was false, then the defendant's  
7 statement about having no "incidents" was true. If there  
8 were to past incidents, such evidence would not be relevant  
9 because it could not impeach his testimony. However, if  
10 the pending charge was true, then the defendant's claim  
11 about having no "incidents" was false. In that case, such  
12 evidence would be relevant because it could directly  
13 impeach his testimony. It is not for purpose of showing  
14 propensity to commit a crime, just impeachment.

15  
16 Although the veracity of the pending charge was still  
17 in litigation, the fact that it existed was admitted into  
18 evidence by the Lankford court. It was for the jury to  
19 resolve whether or not the defendant was impeached by it.  
20

#### 21 **IV. CONCLUSION**

22 Based on the above discussion, no section of the  
23 Evidence Code is a bar to the admissibility of the  
24 complaining witness's sexual conduct for the purposes  
25 requested.

1 [The defendant has the right to prove an alternative  
2 source of knowledge of sexual matter to rebut an inference  
3 that the child must have been molested, how else could the  
4 child have known about these types of matters.]

5  
6 [The defendant has a right to show that the mother's  
7 fears of molestation are a possible source of the  
8 allegation and a possible source of the child's knowledge  
9 concerning molestation.]

10 [The defendant has the right to prove, by use of  
11 specific instances, a trait or character trait of making  
12 false accusations about being sexually abused.]

13  
14 [The issue of whether the prior allegations are true or  
15 false is a jury issue.] \*\*Use appropriate conclusion\*\*

16 Dated:

17 Respectfully submitted,  
18

19  
20 \_\_\_\_\_

21  
22 Attorney for Defendant  
23  
24  
25



1 **DECLARATION IN SUPPORT OF MOTION**

2  
3 I, \_\_\_\_\_, do hereby declare that:

4 1. I am the attorney of record for the Defendant in  
5  
6 the above captioned case.

7 2.

8 I declare under penalty of perjury that the above is  
9 true and correct, except as to those matters based upon  
10 information and belief, and as to those matters, I believe  
11 them to be true. Executed at Walnut Creek, California on  
12

13  
14 \_\_\_\_\_