

1 Innocence Legal Team
1600 S. Main Street, Suite 195
2 Walnut Creek, CA 94596
Telephone: 925 948-9000
3 Attorney for Defendant
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5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF
THE PEOPLE OF THE STATE OF) Case No.
6 CALIFORNIA,)
7)
Plaintiff,) POINTS AND AUTHORITIES
8 vs.) ON ADMISSIBILITY OF
9) PSYCHIATRIC EVALUATION
OF SEXUAL MOLEST VICTIM
10) POST PENAL CODE SECTION
11 Defendant.) 1112 AND POST
12) PROPOSITION 8
13) Date:
Time:
Dept:

14
15 **FACTS**

16 (Set forth the particular facts in your case pertaining
17 to the psychiatric evaluation of the victim, i.e., its
18 purpose, scope and content.)
19

20 **ISSUE**

21
22 Is a psychiatric evaluation of an alleged child molest
23 victim admissible in light of the passage of Penal Code
24 Section 1112 which made it unlawful for the court to order
25

1 a child molest victim to undergo psychiatric or
2 psychological evaluation?

3
4 **LAW**

5 This issue was addressed in **People vs. Hagerman** (1985)
6 164 CA3d 967. The **Hagerman** court held that **Ballard vs.**
7 **Superior Court** (1966) 64 C2d 159, 176-177 noted a
8 distinction between the trial court's power to admit or
9 exclude psychiatric testimony and its power to order a
10 psychiatric examination. The court ruled that Penal Code
11 Section 1112 only curtailed the court's power to order a
12 psychiatric examination and did not purport to act with
13 regard to the court's power to admit psychiatric testimony:
14

15 "A reading of Ballard supports a distinction
16 between the court's power to admit or exclude
17 psychiatric testimony and the court's power to
18 order a psychiatric examination. In Ballard the
19 court first held that a trial judge can determine,
20 in his discretion, whether to admit psychiatric
21 testimony relative to the credibility of a sexual
22 assault victim. (Ballard vs. Superior Court,
23 supra, 64 Cal.2d at p. 175, 49 Cal.Rptr. 302, 410
24 P.2d 838.) The court then turned to the question
25 of the trial judge's power to order a psychiatric
examination of a complaining witness in a sexual

1 assault case. (Id., at pp. 175-177, 49 Cal.Rptr.
2 302, 410 P.2d 838.) The court concluded that the
3 trial judge did possess the requisite power to
4 order the examination, and, again, the court left
5 this decision to the judge's discretion. (Ibid.)
6 Thus a two-step process was developed in which the
7 court was to exercise its discretion twice: once
8 to determine whether to order the examination and
9 once to determine the admissibility of the results
10 of the examination.

11
12 In passing Penal Code Section 1112 in 1980 the
13 legislature overruled the holding in Ballard only
14 with regard to the first step (see People vs.
15 Haskett (1982) 30 Cal.3d 841, 859, fn. 7, 180
16 Cal.Rptr. 640, 640 P.2d 776) but did not purport
17 to act with regard to the second step concerning
18 the admissibility of psychiatric testimony
19 concerning the mental state of the complaining
20 witness in a sex case.

21
22 Ordering a psychiatric examination for a witness
23 is not tantamount to ruling on the admissibility
24 of any evidence which may be generated as a result
25 of that examination. While the constitutional

1 change brought about by the passage of Proposition
2 8 might well impact on any legislation which
3 purported to prevent the introduction of relevant
4 evidence concerning the mental state of mind of a
5 victim of sex crimes, the section has not effect
6 upon Penal Code Section 1112 which does not deal
7 with either the exclusion or the admission of such
8 evidence." (**People vs. Hagerman** (1985), supra, at
9 pp. 974-975.)

11 **ADMISSIBILITY**

12 In **People vs. Russel** (1968) 69 C2d 187, the California
13 Supreme Court held it to be an abuse of discretion to
14 exclude psychiatric testimony of the alleged child molest
15 victim's mental or emotional condition as it effected her
16 ability to tell the truth. The court held that its
17 discretion should be exercised liberally in favor of the
18 defendant (**People vs. Russell**, supra, p. 196).

20 **CONCLUSION**

21 The psychiatric evidence concerning the alleged victim
22 in this case is not made inadmissible by Penal Code Section
23 1112.
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25 Dated:

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Respectfully submitted,

Attorney for Defendant