

**ATTACHMENT 7 TO FROM JV-570**

**Applicable Facts**

**[INSERT FACTS]**

**Applicable Law**

**Petitioner Requires the Requested Records to “Mount a Defense” in a Criminal Prosecution**

As noted, Petitioner is a defendant in a criminal case.

Permissible disclosure under section 827 is more extensive than the minors or amicus curiae acknowledge. Case law has recognized that a broader category of persons than those enumerated in section 827 may be permitted access to material in juvenile court files in the appropriate case. As noted above, the cloak of confidentiality must fall to the rights of a criminal defendant to mount a defense. ( *Lorenza P. v. Superior Court*, supra, 197 Cal. App. 3d 607, 610-611; *Foster v. Superior Court*, supra, 107 Cal. App. 3d 218, 229.)

*In re Keisha T.*, 38 Cal. App. 4th 220, 232, 44 Cal. Rptr. 2d 822, 828 (1995)

**Petitioner has a Due Process Right to the Records Sought**

Generally, a criminal defendant’s Sixth Amendment right to confrontation outweighs a juvenile’s statutory right of confidentiality. *Davis v. Alaska* (1974) 415 U.S. 308, 39 L.Ed.2d 347, 94 S.Ct. 1105. This applies to psychological records (*People v. Caplan* (1987) 193 CA 3d 543, 238 C.R. 478; *People v. Reber* (1986), 177 CA 3d 523, 223 C.R. 139) (both molestation cases); CPS records *Pennsylvania v. Ritchie* (1987) 480 U.S. 39; 94 L.Ed.2d 40 and pupil records *People v. Reber* (1986) 177 Cal.App.3d 523, 531, 223 Cal. Rptr. 139, disapproved on other grounds in *People v. Hammon* (1997) 15 Cal.4th 1117, 1124, 65 Cal. Rptr. 2d 1, 938 P.2d 986.

A patient “has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist.” *Evid. Code* § 1014. “When a defendant proposes to impeach a critical prosecution witness with questions that call for privileged information, the trial court may be called upon . . . to balance the defendant’s need for cross-examination and the state policies the privilege is intended to serve.” *People v. Hammon* (1997) 15 Cal.4th 1117, 1127, 65 Cal. Rptr. 2d 1, 938 P.2d 986 (*Hammon*).

In *People v. Caplan* (1987) 193 CA 3d 543, 238 C.R. 478, the Court reversed the defendant’s molestation conviction because the trial court barred examination of the child’s psychological background based on the patient-psychotherapist privilege. In balancing the privilege against the defendant’s right to confrontation, the Court reasoned that the “truth” was in the child’s best interest even if that was found to be that there was no molestation.

**The Evidence Code Does Not Bar Admission of the Records Sought in the Criminal Case**

By way of its Proffer (attached), the Prosecution in the criminal case has put in issue Coleen Greer’s “post-assault behavior and symptoms.” The cause of any such “behavior and

symptoms” are “disputed fact[s]” and thus rebuttal evidence of their causes is relevant (*Evidence Code* §210) and admissible (*Evidence Code* §350) unless excludable under *Evidence Code* §352.

*Evidence Code* §780 provides:

Except as otherwise provided by statute, the court or jury **may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony** at the hearing, including but not limited to any of the following:

- (a) His demeanor while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) **His character for honesty or veracity or their opposites.**
- (f) **The existence or nonexistence of a bias, interest, or other motive.**
- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.
- (j) His attitude toward the action in which he testifies or toward the giving of testimony.
- (k) His admission of untruthfulness.

(Emphasis added).

The records sought are relevant in the criminal case to complaining witness [WITNESS'S NAME] credibility and motivations and thus may be admissible under §780.