# MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION

**FOR PSYCHOLOGICAL EVALUATION OF MINOR CHILD VICTIM**

State of Colorado

**STATEMENT OF FACTS-MODIFIED**

On December 1, 1983, the victim, B.G., 14 years old at the time, was asleep in her home. At approximately 3:00 a.m. she was awakened by someone rubbing her pubic area with his hand over her clothing. She noticed that the person doing this was the defendant, a friend of the family who had been staying at the house.

 Subsequent to this incident, the defendant gave a statement to a detective in which he admitted going into the victim’s room to put the dog there and attempted to pat B.G. on the shoulder but for an unknown reason patted her on the hip near her buttock area.

 Since January 6, 1984, the victim has been involved in psychotherapy with Dr. J.R. Dr. J.R. prepared a report which appears to be the basis for the defendant’s motion.

**LEGAL ARGUMENT**

The well-established Colorado rule is that the ordering of a psychological examination of a child molestation victim is discretionary with the trial court. *People v. King,* 41 Colo. App. 177, 581 P.2d 739 (1978); *People v. Estorga*, 200 Colo. 78, 612 P.2d 520 (1980). A court should order such an examination only where there is a compelling reason for it.

 In *King,* 41 Colo. App. 177, 581 P.2d 739, the defendant was charged with sexual assault on his ten-year-old stepdaughter. In support of his motion for psychological examination of the victim was an affidavit alleging that the victim was mentally immature, had a vivid imagination, is subject to flights of fancy and that he has observed that the complainant had fantasies concerning sexual contact and relationships.

 The court found that those statements were devoid of specific factual recitation, and were merely conclusory in nature. It went on to say that a court must balance “the possible emotional trauma, embarrassment or intimidation to the complainant against the likelihood of the examination producing material, as distinguished from speculative, evidence,” 581 P.2d at 741. *See also State v. Kahinu*, 498 P.2d 635 (Haw. 1972).

 The court reaffirmed its position in *Estorga*, 200 Colo. 78, 612 P.2d 520 (1980). That case involved a sexual assault of a slightly retarded ten-year-old girl, in which the defendant filed a motion for psychological evaluation of the victim. In support of the motion, the victim’s mother testified that the victim was then ten years of age, had no trouble talking with people, was mentally retarded and was in special education classes. The court, citing *King,* found there was no compelling need for a psychological evaluation and that the trial court did not abuse its discretion in denying the motion.

 The Court of Appeals in *People v. Piro*, 671 P.2d 1341 (Colo. Ct. App. 1983), upheld the trial court’s denial of defendant’s motion for a psychiatric examination of a 13-year-old victim where the child was undergoing therapy and had allegedly made false reports in the past. The court held that the adverse effects upon the victim outweighed the prospect of producing relevant evidence.

 As stated in *State v. Clontz*, 286 S.E.2d 793 (N.C. 1982), “To order the victim of a sex crime to unwillingly submit to a psychiatric examination would result in a profound invasion of her privacy which . . . would deter innocent victims of such crimes from ever making complaints . . . .” The court held that a trial judge does not have the discretionary power to compel an unwilling witness to submit to a psychiatric examination.

 The People submit that there is nothing in defendant’s motion that rises to the “compelling need” standard set forth in *King* and *Estorga*. In fact, the statement by the defendant that he “believes the alleged victim is fantasizing this incident or making it up to control her family” is the kind of speculative assertion that the courts have disapproved.

 Furthermore, the defendant already has a psychological evaluation of the victim prepared by Dr. J.R. Nowhere in the report does it indicate a belief that the victim is not telling the truth regarding the sexual assault.

 THEREFORE, based on the foregoing brief and authorities cited therein, the People respectfully ask this court to deny defendant’s motion for psychological evaluation.

Dated:

Respectfully submitted,

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Assistant District Attorney