**MEMORANDUM IN SUPPORT OF AGE APPROPRIATE QUESTIONING, PRESENCE OF SUPPORT PERSONS AND ORDER OF TESTIMONY BY SUPPORT PERSONS**

**A. EVIDENCE CODE SECTION 765 PROHIBITS DEFENSE COUNSEL FROM USING QUESTIONS THAT ARE CONFUSING AND MISLEADING TO J. AGE 10, N. AGE 8, AND J.L. AGE 6**

Evidence Code section 765 provides in pertinent part that:

With a witness under the age of 14, the court shall take special care to protect him or her from undue harassment or embarrassment, to restrict the unnecessary repetition of questions. the court shall also take special care to insure that questions are stated in a form which is appropriate to the age of the witness. The court may in the interests of justice, an objection by a party, forbid the asking of a question which in the form that is not reasonably likely to be understood by a person of the age of the witness.

Pursuant to Evidence Code section 765 we ask the Court to control the mode of interrogation of three (3) witnesses, J. (age 10), N. (age 8) and J.L. (age 6).

##### B. J. , N. AND J.L. ARE ENTITLED TO THE PRESENCE OF TWO (2) SUPPORTING WITNESSES UNDER PENAL CODE SECTION 868.5

California Penal Code section 868.5 provides that a prosecuting witness is entitled to have up to two (2) persons present for support during his or her testimony at trial. California Penal Code section 868.5 provides, in relevant part:

Notwithstanding any other provision of law, a prosecuting witness in a case involving a violation of Section . . . 288, 288a, .. . ., shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at trial . . .. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness’ testimony.

Defendant has been charged with violation of five (5) counts of Penal Code section 288(a). Because of the sensitive nature of the testimony, J., N. and J.L. are entitled to the presence of a person of his or her choice to be present at the witness stand during their testimony. The presence of a support person will lend moral support to the children during their court appearance.

**C. WITNESS FOR THE PROSECUTION MAY ACT AS SUPPORTING PERSON UNDER PENAL CODE SECTION 868.5 AFTER THEY HAVE TESTIFIED EVEN THOUGH THEY ARE SUBJECT TO RECALL**

Penal Code section 868.5(c) requires that supporting persons who are also witnesses for the prosecution must testify before the prosecuting witness. Subsection (c) provides, in relevant part:

The testimony of the person or persons so chosen who are also prosecuting

witnesses shall be presented before the testimony of the prosecuting witness.

The prosecuting witness shall be excluded from the courtroom during that

testimony.

In *People v. Redondo* (1988) 203 Cal.App.3d 647, the court held that it was not error to allow a prosecuting witness who had already taken the stand, and who had then acted as a supporting person under Penal Code section 868.5 to be recalled for further testimony. The court said:

We believe a blanket rule which prevents a support person from being recalled in any circumstance after the victim has testified is a far less desirable alternative. Such a rule would keep relevant, admissible, and perhaps important evidence from the jury . . . . *Id.*, at 654.

Similarly, in *People v. Disandra* (1987) 193 Cal.App.3d 1354, a prosecuting witness who had already testified attended the trial as any other member of the public even though the support person was subject to recall.

The People respectfully request, pursuant to the foregoing authority, that the court grant the children’s request and allow the attendance of support persons pursuant to statutory requirements, even if this person is also a prosecution witnesses subject to recall.

Dated:

Respectfully submitted,

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District Attorney

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy District Attorney

Attorney for Plaintiff