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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF XXX**

In the Matter of	)	Case Number: XXXX
	)	
<b>A.R.</b>	)	<b>CHILD'S TRIAL BRIEF</b>
	)	
a Child.	)	
	)	
	)	
	)	Date: XX, 2007
	)	Time: 8:30 a.m.
	)	Dept.: XXXX

**INTRODUCTION**

As ordered by the court, counsel for A.R. submits this trial brief addressing the main issues to be decided at the contested adjudication and disposition hearing set for XXXX, 2007. A.R.'s statements that she was sexually abused by her mother are admissible under Welfare and Institutions Code (hereafter "WIC") section 355(c)(1)(B) and (c)(1)(C) as well as under the child dependency hearsay exception and support jurisdiction and removal from the mother. Furthermore, the court must place A.R. with the father absent evidence of detriment and should exercise its discretion to deny reunification services to the mother under WIC 361.2.

**STATEMENT OF FACTS**

The Department initially detained A.R., then two, and her half-brother H.R., age four months, from their mother in XXXX 2004 due to the mother's neglect and mental problems. (WIC

1 § 300 petition filed XXXX/04.) The children were declared dependents pursuant to WIC section  
2 300(b) and placed in foster care. The mother was ordered to complete parenting, eight consecutive  
3 random drug tests, individual counseling to address depression, and to consult with a psychiatrist  
4 and take all prescribed medications. (XXXX/04 Minute order.) On XXXX, 2005, at the eighteen-  
5 month review hearing, the court placed A.R. with the nonoffending father, XXXX XXXX. On  
6 XXXX, 2005, the court terminated reunification for the mother. (XXXX/05 Minute order.) On  
7 XXXX, 2006, jurisdiction was terminated over A.R.. (XXXX/06 Minute order.) A family law  
8 order was issued and awarded the father primary physical custody, gave the mother liberal  
9 visitation, and ordered joint legal custody. (XXXX/06 Det. Rpt., p. 4.)

10 On XXXX, 2006, the Agency received a referral of physical abuse and neglect of A.R. in  
11 the home of the father. The father agreed to a Voluntary Family Maintenance Contract. He was to  
12 participate in Family Preservation, parenting, and family counseling, along with his wife, her  
13 children, and A.R.. (XXXX/06 Det. Rpt., pp. 3, 6; 12/7/06 Juris./Dispo. Rpt., p. 13.)

14 On or around XXXX, 2006, A.R. told her Family Preservation therapist XXXX XXXX that  
15 she had taken showers with her maternal grandfather and her maternal uncle, who lived with the  
16 mother. Both the grandfather and uncle confirmed that they had given A.R. showers but denied  
17 anything inappropriate happened. On or around XXXX, 2006, A.R. participated in a forensic  
18 interview which was negative for sexual abuse. (XXXX/06 Det. Rpt., p. 6.)

19 On XXXX, 2006, A.R. told XXXX XXXX that on that same day, her mother had inserted  
20 her finger in A.R.'s private area and it hurt to go to the bathroom. (XXXX/06 Det. Rpt., p. 6.) On  
21 XXXX, 2006, A.R. was examined by Dr. XXXX XXXX, who said his medical findings were  
22 consistent with sexual abuse. Dr. XXXX also said that A.R. had made statements to him,  
23 discussed further below, that indicated her mother had molested her, including that her mother had  
24 told her not to tell or her father would go to jail. (XXXX/06 Det. Rpt., p. 7 and att. Patient  
25 Progress Note.)

26 On XXXX, 2006, Deputy XXXX of the XXXX interviewed A.R. According to the police  
27 report, A.R. told him that her mom touched her private parts, pointing to her vaginal area. She said  
28 it burned when she urinated. She apparently told the officer that it only happened one time. A.R.

1 said she was laying in the mother's bed watching television, wearing shorts and a t-shirt, when her  
2 mother inserted her right index finger into her vagina. Her mother put her finger in and out of her  
3 vagina XXXX times. A.R. pushed her mother's hand away and told her mother "'don't do that.'"  
4 Her mother told her not to tell anyone. A.R. also said she had showered once with her grandfather  
5 and once with her uncle but denied any inappropriate touching. (Police Rpt. att. to XXXX/06 Det.  
6 Rpt., pp. 3-4.)

7 On XXXX, 2006, the Agency filed a new petition regarding A.R. which alleged that the  
8 mother had sexually abused A.R. by digitally penetrating her and instructing the child not to tell.  
9 The Agency recommended no reunification services for the mother. (WIC § 300 petition filed  
10 XXXX/06.) A.R. was detained with her father, who was nonoffending. The case was continued to  
11 XXXX, 2006 for mediation and adjudication. (XXXX/06 Minute order.)

12 On XXXX, 2006, the court terminated parental rights as to A.R.'s half-sibling H.R.  
13 (XXXX/06 Minute order.)

14 On XXXX, 2006, the Agency filed a first-amended petition which added an allegation  
15 under section 300(j) that the mother had failed to reunify with H.R. (WIC § 300 first-amended  
16 petition filed XXXX/06.) The Jurisdiction/Disposition Report also filed that day stated that A.R.  
17 had participated in another forensic interview on XXXX, 2006 conducted by the XXXX Center.  
18 The Dependency Investigator (DI) had reviewed the videotaped interview and summarized A.R.'s  
19 statements as follows: A.R. began by saying she did not want to talk about the incident or that she  
20 forgot. She said her mother was mad at her and would hit her with a belt. She did not want to be  
21 alone with her mother. A.R. made "numerous statements that her mother hurt her, but she never  
22 followed up those statements with any concrete indicators of specific abuse." (XXXX/06  
23 Juris./Dispo. Rpt., p. 6.)

24 The DI had also interviewed the mother and she flatly denied the allegations. When  
25 asked if she remembered a time when A.R. might have accidentally injured her vaginal area, the  
26 mother said no. However, later in the interview, the mother recalled a time when "'A.R. came to  
27 me and said 'mommy I've fallen on my private parts.'"' She believed it occurred in XXXX or  
28 early XXXX. The mother denied asking A.R. how she was hurt. (XXXX/06 Juris./Dispo. Rpt., p.

1 7.) The DI was suspicious of the timing and content of the mother's disclosure. (*Id.* at p. 17.) The  
2 DI also said the mother had a documented history of mental health problems and seemed incapable  
3 of taking any responsibility for what had happened. (*Id.* at pp. 9-10.) The mother told the DI that  
4 A.R.'s father was actually a man by the name of XXXX XXXX. (*Id.* at p. 11.) She also seemed to  
5 believe she could still reunify with H.R. even though her parental rights had been terminated. (*Id.*  
6 at pp. 8, 10-12.)

7 Dr. XXXX XXXX had been interviewed telephonically twice. On XXXX, 2006, he told  
8 the ER-CSW that A.R. told him her mother "'put her finger in my pee pee.'" (XXXX/06  
9 Juris./Dispo. Rpt., p. 8.) She said it had happened more than once, and that it did not hurt every  
10 time but did hurt the last time. According to Dr. XXXX, A.R.'s labia major was very red and  
11 swollen. Her urethra opening was inflamed. In addition, her hymen was not intact. (*Id.* at pp. 8-  
12 9.) On XXXX, 2006, the DI spoke with Dr. XXXX. He clarified that while A.R.'s injuries could  
13 have resulted from an accident, they were also "highly consistent with abuse in light of the minor's  
14 statements." (*Id.* at p. 9.) He found A.R.'s statements to be believable. (*Ibid.*)

15 The Agency recommended that the court grant custody to the father, deny reunification  
16 services to the mother, and terminate jurisdiction with a family law order giving father full custody.  
17 (XXXX/06 Juris./Dispo. Rpt., p. 17.) On XXXX, 2006, mediation was held and was unsuccessful.  
18 The mother requested a contested hearing, which was set for XXXX, 2007. The court ordered all  
19 counsel to submit trial briefs by XXXX, 2007. (XXXX/06 Minute order.)

## 20 **ARGUMENT**

### 21 22 **I. A.R.'S STATEMENTS ARE ADMISSIBLE AND SUPPORT JURISDICTION 23 UNDER WIC SECTION 300(d)**

24 WIC section 300(d) provides for juvenile court jurisdiction over a child who has been  
25 sexually abused or is at substantial risk of sexual abuse by a parent. The petition alleges that the  
26 mother sexually abused A.R. on or about XXXX, 2006 and on prior occasions by digitally  
27 penetrating her vagina causing injury. Further, the mother allegedly instructed A.R. not to tell.  
28 The principal evidence supporting the allegations are A.R.'s statements to her Family Preservation  
therapist, the doctor who examined her, and a police officer, all of which are contained in the social

1 study. A.R.'s out-of-court statements are admissible and constitute competent evidence upon  
2 which to find jurisdiction under section 355(c)(1)(B) and (c)(1)(C) as well as under the judicially-  
3 created child dependency hearsay exception. (See *In re Cindy L.* (1997) 17 Cal.4th 15.)

4 WIC section 355(c)(1)(B) allows the juvenile court to rely *exclusively* on the hearsay  
5 statements of a minor who is under the age of 12 and who is the subject of the jurisdictional  
6 hearing that are contained in the social study, unless an objecting party can show that the child's  
7 statements are the result of fraud, deceit, or undue influence. The admissibility of the child's  
8 statements is not conditioned upon the child's availability for cross-examination. (*In re Lucero L.*  
9 (2000) 22 Cal.4th 1227, 1242.)<sup>1</sup> Under section 355(c)(1)(C), the court may also rely on statements  
10 of a police officer, a health practitioner, a licensed social worker, or a teacher, with the proviso that  
11 the statements are admissible only to the extent that they would be if the declarant were testifying  
12 in court. (*Id.* at p. 1249, fn. 7.)

13 All of A.R.'s statements in Jurisdiction/Disposition Report fall within WIC section  
14 355(c)(1)(B) and (c)(1)(C) with the possible exception of her statements to Family Preservation  
15 therapist. It is unclear whether Ms. XXXX is a licensed social worker as defined in section  
16 355(c)(1)(C). However, since no party made a *timely* objection to Ms. XXXX's statements as  
17 required by section 355(c)(1), they too are admissible. There is no need to rely exclusively on Ms.  
18 XXXX's statements given A.R.'s statements to Dr. XXXX and the police officer as well as the  
19 medical evidence.

20 Although it is unnecessary in this case for the court to even reach the child dependency  
21 hearsay exception, A.R.'s statements would be admissible under that exception as well. The child  
22 dependency hearsay exception is a judicially-created hearsay exception approved by the California  
23 Supreme Court in *In re Cindy L.*, *supra*, 17 Cal.4th 15 before the legislature added section  
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25 <sup>1</sup> In *Lucero L.*, the California Supreme Court held that a reliability finding is also required where  
26 the court finds the child to be incompetent to testify due to an inability to differentiate the truth  
27 from a lie *and* the child's hearsay statements are the only evidence supporting jurisdiction. (*Lucero*  
28 *L.*, *supra*, 22 Cal.4th 1227.) That is not the situation here. No party has asserted and there is no  
evidence to suggest that five-year-old A.R. is truth incompetent; moreover, in this case there is  
other evidence supporting jurisdiction, namely Dr. XXXX's findings that A.R.'s hymen is not  
intact.

1 355(c)(1)(B) to expressly allow admission of the out-of-court statements of children under age 12.  
2 (*Lucero L., supra*, 22 Cal.4th 1227, 1237-1243.) There are three requirements in order for a child's  
3 hearsay statement to be admissible under the child dependency hearsay exception: "(1) the court  
4 must find that the time, content, and circumstances of the statement provide sufficient indicia of  
5 reliability; (2) a child must either be available for cross-examination or there must be evidence of  
6 child sexual abuse that corroborates the statement made by the child; and (3) other interested  
7 parties must have adequate notice of the public agency's intention to introduce the hearsay  
8 statement so as to contest it.'" (*Id.* at p. 1239, quoting *Cindy L., supra*, 17 Cal.4th 15, 29.)

9 The Court has identified the following nonexhaustive list of factors to consider in assessing  
10 whether a child's out-of-court's statements are reliable: "(1) spontaneity and consistent repetition;  
11 (2) the mental state of the declarant; (3) use of terminology unexpected of a child of similar age;  
12 and (4) lack of motive to fabricate." (*Cindy L., supra*, 17 Cal.4th 15, 29-30.)

13 In *Cindy L.*, the almost four-year-old girl told her preschool teacher that her father had  
14 touched her vagina. Upon questioning, the child repeated the allegations to two agency social  
15 workers and a police investigator. The doctor who examined the child found no evidence of  
16 trauma but did not visualize a hymen and concluded his findings were consistent with sexual abuse.  
17 (*Cindy L., supra*, 17 Cal.4th 15, 20.) The Supreme Court upheld the juvenile court's finding of  
18 jurisdiction, agreeing that the child's statements were spontaneous, consistent, showed precocious  
19 knowledge of sexual matters, and that the child had no motive to lie. In addition, medical evidence  
20 corroborated the child's statements, making cross-examination unnecessary. (*Id.* at pp. 34-36.)

21 Likewise in this case, A.R.'s initial statement to XXXX XXXX that her mother had  
22 inserted her finger in A.R.'s private area and it hurt to go to the bathroom was spontaneous.  
23 Furthermore, A.R. repeated the allegations to Dr. XXXX and the police officer for the most part  
24 consistently, although she provided more detail about the abuse to the police officer and allegedly  
25 varied about whether the abuse had only happened once or more than once. A.R.'s statements to  
26 Dr. XXXX that "her mom hurt her 'pee pee' with her finger" also show precocious knowledge of  
27 sexual matters, as a XXXX-year-old child would not normally know about digital penetration. Nor  
28 is there anything to suggest, despite A.R.'s statements that she is afraid to be alone with her mother

1 and believes her mother is mad at her (XXXX/06 Juris./Dispo. Rpt., p. 14), that she had a motive to  
2 lie. Although A.R. was in the primary custody of her father at the time she made the allegations,  
3 the father did not disclose the abuse and has said he is not even convinced that it happened. (*Id.* at  
4 p. 8.) It is also significant that A.R. has not made allegations against anyone else and has denied  
5 that her maternal grandfather or uncle have abused her despite being questioned about them. (Cf.  
6 *In re Carmen O.* (1994) 28 Cal.App.4th 908, 921 [fact that young girl had not accused any other  
7 males in household added to reliability of her statements that her father had abused her].) Thus,  
8 A.R.'s statements bear the requisite indicia of reliability for admissibility under the child  
9 dependency hearsay exception.

10 Moreover, as in *Cindy L.*, Dr. XXXX's findings provide independent corroborative  
11 evidence that A.R. was sexually abused. Dr. XXXX said A.R.'s labia major was very red and  
12 swollen, her urethra opening was inflamed, and her hymen was not intact. While A.R.'s injuries  
13 could have resulted from an accident, Dr. XXXX concluded the injuries were consistent with  
14 A.R.'s statements indicating abuse. The medical evidence relied on in *Cindy L.* was virtually  
15 identical to the evidence here. (*Cindy L.*, *supra*, 17 Cal.4th 15, 20.) Corroborative evidence need  
16 not be conclusive. Rather, corroborative evidence only has to support a logical and reasonable  
17 inference that the abuse described in the child's hearsay statements occurred. (*Id.* at p. 35.) Dr.  
18 XXXX's findings do just that.

19 The final requirement for admissibility of A.R.'s statements under the child dependency  
20 hearsay exception, that the parties have adequate notice of the agency's intention to introduce the  
21 child's statements, has clearly been met here. A.R.'s statements are contained in the Agency's  
22 Detention Report prepared XXXX, 2006 as well as the Jurisdiction/Disposition Report dated  
23 XXXX, 2006. The mother has been on notice of the Agency's intention to introduce the statements  
24 at the jurisdictional hearing for many months.

25 In summary, A.R.'s statements that her mother digitally penetrated her and told her not to  
26 tell are admissible under sections 355(c)(1)(B) and (c)(1)(C) as well as the child dependency  
27 hearsay exception. Furthermore, the child's statements, combined with the medical evidence that  
28 A.R.'s hymen is not intact and the mother's lack of a credible explanation of how else A.R. might

1 have been injured, support a finding by a preponderance of the evidence that A.R. was sexually  
2 abused by her mother.

3 **II. A.R. MUST BE PLACED WITH HER FATHER ABSENT EVIDENCE OF**  
4 **DETRIMENT AND THE MOTHER IS NOT ENTITLED TO REUNIFICATION**  
5 **SERVICES UNDER WIC 361.2**

6 Assuming the court sustains the petition and removes A.R. from the custody of her mother,  
7 the court is required by WIC section 361.2(a) to place A.R. with her father unless it finds by clear  
8 and convincing evidence that such placement would be detrimental to her physical or emotional  
9 well-being.<sup>2</sup> (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827-1829.) Under section 361.2(b),  
10 the court has three options when placing a child with a previously noncustodial parent: (1) Order  
11 legal and physical custody to the parent and terminate jurisdiction; (2) Order custody to the parent,  
12 continue jurisdiction and require the social worker to conduct a home visit within three months and  
13 file a report with the court, or (3) Order custody to the parent and continue jurisdiction either to  
14 provide reunification services to the previously custodial parent, family maintenance services to the  
15 parent who has assumed custody, or both. Reunification services to the previously custodial parent  
16 in this situation are entirely within the discretion of the juvenile court. (*In re Sarah M.* (1991) 233  
17 Cal.App.3d 1486, 1496-1497, disapp. on other grounds by *In re Chantal S.* (1996) 13 Cal.4th 196,  
18 204; see also *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1453-1455 [where court exercises  
19 discretion to provide reunification services to previously custodial parent, failure to provide  
20 adequate services is not a bar to termination of jurisdiction under WIC 361.2].)

21 Given that the mother previously received reunification services for A.R., that she failed to  
22 reunify with A.R.'s half-sibling H.R., and that she appears unwilling or unable to accept any  
23 responsibility for or demonstrate any insight into the reasons for A.R.'s current removal, the court  
24 should exercise its discretion to deny reunification services to the mother under WIC section 361.2.

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25  
26 <sup>2</sup> In the alternative, the court could find Mr. XXXX to be a custodial parent given that he had  
27 primary physical though joint legal custody with the mother at the inception of the proceedings. In  
28 that case, the court would be required to allow the father to retain custody of A.R. unless it found  
clear and convincing evidence of risk to her physical safety to justify removal. (WIC § 361(c)(1);  
*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695-698.)

However, before terminating jurisdiction over a child who is placed with a nonoffending noncustodial parent under WIC section 361.2, the court must determine whether there is a need for continued supervision. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1135.) While the Agency is recommending that the court grant custody to the father and immediately terminate jurisdiction, counsel for A.R. is concerned that the father was recently receiving services through a Voluntary Family Maintenance Contract due to a substantiated allegation of physical abuse of A.R. It is unknown whether the father successfully completed the Voluntary Family Maintenance Contract. Therefore, counsel for A.R. reserves the right to ask the court to continue supervision and provide family maintenance services to the father for six months before terminating jurisdiction.

## CONCLUSION

For the reasons stated, the counsel for A.R. requests that the court find that A.R. was sexually abused by her mother, grant physical custody of A.R. to her father, and deny reunification services to the mother.

Dated: XXXX, 2007

Respectfully submitted,

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