

January 17, 2014

Honorable Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *In re A.A.* (2013) 221 Cal.App.4th 725
Case No. S215467 (Second District Court of Appeal No. B240896)
Letter of Amicus Curiae In Support of Petition For Review (Cal. Rules
of Court, rule 8.500(g)(1))

To the Chief Justice and the Associate Justices of the California Supreme Court:

Pursuant to California Rule of Court, rule 8.500(g), the California Association of Counties (CSAC) respectfully submits this letter in support of the petition for review filed by the Los Angeles County Department of Children and Family Services, filed with this Court on December 24, 2013, asking this Court to review the above-referenced opinion of the Second District Court of Appeal, Division One (appellate court), filed October 29, 2013, and certified for publication on November 21, 2013, for the reasons set forth below.

I. California Association of Counties' Interest in Review

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case involves a matter affecting all counties. Specifically, further guidance is needed to assist courts, and counties relying on the decisions of those courts, in determining under what circumstances a parent or guardian's children of the opposite sex are subject to dependency court jurisdiction as a result of a parent or guardian's sexual abuse of a child.

II. Review Should be Granted to Ensure Uniformity of Decision and to Settle an Important Question of Law

In *In re I.J.* (2013) 56 Cal.4th 766, this Court held that a father's sexual abuse of his daughter may support a determination that his sons are juvenile court dependents even if there is no evidence the father sexually abused or otherwise mistreated the boys, and they were unaware of their sister's abuse. The present case presents similar facts—jurisdiction was asserted over two boys following their father's sexual abuse of a close family friend, an unrelated nine year old girl, in the family home with the boys present. The appellate court initially held that the abuse did not constitute sufficient evidence to conclude father's male children were also at risk of sexual abuse. This Court granted review, held the case while it was considering *In re I.J.*, and then remanded for reconsideration in light of the ruling in *In re I.J.*

On remand, the appellate court once again held that the abuse did not constitute sufficient evidence to conclude father's male children were also at risk of sexual abuse distinguishing this case from *In re I.J.*, *supra*, by stating:

The alleged abuse of An. R. involved father rubbing his erect penis against her buttocks, simulating intercourse, grabbing her buttocks, rubbing his penis against her vagina, and holding her in his lap against his penis, with no disrobing, penetration, genital contact or use of force. *We believe the distinction makes a difference because the fully clothed rubbing of genital areas here was nothing like the abuse committed in In re I.J. or even In re Jordan R., and did not, in our view, constitute a fundamental betrayal and abandonment and contravention of the parental role.*

(*Id.* at p. 730, emphasis added.) The appellate court also held that sexual abuse that occurred for a year was insufficient in duration to justify juvenile court jurisdiction. (*Id.* at p. 730.)

This Court should grant review, pursuant to California Rules of Court, rule 8.500(b)(1), to provide Courts of Appeal clear guidance in cases involving the sexual abuse of a child, and the risk presented to the perpetrator's children of the opposite sex of similar abuse based on the parent's behavior and the contravention of the trust imbued in the parental role. In its decision in *In re I.J.*, this Court, recognizing that the decisions of the Courts of Appeal conflicted, offered guidance on this issue. (*In re I.J.*, *supra*, 56 Cal.4th at 774.) However, the decision in *In re A.A.*, *supra*, indicates that additional guidance is necessary to settle this ongoing issue within the courts.

In *In re I.J.*, after finding that jurisdiction was appropriate under Welfare and Institutions Code section 300, subdivision (j) [abuse of a sibling], this Court specifically left open the question of whether or not the opposite-sex children of a parent or guardian who had sexually abused a child was subject to jurisdiction under Welfare and Institutions Code section 300, subdivisions (b) [neglect] and (d) [sexual abuse]. (*In re I.J.*, *supra*, 56 Cal.4th at 773.) In this case, as the father abused an unrelated child, jurisdiction under section 300, subdivision (j) does not apply. But the opinion rendered by the appellate court in *In re A.A.*, *supra*, shows that the question of when jurisdiction attaches under section 300, subdivision (b) urgently requires an answer from this Court. This case thus meets the criteria set forth in California Rules of Court, rule 8.500(b)(1), as it will settle an important question of law for agencies and courts charged with the protection of vulnerable children.

CSAC believes the Petition for Review filed by the Los Angeles County Department of Children and Family Services convincingly argues that the appellate decision in this case is contrary to this Court's holding in *In re I.J.*, *supra*, and that the children in this case fall under section 300, subdivisions (b) and (d) due to the substantial risk of abuse. As such, CSAC joins with them in urging this Court to grant the petition. "In *In re I.J.* the court opined that there is 'a violation of trust' when the sexual abuse occurs in the children's home where they could observe the abuse. (*Id.* at p. 778.) Here, the father's sexual abuse of A.R. occurred, on occasion, in A.A. and J.A.'s actual presence. [Citation.] Even though the boys did not perceive the conduct as sexual abuse, the father's conduct was exactly such 'a violation of trust' as described in *In re I.J.* Such conduct committed in any reasonable person's presence is offensive under the Penal Code, justifying jurisdiction under section 300, subdivision (d)." (Petition for Review at p. 18.)

III. Conclusion

For the foregoing reasons, and for the all of the reasons stated in the Petition for Review, CSAC respectfully urges this Court to grant the Petition for Review in this case.

Respectfully submitted,

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Proof of Service Attached