

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2595 (Jones-Sawyer)  
Version: March 30, 2022  
Hearing Date: June 21, 2022  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Juveniles: dependency: jurisdiction of the juvenile court

**DIGEST**

This bill requires the California Department of Social Services (CDSS) to update administrative requirements and guidance to ensure that child welfare investigations treat a parent or guardian’s possession or use of cannabis in the same manner as use or possession of alcohol or legally prescribed medication.

**EXECUTIVE SUMMARY**

The child welfare system is intended to achieve a delicate balance of values, including “protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life.” (*In re R.T.* (2017) 3 Cal.5th 622, 638.) Welfare and Institutions Code section 300(b) (section 300(b)) provides that a child may be brought into the system if the child is subjected to serious physical harm or a substantial risk thereof by a parent’s willful or negligent failure to properly provide for the child. A parent’s substance abuse, without more, is not enough for removal of a child – there must be a showing that the child has suffered, or that there is substantial risk the child will suffer, serious harm as a result of the substance abuse. (*See, e.g., Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.)

In 2016, Californians approved, by a healthy margin, a ballot measure to approve the use of and possession of specified amounts of cannabis by adults aged 21 and older. Yet the author, sponsor, and supporters of the bill report that child welfare agencies continue to file petitions alleging parental neglect on the sole basis of the parent’s possession or use of cannabis. Given the extraordinary disruption to a family that juvenile court jurisdiction can cause – including, in the worst case scenario, losing custody of a child – it is difficult to discern a good faith reason for petitions based solely on the possession or use of cannabis by an otherwise-attentive and loving parent continue to be filed.

This bill seeks to address and prevent juvenile court petitions from being filed solely on the basis of a parent or guardian's use or possession of legal cannabis by further clarifying that a parent or guardian's cannabis use or possession, without more, does not constitute abuse or neglect for purposes of the juvenile court. Specifically, this bill requires CDSS to update its regulations, all-county letters, and other instructions relating to a child welfare investigation to provide that, when a social worker is investigating an alleged case of child abuse or neglect, the use or possession of cannabis is treated in the same manner as the use or possession of alcohol or legally prescribed medication.

This bill is sponsored by Los Angeles Dependency Lawyers, Inc., and is supported by California NORML and the National Association of Social Workers – California Chapter. There is no known opposition. This bill passed out of the Senate Human Services Committee with a 4-0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the juvenile court, which is intended to provide for the protection and safety of the public and minors falling under its jurisdiction. (Welf. & Inst. Code, §§ 202, 245.)
- 2) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian<sup>1</sup> on the basis of enumerated forms of abuse or neglect. (Welf. & Inst. Code, § 300(a)-(j).)
- 3) Provides, under 2), that a child becomes a dependent of the juvenile court when the child has suffered, or there is a substantial risk that the child will suffer serious physical harm or illness as a result of the inability of the parent to provide regular care for the child due to the parent's mental illness, developmental disability, or substance abuse. (Welf. & Inst. Code, § 300(b)(1).)
- 4) States that it is the intent of the Legislature that provisions for juvenile court jurisdiction not disrupt the family unnecessarily, intrude inappropriately into family life, or prescribe a particular method of parenting. (Welf. & Inst. Code, § 300.)
- 5) Provides, as the purposes of the provisions relating to juvenile court law:
  - a) Notwithstanding any other provision of law, the purpose of the juvenile court relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety,

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<sup>1</sup> Going forward, this analysis uses "parent" to refer to a parent or guardian.

- protection, and physical and emotional well-being of children who are at risk of that harm.
- b) This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children.
  - c) The focus is on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.
  - d) The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection, and physical and emotional well-being of the child.
  - e) Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. (Welf. & Inst. Code, § 300.2.)

This bill:

- 1) Requires CDSS to update all regulations, all-county letters, and other instructions relating to the investigation of a minor who may be a dependent of the juvenile court to ensure that, when a social worker is investigating an alleged case of child abuse or neglect, a parent's use or possession of cannabis is treated in the same manner as a parent's possession of alcohol and legally prescribed medication.

### COMMENTS

#### 1. Author's comment

According to the author:

California has found that cannabis use, whether medical or recreational, is acceptable for adults. Thus, cannabis use alone should not be a basis for state intervention into family life. As is the case with alcohol and prescription medication, parents and guardians should be allowed to safely and legally use cannabis without fear of having their children permanently removed from their care, provided there are no other concerns regarding the child's safety. As such, AB 2595 directs the Department of Social Services to update its regulations to ensure that cannabis is treated as any other legal substance for the purposes of child custody and dependency courts.

#### 2. Background on the juvenile court and its jurisdiction

Children who are at risk of abuse, neglect, or abandonment may be deemed dependents of the juvenile court and provided services, supports, and interventions aimed at protecting them and their health and safety. The system aims to preserve and strengthen families by maintaining or reuniting children with their parents whenever appropriate. The dependency process begins when child abuse, neglect, or

abandonment is reported to the local child welfare agency. A social worker with the child welfare agency investigates the allegation to determine if the child requires protection in order to ensure their safety. If so, the child welfare agency files a petition with the juvenile court to make the child a dependent of the court. If necessary, the social worker will remove the child from their home and take the child into protective custody.

Welfare and Institutions Code section 300 sets forth the statutory bases for juvenile court jurisdiction over a child. These bases include where a child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally by the child's parent or guardian; the child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care; and the child has been sexually abused, or there is a substantial risk that the child will be sexually abused by the parent or guardian or a member of their household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.<sup>2</sup>

3. A child does not become a dependent of the juvenile court simply because their parent uses or possesses cannabis

For purposes of this bill, the relevant jurisdictional basis for dependency jurisdiction provides that a child is a dependent of the juvenile court when the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the parent's inability "to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."<sup>3</sup> There is no statutory provision for placing a child under the jurisdiction of a court solely on the basis of a parent's use or possession of controlled substances. Even before California legalized adult recreational use and possession of cannabis, the Courts of Appeal consistently held that cannabis use, without more, is insufficient to establish a substantial risk of detriment to the physical or well-being of the child.<sup>4</sup>

Given that case law prohibited a parent's cannabis use, on its own, from being a basis for dependency jurisdiction *before* the passage of Proposition 64 legalizing specified forms of adult use and possession of cannabis,<sup>5</sup> the passage of Proposition 64 should

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<sup>2</sup> Welf. & Inst. Code, § 300.

<sup>3</sup> *Id.*, § 300(b)(1).

<sup>4</sup> See, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003; *In re David M.* (2005) 134 Cal.App.4th 822, 830 (abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622); *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.

<sup>5</sup> See The Adult Use of Marijuana Act, added by initiative, Gen. Elec. (Nov. 8, 2016), commonly known as Proposition 64.

have made it abundantly clear to child welfare agencies that a parent's possession or use of a *legal substance* cannot be the basis for a petition to make a child a dependent of the juvenile court. At this point, threatening to remove a child from their parent's care only because of their cannabis use is akin to threatening to remove a child from their parent's care because the parent has an occasional cocktail or uses prescription medications with no deleterious effects on the parenting itself. There is simply no legal basis for doing so.

4. This bill requires CDSS to make clear that a parent's use or possession of cannabis should be treated in the same manner by a social worker as a parent's use or possession of alcohol or legally prescribed medication

While the law on substance abuse and child abuse is clear, the author and sponsor state that some counties continue to remove children from their parents simply because of their parents' cannabis use. As stated above, regardless of the legality of cannabis, a child cannot be made a dependent of the juvenile court without a showing that the parents' substance abuse resulted in the willful or negligent failure to provide the child with adequate food, clothing, shelter, or medical treatment, or regular care for the child. But, argue the author and sponsor, children are more readily removed when cannabis is involved, as compared with alcohol or legally prescribed medication.

This bill does not seek to address this problem by clarifying the law: the law is already clear. Instead this bill requires CDSS to update all of its regulations, all-county letters, and other instructions relating to the investigation of a minor who may qualify as a dependent child to ensure that, when a social worker is investigating an alleged case of child abuse or neglect, the parent's use or possession of cannabis is treated in the same manner as the parent's use or possession of alcohol or legally prescribed medication would be. This should help ensure that older administrative decrees, that pre-date cannabis legalization, are properly updated to ensure equal treatment of cannabis, alcohol, and other legally prescribed drugs, but also that abuse of any of these or other substances, by themselves, does not warrant assertion of dependency jurisdiction over a child. That requires a showing of harm, or substantial risk of harm, to the child.

To be clear, nothing in current law or this bill alters the existing law permitting a juvenile court petition when the parent's cannabis use causes such substantial harm or risk of substantial harm. Just as alcohol or prescription medication can be used legally with no ill effects, or be abused and result in child neglect or abuse, so too can cannabis. This bill simply emphasizes – again – that it is long past time to stop treating cannabis use as inherently suspect. The history of anti-cannabis regulation is inextricable from policies that enforced white supremacy and overwhelmingly targeted users of color,

destroying lives and families in the process.<sup>6</sup> This bill reflects the Legislature's intent that the lingering effects of anti-cannabis bias – be they a reflection of conscious or unconscious white supremacist attitudes, or simply a lingering distaste for the use of cannabis – stops now.

### **SUPPORT**

Los Angeles Dependency Lawyers, Inc. (sponsor)  
California NORML  
National Association of Social Workers - California Chapter

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: SB 1085 (Kamlager, 2022) provides that a parent or guardian's condition of financial difficulty, including, but not limited to, poverty, homelessness, lack of access to medical care or resources, or the inability to afford food, clothing, home or property repair, or childcare, is not itself a sufficient basis for placing a child under the jurisdiction of the juvenile court. SB 1085 is pending before the Assembly Judiciary Committee.

#### Prior Legislation:

AB 841 (Cunningham, Ch. 98, Stats. 2021) added an exception to the circumstances in which a child falls within the jurisdiction of the juvenile court, providing that a child does not fall within the juvenile court's jurisdiction solely due to the failure of the child's parent or alleged parent to seek court orders for custody of the child.

AB 2723 (Chávez, 2016) would have provided that a child who has engaged in specified violations of the Penal Code relating to soliciting, or loitering with the intent to commit, prostitution falls within the jurisdiction of the juvenile court. AB 2723 died in the Senate Appropriations Committee.

SB 885 (Committee on Budget and Fiscal Review, Ch. 29, Stats. 2014) clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court.

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<sup>6</sup> See, e.g., California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (June 1, 2022), available at <https://oag.ca.gov/ab3121/reports> (last visited June 2, 2022), pp. 12-14, 379.

AB 2035 (Chesbro, 2014) would have clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court. AB 2035 was vetoed by Governor Brown, whose veto message stated that the bill was premature in light of ongoing efforts to combat commercial sexual exploitation of children.

AB 2001(Ammiano, 2014) would have provided that a child falls within the jurisdiction of the juvenile court when they reside in a runaway and homeless youth shelter and other evidence supports a finding of abuse or neglect. AB 2001 died in the Senate Appropriations Committee.

SB 738 (Yee, 2013) would have clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court, until January 1, 2017. SB 738 died in the Assembly Human Services Committee.

**PRIOR VOTES:**

Senate Human Services Committee (Ayes 4, Noes 0)  
Assembly Floor (Ayes 58, Noes 9)  
Assembly Appropriations Committee (Ayes 12, Noes 3)  
Assembly Human Services Committee (Ayes 6, Noes 0)  
Assembly Judiciary Committee (Ayes 8, Noes 0)

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