Supreme Court No. S274943
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF N.R., Minor.	Court of Appeal No. B312001 Superior Court Nos. 20CCJP06523, 20CCJP06523A
Los Angeles Department of Children and Family Services, Petitioner and Respondent, v. O.R., Objector and Appellant.	

Appellant's Answer to Amicus Brief filed by California State Association of Counties

After the Unpublished Decision by the Second District Court of Appeal, Division Five Filed April 29, 2022

Sean Angele Burleigh
ATTORNEY AT LAW
State Bar No. 305449
PO Box 1976
Cortaro, AZ 85652-1976
(415) 692-4784
Attorney for Appellant Father, O.R.
By appointment of the Supreme Court of California under California Appellate Project-Los Angeles Independent Case System

Table of Contents

Table of Authorities

US SUPREME COURT CASES

CALIFORNIA CASES

CALIFORNIA STATUTES

CALIFORNIA RULES OF COURT

LAW REVIEW ARTICLES

OTHER

Supreme Court No. S274943
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF N.R., Minor.	Court of Appeal No. B312001 Superior Court Nos. 20CCJP06523, 20CCJP06523A
Los Angeles Department of Children and Family Services, Petitioner and Respondent, v. O.R., Objector and Appellant.	

Appellant's Answer to Amicus Brief Filed by California State Association of Counties

Pursuant to California Rules of Court, Rule 8.520, subdivision (f)(7), Appellant O.R. (Father) submits this Answer Brief to the Amicus Brief submitted on behalf of California State Association of Counties (CSAC) on April 5, 2023. Appellant maintains any and all arguments and assertions made so far in briefing. Appellant joins in the arguments of the other seven amicus briefs filed in support of his position and will accordingly point this Court to relevant amici arguments that counter assertions made by CSAC. To the extent any points in the Amicus Brief filed by

CSAC are not addressed herein, the choice not to respond should not be considered a concession of those points.

Introduction

CSAC joins the Department in arguing that, concerning the term "substance abuse" in Welfare and Institutions Code section[1] 300, the task of statutory interpretation should be a discretionary endeavor left up to individual social workers, juvenile courts and reviewing courts. This approach belies basic tenets of statutory interpretation and if adopted by this Court will subject the families of California to the exact type of subjective and disparate treatment the Legislature sought to end. Father maintains that a finding of parental "substance abuse" should be based on the objective and scientifically based criteria from the current edition of the Diagnostic and Statistical Manual of Mental Disorders (the DSM).[2]

CSAC joins the Department in asserting that the "tender years" doctrine should not be disturbed because it is not a presumption affecting the burden of proof, but merely an "inference" of risk that arises from a finding of "substance abuse" regardless of the definition utilized. As explained in Appellant's Reply Brief this is at most a distinction without a difference. In support of this "inference", CSAC relies upon "empirical evidence" that has no relation to the subjective, malleable and undefined

---

[1] Further statutory references will be to the California Welfare and Institutions Code unless otherwise noted.
[2] In keeping with prior briefing, counsel will refer to the entity as DSM and identify a particular edition when necessary.

notion of "substance abuse" that they advocate for. Father maintains that this Court should reject the "tender years" doctrine and clarify that in line with the plain language of the relevant statutes and constitutional guarantees, the Department bears the burden to affirmatively prove the particular child before the court is at a current substantial risk of serious physical harm.

I. The term "substance abuse" in section 300, subdivision (b)(1) refers to a Substance Use Disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM).

This Court granted review to decide the split of authority on the definition of "substance abuse" which CSAC denies exists. (*Infra* I.A., pp. 11-13.) This Court should not leave statutory interpretation up to the discretion of individual social workers, trial judges, and reviewing courts. (*Infra,* I.B., pp. 13-16.) Father's approach is the most reasonable interpretation and CSAC's arguments to the contrary are unpersuasive. (*Infra,* I.C., pp. 16-29.) CSAC proposes yet another possible definition of "substance abuse" that courts and social workers may utilize if they so choose – the Department of Social Services Structured Decision Making Manual (the SDM Manual) – which is not in line with legislative intent but undermines certain claims made by CSAC about social work practice. (*Infra,* I.D., pp. 30-38.)

A. There is a split of authority on the definition of "substance abuse." This Court granted review to decide the disagreement in the law that CSAC denies exists.

CSAC claims that there is "not in fact a split of authority related to the definition of substance abuse." (CSAC, p. 21.) This is untrue. As stated in the most recent edition of the widely accepted treatise "Seiser & Kumli on California Juvenile Court's Practice and Procedure" published in 2022: "courts are ***split*** on whether a medical professional's diagnosis of a substance abuse pathology, or evidence showing factors that are recognized in the medical profession to support a diagnosis of substance abuse is necessary to establish jurisdiction under [section 300, subdivision (b)(1)(D)] due to a parent's substance abuse and its resultant negative impact on parenting thereby placing the child at risk." (*Seiser & Kumli on California Juvenile Courts Practice and Procedure* (2022), § 2.84[3] [emphasis added]; see also *In re J.A.* (2020) 47 Cal.App.5th 1036, 1046 ["the law is *not in agreement* on when substance use reaches the point of substance abuse"] [emphasis added].)

CSAC argues that *In re Drake M.* (2012) 211 Cal.App.4th 754, 758 (*Drake M.*) is an "outlier" and there is only a single published opinion adopting its reasoning which requires the satisfaction of medical criteria to support a factual finding of "substance abuse." (CSAC, pp. 17, 20 [citing *In re Natalie A.* (2015) 243 Cal.App.4th 178].) This is also not true. First, CSAC inaccurately characterizes the Second District Court of Appeal,

Division Eight's opinion *In re Alexzander C.* (2017) 18 Cal.App.5th 438 as declining to follow *Drake M.* (CSAC, p. 19.) The *Alexzander C.* court analyzed the father's substance use under the DSM-IV and DSM-V and concluded there was "sufficient evidence to demonstrate a substance abuse disorder pursuant to section 300, subdivision (b)." (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 448.)[3] Also, the Second District Court of Appeal, Division One in *In re L.C.* (2019) 38 Cal.App.5th 646 reversed the finding of "substance abuse" based on the lack of medical diagnosis and evidence that would have supported such a diagnosis. (*In re L.C., supra,* at pp. 652-53.) Other courts have declined to choose an approach. (E.g., *In re J.A., supra,* 47 Cal.App.5th at p. 1047; *In re J.M.* (2019) 40 Cal.App.5th 913, 922.) And many opinions following *Christopher R.* still recite alternative analysis in the event *Drake M.* is correct. (E.g., *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 727.)[4]

---

[3] The confusion is likely because the *In re Alexzander C.* court describes DSM 5 criteria as "criteria outlined in [] *Christopher R*" referencing only the observation made by the *Christopher R.* court that a revised edition of the DSM had been published. (*In re Alexzander C., supra,* at p. 447.)

[4] CSAC's claim that 124 published and unpublished opinions have rejected or declined to follow *Drake M.*, is misleading. (CSAC, p. 19 fn. 5.) In a WestlawNext search conducted on May 4, 2023 there are 122 results classified as "negative." This is without confining the search whatsoever and therefore includes cases discussing unrelated portions of *Drake M.* such as this Court's recent opinion *In re D.P.* (2023) 14 Cal.5th 266 which addresses not "substance abuse" but mootness. There are 879 results not classified as "negative."

Regardless, statutory interpretation is not decided by majority rule. (E.g. *In re G.C.* (2020) 48 Cal.App.5th 257, 278 [Diss. Opn. Menetrez, J.] [explaining that "hundreds" of published and unpublished opinions have completely mis-read section 361, subdivision (c)(1) and created a presumption in favor of removal based on any jurisdictional finding]; *In re E.E.* (2020) 49 Cal.App.5th 195, 217 [correcting this same misunderstanding that has "stemmed from a rise in appellate opinions misinterpreting section 361, subdivision (c)(1)"]; *In re B.E.* (2020) 46 Cal.App.5th 932, 939-40 [correcting a similarly widespread misinterpretation of section 361.5, subdivision (b)(13)].) In sum, CSAC is incorrect and there is a split of authority on the definition of "substance abuse." This Court in fact granted review to decide the very disagreement in the law that CSAC denies exists.

B. This Court should not leave the task of statutory interpretation up to the discretion of individual social workers, juvenile courts and reviewing courts.

CSAC joins the Department in the paradoxical argument that the term "substance abuse" in section 300 is clear and unambiguous but also open to an unlimited number of interpretations. (E.g., CSAC, pp. 23, 24.) CSAC asserts that because the Legislature did not specifically define the term "substance abuse" within the text of section 300 then this Court must interpret the term to have no specified meaning. (CSAC, p. 24.) Following CSAC's logic, any term that the Legislature does not supply a specific definition for must be left undefined and

open to variable interpretations by courts and practitioners. This assertion belies basic tenets of statutory interpretation.

First, a court must look to the plain language of the statute. (*In re R.T.* (2017) 3 Cal.5th 622, 627.) If the language is clear and unambiguous, the plain meaning is normally followed. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.) However, "[a] statutory provision is ambiguous if it is susceptible of two [or more] reasonable interpretations." (*People v. Dieck* (2009) 46 Cal.4th 934, 940.) CSAC argues the term "substance abuse" is susceptible to an *unlimited* number of reasonable interpretations. These include:

- Drinking "too much" alcohol (Respondent's Answer Brief (RAB), p. 27 [Oxford English Learner's Dictionary].)

- Excessive use of a drug (AB, p. 27 [Merriam-Webster's Dictionary])

- Any "use of a drug without medical justification" (AB, p. 27 [Merriam-Webster's Dictionary])[5]

- Any "illegal use of a substance" (AB, p. 27 [The American Heritage Dictionary of the English Language])

- "[t]he detrimental state produced by the repeated consumption of a narcotic or other potentially dangerous drug, other than as prescribed by a doctor…" (AB, p. 27 [Black's Law Dictionary].)

[5] Contra § 328.2 [marijuana should be treated as equivalent to alcohol use].

- "The use of illegal drugs or the use of prescription or over-the counter drugs or alcohol for purposes other than those for which they are meant to be used, or in excessive amounts…" (AB, p. 42 [National Cancer Institute's website].)

- The "caregiver has abused legal or illegal substances or alcoholic beverages in this incident to the extent that control of his/her actions or caregiving abilities is significantly impaired…" (CSAC, p. 35 [SDM Manual].)

- DSM criteria (CSAC, p. 28)

- Any other definition that a social worker, trial court or reviewing court deems appropriate. (CSAC, p. 24.)

Assuming *arguendo* that the definitions within this never-ending list are each reasonable interpretations of the term "substance abuse", the statute is certainly ambiguous. As this Court has explained: "where 'statutory ambiguity exists,' our role is 'to ascertain the most reasonable interpretation.'" (*People v. Raybon* (2021) 11 Cal.5th 1056, 1065 [quoting *People v. Canty* (2004) 32 Cal.4th 1266, 1277.)

Further, CSAC argues that this Court should leave the definition of the term "substance abuse" up to the discretion of social workers and courts because the Legislature has not acted to specifically lay out a definition within the text of section 300. (CSAC, pp. 24-25.) As this Court has repeatedly explained: "In the area of statutory construction, an examination of what the Legislature has done (as opposed to what it has left undone) is generally the more fruitful inquiry. Legislative inaction is a weak reed upon which to lean." (*Mendoza v. Forseca McElroy Grinding*

Co., Inc. (2021) 11 Cal.5th 1118, 1139 [citations omitted]; *Tomlinson v. Qualcomm, Inc.* (2002) 97 Cal.App.4th 934, 942; *People v. Anderson* (2002) 28 Cal.4th 767, 780; *Quinn v. State of California* (1975) 15 Cal.3d 162, 175.)[6]

C. The objective and scientifically based definition proposed by Father is the most reasonable interpretation of the term "substance abuse" and is most in line with legislative intent. CSAC's various arguments against DSM criteria are unpersuasive.

As explained thoroughly in Appellant's briefing and by amicus supporting appellant, a definition of "substance abuse" tied to the scientifically based criteria in the DSM is the most reasonable approach in line with legislative intent and the overall purposes of the dependency code. CSAC's various arguments against DSM criteria are unpersuasive.

i. CSAC inappropriately conflates the question of "substance abuse" with the separate questions of risk and causation.

CSAC like the Department critiques the DSM-V-TR criteria because this authoritative guide on mental disorders was not specifically designed for use in juvenile dependency. (CSAC, pp. 26-27, 29-33.) As explained in Appellant's Reply Brief, none of the "ordinary" dictionary definitions provided by the Department and supported by CSAC mention "third parties" or "children." (RAB,

---

[6] Counsel also addressed similar arguments made by the Department in Appellant's Reply Brief. (Appellant's Reply Brief filed on March 6, 2023 (ARB), pp. 20, 29.)

pp. 27-28, 42; ARB, p. 23.) The various online dictionaries that the Department and CSAC argue can be utilized by social workers and juvenile courts were certainly not created with juvenile dependency in mind. Regardless, CSAC like the Department inappropriately conflates the definition of "substance abuse" with the separate inquiries of causation and risk, essentially removing the rest of the language in section 300, subd. (b)(1)(D). (E.g., CSAC, pp. 26-27, 29; *Franchise Tax Bd. Of State of Cal. V. Superior Court* (1998) 63 Cal.App.4th 794, 799 [statutory interpretation should whenever reasonable "accord a significance to each word in the phrase"]).

Further, amici Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA) and California Society of Addiction Medicine (CSAM) point out that many of the DSM-V-TR criteria "*do* account for social and relational harms." (AMERSA/CSAM, p. 35.) Criterion 5, 6, and 7 "require an accounting of a patient's relationships – including with children – and are assessed as part of any guideline-based clinical evaluation for a SUD." (*Ibid.*)

ii. CSAC is incorrect that "substance abuse" is understood differently in dependency cases opposed to clinical settings. A parent labeled a "substance abuser" is treated as an "addict" by the Department and juvenile courts. This Court should require that at a minimum this label and resulting stigma be supported by the satisfaction of medically based criteria.

CSAC claims that "substance abuse" is understood differently in the context of juvenile dependency opposed to clinical settings. (CSAC, pp. 26-27, 30-33.) That is untrue. In juvenile dependency, a finding of "substance abuse" is equated with a finding of "addiction" or "chemical dependence." CSAC's arguments themselves exemplify this point. CSAC argues against a medically based definition of "substance abuse" then utilizes "empirical evidence" related to Substance Use Disorders to argue an "inference" of risk. (CSAC, pp. 46-47.) In support of this "inference" of risk, CSAC first points to the DSM itself and research related to Opioid Use Disorders, not undefined "substance abuse." (CSAC, p. 46.)

Then CSAC cites to a policy report entitled "Families Affected by Parental Substance Use" released in 2016 by the American Academy of Pediatrics (AAP). (CSAC, p. 46; American Academy of Pediatrics, *Families Affected by Parental Substance Use* – Clinical Report (2016) < <https://publications.aap.org/pediatrics/article/138/2/e20161575/52464/Families-Affected-by-Parental-Substance-Use> [as of May 4, 2023].) In May 2022, the AAP released a policy statement on "recommended terminology for Substance Use Disorders in the

care of Children, Adolescents, Young Adults, and Families." (American Academy of Pediatrics, *Recommended Terminology for Substance Use Disorders in the Care of Children, Adolescents, Young Adults, and Families* (2022) <https://publications.aap.org/pediatrics/article/149/6/e2022057529/188090/Recommended-Terminology-for-Substance-Use?_ga=2.227049181.1959353170.1681499883-2064593379.1681499883> [as of May 4, 2023].) The AAP explained that the organization has followed the DSM and updated its terminology to replace the term "substance abuse" with the medically accurate and less stigmatizing term "Substance Use Disorder." (*Ibid.*) According to the AAP, "pejorative terms" such as "substance abuse" "have racist connotations, and derogatory terms like 'crack babies' carry with them decades of legislation targeting communities of color with a carceral response to substance use, such as the War on Drugs." (*Ibid.*) The AAP specifically recommends that when quoting literature that uses the defunct term "substance abuse" the term should be replaced by "Substance Use Disorder" "accompanied by an explanation of the outdated problematic terminology." (*Ibid.*) Therefore, within the 2016 clinical report cited to by CSAC any reference to "substance abuse" should be read as referring to a "Substance Use Disorder" as defined by the DSM. (*Ibid.*) CSAC attempts to have it both ways – according to CSAC, social workers and trial courts can label parents "substance abusers" based on any definition, then treat them the same as persons with Substance Use Disorders. (See CSAC, pp. 46-47.)

CSAC relies heavily upon AAP guidelines and research throughout its brief. (E.g., CSAC, pp. 43, 44, 46-47.) The AAP specifically recommends that:

> 1. Pediatricians, policy makers, ***government agencies***, and media should use medically accurate terminology as opposed to stigmatizing jargon in interactions with patients, families and the public as well as in written materials including medical record documentation, correspondence, manuscripts, editorials and opinion articles, and news stories.
>
> 2. Pediatricians, health care facility spokespersons, policymakers, ***government agencies***, and media should use person-first language that respects the dignity of an individual first and foremost..

(*Ibid* [emphasis added].) The AAP explains that practitioners should use "person with a substance use disorder" opposed to "substance abuser." (Compare *ibid* with CT 4 ["current abuser of cocaine"].) The AAP clearly does not subscribe to the undefined notion of "substance abuse" advocated for by CSAC. (CSAC, pp. 17-35.) Given the AAP, CSAC and the Department's shared concern and focus on the well-being of children it is quite frankly astounding that CSAC so strongly resists the understanding of substance use adopted by the AAP, "an organization of 67,000 pediatricians committed to the optimal physical, mental, and social health and well-being for all infants, children, adolescents,

and young adults." (American Academy of Pediatrics Website: About the AAP < https://www.aap.org/en/about-the-aap/> [as of May 4, 2023].) At a minimum, the AAP's stance fundamentally undermines CSAC's assertion that an approach to substance use in line with scientific consensus is somehow incompatible with the protection of children. (Contra CSAC, pp. 26-36.)

Regardless of the definition utilized, a parent labeled a "substance abuser" is treated as an "addict" throughout a juvenile dependency case. In the instant case, despite four months of negative drug tests, the court removed N.R. from his father's custody. (RT 29-30.) This was presumably based on the fear that Father would succumb to some compulsion to use despite no clinical indication that he was addicted to or dependent on cocaine. (See RT 29-30.) A finding of "substance abuse" almost always leads to an order for addiction-related services. (E.g., CT 186; RT 33 [Father was ordered to randomly drug-test; any missed or positive test would result in a mandatory treatment program].) Parents are often expected to attend Narcotics or Alcoholics Anonymous meetings and work on completing the "steps" that are designed for people who are "addicted" to or "dependent" upon a substance. (E.g., CT 65 [Mother was expected to attend AA meetings despite no indication she had an Alcohol Use Disorder]; Alcoholics Anonymous, *What is A.A.?*. <https://www.aa.org/what-is-aa> [as of May 4, 2023] [purpose of "steps" is to "recover from alcoholism"].) Any positive test by a parent deemed a "substance abuser" is viewed as a "relapse." (E.g., *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 505.)

"Substance Abuse" is treated as "addiction" in dependency courts and it makes no sense not to require evidence to support that characterization.

Further as explained in Appellant's Reply Brief, elsewhere in the dependency code the Legislature has indicated an understanding of "substance abuse" as something that needs to be *treated* in a clinical setting. (ARB, pp. 22-23; e.g., § 300.2 [a treatment program for substance abuse]; § 366.21, subd. (e)(1) ["certified substance abuse treatment facility"; § 366.22, subd. (a)(1) ["court-ordered residential substance abuse treatment program"]; § 319, subd. (f)(4) [same]; § 16500.5, subd. (c)(1) [family preservation services include "counseling, mental health treatment and substance abuse treatment services…"].) CSAC again cannot have it both ways – social workers and trial courts cannot label parents "substance abusers" based on any definition then treat them like persons with Substance Use Disorders as defined by the DSM.

iii. The DSM is updated based on changes in scientific understanding. Child welfare practice should also be constantly evolving in response to emerging knowledge. Therefore, CSAC's arguments, that the changing nature of science undermines Drake M.'s reasoning, are unpersuasive.

CSAC also argues against utilization of DSM criteria because the DSM is periodically updated. (CSAC, pp. 27-29.) As amici AMERSA and CSAM explains: "The DSM publishes revisions over time to try to keep up with changes in the relevant

scientific and medical literature and practice." (AMERSA/CSAM, p. 24.) As explained in Appellant's Opening Brief, the evolution of medical understanding between the DSM-III and the current DSM-V-TR in no way undermines *Drake M.*'s reasoning. (Appellant's Opening Brief on the Merits filed 12/14/22 (OBM), pp. 29-30.) Social workers are ethically required to "keep current with emerging knowledge" and to "base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics." (National Association of Social Workers, *Social Workers' Ethical Responsibilities as Professionals*, 4.01, subds. (b),(c) < https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English/Social-Workers-Ethical-Responsibilities-as-Professionals#:~:text=4.01%20Competence&text=Social%20workers%20should%20critically%20examine,practice%20and%20social%20work%20ethics.0work%20ethics> [as of May 4, 2023]. The California Integrated Core Practice Model adopted by the California Department of Social Services in 2018 includes as a "foundational behavior" for social workers to "routinely assess your own knowledge and competency levels, including emerging evidence-informed or evidence-based practice areas…" (California Integrated Core Practice Model, p. 25 < https://www.cdss.ca.gov/Portals/9/ACIN/2018/I-21_18.pdf> [as of May 4, 2023].) The Legislature did not intend child welfare practice to freeze in 1987 or any year thereafter and of course expected decisions as important as court intervention into the privacy of the family to be based on the most current and up to

date scientific consensus not Merriam-Webster's online dictionary. Therefore, the fact that the DSM is regularly updated by experts makes it the most appropriate resource for assessing parental substance use.

iv. Contrary to CSAC's assertions, utilization of DSM criteria is "workable." Father's proposed approach is in line with nationally recognized best practices and ethical requirements for social workers. The approach, lacking any objective criteria, proposed by CSAC is not.

CSAC also argues that it would be more cumbersome for the Department to prove that a parent has a "Substance Use Disorder." (CSAC, pp. 29-33.) Father who missed his child's first steps has little sympathy for this argument. (CT 74.) CSAC argues that parents are often not cooperative and therefore obtaining the necessary information may be difficult. (E.g., CSAC, p. 30.) In the instant case, after testing positive Father was candid with the social worker. He explained his history and frequency of use. (CT 11-12, 66.) He had never cared for N.R. while inebriated, had no criminal history and substance use had never negatively affected his schooling or employment. (CT 66.) The Department through its investigation found no conflicting evidence. Father also immediately stopped using cocaine and complied with drug testing (to the extent he could without jeopardizing his employment). (CT 158.) Nevertheless, the court took jurisdiction over his child and stripped him of custodial rights. (CT 181, 189, 191; RT 24, 33.) Those decisions were

affirmed by the appellate court who defined substance abuse as repeated use. (Opn., p. 11.) Father asserts it should take more effort and thought than *this* for the Department to prove "substance abuse."

Contrary to CSAC's claims, Father's proposed approach is in deed "workable" as it is in line with nationally recognized best practices and ethical expectations for social workers. (Contra CSAC, pp. 17, 29- 33.) As amici AMERSA and CSAM note the National Center on Substance Abuse and Child Welfare (NCSACW) has compiled examples of screening and assessment tools that child welfare staff may utilize to identify Substance Use Disorders. (AMERSA/CSAM, p. 32 fn. 57; Young et al., *Screening and Assessment for Family Engagement, Retention, and Recovery (SAFERR),* Appendix D-1 (2016), available at <https://ncsacw.acf.hhs.gov/files/SAFERR.pdf> [as of May 4, 2023].) These types of interviews "take at least thirty minutes" and "require a nuanced back and forth." (AMERSA/CSAM, p. 32 fn. 57.) NCSACW recommends that child welfare workers possess knowledge of Substance Use Disorders and the skills necessary to gather the relevant information to determine whether a Substance Use Disorder is indicated. (NCSACW, *Drug Testing For Parents Involved In Child Welfare: Three Key Practice Points*, pp. 2, 3 < https://ncsacw.acf.hhs.gov/files/drug-testing-brief-2-508.pdf> [as of May 4, 2023].) This "[i]nformation comes from the use of standardized screening tools and assessments, observations of the physical environment, behavioral indicators, and collateral details." (*Id.* at p. 3.) The National Association of

Social Workers (NASW) expects social workers working with persons with Substance Use Disorders to "possess skills in systematic assessment, data gathering, and interpretation at multiple levels and use a variety of methods (for example, interviews, direct observations, standardized instruments, surveys)." (National Association of Social Workers, *NASW Standards for Social Worker Practice with Clients with Substance Use Disorders*, p. 12 <https://www.socialworkers.org/LinkClick.aspx?fileticket=ICxAggMy9CU%3D&portalid=0> [as of May 4, 2023].) "For assessment purposes, social workers shall be familiar with the criteria for assessment of substance use disorders in the DSM-5." (*Id.* at p. 7.) There is no source identified by CSAC to support the claim that contrary to these best practice recommendations social workers should be allowed to rely upon individualized judgment of substance use or online dictionaries, opposed to the DSM.

When a concern of substance use is raised, child welfare workers in Los Angeles are supposed to conduct a "thorough assessment" which includes consideration of "self-reports" and "observations of behavioral indicators by substance abuse treatment providers, CSWs or other professionals." (*Los Angeles DCFS Child Welfare Policy Manual*, Drug and Alcohol Assessment < https://policy.dcfs.lacounty.gov/#Assessment_of_Drug_Alc.htm?Highlight=substance%20use%20disorder> [as of May 4, 2023].) "It is important to gather as much information from as many sources as possible in order to make an accurate assessment."

(*Ibid*.) Emergency response workers are able to refer parents "to community agencies with credentialed clinicians who possess knowledge of [] substance abuse" for the purpose of in-depth assessment. (*Los Angeles Child Welfare Policy Manual*, Community-Based Resources < https://policy.dcfs.lacounty.gov/#POE_ARS_Communit.htm> [as of May 4, 2023].) These tools were not utilized in the present case and instead the social worker sought a "removal order from [Father] as a result of the [single] positive drug test." (CT 13.) This was despite absolutely no evidence that N.R. had ever been harmed or ever would be. CSAC finds no issue with this mechanical response to any and all substance use which is incompatible with ethical social work practice, contrary to nationally recognized best practices, and violates the Department's own policies and procedures. This approach may be "workable" in CSAC's view but is not in line with legislative intent or the purposes of juvenile dependency. (CSAC, p. 17.)

CSAC like the Department argues that parents may not be truthful with social workers and therefore obtaining necessary information may be difficult. (E.g., CSAC, pp. 29-30.) "While a social worker [] may feel more comfortable and confident about a parent who is friendly and gets along with them, that is not what the law requires…[these] are professionals who are specially trained to deal with difficult or demanding personalities." (*In re Ma.V.* (2021) 64 Cal.App.5th 11, 25.) Amici AMERSA and CSAM also speak to this point and explain "the DSM-5-TR criteria are not simply a checklist of questions that rely on honest answers…"

(AMERSA/CSAM, pp. 34-35.) As amici Dependency Trial Counsel (DTC) and California Appellate Defense Counsel (CADC) observe, a parent's dishonesty is often "representative of the fear communities have that the dependency system's first instinct is to sever rather than preserve families." (DTC/CADC, p. 39.) Any problems of parental dishonesty will only be exacerbated if this Court were to adopt the reasoning of the Department and CSAC. Social workers and juvenile courts would be allowed to define "substance abuse" based on subjective notions of what is "problematic" "too much" or "inappropriate." (RAB, pp. 27-28; CSAC, p. 35.) Also, continuing to refer to parents as "substance abusers" not based on any uniformly accepted criteria will hamper the Department's efforts to build rapport with families. (AMERSA/CSAM, p. 22 [the term "substance abuse" is no longer used by professionals as it is "pejorative and conveys stigma"].) In contrast, a holding from this Court requiring social workers to act in accordance with ethical standards and base decisions on expertly crafted guidelines which rely on "an extensive review of the latest literature" opposed to Merriam-Webster's online dictionary would show the public that the state takes seriously the power it has been trusted with to disrupt and separate families. (AMERSA/CSAM, p. 24.)

CSAC explains that the DSM breaks up substance use disorders into more than 10 different types of disorders. (CSAC, p. 28.) "While the criteria is largely the same for all of the disorders, petitioner's rule would require the juvenile court to consult with the latest edition of the DSM about how many

diagnostic criteria for any of the disorders a parent meets." (CSAC, p. 28.) The point here is in unclear. First, the *social worker* should have consulted the DSM in line with nationally recognized best practices prior to requesting a factual finding from the trial court. And, of course the particular substance should be considered. What is concerning is that CSAC's point assumes that currently social workers are not consulting specific criteria and research related to the particular substance used by a parent.

CSAC also argues that children will be left unprotected if social workers are required to take the time and effort to determine whether a parent's substance use actually meets medical criteria for a Substance Use Disorder. (CSAC, p. 33.) If this Court interprets the term "substance abuse" to have an objective and scientifically based definition, the rest of section 300 will remain. If during an investigation, a social worker discovers evidence that a child is at risk, the Department may file a petition and prove that jurisdiction is warranted regardless of whether "substance abuse" is indicated. (§ 300, § 355; see also DTC/CADC, pp. 31-32 [discussing voluntary services]; *In re M.R.* (2020) 48 Cal.App.5th 412, 427 [explaining that the case plan may be modified if evidence of "substance abuse" arises after disposition]; § 342 [additional jurisdictional allegations may also be plead at a later date].) On the other hand, if a social worker simply does not approve of a parent's substance use, and has no evidence of abuse or neglect, the state is not and should not be authorized to forcibly intervene.

D. The ad hoc approach proposed by CSAC is entirely out of line with legislative intent, would harm families across California, and undermine the public's trust in the child welfare system.

CSAC "turns to how the term should be defined." (CSAC, p. 34.) CSAC's answer: it should not be - "you'll know it when you see it." (See CSAC, pp. 24, 34-35.) CSAC joins the Department in claiming that the meaning of "substance abuse" is plainly apparent but also escapes any articulable description. (CSAC, pp. 22, 24, 34.) In CSAC's view, any of the online dictionaries supplied by the Department are fine sources but a social worker or court *may* also consult the SDM Manual. (CSAC, p. 34.) The SDM Manual has been critiqued by experts as purporting to be objective but allowing for results-oriented and biased application. (E.g., Glaberson, *Coding Over the Cracks: Predictive Analytics and Child Protection* (2019) 46 Fordham Urb. L.J. 307, 336-356; Beniwal, *Implicit Bias in Child Welfare: Overcoming Intent* (2017) 49 Conn. L.R. 1021, 1029-32.)[7]

[7] The former director of the Los Angeles Department of Child and Family Services Phillip Browning remarked in 2015: "[i]t's a manual process. I was really very disappointed in the ability of a worker to manipulate [SDM] in any way they want to." (Slattery, *Social Worker, and Part-Time Hacker, Builds Apps for Child Welfare* (July 21, 2015) < https://imprintnews.org/news-2/social-worker-turned-hacker-builds-apps-for-child-welfare/11425> [as of May 4, 2023].)

i. CSAC provides an incomplete statement of the SDM Manual's definition of "substance abuse." The SDM Manual's definition of a "substance abuse problem" actually closely mirrors the Drake M. formulation and relies on medical criteria. Therefore, according to the Department of Social Services assessing for medical criteria is indeed "workable."

CSAC explains that the SDM Manual must be utilized by all social workers across the state of California. (CSAC, p. 34.) CSAC further states that the definition of "substance abuse" that supposedly all California social workers are utilizing is the "[c]aregiver has abused legal or illegal substances or alcoholic beverages in this incident to the extent that control of his/her actions caregiving abilities is significantly impaired…" (CSAC, p. 35 [citing SDM Manual, pp. 53, 60].) CSAC makes no attempt to argue that this definition was applied or could be applied to the present case. (See CSAC, p. 35.) The record here is devoid of any evidence that Father "abused" cocaine to an extent that his caregiving ability was impaired at all let alone significantly so; also his weekend cocaine use had nothing to do with "this incident" that prompted initial Department intervention.

CSAC does not provide a complete statement of the SDM Manual's definition of "substance abuse." The statement referred to by CSAC explains when "substance abuse" qualifies as a "complicating behavior." (*SDM Policy and Procedures Manual* (2021), p. 60 < https://www.cdss.ca.gov/Portals/9/Child-Welfare-Programs/Child-Welfare-Protection/SDM-Policy-Procedure-Manual-2021.pdf>.) Again, the question of "substance abuse" and "risk" are two separate inquires. (§ 300, subd. (b)(1)(D); accord

SDM Manual, p. 71 ["caregiving complicating behaviors" "is comnsidered only when there are safety threats identified as present in the household"].) The SDM Manual states that a caregiver[8] has a "substance abuse problem" if:

> The caregiver is ***diagnosed*** with chemical dependency or abuse AND is currently using. Current use does not require that the caregiver be under the influence at the moment of the call, but that the caregiver has used within the past two weeks and has not entered into a formal or informal program to achieve abstinence; OR
>
> The caregiver is using illegal drugs; OR
>
> The caregiver's alcohol use suggests a probability that ***dependency or abuse exists***, such as blackouts, secrecy, negative effects on job or relationships, identified drinking patterns, etc.

(SDM Manual, p. 37.) First, the SDM Manual classifies any and all illegal drug use as "substance abuse" which is out of line with legislative intent and this notion has been uniformly rejected by appellate courts. (*Ibid*; OBM, pp. 25-36; e.g., *Drake M., supra,* 211 Cal.App.4th at p. 764; *In re Rebecca C., supra,* 228 Cal.App.4th at p. 727.) CSAC agrees that there is a difference between even illegal drug *use* and *abuse*. (CSAC, pp. 22-23.) Therefore, this Court should correct the Department of Social Services' understanding of "substance abuse" insofar as their definition

[8] The SDM Manual defines a "caregiver" as "[a]n adult, parent, or guardian in the household who provides care and supervision for the child." (SDM Manual, p. 1.)

includes any and all illegal drug use. That said even by this definition, a finding of "substance abuse" was not supported in the present case. Father's only positive test was from three weeks before N.R. was placed into protective custody and four months before the petition was sustained. (CT 12, 13, 21, 180, 189.) This is not "current use" which the SDM Manual defines as within the preceding two weeks. (SDM Manual, p. 37.) [9]

The rest of the SDM Manual's definition of a "substance abuse problem" actually closely mirrors *Drake M.* (SDM Manual, p. 37.) The SDM manual defines a "substance abuse problem" (in relation to legal substances) as a medical diagnosis or evidence that would support a medical diagnosis. (*Ibid.*) As CSAC explains the SDM Manual was developed in 1998. (CSAC, p. 34.)
At that time the DSM-IV was in effect and classified "Substance Use Disorders" as either "Substance Abuse" or "Substance Dependence" – the terms utilized by the SDM Manual. (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: Fourth Edition DSM-4* (1994), pp. 176-84.) It is unsurprising that the drafters of the SDM Manual would rely

---

[9] CSAC like the Department argues that no medical diagnosis of a mental illness and developmental disability or evidence to support such a diagnosis is required. (CSAC, pp. 25-26.) Appellant addressed this assertion in briefing and maintains that these terms have clinical significance and connote the necessity for professional assessment. (ARB, pp. 16-17.) Counsel adds only that the SDM Manual states that "current mental health concerns" must be "based on a ***diagnosis*** of a major mental illness (e.g., schizophrenia, bipolar disorder, depression) or exhibits symptoms that suggest a ***probability that such a diagnosis exists***." (SDM, p. 37 [emphasis added].)

upon the authoritative guide for diagnosing mental disorders including addiction. It is concerning that the terminology has not been updated. (AMERSA/CSAM, pp. 24-26.)[10] Regardless, this fact fatally undermines CSAC's assertion that requiring social workers to assess for medical criteria is "unworkable." (CSAC, p. 17.) When it comes to legal alcohol or marijuana use, social workers across California are currently required to determine whether a caregiver has a medical diagnosis of "abuse" or "dependence" - which today in any medical setting would be a Substance Use Disorder - or is exhibiting symptoms that would support a diagnosis. (SDM Manual, p. 37; AMERSA/CSAM, pp.

---

[10] The DSM-V was published in 2013 replacing both terms "substance abuse" and "substance dependence" with the over-arching diagnosis "Substance Use Disorder." (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition DSM-5* (2013), p. xlii.) The following organizations have all released statements advising that terms such as "substance abuse" and "substance dependence" be replaced in literature and practice by the medically accurate and less stigmatizing term "Substance Use Disorder": The American Academy of Pediatrics, The American Society of Addiction Medicine, Association for Multidisciplinary Education and Research in Substance Use and Addiction, American Medical Association, International Society for Addiction Journal Editors, The White House, National Institute of Health, Associated Press, Columbia Journalism Review, National Academies of Science, Engineering and Medicine. (American Academy of Pediatrics, *Recommended Terminology for Substance Use Disorders in the Care of Children, Adolescents, Young Adults, and Families* (2022) < https://publications.aap.org/pediatrics/article/149/6/e2022057529/188090/Recommended-Terminology-for-Substance-Use?_ga=2.25834621.1959353170.1681499883-2064593379.1681499883> [as of May 4, 2023].)

24-26.) According to the California Department of Social Services it is entirely "workable" for social workers, tasked with determining when the state's power to disrupt and separate families should be exercised, to assess for medically recognized criteria. (SDM Manual, p. 37.)

ii. Regardless, the Department cannot be allowed to create the law it is required to follow.

The purpose of the SDM Manual is to assist social workers in *implementing* the law and is not meant to and cannot be allowed to *create* law. It is the Legislature's role alone to create laws and courts' role to interpret that law. The SDM Manual was not in existence even as a concept when section 300 was enacted. (CSAC, p. 34.) To allow the SDM Manual to control the evidentiary criteria that a finding of "substance abuse" should be based upon would be akin to allowing the police to define a specified crime. (Cf. *People v. Lamoureux* (2019) 42 Cal.App.5th 241, 255 ["Encompassed within the Legislature's core function of passing laws is the responsibility of defining crimes and prescribing punishments"].) The Department of Social Services is not the Legislature and cannot create the law it is required to follow.

iii. The subjective, malleable, and undefined notion of "substance abuse" advocated for by CSAC will lead to the exact type of subjective and disparate treatment that the Legislature sought to end.

CSAC like the Department argues for an unlimited number of definitions of the term "substance abuse." Under CSAC's view, the SDM Manual is just one possibility. (CSAC, pp. 34-35.) The DSM is another. (CSAC, p. 34.) The Oxford English Learner's Dictionary is another. (RAB, p. 27.) And the Cancer Institute's website is yet another. (RAB, p. 42.) Under CSAC's approach, a social worker in one county could pick up the SDM Manual which states any and all illegal drug use qualifies as "substance abuse" and allege in a petition that a parent who has used methamphetamine a handful of times in his life is a "substance abuser." (SDM Manual, p. 37.) In another county, the social worker could follow nationally recognized best practices and use standardized assessment tools based on DSM criteria to determine that a similarly situated parent's methamphetamine use is not "substance abuse." (Young et al., *Screening and Assessment for Family Engagement, Retention, and Recovery (SAFERR),* Appendix D-1 (2016), available at <https://ncsacw.acf.hhs.gov/files/SAFERR.pdf> [as of May 4, 2023].) In a different county, a social worker could determine the use was "inappropriate" because the parent is poor and should not have used any money on drugs and then label that parent a "substance abuser." (RAB, p. 27.) A social worker in a separate county or the same one would also be free to review all of these definitions of "substance abuse" to locate one that fits a case of

parental substance use they disapprove of. (CSAC, p. 24.) For that matter, as counsel understands it according to CSAC a social worker could just decide that this use qualifies as "abuse" based on their own ideas and no particular definition or criteria. (CSAC, p. 24 [term is "undefined"].) Under CSAC's approach, the trial courts in all of these counties would be well within their purview to sustain these findings and reviewing courts could find "substantial evidence" of "substance abuse" in each of these cases. Then any of these parents deemed "substance abusers" would be marred by those findings in any future interactions with the Department. (*In re D.P.* (2023) 14 Cal.5th 266, 285 [child protective agencies rely on prior jurisdictional findings].)

This is not what the Legislature intended. The drafters of section 300 were specifically concerned with disparate treatment of families and noted: "Given the enormous variation in background, training and experience of child welfare workers and police, vague standards lead to highly variable practices in different counties and even within counties." (JN-C, p. 47.) "[I]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend….the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirt of the act." (*People v. Pieters* (1991) 52 Cal.3d 894, 896 [internal citations and quotations omitted].)

As explained in appellant's briefing and by amici, the statutory interpretation advocated for by the Department and

CSAC is fundamentally unfair and violates due process. A statute does not comport with due process if it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 109.) This is exactly what CSAC advocates for. CSAC claims "[t]he distinction between 'use' and 'abuse' is not seriously in dispute." (CSAC, pp. 22-23.) Then, what is it? CSAC claims nothing more than perhaps "You'll know it when you see it." The problem is a family's future should not be determined by *who* is looking. (Amici Professor Alan J. Dettlaff, Professors of Social Work and Social Workers, pp. 4-13 [discussing the social science research evidencing biased practices in child welfare].) And the Legislature who made great efforts to avoid inconsistent and subjective application certainly did not intend such a result.

For these reasons and those articulated in appellant's briefing and the amicus briefs supporting appellant, this Court should hold that a finding of parental "substance abuse" must be based on evidence the parent has been diagnosed with a Substance Use Disorder or evidence that would support a medical diagnosis.

II. For a child of any age, a finding of parental substance abuse alone does not provide sufficient evidence to warrant juvenile court jurisdiction.

CSAC agrees with Father that a finding of "substance abuse" should not relieve the Department of its burden to

affirmatively prove risk. (CSAC, pp. 36-37.) In practice, the "tender years" doctrine acts as a presumption affecting the burden of proof. (*Infra,* II.A., pp. 39-41.) Therefore, this Court should reject the "tender years" doctrine. (*Infra,* II.B., pp. 41-43.)

A. Appellate courts have created a *presumption* of jurisdiction in cases concerning parental "substance abuse."

CSAC agrees that a finding of parental "substance abuse" should not shift the evidentiary burden on to the parent in cases of parental "substance abuse." (CSAC, p. 36.) CSAC argues that the law does not need clarification though because appellate courts merely give "more weight" to a finding of "substance abuse" when the child is of "tender years." (CSAC, pp. 36-39.) This is incorrect – in practice, the "tender years" doctrine allows the unreasonable burden to be placed on a parent to disprove risk. With the inherent uncertainty fundamental to childhood, no parent can possibly *prove* the future safety of their child. In the present case, jurisdiction was affirmed because the reviewing court determined Father did not "rebut" the "prima facie evidence" of risk that was based on an ad hoc determination that he was "a recent abuser of cocaine." (Opn., pp. 12-13; RT 23.) This was despite a record devoid of any evidence that N.R. was ever placed in harm's way as a result of Father's weekend use of cocaine while N.R. was cared for by Mother. CSAC makes no attempt to even claim that jurisdiction in the present case was based on anything more than Father's substance *use* alone.

A review of unpublished cases show that appellate courts are regularly characterizing the "tender years" doctrine as a presumption affecting the burden of proof. Counsel does not cite to these unpublished opinions for precedential value but merely intends to alert this Court to their existence. (California Rules of Court, Rule 8.115, subd. (a).) Counsel's purpose is to disprove CSAC's assertion that the "tender years" doctrine is not being treated as a presumption affecting the burden of proof by lower courts. (Compare CSAC, p. 36 with e.g., *In re Camila M.* (Mar. 16, 2023, No. B316683) [Nonpub. Opn.] ["Although the continued validity of the tender years *presumption* is before our Supreme Court in *In re N.R.* [] it is still the law today"] [emphasis added]; *In re Kashmere S.* (March 7, 2023, B320857) [Nonpub. Opn.] [relied upon the "tender years" doctrine to affirm a removal order; "as we have repeatedly held, a finding of substance abuse constitutes prima facie evidence…for a child of tender years – that is, a child six years old or younger"]; *In re R.R.* (October 13, 2020, No. B301853) [Nonpub. Opn.] ["But the burden of rebutting the 'tender years' *presumption* rested on Alisha and, as such, we may reverse the court's finding…only if Alisha's evidence was 'uncontradicted and unimpeached' and 'of such a character and weight as to leave no room for judicial determination that it was insufficient' to carry her burden"] [emphasis added]; *In re Emmanuel A.* (2019) (January 25, 2019, No. B288684) [Nonpub. Opn.] [describing the tender years doctrine as a "presumption" that must be "rebutted" by the parent]; *In re Robert M.* (June 19, 2019, No. B294281) [Nonpub. Opn.] [same]; *In re R.C.* (2017)

(March 16, 2017, No. B272199) [Nonpub. Opn.] [same]; *In re Mackenzie D.* (2015) (May 4, 2015, No. B257853) [Nonpub. Opn.] ["Father provided no evidence to rebut the *evidentiary* presumption"] [emphasis added].)

B. CSAC agrees with Father that there should not be a *presumption* in favor of jurisdiction in cases concerning parental substance abuse. CSAC argues that "empirical evidence" supports an *inference* though. This "empirical evidence" has no relation to the undefined notion of "substance abuse" advocated for by CSAC. Further, this "empirical evidence" is not sufficient to ease the Department's burden to affirmatively prove risk.

CSAC argues that while there is not a *presumption* affecting the burden of proof, this Court should leave in place the widely accepted *inference* that a finding of parental "substance abuse" automatically places a child at risk. (CSAC, pp. 36-49.) In CSAC's view, this inference arises no matter what definition of "substance abuse" is utilized – the DSM, Merriam-Webster, the National Cancer Institute, or the SDM Manual. (CSAC, p. 24 [term is "undefined"].) This inference is reasonable CSAC argues because of "empirical evidence." (CSAC, p. 11.) On its face, this claim is problematic – it is hard to believe there is "empirical evidence" that a completely subjective and variable determination of "substance abuse" supports the automatic conclusion that a child is at risk. As explained, *supra* I.C.ii., pp. 17-18, CSAC in fact relies on research related to Substance Use Disorders to support its claim that an "inference" of risk should

arise based on any ad hoc finding of "substance abuse." (CSAC, p. 46.)

Regardless, as explained in appellant's briefing and expounded upon extensively by amici – there is no scientific consensus that parental substance use or even dependence alone places a child at risk of serious physical harm. (Professors of Law with Expertise in Child Welfare, Public Health, and Drug Policy, pp. 22-25; Drug Policy Alliance et al., pp. 13-19; Persons With Lived Experience In The Child Welfare System, pp. 4-5; AMERS/CSAM, pp. 45-5 [and citations therein].) For that matter, the information about the "addictive" nature of certain substances discussed by CSAC can also not be generalized to *all* parents – as amici AMERSA and CSAM explain the "likelihood of developing a substance use disorder is influenced by a myriad of factors, including individual physiology, genetic makeup, adverse childhood experiences, and environmental circumstances." (AMERSA/CSAM, pp. 23-24.)

CSAC discusses *possible* risks from parental "substance abuse" but makes no attempt to argue that in this case any of those concerns were present. (CSAC, pp. 46-47.) Father used cocaine on weekends that his child was in the exclusive care of Mother; there is absolutely no evidence he ever placed this child at risk or ever would. The present confusion in case law allowed generalized assumptions about substance use to disrupt ***this*** family, and separate ***this*** child from ***this*** father. Had the Department been required to affirmatively prove risk to ***this*** child as the Legislature intended and in line with constitutional

guarantees, this inappropriate intervention never would have happened. CSAC requests this Court affirm the lower court's decision without any discussion whatsoever of why jurisdiction in *this* case was warranted. (CSAC, p. 50.) Father asserts this Court should reverse the lower court's decision and should prevent future families from facing this same fundamentally unfair treatment by holding that the Department must affirmatively prove risk in cases concerning parental "substance abuse." Families should be assessed *individually* and not based on generalized assumptions. After all, as CSAC states "[a] person could easily have a medical diagnosis of a substance use disorder per the DSM, but be able to safely parent their child." (CSAC, p. 28.)

Conclusion

For the foregoing reasons and those stated in appellant's and amici's briefing, this Court should interpret the term "substance abuse" found in section 300, subdivision (b)(1)(D) to mean a Substance Use Disorder as defined by the current edition of the DSM. Accordingly, a factual finding of "substance abuse" must be supported by a medical diagnosis of a "Substance Use Disorder" or evidence that would support such a diagnosis.

For the foregoing reasons and those stated in appellant's and amici's briefing, this Court should reject the "tender years" doctrine and clarify that the Department has the affirmative burden to prove risk to every single unique child before any court steps into the role of substitute parent.

DATED: May 4, 2023

Respectfully submitted by,

/S/

Sean Burleigh, Attorney for Petitioner

CERTIFICATE OF WORD COUNT

The foregoing petition contains 8,400 words, including footnotes according to the word count in the computer program utilized to create this brief Microsoft Word for Mac 2019 version 16.67.

Executed on May 4, 2023 at Tucson, AZ.

Respectfully submitted by,

/S/

Sean Burleigh, Attorney for Petitioner

PROOF OF SERVICE
IN THE SUPREME COURT OF CALIFORNIA

In re N.R.,
Supreme Court Case No: S274943
Appellate Court Case No.: B312001

I, Sean Burleigh, declare and state:

That I am not a party to the within action; that I am an attorney admitted to practice law in the State of California appointed by this Court to represent Appellant.

That on May 4, 2023, I served the following:

Appellant's Answer to Amicus Brief Filed by California State Association of Counties

Upon the persons or organizations listed below electronically. I utilized service through the true filing electronic system.

Michael Neu (trial counsel for Father), neum@ladlinc.org

Daniel Hoang (trial counsel for Father), Hoangd@ladlinc.org

Andrew Tippin (trial counsel for Mother), tippina@ladlinc.org

Samantha Bhuiyan (trial counsel for child), bhuiyans@clcla.org

CAP-LA, capdocs@lacap.com

Superior Court, JuvJoAppeals@lacourt.org

Office of County Counsel, appellate@counsel.lacounty.gov

David Miller (County Counsel), dmiller@counsel.lacounty.gov

Jennifer Henning (Amici California State Association of Counties), jhenning@counties.org

Elizabeth McDonald Muniz (Amici California State Association of Counties/San Fracisco City Attorney), Elizabeth.Muniz@sfcityatty.org

Elizabeth Gill (amici ACLU-Northern California), egill@aclunc.org

Faride Perez-Aucar (amici ACLU-Northern California), FPerezAucar@aclunc.org

Minouche Kandel (amici ACLU-Sothern California) mkandel@aclusocal.org

Brenda Star Adams (National Center for Youth Law), badams@youthlaw.org

Kellen Russoniello (Amici Drug Policy Alliance, et al.), Krussoniello@drugpolicy.org

Jonathan M. Weiss (Amici CSAM/AMERSA), jweiss@proskauer.com

Michelle Moriarty (Amici CSAM/AMERSA), mmoriarty@proskauer.com

Bradley Presant (Amici CSAM/AMERSA), bpresant@proskauer.com

Leslie Barry (Amici Persons with Lived Experience), LeslieBarrylaw@gmail.com

Tasha Hill (Amici Professors of Social Work and Social Workers), Tasha@HillCivilRights.com

Brian Okamoto (Amici Dependency trial counsel/CADC), Brian.Okamoto@ocpubdef.com

Allison Korn (Amici law professors), korn@law.duke.edu

Alicia Virani (Amici law professors), virani@law.ucla.edu

Appellate Court, through truefiling

Upon the persons or organizations listed below, by placing this document in the mail addressed to:

O.R. - Appellant, Address on file

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 4, 2023 at Tucson, Arizona.

/S/
Sean
Burleigh

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE N.R.**
Case Number: **S274943**
Lower Court Case Number: **B312001**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **saburleigh@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S274943 Answer to Amicus

Service Recipients:

Person Served	Email Address	Type	Date / Time
Michael Neu Los Angeles Dependency Lawyers	neum@ladlinc.org	e-Serve	5/4/2023 5:11:05 PM
Samantha Bhuiyan Children's Law Center	bhuiyans@clcla.org	e-Serve	5/4/2023 5:11:05 PM
Jennifer Henning California State Association of Counties 193915	jhenning@counties.org	e-Serve	5/4/2023 5:11:05 PM
Kellen Russoniello Drug Policy Alliance 295148	krussoniello@drugpolicy.org	e-Serve	5/4/2023 5:11:05 PM
Brenda Adams National Center for Youth Law 248746	badams@youthlaw.org	e-Serve	5/4/2023 5:11:05 PM
Alicia Virani Criminal Justice Program	virani@law.ucla.edu	e-Serve	5/4/2023 5:11:05 PM
Leslie Barry Attorney at Law 212303	lesliebarrylaw@gmail.com	e-Serve	5/4/2023 5:11:05 PM
Elizabeth Muniz Office of City Attorney, San Francisco 285578	elizabeth.muniz@sfcityatty.org	e-Serve	5/4/2023 5:11:05 PM
Michelle Moriarty PROSKAUER ROSE LLP	mmoriarty@proskauer.com	e-Serve	5/4/2023 5:11:05 PM
Elizabeth Gill	egill@aclunc.org	e-	5/4/2023

American Civil Liberties Union of Northern California 218311		Serve	5:11:05 PM
Jonathan Weiss Proskauer Rose LLP 250307	jweiss@proskauer.com	e-Serve	5/4/2023 5:11:05 PM
David Miller Los Angeles County Counsel Appellate group 251772	dmiller@counsel.lacounty.gov	e-Serve	5/4/2023 5:11:05 PM
Sarah Vesecky Office of County Counsel Appeals Division 205481	svesecky@counsel.lacounty.gov	e-Serve	5/4/2023 5:11:05 PM
Brian Okamoto Office of the Public Defender 217338	Brian.Okamoto@pubdef.ocgov.com	e-Serve	5/4/2023 5:11:05 PM
Minouche Kandel American Civil Liberties Union Foundation of Southern California 157098	mkandel@aclusocal.org	e-Serve	5/4/2023 5:11:05 PM
Bradley Presant PROSKAUER ROSE LLP	bpresant@proskauer.com	e-Serve	5/4/2023 5:11:05 PM
Tasha Hill The Hill Law Firm 301865	Tasha@HillCivilRights.com	e-Serve	5/4/2023 5:11:05 PM
Sean Burleigh Law Office of Sean Burleigh 305449	saburleigh@gmail.com	e-Serve	5/4/2023 5:11:05 PM
Daniel Hoang	Hoangd@ladlinc.org	e-Serve	5/4/2023 5:11:05 PM
Andrew Tippin	tippina@ladlinc.org	e-Serve	5/4/2023 5:11:05 PM
CAP-LA	capdocs@lacap.com	e-Serve	5/4/2023 5:11:05 PM
Superior Court	JuvJoAppeals@lacourt.gov	e-Serve	5/4/2023 5:11:05 PM
County Counsel	appellate@counsel.lacounty.gov	e-Serve	5/4/2023 5:11:05 PM
Faride Perez-Aucar	FPerez@aclunc.org	e-Serve	5/4/2023 5:11:05 PM
Allison Korn 4644183	korn@law.duke.edu	e-Serve	5/4/2023 5:11:05 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/4/2023

Date

/s/Sean Burleigh

Signature

Burleigh, Sean (305449)

Last Name, First Name (PNum)

Law Office of Sean Burleigh

Law Firm