FIRST DISTRICT APPELLATE PROJECT

THE FOUNDATION CRUMBLES: CHALLENGING JURISDICTION ON APPEAL

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FDAP

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General principles regarding dependency jurisdiction

Constitutionally, state intervention in the family is a last resort, because "[p]arenting is a fundamental right, and accordingly, is disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood." (*In re James T.* (1987) 190 Cal. App.3d 58, 64.)

"A parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307).

Government interference in one of society's most "fundamental" and "basic" relationships – the parent-child relationship – must be legally justified; the juvenile court is constrained by the statutory intent and language of section 300. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76, citing *Stanley v. Illinois* (1972) 405 U.S. 645; *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 27.)

"[I]t is difficult to imagine a more extreme emotional situation than the prospect of losing your child[]." (*In re Ma.V.* (2021) 64 Cal.App.5th 11, 25.)

Purpose of juvenile court jurisdiction

Section 300.2 describes the purpose and aim of dependency jurisdiction as providing "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, protection, and physical and emotional well-being of children who are at risk of that harm. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child." (§300.2).

The dependency statutes' chief purpose is: "[t]o protect the child." (*In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1317.) The dependency statutes have

another purpose, however, one running a close second to protecting children: "to preserve the family." (*Ibid.*) (*In re B.T.* (2011) 193 Cal.App.4th 685, 697 (abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622.)

Section 300 intent statement:

> It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting.
>
> Further, this section is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills.
>
> The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents the parent from exercising care and control.
>
> The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent. (§ 300.)

Efforts to focus on prevention prior to filing of petition

Federal efforts

Family First Prevention Services Act, signed into law on February 9, 2018 authorized federal funding for services before removal and explicitly stated the intent to move towards a focus on preventative services for candidates to foster care

(Public Law 115-123).

The Family First Prevention Services Act authorized new optional title IV-E funding for time-limited prevention services for mental health, substance abuse, and in-home parent skill-based programs for a child or youth who is a candidate for foster care, a pregnant or parenting foster youth, and the parents or kin caregivers of those children and youth.

State efforts

In 2021, California passed AB 153, which added sections 16585-16589 to the Welfare and Institutions Code establishing the Family First Prevention Services (FFPS) program. (§§16585 -16589.) The California Department of Social Services (CDSS) Vision for Prevention stated that the FFPS program encourages counties to consider a holistic view of the prevention of child maltreatment.

Regarding the FFPS program, the California Department of Social Services (CDSS) stated: "California is committed to the reformation of the child welfare system by shifting the mindset from a child protection and foster care system to a child and family well-being system. This vision involves an integrated system of care network supported by a framework of prevention that includes primary, secondary, and tertiary strategies grounded in the principles of fairness and equity."

CDSS further noted that FFPSA provides "a shift in the current paradigm, changing from a focus on reaction to a focus on prevention and early intervention with the goals of reducing incidences of abuse and neglect, decreasing entries into foster care, reducing disproportionality, addressing systemic and historical traumas, promoting the social determinants of health, and improving the lives of children, youth, and families."

Policy arguments to support prevention over removal

"[S]tates should expend at least as much money on helping families stay together and reunifying them as they would on maintaining children in foster care, thus ending the disturbing disparities in which states pay foster parents generous monthly stipends after refusing to do the equivalent for parents struggling to take care of their children." (Josh Gupta-Kagan,

Confronting Indeterminacy and Bias in Child Protection Law, 33 Stanford Law & Policy Review 217 (2022) at p. 222.)

Alternatives available to social services to support goal of prevention

Was there a safety plan prior to filing of petition?

- A safety plan is an agreement between the Bureau and family about how to keep the child safe without child welfare intervention.

Was there a violation of the safety plan to warrant filing of a petition?

- Willful lack of compliance by parents of the safety plan will support filing of petition. (See, *In re S.F.* (2023) 91 Cal.App.5th 696, 703; *In re K.B.* (2021) 59 Cal.App.5th 593, 602)
- A failed safety plan may be due to change of circumstance and not the fault of parent. (See, I*n re Drake M.* (2012) 211 Cal.App 4th 754, 759; *In re R.T.* (2017) 3 Cal.5th 622, 633.)

If no violation of safety plan, has risk been established to justify jurisdiction by the court?

Were preventative services offered before filing a petition?

- Section 306:

  Before taking a child into custody, a social worker shall consider … [w]hether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the child, would eliminate the need to remove the child from the custody of their parent, guardian, Indian custodian, or other caretaker. (§ 306, subd. (f)(1).)

  Before taking a child into custody, a social worker shall consider … [w]hether a nonoffending caretaker can provide for an protect the child … (§ 306, subd. (f)(1).)

- Section 309:

  Social workers are required to "immediately" perform an investigation into the facts and circumstances of the situation, and "attempt to

maintain the child with the child's family through the provision of services." (§ 309, subd. (a).)

- Section 328:

  The social worker must "immediately" perform an investigation, not only as to whether court proceedings should begin, but also, whether child welfare services should be offered. (§ 328.)

Were voluntary services offered to the parent?

- Section 301 allows a social worker, with the consent of the parent or guardian, to offer a voluntary program of supervision instead of filing a formal dependency petition in juvenile court (or after a petition is dismissed).

> **PRACTICE TIP:** Review record on appeal to determine if any services were provided to the family pre-detention/filing of the petition. Was the filing of the petition necessary?

Jurisdiction under section 300

"Dependency adjudication 'allows the juvenile court, within specified limits, to assert supervision over the endangered child's care' [citation], and is therefore a weighty determination with important consequences. (*In re N.R.* (2023) 15 Cal.5th 520, 556.)

Under section 300, a court may exercise dependency jurisdiction over a child who has been abused, neglected, or is otherwise at risk of "serious physical harm" because of a parent's abuse or inability to provide adequate care or supervision. (§ 300, subds. (a)–(j).)

> Subdivision (a) physical abuse, (b) neglect, (c) emotional damage, (d) sexual abuse, (e) severe physical abuse; (f) death of another child, (g) no support, (h) adoption delays, (i) cruelty, (j) sibling abuse.

The current form of section 300 is largely the result of Senate Bill 243 [Stats. 1987, ch. 1485]. In *In re Rocco M.* (1991) 1 Cal.App.4th 814, 823, the Court said that the legislative history of SB 243 showed an "unmistakable intention

to narrow the ground on which children may be subjected to juvenile court jurisdiction." (*Id.* at p. 823.)

In *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 247, our Supreme Court discussed the purpose of the legislative changes, stating:

> The juvenile dependency system, as modified by Senate Bill No. 243, begins with section 300, which lists specific situations that will bring a child within the jurisdiction of the juvenile court for dependency proceedings. The former broad language of section 300 was made much more specific in an attempt to "ensure more uniform application of the law throughout the state and to ensure that court intervention does not occur in situations the Legislature would deem inappropriate." (Task Force Report, supra, p. 3.)

The circumstances under which the juvenile court is authorized to take jurisdiction of a child are narrowly defined. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 565.)

Recent changes in the law narrowing the basis for jurisdiction under subdivision (b)(1)

2022

Effective January 1, 2022, section 300(b)(1) was amended, as follows: "A child shall not be found to be a person described by this subdivision solely due to the failure of the child's parent or alleged parent to seek court orders for custody of the child." (Stats. 2021, ch. 98, § 1; former § 300, subd. (b)(1); see also § 300, subd. (b)(2)(B).)

2023

After the custody-order provision at issue was added effective January 1, 2022, subdivision (b) was again amended by the Legislature, this time to add a similar provision related to indigency, effective January 1, 2023. (Stats. 2022, ch. 832, § 1; see § 300, subd. (b)(2)(C).) Senate Bill 1085 also grouped these two provisions together with an existing, third provision involving homelessness.

In its current form, section 300, subd. (b)(2) provides: "A child shall not be found to be a person described by this subdivision solely due to any of the following: [¶] (A) Homelessness or the lack of an emergency shelter for the family. [¶] (B) The failure of the child's parent or alleged parent to seek court orders for custody of the child. [¶] (C) Indigence or other conditions of financial difficulty, including, but not limited to, poverty, the inability to provide or obtain clothing, home or property repair, or childcare."

Both homelessness and indigence may be a factor considered under section 300, subdivision (b), so long as neither is the only factor. (*In re L.B.* (2023) 88 Cal.App.5th 402, 413.)

In support of the bill, the National Association of Social Workers California Chapter wrote: "Currently, the definition of neglect is overly broad. It provides a social worker free reign to initiate the removal of a child from their parents for relatively minor circumstances relating to poverty. The definition in the [Welfare & Institutions Code] should be refined so that conditions such as a partially empty refrigerator, damaged furniture, or temporary inability to afford childcare while working a low wage job will not alone result in the removal of a child from their parents." (Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill No. 1085 (2021–2022 Reg. Sess.) as amended June 9, 2022, p. 4.) (See *In re M.D.* (2023) 93 Cal.App.5th 836, 850.)

Overview of the jurisdiction hearing

It is a bifurcated hearing: We emphasize that the jurisdictional findings and the disposition are analytically distinct steps in what "is essentially a bifurcated proceeding." (*In re E.E.* (2020) 49 Cal.App.5th 195, 205.)

The juvenile court's first task is to determine whether the minor is within any of the descriptions set out in section 300 and therefore subject to its jurisdiction. (*In re E.E.* (2020) 49 Cal.App.5th 195, 205.)

"[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction." (*In re I.J.* (2013) 56 Cal.4th 766, 773.) The court "need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

Jurisdiction is taken over the child, not the parents, based upon the harm or risk of harm to the child. (*Kern County Dept. of Human Services v. Superior Court* (2010) 187 Cal.App.4th 189, 202.) Jurisdiction may exist based on the conduct of one parent only. (*In re I.A.* (2011) 201 Cal.App. 4th 1484, 1491.)

Findings required by the juvenile court

- After hearing the evidence, the court must make a finding whether the child is described by section 300 and note each specific subsection of section 300 under which the petition is sustained. (§ 356.)
- To support a finding that the child is described by section 300, the court must find there is proof by a preponderance of the evidence that the allegations in the petition are true. (§ 355 (a).)
- The court need not make specific findings; general findings that the allegations of the petition are true will be sufficient as long as the petition states ultimate facts that support the specific allegations of which adjudication is sought. (*In re J.T.* (1974) 40 Cal.App.3d 633, 640.)

Judicial Council Benchguide: Juvenile Dependency Jurisdiction hearing (2018):

- Each jurisdictional allegation brought under a different subdivision of 300 must stand on its own to justify an assumption of jurisdiction under that particular subdivision. "A simple test to determine this is to ask whether the allegations under one subdivision would be sufficient to support a jurisdictional finding if the allegations under the other subdivisions were found to be untrue." (101.7.)

> **PRACTICE TIP**: The San Bernardino Law Library is a good source for Judicial Council Benchguides.

The Department must prove jurisdictional grounds by a preponderance of the evidence

The Department bears the burden of proving jurisdictional grounds by a preponderance of the evidence at the time of the jurisdictional hearing. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; *In re L.W.* (2019) 109 Cal.App.5th at 1016; 1018; see also *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1320; *In re R.M.* (2024) 99 Cal.App.5th 240, 247.)

The Department must prove each required element of section 300 subdivision (b) to support dependency jurisdiction, and the court may not presume a substantial risk that has not been proven. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396-1398.)

The burden is on the Department, not the parent. (*In re G.Z.* (2022) 85 Cal.App.5th 857, 878 ["The burden is not on Mother to disprove what DCFS had failed to prove in the first place."].)

After presentation of evidence, parent or child can make a motion that the petition should be dismissed and the child should be released for failure to meet the burden of proof. (§§ 350(c), 356.)

Jurisdiction under section 300 (b)(1)

Majority of petitions filed fall under subdivision (b)(1).

The definition of neglect and abuse—which determines when a host of professionals must report families to child protection agencies, what those agencies must look for when investigating families, when state authorities may remove a child from a parent's custody, and when family courts may take jurisdiction over a child—remains both broad and vague. (See *Santosky v. Kramer* (1982) 455 U.S. 745, 762-763.)

"Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias." (*Santosky v. Kramer* (1982) 455 U.S. 745, 763.)

"[U]nder section 300, subdivision (b), a child may be subject to dependency jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of a parent's failure or inability to adequately supervise the child, or as a result of a parent's inability to provide regular care for the child due to the parent's substance abuse. (§ 300, subd. (b)(1)(A) & (D).)" (*In re B.D.* (2024) 103 Cal.App.5th 315, 324.)

To find dependency jurisdiction under section 300 subdivision (b), the court must have proof of:

> (1) neglectful conduct by the parent as specified in the statute;
>
> (2) causation; and
>
> (3) "serious physical harm or illness" or a "substantial risk" of serious physical harm or illness. (*In re L.W.* (2025) 109 Cal.App.5th 1012, 1019; see also *In re N.R.* (2023)15 Cal.5th 520, 558; I*n re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

The statute "means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.)

Ways to approach a jurisdictional argument

Break down the argument into three parts: 1) Neglectful conduct, failure, or inability by parent, 2) causation, and 3) substantial risk of harm at time of jurisdictional hearing.

Neglectful conduct, failure, or inability by parent

Was the alleged conduct neglectful?

- Mother challenged the sufficiency of the evidence arguing that the Department failed to establish the injuries were caused by abuse and not a preexisting medical condition. (*In re G.Z.* (2022) 85 Cal.App.5th 857, 878 [family accounts of minor's accidental head trauma in weeks preceding hospital visits were consistent, there were no signs of shaken baby syndrome or other physical abuse, and doctors discovered

congenital medical condition that rendered infant susceptible to brain bleeds from minor accidental trauma or normal handling.])

Past conduct alone is not sufficient

- "Previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.)
- Although "[e]vidence of past conduct may be probative of current conditions," past conduct standing alone does not establish a substantial risk of harm. (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146.)
- However, *In re T.V.* (2013) 217 Cal.App.4th 126, 133 found that "[a] parent's past conduct is a good predictor of future behavior."

Has a defined risk of harm been established?

- "To establish a defined risk of harm at the time of the hearing, there must be some reason beyond mere speculation to believe the alleged conduct will recur." (*In re Cole L.* (2021) 70 Cal.App.5th 591, 602.)

Causation

Did the parent's conduct cause harm to the child?

- A finding of substantial risk of serious physical harm must be tied to evidence that demonstrates a specific, defined risk. (*In re David M.* (2005) 134 Cal.App.4th 822, 829-830.)
- Concern "untethered to any evidence" that is more than theoretical does not establish substantial risk of physical injury to a minor. (*In re S.F.* (2023) 91 Cal.App.5th 696, 718.)
- It is [the agency's] burden to prove by a preponderance of the evidence that nonaccidental trauma was the cause of injury. Lack of conclusive evidence does not equate to evidence of neglect proven by a preponderance. (*In re G.Z.* (2022) 85 Cal.App.5th 857, 878.)

Substantial risk of harm at time of jurisdictional hearing

Risk of harm must exist at time of jurisdictional hearing

- "The statute does not define what constitutes such harm, [but] it has withstood a void-for-vagueness challenge because the term has a sufficiently well-established meaning and is no less specific than the phrase 'great bodily injury.' [Citation.] 'Although there may be an "I know it when I see it" component to this factual determination [of what constitutes "serious physical harm"], as with the term "great bodily injury" we believe that parents of common intelligence can discern what injuries fall within its reach.'" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138-139, quoting *In re Mariah T.* (2008) 159 Cal.App.4th 428, 436–437 & 438.)
- There must be a risk to the child at the time of the jurisdictional hearing in order to meet the last element, "'some reason to believe the acts may continue in the future.'" (*In re Rocco M* (1991) 1 CalA.pp.4th at p. 824.)
- The focus is forward-looking, not punitive, meaning the court must determine whether the child is presently at risk, not whether the parent engaged in prior misconduct. "Whatever a parent's past mistakes, jurisdiction is proper only upon a showing of substantial risk of future harm." (*In re F.V.* (2024) 100 Cal.App.5th 219, 229.)
- Courts have held consistently that the dependency system exists to keep children at current risk of harm safe from abuse and neglect. It does not exist "as punishment" for parents who have made "grave mistake[s]" even those which give rise to considerable "moral outrage." (*In re B.T.* (2011) 193 Cal.App.4th 685, 697 [the appellate court overturned jurisdiction against a 38-year-old mother of four who had sex with and conceived a child with her elder son's 14-year-old friend.].)
- Temporary problems that can be easily cured do not constitute serious physical harm. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 390.)
- Relying on facts as they existed at the detention hearing and failing to analyze facts as they exist at the time of the jurisdiction hearing constitutes reversible error. (*In re L.W.* (2025) 109 Cal.App.5th 1012, 1018.)

Conduct that has not formed an adequate basis for jurisdiction

Past harm

- *In re Gilberto G.* (2024) 105 Cal.App.5th 52 [although there was claim of sustained allegation from a prior supplemental petition based on substance abuse and mother minimized incident where she fell after drinking, children were not harmed in single incident of intoxication, there was no evidence they were at risk of serious physical harm while riding bus with mother, and there were no subsequent incidents of intoxication while caring for children.]
- *In re M.W.* (2015) 238 Cal.App.4th 1444, 1454 ["the record contains evidence that a single incident of domestic violence occurred more than seven years before the hearing."]
- *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [physical violence by father against mother took place two or seven years before the petition was filed.]
- *In re Ma.V.* (2021) 64 Cal.App.5th 11 [Court of Appeal reversed the juvenile court because its findings were based on "stale" acts of domestic violence and neglect which had occurred 10 months earlier and had not been repeated.]

Past police contact

- *In re J.N.* (2021) 62 Cal.App.5th 767 [jurisdiction based on a parent's incarceration and criminal record insufficient to support jurisdiction even though the child welfare agency was alleging the potential for violent behavior based on a record of convictions for violent crime. (*Id.* at p. 771). The court found that the father's multiple convictions supported "a reasonable inference that there is a substantial risk Father will commit crime–even violent crimes–in the future. But that is not the same as a substantial risk J.N. will be harmed." (*Id.* at p. 775.)]

Prior child welfare history

- The use of evidence–which has been already evaluated as insufficient for either criminal or child welfare investigation and for which the

accused had no contemporaneous opportunity to address or counter–as factual support of a predisposition towards violent and assaultive behavior can be argued to be speculative. (Penal Code § 11165.12.)

One-time incidents with no evidence of an ongoing problem

- *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-2026 [car accident while father was driving under the influence was a "single episode of endangering conduct" and no evidence either parent had a substance abuse problem.]
- *In re Emily L.* (2021) 73 Cal.App.5th 1, 15 ["By the time of the hearing…, familial circumstances had undergone epic changes." If an altercation is the initiating factor, social services must allege a reason to believe that conduct will reoccur, and if this is not done, jurisdiction is not proper.]
- *In re R.L.* (2025) 115 Cal.App.5th 221, 233 [car accident while father was driving under the influence was a one-time incident and no evidence that either parent had a history of alcohol abuse.]

Poor hygiene

- *In re Roger S.* (2018) 31 Cal.App.5th 572, 582 [evidence that child had poor hygiene and wore dirty, ill-fitting clothes was insufficient to show substantial risk where child had no associated medical or dental condition.]

Mental health not tied to harm to the child

- The fact that a parent has a mental illness, without more, is insufficient to support jurisdiction. (*In re B.H.* (2024) 103 Cal.App.5th 469, 485.)
- The specific harm or substantial risk of harm resulting from the parent's mental illness is a "separate element [ ]" that must be proven by the Agency. (*In re N.R.* (2023) 15 Cal.5th 520, 558.)
- *In re Joaquin C.* (2017) 15 Cal.App.5th 537 [juvenile court appeared to conclude that mother's failure to promptly treat her mental illness with medication endangered child; evidence showed that agency did not produce evidence that mother had ever failed to adequately supervise or protect child, to provide him with food, clothing, or medical care, or

was unable to provide regular care for him because of her mental illness; indeed, all evidence was to contrary; moreover, mother participated in therapy, saw psychiatrist, and, as soon as she could no longer breastfeed child, promptly began taking psychotropic medication.]

- *In re Isabella F.* (2014) 226 Cal.App.4th 128, 140 [more than 2 years before filing of dependency petition, father had psychiatric incident that resulted in involuntary psychiatric hold; however, there was no evidence that daughter was in father's care at time of incident, was affected by it, or even knew about it; daughter had not seen father for long time, department had been unable to locate him, there was no evidence that he was or would be involved in her life, and court had ordered jurisdiction solely as protective measure in event of his return.]
- *In re L.W.* (2025) 109 Cal.App.5th 1012, 1019 [although mother had been diagnosed with schizophrenia and bipolar disorder, by the time of the jurisdictional ruling, she was treating her mental illness with medication, psychiatric care, and therapy.]

The juvenile court amending allegations of the petition

A complaint cannot be amended to conform to proof to set up a new cause of action. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027; *In re G.B.* (2018) 28 Cal.App.5th 475, 489; *In re I.S.* (2021) 67 Cal.App.5th 918, 926.)

Mother's due process rights were violated when the juvenile court established jurisdiction based on the conduct of a parent the Department never alleged was an offending parent, and on a factual and legal theory not raised in the Department's petition. (*In re S.V.* (2022) 86 Cal.App.5th 1036.)

Appellate standard of review – substantial evidence

Jurisdictional issues are appealable as part of disposition. (§ 395.)

The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re E.E.* (2020) 49 Cal.App.5th 195, 206.)

The appellate court reviews the juvenile court's jurisdictional findings to see if substantial evidence supports them, and draws all reasonable inferences

from the evidence to support the juvenile court's findings and orders. (I*n re R.T.* (2017) 3 Cal.5th 622, 633.) If substantial evidence supports the findings and orders, "we affirm the order even if other evidence supports a contrary conclusion." (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.)

The evidence supporting the jurisdictional finding must be considered "in the light of the whole record" "to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value...."" (*In re I.C.* (2018) 4 Cal.5th 869, 892; accord, *In re Cole L.* (2021) 70 Cal.App.5th 591, 602.)

"Substantial evidence is a deferential standard, but it is not toothless. It is well settled that the standard is not satisfied simply by pointing to "'isolated evidence torn from the context of the whole record.'" (*In re I.C.* (2018) 4 Cal.5th 869, 892.)

Substantial evidence may include inferences, but the inferences must logically and reasonably relate to evidence in the record. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216–217.) "A decision supported by a mere scintilla of evidence need not be affirmed on appeal." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

"Perceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence." (*In re James R.* (2009) 176 Cal.App.4th 129, 136; I*n re David M.*, supra, 134 Cal.App.4th at 830; *Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1070.)

Waiver/forfeiture concerns

A parent who submits on the social worker's report at the jurisdiction hearing, making no argument against a finding of jurisdiction, does not waive the right to raise the sufficiency of the evidence to support the jurisdiction finding on appeal. (*In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1236-1239.)

"Sufficiency of the evidence has always been viewed as a question necessarily and inherently raised in every contested trial of any issue of fact, and requiring no further steps by the aggrieved party to be preserved for appeal." (*In re K.F.* (2009) 173 Cal.App.4th 655, 660 [delinquency case].)

Notable jurisdiction wins in the First District!

In re L.W. (2025) 109 Cal.App.5th 1012 – Katie Curtis – Jurisdictional findings under sections (b)(1)[mental health] and (g) [whereabouts unknown] reversed for lack of substantial evidence. The Department failed to prove that mother was suffering from untreated mental illness or drug addiction or that mother's mental illness put the child at substantial risk of physical harm or illness. (*Id.* at p. 1022.) In addition, the subdivision (g) criteria were not met based on the facts in existence at the time of the hearing. (*Id.* at p. 1017.)

In re S.V. (2022) 86 Cal.App.5th 1036 – Elizabeth Klippi - In an appeal from jurisdiction and disposition, the Court of Appeal found the juvenile court violated mother's due process rights when it established jurisdiction based on the conduct of a parent the Department never alleged was an offending parent and on a factual and legal theory not raised in the Department's petition.

A174002 – Roni Keller – October 8, 2026. Father appealed arguing the jurisdictional findings were not supported by sufficient evidence. Even though there were other allegations in the petition regarding mother, the Court of Appeal exercised its discretion to review father's arguments because the juvenile court's findings designated father as an offending father and thus had consequences beyond initial assumption of jurisdiction. (Opn. at p. 20.) The Court found that factors regarding father not engaging with services or allowing the Department to assess his parenting ability "do not supply substantial evidence for jurisdiction under subdivision (g)." (Opn. at p. 21.)

A173712 – Suzanne Davidson – March 10, 2026. Mother appealed jurisdictional finding regarding her alleged inability to protect the child from domestic violence. The Court of Appeal agreed with mother that the juvenile court's jurisdictional finding under section 300(b)(1)(a) was legally and factually insufficient. The jurisdiction and disposition orders were reversed and the court was directed to dismiss the dependency petition.

A173461 – Suzanne Davison – May 7, 2026 – Appeal by minors. The juvenile court dismissed the section 300 petition at the jurisdiction hearing finding the Department had not met its burden of proof. Minors appealed arguing that the petition should have been sustained pursuant to subdivisions (b)

[malnutrition], (e) [severe physical abuse], and (j) [risk to sibling]. Under the substantial evidence standard, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law. Regarding the risk of malnutrition alleged under subdivisions (b) and (j), the Court of Appeal reversed, finding the juvenile court made inferences and conclusions that were not supported by the record. In all other respects, the jurisdictional orders were affirmed.

A174004 – Jesse Rodriguez – June 30, 2026 - Father appealed from several orders, including those made at a combined jurisdiction/disposition hearing. The Court agreed that father's due process challenges relating to notice were not forfeited on appeal even if they were not timely or adequately raised in the juvenile court. Father did not receive written notice of the hearing and the juvenile court's "oral" notice was not explicit and clear. The Court found these defects violated his due process rights and the defects were consequential. The jurisdiction and disposition orders were reversed and remanded for further proceedings.