

## Robert O. Amador

- San Diego Superior Court 2013-Present
- El Cajon Family Law Judge
  - 2 Years Independent Calendar
- San Diego Deputy District Attorney
  - 30 years
  - 12 Years Project Director J.U.D.G.E. Program
  - 3 Years Drug Endangered Children Program

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## W&I § 300(b)(1)

- The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

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## Cannabis Cases

- In re Christopher R.
  - 225 Cal.App.4<sup>th</sup> 1210 (2014)
- In re Drake M.
  - 211 Cal.App.4<sup>th</sup> 754 (2012)
- In re Alexis E.
  - 171 Cal.App.4<sup>th</sup> 438 (2009)

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## Cannabis and Parenting

- Dependency Court Considerations
  - Welfare and Institutions Code 300 Jurisdiction
- Family Court Considerations
  - Family Code 3011
  - Family Code 3020
  - Family Code 3030
  - Family Code 3041.5
  - Family Code 3044
  - Family Code 3190

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## Family Code 3020

- (a) The Legislature finds and declares that it is the public policy of this state to assure that the **health, safety, and welfare of children** shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.
- (b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in **Section 3011**.

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## Family Code 3011

- In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:
  - (a) The health, safety, and welfare of the child.
  - (b) Any history of abuse by one parent or any other person seeking custody against any of the following:.....
  - (c) The nature and amount of contact with both parents, except as provided in Section 3046.

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## Family Code 3011

- **(d) The habitual or continual illegal use of controlled substances,** the habitual or continual abuse of alcohol, or **the habitual or continual abuse of prescribed controlled substances** by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

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## Family Code 3030

- (a)(1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under [Section 290 of the Penal Code](#) where the victim was a minor, or if the person has been convicted under [Section 273a, 273d, or 647.6 of the Penal Code](#), unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

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### § 273a. Willful harm or injury to child; endangering person or health

- (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

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**§ 273d. Corporal punishment or injury of child**

- (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine.

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**Family Code 3041.5**

In any custody or visitation proceeding brought under this part, as described in [Section 3021](#), or any guardianship proceeding brought under the Probate Code, the court may order any person who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that there is the **habitual, frequent, or continual illegal use of controlled substances** or the habitual or continual abuse of alcohol by the parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship.

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**Family Code 3044**

- (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to [Section 3011](#). This presumption may only be rebutted by a preponderance of the evidence.
- (b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:
- (3) Whether the perpetrator has successfully completed a program of alcohol or **drug abuse counseling** if the court determines that counseling is appropriate.

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## Family Code 3190

- (a) The court may require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including,
  - but not limited to, mental health or substance abuse services,
  - for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:...

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## Family Code 3190

- (1) The dispute between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights and the child, poses a substantial danger to the best interest of the child.
- (2) The counseling is in the best interest of the child.

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## Court Considerations

- Nature of Marijuana at the Home
- Cultivation
- Sales
- Extent of Use
  - Medical MJ (Does it make a difference?)
- Age of children
- Testing
- Other Factors

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