IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE R.T., A Person Coming Under the Juvenile Court Law, LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA E., Defendant and Appellant.	Case No. S226416 Court of Appeal Case No. B256411 Juvenile Court Case No. DK03719 (Los Angeles County)

Appeal from the Juvenile Court of Los Angeles County

Honorable MARGUERITE D. DOWNING, Judge, Presiding

BRIEF OF PETITIONER LISA E. ON THE MERITS

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v.	
LISA E., Objector/Appellant.	

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, Lisa E., hereby submits the following as her opening brief on the merits after this Court granted review of a published decision of the

Court of Appeal, Second Appellate District, Division Two, affirming a decision of the trial court declaring her daughter, R. T., a dependent of the juvenile court. This brief is intended to address the issue raised by the Supreme Court, address the specific facts in the within case as it applies to jurisdiction under Section 300, subdivision (b)(1), and to supplement the points and authorities presented in Petitioner's petition for review.

ISSUE PRESENTED

Does Welfare and Institutions Code section 300, subdivision (b)(1)[1] authorize dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child?[2]

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1 At the time the section 300 petition was filed, section 300 was not divided into two parts. In 2014, a sub-section was added to section 300, subdivision (b), resulting in the re-numbering of that section into subdivisions (b)(1) and (b)(2). Section 300, subdivision (b)(1) is the same in all respects as the former section 300, subdivision (b). For purposes of this brief, Petitioner will refer to section 300, subdivision (b)(1) in addressing the statute that is in issue as that is how the relevant statute is referenced by this Court in its acceptance of the Petitioner's Petition for Review.

2 The issue presented reflects verbatim the issue this Court requested be briefed and argued.

INTRODUCTION

When a parent[3] does everything possible to care for her child, to supervise her child, and to protect that child from harm, but the parent is faced with a wilful, disobedient, incorrigible child who will not listen, nor follow the parent's rules, and who places herself at risk of harm, does section 300, subdivision (b)(1)[4] provide that the juvenile court "may adjudge that child" to be a dependent of the juvenile court, paving the way to remove the child from the care and custody of the parent? Notwithstanding the opinion in the case of *In re Precious D.* ((2010) 189 Cal.App.4th 1251), a case factually almost identical to this one in which the Court of Appeal held that parental culpability was required to assert jurisdiction under these facts, the trial court here held that dependency jurisdiction could be asserted over R.T. The Court of Appeal concurred and affirmed the decision, disagreeing with the opinion in *Precious D.* In

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3 Although not relevant in this case, the provisions of Section 300 apply to legal guardians as well as to parents.

4 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Precious D., the intermediate appellate court did not engage in depth in statutory construction. Instead, the court concluded that the language at issue here – "failure or inability" – could not constitutionally support the assumption of dependency jurisdiction without a finding of parental fault. According to that court, "parental unfitness," the constitutional predicate for termination of parental rights, requires a showing of parental fault. (*In re Precious D., supra*, 189 Cal.App.4th at pp. 1260-1261.) The issue presented for review here is the construction of statutory language, not its constitutionality.

Division Two interpreted the first sentence of section 300, subdivision (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...to adequately supervise or protect the child." (Emphasis added.) Division Two determined that anytime a child is at risk of serious physical harm, the inability of a parent to supervise or protect the child is "enough by itself to invoke the dependency court's jurisdiction", whether or not the inability is attributable to the fault of the parent. (Slip Op. 2). Division Two's statutory analysis was incomplete.

A review of the 100-year history that the Juvenile Law dealing with dependent and delinquent minors has been in existence clearly shows that the Legislature ultimately intended to protect children at risk of harm due to the parent's fault under the dependency statutes, while it separated out those children who placed themselves at risk of harm without parental culpability or who actually committed crimes into what ultimately became the juvenile delinquency statutes.

If there was to be any juvenile court supervision of R.T. because of her incorrigible and disobedient behavior, it could only occur in the juvenile delinquency court under section 601, not in the juvenile dependency court under section 300. Section 601 deals specifically with situations where, through no fault of the parent, a child is incorrigible and disobedient – one who has committed acts which, if committed by an adult, would not be a crime. Section 602, on the other hand, deals specifically with children who have committed acts which, if committed by an adult, would be a crime. (In *re W.B., Jr.* (2012) 55 Cal.4th 30, 42-43.)

The legislative intent of enacting specific grounds under section 300 was to limit court intervention to family situations where the children are

threatened with serious physical harm or illness. The purpose of subdivision (b)(1) was to ensure that, if there are behaviors by parents which cause actual harm or risk of actual harm to the children, the courts can protect the "at risk" children. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Here, there was no "behavior" by Lisa that placed R.T. at risk of harm. The facts clearly show that it was R.T.'s behavior that put herself at risk of harm.

The Opinion by Division Two, and the findings therein, should be reversed.

STATEMENT OF THE CASE

On February 21, 2014, a petition was filed by the Department of Children and Family Services ("DCFS") pursuant to section 300, subdivision (b), alleging, as follows:

> "b-1
>
> The child, R[.]T[.]'s mother, Lisa E[.] is unable to provide appropriate parental care and supervision of the child due to the child's chronic runaway behavior and acting out behavior. The child refused to return to the mother's home and care. Such inability to provide appropriate parental care and supervision of the child by the

mother endangers the child's physical health and safety and places the child at risk of physical harm, damage and danger." (CT 3.) The adjudication on the petition went forward on April 23, 2014.

Minor's counsel argued that R.T. did not understand why a case needed to be opened for her. Lisa's counsel argued that the petition should be dismissed as Lisa had made an appropriate plan for R.T. by placing her in the home of the maternal grandparents. and had provided the best care for R.T. She also pointed out that DCFS had placed R.T. in the same home that Lisa had chosen for her. In sustaining the allegation against Lisa, the juvenile court stated:

> "The court finds by a preponderance that b-1 is true. It's clear the mother can't control her, so she has given her off to grandparents and they can't control her either. She is 17 years old. She has an almost two year old [for whom] she is receiving reunification services. She is now pregnant. She chronically is AWOL. She is not going to school. Does not sound like an appropriate plan to me." (RT 4.)

The court proceeded to disposition and detained R.T. from Lisa. Lisa was granted monitored visitation with R.T. Lisa was ordered to

complete a parenting program and to participate in conjoint counseling with R.T. (2RT 4-6.)

Lisa filed a Notice of Appeal on May 6, 2014. Appellant's Opening Brief was filed on September 24, 2014. Lisa argued that this case was factually identical in most respects to the facts in *Precious D.* and reiterated the reasoning of the *Precious D.* court. *Precious D.* held that under DCFS's interpretation of section 300, subdivision (b)(1), dependency jurisdiction could be asserted over an incorrigible child whose parent was neither unfit nor neglectful. That basis could lead to the child's removal and for an order of reunification services that might be thwarted by the child's behavior, ultimately leading to termination of parental rights. Therefore, parental rights might be terminated without any finding of unfitness or neglectful conduct by the parent, which result would not comport with the federal due process principles. (*In re Precious D.*, *supra*, 189 Cal.App.4th at p. 1261.) The *Precious D.* court also pointed out that there were other resources within the juvenile court system to deal with an incorrigible child, referring to section 601 (which provides the procedure to adjudge a habitually disobedient or truant minor a ward of the court). (*Ibid.*)

DCFS filed their Respondent's Brief on November 3, 2015, and argued that the first prong of section 300, subdivision (b)(1) does not require parental fault. It further argued that in holding that "parental fitness or neglectful conduct must be shown in order to assert dependency jurisdiction under that part of section 300, subdivision (b)(1) providing for jurisdiction based on the parent's inability...to adequately supervise or protect the child", the *Precious D.* court had "improperly grafted" that requirement onto subdivision (b)(1). (*In re Precious D.*, *supra*, 189 Cal.App.4th at p. 1254.) DCFS further argued that the *Precious D.* court was incorrect in its belief that a jurisdictional finding under section 300, subdivision (b)(1) could lead to a removal of a child or the termination of parental rights without a finding of "unfitness or neglect" by the parent.

Lisa filed a Reply Brief on December 12, 2014, and reiterated her argument that section 300, subdivision (b)(1) requires a finding of parental unfitness, neglect or abuse before a true finding of dependency can be made, and that no such finding had been made in this case. Lisa further argued that section 601 was the proper vehicle for minors such as R.T., not the dependency scheme.

Lisa filed a request for judicial notice on December 12, 2014, as well, advising Division Two that R.T. had become eighteen during the pendency of the appeal and that her case as a minor dependent had been closed. The request for judicial notice was granted on January 5, 2015.[5]

The Opinion was filed on April 2, 2015.[6] Division Two affirmed the trial court's findings and orders and disagreed with the decision in *Precious D.* Division Two held that "no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent's 'failure or inability...to adequately supervise or protect' her", citing section 300, subdivision (b)(1). (Slip Op. 11.)

On May 15, 2015, Lisa filed a Petition For Review and this Court granted review on June 17, 2015. Counsel for Lisa was appointed by this

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5 In granting Lisa's request for judicial notice, Division Two stated: "R.T.'s majority does not moot this appeal because the juvenile court's assertion of jurisdiction over R.T. may reflect adversely on mother's suitability to act as a caregiver to R.T.'s two children in any future dependency proceedings involving those children (for whom mother has cared in the past). [Citations.]" (Slip Op. 3, fn 2.)

6 A copy of the Opinion is attached hereto as Appendix "A".

Court on July 7, 2015.

STATEMENT OF THE FACTS

There is no dispute as to the facts of this case. R.T. was born in 1996. When R.T. was 14, she began running away from home for days at a time, did not attend school, falsely reported that Lisa abused her and, at least on one occasion, R. T. threw furniture. R.T. got pregnant at 15 and, at 17, got pregnant again. (Slip Op. 2.) At the time the petition was filed, R.T. was 17-1/2 years old, the mother of one child who had been detained from her by DCFS, and pregnant with her second child. She was residing in the home of her maternal grandparents.

There is no dispute as to the fact that Lisa did everything within her power to supervise and protect R.T. She would look for R.T. when she would run away; she arranged for R.T. to live with the maternal grandparents, primarily because the maternal grandfather had worked with troubled juveniles and also as a safeguard against the false reporting of abuse by R.T.; she sought help from law enforcement; and she asked DCFS for assistance, even though she declined to voluntarily submit R.T. to

DCFS' jurisdiction. "Notwithstanding these efforts, R.T. remained 'rebellious', 'incorrigible' and 'out of control.'" (Slip Op. 2.)

The trial court asserted jurisdiction over R.T., even though there were no allegations of culpability against Lisa. The court removed R.T. from Lisa's custody and authorized DCFS to place R.T. elsewhere while Lisa was provided with reunification services. (Slip Op. 3.)

In its Opinion, Division Two concurred that, like the mother in *Precious D.*, Lisa "was neither neglectful nor blameworthy in being unable to supervise or protect" R.T. Division Two further found that Lisa's decision to place R.T. with the maternal grandparents, the same placement later made by DCFS, "was not neglectful or blameworthy." The same with Lisa's refusal to accept DCFS' invitation to voluntarily accede to jurisdiction, as Division Two found that not to be evidence of neglect or culpability. (Slip Op 4.)

DISCUSSION

I

WELFARE AND INSTITUTIONS CODE SECTION 300, SUBDIVISION ((b)(1), REQUIRES A FINDING THAT PARENTAL FAULT OR NEGLECT IS RESPONSIBLE FOR THE CAUSE OF THE SERIOUS PHYSICAL HARM OR SUBSTANTIAL RISK OF THAT HARM SUFFERED BY THE INCORRIGIBLE CHILD.

A. The controlling statutory scheme.

There is no dispute as to the purpose of the dependency statutes, which is to provide maximum protection for children who are at risk. Section 300.2 makes it clear that the protection is focused on a very specific group of children: children who are currently being physically, sexually, or emotionally abused, being neglected, or exploited, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of *that* harm." (Section 300.2 (emphasis added).) Any analysis of the relevant language of subdivision (b)(1) must be made understanding the purpose of the dependency scheme and what is the intended goal. As will be discussed, below, under the factual situation presented here, when it was R. T.'s actions and behavior and not any fault or neglect by Lisa that placed

R.T. at risk of harm, the failure or inability of Lisa to protect her child is not authorized by section 300, subdivision (b)(1). Division Two's analysis and interpretation of this statute, and specifically the word "inability", to support its opinion is not borne out by the intention of the Legislature throughout the history of this statute, and disregards the nexus that must be shown between a parent's act or omission and the harm or risk of harm confronting the child. "Dependency proceedings are not designed to prosecute parents. In a dependency proceeding, the state is empowered to intervene because a parent's inadequacy puts a child at risk. Parents who fail or refuse to meet their parental obligations face the profound loss of a relationship with their child. Parents who break the law are subject to criminal prosecution, but they are also entitled to the panoply of rights and protections provided by the Constitution and statute to those who stand accused of a crime." *(In re Nolan W.* (2009) 45 Cal.4th 1217, 1238.) Lisa is a more than adequate parent. The juvenile court and Division Two found that Lisa was blameless and did everything she could to protect R.T. from harm. And, yet, Division Two agreed that although no fault could be attributed to Lisa for the incorrigible, disobedient and truant behavior of

R.T., the situation required juvenile dependency jurisdiction. That is not the situation that the first clause of section 300, subdivision (b)(1) is intended to address.

B. Statutory Interpretation.

1. The statutory construction issue presented for review should be decided on the facts – an incorrigible child and a blameless parent.

To reiterate, the issue presented for review is whether Welfare and Institutions Code section 300, subdivision (b)(1) authorizes dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child. Necessarily, this brief and the opinion should address that question in the context of the facts of this case, the incorrigible child. (*In re Levi H.* (2011) 197 Cal.App.4th 1279, 1289 [A decision is authority only for the point actually passed on by the court and directly involved in the case. General expressions in opinions that go beyond the facts of the case will not necessarily control the outcome in a subsequent suit involving different facts.]; see also *In re Jason J.* (2009) 175 Cal.App.4th 922, 935 ; *In re H.E.* (2008) 169 Cal.App.4th 710,

721-722 [Language used in any opinion is to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered. The holding of a decision is limited by the facts of the case being decided, notwithstanding the use of overly broad language by the court in stating the issue before it or its holding or in its reasoning.].)

Nevertheless, recognizing this Court has defined the issue presented for review more broadly, this brief addresses the statutory construction issue both as it relates to the facts of this case and in any case in which a child has suffered or is at substantial risk of suffering physical harm as a result of a parental failure or inability.

2. The intent of a statute must not be determined from a single word or sentence but must be construed in the overall context intended.

Division Two of the Court of Appeal based its findings and opinion on its interpretation of the language in section 300, subdivision (b)(1), and specifically: "[t]he 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." Division Two focused on the meaning of the word "inability." Unlike the reviewing court in *Precious D.*, Division Two did not define parental unfitness to mean parental fault. (*In re Precious D.*, *supra*, 189 Cal.App.4th at p. 1260.)

In determining whether language has a clear meaning or is susceptible of multiple interpretations, the reviewing court is mindful that "the meaning of the enactment may not be determined from a single word or sentence; the words must be construed in context." (*Tanya M. v Superior Court* (2007) 42 Cal.4th 836, 844.) Dependency provisions "must be construed with reference to the whole system of dependency law, so that all parts may be harmonized." (*Ibid.*) "By examining the dependency scheme as a whole", the reviewing court "can better understand the consequences of a particular interpretation, avoid absurd or unreasonable results, and select the interpretation most consonant with the Legislature's overarching goals." (*Id.*, at p. 845.)

These findings by the Supreme Court in the *Tanya M.* case are consistent with many California cases that speak to the necessity of ensuring that the purpose of the dependency system as a whole, and the

intent of the Legislature in enacting the comprehensive statutory scheme governing juvenile dependency are considered, so that the interpretation of the statute does not create unintended consequences. (*In re Marquis H.* (2013) 212 Cal.App.4th 410, 420-425 [A statute should not be given a literal meaning if to do so would create unintended consequences. Intent prevails over the letter of the law and the letter will be read in accordance with the spirit of the enactment.]); Section 1858 of the Code of Civil Procedure [In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein and not to insert what has been omitted, or to omit what has been inserted..."].)

The facts in *Precious D.* were very similar to the facts in this case, namely, an incorrigible teenager who repeatedly endangered herself by running away from home, and a mother who tried everything to no avail. (*Precious D.*, *supra*, 189 Cal.App.4th at p. 125.) The mother in *Precious D.* was unable to supervise or protect her daughter, not due to the mother's behavior as she was found to be blameless, but as a result of the behavior exhibited by her incorrigible child. (Slip Op. 3-4.)

Division Two noted that, in this case, there was no blameworthy or neglectful conduct by Lisa. It also found that it was undisputed that R.T.'s behavior placed herself at substantial risk of harm or illness. Based on that, the court came to the conclusion that the propriety of juvenile court's jurisdiction in this case "turns on a single question" - "[m]ust a parent be somehow to blame for her 'failure or inability' to adequately supervise or protect her child, when that inability creates a substantial risk of serious physical harm or illness, before a juvenile court may assert dependency jurisdiction pursuant to the first clause of section 300, subdivision (b)?" (Slip Op. 4.) Division Two found that the answer could be found in statutory interpretation, which they reviewed de novo, and concluded it did not. (Slip Op. 4-7.) Division Two's interpretation of that portion of subdivision (b)(1) is wrong.

3. The first clause of subdivision (b)(1) is ambiguous, which necessitates a review and judicial notice of the legislative history of such subdivision in order to determine whether or not such clause authorizes the assumption of dependency jurisdiction in the absence of parental fault or neglect.

In a case where the statutory language may be unambiguous on its face, but a latent ambiguity has been revealed, the reviewing court may

consult and take judicial notice of legislative history for guidance. (*Quaterman v. Keauver* (1997) 55 Cal.App.4th 1366, 1376; see also *In re J.W.* (2002) 29 Cal.4th 200, 211; *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1340; *Los Angeles County Dept. of Children and Family Services v. Superior Court* (2003) 112 Cal.App.4th 509, 516.)

The latent ambiguity in the statutory language of section 300, subdivision (b)(1), is revealed here by the conflicting opinions in *R.T.* and *Precious D.* Thus, the legislative history should be consulted and judicially noticed.

C. Legislative History of Section 300, subdivision (b)(1)

This section, and the children to be protected, have a long history going back to 1903. In 1909, a new act, to be known as Parental Court Law, was approved by the Governor and enacted that year in chapter 133[7]. The language found in Section 1 of that enactment reads as follows:

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7 A copy of Section 1 enacted in 1909 is set out in full in the Request For Judicial Notice filed concurrently with the within brief, as will all further statutes contained in this section discussing the legislative history of section 300, subdivision (b)(1).

"Section 1.

This act...shall apply only to children under the age of eighteen years...

(1) Who is found begging or receiving or gathering alms, (whether actually begging or under the pretext of selling or offering anything for sale); or

(2) Who is found in any street, road or public place for the purpose of so being, gathering or receiving alms; or,

(3) Who is a vagrant; or,

(4) Who is found wandering and not having any home or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or,

(5) Who has no parent or guardian; or, no parent or guardian willing to exercise or capable of exercising proper parental control; or,

(6) Who is destitute; or,

(7) Whose home by reason of neglect, cruelty or depravity on the part of its parents or either of them, or on the part of its guardian, or on the part of the person in whose custody or care it may be, is an unfit place for such child; or,

(8) Who frequents the company of reputed criminals, vagrants, or prostitutes; or,

(9) Who is found living or being in any house of prostitution or assignation; or,

(10) Who habitually visits, without parent or guardian, any saloon, or poolroom or place where any spirituous liquors, or wine, or intoxicating, or malt liquors are sold, exchanged or given away; or,

(11) Who persistently refuses to obey the reasonable and proper orders or directions of a guardian, or parent; or,

(12) who is incorrigible, that is, who is beyond the control and power of his parents, guardian, or custodian by reason of vicious conduct or nature of such minor; or,

(13) Whose father is dead or has abandoned his family or is an habitual drunkard, or does not provide for such minor, and it appears that such minor is destitute of a suitable home and of adequate means of obtaining an honest living, and is in danger of being brought up to lead an idle and immoral life and where the mother of such child is dead or is unable to provide the proper support and care of such minor; or,

(14) Who is an habitual truant within the meaning of an act entitled 'an act to enforce the educational rights of children and providing penalties for the violation of said act' approved March 24, 1903, and who is not placed in a parental school under the provisions of said act, or who being over fourteen years of age refuses to attend public or private school, as directed by his parents, duly authorized guardian, or legal custodian [or,]

(15) Who habitually uses intoxicating liquor as a beverage or habitually smokes cigarettes to excess or who habitually uses opium, cocaine, morphine or other similar drugs–without the direction of a competent physician–.

The words 'delinquent child' shall include any child under the

> age of eighteen years who violates any law of this state, or any ordinance of any town, city, county, or city and county of this state, defining crime."

In 1909, by virtue of this enactment, the incorrigible, disobedient and truant child did not come under the term "delinquent child"; only those children who actually committed a crime were part of the "delinquency" laws.

In 1915, the statutes then in existence were modified to raise the age of the persons to whom these laws applied to twenty-one years. The name of the act was changed to the Juvenile Court Law. Relevant to the issue in this case, the prior subdivisions under Section 1 relating to "incorrigible" children and children who "disobeyed their parents", subdivisions (11) and (12), were repealed and combined into a new subdivision, no. 9, as follows:

> "Section 1. This act shall be known as the "juvenile court law" and shall apply to any person under the age of twenty-one years, hereinafter more particularly designated to wit:
> ...
>
> 9. Who, being a minor, persistently or habitually refuses to obey the reasonable and proper orders or directions of, or who is beyond the control of his parent, parents, guardian or custodian;..." (Chapter 631 of the Statutes of 1915.)

The provision regarding being a habitual truant remained, although

the language was modified.

In 1939, the act went through another revision and was reflected in Section 700 of the Welfare and Institutions Code, through Chapter 1099. The "refuse to obey" language remained in the statute.

This remained California law until 1961, when a major revision of the juvenile court language in Chapter 1616 of the Statutes of 1961 amended the definitions within the jurisdiction of the court. Recommendations for changes in the juvenile law were proposed by the Governor's Special Study Commission on Juvenile Justice ("Commission"). In following the recommendations by the Commission that, instead of the numerous classes of minors then subject to the jurisdiction of the juvenile court under one section (Section 700 of the Welfare and Institutions Code), the bill established three classes of minors subject to its jurisdiction. These were designated as "dependent or neglected minors" (Sec. 600), "delinquent minors" (Sec. 601), and "minors who have violated laws " (Sec. 602) In light of the new statutes, if the court found that the child was in the first class, it may declare him or her a dependent child of the juvenile court; if the court found that he or she was in one of the other two classes, it may

declare him or her a ward of the juvenile court (Sec. 725.) The statutes, as enacted in 1961, were as follows::

> Section 600:
>
> "Any person under the age of 21 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:
>
> (a) Who is in need of proper and effective parental care of control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.
>
> (b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is."
>
> Section 601:
>
> "Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of these States or who from any cause is in danger of leading an idle, dissolute, lewd, or amoral life, is within the

> jurisdiction of the juvenile court which may adjudge such person to be a ward of the court."
>
> Section 602:
>
> "Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which adjudge such person to be a ward of the court."

The division under the newly enacted statutes, and the jurisdictional language under sections 600, 601 and 602, left no doubt that cases coming into the juvenile court concerning children who were abused and neglected by their parents fit into the "dependency" scheme, under section 600, whereas jurisdiction over those children who are incorrigible, disobedient and truant, were properly authorized under the "delinquency" scheme, under section 601. This was the first time the legislature made that distinction and separated the child who was a "dependent" from the child who was a "ward" of the court

In 1971, the maximum age of the minor, to which the juvenile law was applicable, was adjusted to eighteen in Chapter 1748.

In 1978, in Chapter 1067, juvenile court dependency jurisdiction language was moved from section 600 et seq to section 300 et seq of the Welfare and Institutions Code.

The language enacted in 1978 was carried forward in Chapter 977 of 1982.

In 1987, in Chapter 1485, section 300 , subdivision (b) was amended and the relevant portion to the issue in this case stated:

> "Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge the person to be a dependent of the court...(b) The minor has suffered, or there is substantial risk the minor will suffer, serious physical harm or illness, as the result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor..."

The changes in the law in 1987 were significant because it narrowed the situations where dependency jurisdiction could be asserted over the child and the thrust of the changes in subdivision (b) was to ensure that the abused or neglected children were protected. (*In re Rocco M., supra*, 1 Cal.App.4th at p. 823.)

The language in section 300, subdivision (b)(1) remains as amended in 1987.

One understanding to be gleaned from the 100-year legislative history is that it addressed, and continues to address, two persons – the parent and the child. On one hand, over the last 100 years, the Legislature described and defined the *child* who may fall under juvenile court jurisdiction. One of those definitions was "incorrigibility". On the other hand, the Legislature described and defined the *parent* whose child was subject to that jurisdiction. The evolving and separate definitions of "parent" and "child" continue to individually inform the other's meaning

An overview of the legislative history establishes a legislative intention to narrow dependency jurisdiction and reassign to section 601 of the code children previously subject to section 300 jurisdiction. The "incorrigibility" language was eliminated as a basis for section 600(a) dependency jurisdiction in 1961; but, its exercise on the basis of the lack of a parent "capable of exercising care and control" remained. The 1987 amendment modified the language from "capable of exercising care and control" to "failure or inability" to provide for and protect the child. The meaning of this modified language is revealed by the earlier removal of the incorrigible child from dependency jurisdiction. That shift of the

incorrigible child from dependency to delinquency jurisdiction implicitly resulted in the insertion of a parental fault or neglect requirement in that context and under section 300, subdivision (b)(1). A contrary interpretation would ignore the "cause and effect" language of the statute. In order to establish dependency jurisdiction under that clause, the social services agency must demonstrate the child is at substantial risk of suffering serious physical harm *as a result of* a parental failure or inability. An incorrigible child is not the subject of dependency jurisdiction unless the incorrigibility is shown to be the result of a parental failure or inability. No such showing was made in R.T.'s dependency case. Thus, she fell under section 601.

Clearly, the progressive removal of any reference to an incorrigible, disobedient and/or truant child from section 300 and placing those children under the delinquency section of the juvenile law in the incorrigible child context, initially accomplished in 1961, supports the finding that subdivision (b)(1) does not authorize dependency jurisdiction over R.T., a child who was incorrigible, disobedient, and truant, because there was no showing Lisa was responsible for the substantial risk of serious physical harm confronting R.T.

Division Two's opinion has clearly blurred the bright line distinction created by the Legislature. Its holding that subdivision (b)(1) of section 300 is a kind of "no fault" way to invoke dependency jurisdiction is at odds with the carefully created distinctions made by the Legislature and, for all practical purposes, renders 601[8] a nullity. (*Williams v. Superior Court* (1991) 5 Cal.4th 337, 357 [An interpretation that renders statutory language a nullity is obviously to be avoided.].)

Section 601 was placed in the law for a very specific purpose – it was designed to deal with a child at risk largely as a result of his/her own freely chosen behavior of incorrigibility and disobedience. It is not there to punish the child but to help the child. (*In re Julian R.* (2009) 47 Cal.4th

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[8] Section 601(a) provides, as follows:

> "Any person under 18 years of age who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court."
>
> The language in section 601(b) relates to specific directives when a child is truant.

487, 496-497 [Purpose of delinquency law remains rehabilitative, not punitive.]; see also *In re W.B., Jr., supra,* 55 Cal.4th at pp. 42-43 re. division of the juvenile law among sections 300, 601 and 602.) It is a law that seriously addresses children who are very possibly on the road to criminal behavior and is meant to curb the behaviors of those children to avoid that outcome.

If the Legislature intended that subdivision (b)(1) include situations where the child is incorrigible and fails to obey the parents and where the parent is blameless, and it is the child's incorrigible and disobedient behavior that places the child at risk of harm, not the parent's fault or neglect, the stricken language that addressed that very issue would have remained as part of section 300.

A review of the legislative history of subdivision (b)(1) leaves no doubt as to the intent of the Legislature with respect to disobedient and incorrigible children.

D. The statutory terms "failure or inability" cannot be understood without reference to the key causative statutory term "result."

The first clause of section 300, subdivision (b)(1), provides, as follows:

> "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..."

As shown here, the term "result" informs the proper construction of the clause at issue in the context of the incorrigible child and in all other situations in which a child has suffered serious physical harm or is at substantial risk of suffering that harm.

In some circumstances, a parent's disability presents a substantial risk of serious physical harm to a child supporting the exercise of dependency jurisdiction under section 300, subdivision (b)(1). A mother who suffers incapacitating and irreversible brain damage during child birth is unable to parent her infant. If there is no other willing and capable parent (*In re A.G.* (2013) 220 Cal.App.4th 675, 686), that child is at substantial risk of suffering serious physical harm *as a result* of her mother's *inability*

to function as a parent. In other words, in that situation, there is a cause and effect relationship between the parent's *inability* and the risk to the child, respectively. The "result" element of section 300, subdivision (b)(1) is established. Consistent with its requirement that the risk of harm to a child be shown to be the *result* of any parental failure or inability, the Legislature moved the incorrigible child from the umbrella of dependency jurisdiction to delinquency jurisdiction.

The connotation of "incorrigibility" is a blameless parent. The word "incorrigible" is defined, as follows: " 1. [N]ot corrigible; bad beyond correction or reform;... 2. impervious to constraints or punishment; willful; unruly; uncontrollable; ...3. firmly fixed; not easily changed; ...4. not easily swayed or influenced." (dictionary reference.com/ browse/incorrigible) In deleting the incorrigible child from section 300, subdivision (b)(1), the Legislature implicitly recognized that the serious physical harm suffered by the incorrigible child, or the substantial risk the incorrigible child will suffer, cannot be shown to be "the result of the failure or inability of the parent."

Here, R..T. engaged in disobedient and incorrigible behaviors –

running away from home for days at a time, not attending school, and engaging in sexual activities that resulted in one pregnancy at age 15 and another at age 17– all of which placed her at risk of harm. (Slip Op. 2.) That "risk of harm" had nothing to do with what Lisa did, or failed to do, or could have done differently, to prevent those behavioral problems. Accordingly, the risk of harm to R. T. was not "as a result" of any failure or inability of Lisa.

E. The language of other clauses of section 300, subdivision (b)(1) and other subdivisions of that section do not define the legislative intent in regard to the first clause of section 300, subdivision (b)(1).

As Division Two pointed out in its opinion, some clauses of subdivision (b)(1) and other subdivisions include such terms as "willful", "nonaccidental", etc to indicate a requirement that a parent acted intentionally: "(See § 300, subds. (a) [parent's 'nonaccidental' 'inflict[ion]' of physical harm on child], (c) [child suffered, or is at substantial risk of suffering, serious emotional damage 'as a result of' the parent's conduct], (d) [parent's sexual abuse of child], (e) [parent's infliction of severe

physical abuse on a child under five years old], (g) [parent incarcerated or voluntarily surrendered child at safe surrender site], (I) [parent subjected child to acts of cruelty].) (Slip Op. 5.)

Division Two further pointed out that, "under other provisions, negligent conduct by the parent will suffice: (subd. (b)(1) [second clause: parent's 'willful or negligent failure' to supervise or protect child when leaving child with another person]; *ibid.* [third clause: parent's 'willful or negligent failure' to provide 'adequate food, clothing shelter or medical treatment']; *id.*, subd. (d) [parent did not protect child from sexual abuse, when parent knew or should have know of risk]; *id.*, subd. (e): [same, as to severe physical abuse of child under five years old]; *id.*, (I) [same, as to acts of cruelty]; *id.*, (j) parent's 'abuse or neglect' caused death of another child]; *id.*, (g) [parent's whereabouts are unknown].)" (Slip Op. 5-6.)

Division Two concluded by saying, "And for still others, dependency jurisdiction is appropriate when the parent is not to blame. (See § 300, subd. (c) [child is suffering, or at substantial risk of suffering, serious emotional damage, and 'has no parent or guardian capable of providing appropriate care']; *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 [this clause of

section 300, subd.(c), requires 'no parental fault or neglect']; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [same]; §300, subd. (g) [when child 'has been left without any provision for support']; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128-1129. (*D.M.*) [this clause of section 300, subd. (g), need not be willful]; §300, subd. (b)(1) [fourth clause; parent's 'inability...to provide regular care for the child' due to parent's 'mental illness' or 'developmental disability'].)" (Slip Op. 6.) Although not mentioned by Division Two, dependency jurisdiction may also be taken of a child who has been sexually abused by a member of the household. No element of parental fault or neglect attaches to that portion of subd. (d).

Lisa acknowledges that the Legislature has either inserted or omitted in each of the enumerated sections/subdivisions the element of parental fault in some form. Thus, an inference to be drawn from the inclusion of "fault" language in other clauses of subdivision (b) and in other subdivisions of section 300, but its omission from the first clause of section 300, subdivision (b)(1) -- and the one drawn by Division Two -- is that the Legislature did not intend to include the element of parental fault or neglect in section 300, subdivision (b)(1) when it wrote the language "failure or

inability." (See *In re A.M.* (2010) 187 Cal.App.4th 1380, 1389 [Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted. (Omission of "current risk" from section 300, subd. (f); but see, section 300, subds. (a), (b), (c), (d) and (j).].)

The omission principle of statutory construction should be applied here. There is an equally weighty tenet that no principle of statutory construction is implied invariably without regard to indicia of legislative intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725; see e.g. In *re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1411 [Like all other guidelines for statutory construction, the maxim *expression unius est exclusion alterius* has exceptions.].) The legislative intent in the enactment of section 300(b)(1) is gleaned from the 100-year evolution of that statute and should overrule the "omission principle" of statutory construction. As shown by the 100-year history of section 300, subdivision (b)(1), the Legislature's intent was to remove the incorrigible child and, therefore, the parent of the incorrigible child, from the jurisdiction of the dependency

branch of the juvenile court. Although other clauses of subdivision (b)(1) include the element of parental fault in the form of neglect, and other subdivisions of section 300 include or exclude parental fault in any of its forms, the first clause of subdivision (b)(1) – consistent with the its legislative history – should be understood to require parental fault in the context of the incorrigible child.

F. Consistent with the legislative history of section 300, the provisions of section 241.1 do not apply in this case where there is an incorrigible child and a blameless parent.

Section 241.1 addresses a situation when a minor appears to become within the description of both section 300 and section 601 or 602. (*In re W.B., Jr.*, *supra*, 5 Cal.4th at p. 46.) Once it is established that a minor meets the criteria for either dependency or wardship, the juvenile court is required by section 241.1 to "determine which status is appropriate for the minor." (§ 241.1, subd. (a.).) When doing so, the juvenile court considers the recommendations of the county probation department and the child welfare services department as to "which status will serve the best interests of the minor and the protection of society." (*In re M.V.* (2014) 225

Cal.App.4th. 1495, 1513.) This statute, read within the context of the Juvenile Court Law generally, grants broad discretion to the juvenile court when determining which status will best meet a particular minors's needs. (See § 202, subd. (b) [both delinquent and dependent minors shall receive "care, treatment, and guidance" that is "consistent with their best interest"].) (*In re M.V., supra*, 225 Cal.App.4th at pp. 1513-1514.)

"As a general rule, a child who qualifies as both a dependent and a ward of the juvenile court cannot be both." (*In re M.V. , supra,* 225 Cal.App.4th at p.1505; § 241.1, subd. (d);) However, in 2004, the Legislature created an "exception" which would allow a "dual status" child, "but only in accordance with a precise written protocol ." (*In re W.B., Jr., supra*, 55 Cal.4th at pp. 46-47.)

Lisa acknowledges that one interpretation of section 241.1 is the Legislature's decision to leave to the executive branch the decision whether to file a dependency petition or a delinquency petition where the minor meets the definition of a person described under either section 300 or sections 601/602. Thus, one inference from section 241.1 is that the Legislature permitted the executive branch to decide whether to proceed

under section 300 or under section 601 in the case of an incorrigible child. But, as shown, if the parent is blameless, there is no such discretion. Unless the harm or the substantial risk of harm suffered by the child is the result of parental failure or inability, the executive branch must proceed under section 601.Consistent with that legislative history, the incorrigible child and blameless parent do not fall under section 300 or section 241.1.

CONCLUSION

When juvenile law was first created in the state of California, the Legislature created one statute that sought to protect children that were the victims of abuse and neglect, children that were incorrigible and disobedient, and children who committed crimes. In 1961, the Legislature, as a result of input from task forces, commissions, and other sources, looked at the differences in the status of the children under juvenile law and created three distinct sections addressing those differences – one section to address children who were abused and neglected by parents, guardian or caretaker; one section to address children who were disobedient and incorrigible but who had not violated any law that would not be considered

criminal if committed by an adult, and whose parents were blameless, and one section to address children who committed criminal acts that would be criminal if committed by an adult. Those sections, and the different status of the children to be addressed thereunder, have remained part of the juvenile law to the current time. That differentiation was recognized by the *Precious D.* court; it was not recognized by Division Two in this case.

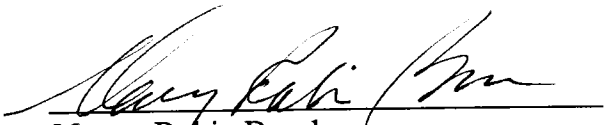
The Court of Appeal ruled that juvenile dependency could be asserted over R.T, an incorrigible and disobedient child, without a finding of parental fault. This Court should reverse that ruling and hold that dependency jurisdiction was wrongly asserted over R.T., under section 300, subdivision (b)(1), due to Lisa's inability to protect R.T. from harm and illness in light of the Legislature's retention of the requirement a child's serious physical injury or substantial risk of suffering such injury must be shown to be *as a result* of any parental failure or inability. Here, it was R.T. an incorrigible child, who was at fault for creating a risk of harm for herself. By definition, an incorrigible child means the parent is not at fault.

Where there is an absence of parental fault, the serious physical harm suffered by the incorrigible child, or likely to be suffered, is not the *result* of

any parental failure or inability, and any juvenile court jurisdiction lies only under section 601.

Dated: August 5, 2015

Respectfully submitted,

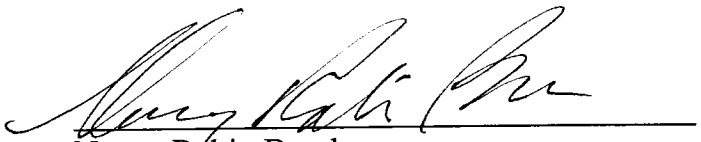


Nancy Rabin Brucker,
Attorney for Petitioner, Lisa E.

WORD COUNT CERTIFICATE

In compliance with California Rules of Court, Rule 8.520(c)(1), I certify this brief contains 8,380 words, excluding tables, calculated by the word processing program used to generate this brief.

Dated: August 5, 2015



Nancy Rabin Brucker

APPENDIX "A"

Filed 4/2/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.T., a Person Coming Under the Juvenile Court Law.	B256411 (Los Angeles County Super. Ct. No. DK03719)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA E., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * * * * *

A "rebellious" and "incorrigible" teen repeatedly runs away from home, placing herself and her infant daughter at "substantial risk [of] . . . serious physical harm." (Welf. & Inst. Code, § 300, subd. (b)(1).)[1] Can the juvenile court assert dependency jurisdiction over the teen on the ground that her mother, who tried everything she could, was still unable "to adequately supervise or protect" the teen? (*Ibid.*) *In re Precious D.* (2010) 189 Cal.App.4th 1251 (*Precious D.*) said "no," reasoning that the first clause of section 300, subdivision (b)(1), requires proof of parental culpability. We respectfully disagree, and hold that the language, structure, and purpose of the dependency statutes counsel against *Precious D.*'s conclusion that this provision turns on a finding of parental blameworthiness. When a child thereby faces a substantial risk of serious physical harm, a parent's inability to supervise or protect a child is enough by itself to invoke the juvenile court's dependency jurisdiction.

FACTS AND PROCEDURAL HISTORY

Lisa E. (mother) gave birth to R.T. in 1996. When R.T. was 14, she began running away from home for days at a time, not attending school, falsely reporting that her mother abused her, and at least on one occasion throwing furniture. At least one of her absences necessitated a visit to the hospital. R.T. also began having children—one when she was 15 (who became a dependent of the court) and another a few years later. Mother made efforts to supervise and safeguard R.T.: She went looking for R.T. whenever she left home; she arranged for R.T. to live with mother's parents because R.T.'s grandfather used to work with troubled juveniles and because R.T.'s false reports were made when R.T. and mother were alone; she called the police for help; and she asked the Los Angeles County Department of Children and Family Services (Department) for assistance, although she declined to voluntarily submit R.T. to the Department's jurisdiction. Notwithstanding these efforts, R.T. remained "rebellious," "incorrigible," and "out of control."

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The Department filed a petition to declare then-17-year-old R.T. a dependent of the juvenile court on the ground that she faced "a substantial risk [of] . . . serious physical harm or illness, as a result of the failure or inability of [mother] to adequately supervise or protect" her. (§ 300, subd. (b)(1).) The juvenile court asserted jurisdiction over R.T., denying mother's motion to dismiss the petition. The court reasoned that "the mother can't control [R.T.], so she has given her off to grandparents and they can't control her either." The court then issued a dispositional order authorizing the Department to place R.T. elsewhere while reunification services were provided, and the Department placed her back with her grandparents.

Mother timely appeals.[2]

DISCUSSION

Mother argues that the juvenile court erred in asserting dependency jurisdiction over R.T. (and, by extension, erred in making its dispositional order premised on that jurisdiction) because (1) the first clause of section 300, subdivision (b)(1), as interpreted in *Precious D., supra,* 189 Cal.App.4th 1251, requires proof that the parent's inability to supervise or protect her child stems from being "unfit or neglectful" (*id.* at p. 1254; see also *In re James R.* (2009) 176 Cal.App.4th 129, 135, quoting *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820), and (2) there was insufficient evidence that she was unfit or neglectful because she did her best to control R.T.

It is critical to clarify what *Precious D.* meant by "unfit or neglectful."[3] *Precious D.* involved facts strikingly similar to this case—namely, an incorrigible teen

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2 While this appeal has been pending, R.T. turned 18. We grant mother's request to judicially notice the court documents so indicating. R.T.'s majority does not moot this appeal because the juvenile court's assertion of jurisdiction over R.T. may reflect adversely on mother's suitability to act as a caregiver to R.T.'s two children in any future dependency proceedings involving those children (for whom mother has cared in the past). (Accord, *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

3 *In re James R.* and *In re Rocco M.* add nothing to the analysis because they refer to "neglectful conduct by the parent *in one of the specified forms*" and thus do no more

who repeatedly endangered herself by running away from home, and a mother who "tried everything" to no avail. (*Precious D.*, *supra*, 189 Cal.App.4th at p. 1257.) Thus, the mother in *Precious D.* was in no way neglectful, but was "unfit" insofar as she was unable to supervise or protect her daughter. Thus, by "unfit," the *Precious D.* court was looking not only to the *reason* for the parent's unfitness, but also for some proof that the parent be blameworthy or otherwise at fault. (*Id.* at p. 1259 [concluding there was no basis to be "critical of Mother's parenting skills or conduct"].)

Like the mother in *Precious D.*, mother in this case was neither neglectful nor blameworthy in being unable to supervise or protect her daughter. The Department argues that mother "abdicated" her parental role by placing R.T. with her grandparents and by declining the Department's invitation to voluntarily consent to jurisdiction. But mother's decision to put R.T. with her more experienced grandparents—the very same placement the Department later made—was not neglectful or blameworthy. Her decision not to voluntarily accede to jurisdiction was also not evidence of neglect or culpability.

Because there was no neglect or blameworthy conduct, and because it is undisputed that R.T's behavior placed her at substantial risk of serious physical harm or illness, the propriety of the juvenile court's assertion of dependency jurisdiction turns on a single question: Must a parent be somehow to blame for her "failure or inability" to adequately supervise or protect her child, when that inability creates a substantial risk of serious physical harm or illness, before a juvenile court may assert dependency jurisdiction pursuant to the first clause of section 300, subdivision (b)(1)?

This is a question of statutory interpretation we review de novo. (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1543.) Our review is informed, but not controlled, by the decision of our sister Court of Appeal on this question. (*The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1529.)

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than recharacterize the statutory grounds as "neglect." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 135; *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.)

I. Statutory construction

In answering the question presented by this case, we start with the statutory language. (*Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 630 (*Stiglitz*).) The first clause of section 300, subdivision (b)(1), confers dependency jurisdiction over a child who "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." (§ 300, subd. (b)(1).) The text itself does not speak to whether the parent must also be to blame for this "failure or inability."[4]

We must interpret this silence in the manner most consonant with the legislative intent behind this provision. (*Stiglitz*, *supra*, 60 Cal.4th at p. 630.) Two indicia—one implicit and one explicit—point to the conclusion that this clause of section 300, subdivision (b)(1) has no culpability requirement.

The language we are interpreting is just one of many provisions setting forth various grounds for dependency jurisdiction. Some of these provisions require a showing that the parent acted intentionally. (See § 300, subds. (a) [parent's "nonaccidental" "inflict[ion]" of physical harm on child], (c) [child suffered, or is at substantial risk of suffering, serious emotional damage "as a result of" the parent's conduct], (d) [parent's sexual abuse of child], (e) [parent's infliction of severe physical abuse on a child under five years old], (g) [parent incarcerated or voluntarily surrendered child at safe surrender site], (i) [parent subjected child to acts of cruelty].) Under other provisions, negligent conduct by the parent will suffice. (See § 300, subd. (b)(1) [second clause; parent's "willful or negligent failure" to supervise or protect child when leaving child with another person]; *ibid.* [third clause; parent's "willful or negligent failure" to provide "adequate food, clothing, shelter, or medical treatment"]; *id.*, subd. (d) [parent did not protect child from sexual abuse, when parent knew or should have known of risk]; *id.*,

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[4] For clarity's sake, we will refer to "parents," but our discussion applies equally to "guardians."

subd. (e) [same, as to severe physical abuse of child under five years old]; *id.*, (i) [same, as to acts of cruelty]; *id.*, (j) [parent's "abuse or neglect" caused death of another child]; *id.*, (g) [parent's whereabouts are unknown].) And for still others, dependency jurisdiction is appropriate when the parent is not to blame. (See § 300, subd. (c) [child is suffering, or at substantial risk of suffering, serious emotional damage, and "has no parent or guardian capable of providing appropriate care"]; *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 [this clause of section 300, subdivision (c), requires "no parental fault or neglect"]; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [same]; § 300, subd. (g) [when child "has been left without any provision for support"]; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128-1129 (*D.M.*) [this clause of section 300, subdivision (g), need not be willful]; § 300, subd. (b)(1) [fourth clause; parent's "inability . . . to provide regular care for the child" due to parent's "mental illness" or "developmental disability"].)

Where, as here, the Legislature has expressly made parental culpability an element of some grounds for dependency jurisdiction but not an element of others, we generally infer that the omission of a culpability requirement from a particular ground was intentional. (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 ["When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful."] (*Ethan C.*).) This inference is even stronger when the differential treatment appears in the same section and, indeed, the very same subdivision—subdivision (b)(1)—we are interpreting.

This inference becomes compelling when read in conjunction with the Legislature's explicit declaration that dependency jurisdiction is to be read broadly: "[T]he purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

Construing the first clause of section 300, subdivision (b)(1) to require a showing of parental fault, as mother urges, not only ignores these indicia of legislative intent, but also tasks the judiciary with drawing lines better drawn by the Legislature. Mother argues that her inability to supervise or protect R.T. is not blameworthy, but that a parent's inability to supervise or protect a younger child might be. "At some point," mother reasons, "the order of human growth and development" shifts the blame from parent to child. If we were to recognize a culpability element, we would have to fix that point. But where would we place it, and what criteria would we use in doing so? This blameworthiness line, if it is to be drawn at all, is a policy decision within the special competence of the legislative branch, not the judicial branch.

When read in light of these considerations, the text and purpose of the first clause of section 300, subdivision (b)(1) point to the conclusion that a showing of parental blame is not required.[5]

II. Countervailing arguments

Mother offers two arguments that, in her view, compel us to reject the statutory analysis set forth above.

A. Constitutional avoidance

Mother asserts that the interpretation of the first clause of section 300, subdivision (b)(1) is governed by a different and weightier canon of statutory construction—namely, the "cardinal" rule that a statute should, where possible, be construed in a manner that avoids doubts about its constitutionality. (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.) This canon was the basis for *Precious D.*'s ruling. (*Precious D., supra*, 189 Cal.App.4th at pp. 1260-1261.)

Natural parents have a "fundamental liberty interest . . . in the care, custody, and management of their child[ren]." (*Santosky v. Kramer* (1982) 455 U.S. 745, 753 (*Santosky*).) Consequently, due process guarantees that the state may not terminate a

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5 Of course, the assertion of jurisdiction on this basis is specific to R.T., and is not a global finding that mother is unfit as to other children. (*In re Cody W.* (1994) 31 Cal.App.4th 221, 225-226 (*Cody W.*).)

parent's rights with respect to her child without first making (1) a showing of parental unfitness, (2) by clear and convincing evidence. (*Id.* at pp. 747-748, 758, 760, fn. 10; *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1130 (*Ann S.*); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254 (*Cynthia D.*).) *Precious D.* reasoned that the assertion of dependency jurisdiction based on parent's blameless inability to control her daughter made it possible for that parent's right over that child to be terminated without any finding of parental unfitness. (*Precious D.*, *supra*, 189 Cal.App.4th at pp. 1260-1261.) We are unpersuaded by this argument for two reasons.

First, this argument conflates parental "unfitness" with parental culpability. But they are not the same. "Unfitness" is concerned *whether* a parent is able to protect the welfare of her child; culpability is concerned with *why*. As noted above, unfitness can stem from a parent's willful acts, her negligence, or acts entirely beyond her control and for which she is not culpable (such as suffering from a developmental disability). The decisions governing the constitutional constraints on the termination of parental rights define "unfitness" with reference to the child's welfare, not the culpability of the child's parents. (See *Santosky*, *supra*, 455 U.S. at p. 766 [noting "state's *parens patriae* interest in preserving and promoting the welfare of the child"]; accord, *In re Vonda M.* (1987) 190 Cal.App.3d 753, 757 ["the imposition of juvenile dependency jurisdiction must depend upon the welfare of the child, not the fault of or lack of fault of the parents"].) Indeed, if unfitness were synonymous with fault, all of the grounds for dependency jurisdiction having no element of parental blame would be constitutionally suspect. (See § 300, subds. (b)(1) [fourth clause], (c), (g).)

Second, when "unfitness" is properly defined, there is no danger that allowing a juvenile court to assert jurisdiction over a child based on the parent's "failure or inability . . . to adequately supervise or protect the child" from a substantial risk of physical harm or illness will result in the termination of parental rights without a finding, by clear and convincing evidence, of parental unfitness. *Precious D.* correctly noted that a court's assertion of dependency jurisdiction over a child is made only by a preponderance of the evidence. (§§ 300, 355.) But the assertion of jurisdiction is

no say in which jurisdiction the executive chooses to invoke in the first place. To the contrary, "it rests in the discretion of the executive branch employees—social workers, probation officers, and the district attorney—whether to file such petitions, not the juvenile court." (*D.M.*, at p. 1127; §§ 290.1 [invocation of dependency jurisdiction entrusted to probation officers and social workers], 650 [invocation of delinquency jurisdiction entrusted to probation officers or district attorneys].)

What our interpretation of the first clause of section 300, subdivision (b)(1) does is recognize a bigger galaxy of cases in which the executive will get to decide between invoking truancy and delinquency jurisdiction (under sections 601 and 602, respectively) on the one hand, and dependency jurisdiction on the other. But this larger galaxy is entirely consistent with the Legislature's expressed intent that dependency jurisdiction be broadly construed (§ 300.2), and in no way nullifies section 601.

For these reasons, we respectfully disagree with the decision in *Precious D.*, and hold instead that no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent's "failure or inability . . . to adequately supervise or protect" her. (§ 300, subd. (b)(1).)

DISPOSITION

The jurisdictional and dispositional orders of the juvenile court are affirmed.

CERTIFIED FOR PUBLICATION.

_____, J.

HOFFSTADT

We concur:

_____, Acting P. J.

ASHMANN-GERST

_____, J.

CHAVEZ

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 11661 San Vicente Boulevard, Suite 500, Los Angeles, CA 90049.

On August 6, 2015, I served the foregoing PETITIONER'S OPENING BRIEF ON THE MERITS on the parties in this action by placing a true and correct copy thereof in a sealed envelope to the following addresses:

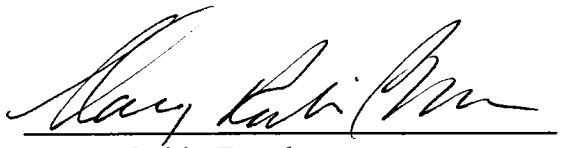
SEE SERVICE LIST ATTACHED

[X] BY MAIL **I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.**

[ ] HAND DELIVERY

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 6, 2015, at Los Angeles, California.



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