S226416

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of R.T.,

A Person Coming Under Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA E. (Mother),

Defendant and Appellant.

Case No. S226416

Court of Appeal, 2d District
Case No. B256411

Los Angeles County
Superior Court
Case No. DK03719

ANSWER BRIEF ON THE MERITS

From a Decision of the Court of Appeal, Second Appellate District, Division Two

On Appeal from the Judgment of the Superior Court
for the County of Los Angeles, Juvenile Division
The Honorable Marguerite D. Downing, Judge Presiding

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

WELFARE AND INSTITUTIONS CODE

STATUTES

OTHER AUTHORITIES

RULES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of R.T., A Person Coming Under Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA E., (Mother), Defendant and Appellant.	Case No. S226416 Court of Appeal, 2d District Case No. B256411 Los Angeles County Superior Court Case No. DK03719

FROM A DECISION ON APPEAL FROM THE SUPERIOR COURT,
LOS ANGELES COUNTY
HONORABLE MARGUERITE D. DOWNING, JUDGE PRESIDING

ANSWER BRIEF ON THE MERITS

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

STATEMENT OF SPECIFIED ISSUE TO BE BRIEFED

This Court's order granting review specifies one issue to be briefed and, pursuant to California Rules of Court, rule 8.520(b), this brief will contain arguments on the following issue, and related issues fairly included within it:

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ISSUE PRESENTED

Does Welfare and Institutions Code[1] section 300, subdivision (b)(1),[2] require a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child?

INTRODUCTION

The question of whether section 300, subdivision (b)(1), requires a finding that parental[3] fault or neglect is responsible for the failure or inability to supervise or protect the child is answered by the plain and unambiguous language of the statute itself. The first prong of the statute provides for jurisdiction due to the "failure or inability" of the parent to adequately supervise or protect the child. The second and third prongs of the statute provide for jurisdiction due to the "willful or negligent" failure

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

[2] Section 300, subdivision (b)(1), provides for jurisdiction where: "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." (§ 300, subd. (b)(1).)

[3] This brief will refer to "parents," but the statute applies equally to "guardians."

of the parent to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or of the parent to provide the child adequate food, shelter, or medical treatment. The fourth prong provides for jurisdiction due to the inability of the parent to provide regular care for the child due to the parent's "mental illness, developmental disability, or substance abuse."

Thus, the second, third, and fourth prongs of the statute explicitly include at least one element of parental fault or neglect. The first prong does not. The fact that the Legislature expressly included the element of parental fault or neglect in two of the prongs of the statute, but not the first, indicates that jurisdiction under section 300, subdivision (b)(1), is not limited to circumstances where parental fault or neglect is responsible for the failure or inability to supervise or protect the child.

Such an interpretation is not only compelled by the plain language of the statute, it is consistent with the purpose of dependency law: to protect children who have been harmed or are at risk of harm. (§ 300.2.) Citing to section 300.2, Division Two of the Second Appellate District correctly held in the case on review that the plain and unambiguous language of the first prong of section 300, subdivision (b)(1), does not limit dependency jurisdiction to cases where parental fault or neglect is responsible for the failure or inability to supervise or protect the child. (*In re R.T.* (2014) 235

Cal.App.4th 795, 801, 804, review granted and opinion superseded June 17, 2015 ["*In re R.T.*"].) In so holding, Division Two expressly disagreed with *In re Precious D.* (2010) 189 Cal.App.4th 1251 ("*Precious D.*"), where Division One of the Second Appellate District found that in order to avoid a violation of due process guarantees, proof of "parental unfitness" or "neglectful conduct" is required under the first prong of section 300, subdivision (b)(1).[4] (*Id.* at pp. 1260-1261.) Defendant and Appellant, Lisa E. ("mother"), contends that *Precious D.* was the correct decision.

However, the *Precious D.* Court was incorrect to find that due process necessitated proof of "parental unfitness" or "neglectful conduct" before dependency jurisdiction under section 300, subdivision (b)(1), is appropriate. Over 20 years ago, this Court held that the California dependency statutory scheme comports with due process principles even though a specific finding of "parental unfitness" by clear and convincing evidence is not required to be made at any time prior to the section 366.26 hearing to terminate parental rights. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256 ["*Cynthia D.*"].) Rather, it is the detriment finding made at the disposition hearing by clear and convincing evidence and the

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[4] At the time of the *Precious D.* decision, the language currently found in section 300, subdivision (b)(1), was contained in section 300, subdivision (b). The current text of section 300, subdivision (b)(1), is identical to the text of former section 300, subdivision (b). For clarity, this brief will refer to the statute as "section 300, subdivision (b)(1)."

successive detriment findings made thereafter by a preponderance of the evidence that bring California's statutory scheme in compliance with due process principles. (*Id.* at p. 253.) Furthermore, the "parental unfitness" standard "was dropped by the Legislature in 1969 in favor of the requirement the court make a finding an award of custody to the parent would be detrimental to the child." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 224, fn. 3, internal quotes omitted ["*Dakota H.*"].) Therefore, Division One's decision in *Precious D.* that the language of the first prong of section 300, subdivision (b)(1), must be read to include a requirement of parental unfitness or neglect conflicts with *Cynthia D.* and the legislative intent expressed 46 years ago. (See, e.g., *In re P.A.* (2007) 155 Cal.App.4th 1197, 1210-1212 ["*In re P.A.*"].)

The language of the first prong of section 300, subdivision (b)(1), is clear and unambiguous. The Legislature did not include in it an element of parental fault or neglect. Therefore, the *Precious D.* Court was wrong to judicially amend the statute to include such a requirement. *In re R.T.* is the better reasoned decision with the correct outcome and should be affirmed. As such, *Precious D.* should be disapproved.

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COMBINED STATEMENT OF THE CASE AND FACTS

This matter concerns the safety and protection of now 18-year-old R.T.[5] (1CT 1-5.)

Proceedings in the Juvenile Court.

On December 30, 2013, when R.T. was 17 years old, Respondent, the Los Angeles County Department of Children and Family Services ("DCFS"), received a referral alleging general neglect of the child by mother. (1CT 9.)

A DCFS social worker investigated the referral and discovered that R.T. and her two-year-old daughter were living with the maternal grandparents in Compton, California.[6] (1CT 9.) R.T. would continually run away from home and leave her daughter with the maternal grandparents without a proper plan in place. (1CT 9.) Mother lived in San Bernardino County and was uncomfortable having R.T. live with her because R.T. had made false allegations of child abuse. (1CT 9, 119.)

On February 10, 2014, R.T.'s maternal grandmother told DCFS that R.T. left the home two days earlier and had yet to return. (1CT 10.) When the social worker went to the maternal grandparents' home to discuss the matter further, mother was present and volunteered to inform the Compton

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[5] R.T.'s date of birth is September 27, 1996. (Volume One, Clerk's Transcript ["1CT"] 1.)

[6] R.T.'s daughter is the subject of a separate dependency case.

Sheriff's Office that R.T. had run away. (1CT 10.) Mother stated that "it would be best" if DCFS detained R.T. because neither she nor the maternal grandparents had been able to control the child. (1CT 11, 19, 91.) However, when she was told that a petition would need to be filed alleging "caretaker incapacity," mother became frustrated and said she did not understand. (1CT 11.)

R.T. returned to the maternal grandparents' home on February 14, 2014. (1CT 11.) Two days later, she ran away with her daughter. (1CT 11.) The next day, R.T. telephoned the maternal grandparents and asked to be picked up from downtown Los Angeles. (1CT 12.) Mother went downtown to retrieve R.T. and R.T.'s daughter, and noted that R.T. appeared to have been in a fight because some of her hair had been pulled out. (1CT 12.) R.T.'s daughter was wearing pajamas without a diaper. (1CT 12.) Mother returned the children to the maternal grandparents' home. (1CT 12.)

DCFS held a meeting on February 19, 2014, to discuss concerns over R.T. jeopardizing her and her daughter's safety by chronically running away from home. (1CT 12.) During the meeting, R.T. said she did not want to live with mother or the maternal grandparents, mother said she was unable to discipline R.T., and the maternal grandparents said they thought it would be best if R.T. were placed elsewhere. (1CT 12.) DCFS

recommended that mother and R.T. participate in family therapy, and it was agreed that DCFS would detain R.T., evaluate her mental and developmental health, and offer reunification services to mother. (1CT 13.) When the meeting concluded, R.T. was transported to Dream Home Care, a 30-day shelter in Torrance, California, and her daughter was placed with the maternal grandparents. (1CT 13, 59.)

On February 21, 2014, DCFS filed a section 300 petition alleging R.T. was at risk of harm as a result of mother's inability to adequately supervise and protect the child. (1CT 1-3.) The juvenile court detained R.T. from mother's custody, ordered the child to remain in foster care or with an appropriate relative, and continued the matter for the adjudication. (1CT 45-47.)

R.T. ran away from Dream Home Care Shelter on March 7, 2014. (1CT 49.) She told the social worker she was tired of everything and did not want to return. (1CT 56.) DCFS placed the child back with the maternal grandparents. (1CT 59, 129.)

DCFS reported that mother and the maternal grandparents had "done what has been within their limits to care for . . . R.T. However, [R.T.]'s rebellious behavior has prevented her family from providing her with adequate supervision and guidance." (1CT 120.) DCFS further reported

that "it appears that the mother's inability to care for [R.T.] is due to the minor's incorrigible behavior." (1CT 135.)

The juvenile court adjudicated the section 300 petition on April 23, 2014. (1CT 166; 2RT 1.) Counsel for mother argued that mother had made an appropriate plan for R.T. by placing her with the maternal grandparents, which was also where DCFS had placed the child, and asked the court to dismiss the section 300 petition. (2RT 3.) Counsel for R.T. submitted the matter to the juvenile court, noting the child was residing with the maternal grandparents. (2RT 2-3.) Counsel for DCFS asked the court to sustain the petition in its entirety. (2RT 3-4.)

The juvenile court stated, "It's clear the mother can't control [R.T.], so she has given her off to the grandparents and they can't control her either." (2RT 4.) The court continued, "[R.T.] has an almost two-year old that . . . is receiving reunification services. [R.T.] is now pregnant. She is chronically AWOL. She is not going to school. Does not sound like an appropriate plan to me." (2RT 4.) The court sustained the section 300 petition,[7] declared R.T. a dependent of the juvenile court, removed her from

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[7] The petition was sustained 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 (continued...)

mother's custody, ordered her suitably placed, granted mother monitored visitation, and directed DCFS to provide mother family reunification services. (1CT 162, 166-168; 2RT 4-5.)

Proceedings in the Court of Appeal.

Mother appealed. (1CT 169.) In her opening brief, mother contended that jurisdiction over R.T. was improper under the reasoning expressed in *In re Precious D., supra*, 189 Cal.App.4th 1251. (Appellant's Opening Brief ["AOB"] 15-31.) In *Precious D.*, Division One of the Second Appellate District reversed jurisdiction over an "incorrigible youth," holding that the first clause of section 300, subdivision (b)(1), required proof of parental unfitness or neglectful conduct. (*Id.* at pp. 1253-1254, 1262.)

Division Two of the Second District Court of Appeal found that the *Precious D.* decision was at odds with the language, structure, and purpose of the dependency statutes. (*In re R.T., supra*, 235 Cal.App.4th at p. 797, review granted and opinion superseded.) Noting that the Legislature had expressly made parental culpability an element of some grounds for dependency jurisdiction but not others, Division Two held that the first clause of section 300, subdivision (b)(1), did not require a showing of

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(...continued)
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." (1CT 3.)

parental culpability or blame. (*Id.* at pp. 801, 805, review granted and opinion superseded.) Division Two rejected *Precious D.*'s conclusion that dependency jurisdiction based on a parent's blameless inability to control his or her child made it possible for the parent's rights over the child to be terminated at a section 366.26 hearing without any finding of "parental unfitness." (*Id.* at p. 802, review granted and opinion superseded.) Quoting this Court's decision in *Cynthia D. v. Superior Court, supra,* 5 Cal.4th at page 253, Division Two stated, "More than 20 years ago, our Supreme Court observed that '[b]y the time dependency proceedings have reached the stage of a section 366.26 hearing, there have been multiple specific findings of parental unfitness.'" (*Id.* at p. 804, review granted and opinion superseded.)

Actions in the Supreme Court.

Mother filed a Petition for Review in the California Supreme Court, which was granted on June 17, 2015.

Issue Presented.

Does Welfare and Institutions Code section 300, subdivision (b)(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?

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DISCUSSION

I. STANDARD OF REVIEW.

The sole issue for review is the interpretation of section 300, subdivision (b)(1). The interpretation and applicability of a statute is a question of law. (*Bodinson Mfg. Co. v. California Emp. Com.* (1941) 17 Cal.2d 321, 325; *Estate of Madison* (1945) 26 Cal.2d 453, 456.) Appellate courts review purely legal questions de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599.) The interpretation of statutes and the application of the interpreted statute to undisputed facts also allow for de novo review. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611; *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125.)

II. THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE FIRST PRONG OF SECTION 300, SUBDIVISION (b)(1), DOES NOT REQUIRE PARENTAL FAULT OR NEGLECT.

When interpreting a statute, the judiciary's role is to ascertain the intent of the Legislature. (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 487.) The words used by the Legislature are the most reliable indicator of legislative intent. (*In re Ethan C.* (2012) 54 Cal.4th 610, 627.) Words of a statute are given their usual and ordinary meaning. (*Ibid.*) However, they "must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the

same subject must be harmonized both internally and with each other to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) Where the language of the statute is clear, there can be no room for interpretation. (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 121.)

"Only when the statute's language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation." (*In re Ethan C., supra*, 54 Cal.4th at p. 627, internal quotes and citations omitted.) "'The judiciary has no power to rewrite plain statutory language' under the guise of construction. [Citation]." (*Greyhound Lines, Inc. v. County of Santa Clara, supra*, 187 Cal.App.3d at p. 487.) A Court may not rewrite a statute under the guise of statutory reformation to comport with constitutional principles when such reformation would conflict with the intent of the Legislature as evidenced by the clear and unambiguous words used by the Legislature. (*Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607, 660-661.)

At issue here is the portion of section 300, subdivision (b)(1), providing for jurisdiction where the child has suffered, or is at substantial risk of suffering, 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 context in which the language

of section 300, subdivision (b)(1), must be construed includes section 202, the remainder of section 300, and section 300.2.

Section 202, subdivision (a), which applies to both dependents and delinquents, provides, "The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public." (§ 202, subd. (a).) Section 300 begins with, "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court[.]" (§ 300.) The purpose of section 300, subdivision (b)(1), is to protect children from "serious physical harm or illness." (§ 300, subd. (b)(1).)

Section 300.2 states, "Notwithstanding any other provision of law, the 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.) This Court has noted that "[t]he overarching goal of dependency proceedings is to

safeguard the welfare of California's children." (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.)

As noted, the first prong of section 300, subdivision (b)(1), provides for jurisdiction where "[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. (§ 300, subd. (b)(1), italics added.) The usual and ordinary meaning of "inability" is "the lack of sufficient power, resources, or capacity." (Merriam-Webster Online Dictionary at <http://www.merriam-webster.com/dictionary/inability> [as of August 20, 2015].) The usual and ordinary meaning of "adequate" is "sufficient for a specific requirement," or, "barely sufficient or satisfactory." (Merriam-Webster Online Dictionary at <http://www.merriam-webster.com/dictionary/adequate> [as of August 20, 2015].)

Using the usual and ordinary meaning of the words chosen by the Legislature, a parent's inability to adequately supervise or protect his or her child means the parent lacked sufficient power, resources, or capacity to protect the child from serious physical harm or illness or the substantial risk of such harm or illness. Therefore, it is evident that the language of the first prong of section 300, subdivision (b)(1), does not limit jurisdiction to

cases where parental fault or neglect is responsible for the failure to adequately supervise or protect the child.

The fact that the Legislature did not intend to include parental fault or neglect in the first prong of section 300, subdivision (b)(1), is even more evident when it is compared to the remainder of that subdivision and other subdivisions of section 300. In the second, third, and fourth prongs of subdivision (b)(1), the Legislature included the element of parental fault or neglect: "[T]he *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 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*."[8] (§ 300, subd. (b)(1), italics added.) Section 300, subdivision (a), requires the parent's conduct to be nonaccidental. (§ 300, subd. (a).) Section 300, subdivisions (d) and (e), require the parent to be the perpetrator of the sexual abuse or severe physical injury or to have failed to protect the child

[8] As noted *infra*, because a parent's "mental illness" or "developmental disability" are not the result of parental fault or neglect, the fourth prong of section 300, subdivision (b)(1), could be described as a "hybrid" of the first three prongs in that it provides for jurisdiction where there is and where there is not parental fault or neglect.

from the perpetrator of the abuse. (§ 300, subds. (d) and (e).) Section 300, subdivision (f), requires the parent to have caused the death of a child through abuse or neglect. (§ 300, subd. (f).) Section 300, subdivision (g), requires the parent to voluntarily surrender the child. (§ 300, subd. (g).) Section 300, subdivision (i), requires the parent to subject the child to acts of cruelty. (§ 300, subd. (i).)

"When language is included in one portion of a statue, its omission from a different portion addressing a similar subject suggests that the omission was purposeful." (*In re Ethan C., supra*, 54 Cal.4th at p. 638.) Because the Legislature expressly included the element of parental fault or neglect in some subdivisions of section 300, but omitted it from the first prong of subdivision (b)(1), it must be inferred that the Legislature did not intend to include parental neglect or fault as a requirement in the first prong of section 300, subdivision (b)(1). (*Ibid.*)

This conclusion is bolstered by the fact that there are other subdivisions of section 300 which do not require parental fault or neglect. As noted, the fourth prong of section 300, subdivision (b)(1), allows for jurisdiction where the inability of the parent to provide regular care for the child is due to the parent's mental illness or developmental disability. (§ 300, subd. (b)(1).) Section 300, subdivision (c), which applies where a child is at risk of suffering emotional damage and has no parent "capable of

providing appropriate care," has been held not to require parental fault or neglect. (§ 300, subd. (c); *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 ["The statute thus sanctions intervention by the dependency system . . . when the child is suffering serious emotional damage due to no parental fault or neglect . . . ."]; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [same].) Section 300, subdivision (g), allows for jurisdiction when the parent is incarcerated, but does not require the reason for the parent's incarceration to be related to abuse or neglect of the child. (§ 300, subd. (g).)

Other scenarios where dependency court jurisdiction would be appropriate without parental fault include the medically fragile child and where parents refuse consent for life-saving medical procedures on religious grounds. (See, e.g., *San Joaquin County Human Services Agency v. Marcus W.* (2010) 185 Cal.App.4th 182, 192 ["The Legislature has established a procedure by which the jurisdiction of the juvenile court may be invoked to authorize necessary medical care for minors whose parents are unwilling, for religious reasons or otherwise, to provide such care."]; *In re Melissa R.* (2009) 177 Cal.App.4th 24, 26-27 [The child's medical problems included cerebral palsy, limited mobility, mental retardation, and a cleft palate. Although the mother's own mental disorder and substance abuse history would later be grounds for jurisdiction, the initial intervention

by the Alameda County juvenile court was based solely upon the mother's inability to care for her daughter due to the child's severe medical needs.]; *In re Albert T.* (2006) 144 Cal.App.4th 207, 210-211 [The juvenile court took jurisdiction over a six-year-old child diagnosed with bipolar disorder and attention deficit hyperactivity disorder, while the child's 11-month old sibling was allowed to remain in the mother's care.]; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004, fn. 5 [Courts throughout the country have ordered transfusions for minors over their parents' religious objections.].)

Another indication that the Legislature did not include the element of parental fault or neglect in the first prong of section 300, subdivision (b)(1), is its decision to use nearly identical language in enacting a new subparagraph of subdivision (b) that cannot have been intended to require parental fault or neglect. (§ 300, subd. (b)(2).) In 2014, the Legislature enacted section 300, subdivision (b)(2), in response to the growing problem of commercially sexually exploited children in California.[9] Section 300, subdivision (b)(2), provides:

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[9] "[C]alifornia has emerged as a magnet for commercial sexual exploitation. The [Federal Bureau of Investigation] has determined that three of the nation's thirteen High Intensity Child Prostitution areas are located in California: the San Francisco, Los Angeles, and San Diego metropolitan areas." (<http://www.chhs.ca.gov/CWCDOC/CSEC%20Fact%20Sheet%20-%201.pdf> [as of August 20, 2015].)

(continued...)

> The Legislature finds and declares that a child who is sexually trafficked, . . . or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in [s]ection 236.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

(§ 300, subd. (b)(2).)

Thus, jurisdiction under section 300, subdivision (b)(2), is appropriate where the parent "failed to, or was unable to" protect the child from being sexually exploited. This is essentially the same as the "failure or inability" language in the first prong of section 300, subdivision (b)(1). (§ 300, subd. (b)(1).) Accordingly, if this Court were to find that the "failure or inability" language of section 300, subdivision (b)(1), required parental fault or neglect, it would also be true that the "failed to, or was unable to" language of section 300, subdivision (b)(2), required the element of parental fault or neglect. Such an interpretation would mean the Legislature intended that before the dependency court could provide protection to a commercially sexually exploited child, it must find that the

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(...continued)

In 2013, nearly 150 youths were arrested for prostitution in Los Angeles County. (Abram, *Prostitution in Los Angeles: Programs Like Children of the Night Are All Too Rare*, L.A. Daily News (May 18, 2014) p. 2, available at <https://www.childrenofthenight.org/wp-content/uploads/2015/07/Daily-News-Article.pdf> [as of August 20, 2015].)

parent was responsible for, acquiesced in, or whose neglectful conduct allowed the child's commercial sexual exploitation. This would also mean that DCFS and the dependency court would be powerless to intervene on behalf of a commercially sexually exploited child if the child's parent had done everything possible to put a stop to the sexual exploitation but was unsuccessful. Therefore, to interpret section 300, subdivision (b)(2), as requiring parental fault or neglect would be absurd because it would render it ineffective in protecting the population it purports to safeguard. Considering the scope of the problem in California, this clearly is not what the Legislature intended.

It is significant that the Legislature provided that a commercially sexually exploited child whose parent is not at fault or neglectful comes "within the description of this subdivision, and that this finding is declaratory of existing law."[10] (§ 300, subd. (b)(2).) This appears to be an

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[10] The Legislative history of section 300, subdivision (b)(2), provides: "Existing law establishes the jurisdiction of the juvenile court, which may adjudge certain children to be dependents of the court under certain circumstances, including when the child is abused, a parent or guardian fails to adequately supervise or protect the child, as specified, or a parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment. [¶] This bill would make a legislative finding that declares that a child is within the jurisdiction of the juvenile court and may become a dependent child of the court if the child is a victim of sexual trafficking, or receives food or shelter in exchange for, or is paid to perform, specified sexual acts, as a result of the failure or inability of his or her parent or guardian to protect the child, and would declare that this finding is declaratory of existing law." (Legis. Counsel's Dig., Sen. Bill

(continued...)

acknowledgement that section 300, subdivision (b)(1), as it existed prior to the enactment of subdivision (b)(2), described commercially sexually exploited children whose parents were not at fault or neglectful. Thus, it is an acknowledgement that section 300, subdivision (b)(1), does not require a finding that parental fault or neglect is responsible for the failure or inability to adequately supervise or protect the child. If the Legislature had intended to include the element of parental fault or neglect with respect to commercially sexually exploited children, the more logical subdivision to place a statute protecting them would have been subdivision (d), which encompasses sexually abused children whose parents were at fault or neglectful. (§ 300, subd. (d).) In placing commercially sexually exploited children under subdivision (b) instead of (d), the Legislature removed the possibility that the lack of parental fault or neglect could leave such a child without dependency protection. This is consistent with the goal of protecting all children at risk of harm, whether or not their parent was at fault or neglectful. (§ 300.2.) As such, there is no question that neither section 300, subdivision (b)(1), nor (b)(2), require parental fault or neglect.

The discussion above makes clear that in using the language "failure or inability," the Legislature did not intend to include the element of

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(...continued)
No. 855 (2013-2014 Reg. Sess.) § 24
<https://legiscan.com/CA/text/SB855/id/1036954> [as of August 31, 2015].)

parental fault or neglect in the first prong of section 300, subdivision (b)(1). Mother's interpretation would not only deny dependency protection for children like R.T. who come under that subdivision, but it could also deny dependency protection for commercially sexually exploited children who come under the newly enacted section 300, subdivision (b)(2). The analysis by Division Two in *In re R.T.* was correct, and nothing in *Precious D.* or mother's brief provides a legal reason or authority for rewriting the statute. Accordingly, this Court should disapprove of *Precious D.* and affirm *In re R.T.*

III. PRECIOUS D. PROVIDES NO REASON TO DEVIATE FROM THE CLEAR AND UNAMBIGUOUS LANGUAGE OF SECTION 300, SUBDIVISION (b)(1).

Mother contends that Division One's decision in *Precious D.* was the more well-reasoned opinion. (Mother's Brief On The Merits ["BM"] 18-20.) The discussion below shows this is not so.

The *Precious D.* Court reasoned that if the first prong of section 300, subdivision (b)(1), were not read to include an element of parental unfitness or neglect, a jurisdictional finding based upon that prong of the statute "would then be the basis for the child's removal and for an order requiring reunification services that are either unnecessary or doomed to failure due to incorrigible conduct on the child's part, and then for the ultimate termination of parental rights. Thus, parental rights would be terminated

and the family unit destroyed without any finding of unfitness or neglectful conduct. Such a result would not comport with federal due process principles." (*In re Precious D., supra,* 189 Cal.App.4th at p. 1261.)

In reaching its conclusion, the *Precious D.* Court failed to provide any legal analysis or explanation as to why it had authority to graft onto the first prong of section 300, subdivision (b)(1), words the Legislature failed to include and, thereby, give the statute an entirely different meaning. As noted above, the Court had no authority to rewrite the plain statutory language of section 300, subdivision (b)(1), under the guise of statutory construction. (*Greyhound Lines, Inc. v. County of Santa Clara, supra,* 187 Cal.App.3d at p. 487.) Nor did the *Precious D.* Court have authority to reform the statute to conform to constitutional principles when such reformation clearly conflicts with the intent as evidenced by the clear and unambiguous words used by the Legislature. (*Kopp v. Fair Political Practices Commission, supra,* 11 Cal.4th at pp. 660-661.) Nor did the *Precious D.* Court acknowledge that initiating a proceeding to declare a child a ward of the court under section 601 also sets in motion a proceeding that could ultimately result in the termination of parental rights without the parent ever being found at fault or neglectful. (§§ 727.2, 727.3, and 727.31.)

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A. That A Dependency Action Based Upon A Jurisdictional Finding Of A Parent's Inability To Adequately Supervise And Protect A Child Might End In The Termination Of Parental Rights Is Not Reason To Judicially Rewrite The Statute, Nor Does It Violate Due Process.

To support its decision that due process principles required proof of parental fault or neglect in the first prong of section 300, subdivision (b)(1), the *Precious D.* Court cited to *Dakota H., supra,* 132 Cal.App.4th at page 212, and *In re A.S.* (2009) 180 Cal.App.4th 351 ("*In re A.S.*").) However, neither of those cases stands for the proposition that a jurisdictional finding by a juvenile court must be based upon parental fault or neglect in order to satisfy due process principles. In fact, *In re A.S.* held that the termination of parental rights of a parent who was not even named in a sustained count of the dependency petition does not violate due process. (*In re A.S., supra,* 180 Cal.App.4th at pp. 360-362.) That issue was once a topic of dispute in the Second Appellate District. (See *In re P.A., supra,* 155 Cal.App.4th at p. 1197; *In re Gladys L.* (2006) 141 Cal.App.4th 845 ["*Gladys L.*"].)

As the *In re A.S.* Court explained: "In *Gladys L.*, the section 300 allegations pertained only to the mother of the child. The child's presumed father appeared at the detention hearing and then disappeared for three years. When he reappeared at the section 366.26 hearing, the court denied his request to reestablish his relationship with his daughter. (*In re Gladys L., supra,* 141 Cal.App.4th at p. 847.) The reviewing court stated that

before parental rights may be terminated, constitutional standards of due process require the trial court to have made prior findings of parental unfitness, and remanded the case to the trial court to 'determine whether, based upon the facts as they currently exist, a petition under section 300 can be properly pleaded and proven' (*Id.* at pp. 848–849). Thus, *Gladys L.* suggested a sustained dependency petition alleging the unfitness of each parent was a necessary precedent to termination of parental rights. [Citation.] [T]he [*In* re] *P.A.* court respectfully disagreed with *Gladys L.* to the extent it suggested that a sustained section 300 petition as to each parent was a required precursor to termination of parental rights. ([*In re*] *P.A., supra*, at p. 1212.)" (*In re A.S., supra,* 180 Cal.App.4th at pp. 360-361.)

The *In re A.S.* Court also disagreed with *Gladys L.* and adopted the reasoning of *In re P.A.*, which was: "[A] child may be declared a dependent if the actions of either parent bring the child within the statutory definitions of dependency. [Citations.] Additionally, a jurisdictional finding is not an adequate finding of parental unfitness because it is made by a preponderance of the evidence. [Citations.] Therefore, even if the dependency petition had alleged [the parent's] unfitness, the order sustaining the petition would have been inadequate, by itself, to terminate [that parent's] parental rights without a subsequent finding of detriment by clear and convincing evidence. Thus, the absence of a jurisdictional finding

that related specifically to [that parent] does not prevent termination of parental rights." (*In re P.A., supra*, 155 Cal.App.4th at p. 1212.)

Relying on this Court's decision in *Cynthia D.*, the *In re P.A.* and *In re A.S.* Courts explained that it is the detriment finding made to support removal at disposition by clear and convincing evidence coupled with the detriment finding made when reunification services are denied or the successive detriment findings made at the review hearings when reunification services are ordered, and the finding of detriment when reunification services are terminated that make our dependency scheme comport with federal due process principles. (§ 361, subd. (c); § 361.5, subd. (b); § 366.21, subds. (e) and (f), and § 366.22; *In re A.S., supra,* 180 Cal.App.4th at p. 363; *In re P.A., supra,* 155 Cal.App.4th at p. 1212.) That is what this Court held in *Cynthia D., supra,* 5 Cal.4th at pages 254 through 256.

Although the *Cynthia D.* Court used the terms "unfitness," "inadequacy," and "fault" in reference to the parent in a dependency proceeding, the issue before the Court was whether California's statutory provisions could withstand a due process challenge when it allowed for the termination of parental rights based on a preponderance of the evidence standard at the section 366.26 hearing. (*Cynthia D., supra,* 5 Cal.4th at pp. 245, 253-254.) Finding that it did, the Court explained: "Except for a

temporary period, the grounds for initial removal of the child from parental custody have been established under a clear and convincing standard (see § 361, subd. (b)[now subdivision (c)]); in addition, there have been a series of hearings involving ongoing reunification efforts and, at each hearing, there was a statutory presumption that the child should be returned to the custody of the parent. (§§ 366.21, subds. (e), (f), 366.22, subd. (a).) Only if, over this entire period of time, the state continually has established that *a return of custody to the parent would be detrimental to the child* is the section 366.26 stage even reached."[11] (*Id.* at p. 253, italics added.)

This tells us that, in California, the focus is on the detriment to the child, not the fitness or unfitness of the parent. This has been the case since 1969, as was described in *In re Cody W.* (1994) 31 Cal.App.4th 221: "The persistence and frequency with which appellate attorneys reproduce the argument [that section 366.26 is unconstitutional because it does not require a finding of parental unfitness] [. . .] appears to be based on the misconception that the words 'parental unfitness' are somehow talismanic in the field of juvenile dependency law. They are not. True, courts occasionally employ the phrase (*Cynthia D.* [. . .]; see also *In re Brittany M.*

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[11] The *Dakota H.* Court also followed this Court's guidance in *Cynthia D.* and held a juvenile court is not required to make a specific finding of parental unfitness, and it is not required to make a new detriment-to-place finding before terminating parental rights at the section 366.26 hearing. (*In re Dakota H., supra,* 132 Cal.App.4th at pp. 222-228.)

[(1993)] 19 Cal.App.4th [1396,] 1403); but 20 [now over 40] years ago the Supreme Court observed, 'Thus, prior to the enactment of the Family Law Act in 1969 [former Civil Code, section 4600 et seq.], the decisions had held that an award denying custody to the parent in favor of a nonparent could stand only if the parent had been proven to be unfit. [W]ith the enactment of the Family Law Act, the standard of unfitness was dropped and the Legislature created the new rule that in order to award custody of a child to a nonparent the court was required to render a finding that an award to a parent would be "detrimental to the child" . . . .' (*In re B.G.* (1974) 11 Cal.3d 679, 694-695 [. . .].)" (*In re Cody W., supra,* 31 Cal.App.4th at p. 225.)

Therefore, the *Precious D.* Court's concern that by not including an element of unfitness, the first prong of section 300, subdivision (b)(1), does not comport with federal due process is not supported by the law. Indeed, if the *Precious D.* Court were correct, every other subdivision of section 300 that does not require parental fault or neglect would also be constitutionally infirm.

In re R.T., not *In re Precious D.*, is in line with the legislative intent apparent from the words the Legislature used in section 300, subdivision (b)(1), promotes the purposes of the dependency law by providing protection and services to children in R.T.'s situation, and, hopefully, keeps

them from becoming sections 601 or 602 delinquents. (§ 300.2; § 601 *et seq.*) It also recognizes that "[d]ependency proceedings are civil in nature and are designed to protect the child, not to punish the parent." (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.) On the other hand, *Precious D.* focuses on the parent's behavior rather than the child's safety and protection. (See, *In re Ethan C., supra,* 54 Cal.4th at pp. 623-624 ["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."].) Section 300 requires the child, not the parent, to be described by one of the subdivisions. (§ 300.) *In re R.T.* is the correct decision, and mother is incorrect to assert otherwise.

B. The Cases Relied Upon By The Precious D. Court Are Distinguishable.

In finding that section 300, subdivision (b)(1), required a showing of parental neglect or unfitness, the *Precious D.* Court relied upon *In re James R.* (2009) 176 Cal.App.4th 129. (*In re Precious D., supra,* 189 Cal.App.4th at p. 1259.) The *In re James R.* appellate court merely quoted its earlier quote in *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396, which had quoted from *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820. (*In re James R., supra,* 176 Cal.App.4th at p. 136.) These cases are distinguishable from the instant case.

In *In re James R., supra,* 176 Cal.App.4th at page 129, the juvenile court found the children were at risk because of their mother's mental instability and one-time negative reaction to combining Ibuprofen with beer. (*Id.* at p. 136.) In *In re Savannah M., supra,* 131 Cal.App.4th at page 1387, the issue was whether the parents willfully or negligently failed to adequately supervise or protect the child from the custodian with whom the child had been left. (*Id.* at pp. 1394-1395.) In *In re Rocco M., supra,* 1 Cal.App.4th at page 814, the Court of Appeal found there was ample evidence of parental neglect and the issue was whether such neglect placed the child at substantial risk of suffering serious physical harm. (*Id.* at p. 820.) None of these cases dealt with the issue of whether a parent's inability to adequately supervise or protect his or her child may be the result of the child's incorrigible behaviors rather than the parent's negligence or unfitness. "'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.' [Citations.]" (*In re X.V.* (2005) 132 Cal.App.4th 794, 803.) Therefore, *In re James R., supra,* 176 Cal.App.4th at page 129, and the cases it relied upon are not authority for the decision in *Precious D.* (*In re Precious D., supra,* 189 Cal.App.4th at pp. 1254, 1259.) Because the

Precious D. Court provided no legal support for its decision, *In re R.T.* should be affirmed, and *Precious D.* should be disapproved.

IV. MOTHER'S BRIEF ON THE MERITS PROVIDES NO REASON TO DEVIATE FROM THE CLEAR LANGUAGE OF SECTION 300, SUBDIVISION (b)(1).

Mother states that a review of the legislative history of 100 years of juvenile court law is necessary to understand the language in section 300, subdivision (b)(1). (BM 19-40.) She is wrong.

A. There Is No Need To Review The Legislative History.

Mother identifies no ambiguity or lack of clarity in section 300, subdivision (b)(1), that would necessitate review of its legislative history. (BM 13-40.) In fact, she admits that "an inference" to be drawn from the clear and unambiguous language of the statute is that "the Legislature did not intend to include the element of parental fault or neglect in section 300, subdivision (b)(1)." (BM 36-37.) This "inference" is the only reasonable interpretation of the statute based on its plain language, and the only one consistent with dependency law's goal of protecting every child who is at risk of harm. (§ 300.2.) "If the language [of a statute] is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . ." (*Los Angeles County Dept. of Children and Family Services v. Superior Court* (2003) 112 Cal.App.4th

509, 516.) As the language of section 300, subdivision (b)(1), is clear and unambiguous, there is no need to turn to its legislative history.

Nevertheless, mother contends that because the decisions in *Precious D.* and *In re R.T.* conflict, there must be a latent ambiguity in the statute. (BM 19-20.) But this is not so. Neither decision identified any word or terminology in the statute that appeared clear on its face but was shown by extrinsic evidence to be open to two or more interpretations. (*Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495, fn. 18 [A latent ambiguity exists where the language is clear but some extrinsic evidence creates a necessity for interpretation].) Rather, the *Precious D.* Court essentially *added* words to the statute. (*In re Precious D., supra,* 189 Cal.App.4th at pp. 1252-1254, 1258-1262.) Therefore, it was not a latent ambiguity in the statute that caused the *Precious D.* and *In re R.T.* decisions to differ. It was Division One's mistaken belief that the statute, as written, did not comport with due process principles, thus creating the need to rewrite the statute. As such, a review of the legislative history of section 300, subdivision (b)(1), is unnecessary.

B. Mother's Interpretation Of Section 300, Subdivision (b)(1), Is Wrong.

Even if it were necessary to review the legislative history, mother's analysis of it is not persuasive. Her Request For Judicial Notice ("RJN") shows that the 1909 precursor to section 300, subdivision (b)(1), provided

for juvenile court jurisdiction over a child "[w]ho has no parent or guardian; or, no parent or guardian willing to exercise or capable of exercising proper parental control." (RJN Exhibit ["Ex."] A.) This language remained virtually the same until 1987, when it was replaced with the current language of section 300, subdivision (b)(1).[12] (§ 300, subd. (b)(1); RJN Exs. B-E.)

The 1909 precursors to section 601 provided for jurisdiction where the child "persistently refuses to obey the reasonable and proper orders" of the parent, or "is incorrigible." (RJN Ex. A.) In 1915, the Legislature dropped the word "incorrigible" and provided for jurisdiction where the child "persistently or habitually refuses to obey" the parent, is "beyond the control" of the parent, or is a "habitual truant." (RJN Ex. B.) These remain grounds for delinquency jurisdiction under section 601. (§ 601.)

Mother claims to have discovered from this history an intent to progressively remove any reference to "incorrigible" children from section 300, subdivision (b)(1), and implicitly insert the element of parental fault or neglect into the first prong of section 300, subdivision (b)(1). (BM 28-29, 31, 33, 37-38.) There are several problems with this analysis. First, even though 100 years have passed since the Legislature removed the word "incorrigible" from the statutes, mother can point to no commentary, case

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[12] *In re Rocco M., supra*, 1 Cal.App.4th at pp. 820-821.

law, or any other authority to support her interpretation. (BM 13-42.) Second, the word "incorrigible" was not progressively removed from section 300, subdivision (b)(1), because it was never in that section or any of its predecessors. (§ 300, subd. (b)(1); RJN Exs. A-E.) Third, it is more than a stretch in reasoning to say that the Legislature intended in 1987 to implicitly insert the requirement of parental fault or neglect into the first prong of section 300, subdivision (b)(1), by deleting the word "incorrigible" in 1915. (BM 28-29, 31, 33, 37-38.) This is especially so considering that in 1987 the Legislature did explicitly insert the requirement of parental fault or neglect into the second, third, and fourth prongs of section 300, subdivision (b)(1), but not the first. (RJN Ex. E.) "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." (*In re Ethan C., supra*, 54 Cal.App.4th at p. 638.) As noted in *In re R.T.*, this inference is even stronger when the inclusion and omission appear in the same subdivision. (*In re R.T., supra*, 235 Cal.App.4th at p. 801, review granted and opinion superseded.) Because the second, third, and fourth prongs contain an element omitted from the first prong of the very same sentence, it is indisputable that the Legislature never intended – implicitly or otherwise – to include the requirement of parental fault or neglect into

the first prong of section 300, subdivision (b)(1).) As such, mother's interpretation of the legislative intent is unconvincing.

Mother also argues that "[t]he connotation of 'incorrigibility' is a blameless parent," and as such, the harm or risk of harm to an incorrigible child cannot be the result of the parent's failure or inability to adequately supervise or protect the child. (BM 32-34.) But the language in section 300, subdivision (b)(1), makes plain that when a child is harmed or at risk of harm, for whatever reason, the parent has a responsibility to adequately supervise or protect the child. (§ 300, subd. (b)(1).) When the child's "incorrigible" behavior places herself at risk of harm and the parent fails or is unable to protect the child's well-being, the harm or risk of harm to the child *is* a result of the parent's failure or inability to adequately supervise or protect the child, and the child comes within section 300, subdivision (b)(1). (§ 300, subd. (b)(1).) In the instant case, mother admitted that she was unable to control R.T.'s incorrigible conduct that was placing the child at risk. (1CT 11, 19, 91.) Therefore, the ongoing risk of harm to R.T. was a result of mother's failure or inability to adequately supervise or protect the child.

It is worth noting that by focusing on "incorrigible" children, mother narrows the description of the children that section 300, subdivision (b)(1), was enacted to protect. It is not limited to "incorrigible" children; it applies

to any child who has been or is at risk of harm due to the failure or inability of the parent to adequately protect or supervise the child, whether the child is "incorrigible" or not. (§ 300, subd. (b)(1).)

For all the reasons above, it is clear that mother's interpretations of section 300, subdivision (b)(1), and the population of children it is intended to protect, are erroneous. The *In re R.T.* Court's interpretation was correct, and that case should be affirmed.

C. Section 601 Is Not The Exclusive Statutory Vehicle For Incorrigible Or Runaway Teenagers.

Mother posits that giving section 300, subdivision (b)(1), its plain and clear meaning would lead to an absurd result because it would render section 601 a nullity. (BM 30-31.) But, the fact that section 300 and section 601 may overlap does not render either statute a nullity; the Legislature recognized the two statutes overlap and, to account for that fact, enacted section 241.1. (§ 241.1; § 300; § 601.)

Section 300, subdivision (b)(1), provides for jurisdiction where:

> 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.

(§ 300, subd. (b)(1).)

Section 601, subdivision (a), provides that:

> Any person under the age of 18 years 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.

(§ 601, subd. (a).)

Nothing in the language of either section 300, subdivision (b)(1), or section 601, subdivision (a), makes section 601 the exclusive provision for dealing with children it describes. In enacting section 241.1, the Legislature acknowledged that section 300 overlaps with sections 601 and 602. (§ 241.1.) Subdivision (a) of section 241.1, states:

> Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society.

(§ 241.1, subd. (a); see, e.g., *In re M.V.* (2014) 225 Cal.App.4th 1495, 1505-1507.)

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That a child described by section 601 or section 602 can also be described by section 300, was noted by the Court of Appeal in *In re Natasha H.* (1996) 46 Cal.App.4th 1151: "Obstinacy and defiance test the patience of adults charged with the tending to the needs of minor children. [. . .] [However,] [a]s much as the minor might wish to be rid of court supervision, and as frustrating as her conduct might be to the [social workers] and the court, her misbehavior and lack of cooperation do not justify termination of her dependency status. . . ." (*Id.* at pp. 1157-1158.)

However, mother contends that, consistent with her interpretation of section 300, subdivision (b)(1), and its legislative history, section 241.1 does not apply in the case of an incorrigible child and a blameless parent. (BM 38-40.) But, as argued above, mother's interpretations of section 300, subdivision (b)(1), and its legislative history are wrong. There is nothing in the statutes or legislative history to show an intent to shift all incorrigible child cases exclusively to delinquency court, implicitly insert the requirement of parental fault or negligence into section 300, subdivision (b)(1), or imply that a parent is not responsible for adequately supervising and protecting an incorrigible child.

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Mother's and the *Precious D.* Court's interpretation of the first prong of section 300, subdivision (b)(1), would mean DCFS and the juvenile dependency court would be impotent when made aware of a child who is exhibiting self-destructive behaviors that are described by section 601. It is unclear what mother and the *Precious D.* Court expect to accomplish by a state-wide judicially imposed rule that would prevent children who come within section 601 through "no fault of a parent," from receiving services as a section 300 dependent. That cannot be what the Legislature intended. The approach taken by the *In re R.T.* Court not only correctly interprets the statute, it allows the juvenile court system to meet the unique circumstances of each child. When proceedings under both sections 300 and 601 are initiated, section 241.1 allows the two juvenile courts to determine under which section the child will be best served. (§ 241.1.)

It is undisputed that R.T. was out of control and mother was unable to remedy the problem. However, it is counterproductive for the juvenile court to be required to allocate fault between the parent and child for cases like R.T.'s. Court time and resources should be spent on resolving the child's issues. As indicated by Division Two, if the best place to do that is in the dependency system then the executive branch and the juvenile court should be free to choose that system. (*In re R.T., supra*, 235 Cal.App.4th at p. 804, review granted and opinion superseded, citing section 241.1 and

D.M. v. Superior Court (2009) 173 Cal.App.4th 1117, 1127 ["[T]he courts have a say in choosing which jurisdictional basis – dependency or delinquency – to exert once the executive branch has invoked both."].) Therefore, *In re R.T.* should be affirmed and *Precious D.* should be disapproved.

CONCLUSION

The plain and unambiguous language of the first prong of section 300, subdivision (b)(1), does not require an element of parental fault or neglect. This Court concluded in *Cynthia D.* that the California dependency statutory scheme comports with federal due process principles. (*Cynthia D., supra,* 5 Cal.4th at p. 256.) It would, therefore, be contrary to *Cynthia D.* and legislative intent expressed 46 years ago to graft on the first prong of section 300, subdivision (b)(1), the requirement that the risk to the child

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be a product of parental fault or neglect. Accordingly, DCFS respectfully requests that the Supreme Court affirm *In re R.T.* and disapprove *Precious D.*

DATED: September 2, 2015

Respectfully submitted,

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By _____
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CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.360

The text of this brief consists of 9,583 words as counted by the Microsoft Office Word 2010 program used to generate this brief.

DATED: September 2, 2015

Respectfully submitted,

MARY C. WICKHAM
Interim County Counsel

By _____
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Attorneys for Respondent,
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DECLARATION OF SERVICE (Mail)

STATE OF CALIFORNIA, County of Los Angeles:

DIANE M. AGUILAR states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 201 Centre Plaza Drive, Suite 1, City of Monterey Park, County of Los Angeles, State of California; that I am readily familiar with the business practice of the Los Angeles County Counsel for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business.

That on September 2, 2015, I served the attached **ANSWER BRIEF ON THE MERITS IN THE MATTER OF R.T., SUPREME COURT NO. S226416, 2d JUVENILE NO. B256411, LASC NO. DK03719**, upon Interested Parties by depositing copies thereof, enclosed in a sealed envelope and placed for collection and mailing on that date following ordinary business practices in the United States Postal Service, addressed as follows:

Nancy R. Brucker, Esq.
11661 San Vicente Boulevard, Suite 500
Los Angeles, California 90049
(Counsel for Appellant, Mother)

Stephanie Miller, Esq.
California Appellate Project
520 South Grand Avenue, 4th Floor
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Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 2, 2015, at Monterey Park, California.

Diane M. Aguilar

DIANE M. AGUILAR

DECLARATION OF SERVICE (Personal)

STATE OF CALIFORNIA, County of Los Angeles:

DIANE M. AGUILAR states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 201 Centre Plaza Drive, Suite 1, Monterey Park, California 91754-2142.

On September 2, 2015, I personally served the attached **ANSWER BRIEF ON THE MERITS IN THE MATTER OF R.T., SUPREME COURT NO. S226416, 2d JUVENILE NO. B256411, LASC NO. DK03719**, to the persons and/or representative of the court as addressed below:

For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a secretary or an individual in charge of the office, between the hours of 9:00 a.m. and 5:00 p.m.

For the court, delivery was made to the Clerk of the Superior Court by leaving the documents in an envelope or package, clearly labeled to identify the hearing officer being served, with the counter clerk in that office, between the hours of 8:30 a.m. and 4:30 p.m.

Clerk of the Court
Court of Appeal
Second Appellate District
Division Two
300 South Spring Street
2nd Floor, North Tower
Los Angeles, California 90013-1213

Honorable Marguerite D. Downing
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I declare under penalty of perjury that the foregoing is true and correct. Executed on September 2, 2015, at Monterey Park, California.

Diane M. Aguilar

DIANE M. AGUILAR