

May 10, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-43

The purpose of this All County Letter is to provide guidance to county child welfare services agencies on [Assembly Bill 2595 \(Chapter 260, Statutes of 2022\)](#). This bill adds Welfare and Institutions Code Section 328.2, regarding assessing and investigating reports of child abuse or neglect involving parental use or possession of cannabis.



KIM JOHNSON
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

May 10, 2023

ALL COUNTY LETTER NO. 23-43

TO: ALL COUNTY WELFARE DIRECTORS
ALL EMERGENCY RESPONSE STAFF
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS

SUBJECT: ASSEMBLY BILL 2595 – PARENTAL CANNABIS USE

REFERENCE: [ASSEMBLY BILL 2595 \(CHAPTER 260, STATUTES OF 2022\);](#)
[WELFARE AND INSTITUTIONS CODE SECTIONS 300 AND](#)
[328.2;](#)
[PENAL CODE SECTIONS 11165.13 AND 11166\(i\)\(1\);](#)
[HEALTH AND SAFETY CODE SECTIONS 11357,](#)
[HEALTH AND SAFETY CODE SECTION 11359,](#)
[HEALTH AND SAFETY CODE SECTION 11360,](#)
[HEALTH AND SAFETY CODE SECTION 11361,](#)
[HEALTH AND SAFETY CODE SECTION 11362.5,](#)
[AND HEALTH AND SAFETY CODE SECTION 123605;](#)
[VEHICLE CODE SECTION 23152\(f\) AND VEHICLE CODE](#)
[SECTION 23222\(b\); 21 UNITED STATES CODE SECTION 811;](#)
[21 UNITED STATES CODE SECTION 812;](#)
[ALL COUNTY LETTER NO. 17-92;](#)
[ALL COUNTY LETTER NO. 20-122;](#)
[PUBLIC LAW 114-198, THE COMPREHENSIVE ADDICTION AND](#)
[RECOVERY ACT OF 2016;](#)
[PROPOSITION 64, THE ADULT USE OF MARIJUANA ACT](#)

The purpose of this All County Letter (ACL) is to provide guidance to county child welfare services (CWS) agencies on [Assembly Bill \(AB\) 2595 \(Chapter 260, Statutes of 2022\)](#). This bill adds [Welfare and Institutions Code \(WIC\) section 328.2](#), regarding assessing and investigating reports of child abuse or neglect involving parental use or possession of cannabis.

BACKGROUND

California's [Proposition 64, the Adult Use of Marijuana Act](#), went into effect November 9, 2016, making it legal for individuals 21 and older to use and grow marijuana for personal use. Adults in California are now generally allowed to use and possess cannabis, whether it be for medical or recreational purposes. ([Health and Safety Code \(HSC\) §§ 11357](#) and [11362.5](#).) While the private use and possession of marijuana is legal in California, there are federal, state, and local laws prohibiting driving under the influence of marijuana and restricting and regulating the cultivation, transportation, and sale of marijuana, including ordinances on the location of dispensaries. (See, e.g., [HSC §§ 11359, 11360](#) and [11361](#); [Vehicle Code §§ 23152\(f\)](#) and [23222\(b\)](#); [21 United States Code §§ 811 & 812](#).)

With the legalization of cannabis in California, many counties are faced with determining how this change in the law impacts the child welfare system and how counties conduct risk assessments, including determining when parental cannabis use or possession constitutes or contributes to child abuse or neglect. As with any concern, county child welfare agencies must continue to focus on what impact these issues may have on children and the parent/caregiver's ability to care for the child. Just like the legal use of alcohol can pose a risk to a child, legal use of marijuana can also pose a risk to the child. It is crucial that any indication of child maltreatment related to the parent/caregiver's substance use or possession requires an assessment of the safety and risk to the child.

ASSEMBLY BILL 2595 LANGUAGE

The AB 2595 was introduced to clarify that parental use or possession of cannabis alone should not be the sole basis for child welfare intervention and adds [WIC section 328.2](#), which requires the California Department of Social Services (CDSS) to "update all regulations, all-county letters, and other instructions relating to the investigation of a child to ensure that when a social worker is investigating an alleged case of child abuse or neglect, a parent's or guardian's use or possession of cannabis is treated in the same manner as a parent's or guardian's use or possession of alcohol and legally prescribed medication."

[Penal Code \(PEN\) section 11165.13](#) states, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, in accordance with the Comprehensive Addiction and Recovery Act (CARA), any indication of maternal substance abuse at the time of delivery of an infant, including abuse of illegal drugs, legal drugs, and alcohol will lead to an assessment of the needs of the mother and the child pursuant to [HSC section 123605](#), which may require a medical provider to report to the local county CWS hotline if there are additional concerns regarding the mother's ability to safely care for the infant. If other factors are present that indicate risk to a child, then a report shall be made.

However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular safe care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency ([PEN § 11166\(j\)\(1\)](#)).

The provisions under [AB 2595](#) further establishes that the safe and legal use of cannabis should be treated in the same manner as alcohol use and prescription medication for the purposes of investigating reports of child abuse and neglect and determining child welfare's response and are consistent with existing guidance. For the past several years, CDSS policy regarding the assessment for parental use or possession of substances has been consistent with the purpose behind AB 2595. The CDSS previously released guidance in All County Letter No.'s [17-92](#) and [20-122](#) focusing primarily on the CARA for infants aged 0-12 months, who are affected by substance abuse.

While parental use or possession of any drug, legal or illegal, can be a risk factor, it is important to carefully assess how the parental use of cannabis impacts the safety of the child, including assessing the child's access to cannabis, the impact of any use on the parent's functioning and ability to care and supervise their child, plant growth in the home, usage in foster homes, etc. For example, if a parent is arrested and incarcerated for being under the influence of cannabis while recklessly driving a vehicle and their two-year-old child was found in the vehicle, the parent's behaviors put that child at risk and further assessment is needed, rather than merely the parent's personal use of cannabis being the sole factor.

County CWS agencies need to fully understand how to respond to and assess cannabis usage in the household for the families they are serving. The [Structured Decision Making Manual of Policies and Procedures](#) defines substance abuse as: "Caregiver has abused legal or illegal substances or alcoholic beverages in this incident to the extent that control of his/her actions or caregiving abilities is significantly impaired, or information is available that past abuse of legal or illegal substances has impaired the parent's caregiving capabilities in the past." Use of marijuana (or other drugs or alcohol) does not by itself, equal substance abuse. If the sole reason for a child abuse or neglect report indicates it is related to exposure to or the parental use of cannabis, the county CWS agency does not have sufficient grounds for requiring child welfare intervention. Additional risk factor(s) must also be present indicating the health and safety of the child is in jeopardy and/or the parent/caregiver may not be able to safely provide care for the child.

If additional safety threats or risk factors are present but can be mitigated with support, the investigating social worker, through the creation of a safety plan, should assist the family in identifying a support network, and connect the family to needed services to maintain the child within their home without needing to take further action, such as removing the child from parental custody or filing a petition under [WIC section 300](#).

Mitigation of any risk under a safety plan and supportive services helps ensure that families can safely and legally use cannabis without concern of experiencing negative consequences from a county CWS agency, providing there are no safety concerns or risk to the child.

When substance abuse is a factor, CWS needs to do a full assessment of the situation to determine potential risk to the child. In situations where a parent/caregiver is using cannabis, alcohol, or other legal drugs or has a history of allegations related to their substance abuse, the courts cannot exercise dependency jurisdiction for that child unless the court finds that the parent's caregiving abilities are significantly impaired, and the parent is unable to provide safe and adequate care resulting in risk of harm to the child due to the parent's substance abuse.

If you have any questions or need additional guidance regarding the information in this letter, please contact the Family Centered Safety and Support Bureau at (916) 651-6160 or by sending an email to childprotection@dss.ca.gov.

Sincerely,

Original Document Signed By:

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division