

Case No. S265910

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CHRISTOPHER L.,
A Person Coming Under the Juvenile Court Law,

THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,
Plaintiff and Respondent,

v.

CARLOS L.,
Defendant and Appellant.

From a Decision by the Court of Appeal, Second Appellate District,
Division One, Case No. B305225 (Hon. Rothschild, P.J.)
On Appeal from the Superior Court of Los Angeles County, Case No.
17CCJP02800B (Hon. Marguerite D. Downing, Judge)

**[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES IN SUPPORT OF
RESPONDENT THE LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES**

JENNIFER B. HENNING
SBN 193915
CSAC Litigation Counsel
1100 K Street, Suite No. 101
Sacramento, California 95814
Telephone: (916) 327-7535
Facsimile: (916) 443-8867
Email: jhenning@counties.org

JOHANNAH L. HARTLEY
SBN 253914
Senior Deputy County Counsel
County of Santa Barbara
105 E Anapamu, Suite 201
Santa Barbara, California 93101
Telephone: (805) 568-2950
Email: jhartley@co.santa-barabara.ca.us

Attorneys for Amicus Curiae
California State Association of Counties

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I. INTRODUCTION

To err is human. To evaluate that error and determine corrective action based on the harm it causes is just, especially in dependency proceedings. Dependency proceedings are special proceedings that are neither civil nor criminal. Instead, these proceedings focus on protecting children from abuse and neglect and finding them a safe, permanent placement. When balancing the rights of the parent and the child, the harmless error standard creates a just test that preserves the rights and interests of both. A structural error standard fails to preserve this delicate balance and would cause great harm to juvenile dependents whose need for permanency and stability would be unnecessarily delayed. A harmless error standard is appropriate to address errors occurring at jurisdiction and disposition hearings, including errors that are constitutional in nature.

Utilizing this standard, if the errors in the dependency proceeding were harmless, then the dependent does not have to suffer because of them. However, if the errors in the dependency proceeding caused harm, then reversal is appropriate, thus protecting the rights of the parent. In addition, the Court may choose between imposing a ‘beyond a reasonable doubt,’ a ‘clear and convincing evidence,’ or a ‘reasonably probability’ standard of harmless error to provide even greater protections as needed.

In the present case, the holding of a combined jurisdiction and disposition hearing without the presence of the incarcerated father or

appointing counsel in violation of Penal Code section 2625 was an error. While this error is “troubling,” the facts of the case and the provisions of the Welfare and Institutions Code support establishing jurisdiction and bypassing reunification services. (*In re Christopher L.* (2020) 56 Cal.App.5th 1172, 1177.) Accordingly, the error was harmless. In addition, the father participated in and was appointed counsel at the next dependency hearing, before his parental rights were terminated. In fact, the father was able to obtain an order for paternity testing and delay the permanency planning hearing so he could continue to participate in the proceedings for over a year during which time he remained incarcerated. Therefore, even if the error at the jurisdiction/disposition hearing had not occurred, the outcome of the case would be the same based on the Welfare and Institutions Code sections 300 and 361.5(b)(10) and (12), (e)(1). To treat the error as structural and subject to automatic reversal would harm Christopher L., who entered the dependency proceedings as a newborn in December of 2017, and whose permanent, stable placement would be delayed with reversal.

Accordingly, CSAC respectfully requests that this Court affirm the decision of the Second District Court of Appeal applying the harmless error standard to errors in juvenile dependency proceedings, including errors occurring at the jurisdiction/disposition hearing.

II. ARGUMENT¹

A. THE HARMLESS ERROR STANDARD IS THE MOST APPROPRIATE STANDARD FOR DEPENDENCY PROCEEDINGS BECAUSE IT PROTECTS BOTH THE BEST INTERESTS OF THE CHILD AND THE RIGHTS OF THE PARENT.

The harmless error doctrine has a long, well-established history. (See, e.g., Cal. Const., art. VI, § 13 [a judgment shall not be reversed based on error, unless the error resulted in a “miscarriage of justice”]; Epps, *Harmless Errors and Substantial Rights* (2018) 131 Harv.L.Rev. 2117, 2127 (tracing harmless error back to the English appellate courts).) From 1919 to 1967, harmless error only applied to nonconstitutional errors. Over time the courts have continually expanded its application. In 1967, the United States Supreme Court applied the harmless error doctrine to constitutional errors. (*Chapman v. State of California* (1967) 386 U.S. 18.) In *Chapman*, the Court determined that constitutional violations are only harmless if they are “harmless beyond a reasonable doubt.” (*Id.* at p. 26.) The Court acknowledged that some errors remained reversible per se and listed three key examples of reversible error: 1) coerced confessions under *Payne v. Arkansas*, 2) the right to counsel under *Gideon v. Wainwright*, and 3) the right to an impartial judge under *Tumey v. Ohio*. (*Id.* at p. 23, fn. 8.) Since *Chapman*, the United States Supreme Court has expanded the list of

¹ The Facts of this case are fully described in Respondent’s Answer Brief filed on or about July 13, 2021.

the constitutional errors subject to the harmless error standard and even determined one of the three examples in *Chapman*, coerced confessions, should also be subject to harmless error. (*Arizona v. Fulminante* (1991) 499 U.S. 279; *Chambers v. Maroney* (1970) 399 U.S. 42, 53-54; *Brown v. United States* (1973) 411 U.S. 223, 231-32.) The Court has also determined that harmless error may be proven by the lower standard of the error not having a “substantial and injurious effect or influence in determining the jury’s verdict.” (*Brecht v. Abrahamson* (1993) 507 U.S. 619, 638.)

Juvenile dependency, unlike other areas of laws, is focused on the protection of the child and finding a long term safe and stable home for the child. The purpose of the juvenile dependency system 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.” (Welf. & Inst. Code, § 300.2.) The primary goals of the juvenile dependency system are: 1) the safety and protection of the child, 2) the preservation of the family, if it can be done safely in a timely manner, and 3) the timely provision of a stable, permanent home for the child. (Welf. & Inst. Code, §§ 202(a), 16500, 16500.5; Seiser & Kumli, *California Juvenile Courts Practice and Procedure* (2021) § 2.11.) Accordingly, the best interest of the child

standard is applied when making decisions in dependency proceedings. (*In re Zeth S.* (2003) 31 Cal.4th 396, 410; *In re Jessi G.* (1997) 58 Cal.App.4th 1, 8.) Although an elusive standard, a dependent’s best interest is determined by the Legislature “through implementation of the procedures, presumptions, and timelines written into the dependency statutes.” (*In re Zeth S., supra*, 31 Cal.4th at p. 410.) Considering the best interest of the child, as viewed through the Welfare and Institutions Code’s relatively short timelines for reunification to prevent delayed permanence, necessitates use of harmless error. The consequences of reversing a case in which the error did not impact the outcome of the case and did not in fact harm the parent, would be significant for the child who would be harmed by the delayed permanence.

1. The harmless error standard is widely applied by the courts to both trial errors and structural errors.

To determine how to treat an error that occurred during a case, the United States Supreme Court has separated errors in criminal proceedings into two categories: 1) structural error, and 2) trial error. Structural errors “necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” (*Washington v. Recuenco* (2006) 548 U.S. 212, 218-19 (citations and quotations omitted).) Trial errors occur during the presentation of the case. Trial errors are subject to the harmless error standard because a court may “quantitatively assess”

such errors “in the context of other evidence presented” to determine the effect of the error on the case.” (*Arizona v. Fulminante* (1991) 499 U.S. 279, 307-08.) Structural errors are also generally subject to the harmless error standard. “In more than 60 years, however, only in rare criminal cases has the high court held that an error is structural requiring automatic reversal. More often than not, the U.S. Supreme Court has found federal constitutional error in criminal cases subject to harmless error standards, rather than finding the error to require reversal per se. The Court has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless.” (Seiser & Kumli, *California Juvenile Courts Practice and Procedure* (2021) § 2.194[3](citations omitted).) Considering that the harmless error standard is often used in criminal proceedings, which are subject to a heightened standard of review, errors in dependency proceeding should be subject to the same or even a lower standard of review.

2. Dependency proceedings are distinct from criminal proceedings and use of the harmless error standard recognizes and protects these important distinctions.

Dependency proceedings are special proceedings governed by their own specific rules in the Welfare and Institutions Code. Not only are these proceedings different from criminal proceedings, they are different from civil proceedings and the Civil Code and the Code of Civil Procedure do not generally apply in dependency proceedings. (*In re Shelley J.* (1998) 68

Cal.App.4th 322, 328; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 711.)

The California Supreme Court has recognized these differences by deeming dependency proceedings “civil in nature” as they are designed not to punish or “prosecute a parent, but to protect the child.” (*In re Malinda S.* (1990) 51 Cal.3d 368, 384 (quotation omitted)(superseded by statute on other grounds).) Dependency jurisdiction is based on the harm or risk of harm to the child, and is taken over the child and not over the parent. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.) Unlike a criminal case in which the standard of proof at trial is beyond a reasonable doubt, in dependency proceedings the standard is either preponderance of the evidence or clear and convincing evidence. (Welf. & Inst. Code, §§ 355, 361(c).) Even the termination of parental rights, which are considered constitutional rights, are not subject to the heightened standard used for criminal proceedings. (See, e.g., Welf. & Inst. Code, § 366.26, *In re Angelia P.* (1981) 28 Cal.3d 908, 919.) “The United States Supreme Court has never required a beyond a reasonable doubt standard at either the trial or appellate levels when dealing with federal constitutional rights in the context of the fundamental right to parent. Instead, it has applied the ‘elevated standard’ of clear and convincing evidence standard.” (Seiser & Kumli, *California Juvenile Courts Practice and Procedure* (2021) § 2.194[2].)

The California Supreme Court addressed the significant differences between juvenile and criminal proceedings as follows:

In a criminal prosecution, the contested issues normally involve *historical* facts (what precisely occurred, and where and when), whereas in a dependency proceeding the issues normally involve evaluations of the parents' present willingness and ability to provide appropriate care for the child and the existence and suitability of alternative placements. Finally, the ultimate consideration in a dependency proceeding is the welfare of the child ... a factor having no clear analogy in a criminal proceeding.

(*In re James F.* (2008) 42 Cal.4th 901, 915 (citations omitted).)

The "concept of structural error was developed in criminal cases."

(*In re A.D.* (2011) 196 Cal.App.4th 1319, 1326.) The California Supreme Court has "cautioned against using the structural error doctrine in dependency cases." (*Id.* at p. 1326.) In particular, the Court noted "needless reversals of dependency judgments is unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible." (*In re James F.* (2008) 42 Cal.4th 901, 918.) The strong interest in resolving dependency proceedings expeditiously "would be thwarted if the proceeding had to be redone without any showing the new proceeding would have a different outcome." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 625.)

a. A child's need for stability and permanence is protected by the harmless error standard.

Children have fundamental rights. The Legislature has declared that "[c]hildren have a right to a normal home life free from abuse." (Welf. & Inst. Code, § 396.) The California Supreme Court determined that

“children, too, have fundamental rights—including the fundamental right to be protected from neglect and to have a placement that is stable and permanent.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419 (quotation omitted).) The Court has recognized that “children have a fundamental independent interest in belonging to a family unit, and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306 (citations omitted).)

These rights are time sensitive as childhood is fleeting. “[A]n important element that a trial court must consider, when making a decision about children, is the impact of the passage of time. Childhood is short; many basic attitudes and capacities are developed in the very early years.” (*In re Rose G.* (1976) 57 Cal.App.3d 406, 425.) The swift resolution of dependency proceedings is essential to promoting permanency for children and for that reason dependency cases take priority over other matters pending before the Court of Appeal. (Welf. & Inst. Code, § 395(a)(1); *In re Phoenix H.* (2009) 47 Cal.4th 835, 843-44.) The harmless error standard respects the timing considerations in dependency proceedings by allowing cases with harmless errors to proceed and only reversing cases with harmful errors.

Dependency proceedings seek to balance the rights and interest of the child with the rights of the parent and the use of harmless error standard is essential to perform this balancing. (See, e.g., *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 [“The interests of the parent and the child, therefore, must be balanced.”].) Dependency experts Seiser and Kumi assert that “[s]tructural error should not apply in dependency proceedings even when dealing with errors of a federal constitutional dimension. Structural error considers only the error and interest of the parent. It fails to consider the weight of the facts or the interests of the child who is both a party to and the subject of the proceedings.” (Seiser & Kumli, *California Juvenile Courts Practice and Procedure* (2021) § 2.194[3].)

b. A parent’s right to a fair proceeding is protected by the harmless error standard as harmful errors are subject to reversal and may be subject to the heightened review of beyond a reasonable doubt.

A parent has the right to a fair proceeding, not a perfect proceeding. This has been acknowledged by the courts and the Petitioner. (Petitioner’s Reply Brief, p. 34 (citing *People v. Woodruff* (2018) 5 Cal.5th 697, 768); *Arizona v. Fulminante* (1991) 499 U.S. 279, 308 (harmless error “promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error”).) While errors are inevitable in proceedings, the harm of the error should determine its effect. Failure to follow a statute, as in this case, is clearly an error. Even if the error rises to the level of a

constitutional error, the United States Supreme Court has “applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless.” (*Arizona, supra*, 499 U.S. at p. 306.)

The harmless error doctrine provides an added benefit in that there are different standards under which the error may be reviewed to determine if it was harmful. The two traditional standards of review for harmless error are: 1) the *Chapman* standard -- that the error must be harmless beyond a reasonable doubt, or 2) the *Watson* standard -- that the error must be harmless by a reasonable probability. (*Chapman v. State of California* (1967) 386 U.S. 18, 24; *People v. Watson* (1956) 46 Cal.2d 818.) A third potential standard is the clear and convincing evidence standard, which is the highest burden of proof required in juvenile dependency proceedings. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1514.) When determining whether a statutory error is harmless, the traditional standard of review in a dependency case is whether it is “reasonably probable that a result more favorable” to the person appealing would have been reached if the error had not occurred. (*People v. Watson* (1956) 46 Cal.2d 818, 836; See also *In re Celine R.* (2003) 31 Cal.4th 45, 60, *In re Nalani C.* (1988) 199 Cal.App.3d 1017, 1028.) “The *Watson* harmless error test also applies to an appellate court’s review of the denial of a parent’s statutory right to counsel.” (*In re A.J.* (2019) 44 Cal.App.5th 652, 665-66 (citing *In re*

J.P. (2017) 15 Cal.App.5th 789, 797 and *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667–68.)

Alternatively, utilizing the heightened *Chapman* standard provides additional protection, especially in the case of a fundamental constitutional error. (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1145.) While experts dispute which standard is appropriate, the Court may use the *Chapman* standard to provide the added protection for fundamental errors while still balancing the interests of other parties in the dependency proceedings. (See Seiser & Kumi, *California Juvenile Courts Practice and Procedure* (2021) § 2.194; Rasch, *California's Dueling Harmless Error Standards: Approaches to Federal Constitutional Error in Civil Proceedings and Establishing the Proper Test for Dependency* (2008) 35 W.St.U.L.Rev. 433.) Several dependency cases with constitutional errors have utilized the heightened *Chapman* harmless error standard. (*In re Mark A., supra*, 156 Cal.App.4th at p. 1124 [error to order parent to testify after parent invoked his Fifth Amendment right against self-incrimination harmless]; *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132 [violation of parent's right to be heard harmful]; *In re Angela C.* (2002) 99 Cal.App.4th 389, 394 [error to hold 366.26 hearing without notice to parent harmless]; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 446 [violation of the right to confront and cross examine witnesses harmful]; *In re Andrew S.* (1994) 27 Cal.App.4th 541, 547 [violation of the right to counsel harmless]; *In re Laura H.* (1992) 8

Cal.App.4th 1689, 1696 [violation of witness confrontation right was harmful under both *Watson* and *Chapman*]; *In re Amy M.* (1991) 232 Cal.App.3d 849, 868 [violation of witness confrontation right was harmful].) The Fifth District Court of Appeal held “[c]onstitutional error as a general rule does not automatically require reversal. In determining the effect of ‘most constitutional errors,’ appellate courts can properly apply a *Chapman* harmless-error analysis.” (*In re Angela C.* (2002) 99 Cal.App.4th 389, 394 (citation omitted).)

Under both the *Watson* and *Chapman* standards of harmless error, the error in the current case was harmless. (*In re Christopher L.* (2020) 56 Cal.App.5th 1172, 1188.) The outcome of this case, absent the error in applying Penal Code section 2625, would be the same based on the age of Christopher L., the criminal history of the father, the length of the father’s incarceration, and the provisions of Welfare and Institutions Code sections 300, 361.5(b)(10) and (12), (e)(1). (*In re Christopher L., supra*, 56 Cal.App.5th at pp. 1189-90.) Therefore, the application of the harmless error standard is critical for the protection and stability of Christopher L.

The structure of the dependency proceedings, as established by the Legislature, dictates the parameters for jurisdiction, the basis for bypassing of reunification services, and the timelines for reunification based on the age of the child. (Welf. & Inst. Code, §§ 300, 361.5.) The service bypass provisions in Section 361.5 “reflect a legislative determination that an

attempt to facilitate reunification between a parent and child generally is not in the minor[']s best interests.” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228.) This Section identifies high risk activities that “places the parent’s interest in reunifying with her[/his] child directly at odds with the child’s compelling right to a ‘placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’” (*Ibid.*)

Under Welfare and Institutions Code section 300(b)(1) and (j), jurisdiction may be established when “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 inability of the parent ... to provide regular care for the child due to the parent’s ... substance abuse” and when the “child’s sibling has been abused or neglected ... and there is a substantial risk that the child will be abused or neglected.” Here, the father had a well-established substance abuse problem, including related criminal history, and a prior dependency case resulting in two of Christopher L.’s siblings being placed in legal guardianship. Under Welfare and Institutions Code section 361.5(b)(10) and (12) and (e)(1), a parent is ineligible for reunification service if the parent failed to reunify with another child and has not subsequently made a reasonable effort to treat the previous problem, or if the parent has been convicted of a violent felony. Accordingly, the nature of the father’s incarceration, as well as the prior dependency cases

involving Christopher L.'s older siblings, support bypassing services. Even if reunification services were provided, because Christopher L. was a newborn, the parent would only be entitled to 6 months of services. (Welf. & Inst. Code, § 361.5(a)(1)(B); *In re Christopher L.*, *supra*, 56 Cal.App.5th at pp. 1190-91.) The father's incarceration would have made it impossible to reunify within 6 months as the father remained in prison well beyond 2 years after jurisdiction was established. (Welf. & Inst. Code, § 361.5(e)(1).)

3. The harmless error standard is commonly used in dependency proceedings, unlike structural error which has very limited applications.

Most appellate courts apply the harmless error standard when evaluating errors in dependency proceedings. (See, e.g., *Denny H. v. Superior Court* (App. 1 Dist. 2005) 131 Cal.App.4th 1501; *In re Kobe A.* (App. 2 Dist. 2007) 146 Cal.App.4th 1113; *In re L.S.* (App. 3 Dist. 2014) 230 Cal.App.4th 1183; *In re M.S.* (App. 4 Dist. 2019) 41 Cal.App.5th 568; *In re A.C.* (App. 5 Dist. 2008) 166 Cal.App.4th 146; *In re Kristin H.* (App. 6 Dist. 1996) 46 Cal.App.4th 1635, 1668.) In 2020, the Second District Court of Appeal noted that “[g]enerally, the harmless error rather than structural error analysis applies in juvenile dependency proceedings even where the error is of constitutional dimension.” (*In re Andrew M.* (2020) 46 Cal.App.5th 859, 866-67 (quotation and citation omitted).) The harmless error standard provides adequate protections to all parties in a

dependency proceeding, as if the error is harmful then the decision is reversed. (See, e.g., *In re R.A.* (2021) 61 Cal.App.5th 826; *In re A.J.* (2019) 44 Cal.App.5th 652, 666.)

Not only is harmless error commonly used, but scholars have asserted that harmless error should be used exclusively. (Greabe, *The Riddle of Harmless Error Revisited* (2016) 54 Hous.L.Rev. 59, 64.) “By subjecting all properly preserved constitutional errors to harmless-error review, and requiring burden shifting for forfeited errors under plain-error review, the courts would have a more workable framework that balances fundamental fairness, promotes accurate fact-finding, increases judicial efficiency, increases consistency in application, and protects against gamesmanship.” (Tisdale, *A New Look at Constitutional Errors in a Criminal Trial* (2016) 48 Conn.L.Rev. 1665, 1702.)

Dependency experts Seiser and Kumli, after examining cases before and after *James F.*, noted:

An examination of California dependency cases in which appellate courts found structural error before the Supreme Court’s *James F.* decision reveals the courts conducted little to no analysis as to whether structural error should apply in dependency cases. Instead, it was simply assumed the concept of structural error could apply in dependency cases, just as it does in criminal cases. But the U.S. Supreme Court and the California Supreme Court have been clear that criminal standards do not apply in dependency proceedings, and that due process requirements afforded to parents in dependency court differ from those due criminal defendants.

(Seiser & Kumli, California Juvenile Courts Practice and Procedure (2021)
§ 2.194[3](citations omitted).)

Accordingly, the structural error standard of automatic reversal should not apply in dependency cases, even if there is a constitutional error, because this standard fails to consider the “interest of the child, who is both a party to and subject of the proceedings.” (*Ibid.*)

Not only does structural error originate from criminal proceedings, the actual application of structural error is very limited. The United States Supreme Court has stated, “[i]ndeed, we have found an error to be ‘structural,’ and thus subject to automatic reversal, only in a ‘very limited class of cases.’” (*Neder v. U.S.* (1999) 527 U.S. 1, 8.) In 2013, the Court clarified “[w]e have characterized as ‘structural’ ‘a very limited class of errors’ that trigger automatic reversal because they undermine the fairness of a criminal proceeding as a whole.” (*United States v. Davila* (2013) 569 U.S. 597, 611.) In fact, the Court stated “[w]e have recognized that most constitutional errors can be harmless.” (*Neder, supra*, 527 U.S. at p. 8 (quotation omitted).) The Court has gone as far to opine that “fundamental, even ‘constitutional’ error, that falls short of being ‘structural’ error is subject to harmless-error analysis.” (Graham, 2 Handbook of Fed. Evid. (2020) § 103:1 (citing *Hedgpeth v. Pulido* (2008) 555 U.S. 57).)

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B. THE PUBLIC INTEREST SUPPORTS USING THE HARMLESS ERROR STANDARD TO ADDRESS THE ERROR OF PROCEEDING WITH A JURISDICTION AND DISPOSITION HEARING WITHOUT AN INCARCERATED PARENT’S PRESENCE AND WITHOUT APPOINTING COUNSEL.

The public interest in dependency proceedings is to protect children by quickly placing children in safe and stable homes. “[T]his state has a responsibility to attempt to ensure that children are given the chance to have happy and healthy lives, and that, to the extent possible, the current practice of moving children receiving foster care services from one foster home to another until they reach the age of majority should be discontinued.” (Welf. & Inst. Code, § 396.) In addition, “[m]inors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public.” (Welf. & Inst. Code, § 202(b).) Childhood is brief, but the impacts on development when a child lacks a safe and stable home and emotional attachment are long lasting. This lack of stable foundation can impact the child’s success and future contributions to society. Acting quickly in dependency cases is one way to stop repeating patterns of violence, abuse and criminal activities passed on from generation to generation.

The public also has an interest in application of the harmless error standard. The harms of unnecessarily reversing cases were discussed by

the United States Supreme Court in 1946. (*Kotteakos v. U.S.* (1946) 328 U.S. 750.) Discussing the history that resulted in the 1919 federal harmless error statute, the Court noted “[s]o great was the threat of reversal, in many jurisdictions, that criminal trial became a game for sowing reversible error in the record, only to have repeated the same matching of wits when a new trial had been thus obtained.” (*Id.* at p. 759.) Accordingly, the harmless error statute was created “to substitute judgment for automatic application of rules; to preserve review as a check upon arbitrary action and essential unfairness in trials, but at the same time to make the process perform that function without giving men fairly convicted the multiplicity of loopholes which any highly rigid and minutely detailed scheme of errors, especially in relation to procedure, will engender and reflect in a printed record.” (*Id.* at p. 760.) Applying the harmless error standard in dependency proceedings promotes public respect for the dependency process by ensuring fair hearings and prompt permanence for children.

III. CONCLUSION

To uphold the Appellate Court’s use of the harmless error standard would allow Christopher L. to obtain permanency and be adopted by his relative. If the harmless error standard is not applied, and errors made at the beginning of the dependency proceeding in the jurisdiction and disposition hearing(s) are required to be automatically reversed, the burden on the courts and the county departments of social services may become

untenable and substantially delay dependency proceedings and safe and stable permanent placements for children.

For the reasons discussed above, and for the reasons argued by Respondent, CSAC, and its member counties, respectfully ask this Court to affirm the decision of the Court of Appeal for the Second District in *In re Christopher L.* (2020) 56 Cal.App.5th 1172, to use the harmless error standard.

Dated: August 27, 2021

Respectfully submitted,

JENNIFER B. HENNING
CSAC Litigation Counsel
SBN 193915

Attorney for *Amicus Curiae*
California State Association of Counties

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Respectfully submitted,

JENNIFER B. HENNING
CSAC Litigation Counsel

Attorney for Amicus Curiae
California State Association of Counties