



## Parental substance use: How child welfare workers make the case for court intervention

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### ABSTRACT

Parental substance use (PSU) is a factor in many child welfare cases; however, little is known about how child welfare agencies and their workers make the case to juvenile or family courts that PSU-related acts and omissions are harmful to children. This qualitative data-mining study explores the ways in which child welfare workers draw on child maltreatment statutes, risk assessment tools, and practice guidelines to frame evidence and make the case that PSU is harmful or poses a substantial risk of harm to children. Narrative data were extracted from child welfare court reports located in electronic case records from two California counties. Analysis revealed that workers cited multiple sources and types of evidence to make the case that, due to substance use, parents had failed to protect their children from harm or risk of harm and/or had failed to provide for their children's basic needs. Moreover, workers noted that these failures constituted neglect under California law. In addition, similarities and differences emerged within and across counties in how workers made the case that children were in need of protection, which suggested that state and local policy-practice guidelines influenced the structure of court reports and arguments made for state intervention. Implications for policy and practice are discussed and recommendations for future research are identified.

### 1. Introduction

Substance misuse is a widespread social problem in the United States. The 2012–2013 National Epidemiologic Survey on Alcohol and Related Conditions found that 29.1% of adults experience a diagnosable alcohol use disorder (Grant et al., 2015) and 9.9% of adults experience a diagnosable drug use disorder (Grant et al., 2016) at some point in their lifetime. Substance misuse among parents has been shown to disrupt family stability and cohesion (Ryan & Huang, 2014; Ryan, Marsh, Testa, & Louderman, 2006) and affect children's short- and long-term physical and emotional health and cognitive development (Bountress & Chassin, 2015; Felitti et al., 1998; Smith & Wilson, 2016). Studies have found that parental substance misuse can adversely affect parents' ability to meet their children's basic needs (Hayward, DePanfilis, & Woodruff, 2010; Suchman, Pajulo, DeCoste, & Mayes, 2006) and that children whose parents use substances are at elevated risk of child maltreatment (Berger, Slack, Waldfogel, & Bruch, 2010; Staton-Tindall, Sprang, Clark, Walker, & Craig, 2013). Moreover, each year an estimated 400,000 infants are affected by prenatal exposure to substances (Young et al., 2009). These prenatal exposures can lead to a range of developmental and behavioral outcomes (varying from none to severe) based on the type of prenatal exposure and the duration and timing of that exposure (Behnke & Smith, 2013; Frank, Augustyn, Knight, Pell, & Zuckerman, 2001; Lambert & Bauer, 2012; McQueen &

Murphy-Oikonen, 2016).

How child welfare systems should respond to parental substance use, and the impact of parental substance use on infants and children, has been the subject of extensive debate. Concerns in the late 1980s about prenatal exposure to crack cocaine and the potential effect of the crack epidemic on children pushed state and federal legislators to adopt new laws that criminalized prenatal and parental substance use (Gustavsson, 1991; Hacking, 1991; Korn, 2016). Worries about parental use of methamphetamine in the first decade of the 21st century and the impact of the opioid crisis on children in more recent years have again encouraged federal and state lawmakers to enact new criminal and child welfare statutes regarding the use, manufacturing, and distribution of controlled substances by parents (Gutmacher Institute, 2017; Korn, 2016; Price et al., 2012; U.S. Department of Health and Human Services, 2017; Weber, 2006).

Despite decades of concern, few states have explicitly defined parental substance use (PSU) *itself* as a type of child maltreatment warranting dependency; however, nearly all states now incorporate language about PSU into their child maltreatment statutes (Child Welfare Information Gateway, 2016; U.S. Department of Health, & Human Services, Administration for Children and Families, 2018). Terms such as substance and/or drug *misuse* or *abuse* are used in statutory language to convey legislative concerns related to parental use, dependence, and addiction and the resulting impact on children. Review of state statutes

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finds that legislatures rarely use clinical definitions of substance misuse in law. Instead, statutes describe the ways in which parental substance use or abuse, manufacturing, and/or distribution can threaten child safety, cause direct harm to children, or prevent parents from meeting the needs of children (see [Child Welfare Information Gateway, 2016](#)). In addition to these statutory reforms, over the last two decades, child welfare systems across the nation have adopted risk and safety assessment tools, such as Structured Decision Making, to help improve frontline child welfare worker decision making ([Children's Research Center, 2015](#); [Cuccaro-Alamin, Foust, Vaithianathan, & Putnam-Hornstein, 2017](#)). While these tools do not include diagnostic criteria or directly equate PSU with child maltreatment, assessment tool guidelines describe how PSU can pose a risk or immediate safety threat to children (see [Children's Research Center, 2015](#)).

The incorporation of PSU-related language into child maltreatment statutes and assessment tools reflects social beliefs and concerns about PSU, including the emergence of new knowledge about PSU and its effects on children, and the relationship between PSU and risk of child maltreatment. The language related to PSU in maltreatment statutes and assessment tools likely influences the types of referrals child welfare systems receive, how those referrals are processed (i.e., investigated, substantiated, and promoted to case status), and how allegations of PSU-related child maltreatment are presented to and adjudicated by dependency courts (i.e., juvenile or family courts) ([Barry, McGinty, Pescosolido, & Goldman, 2014](#); [Henry, 2017](#)). Studies have found that PSU-related acts and omissions, including prenatal substance exposure, often trigger referral to child welfare agencies (e.g., 53% of all infants diagnosed with prenatal substance exposure at birth in California were reported to child welfare services) ([Putnam-Hornstein, Prindle, & Leventhal, 2016](#); [Young, Boles, & Otero, 2007](#)); that PSU is identified as a risk factor in a high proportion of child welfare cases (e.g., 40–80% of all child welfare involved families are affected by PSU) ([U.S. Department of Health, & Human Services, Administration for Children and Families, 2018](#); [Young et al., 2007](#)); and, PSU-related problems account for more than half of all foster care placements ([Barth, Wildfire, & Green, 2006](#); [Connell, Bergeron, Katz, Saunders, & Tebes, 2007](#)). Together, these findings show that PSU is a common problem among child welfare involved families and, in some cases, PSU itself may be the reason for referral to the child welfare system. On their own, however, these findings tell us little about how, in the absence of clear legislative mandates that define PSU as a type of maltreatment, child welfare workers (hereafter *workers*) construe PSU-related acts and/or omissions as harmful to children. Nor do they tell us how, within an adversarial child welfare system in which allegations of maltreatment must be adjudicated by dependency courts (hereafter *courts*), workers make the case that PSU-related acts and omissions are harmful to children and ongoing state intervention is needed.

### 1.1. Study goals and overview

This exploratory study begins to address this gap in the literature by examining the ways in which, in the absence of clear statutory mandates that define PSU as a type of child maltreatment, workers make the case to the courts that PSU is harmful to children. Through review of electronic child welfare case records, this study examines the ways in which workers in two California counties make the case that PSU-related acts and omissions are harmful to children and that ongoing court supervision and child welfare services are needed. California maltreatment statutes, case law, and child welfare policy-practice documents are referenced throughout in order to situate child welfare practice within the complex federal, state, and local policy-practice environments in which child welfare practice operates.

This study found that workers drew on various sources of evidence to make the case that PSU-related acts and omissions were harmful to children or posed a substantial risk of harm. Across counties and cases, workers consistently framed PSU-related acts and omissions as child

neglect, arguing that as a consequence of PSU, parents had failed to protect or adequately provide for their children. Workers argued that parents had failed to protect their children by directly exposing them to licit and illicit substances and/or substance use-related activities, or by failing to provide for their children by not meeting their basic care and supervision needs. This framing of PSU-related acts and omissions as a type of maltreatment mirrored state statutes and policy-practice guidelines generated by state and local agencies, suggesting that these formal policy instruments shape workers' understanding of the acts and omissions that constitute maltreatment. Moreover, there were similarities and differences within and across counties in how workers made the case that children were in need of protection, which also suggested that state and local policy-practice documents influenced the structure of court reports and arguments made for state intervention. Implications for child welfare policy and practice are discussed and recommendations to enhance both are made.

## 2. Methodology

This case study was part of a larger practice-based research study undertaken in partnership with the University of California, Berkeley and a regional social services consortium of county child welfare agencies in California, to better understand and improve child welfare practice through qualitative data-mining ([Henry, Carnochan, & Austin, 2014](#)). Qualitative data-mining (QDM) is the mining of narrative text data from administrative databases. This method enables researchers to gain a more nuanced understanding of child welfare populations, client needs, and child welfare interventions. Moreover, QDM techniques allow researchers to examine in a relatively non-intrusive manner how child welfare workers define and respond to child maltreatment in daily practice. With the parallel examination of policy-practice documents, the researchers are also able to trace how workers' responses may be shaped by state and local policy and practice frameworks and guidelines ([Henry et al., 2014](#)). All text data used in this study were generated by workers during the course of their regular child welfare duties and were extracted from California's administrative data system, the Child Welfare Services/Case Management System (CWS/CMS). This study was approved by institutional review boards at the University of California, Berkeley, Hunter College at the City University of New York, and the California State University, East Bay. Permission to use these data was also granted by the county agencies participating in the study.

### 2.1. Use of case study

Federal law establishes policy mandates for child welfare agencies; however, child welfare statutes are created at the state level and interpreted, administered, or enforced by state or local child welfare agencies and courts. Similarly, federal agencies establish practice guidelines and benchmarks, but how these guidelines or benchmarks are implemented or met is typically left to state and local jurisdictions; thus, child welfare policy and practice vary across place and time ([Child Welfare Information Gateway, 2018](#)).

In California, much of child welfare policy is created at the state level (e.g., child maltreatment laws and practice guidelines), but child welfare services and child welfare cases are administered and adjudicated at the county level. To capture both variations and similarities in practice and the interplay between state and local policies and practice, child welfare case records from two counties were selected for this case study. These counties were *typical* of other California counties in that practice in both counties was governed by state and local policies. In case study, analysis of such typical cases is viewed as providing a deeper or *thicker* understanding of how individuals or organizations respond to a particular phenomenon within a specific policy-practice context ([Stake, 1995](#); [Yin, 2013](#)).

## 2.2. Policy & practice context

Under California Law, PSU itself is neither defined as a type of child maltreatment nor considered, alone, grounds for ongoing state intervention. Instead, for a child to come within the court's jurisdiction, a *nexus* between PSU and one of ten subtypes of child maltreatment must be demonstrated (see Cal. W&I Code § 300 (a)-(j); *Contra Costa County Department of Social Services v. Catherine P.*, 1991). These subtypes include physical abuse, sexual abuse, emotional abuse, and neglect (Cal. W&I Code § 300 (a)-(d)). While prenatal exposure to substances was once treated as *de facto* child maltreatment by county agencies, passage of a 1990 law required counties to develop protocols for assessing threats to the risk and safety of infants before removal (Berrick, Needell, Barth, & Johnson-Reid, 1998; *Perinatal Substance Abuse Act*, 1990). Today, indication of prenatal exposure at time of birth “is not in and of itself a sufficient basis for reporting child abuse or neglect” and state law requires a report to be made only if “other factors are present that indicate risk to a child” (Cal. Penal Code § 11,165.13).

In California, workers have 30 days to investigate allegations of maltreatment. At the end of the investigative period, workers must either close their investigation or petition the court to adjudicate the children who are the subjects of the referrals as dependents of the court. Using evidence generated through their initial and ongoing investigations, workers must show in their initial petitions, and subsequently in the jurisdiction and disposition reports, that a *nexus* exists between PSU and child maltreatment and that state intervention is needed. Under California Law, the reports that workers submit to the court are admissible hearsay for the purposes of jurisdiction and the evidence contained in them is assumed to be true, unless successfully rebutted (Cal. W&I Code § 355 (b)).

In their initial petition, workers present evidence that, *if* substantiated, *would* show that the condition/situation of the child is described by one or more subsections of section 300 of the California Welfare and Institutions Code. In contrast, at the jurisdiction hearing, the agency *must* show that the child *is*, in fact, impacted by a condition/situation described by the code (Cal. W&I Code (a); Cal. Rules of Court 5.534). If the child is so adjudicated, then a disposition hearing occurs to determine if the child should be declared a dependent of the court. If declared a dependent, then the state becomes responsible for the care and control of the child. If the dependent child is removed from the home, families are ordered to engage in services that have the goal of reunifying the family. If the dependent child is not removed from the home, or is returned to the home, families are ordered to engage in family services designed to preserve and strengthen parenting and other family supports. In rare circumstances, the judge will order a bypass of reunification services, moving instead to terminate parental rights and direct the agency to seek out an alternative permanent placement for the child (e.g., adoption) (Berrick, Choi, D'Andrade, & Frame, 2008). Table 1 provides an overview of the dependency hearing process, including the purpose and content of court documents submitted by workers, burden of proof requirements, and hearing time frames.

## 2.3. Sample & data collection

A *purposive* sample of child welfare cases that featured PSU as a presenting problem was selected for review (Miles, Huberman, & Saldaña, 2013). All cases included children who were adjudicated dependents of the court and were placed in out-of-home care. Because PSU is not defined as a discrete type of child maltreatment in California Law, it is not systematically captured in CWS/CMS. To identify cases in which PSU was identified as a presenting problem, county staff queried CWS/CMS to identify all cases in which PSU services were a component of the court-ordered case plan. In order to capture recent and current practice, the query specified cases that had been active through June 2016. In County 1, a random sample of 26 unique cases identified by the query was drawn and reviewed for variation with respect to case

services and outcomes (e.g., reunification services, permanency planning, or adoption). The sample was then supplemented with four additional cases to diversify the range of services and outcomes included in the sample. County 2 drew a random sample of 32 cases from the query that reflected a comparable proportion of case types in comparison to the County 1 sample; however, given the diversity of child welfare cases, the two county samples were not exactly matched with respect to case trajectories. The original sample contained a total of 62 cases.

For the purpose of this analysis, the original sample of 62 cases was further refined to include only family reunification cases in which substance use by the primary caregiver was identified in the child welfare record as a presenting problem at the opening of the case ( $n = 35$ ). These criteria were selected to allow for some consistency in case record trajectories (which were often highly variable) across cases and made it possible to compare service and placement decisions between cases that had identified PSU as a presenting problem at case start. In addition, cases were excluded from the study if they had: 1. missing or poor documentation ( $n = 6$ ); 2. were under one year or over 10 years in length ( $n = 4$ ); 3. were outliers (e.g., medically fragile infant with severe medical needs) ( $n = 1$ ); or 4. were a duplicate of another case in the sample ( $n = 1$ ). During the course of the analysis, saturation of themes was regularly assessed; once saturation was achieved, review of additional cases was deemed unnecessary (Saldaña, 2015). Saturation occurs “when the data show redundancy and reveal no new information” (Padgett, 2017, p. 134). The final sample contained 19 child welfare cases involving children who were made dependents of the California juvenile court between 2010 and 2015. Eight cases were from County 1 and eleven cases from County 2. For the 19 cases included in this sample, there were 47 unique worker-generated court-related documents. These documents included initial petitions, jurisdiction reports, and disposition reports. All court-related documents were extracted and imported to Dedoose – a cloud-based qualitative analytic software program – for data storage and analysis.

In California, child welfare cases are opened at the child-level; therefore, each case in the sample represented one child. Length of case ranged from 371 days (1 year) to 1729 days (4.7 years). Average length of case was 871 days (2.4 years). Children in the sample ranged in age from 0 to 11 at case start and nearly half (47%) were under the age of five. Children in the sample came from diverse racial and ethnic backgrounds: 37% were identified as Latino; 26% were identified as Black; and the remaining 37% of children were identified as American Indian ( $n = 2$ ), White ( $n = 2$ ), multi-racial ( $n = 1$ ), or their race/ethnicity was not recorded ( $n = 2$ ). For each case, a primary caregiver was identified. In all but one case, the primary caregiver was identified as the mother. In the case where the father was identified as the primary caregiver, the whereabouts of the mother was unknown. The primary caregivers (hereafter referred to as *parents*), ranged in age from 20 to 43; 74% ( $n = 14$ ) were over the age of 25 at case start. Table 2 lists the key characteristics of the 19 cases included in the sample.

## 2.4. Analysis

Deductive-qualitative analysis (Gilgun, 2005) was used to examine and make meaning of the narrative data contained in each document. Following Gilgun's (2005) analytic technique, preliminary deductive codes were developed first, followed by the creation of inductive codes generated through open-coding of data. The initial deductive codebook was constructed based on: 1) the research team's knowledge about child welfare policy, practice, and populations in California; 2) review of the child welfare literature; 3) conversations with county child welfare staff about local policies and practices; and 4) an examination of federal, state, and county rules, regulations, policies, procedures, assessment tools, court report templates, and training guides. For example, the deductive codebook identified the range of California Welfare & Institutions Codes that workers could utilize in practice; various types of

**Table 1**  
Overview of child welfare dependency court documents

Document	Point-in-time of hearing	Explicit purpose of worker reports & hearings	Burden of proof	Types of information included
Initial Petition	Within 15 judicial court days of the date the detention report was filed if the child is not detained (i.e., removed from the home).  Within 2 judicial court days if the child is detained.	To present evidence that, if substantiated, would prove that the child falls within the scope of Cal. WIC § 300.  If the child is detained, the report must also demonstrate that “there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child’s physical or emotional health may be protected without [removal]” (Cal. WIC § 319).	Prima Facie	<ul style="list-style-type: none"> <li>● Cal. WIC § 300 allegations</li> <li>● Supporting evidence</li> <li>● Documentation of reasonable efforts to prevent or eliminate the need for removal of the child from the home if applicable</li> </ul>
Jurisdiction Report	Within 15 calendar days of filing if the child is detained.  Within 30 calendar days of filing if the child is not detained.	To establish jurisdiction by showing that the child comes within one or more subsections of Cal. WIC § 300.  At the hearing the court makes a factual determination if the child falls within the scope of Cal. WIC § 300.	Preponderance of Evidence	<ul style="list-style-type: none"> <li>● Cal. WIC § 300 allegations</li> <li>● Worker assessment</li> <li>● Child welfare history</li> <li>● Services offered/provided</li> <li>● Witness list</li> <li>● Case plan recommendation</li> <li>● Jurisdiction recommendation</li> </ul>
Disposition Report	Within 30 days of the jurisdiction.	To show that the child should be declared a dependent of the state and the parent/s should receive a specified service plan.  At the hearing the court may or may not adjudicate the child as a dependent of the court.	Clear & Convincing	<ul style="list-style-type: none"> <li>● Child welfare history</li> <li>● Criminal history</li> <li>● Legal relationships</li> <li>● Family law status</li> <li>● Cal. WIC § 300 allegations</li> <li>● Supporting evidence</li> <li>● Family assessment</li> <li>● Description of reasonable efforts</li> <li>● Disposition recommendation</li> </ul>

PSU, including prenatal substance use; and PSU-related risks and harms as described in assessment tool guidelines, such as driving with child while intoxicated. The deductive codebook also captured familial demographics and information known to be associated with child maltreatment, including child and parent age, parent’s history with child welfare and/or criminal justice systems, mental health, and domestic violence experiences. In addition, case characteristics such as days in care, out-of-home placement types, and service referrals were also documented.

To enhance construct validity, a team-based coding strategy was adopted (MacQueen, McLellan, Kay, & Milsten, 1998). The deductive codebook was piloted on eight cases by three members of the research team. In-depth discussions and negotiated consensus were used to resolve team-coding discrepancies and to revise the codebook language to increase both reliability and construct validity (Bradley, Curry, & Devers, 2007). After successfully piloting the codebook, each case was reviewed by at least one member of the research team. Throughout the deductive coding phase, illustrative quotes were excerpted and later reviewed by at least two members. Inductive coding methods were then used to *surface* emerging themes from excerpts across all cases (Saldaña, 2015).

### 3. Findings

#### 3.1. The parents: complex problems & histories

The parents in the sample experienced an array of complex social, behavioral, and economic challenges. In court documents, workers documented parental struggles with substance use, domestic violence, mental illness, and homelessness. While PSU was the focus of this study, the co-occurrence of substance use with one or more other social problems was the rule rather than the exception. Ninety-percent ( $n = 17$ ) of cases were co-indicated for substance use and at least one other social problem (Table 2). These social problems were further compounded by family structure, poverty, and involvement in multiple

government systems (e.g., criminal justice). Seventy-nine percent ( $n = 15$ ) of families in the case records were headed by single-mother households, placing these families at higher risk of poverty and related stressors (Waldfoegel, Craigie, & Brooks-Gunn, 2010). Many parents had difficulty meeting basic needs (e.g., securing adequate food or paying rent) and maintaining utility services (e.g., disconnected cellular phone service, unreliable transportation). Two families experienced homelessness during their cases. Examination of child welfare and criminal justice histories for each family found that 79% ( $n = 15$ ) had previously been referred to or received child welfare services and 84% ( $n = 16$ ) had prior criminal justice involvement (Table 2).

Reports indicated that parents had used a variety of licit and illicit substances. Substances used included methamphetamine (63%), marijuana (58%), alcohol (53%), heroin (10%), and opioid-based prescription medications (10%) (Table 2). Most cases (63%) noted that parents had used multiple substances, most frequently alcohol or marijuana and another type of substance (Table 2). Review also indicated parental use (and suspected misuse) of medical marijuana ( $n = 4$ ), which was legal in the state; opioid-based medications, including methadone for treatment of opioid dependence ( $n = 4$ ); and off-label use of prescribed medications (Cases 5 & 27). Parental substance use histories often dated back for years, if not decades. In a number of cases, parents reported that they began using in childhood/early adolescence (Cases 3, 5, & 14). One parent reported using as early as age 5 (Case 14). Criminal justice and child welfare histories also indicated long-standing substance use issues. Review of court reports revealed that 63% ( $n = 12$ ) of cases included documentation of arrest histories and/or convictions for substance use-related infractions; and 26% ( $n = 5$ ) of cases had previously been referred to or received prior substance use related child welfare services.

#### 3.2. The children: in need of protection

Review of court documents found that children were exposed to PSU in multiple ways. Some children ( $n = 4$ ) experienced prenatal exposure

**Table 2**  
Case characteristics.

Case	Child Age	Child Gender	Child Race	Parent Age	Parent Gender	Parental Substance Use	Prenatal Substance Exposure	Child Welfare History	Criminal Justice History	Domestic Violence	Mental Health	Homeless During Case	Detained at Case Start	Case Length (Days)	Child Welfare Outcome
1	< 1	Male	Black	43	Female	Alcohol, Marijuana, Meth. <sup>a</sup>	X <sup>b</sup>		X					371	Case Closed
3	10	Male	Latino	43	Female	Meth.		X	X	X	X			799	Permanent Placement
5	7	Female	Missing	29	Female	Heroin, Marijuana, Meth., Prescription		X	X	X	X	X		1023	Permanent Placement
6	6	Male	Latino	28	Female	Alcohol, Marijuana		X		X	X		X	1176	Case Closed
7	< 1	Male	Latino	20	Female	Marijuana, Meth.		Father Only		X	X		X	946	Case Closed
12	< 1	Male	Latino	27	Female	Meth.	X	Father Only	Father Only	X			X	424	Family Maintenance
13	5	Female	White	45	Female	Alcohol, Marijuana, Meth.		Father Only		X	X		X	1642	Case Closed
14	5	Female	Black	36	Female	Alcohol, Meth.		X	Father Only	X			X	1245	Case Closed
16	7	Male	American Indian	29	Male	Alcohol, Marijuana		X	X		X		X	958	Permanent Placement
17	3	Female	Black	25	Female	Alcohol, Marijuana		X	X		X		X	1089	Case Closed
22	8	Female	Multi-Race	37	Female	Meth.		X	X	X			X	1729	Family Maintenance
27	< 1	Male	Missing	27	Female	Marijuana, Meth., Prescription	X		X	X	X		X	750	Family Maintenance
38	4	Male	Latino	20	Female	Alcohol		X	X	X	X		X	589	Case Closed
41	5	Male	American Indian	40	Female	Marijuana, Meth.		X	X					570	Family Maintenance
43	4	Female	Black	33	Female	Alcohol		X	X	X				712	Case Closed
44	1	Female	Latino	23	Female	Alcohol, Marijuana		X	Father Only	X				570	Permanent Placement
53	5	Female	Latino	23	Female	Marijuana, Meth.		X	X	X	X			458	Permanent Placement
57	< 1	Female	White	33	Female	Heroin, Meth.	X	X	X		X			773	Case Closed
60	11	Female	Black	33	Female	Alcohol		X	X	X	X	X	X	732	Permanent Placement

<sup>a</sup> Meth. indicates methamphetamine.

<sup>b</sup> X equals yes or indicated.

to substances (Cases 1, 12, 27 & 57). Often these prenatal exposures triggered initial child welfare investigations and led to subsequent court proceedings. In their reports, workers noted how children were adversely impacted by prenatal exposure. Reports indicated that prenatal exposure had led to premature births (Case 1), neonatal drug withdrawal (Cases 27 & 57), and infants' prolonged hospitalization (Case 27). In addition to prenatal exposure, children were witness to the purchase and use of substances (e.g., drug paraphernalia) by their parents (Cases 5, 16 & 3). Workers argued that children, even if they were not directly exposed to parental use of substances, were often impacted by it. In their reports, workers noted that parents were not able to meet the basic care, protection, and supervision needs of their children when using substances. Reports noted that young children were found in the care of unresponsive parents (i.e., parent was inebriated) (Case 38) or in cars with parents who had been driving under the influence (DUI) (Case 44). Children were left with unsafe adults while parents used (Case 5) or were left without supervision after their parent was arrested for a substance-related offense (Case 41). Moreover, reports described children having to care for themselves when their parents were using or impaired (Cases 14 & 60) and at times being frightened that their parents would die from use of substances (Cases 5 & 6).

### 3.3. The dependency process: making the case

How workers made their cases to the court – the allegations they brought, the evidence they presented, and the order in which they presented it – was shaped by state and local policy and practice guidelines. Language from section 300 of the California Welfare and Institutions Code, which outlines the statutory basis for juvenile dependency, was integrated into all court documents (Table 1). Common forms generated by the California courts (e.g., California Juvenile Dependency Petition, JV-100) were used by workers in both counties to outline their initial dependency petitions to the courts. These forms required workers to select applicable maltreatment statutes and corresponding maltreatment qualifiers and prompted workers to describe how parental acts and/or omissions had resulted in specific types of maltreatment in a “concise statement of facts” (see California Courts, 2018).

Jurisdiction and disposition report templates generated by county agencies guided workers in determining the types of evidence to present and the order of presentation. These templates directed workers to include information about parents' child welfare and criminal justice histories, maltreatment risk factors, existing safety threats, and circumstances that had brought families to the attention of the child welfare agencies. While templates varied between the two counties, the information and types of evidence they required were largely the same (Table 1). Variance across templates reflected differences in county practices – in County 1, disposition and jurisdiction hearings typically occurred at different times and thus had separate report templates, while County 2 typically combined the two hearings and as a result had one template for both.

As cases advanced from initial petition to disposition, proof thresholds escalated, increasing from *prima facie evidence* at initial petition or detention (i.e., evidence that is supportive of a judgment until the presentation of contradictory evidence) to *preponderance of evidence* at jurisdiction (i.e., evidence that “is more than a 50% chance of being true” (Allen, 2014, p. 200)), and then to *clear and convincing* evidence at disposition (i.e., evidence that is substantially more likely to be true than not) (Allen, 2014) (Table 1). To meet these evidentiary thresholds, at each stage the reports of workers became increasingly detailed and incorporated additional evidence of both risk and harm, including more information about the parental acts and omissions that brought the child to the attention of the agency. Risk and safety assessment tools, such as Structured Decision Making, were not directly referenced in the reports; however, review of reports found that they

integrated risk and safety assessment language, suggesting that assessment tools in addition to state and local templates might have guided how workers framed problems and/or maltreatment in their written reports. As cases progressed from petition to disposition, reports included more detailed assessments of family functioning by workers and allied professionals; descriptions of agency efforts to maintain the child in the home (i.e., reasonable efforts) or to provide the family with needed services to enable the child's return; and worker disposition recommendations to the court (i.e., request that the court establish jurisdiction and order services).

As previously noted, child welfare reports are considered admissible hearsay under California law (Cal. W&I Code § 355 (b)). In the absence of written or verbal testimony from family members or collateral contacts, the accounting of facts that workers submitted served as evidence of maltreatment. In their reports, workers offered their own observations and assessments, but also reported what had been told to them, often noting *the parent reported*, *the child disclosed*, or *if called to testify the expert would say*. To make their case or support their accounting of the facts, workers would often use the statement of one witness (e.g., family members, professionals, or collateral contacts) to corroborate statements made by other witnesses. In their reports, workers also sought to convince the court that some statements were more credible than others. Witnesses whose reports aligned with the case being made were characterized as credible, while witnesses whose reports did not align with the case being made were characterized as unreliable. For example, in Case 14, the worker noted that an older child witness – who had confirmed her mother was using substances – was “well-groomed, articulate, and ... a reliable historian,” while the child's younger sibling – who denied his mother was using – was described as having “flat and unconvincing” responses. By emphasizing affirming witness statements and dismissing contradictory statements, workers sought to convince the court that their accounting of the facts was true and that state intervention was warranted.

#### 3.3.1. Establishing a nexus between PSU and maltreatment

In order for children to be declared dependents of the juvenile court, workers had to establish a nexus between PSU and child maltreatment (Cal. W&I Code § 300; *Contra Costa County Department of Social Services v. Catherine P.*, 1991). To establish this nexus, workers drew on multiple sources of evidence to document PSU and its adverse effects on children. Evidence of PSU was gathered from professionals (e.g., social service, education, medical, police agencies, and drug-testing centers), children, family, friends, and parents themselves. Workers used findings from prior child welfare cases, arrest histories, and criminal convictions to document problematic usage. Toxicology results – from prior proceedings and on-demand testing requested during the case investigation – were used to document chronicity, types of substances used, frequency of use, and dependence. Missed on-demand tests were treated as “dirty” and used by workers as evidence of continued use.

Workers communicated problematic PSU to the court by using terms such as *substance abuse* or *dependence* and/or by highlighting how PSU had led to criminal and/or prior child welfare involvement, prenatal drug exposure, or the impaired ability of parents to meet the needs or daily obligations related to child-rearing. In addition, workers often highlighted chronic substance use and frequency of use as indicators of problematic use, noting past treatment failures and episodes of relapse. Despite using diagnostic terms, such as *substance abuse* or *dependence*, in no cases did workers describe parents as having a diagnosable substance use disorder or explicitly reference diagnostic criteria for Substance Use Disorder as described in the DSM-5 (American Psychiatric Association, 2013) or other diagnostic tools.

#### 3.3.2. Parental substance use-related acts & omissions as neglect

While parents could be charged with a range of maltreatment types (e.g., physical abuse, emotional abuse), in *all* cases workers argued that PSU-related acts and omissions constituted neglect as defined under

California Welfare and Institution Code section 300, subsection b (printed below), thus establishing a nexus between PSU and neglect and leading to the rationale for court intervention. California Welfare and Institution Code section 300, subsection b, is the only subsection of the code that explicitly addresses substance use. While the code does not equate PSU with neglect, the code does allow workers to construe PSU-related acts and omissions as neglect. In their reports, workers argued that because of PSU-related acts and omissions parents had 1) failed to protect their children from harm or substantial risk of harm and/or 2) failed to adequately meet the basic needs of their children, and therefore their children came within the jurisdiction of the court under Welfare and Institution Code section 300, subsection b:

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

**3.3.2.1. Failure to protect.** Most frequently, workers linked PSU to parental *failure to protect*. In their reports, workers described how parents had failed to secure adequate prenatal care due to PSU, exposed children to substances in utero, and/or harmed or placed children at substantial risk of harm by directly exposing them to substances and/or substance use-related activities (e.g., criminal activity, drug paraphernalia).

A number of cases were triggered by prenatal exposure to parental substance use (Cases 1, 12, 27, & 57). In reports, evidence of prenatal exposure was coupled with evidence of adverse medical outcomes for children (i.e., withdrawal symptoms, prolonged hospitalization) and/or other maltreatment risk factors, including parents' prior child welfare or criminal justice involvement, to make the case that parents had failed to protect their children from harm or had placed them at substantial risk of harm. For example, in Case 57, the worker noted that the parent had "over 15 charges of possession of a controlled substance" and that the parent's last drug-related arrest occurred when she "was pregnant with the child." When describing the risk posed to the child, the worker noted, "the mother's history of substance abuse, coupled with criminal behavior, interferes with her ability to care for the infant."

Some cases focused on direct failures to protect (i.e., direct exposures to substances) (1, 27, & 57). For example, in Case 27, the worker noted, "the infant was born addicted to methadone...the infant experienced withdrawal symptoms including jitteriness, apnea episodes, and increased stiffness and tone and he remained at hospital for 18 days while stabilized." In another case, Case 57, the worker noted, "In addition to being exposed to heroin, the infant was exposed to methadone during the pregnancy and required morphine [to treat withdrawal symptoms] following the delivery." In some cases, workers argued that PSU during pregnancy was an indicator of substantial risk of harm. For example, in Case 12, the worker noted, "The mother's substance abuse, including methamphetamines and marijuana, impacts her judgment in parenting and places the infant child at a substantial risk of serious physical harm. The mother used methamphetamine two days prior to giving birth." Overall, workers argued that prenatal exposures constituted a failure of protection in that prenatal exposures resulted in serious physical harm and/or served as indicators of substantial risk of harm. As one worker noted, "The mother's substance abuse during pregnancy placed the developing fetus in danger and now places the new born infant at substantial risk" (Case 57).

Workers described children's exposure to PSU in various ways in addition to prenatal exposure. In their reports, workers argued that

these exposures, or exposure to substance use-related activities, constituted a failure to protect on the part of the parents. By drawing upon the reports of allied professionals, family members, and the children themselves, workers described how parents had failed to protect their children by exposing them to harmful chemicals, drug-paraphernalia, and dangerous persons and places as a result of their substance use. In addition, workers highlighted how these exposures physically or emotionally harmed children or posed a substantial risk of harm. For example, in Case 13, the worker noted that the child's father "has a drug addiction and manufactures methamphetamine at his home where she [the mother] allows the child to be cared for." In another case, Case 5, the worker noted, that "the mother's drug use significantly impairs her judgment in that she leaves her drug paraphernalia, which include hypodermic needles in the reach of her young daughter." In both cases, the workers did not explicitly describe *how* these exposures adversely impacted children. Instead, they simply noted that the parents failed to protect their children from direct exposure to substances and substance-related toxins (i.e., the mother *allowed* the child to be cared for in a dangerous environment, the mother's judgment was impaired because she left drug paraphernalia within the child's reach and doing so created a substantial risk of harm).

In other reports, workers conveyed less concern about the child's exposure and more concern for how PSU threatened child safety by affecting parent behavior. For example, in Case 44, the worker noted how "the mother drank beer and whiskey before driving with the children; her car skidded across the road, spun around, and then was facing the wrong way." The parent was subsequently arrested for a DUI and the child placed in protective custody. In this case, the worker used evidence derived from police reports to establish that the parent drove with her children while intoxicated, placing them all at substantial risk of harm.

The workers also highlighted how parents had failed to protect children by exposing them to substance use-related criminal activities and people known to engage in crime. For example, in Case 41, the worker noted that the parent took her five-year-old son with her to purchase methamphetamine. "The mother was arrested for soliciting drugs and released.... The mother's substance abuse, coupled with including her son directly in a drug transaction, places the five-year-old child at a substantial risk of serious physical harm." In other reports workers noted the exposure of children to "known drug users" (Case 5) or "gang members and other drug users" (Case 16) in an effort to highlight substance use-related parental actions that placed children at risk.

Finally, in their reports, workers also noted how parents had failed to protect children from emotional harm by exposing children to their substance use. For example, in Case 5, after describing how the child had watched her parent administer heroin on multiple occasions (the child described how her mother would "cook up and smoke heroin," explaining, "she always does them [drugs] in front of me with a needle in the car and woods") the worker noted that the child reported, "I don't feel happy because she [the mother] does drugs. I am scared when she uses because I don't like needles. I feel sad, angry because I tell her to stop but she doesn't... my mom told me if she does it [drugs] fast she will die."

**3.3.2.2. Failure to provide.** Workers also linked PSU to parental *failure to provide*. In their reports, workers described how, due to substance use, parents had failed to meet their children's basic needs. In their reports, workers linked PSU to misuse of family resources, inadequate supervision, and lack of basic care. For example, in Case 16, the worker described how the child, age seven, complained of hunger pains and that his poor nutrition was noted by the school. When asked about food insecurity, the child reported that "when he was living with his father, he didn't have food for five days, because his father spent the grocery money on drugs." Here the worker linked the parent's substance use to his failure to meet his son's basic nutritional needs. In another case,

Case 14, the worker noted that the parent, who is described in court reports as having a “chronic substance abuse problem,” “sells her food stamps and sometimes runs out of food for the children.” While the worker does not explicitly state that the parent sells her food stamps to buy alcohol or other drugs, the juxtaposition of “chronic substance abuse problem” with the descriptor “sells her food stamps” in the report suggested a correlation between the parent’s use and her ability to provide adequate child care.

In some cases, workers documented how PSU-related impairment prevented parents from providing or arranging for adequate care and supervision. Children reported that they were left unattended and often had to care for themselves or their siblings. For example, in Case 14, the worker noted that “the mother admits to excessive drinking, including drinking all day...neighbors have witnessed the children, even the youngest wandering through the neighborhood unsupervised daily.” When asked about their daily care, the eldest child, a teenager, described how she had to regularly supervise her one-year old sibling. In this case, the worker linked the parent’s “excessive” use of alcohol to a basic lack of care. The eldest was left to care for the younger siblings, but this care is portrayed as inadequate, as evidenced by the worker’s description of “even the youngest wandering through the neighborhood.”

In other cases, workers explicitly noted how PSU adversely impacted the ability of parents to provide adequate care and supervision. For example, in Case 38, the worker noted, “The child’s mother has a substance abuse problem, which impairs her ability to provide adequate care and supervision for the child.” Documenting the initial meeting with the child, the worker noted that the child, who was found with his inebriated parent on a roadside, “appeared disheveled and poorly cared for,” was “observed to have a significant build-up of dirt beneath his fingernails,” and “appeared to not have been bathed for several days.” Citing a police report, the worker noted that the parent was found largely unresponsive and unable to protect her child or to respond to his needs.

#### 4. Discussion & implications

Parents who came to the attention of the child welfare agencies under study lived complex lives. Their substance use represented one problem among many – including poverty, domestic violence, mental illness, and homelessness – which affected their ability to protect and provide for their children. In most cases, concerns about PSU and its impact on children brought these families to the attention of the child welfare agencies. Charged with determining if children were in need of court protection, workers investigated and documented the ways in which PSU adversely impacted the safety of children or placed them at substantial risk of harm.

Across counties and cases, workers framed PSU as harmful to children in similar ways. In all cases, workers construed PSU-related acts and omissions as neglect, arguing that, as a result of PSU, parents had 1) failed to protect their children by directly exposing them to substances and/or substance-use related activities (e.g., exposure to toxins, paraphernalia, and criminal activity) and/or 2) failed to adequately provide for their children (e.g., inadequate food, care, and supervision). Workers argued that these acts and omissions constituted neglect under California law, per Welfare and Institutions Code, section 300, subsection b, and asked that children be adjudicated as dependents of the court.

In addition, across all counties and cases, workers situated this neglect within a larger framework of risk and harm. In all reports, workers noted the circumstances that had brought the families to the attention of the agencies; known risk factors, such as prior child welfare or criminal justice involvement; and ongoing threats to child safety, such as ongoing substance use in the home. These framings mirrored state statutes and state and local policy-practice guidelines, suggesting that formal policies and policy-practice documents influence the arguments

workers make, the types of evidence they present, and how they present it. Moreover, while workers did not specifically reference formalized assessment tools in their reports, they often integrated risk and safety assessment language into their court reports, suggesting that assessment tools may also shape how workers construe risk and harm and make their case to the court.

Conversely, while workers similarly framed PSU-related acts and omissions as harmful, how workers communicated this harm to the court – the completeness of the evidence presented as well as the logic outlined in their arguments for court intervention – varied between workers, both between and within counties. In some reports, workers explicitly outlined the PSU-maltreatment nexus by noting how PSU-related acts and omissions had adversely affected children, while in other reports, the evidence of PSU, maltreatment, and risk were presented sequentially, but not explicitly linked. These findings suggest that – while formal policies and policy-practice documents may influence how workers frame maltreatment, the types of evidence they present, and the risk and safety factors they include in their court reports – existing policies and policy-practice documents have less influence on how workers use or construct the information they have gathered to make their case to the court.

Findings from this study highlight in part what Berrick, Peckover, Pösö, and Skivenes, (2015) refer to as the *formalized framework for decision making* in child welfare in the United States (i.e., a system of “formalized rules and procedures that govern and inform organizational activities” (p. 367)). These frameworks may limit worker discretion, reduce bias, promote more uniform decision making, increase child safety, and enhance communication across child welfare workers, agencies, and courts (Cuccaro-Alamin et al., 2017). However, in their rigidity, these formalized frameworks may also constrain reflective or family-centered practice and undermine the ability of workers to respond to the unique and complex needs of diverse child welfare populations (Lipsky, 2010; Ruch, 2005). Moreover, these formalized frameworks focus more on family risk and safety factors, and less on family strengths and resilience (Berrick, Peckover, Pösö, & Skivenes, 2015; Cuccaro-Alamin et al., 2017). As a consequence, court reports tend to capture problematic family events and unsafe parenting behaviors, but may not adequately capture typical or daily parenting and may obscure parenting capacities. While sufficient evidence of abuse or neglect must be provided to the court for a child to be adjudicated as a dependent, should not be deemed to require the exclusion or minimization of family strengths and capacities. Given the important role that formal policies and policy-practice documents play in shaping court documentation, policymakers and administrators should consider revising state and local guidelines and templates to support reflective and family-centered assessments that emphasize both risk and safety factors and family strengths. Such revisions may help to improve both case planning and judicial decision making, by providing the courts with more complete information about family needs and capacities.

While formalized frameworks can constrain practice, they can also enhance practice by attuning workers to important elements of child welfare service and documentation. Variation in court report quality (i.e., completeness of evidence and logic of argumentation) suggests that state and local policies, guidelines, and templates could be improved to enrich worker documentation and argumentation. In addition, guidelines and templates could instruct workers on how to formally integrate findings from standardized assessment tools into court documentation. Integration and explanation of assessment tool findings and recommendations can help dependency judges to better situate child maltreatment within a broader context of risk and harm and to make more informed decisions about custody and care. In addition, it may be beneficial to provide training for workers related to developing coherent, complete, and meaningful arguments, in order to strengthen critical thinking and to improve how workers make their case (Greeno, Bright, & Rozeff, 2013).

This exploratory study furthers our understanding of how workers

communicate their concerns to the court and use existing policy-practice statutes and guidelines to frame parental acts and omissions as abuse or neglect. The findings, however, are affected by several limitations related to the sample and the data source. First, this study examines the documentation practices of two county child welfare agencies; and findings may not be generalizable to other jurisdictions. Second, all of the cases included in the study received court-ordered family reunification services, suggesting that the cases reviewed may have been perceived as more severe, or were in fact more severe, than other cases that came to the attention of these agencies but did not receive court ordered services. Third, the findings from this study do not tell us about how workers respond to or construe allegations of PSU-related child maltreatment in general. It may be that most allegations of PSU-related maltreatment are screened out at time of referral or that workers construe PSU-related acts and omissions differently when court-supervision is deemed unnecessary. Moreover, findings from this study do not consider how race, class, and use of specific substances impact who is referred to the child welfare system or which referrals are most likely promoted to case status. Research examining how alleged PSU-related acts and omissions are treated at time of referral and during investigation is needed. Fourth, court reports only tell a partial story of how agencies and their workers frame parental acts and omission as harmful. In practice, reports are submitted to the court for review and during dependency hearings may be supplemented by worker testimony that is not reflected in this analysis. Fifth, worker documentation may not fully reflect practice or capture workers' assessments in their entirety. Discretionary acts (see Lipsky, 2010) – what workers leave out of their reports and why – are difficult if not impossible to ascertain from document-based research alone. Most importantly, all information contained in the court report is filtered through the worker, so alternative accounts or perspectives on PSU and its impact on children may not be included. Consequently, studies that gather accounts directly from workers, judges, parents, and children are needed to broaden and deepen our understanding of how PSU affects both children and overall decision making in child welfare and how formalized frameworks shape and inform daily practice.

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