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Child Custody

The rights of medical marijuana patients in the removal, dependency, and child custody contexts are still unresolved. Defending your rights can be very difficult, especially because many people in the system, including Child Protective Services (CPS) workers, attorneys, and judges can be biased against parents who are medical marijuana patients.

The best defense is to be very intentional and responsible about your medical marijuana use and cultivation with regards your children. This will help you avoid unwanted attention from the authorities, and also provide good defenses should you find yourself dealing with CPS or in Family Court. Here are some best practices:

- When residing in a house with a child, possess or cultivate as little as your condition allows.
- Keep all medical marijuana out of plain sight, ideally in clearly labeled medicinal jars and with other prescription medications, in a place that children cannot access. If you cultivate outdoors, surround your garden surrounded with an impermeable fence that will deny access to children. If you cultivate indoors, do not include lamps or other fire hazards, and secure the garden in a locked room or devise another way to deny access to children.

- If you cook with medical marijuana, clearly label any resultant food products as medicinal, and keep them far away from any children's food.
- Use discretion when medicating, and do not do so when your child is present. Specifically, think about medicating when you have several hours open before any interaction with the child or after he/she is already in bed.
- If your child can understand, specifically explain to her/him that the marijuana is your medicine and that it is not for her/him (much like any other prescription medication). Furthermore, let him/her know that your patient status and medicine is a private matter, just like any other medical condition, and that he/she should not volunteer information about it to anyone.
- In a dual-patient-parent household, try to work out a routine with your partner where one parent is always unmedicated in case any unexpected issues arise.
- Never drive with your children in the car after medicating.
- Consider keeping notes for yourself regarding the precautions you have taken, so that you are prepared to inform CPS or the Family Court judge about them if asked.
- Note: You have no reason to inform CPS or a Family Court judge that you are a medical marijuana patient, unless directly asked about marijuana. Do not volunteer such information without cause to do so.

CPS

If someone (police, neighbor, child's teacher) makes a report about the safety of your child to CPS, they will send a social worker to investigate and decide if the court should get involved. CPS may want to investigate your home, and may remove your children. Once in Family Court, CPS

case workers may want you to adhere to a case plan involving drug therapy or ongoing drug tests in order to regain custody of their children. They could seek to terminate your parental rights entirely, sending your children to relatives or making them dependants of the court.

Patient Anecdote: In one positive case, cops came to the house of the patient, Mr. F. and found 9 immature plants, and called CPS, who removed an 11-year-old and a 13-year-old. CPS workers then came to the house to investigate the claim that the medical marijuana provided an unsafe environment for the children. Mr. F showed them his cultivation site, which was fenced in and had fewer plants than was suggested by the local guidelines. He was incredibly confident about the precautions he had taken, and invited them to touch the plants. When asked if he felt that the plants created an unsafe environment, he responded that he was confident in their safety. CPS decided to return his children to him, and cited his tour and the fact that both of his children had full knowledge of his medicine as the reasons they felt confident in doing so.



If a CPS worker visits or threatens to remove your child, you need to make a difficult decision about how accommodating to be. Since they do have the power to take away your child, it can be risky to take an adversarial position. Still, you may want to consult a lawyer before speaking with them. Be polite and remember, the CPS case worker and you both want what's best for your children, despite disagreements about what that entails. Contact ASA's Legal Services Coordinator to explain the situation.

If CPS has removed your child, they have 2 work days to file a petition with the court (See [CourtInfo.CA.gov's page on Information for Parents about Abuse & Neglect \(http://www.courts.ca.gov/selfhelp-childabuse.htm\)](http://www.courtinfo.ca.gov/selfhelp-childabuse.htm) for more info). At your first hearing, the judge will decide whether or not to return your child to you until the next court hearing, and give you a court date for your trial. At your trial, the judge will decide if the statements in the petition are true. The social worker will submit a report based on their investigation, and a recommendation of where your child should live for the next 6 months (until the next court hearing). You and the social worker will make a case plan and present it to the court. The court will probably order that all or part of the case plan be carried out. The case plan may include:

- Parenting classes
- Individual counseling
- Family counseling
- Alcohol or drug abuse treatment
- Special programs and classes
- Visits with your child

Have your lawyer raise your condition and medical marijuana issues directly to oppose any discriminatory elements of the case plan (AA meetings, unnecessary drug therapy courses, mandatory drug tests), even while you complete them.

You can also discuss with your attorney various compromise proposals that demonstrate your fitness as a parent while still allowing you to use your medicine, such as pledging to the court to refrain from medicating for 6 hours before seeing the child or children, or offering to try to test under a certain nanogram level that is set high enough to allow the use of some marijuana, but low enough to discourage lesser usage. You should also consider trying to solicit letters from people who would

have personal knowledge (friends, neighbors, colleagues, teachers, etc.) attesting to your caring nature, thoughtful parenting, and strong bond with your children.

If the judge decides that the statements in the petition are true, they will probably make your child a "dependent child of the court." That means you will have only limited control over your child and your child will remain out of your care. Tell the social worker or your lawyer about any relatives the child can stay with until the next hearing (or longer). If the judge does not allow your child to be returned to you, it is usually better for the child to stay with relatives.

Additional Info:

- <http://www.courts.ca.gov/selfhelp-childabuse.htm>
(<http://www.courts.ca.gov/selfhelp-childabuse.htm>)
- <http://www.courts.ca.gov/programs-cfcc.htm>
(<http://www.courts.ca.gov/programs-cfcc.htm>)

Lawyers

You have the right to have a lawyer represent you in court for Dependency hearings and you should get one. A judge should postpone the first court hearing for a day so you can find a lawyer. If you lack money to hire a lawyer, you can ask the court to assign one to your case for free or reduced cost. Here are some additional resources for finding low-cost legal help:

- <http://www.courtinfo.ca.gov/selfhelp/lowcost/help.htm>
(<http://www.courtinfo.ca.gov/selfhelp/lowcost/help.htm>)
- <http://lawhelpca.org/find-legal-help> (<http://lawhelpca.org/find-legal-help>)

If your lawyer is unfamiliar with medical marijuana law and its relationship with family law, contact ASA's Legal Services Coordinator for help. If they are unfamiliar with medical marijuana in general, explain your condition and how marijuana relieves your symptoms and improves your quality of life. Be specific. ASA's educational booklets (asa condition based booklets) on various conditions are often very persuasive.

Additionally, you should definitely ask your attorney to do a thorough search for caselaw regarding child custody and medical marijuana. Here are several Court of Appeal cases that are unpublished (and therefore instructive, but not binding legal precedent) to point your attorney to:

- *In re: Michelle M. et al* (<http://american-safe-access.s3.amazonaws.com/documents/InreMichelleM.pdf>) 2007 WL 1041372 (Cal. App. 2 Dist.)
- *In re Alysha A.* (1996) 51 Cal. App. 4th 393, 397
- *In re K. P. et al.* 2008 WL 5063857 (Cal. App. 5 Dist.)
- *G.R. v. Superior Court* 2008 WL 2445215 (Cal. App. 1 Dist.)
- *In re D.L.* 2008 WL 762011 (Cal. App. 1 Dist.)
- *In re Turina J.* 2006 WL 1545534 (Cal. App. 5 Dist.)
- *In re Sean B.* 2006 WL 1101626 (Cal. App. 3 Dist.)

Parental Custody Battles

If you are in a custody battle, the other parent could use your patient status against you. Just like when dealing with CPS, you could find yourself in court with a discriminatory judge. All of the above tips apply in this situation as well. Discuss the other parent's current or past drug use with your attorney. Use of marijuana, either medically or recreationally, or illegal or prescription drugs may be relevant to bring up in court.

Patient Anecdote: Mr. C was a medical marijuana patient involved in a child custody dispute in a divorce, and his ex-wife requested that he be tested for marijuana. Mr. C presented his State ID Card and the judge lauded his honesty and deemed his medical marijuana patient status to be irrelevant in the case.



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