

Child Welfare, Child Custody & Colorado's Amendment 64: Parenting as a Fundamental Right

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Colorado is a key player in the nation's fastest-growing industry, the groundbreaking world of legal marijuana. Amendment 64 has resulted in a tax windfall for state and local governments, greater funding for a myriad of priorities such as substance abuse prevention in schools, school construction, and education, freeing up resources formerly used to prosecute petty offenses, and even a probable drop in opiate use and fatal overdose.

Yet one particular group of Coloradans faces extra barriers hindering their participation in the emerging retail marijuana industry: parents and pregnant women. Because the existing child welfare and family court systems continue to treat the (now legal) use of cannabis as a factor demonstrating parental unfitness, cannabis consumers who happen to be parents are second-class citizens in Colorado. While it's otherwise completely legal for adults over the age of 21 to purchase and consume cannabis, the same conduct by an adult who parents or becomes pregnant is subject to special surveillance. This can take several forms, including:

- A health care provider filing a child protective report against a cannabis user who delivers a newborn testing positive for THC
- A family court restricting custody and/or visitation based on the alleged risks of cultivation and/or consumption of marijuana by a parent
- A CPS investigation of a parent who moved to Colorado in order to access life-saving cannabis treatments for her child's severe medical condition (e.g., epilepsy, Dravet's syndrome)
- A CPS investigation of a parent who is also a legal medical marijuana patient or a retail user

Although advocates like Family Law & Cannabis Alliance (FLCA) are attempting to track these and similar cases in Colorado and elsewhere, no official data collection efforts are in place to capture the full scope of the problem. Anecdotally, 2014 (the first year of legal marijuana in Colorado) saw an elevated number of both child custody and child welfare cases brought solely on the basis of parental cannabis use.

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As a long-standing medical marijuana state and one of the first two states to legalize retail use, Colorado has the opportunity to lead the way in ensuring that residents who cultivate, purchase, consume or administer cannabis legally retain the fundamental right to parent their children. The use of marijuana does not lead to poor parenting; plenty of good parents consume cannabis and are responsible caretakers. There is no research-based evidence to support the assertion that the use of cannabis is associated with higher rates of child abuse or neglect, nor is there any evidence of a risk posed by licit cultivation and/or consumption in a home where a child resides. In fact, cannabis is safer than alcohol and prescription painkillers, both legal substances whose moderate use does not, in general, trigger allegations of parental unfitness.

These matters should not be left to the discretion of individual judges and child welfare caseworkers, who may simply impose their personal opinions regarding the advisability of cannabis use, leading to uneven applications of the law across the state. To close this loophole and ensure that parents and pregnant women enjoy their equal and fundamental rights under Colorado law, the legislature should enact the broadest language possible to protect the rights of parents and pregnant women who are legal cannabis consumers. It should do so while recognizing that child protection authorities must retain their ability to investigate and assist in cases involving actual child abuse or parental unfitness, unrelated to the use of cannabis.

Family Law & Cannabis Alliance (FLCA) offers best practice model language:

- **Medical:** *Neither the presence of cannabinoid components or metabolites in a person's bodily fluids, nor conduct related to the medical use of cannabis by a custodial or noncustodial parent, grandparent, pregnant woman, legal guardian, or other person charged with the well-being of a child, shall form the sole or primary basis for any action or proceeding by a child welfare agency or in a family or juvenile court. This subsection shall apply only to conduct in compliance with this chapter.*
- **Legal:** *Neither the presence of cannabinoid components or metabolites in a person's bodily fluids, nor conduct permitted under this chapter related to the possession, use, transfer, cultivation, manufacture, or sale of cannabis or cannabis products by a custodial or noncustodial parent, grandparent, pregnant woman, legal guardian, or other person charged with the well-being of a child, shall form the sole or primary basis for any action or proceeding by a child welfare agency or in a family or juvenile court.*