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## SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair  
2021 - 2022 Regular

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**Bill No:** AB 788  
**Author:** Calderon  
**Version:** March 30, 2021  
**Urgency:** No  
**Consultant:** Marisa Shea

**Hearing Date:** June 8, 2021  
**Fiscal:** No

**Subject:** Juveniles: reunification

### SUMMARY

This bill provides for a court to order reunification services for a parent of a dependent child who has a history of extensive, abusive, and chronic use of drugs or alcohol, but who has only passively resisted prior court-ordered treatment.

### ABSTRACT

#### Existing Law:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or who have been abused or neglected, as specified. (*WIC 202*)
- 2) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (*WIC 300 et seq.*)
- 3) Requires a social worker to immediately investigate the circumstance of the child and the facts surrounding the child being taken into custody and attempt to maintain the child with the child's family through the provision of services, when a child is taken into temporary custody, as provided, and brought to the social worker. (*WIC 309(a)*)
- 4) Requires, the court if at the initial hearing the juvenile court orders a child removed from their parent due to abuse or neglect, to order that child welfare reunification services be provided to the family as soon as possible in order to reunify the child with their family, if appropriate. (*WIC 319(e)*)
- 5) Requires the court, as the dispositional hearing, to order a social worker to provide child welfare services to a child who has been removed from their parents' custody and to the parents in order to support the goal of reunification, for a specified time period, except under certain circumstances. Provides that children and families in the child welfare

system should typically receive a full six months of reunification services if the child is under three years of age, and 12 months if the child is over three years of age, but that may be extended up to 18 or 24 months, as provided. (*WIC 361.5(a)*)

- 6) Provides that reunification services for parents or guardians of dependent children need not be provided if the court finds, by clear and convincing evidence, that specified conditions exist, including that the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment, as provided, on at least two prior occasions, even though the programs identified were available and accessible. (*WIC 361.5(b)*)
- 7) Prevents a court from ordering reunification services for a parent in specified situations, including the situations set forth in 6) above, unless the court finds, by clear and convincing evidence, that reunification is in the child's best interest. (*WIC 361.5(c)*)

**This Bill:**

- 1) Provides that, for the purposes of the provision in existing law that denies reunification services to a parent or guardian of a dependent child who has a history of extensive, abuse, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention, "resisted" does not include "passive resistance."

**FISCAL IMPACT**

As currently in print this bill is was not keyed fiscal by the Legislative Counsel.

**BACKGROUND AND DISCUSSION****Purpose of the Bill:**

Per the author, "according to a 2018 study, nearly 8% of Californians met the criteria for a substance use disorder. Relapses are a regular occurrence in rehabilitation journeys, with a study finding that the relapse rate for those with a substance use disorder is similar to the rate found across other chronic illnesses, such as hypertension or asthma. Under current law, however, if a drug addicted parent "resisted" treatment, family reunification services can be terminated, which inevitably leads to a child being permanently removed from the care of their parents. Some courts have embraced an interpretation of "resisted" to include a relapse. A recent California appellate court decision has clarified that relapse is not the same as actively resisting drug treatment. Assembly Bill 788 would clarify that "resisted" does not include passive resistance, such as a relapse, and would prevent parents who have experienced a relapse from becoming disqualified for family reunification services."

*Child Welfare Services (CWS) and Reunification*

The CWS system is an essential component of the state's safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child's well-being and avoid court involvement, or a child is removed from the home and placed into foster care. In 2020, the state's child welfare agencies received 391,464 reports of abuse or neglect. Of these, 59,971 reports contained allegations that were substantiated and 22,562 children were removed from their homes and placed into foster care via the CWS system. As of October 1, 2020, there were 60,045 children in California's CWS system.

In instances where the county child welfare department becomes involved with a family but determines a child does not need to be removed, but rather may remain safely in their home through the provision of services, approximately 12 months of services are provided. This is considered family preservation services and the child does not come under the jurisdiction of the juvenile dependency court during this time.

If it is determined that a child cannot safely remain in the home, even with family preservation and support services, the child comes under the jurisdiction of the county's juvenile dependency court while the family is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. It is the state's goal to reunify a foster child or youth with their biological family whenever possible.

Generally, if a child cannot be safely returned home after the time allotted for reunification services ends, the court terminates the parental rights of the child's parents. The child's case plan then focuses on permanency services, in an effort to connect the child to a permanent placement through adoption or guardianship. If an adoption or guardianship is not established, a child may remain in long-term foster care. The child is always supposed to be placed in the most family like setting, with short-term residential treatment programs used only as necessary to provide intensive services. A child remains eligible for services for the length of their time in the child welfare system, time limits relate to the provision of services to the child's parents.

*Reunification Services*

When a child enters the CWS system, parents are generally provided services in order to safely reunify with their children due to the goal of the dependency system being, whenever possible, to reunite children with their families. These services are time limited, and the length of time for which services are provided depends on the child's age at the time of removal. Reunification services are typically offered for six to 12 months with the ability to extend services to 18 or 24 months. These services are generally geared towards addressing the circumstances that caused the child to be removed from the parents in the first place, such as drug or alcohol treatment, anger management, counseling and other mental health services, parenting classes, or other services that would allow the child to be safely returned to the home.

Additionally, reunification services often include services and case planning to assist with reunification, such as mental health treatment for the child and parents, and visitation between

the parent and child. As parents make progress on their treatment and move towards the goal of reunification, visitation may become more frequent and extend to overnight or weekend visits.

In some circumstances, it is determined that there will be no safe way to reunify the child with a parent or guardian. In these instances, existing law allows the court to not provide reunification services at all, and parental rights are terminated without the opportunity for reunification. This occurs when the court finds, by clear and convincing evidence, that one of 17 specific situations exist that would not allow a child to be safely reunited with their families. These circumstances include, but are not limited to: when the whereabouts of the parent are unknown; when the parent is suffering from a mental disability, as provided, that renders the parent incapable of utilizing those services; when the parent caused the death of another child through abuse or neglect; after a finding of severe sexual abuse; and, of relevance for this bill, when a parent with a history of drug or alcohol abuse has failed to comply with a required treatment program.

However, even in cases where one of the 17 instances exists, a court has the discretion to choose to grant reunification services to the parent if the court determines that it is appropriate. In most cases, the court may only utilize this discretion if the court finds that reunification is in the child's best interest.

By terminating parental rights without first requiring the reunification services for a six or twelve month period, the timeframe for finding an alternative permanency plan for the child is sped up. This causes the child to more quickly enter the adoption, tribal customary adoption, guardianship, or long-term foster care process more quickly but severs the relationship between the child and their biological parents.

#### *Reunification Exemption for Addiction Issues*

Since this bill specifically deals with the denial of reunification services due to a parent or guardian's history of addiction, this analysis explores that particular exemption in more detail. Existing law allows a judge to forgo reunification services if the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention. This bill clarifies that passive resistance, which could include relapsing into drug or alcohol use, is not considered resistance for the purposes of denial of reunification services. This would allow courts to order reunification services, such as drug treatment programs, for parents with a history of drug or alcohol abuse or have relapsed but are otherwise willing to seek treatment.

The reunification exemption for addiction issues typically comes into play when a parent with a history of extensive, abuse, and chronic use of drugs or alcohol has taken either of the following actions: (1) resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention; or, (2) failed or refused to comply with a program of drug or alcohol treatment, as provided, on at least two prior occasions, even though the programs identified were available and accessible. According to the Assembly Judiciary Committee's analysis of this bill, there have inconsistencies in courts' decisions regarding what it means to resist prior court-ordered treatment. The Assembly Judiciary Committee's analysis notes that several court decisions have found that merely relapsing into drug or alcohol abuse after successfully completing a program is

sufficient for a court to find that the parent has resisted treatment.<sup>1</sup> A recent appellate court decision disagreed with these cases, finding that the Legislature did not intend for mere passive resistance to court-ordered drug treatment by relapsing to be used to deny reunification services. Specifically, the appellate court decision stated:

“[H]ad the Legislature intended to *implicitly* bypass services for a mere relapse, there would have been no need to include the word “resisted” at all. It could have simply applied a bypass where the parent was ordered to treatment in the past three years and subsequently became the subject of a new case involving drug use. The word “resisted” is surplusage if the Legislature meant to apply a bypass to simple relapse. Thus, for “resisted” to mean anything at all in this context, it must mean something more than relapse. We conclude that what the Legislature meant by “resisted” is active resistance, not passive resistance.<sup>2</sup>

The *In re B.E.* decision goes on to express the appellate court’s concerns that some courts have been using this reunification exemption to bypass parents who may have had only one relapse. The appellate court notes, “a relapsed parent is far from hopeless. It is decidedly not fruitless to offer services to a parent who genuinely made an effort to achieve sobriety but slipped up on the road to recovery.”<sup>3</sup> This is especially true when one considers that relapsing is seen as a normal part of the recovery process, with 40 to 60 percent of the people treated for substance use disorders experiencing relapses.<sup>4</sup>

This bill codifies the court’s decision in *In re B.E.* by preventing the denial of reunification services to a parent who has only passively resisted treatment. Passively resisting treatment would include the relapse scenario included in *In re B.E.*, as it is seen as a form of passive resistance that does not meet the resistance standard contained in current law. This does not mean reunification will ultimately occur, as the court could still determine that the offered reunification services failed due to a parent being unable to stop their use of drugs or alcohol.

This bill has been dual referred to the Senate Judiciary Committee. Should this bill pass out of this committee, the author’s office may wish to work with stakeholders to determine whether additional clarity is needed in statute to specify the meaning of active resistance or passive resistance and their applicability to relapse, in order to provide further direction for the courts in their decision making.

### **Related/Prior Legislation:**

**AB 1702 (Stone, Chapter 124, Statutes of 2016)** expanded the court's ability to deny reunification services to the parent or guardian of a dependent child to include instances in which the court finds the individual has knowingly participated in the child's sexual exploitation, as specified.

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<sup>1</sup> See, e.g., *Randi R. v. Superior Court* (1998) 64 Cal.App.4<sup>th</sup> 67; *In re William B.* (2008) 163 Cal.App.4<sup>th</sup> 1220.

<sup>2</sup> *In re B.E.* (2020) 46 Cal.App.5<sup>th</sup> 932, 941.

<sup>3</sup> *Id.* at 941.

<sup>4</sup> Thomas McLellan, *et al.*, *Drug Dependence, a Chronic Medical Illness*, 284 (13) JAMA 1689 (2000).

**SB 1056 (Liu, 2015)** would have made several changes to the provisions regarding reunification services for parents without housing. SB 1056 was held on the Senate Appropriations Committee suspense file.

**SB 68 (Liu, Chapter 284, Statutes of 2015)** required the court to include obstacles to minor parents or nonminor dependent parents in the determination of eligibility for reunification services.

**PRIOR VOTES**

Assembly Floor:	78 - 0
Assembly Human Services Committee:	8 - 0

**POSITIONS**

**Support:**

Children's Advocacy Institute / Dependency Legal Services (Co-Sponsors)  
Alliance for Children's Rights

**Oppose:**

None received.

**-- END --**