



# Assemblymember Lisa Calderon, 57<sup>th</sup> District

## AB 788 – Juveniles: reunification.

### SUMMARY

Assembly Bill 788 would adopt the holding of a recent California appellate court and clarify that under current law, reunification services are not terminated for parents within the child welfare system solely because a parent afflicted with drug addiction suffers a relapse while undergoing drug treatment.

### BACKGROUND

Existing law establishes the grounds for the conditional removal of a child from the custody of their parents and placement in temporary foster care, which generally results in the court ordering a county to provide services designed to reunify the parent and the child safely. These services can include counseling, drug addiction treatment, and parenting classes.

Under current law, however, if a drug addicted parent “resisted” treatment, such services can be terminated. The termination of such services almost inevitably leads to a child being permanently removed from the care of their parents, the termination of parental rights, and the child being raised in foster care. A recent California appellate court decision has clarified that relapse – an inevitable symptom of the disease – is not the same as actively resisting drug treatment, correctly reasoning: “As [county] acknowledged...relapse is a normal part of recovery. In other words, 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.” *In re B.E.* (2020) 46 Cal.App.5<sup>th</sup> 932, 934-35.

### PROBLEM

According to a 2018 study, nearly 8% of Californians met the criteria for a substance use disorder. Even though nearly 2.7 million Californians suffer from a substance use disorder, only 10% of this population receives any type of treatment.<sup>1</sup> Relapses are a regular occurrence in rehabilitation journeys. The relapse rate for those with substance use disorders is similar to the rate found across other chronic illnesses, such as hypertension or asthma.<sup>2</sup>

Currently, the status of a parent with a history of substance use resisting treatment is ambiguous in

statute. In part, Welfare & Institutions Code section 361.5(b)(13) permits reunification services to be terminated 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.” Some courts have embraced an interpretation of “resisted” that includes an all-but-inevitable relapse. As the court of appeal held, this legal interpretation makes addiction alone a complete basis to split-up parents and children forever, contrary to the Legislature’s intent to keep families together if possible.

Furthermore, this interpretation is a contributing factor to the disproportionate number of children of color in California who are severed from their parents and placed irrevocably into foster care. According to the California Child Welfare Indicators Project, children of color continue to be overrepresented in the foster care system; in California, for example, African American children make up 23% of foster children but only 6% of the general child population.”<sup>3</sup>

Substance use disorder is a health issue that many parents and their families deal with every day. If these issues provoke the involvement of the child welfare system, families should not automatically lose access to reunification services if parents stay committed to seeking treatment, regardless if they’ve relapsed.

### SOLUTION

AB 788 makes a simple amendment to the Welfare & Institutions Code, clarifying that a parent must be refusing or actively resisting drug use treatment to become disqualified for “resisting” family reunification services.

### SUPPORT

Children’s Advocacy Institute (Co-sponsor)  
Dependency Legal Services (Co-sponsor)

### CONTACT

Lucia Saldivar  
Office of Assemblymember Lisa Calderon  
(916) 319-2057  
Lucia.saldivar@asm.ca.gov

<sup>1</sup> California Health Care Foundation, and Wendy Holt. “Substance Abuse in California: A Look at Addiction and Treatment.” *California Health Care Almanac*, 2018, [www.chcf.org/publication/2018-edition-substance-use-california](http://www.chcf.org/publication/2018-edition-substance-use-california).

<sup>2</sup> NIDA. “Treatment and Recovery.” National Institute on Drug Abuse, 10 Jul. 2020, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.

<sup>3</sup> University of California at Berkeley. “California Child Welfare Indicators Project.” *California Child Welfare Indicators Project*, [ccwip.berkeley.edu](http://ccwip.berkeley.edu).