



February 28, 2021

The Hon. Lisa Calderon
Assemblymember, 57th District
State Capitol, P.O. Box 942849
Sacramento, CA 94249

RE: AB 788 (Calderon) –SUPPORT AND CO-SPONSORSHIP

Dear Assemblymember Calderon:

Dependency Legal Services, a multi-disciplinary, non-profit law firm providing quality representation to parents and children involved with California's Child Welfare System throughout Northern California and the Children's Advocacy Institute at the University of San Diego School of Law which, for over 30 years, has promoted the cause of children through academic analysis, legislative and regulatory advocacy, and litigation, are proud to co-sponsor and support AB 788 (Calderon).

Existing law (Welfare & Institutions Code ("WIC") section 300, *et seq.*) establishes the grounds for the conditional removal of a child from the custody of their parents and placement in (hopefully) 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 do not have to be offered, or in the parlance of child welfare litigation, "bypassed." In relevant part and with pertinent emphasis supplied, WIC Code section 361.5(b)(13) permits reunification services to be bypassed 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.**"

Whether services can lawfully be bypassed is a question of enormous significance. Bypassing 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. This "bypassed" parent is not given an opportunity to reunify.

What constitutes "resistance"? Some courts have taken an extremely broad approach by creating the legal fiction of "passive resistance." These courts have declared that parents who have successfully completed court-ordered treatment, even years before, but have recently begun using again, have "passively" resisted treatment and are eligible to lose their children forever.

This interpretation far expands the law and puts many families at risk to be torn apart permanently for arbitrary reasons. For example, a child-less nineteen-year old who successfully completed a drug diversion program from a marijuana possession charge could, decades later after having children, be "bypassed" if substance-related issues that caused CPS intervention.

However, a recent California appellate court decision, after a detailed and thoughtful analysis of this question, has clarified that relapse – an inevitable symptom of the disease – is not the same as "resisting" drug treatment. Pointing to the county's concession that relapse is a normal part of recovery, the court correctly reasoned: *"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.5th 932, 934-35.

Legal clarity on this point is critical to ensuring that families are not unnecessarily torn asunder and to fulfill the Legislature's over-arching aim for child welfare: family reunification. As drug addiction is a disease, as relapse is an inevitable part of drug addiction, then allowing services intended to treat drug addiction denied on the basis solely of relapse is the same as refusing addiction services because the person is addicted. The so-called exception of the bypass swallows the rule of offering drug treatment to help parents get better; to help families remain together.

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. In California, for example, African American children make up 23% of foster children but only 6% of the general child population¹. Black children are five times more likely than white children to be in foster care.²

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.

AB 788 (Calderon), a bill that, by codifying the reasoning of the recent court of appeal decision, will ensure that families struggling with drug addiction are not forever ruptured due to a tragic misunderstanding of the disease of addiction and a consequent misapplication of current law.

Thank you for authoring this important bill. We hope your colleagues will support AB 788 (Calderon).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Howard', written in a cursive style.

Ed Howard

Senior Counsel, Children's Advocacy Institute

A handwritten signature in black ink, appearing to read 'Julia Hanagan', written in a cursive style.

Julia Hanagan

Policy Director, Dependency Legal Services

¹ <https://www.kidsdata.org/topic/22/foster-in-care-race/table#jump=why-important&fmt=2495&loc=2,127,347,1763,331,348,336,171,321,345,357,332,324,369,358,362,360,337,327,364,356,217,353,328,354,323,352,320,339,334,365,343,330,367,344,355,366,368,265,349,361,4,273,59,370,326,333,322,341,338,350,342,329,325,359,351,363,340,335&tf=108&ch=7,11,8,10,9,44&sortColumnId=0&sortType=asc>

² <https://ccwip.berkeley.edu/childwelfare/reports/DisparityIndices/STSG/r/rts/s>