

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 788 (Calderon) – As Amended March 30, 2021

SUBJECT: Juveniles: reunification

SUMMARY: Provides that for the purposes of determining eligibility for reunification services, "resisted" does not include passive resistance for previous court-ordered drug or alcohol treatment.

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. (Welfare and Institutions Code Section [WIC] 202)
- 2) States Legislative intent to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative. (WIC 16000)
- 3) Provides requirements for eligibility of reunification services through the child welfare system, as specified. (WIC 361.5 *et seq.*)
- 4) Clarifies the purpose of provisions regarding dependent children as to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm; further, states a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child and that successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. (WIC 300.2)
- 5) Defines "nonminor dependent" as a foster child who is a dependent child or ward of the juvenile court, or who is a nonminor under the transition jurisdiction of the juvenile court, and satisfies all criteria, as specified. (WIC 11400 (v))
- 6) Defines "child abuse or neglect" as physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse, willful harm or injury, endangerment of the person or health of a child, or unlawful corporal punishment or injury, as specified. (Penal Code Section [PEN] 11165.6)
- 7) Requires reports of suspected child abuse or neglect to be made by mandated reporters to certain entities, including any police department or sheriff's department, county probation department, or the county welfare department, as specified. (PEN 11165.9)

FISCAL EFFECT: This bill was keyed non-fiscal by Legislative Counsel.

COMMENTS:

Child Welfare Services (CWS): CWS system was established with the goal of protecting youth from abuse and neglect. The system works through collaboration to provide for the safety, health, and overall well-being of children. When a child is identified as being at risk of abuse or neglect, reports can be made to either law enforcement or a county child welfare agency. Often, reports are submitted by mandated reporters who are legally required to report any suspicion of child abuse or neglect due to their profession. When a mandated reporter submits a report to either law enforcement or the county child welfare agency, a social worker determines whether the allegation is of suspected abuse, neglect, or exploitation. The child's social worker and the court collaborate throughout evaluating and reviewing the circumstances of each individual's case. As of October 1, 2020, there were 60,045 youth placed in the state's child welfare system in total.

Dependency Court: If the social worker petitions for the child to be declared a dependent of the court, current law requires the detention hearing be held within 48 hours of the petition being filed. Social workers must outline at the detention hearing the allegations of abuse or neglect made against the child's parents and the rationale for removing the child from their parent's custody. Within 15 days of a child's removal from their parents' custody, a jurisdictional hearing must occur to determine whether the allegations outlined in the social worker's petitions are true. If the allegations are deemed to be true, then the child is determined to be within the juvenile court's jurisdiction, thereby prompting a dispositional hearing within 60 days of the initial detention hearing. At the dispositional hearing, the court determines the family reunification plan parameters and determines where and with whom the child will reside. If the court determines that the child's best interests are served by removing them from their parent's custody, the child is removed, and the child's permanent placement is determined in a later hearing. When appropriate, the system works to reunite children who have been removed from the custody of their parents or guardians with individuals they consider to be family to maintain familial bonds wherever possible.

Substance Abuse in California: In a 2018 report produced by the California Health Care Foundation, it was found that nearly 8% of Californians met the criteria for substance use disorder, with only 10% of that population receiving any type of treatment. In the process of rehabilitation, relapses are common in every type of recovery program. Individuals often seek treatment through behavioral therapies, medication-assisted treatment, or recovery support services depending on circumstance and accessible options. Research has shown the complexities of substance abuse and its impact on all aspects of an individual's life. Underlying health concerns and themes present in those affected continue to evolve our understanding of how addiction develops and the process to successful rehabilitation. While the negative impact of substance abuse continues to reach across our state, the state Legislature has enacted several policies that recognize the importance of successful participation in a treatment program, specifically how it may be included in determining a safe and healthy environment for children in the CWS system.

State Support for Parents with Substance Abuse: In addition to the intent to consider substance use disorder treatment in determining reunification services, successful engagement in treatment is considered throughout the CWS process. Current law includes a process of investigation that

examines all circumstances contributing to a youth's well-being to ensure substance use is not the sole factor in bringing a child into the court's custody. In a recent California appellate court decision, 46 Cal.App.5th 932, the term resisted in a reunification determination was brought to appeal. The court found "resisted treatment," as included in current law, was deemed not to include passive resistance, or more specifically in this case, relapse. This finding is consistent with other provisions regarding rehabilitation and its importance in repairing family bonds for those in the CWS system.

Federal Support for Parents with Substance Abuse: A key tenet of the child welfare system is maintaining familial ties whenever possible. In keeping with this goal, H.R. 1892 (Larson), P.L. 115-123 of 2018 was signed into law. This bill, commonly known as the federal Families First Prevention Services Act (FFPSA) and adopted a number of changes to reform CWS systems across the country. Within the adoption of FFPSA was an expansion of services on which federal funds may be spent, now allowing for covered services to include prevention. Specifically, FFPSA permitted federal funds, in order to prevent the placement of children into the child welfare system, to be used towards mental health services and substance use disorder prevention and treatment services. The federal change aligns with our state's efforts to support prevention rather than separation and invest in the understanding that substance use disorders should not be the sole reason for a child's entry to foster care.

Need for this bill: This bill would add provisions that specify reunification services be denied due to substance use only if the parent or guardian has resisted previous court-ordered treatment for this disorder. By adding provisions that make it clear passive resistance cannot be a reason for denial of reunification, this bill would adopt a recent California appellate court decision clarifying relapse is not the same as resisting drug treatment. Clarification and acknowledgment that relapse is a regular occurrence in the road to recovery align with legislative efforts to support parents who make a genuine effort towards sobriety. As the Legislature has made clear through current intent language, the goal of CWS is to repair familial bonds whenever possible and appropriate. This bill's provisions would clarify appropriate denial factors for reunification services and could assist parents who have managed their substance use disorder in reconnecting with their family.

The author states, "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. This bill 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."

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

PRIOR AND RELATED LEGISLATION:

AB 3272 (Reyes) of 2020, would have adopted changes to state law to implement requirements as required by the federal FFPSA. AB 3272 was referred to the Assembly Appropriations Committee but was not heard.

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.

SB 1056 (Liu) of 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Advocacy Institute (Co-Sponsor)
Dependency Legal Services (Co-Sponsor)
Alliance for Children's Rights
California Catholic Conference
Children's Law Center of California
East Bay Family Defenders
Los Angeles Dependency Lawyers, INC.
Public Counsel

Opposition

None on file

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