

June 16, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**EXECUTIVE SUMMARY**

**ALL COUNTY LETTER NO. 22-50**

The purpose of this letter is to inform child welfare service agencies and juvenile probation departments of the change in the definition of “resisted” pursuant to Welfare and Institutions Code section 361.5(b)(13) following the passage of Assembly Bill (AB) 788, (Chapter 201, Statutes of 2021).



**KIM JOHNSON**  
DIRECTOR

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**DEPARTMENT OF SOCIAL SERVICES**  
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**GAVIN NEWSOM**  
GOVERNOR

JUNE 16, 2022

ALL COUNTY LETTER NO. 22-50

TO: ALL COUNTY WELFARE DIRECTORS  
ALL CHIEF PROBATION OFFICERS  
CHILD WELFARE SERVICES PROGRAM MANAGERS  
ALL FOSTER FAMILY AGENCY DIRECTORS  
ALL TITLE IV-E AGREEMENT TRIBES  
ALL CDSS ADOPTION REGIONAL OFFICES

SUBJECT: **DRUG AND ALCOHOL PARTICIPATION AND ACTIVE RESISTANCE**

REFERENCE: [AB 788, CHAPTER 201 \(STATUTES OF 2021\)](#)  
[In re B.E. \(2020\) 46 Cal. App. 5th 932](#)  
[WELFARE AND INSTITUTIONS CODE \(WIC\) SECTIONS 300;](#)  
[WIC 361.5; WIC 601; AND WIC 602](#)

**PURPOSE**

The purpose of this All County Letter (ACL) is to inform child welfare service (CWS) agencies and juvenile probation departments of the changes to Welfare and Institutions Code (WIC) section 361.5(b)(13) contained in AB 788 (Chapter 201, Statutes of 2021). Previously, a court had to deny family reunification services to a parent or legal guardian who had a history of “an extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court ordered treatment” within a three-year period immediately prior to the filing of the petition. The AB 788 amended the law to clarify that “resisted” means to actively resist court ordered drug and alcohol treatment by refusing to participate or engage in services ordered by the court.

Note that these new requirements also apply to juvenile probation departments when a youth has dual status, which means 1) a youth who is a dependent (pursuant to WIC section 300) and simultaneously a ward (pursuant to WIC sections 601/602) of the juvenile court, or 2) when a youth adjudicated a ward (pursuant to WIC sections 601/602) and who is simultaneously receiving services from CWS (e.g. a social worker

has been assigned to provide some level of youth oversight) and the court has ordered the parent or legal guardian into drug and alcohol treatment.

### **AB 788 REQUIREMENTS**

The AB 788 amended WIC section 361.5(b)(13) to clarify that resistance for the purposes of this section means “active resistance” as defined in *Orange County Social Services Agency v. J.E. et. al and B.E. et al* 46 Cal App 5<sup>th</sup> 932 (J.E.). In that case, the court found that “the bypass provision was intended for parents who refuse to participate meaningfully in a court-ordered drug treatment program, not parents who slip up on their road to recovery.” The term, “resisted,” specifically refers to “active resistance” and does not include “passive” resistance, such as relapses. In J.E., the parents had participated in two (2) prior dependency cases where they engaged in substance abuse treatment, and successfully reunified, then subsequently relapsed. The parents had their oldest child placed into protective custody in April 2013, and that child was returned in April 2015. The parents subsequently relapsed in March 2016 and had the oldest and middle child removed. The youngest child was born during the dependency of that case, and they eventually reunified with all the children in January 2018. The parents subsequently relapsed in March 2018, and voluntarily engaged in residential treatment, without the involvement of the CWS agency. The CWS agency reentered their lives in September 2018, when a needle was found in their couch and was reported to the CWS agency. There was a protracted Jurisdiction/Disposition phase, and the court ultimately provided services to the parents, ruling that the provision of services would not be fruitless, and that the issues of these parents are not “presently pervasive or resistant.” The appellate court agreed and determined that the term “resisted” in this statute meant active resistance and did not include passive resistance. Consult with your county counsel when considering whether to make bypass recommendations pursuant to WIC 361.5(b)(13).

### **RECOMMENDATIONS IN ALIGNMENT WITH INTEGRATED CORE PRACTICE MODEL**

To ensure counties are able to fully support families, CWS agencies and juvenile probation departments should use the [Integrated Core Practice Model \(ICPM\)](#) to improve delivery of timely, effective, and integrated services to children, youth, and families. Practice behaviors for supporting children, youth, and families with the drug and alcohol program participation include engagement, assessment, teaming, service planning and delivery, monitoring and adapting, and transitioning.

It is essential that the social worker or juvenile probation officer engage the parent or legal guardian and provide services to address substance abuse. The social worker or juvenile probation officer should provide a rigorous and balanced assessment of the situation addressing the child’s safety as well as parent’s or legal guardian’s responsibility and accountability in the court ordered treatment program. The social worker or probation officer is encouraged to actively support parents or legal guardians involved in the drug and alcohol treatment program by planning services and preparing

them for the road to recovery. This may include checking in with the parent or legal guardian to ensure that they are active in the treatment program and have not refused to participate in the treatment program. The social worker or probation officer should support and advocate for the parent or legal guardian by providing them services and supports needed to complete the treatment program (e.g., transportation vouchers, drug court referrals), follow up with the parent or legal guardian to ensure that they are able and willing to participate in the treatment program, and determine what support is needed. The social worker or probation officer should make every effort to ensure that the parent or legal guardian is participating in drug treatment by verifying their attendance in all court ordered services, including but not limited to, Alcoholics Anonymous/Narcotics Anonymous meetings, participation in substance abuse testing, and substance abuse treatment programs. The social worker or juvenile probation officer may need to apply safety organized practices to address a parent's or legal guardian's lack of engagement in the treatment program (e.g., skipped tests, missed meetings, etc.) by intentionally listening to the parent or legal guardian in order to resolve concerns, and provide needed supports to maintain active participation in the treatment program. Ultimately, the social worker or juvenile probation officer is strongly encouraged to engage and support the parent or legal guardian throughout the treatment program which may lead to family reunification.

If you have any questions or need additional guidance regarding the information in this letter, contact the Family Reunification and Pathways to Permanency Unit at [Reunification-Permanency@dss.ca.gov](mailto:Reunification-Permanency@dss.ca.gov).

Sincerely,

***Original Document Signed By***

ANGIE SCHWARTZ  
Deputy Director  
Children and Family Services Division