STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

For CSM Use Only
Filing Date: Commission on State Mandates Filed Date August 18, 2026
TC #:

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:
CARE ACT County Legal Counsel

Section 2

Local Government (Local Agency/School District) Name:
County of Santa Clara

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):
Margaret Olaiya, Director of Finance (ex-officio Auditor-Controller)

Street Address, City, State, and Zip:
70 West Hedding Street, East Wing, 2nd Floor

Telephone Number
408-299-5201

Email Address
Margaret.Olaiya@fin.sccgov.org

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5).)

Name and Title of Claimant Representative:
Rajiv Narayan, Deputy County Counsel

Organization: Office of the County Counsel, County of Santa Clara

Street Address, City, State, Zip:
70 West Hedding Street, East Wing, 9th Floor

Telephone Number
6697864287

Email Address
rajiv.narayan@cco.sccgov.org

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and check for amendments to the section or regulations adopted to implement it:

Welfare and Institutions Code sections 5970-5987, as added and amended by Statutes 2022, chapter 319; Statute 2023, chapter 283; Statute 2023, chapter 640; Statute 2024, chapter 647; Statute 2024, chapter 646; and Statute 2025, chapter 528.

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 02 / 09 / 2026

☐ A: Which is not later than 12 months (365 days) following [insert effective date] ___/___/_____, the effective date of the statute(s) or executive order(s) pled; or

☑ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 02 / 11 / 2025, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred*.

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☑ Includes a statement that actual or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☑ Includes all of the following elements for each statute or executive order alleged **pursuant to Government Code section 17553(b)(1)**:

☑ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☑ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☑ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☑ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2025 - 2026 Total Costs: $6,864,404

☑ Identifies all dedicated funding sources for this program;

State: Assembly Bill (AB) 102 (Ting, Section 133, Provision 24(a)-(d), Budget Act of 2023), as implemented by California Department of Health Care Services, Behavioral Health Information Notice No: 24-015

Federal: None

Local agency's general purpose funds: No dedicated funding source (General Fund used to cover costs)

Other nonlocal agency funds: None

Fee authority to offset costs: None

☑ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: None

☑ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows:

☑ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☑ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☑ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.

☑ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5:

☑ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages 29 to 204.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 250 to 256.

☑ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 205 to 242.

☑ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5*.) Pages 243 to 413.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☑ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Margaret Olaiya

Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Director of Finance (ex officio Auditor-Controller)

Print or Type Title

Margaret Olaiya
Margaret Olaiya (Aug 18, 2026 16:40:37 PDT)

Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

TC Form 032026

Final Audit Report 2026-08-18

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Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets with Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:
Welfare and Institutions Code sections 5970-5987, as added and amended by Statutes 2022, chapter 319; Statute 2023, chapter 283; Statute 2023, chapter 640; Statute 2024, chapter 647; Statute 2024, chapter 646; and Statute 2025, chapter 528.

Activity: Providing legal representation and advice to county behavioral health agency in connection with CARE Act court proceedings.

Initial FY: 24-25 Cost: $37,219 Following FY: 25-26 Cost: $118,352

Evidence (if required): Declaration of Rajiv Narayan

All dedicated funding sources; State: 0 Federal: 0

Local agency's general purpose funds: 0

Other nonlocal agency funds: 0

Fee authority to offset costs: 0

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Activity: _____

Initial FY: ____-____ Cost: _____ Following FY: _____-_____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Activity: _____

Initial FY: ____-____ Cost: _____ Following FY: _____-_____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

COUNTY OF SANTA CLARA TEST CLAIM

STATUTE 2022, CHAPTER 319—SENATE BILL NO. 1338
STATUTE 2023, CHAPTER 283—SENATE BILL NO. 35
STATUTE 2023, CHAPTER 640—SENATE BILL NO. 42
STATUTE 2024, CHAPTER 647—SENATE BILL NO. 1400
STATUTE 2024, CHAPTER 346—SENATE BILL NO. 1323
STATUTE 2025, CHAPTER 528—SENATE BILL NO. 27

CARE Act County Legal Counsel

TABLE OF CONTENTS

SECTION 5: WRITTEN NARRATIVE

I. INTRODUCTION....1
II. BACKGROUND....2
A. Local Government's Responsibilities During CARE Process....2
i. Initiating the CARE Process....2
ii. Developing and Carrying Out CARE Agreements and Plans....4
iii. Review and Expiration of CARE Agreements and Plans....6
B. Test Claim Statutes....7
III. LEGAL STANDARD....7
IV. ARGUMENT....8
C. This Test Claim Is Timely Filed....8
D. Costs of Implementing the New Program Mandated by the CARE Act Are "Costs Mandated by the State" Warranting Reimbursement Under Section 6....8
i. The CARE Act Mandates Require the County to Undertake New Activities....9
ii. Dedicated Funding Sources Offset Only Certain Costs Under the CARE Act mandates....11
iii. The County Incurred Approximately $37,219 to Implement the CARE Act Mandates in 2024-2025 Fiscal Year....13
iv. The County Estimates Incurring Approximately $118,352 to Implement the CARE Act Mandates in the 2025-2026 Fiscal Year....13
v. Statewide Costs of Implementing the CARE Act Mandates in the 2025-2026 Fiscal Year Are Estimated to Reach Approximately $6,864,404. 14
vi. There are No Prior Mandate Determinations Related to the CARE Act Mandates....14
vii. There Are No Legislatively Determined Mandates on the CARE Act Mandates....14

E. The Costs of Compliance with the CARE Act Mandates Are Reimbursable by the State Under the California Supreme Court's Three-Prong Test 14
i. The CARE Act Mandates Compel Counties' Legal Counsel to Advise County Behavioral Health Agencies on Implementation....14
ii. The CARE Act Mandates Create New Programs Under Section 6 22
iii. No Conditions Exist That Create an Exception to the Requirement That the State Must Reimburse the County for Compliance with the CARE Act Mandates 24
V. CONCLUSION 27

SECTION 6: Supporting Documents

Test Claim Statutes

Senate Bill No. 1338....29
Senate Bill No. 35 66
Senate Bill No. 45 92
Senate Bill No. 1400....114
Senate Bill No. 1323....138
Senate Bill No. 27 182

Court Decisions and Administrative Decisions

Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, 7 Cal.App.5th 628 (2017)....205
Calvert v. The State Bard of California, 54 Cal.3d 765 (1991)....213
Conservatorship of the Person of John L. v. John L., 48 Cal.4th 131 (2010) 223
Ward v. Superior Court of the State of California for the County of Los Angles, 70 Cal.App.3d 23 (1977)....236

SECTION 7: DECLARATIONS

Declaration of Megan Wheelehan 243
Exhibit A 250
Exhibit B 253
Exhibit C....258
Exhibit D....298
Exhibit E 305
Exhibit F 326
Exhibit G....363
Declaration of Hilary Kerrigan 404
Declaration of Rajiv Narayan....408
Exhibit A 411

Written Narrative

County of Santa Clara Test Claim

Welfare and Institutions Code Sections 5970-5987

Added and amended by

Statutes 2022, Chapter 319—Senate Bill 1338

Statutes 2023, Chapter 283—Senate Bill 35

Statutes 2023, Chapter 640—Senate Bill 42

Statutes 2024, Chapter 647—Senate Bill 1400

Statutes 2024, Chapter 646—Senate Bill 1323

Statutes 2025, Chapter 528—Senate Bill 27

I. Introduction

The County of Santa Clara ("County") seeks a decision that the State of California ("State") must fully reimburse all legal costs incurred by county counsels in implementing the Community Assistance, Recovery, and Empowerment (CARE) Act. Enacted as Senate Bill No. 1338 (Stats. 2022, ch. 319) ("SB 1338"), the CARE Act added Part 8 to Division 5 of the Welfare and Institutions Code (sections 5970 through 5987) and added or amended additional sections of the Health and Safety Code, Insurance Code, Penal Code, and Welfare and Institutions Code. The CARE Act has since been modified by several subsequently enacted bills, including Senate Bill No. 35 (Stats. 2023, ch. 283), Senate Bill No. 42 (Stats. 2024, ch. 640) ("SB 42"), Senate Bill 1400 (Stats. 2024, ch. 647) ("SB 1400"), Senate Bill 1323 (Stats. 2024, ch. 646), and Senate Bill 27 (Stats. 2025, ch. 528).

The CARE Act requires counties to provide mental health treatment ordered by the court for individuals living with schizophrenia spectrum or other psychotic disorders. Specifically, the CARE Act establishes a process by which county behavioral health departments, public guardians, patients, family members, first responders, providers, and others may petition a civil court to oversee the creation of a voluntary CARE agreement or a court-ordered CARE plan for an eligible patient to provide mental health treatment and other social safety net services for up to two years.

Under the CARE Act, county attorneys are mandated to participate in extensive court proceedings and provide counsel to county entities that develop and carry out CARE agreements and plans. Though the State has, at least temporarily, appropriated funds and set policies to partially reimburse legal services as a fraction of overhead for billable activities, these reimbursements are insufficient to cover the full amount of local agencies' actual legal expenses because they do not include actual costs of legal

representation—which counties are statutorily required to provide—associated with billable activities and because counties cannot submit claims for legal services at all under the reimbursement scheme.

Counties' legal expenses under the CARE Act are precisely the sort of mandatory costs that voters intended the State would reimburse when they passed Proposition 4 in 1979, adding Article XIII B, Section 6 ("Section 6"), which requires the State to compensate local governments for the expenses of carrying out new programs compelled by State law. With this test claim, the County respectfully requests that the Commission on State Mandates find that the CARE Act imposes a reimbursable mandate under Section 6, and that the State must fully reimburse the legal costs that local governments otherwise are forced to bear.

II. Background

On September 14, 2022, Governor Newsom approved SB 1338, which required counties in California to institute the CARE process in two successive cohorts, the first no later than October 1, 2023, and the second, which includes the County, no later than December 1, 2024. (Welf. & Inst. Code, § 5970.5, subds. (a), (b).) The legislature subsequently passed several "cleanup" bills adding to and amending legislation related to the CARE Act.

The CARE Act creates the "CARE process," which enables civil courts to oversee the development of behavioral health treatment plans for individuals living with schizophrenia spectrum or other psychotic disorders who are not clinically stabilized in voluntary treatment and meet certain other statutory criteria. (Welf. & Inst. Code, §§ 5970-5972.) The goal of the CARE process is for the parties to devise a voluntary settlement agreement known as a "CARE agreement" or a court-ordered set of services known as a "CARE plan," either of which may "include appropriate behavioral health care and stabilization medications, housing, and other support services." (*Id.*, § 5971, subds. (a), (b).)

A. Local Governments' Responsibilities During the CARE Process

The CARE Act creates numerous new mandatory activities for county agencies at various steps of the CARE process. County counsel must provide advice and representation to County agencies throughout the process. Counties will incur substantial costs to undertake these activities.

i. Initiating the CARE process

The parties to the CARE process include a "petitioner," who petitions the CARE court to begin the CARE process in aid of an eligible individual, and a "respondent," the individual who would receive the behavioral health treatment. The CARE process may take place in the county where the respondent resides, is found, or is facing criminal or civil proceedings. (*Id.*, § 5973.) The CARE process may be initiated upon a petition filed by any individual enumerated in the CARE Act, including county public guardians, the directors of county behavioral health and adult protective services agencies,

behavioral health care providers, hospital directors, first responders, the respondents themselves, family members and other supporters of the respondent, or the courts. (*Id.*, §§ 5974, 5978.1.) Petitions must be signed under penalty of perjury and include an affidavit of a licensed behavioral health professional stating that they have examined or attempted to examine the respondent and have determined the respondent meets the criteria for CARE proceedings or evidence the respondent was detained for at least two intensive treatments. (*Id.*, § 5975, subds. (a)-(d)(1), (2).)

Where the director of a county behavioral health agency or their designee files the initiating petition, the court shall set the matter for an initial appearance within 14 days and order the agency to provide notice to the respondent, the respondent's counsel, and, if in a different jurisdiction, the county behavioral health agency in the county of the respondent's residence. (*Id.* § 5977, subds. (a)(3)(A)(i), (iv).) A representative from the county behavioral health agency must be present at the initial appearance on the petition. (*Id.* § 5977, subd. (b)(4).) Counsel to the county behavioral health agency attends the initial hearing to represent the agency. (Declaration of Hilary Kerrigan ("Kerrigan Decl.") ¶ 6.) If the court determines the petition lacks certain information required by statute, it must order the petitioning county agency to submit a written report with additional information supporting the respondent's eligibility prior to this hearing. (*Id.* § 5977, subd. (a)(3)(A)(iii).)

The CARE Act also enables certain treatment facilities to refer an individual under an involuntary hold to a county behavioral health agency to be considered for the CARE process. (*Id.* § 5978.1, subds. (a), (b).) In such instances, the county behavioral health agency must assess the referred individual and, if it determines the individual is eligible for the CARE process, file a petition with the support of counsel. (*Id.* § 5978.1(c); Kerrigan Decl. ¶ 6.) The county behavioral health agency director must then carry out the same activities after filing the petition as described above, including participating in a hearing, providing notice of the hearing, and, if the petition lacks required information, submitting an additional report. (Welf. & Inst. Code, § 5977, subds. (a)(3)(A)(i), (iii), (iv), (b)(4).)

Where a court refers an individual to CARE Act proceedings from assisted outpatient treatment or misdemeanor or felony proceedings based on a finding the individual is mentally incompetent and ineligible for diversion, if the CARE Act court elects not to consider the referral as a petition, the county behavioral health director or their designee must investigate whether to file a petition on the individual's behalf and notify the referring court if it intends to do so. (*Id.*, § 5978, subds. (a), (d)(1)-(2), (e), (f)(1).) The court may also refer individuals to CARE Act proceedings from Lanterman-Petris-Short (LPS) Mental Health Conservatorships, and if the CARE Act court elects not to consider the referral as a petition, the county public guardian or public conservator or their designee must undertake the same responsibilities. (*Id.* § 5978, subds. (a), (d)(1)-(2), (f)(2); *see id.* § 5974, subd. (g).) If a county agency files a petition after the investigation, it must carry out the same activities after filing the petition as described above, including participating in a hearing, providing notice of the hearing, and, if the petition lacks required information, submitting an additional report. (*Id.* § 5977, subds. (a)(3)(A)(i), (iii), (iv), (b)(4).)

Finally, where the petitioner is not the director of the behavioral health agency or their designee, the court must require the director of a county agency or their designee to investigate the petition and conduct outreach and engagement with the respondent, file a written report within 30 days assessing the respondent's eligibility with evidentiary support, and give notice to the respondent and petitioner of the filing or any court-ordered filing extension. (*Id.* § 5977, subds. (a)(3)(B), (a)(4).) The court shall dismiss the matter where it finds either that the engagement was effective and the respondent is likely to accept voluntary treatment, or that the evidence does not support a prima facie showing that the respondent is eligible for the CARE process. (*Id.* § 5977, subds. (a)(5)(A), (B).) Where the court determines that the CARE process is appropriate, the CARE Act mandates that the court set an initial appearance on the petition and order the county agency to provide notice to the petitioner, respondent, respondent's counsel, and the behavioral health agency in the respondent's county of residence, if different from the county where the CARE process has commenced. (*Id.* § 5977, subds. (a)(5)(C)(i), (iii).) Additionally, the court will appoint the county behavioral health agency director or designee to replace the petitioner as successor petitioner. (*Id.*, § 5977, subd. (b)(6)(A); *see also id.* § 5971, subd. (o).)

In short, notwithstanding who files the initial petition, the CARE Act mandates that a representative of the county behavioral health agency be present at CARE Act hearings and conduct various assessments and reports, and if the petitioner is not the county behavioral health agency director, the CARE Act substitutes the agency director for the petitioner. In addition, the respondent is entitled to counsel throughout the CARE process and has the right to present evidence, call witnesses, and cross-examine witnesses at hearings and to appeal decisions. (*Id.* § 5976, subds. (c), (f)-(i).) To represent the respondent, the court shall appoint either a qualified legal services project, if one has agreed to accept such appointments, or a public defender. (*Id.* §§ 5977, subd. (a)(3)(A)(ii), 5977(a)(5)(C)(ii).)

The CARE Act requires that the court next set a hearing on the merits of the petition within 10 days, to be attended by both parties, at which it shall determine, by clear and convincing evidence, whether the respondent is eligible for the CARE process. (Welf. & Inst. Code, § 5977, subd. (b)(7)(A).) Prior to this merits hearing, counsel to the county behavioral health agency prepares expert testimony, which requires reviewing expert reports and providing advice to the agency about the evidentiary standard. (Kerrigan Decl. ¶ 6.) At the merits hearing, counsel to the county behavioral health agency advises the agency and puts on evidence, including qualifying the expert, conducting examinations, and presenting additional material. (Kerrigan Decl. ¶ 6.) If the court finds that sufficient evidence exists, the CARE Act requires the court to order the county behavioral health agency to work with the respondent, the respondent's counsel, and a supporter for the respondent to engage in behavioral health treatment and attempt to enter into a CARE agreement. (Welf. & Inst. Code, § 5977, subd. (c)(2).)

ii. Developing and carrying out CARE agreements and plans

After the parties have attempted to create a CARE agreement, they convene for a case management hearing at which the court hears evidence about whether the parties have entered or are likely to enter into an agreement. (*Id.* §§ 5977, subd. (c)(2), 5977.1, subd. (a)(1).) Counsel for the county behavioral health agency is also present at this hearing to present evidence and advise the agency. (Kerrigan Decl. ¶ 6.) If the court finds an agreement was reached, it must approve the agreement with or without modification, and if it finds the parties are likely to agree, it may continue the matter to allow further engagement. (Welf. & Inst. Code, § 5977.1, subds. (a)(2)(A)-(B).) Counsel also represents and assists the county behavioral health agency at follow-up and progress hearings set by the court. (*Id.*; *id.* § 5977.1, subd. (a)(4); Kerrigan Decl. ¶ 6.)

However, if the court finds the parties have not entered into a CARE agreement and are unlikely to do so, it must order the county behavioral health agency to conduct a clinical evaluation of the respondent (unless the parties stipulate to the use of a recent evaluation). (Welf. & Inst. Code, § 5977.1, subds. (b)(1)-(4).) The court must also set a review hearing, before which the county must file the evaluation with the court and serve it on respondent's counsel. (*Id.* § 5977.1, subd. (c)(1).) The agency may present additional evidence at the hearing. (*Id.* § 5977.1, subd. (c)(2).)

At this hearing, if the court determines that the respondent meets the CARE criteria, it must order the county behavioral health agency, respondent, and a supporter for the respondent to develop a CARE plan and return for a case management hearing to present the plan. (*Id.* § 5977.1, subds. (c)(3)(A), (c)(6), (d)(1), (d)(6).) Counsel represents the agency at these hearings. (Kerrigan Decl. ¶ 6.) The court may adopt elements of the CARE plan and issue orders facilitating the respondent’s access to appropriate services and support. (Welf. & Inst. Code, § 5977.1, subds. (d)(2)-(4).) Where the court determines additional information is needed before it can approve a CARE plan, it may order the county behavioral health agency to file a supplemental report. (*Id.* § 5977.1, subd. (d)(5).) Counsel to the county behavioral health agency interprets the orders and provides related advice to the agency to ensure proper compliance. (Kerrigan Decl. ¶ 6.)

CARE agreements and plans may include (1) reimbursable behavioral health services, (2) stabilization medications, (3) housing resources funded through any of a list of state and federal housing programs, (4) state-funded social services, (5) services provided as part of every county’s duty to “relieve and support all incompetent poor, indigent persons, and those incapacitated by age, disease, or accident” who lack other sources of support under Welfare and Institutions Code section 17000, and (6) additional services to support the respondent’s recovery. (Welf. & Inst. Code, § 5982, subds. (a)(1)-(6).) Respondents are also prioritized for bridge housing funded by the Behavioral Health Bridge Housing program (*id.* § 5982, subd. (b)), and county behavioral health agencies that elect not to enroll respondents into a full-service partnership as defined by California Code of Regulations section 3620 may be required to explain the decision to the CARE court (*id.* § 5982, subd. (c)).

The CARE Act specifies that if a proceeding commences in a county where a respondent is found or faces judicial proceedings that is not the respondent’s county of

residence, that county's behavioral health agency is responsible for coordinating all components of the CARE agreement or plan, but the county where the respondent resides is responsible for covering all associated behavioral health services. (*Id.* § 5982, subds. (f)(2)-(3).)

iii. Review and expiration of CARE agreements and plans

The CARE Act requires that no less frequently than every 60 days after the court approves a CARE plan, the court shall hold a status review hearing. (*Id.* § 5977.2, subd. (a)(1).) At least five days before this hearing, the county behavioral health agency must file and serve on the respondent and the respondent's counsel and supporter a report detailing, among other factors, the progress made on the CARE plan, the services and supports provided, problems of the respondent's adherence, and recommended changes to the services and supports. (*Id.* § 5977.2, subd. (a)(1).) The county behavioral health agency must also appear at any hearing called by the agency, the respondent, or the court at any time during the CARE process to address a change of circumstances. (*Id.* § 5977.2, subd. (b).)

The CARE Act also mandates that the parties engage in a one-year status hearing in the eleventh month after adoption of the CARE plan. (*Id.* § 5977.3.) The county behavioral health agency is required to file a report with the court prior to this hearing and serve a copy of the report on the respondent and the respondent's counsel and supporter. (*Id.* § 5977.3, subd. (a)(1).) The report must detail the respondent's progress on the CARE plan and a final assessment of the respondent's stability, the services and supports provided or not provided under the CARE plan, problems of the respondent's adherence with the CARE plan, and recommended future steps including ongoing and additional services that would benefit the respondent and that the county behavioral health agency can facilitate or provide. (*Id.* § 5977.3, subds. (a)(1)(A)-(D).)

At the one-year status hearing, the respondent is permitted to respond to the report and introduce witnesses and evidence and may request either to remain in or be graduated from the program. (*Id.* § 5977.3, subd. (a)(2).) If the respondent requests to be graduated, the court will order the county behavioral health agency to work with the respondent on a voluntary graduation plan and the parties must return for a hearing in the twelfth month after adoption of the CARE plan to present the graduation plan. (*Id.* § 5977.3, subd. (a)(3)(A).) If the respondent requests to remain in the program, the court may order ongoing voluntary participation for up to an additional year if the respondent did not successfully complete the CARE plan and would benefit from its continuation. (*Id.* § 5977.3, subds. (a)(3)(B)(i)-(ii), (a)(3)(C).) Alternatively, if the respondent did not successfully complete the CARE process, under certain conditions the court may reappoint the respondent for involuntary participation in the program for up to an additional year. (*Id.* § 5977.3, subds. (b)(1)-(4).)

In general, reports submitted by the county behavioral health agency in the steps described above must include evidence necessary to support the determinations, conclusions, and recommendations in the filings. (*Id.* § 5977.4, subd. (d)(1).) Counsel to the county behavioral health agency represents the agency at the status review

hearings, the one-year status hearing, and any additional hearings ordered by the court, and in addition advises the agency as it develops reports for the court. (Kerrigan Decl. ¶ 6.)

The county behavioral health agency may apply to the court ex parte for an order requiring health care providers to supply relevant records about the respondent. (Welf. & Inst. Code, § 5977.4, subd. (d)(2)(C).) The agency must provide all information disclosed about the respondent to the respondent and respondent's counsel and must notify the respondent and respondent's counsel if it discloses protected information as authorized or required by the CARE Act in such reports. (*Id.* § 5977.4, subds. (d)(2)(E), (F), (d)(3)(A)-(C).) Counsel to the agency provide advice regarding patient confidentiality and these notice requirements. (Kerrigan Decl. ¶ 6.) As needed, counsel to the agency also meet and confer with various partners to the CARE process, including respondents' counsel, court administration, State officials, first responders, and the District Attorney's office. (*Ibid*.)

B. Test Claim Statutes

This test claim argues that the State must reimburse counties for costs incurred by county counsel in carrying out new activities mandated by the CARE Act, under Welfare and Institutions Code sections 5970-5987, as added or amended by Statutes 2022, chapter 319, Statutes 2023, chapter 283, Statutes 2023, chapter 640, Statutes 2024, chapter 647, Statutes 2024, chapter 646, and Statutes 2025, chapter 528.

III. Legal Standard

Section 6 "requires the state to provide a subvention of funds to compensate local governments for the cost of a new program or higher level of service mandated by the state." (*Department of Fin. v. Comm'n on State Mandates* (2022) 85 Cal. App. 5th 535, 549.) The purpose of Section 6 "was to prevent the state from unfairly shifting the costs of government onto local entities that were ill-equipped to shoulder the task." (*County of San Diego v. Comm'n on State Mandates* (2018) 6 Cal. 5th 196, 207.)

Expenses incurred by a local government in complying with a State statute constitute reimbursable "costs mandated by the state" if: (1) the statute "compels the local agency to act," (2) "the compelled activity requires the agency to provide a new program or higher level of service," and (3) none of the statutory or constitutional exceptions to the State's responsibility to reimburse local governments applies. (*Coast Cmty. Coll. Dist. v. Comm'n on State Mandates* (2022) 13 Cal. 5th 800, 808 (citation omitted); see Gov. Code, § 17514 (defining "costs mandated by the state" as, in relevant part, "any increased costs which a local agency . . . is required to incur . . . as a result of a statute . . . which mandates a new program or higher level of service of an existing program within the meaning of [Section 6]").

Under the first prong, a statute "compels the local agency to act" where the State either *legally* compels action by "us[ing] mandatory language that requires or commands a local entity to participate in a program or service (*Coast Cmty. Coll. Dist.*,

supra, 13 Cal. 5th at p. 815 (citation omitted)) or *practically* compels action because "an entity . . . face[s] certain and severe penalties or consequences" for noncompliance (*Department of Fin.*, *supra,* 85 Cal. App. 5th at p. 558). Under the second prong, a statute creates a new "program" if it involves *either* "(1) programs that carry out the governmental function of providing services to the public, or (2) laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates* (2004) 33 Cal. 4th 859, 874 (citation omitted).) Under the third prong, the State bears the burden of demonstrating the existence of any of the seven conditions in Government Code section 17556 or four conditions in Section 6 that free it from the requirement to reimburse local governments for the costs of carrying out a State-mandated program. (*Department of Fin. v. Comm'n on State Mandates* (2016) 1 Cal. 5th 749, 769 (2016) [holding that the State bears the burden of claiming an exception to the requirement it reimburse mandatory costs]; see also *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2017) 7 Cal. App. 5th 628, 641 ["An exception to a statute is to be narrowly construed."] (citation omitted).)

A local government seeking reimbursement for costs of compliance with a State law may file a test claim with the Commission on State Mandates ("Commission"). (*County of San Diego*, *supra,* 6 Cal. 5th at p. 202.) Following a hearing, the Commission determines "whether the statute that is the subject of the test claim. . . mandates a new program or an increased level of service." (*Ibid.* [citing Gov. Code § 17551].) If the Commission concludes that the statute imposes a reimbursable mandate, "it must then 'determine the amount to be subvened to local agencies . . . for reimbursement.'" (*Coast Cmty. Coll. Dist.*, *supra,* 13 Cal. 5th at p. 809 [quoting Gov. Code, § 17557, subd. (a)].)

IV. Argument

C. This Test Claim Is Timely Filed

The Commission may consider this test claim because it is timely filed not later than 12 months since the County initially incurred costs to implement the activities described in this test claim that are mandated by the test claim statute, which are the costs of providing legal representation and advice to county behavioral health agencies in connection with various CARE Act provisions. The County first incurred these costs on February 11, 2025, when a Deputy County Counsel first provided such legal services to the County's Behavioral Health Services Department in connection with a CARE Act petition. (Kerrigan Decl. ¶ 8.)

D. Costs of Implementing the New Program Mandated by the CARE Act Are "Costs Mandated by the State" Warranting Reimbursement Under Section 6

The CARE Act requires the County to provide a new program. The facts provided below, as required under subdivision (b)(1) of Government Code section 17553, demonstrate that the County's expenditures associated with providing this new

program are reimbursable "costs mandated by the state" under Section 6. (See Gov. Code, § 17514.)

i. The CARE Act Requires the County to Undertake New Activities

The CARE Act requires counsel to the behavioral health agency to undertake the following new activities, at a minimum:

- Assist in the preparation of the mandated petition according to statutory requirements, including where the director of a county behavioral health agency or their designee files determines it must file an initiating petition on its own or after a treatment facility or another court refers an individual to the county behavioral health agency and the agency determines that the individual is eligible for the CARE process. (Kerrigan Decl. at ¶ 6; Welf. & Inst. Code, §§ 5974, subd. (h); 5975, subds. (a)-(d)(1), (2); 5978, subds. (d)-(f); 5978.1, subd. (c).)

- Provide notice of the initial hearing to the respondent, the respondent's counsel, and, if in a different jurisdiction, the county behavioral health agency in the county of the respondent's residence. (Kerrigan Decl. at ¶ 6; Welf. & Inst. Code, § 5977, subd. (a)(3)(A)(iv).)

- Represent the county behavioral health agency director or their designee at the initial hearing and, if the court determines the petition lacks the required information, advise the agency on submission of an additional report. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977, subds. (a)(3)(A)(i), (iii), (iv), (b)(4).)

- Where the petitioner is not the county behavioral health agency director or their designee, advise the agency in complying with the court's order to file a written report with evidentiary support following investigation and engagement and give notice to the respondent and petitioner of the filing or court-ordered extensions. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977, subds. (a)(3)(B), (a)(4).)

- Advise the county behavioral health agency director or their designee if the court orders them to replace the original petitioner as successor. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977, subd. (b)(6)(A).)

- Where the court determines that the respondent is or may be eligible for the CARE process based on the report filed under Welfare and Institutions Code section 5977, subdivision (a)(3)(B), advise and represent the county behavioral health agency director or their designee at the initial appearance on the petition and provide notice to the petitioner, respondent, respondent's counsel, and the behavioral health agency in the respondent's county of residence, if different from the

county where the CARE process has commenced. (*Id.* § 5977, subds. (a)(5)(C)(i), (iii).)

- Provide counsel to the county behavioral health agency before and during the merits hearing, including preparing expert testimony by reviewing expert reports and providing advice about the evidentiary standard, presenting evidence by qualifying experts, conducting examinations, and presenting additional material.. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977, subd. (b)(7)(A).)

- Advise the county behavioral health agency director or their designee in assessing and responding to respondent's counsel's communications and evidence, witnesses, and appeals. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5976, subds. (c), (f)-(i).)

- Represent the county behavioral health agency at case management hearings, present evidence as needed, and provide legal advice to the agency if the court orders it to work with the respondent and respondent's counsel to engage the respondent in treatment and work towards a CARE agreement. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, §§ 5977, subd. (c)(2); 5977.1, subds. (a)(1), (a)(2)(A), (B).)

- Represent the county behavioral health agency at additional progress hearings held during the duration of the CARE agreement. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.1, subd. (a)(4).)

- If the court orders the behavioral health agency to conduct a clinical evaluation of the respondent, advise the agency in preparing and filing required documents for and participate in the subsequent clinical evaluation hearing, which might include preparing and presenting evidence and witness testimony. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.1, subds. (c)(1), (2).)

- Advise the county behavioral health agency as it prepares the CARE plan and prepare for and participate in hearings to review and consider approval of the proposed CARE plan, potentially including notice of requests for extensions of time and court orders. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.1, subds. (c)(3)(A), (c)(6), (d)(1), (d)(6).)

- Advise the county behavioral health agency to ensure proper compliance when the court issues orders to support the respondent in accessing elements of the CARE plan. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.1, subds. (d)(2)-(5).)

- Advise the county behavioral health agency to ensure compliance in devising CARE plans and communicating with the court following orders and requests for information relating to services and supports. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5982, subds. (a)-(e).)

- Represent the county behavioral health agency at evidentiary hearings including status review hearings, the one-year status hearing, the graduation plan hearing, and any additional hearings ordered by the court, and advise the agency as it develops and files reports and graduation plans. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.2, subds. (a)(1), (b); Welf. & Inst. Code, § 5977.3, subds. (a)(1)-(3).)

- Advise the county behavioral health agency regarding patient confidentiality and notice requirements associated with report evaluations and other documents filed with the court throughout the CARE process and disclosures of protected information. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.4, subds. (d)(1), (d)(2)(E), (F), (d)(3)(A)-(C).)

- Advise the county behavioral health agency regarding ex parte applications for an order requiring health care providers to supply relevant records about the respondent. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.4, subd. (d)(2)(C).)

- Meet and confer with respondents' counsel, court administration, State officials, and others as necessary to advise and represent the county behavioral health agency throughout the judicial process created by the CARE Act pursuant to these statutes. (Kerrigan Decl. ¶ 7.)

Each of these tasks is a new activity that county counsel must undertake to implement the CARE Act. Prior to the adoption of the CARE Act, counsel to county behavioral health agencies did not perform any of these tasks, as the CARE process did not exist. (Declaration of Megan Wheelehan "Wheelehan Decl." ¶ 8.)

ii. Dedicated Funding Sources Offset Only Certain Costs Under the CARE Act.

There are no sufficient and dedicated funding sources available from the federal government or any State agency to offset the counsel costs of implementing the CARE Act. (*Id*. at ¶ 9.) The State has at least temporarily allocated funding to offset certain costs associated with the CARE Act, but this funding is restricted to specific activities and reimbursement amounts. (*Ibid*.)

To date, the funding available to reimburse counties for undertaking activities required by the CARE Act has been provided by State budget appropriations. DHCS policy has dictated reimbursement processes and the selective list of reimbursable activities have been devised as policy changes issued by DHCS. For instance, in the

Budget Act of 2022, the legislature appropriated $57 million in State general funds for DHCS to support counties in planning and preparation to implement the CARE process. (Wheelehan Decl. Exh. A.) Of this amount, $26 million was dedicated to Cohort I counties and $31 million was dedicated to all counties, including the County of Santa Clara. (*Id.* Exh. A, at pp. 1-2.) The list of reimbursable activities and county payment schedule were outlined in a policy notice issued by DHCS to govern the allocation of this appropriation. (See id.) Because the funds were distributed to support the planning and preparation of CARE programs, they do not provide ongoing reimbursement for county counsel costs incurred to support CARE operations.

In the Budget Act of 2023, the legislature again appropriated just over $52 million in State general funds to reimburse counties for CARE Act implementation, and DHCS subsequently issued another reimbursement policy governing the allocation of these funds. (Wheelehan Decl. Exh. B.) This policy, which remains in effect, provides for reimbursement at a specified hourly rate for time spent performing activities falling into five categories:

- **Court Hearing Time:** Including CARE agreement process meetings, initial hearings, and hearings focused on the merits, case management, clinical evaluation review, CARE plan review, regular status updates, one-year status, evidence, graduation, and reappointment to CARE, as well as miscellaneous hearings occurring due to a change of circumstances.

- **Court Report:** Including drafting of reports such as prima facie county reports, CARE agreement reports, clinical evaluation reports, CARE plan reports, supplemental reports, regular status update reports for hearings, one-year status reports, graduation plan reports, and reappointment to CARE reports.

- **Outreach and Engagement:** Including activities required by Welfare and Institutions Code sections 5977(a)(5)(A) and (c)(2) to engage the respondent and develop a CARE agreement and Welfare and Institutions Code section 5977.3(a)(3) to engage the respondent in preparing a graduation plan.

- **Notice:** Including drafting notices such as prima facie respondent county notices and notices of 30 additional days to engage respondent, initial appearances, hearings on the merits, case management hearings, CARE agreement progress meetings, clinical evaluation review hearings, CARE plan review hearings, regular status update reports, one-year status hearings, evidentiary hearings, graduation hearings, and reappointment to CARE.

- **Data Reporting:** Including collecting and reporting data measures as requested by DHCS on subjects such as respondent demographics, housing placements, and continuation of treatment information.

(*Id*. Exh. B, at p. 2). DHCS calculates reimbursement using an established hourly median wage determined based on the Bureau of Labor Statistics (BLS) wage, plus an

inflator from the May 2021 BLS wage data, a benefits percentage derived from the California State Budget for employees, and an overhead percentage of inflated and benefited wage. (*Id.* Exh. B, at pp. 2-3.)

This funding scheme is inadequate to cover the costs counties incur for counsel to undertake mandated activities. Counties are not permitted to claim costs associated with mandatory activities completed by counsel. (*Id*. ¶ 15 & Exh. D.) Instead, DHCS purports to address mandated legal costs of compliance as a portion of "overhead" added to reimbursements, which is intended to cover "infrastructure and support services like human resources, payroll, and legal," and is calculated at 47.36% of the inflated and benefited median wage of the employee categories assumed to be undertaking each activity. (*Id*. Exh. C, at p. 17.)

As a practical matter, this means that hours of county counsel's work are not refundable. First, counties are not permitted to submit claims for work performed by counsel preparing for and conducting court hearings, meaning that they do not even receive the overhead reimbursement for that time, much less a full and adequate reimbursement. Second, even for hours of work by other county staff that *may* be claimed, reimbursing counsel costs in the form of "overhead" is inadequate to defray actual costs. DHCS policy determines the reimbursement rate for each activity category based "wages of the staff likely to complete the task." (*Id*. Exh. C, at p. 20). For instance, DHCS presumes that court hearings involve the work of licensed practitioners of health arts and non-licensed providers, and that notice is performed by office and administrative staff workers and support occupations. (*Ibid.*) Calculating the reimbursable rate of legal counsel as a subdivision of an overhead fee set at 47.36% of the benefited median wage of these non-counsel employees is insufficient to meet the actual costs counties must pay in salaries and benefits to the counsel supporting these activities. (See Narayan Decl. ¶¶ 9-10.)

iii. The County Incurred Approximately $37,219 to Implement Mandated Activities by County Counsel Under the CARE Act in the 2024-2025 Fiscal Year

In fiscal year 2024-2025, the County incurred approximately $37,218.90 for its counsel costs incurred to implement the CARE Act, significantly exceeding the $1,000 established by Government Code section 17564 as the minimum threshold above which a local government may bring a test claim. (Narayan Decl. ¶¶ 9, 11.) This sum includes time spent by counsel advising the County behavioral health agency, preparing for hearings, attending hearings, and meeting and conferring with other entities and persons involved in the CARE process. (Kerrigan Decl. ¶¶ 4-7.)

iv. The County Estimates Incurring Approximately $118,352 to Implement Mandated Activities by County Counsel Under the CARE Act in the 2025-2026 Fiscal Year

The County estimates it will incur an additional $118,352 for its counsel costs to implement the CARE Act during the 2025-2026 fiscal year. (Narayan Decl. ¶ 10.) This

accounts for actual costs of $62,903 to date and estimated costs of $55,449 through the remainder of fiscal year 2025-2026. (*Id*. at ¶ 10.) These estimated costs were calculated by (1) identifying the average number of hours spent per month by counsel on the mandated activities between fiscal years 2024-2025 and 2025-2026; (2) identifying the average cost per month by multiplying the average number of hours per month by the hourly rate of counsel; and (3) multiplying the average monthly cost of counsel by the number months remaining in fiscal year 2025-2026. (*Id*. at ¶ 6.)

v. Statewide Costs of Implementing Mandated Activities by County Counsel Under the CARE Act in the 2025-2026 Fiscal Year Are Estimated to Reach Approximately $6,864,404

The County estimates that counties will spend approximately $6,864,404 in aggregate during the 2025-2026 fiscal year to comply with mandated activities by county counsel under the CARE Act. (*Id*. at ¶ 12.) The County calculated this figure by multiplying its actual and expected costs for fiscal year 2025-2026 by 58, which represents the number of counties in California. (*Ibid*.)

vi. There Are No Prior Mandate Determinations

The County is not aware of any prior mandate determination made by the Commission related to county counsel activities under the CARE Act. (Wheelehan Decl. ¶ 21.)

vii. There Are No Legislatively Determined Mandates

The County is not aware of any legislatively determined mandate related to county counsel activities under the CARE Act. (Wheelehan Decl. ¶ 20.)

E. The Costs of Compliance with the Mandated Activities by County Counsel Under the CARE Act Are Reimbursable by the State Under the California Supreme Court's Three-Prong Test

The mandated activities by county counsel under the CARE Act are reimbursable under Section 6 because (1) the statute compels local governments to act, (2) the compelled activity requires local governments to provide a new program or higher level of service, and (3) the state cannot carry its burden of identifying legal impediments to reimbursement. (*See Coast Cmty. Coll. Dist.*, *supra*, 13 Cal. 5th at p. 808.)

i. The CARE Act Compels Counties' Legal Counsel to Advise County Behavioral Health Agencies on Implementation

Under Section 6, a statute "constitute[s] a state mandate" where it "establishes conditions under which the state, rather than local officials, has made the decision requiring [local entities] to incur the costs of" providing a new program. (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 880.) The mandated activities by county under CARE Act warrant reimbursement because, in enacting them, the State has legally compelled the County to act. But even if the Commission were to read the

CARE Act otherwise, reimbursement is still warranted because the statute at least practically compels action by establishing severe penalties as a consequence for the failure to comply with these new requirements.

Notwithstanding that the CARE Act does not *explicitly* state that counsel must carry out the mandated activities, that counsel is mandated to act may be inferred from legal requirements for county counsels. State law provides that counties are required to provide counsel, who "*shall* render legal services to the county without fee." (Gov. Code, § 26520.)[1] Like all legal services, those of a county's counsel are subject to the laws and ethical codes governing the relationship between attorneys and their clients. These laws and ethical codes compel counsel to affirmatively provide zealous, competent, and effective representation, especially in a court-proceeding that can determine the rights and responsibilities of the county client. For example, an attorney is "obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his behalf." (*Conservatorship of John L.* (2010) 48 Cal.4th 131, 151–152 [citing Bus. & Prof. Code, § 6068, subd. (c)].) Attorneys must also "respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." (Bus. & Prof. Code, § 6068, subd. (m); *Calvert v. State Bar* (1991) 54 Cal.3d 765, 782 ["Adequate communication with clients is an integral part of competent professional performance as an attorney."].)

Indeed, while county counsel "representation of . . . a public officer is required by law as opposed to being based on a contractual commitment, [they are] nevertheless, like all attorneys, subject to the Rules of Professional Conduct which govern his profession." (*Ward v. Superior Court* (1977) 70 Cal.App.3d 23, 30.) The Rules of Professional Conduct state that an attorney "shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence" (Rule 1.1, subd. (a)); "shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client" (Rule 1.3, subd. (a)); shall "reasonably consult with the client about the means by which to accomplish the client's objectives in the representation" (Rule 1.4, subd. (a)(2)); shall "keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed" (Rule 1.4, subd. (a)(3)); and "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" (Rule 1.4, subd. (b).)

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[1] While under Government Code section 26520, this counsel is provisioned by default through the District Attorney, Government Code section 26529 provides that "[i]n counties that have a county counsel, the county counsel shall discharge all duties vested in the district attorney by Section[] 26520." (See also Gov. Code, §§ 27640, 27642 [county's board of supervisors may appoint a county counsel, who "shall discharge all duties vested by law in the district attorney other than those of a public prosecutor"]; *People v. Parmar* (2001) 86 Cal.App.4th 781, 798.)

Moreover, the State acknowledges that counsel is mandated to implement the CARE Act in its reimbursement scheme, described in detail above, by incorporating into each reimbursement—even for activities that do not involve court appearances or filings—an overhead that includes costs for legal counsel. It similarly makes no sense that the State would assume counsel's involvement in the activities it deems reimbursable but not in other activities that are traditionally the responsibility of counsel, such as preparation for and participation in judicial hearings and the interpretation of court orders.

1. The CARE Act Legally Compels Counsel for County Behavioral Health Agencies to Carry out a Number of Court-Related Activities.

The CARE Act legally compels counsel to county behavioral health agencies to undertake multiple new activities in provisions that require the agencies to prepare for and participate in hearings, create and file legal documents, and interpret and respond to court orders. For example, counsel may be required to assist the agency in interpreting orders the CARE court may issue to support the respondent in accessing elements of the CARE plan. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.1, subds. (d)(2), (3), (5).) Counsel must represent the agency in CARE proceedings (Welf. & Inst. Code, § 5979, subd. (b)(2)(A)), and because the "admission or exclusion of evidence [in CARE proceedings] shall be pursuant to the rules of evidence established by the Evidence Code" (*id*., § 5976.5, subd. (h)), counsel must prepare and present evidence, and conduct examinations of experts and other witnesses. Finally, several technical requirements of the CARE process require careful legal analysis and advice, such as those involving patient confidentiality and disclosure of records. (Kerrigan Decl. ¶ 6; Welf. & Inst. Code, § 5977.4, subd. (d).)

More specifically, the CARE Act legally compels counsel to act by "us[ing] mandatory language that requires or commands a local entity to participate in a program or service." (*Coast Cmty. Coll. Dist.*, *supra*, 13 Cal. 5th at p. 815 (citation omitted).) The CARE Act creates a higher level of service for the existing duty for counsel to provide legal services to the county, expanding the duties mandated by Government Code sections 26520 and 26529. For example (emphases added):

- Section 5978.1, subdivision (c), states that "the county behavioral health agency *shall* complete assessment of the individual referred pursuant to this section and *shall* file a petition pursuant to Section 5975 if the county behavioral health agency determines that the individual meets or is likely to meet criteria for the CARE process and the individual does not engage in voluntary treatment." This requires counsel to assist the agency in applying its expertise to the requirements of the law, and where the individual is eligible for CARE, counsel may be required to develop the petition so that it is legally sufficient. (Kerrigan Decl. ¶ 6.)

- Section 5977, subdivision (b)(4), states that "[a]t the initial appearance on the petition . . . [a] representative from the county behavioral health agency *shall*

be present." This requires the agency's counsel to attend the hearing in order to represent the county behavioral health agency in a forum where its rights and obligations will be determined by the court. (Kerrigan Decl. ¶ 6.)

- Section 5977.2, subdivision (a)(1) states that "At intervals set by the court and not less frequently than every 60 days after the court orders the CARE plan, the court shall hold a status review hearing. The county behavioral health agency *shall* file with the court and serve on the respondent, and the respondent's counsel and supporter, a report no fewer than five court days prior to the review hearing." This requires the agency's counsel to provide advice, as needed, to the county behavioral health agency about the report and to represent the agency at the hearings. (Kerrigan Decl. ¶ 6.)

- Section 5977.3, subdivision (a)(1), states that "[i]n the 11th month of the process timeline, the court shall hold a one-year status hearing. Not fewer than five court days prior to the one-year status hearing, the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter." This requires the agency's counsel to provide advice, as needed, to the county behavioral health agency about the report and to represent the agency at the hearing. (Kerrigan Decl. ¶ 6.)

- Section 5977.4, subdivision (d), states that "the county behavioral health agency *shall* include in any report evaluation, or other document filed with the court, the information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the filing" and include a number of compliance provisions guiding that duty. This requires the agency's counsel to provide advice to the county behavioral health agency regarding patient confidentiality and notice requirements. (Kerrigan Decl. ¶ 6.)

County behavioral health agencies' counsel have no discretion as to whether to take the required actions noted above because the CARE Act uses "mandatory language that requires or commands" counties to comply. (*Department of Finance*, 85 Cal. App. 5th at p. 558.) Courts and the Commission routinely find that the State has established reimbursable mandates where it requires local governments to act using language that eliminates discretion. For example, a statute requiring that, under certain conditions, a "pupil *shall* be entitled to a[n] [expulsion] hearing" legally compelled local governments to conduct such hearings. (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 868 & n.3 (emphasis added).) Likewise, executive orders requiring that certain "[p]ersonal protective clothing and equipment . . . *shall* be provided" to firefighters and that employers "*shall* ensure the availability, maintenance, and use of all [such] protective clothing and equipment," compelled participation in a new program. (*Carmel Valley Fire Prot. Dist. v. State of California* (1987) 190 Cal. App. 3d 521, 537-38; *see* Commission on State Mandates, Test Claim Decision on *County of L.A. Citizens Redistricting Comm'n*, No. 19-TC-04 at pp. 22-23 (adopted May 28, 2021) (elections-

related statute "us[ing] the word 'shall' regarding the requirement for the [local agency] to take steps" left agency "no choice").)

In certain other provisions of the CARE Act, though the Legislature does not itself directly mandate a county behavioral health agency and its counsel to perform a specified task, it requires or authorizes a court to issue such a mandate in an order requiring the county agency's compliance. Any time the court issues an order in a proceeding governed by the CARE Act, that order is a mandate to the county behavioral health agency enforceable by referral to the presiding judge, who "shall issue an order to show cause why the local government entity should not be fined" in the instance of noncompliance. (Welf. & Inst. Code, § 5979, subd. (b)(2)(A).) For example:

- Section 5977, subdivision (b)(7)(A), states that "[t]he court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner. A licensed behavioral health professional may testify as an expert concerning whether the respondent meets the CARE criteria in Section 5972 provided that the court finds that the professional has special knowledge, skill, experience, training, or education sufficient to qualify as an expert under Section 720 of the Evidence Code." This requires the agency's counsel to prepare expert testimony for merits hearing by reviewing expert reports and providing advice to the agency about the evidentiary standard, present evidence at the merits hearing by qualifying experts, conducting examinations, and presenting additional material, and provide counsel to the agency during the merits hearing. (Kerrigan Decl. ¶ 6.)

- Section 5977, subdivision (c)(2), states that upon the fulfilment of other conditions, "the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days." This requires the agency's counsel to represent county behavioral health agency at case management hearings, present additional evidence as needed, and advise agency client. (Kerrigan Decl. ¶ 6.)

- Section 5977.1, subdivision (a)(1), states that "[a]t the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement." This requires the counsel to represent county behavioral health agency at case management hearings, present evidence as needed, and advise agency client. (Kerrigan Decl. ¶ 6.)

- Section 5977.1, subdivision (a)(4), states that "[t]he court may, in its discretion, call additional progress hearings beyond the hearing set at 60 days, for the duration of the CARE agreement." Section 5977.1, subdivision (a)(2)(A) likewise contemplates the court setting a progress hearing. These provisions require counsel to represent the county behavioral health agency at additional progress hearings held during the duration of the CARE agreement. (Kerrigan Decl. ¶ 6.)

- Section 5977.1, subdivision (c)(3)(A), states that "[i]f the court finds that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days." This requires the agency's counsel to advise county behavioral health agency as it prepares CARE plan. (Kerrigan Decl. ¶ 6.)

- Section 5977.1, subdivisions (d)(2), (3), and (5), state that "[t]he court may issue any orders necessary to support the respondent in accessing appropriate services and supports"; "[a] court may order medication"; and where needed the "court shall order a supplemental report to be filed by the county behavioral health agency." This requires counsel to advise the county behavioral health agency whenever the court issues orders to support the respondent in accessing elements of the CARE plan. (Kerrigan Decl. ¶ 6.)

County counsel responsibilities under the CARE Act that are triggered by court order are no less compulsory than direct mandates in the legislation. The Commission has found that mandates are legally compelled for the purposes of the Section 6 analysis notwithstanding the fact that local government action might be conditioned on a court first determining whether triggering circumstances exist. The Commission's *Post-Conviction: DNA Court Proceedings* test claim decision is analogous. There, the Commission considered a statute providing that "[i]f the court finds evidence was subjected to DNA or other forensic testing previously . . . , *it shall order the party* at whose request the testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing." Commission on State Mandates, Test Claim Decision on *Post-Conviction: DNA Court Proceedings*, No. 00-TC-21 at p. 16 (adopted July 28, 2006) (emphasis added). The Commission found that "the district attorney's preparation and filing of a response to the DNA-test motion is a state mandate within the meaning of" Section 6. (*Id.*) The Commissioned reasoned: "Based on its mandatory language that the court 'shall' order access to the specified information, [the statute] leaves the court with no discretion in ordering the parties access to the previous DNA-testing information. . . . *[W]hen the court is left without discretion, the provision is a state mandate rather than a mandate by the court.*" (*Id.* [emphasis added].)

2. Alternatively, the CARE Act Practically Compels Counsel to County Behavioral Health Agencies to Undertake New Activities

Even if the Commission finds that counsel are not *legally* compelled to act under the CARE Act, it should nonetheless conclude that they are *practically* compelled to do so, equally warranting State reimbursement. (See *Department of Fin.*, *supra*, 85 Cal. App. 5th at p. 558.) The State practically compels a program when "an entity or its constituents face certain and severe penalties or consequences for not participating in or complying with an optional state program." (*Ibid.*) The Supreme Court advises that "a reimbursable state mandate might be found in circumstances short of legal compulsion . . . if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program." (*Department of Finance v. Commission on State Mandates*, 30 Cal. 4th 727, 731 (2003).)

Case law and previous Commission decisions illustrate several examples of practically compelled mandates that required reimbursement under Section 6. Rejecting the argument that local governments preclude reimbursement by choosing to provide a stormwater drainage system, the Court of Appeal explained that "[t]he drainage of a city in the interest of the public health and welfare is one of the most important purposes for which the police power can be exercised," such that "deciding not to provide a stormwater drainage system is no alternative at all." (*Department of Finance*, *supra*, 85 Cal.App.5th at p. 558 [citation omitted].)

In determining that the federal government practically compelled the State and local governments to provide unemployment insurance benefits to their employees, the Court of Appeal observed that California "businesses faced a new and serious penalty" for noncompliance, one that was "certain and severe." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74.) State and local government noncompliance would invite "full, double unemployment taxation by both state and federal governments" that, "[b]esides constituting an intolerable expense against the state's economy on its face, . . . would place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance." (*Ibid*.)

The Commission determined that post-election manual tallies were practically compelled during the November 2008 General Election. First, the Commission noted that it is a "core mandatory function of counties . . . to conduct elections." (Post Election Manual Tally (PEMT), 10-TC-08, Statement of Decision, 37, Commission on State Mandates (2014). In this case, the claimant established that complying with the test claim regulations was "the only reasonable means to carry out its core mandatory function." (*Ibid*.) Given the compliance timeframe and with voting already underway, the Commission agreed that "counties could not, as a practical matter, stop using the already-approved electronic voting system and change to a paper ballot only voting process to avoid the test claim regulations." (*Id*. at pp. 37-38.)

Here, the Legislature clearly recognized that counsel are integral to implementing the CARE Act. The statutory scheme entitles CARE respondents to counsel (Welf. & Inst. Code, § 5976, subd. (c)) and allows respondents to present evidence, call witnesses, cross-examine witnesses, and appeal decisions, among other rights (*id*. at subds. (f), (g), (h), (i).). The Legislature also expressly recognized the importance of counsel in its legislative findings. (SB 1338, § 1, subd. (e).) Were the county behavioral health agencies to undertake the CARE Act without the assistance of counsel, they would face a considerable imbalance in judicial proceedings where respondents are represented by counsel. It is highly unlikely that the Legislature would intend this outcome, as it risks undermining the effectiveness of the CARE Act to achieve the Legislature's purpose.

Moreover, without county counsel present to put on evidence, complete direct examination and cross examination, and advise county behavioral health agencies on a variety of issues including compliance with court orders, patient confidentiality, and other legal requirements, the CARE process itself would be severely weakened. (Wheelehan Decl. ¶ 19.) Counsel are crucial to ensuring that county behavioral health agencies understand the requirements of the CARE Act, including both the law itself and orders issued by the court in CARE proceedings. (*Ibid.*) County experts need assistance from counsel to prepare expert reports, and to prepare for examination during CARE proceedings. (*Ibid*.) And counsel are crucial to ensuring that CARE proceedings adequately consider evidence and facilitate agreement between the parties. (*Ibid*.) Without counsel, county behavioral health agencies may not be equipped to collaborate with respondents, and may proceed much more slowly through the CARE process. (*Ibid*.) These consequences are severe because the CARE Act concerns a severe set of circumstances. (*Ibid.*)

The legislative findings for the CARE Act make the stakes of effective implementation abundantly clear. The Legislature declared that "[t]housands of Californians are suffering from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death." (SB 1338, § 1, subd. (a).) The Legislature was clear that "[a] new approach is needed to act earlier and to provide support and accountability, both to individuals with these untreated severe mental illnesses and to local governments with the responsibility to provide behavioral health services," adding that "California's civil courts will provide a new process for earlier action, support, and accountability, through a new Community Assistance, Recovery, and Empowerment (CARE) process." (*Id*. at subd. (c).) It emphasized that "CARE provides a vital solution to ensure access to comprehensive services and supports for some of the most ill and most vulnerable Californians." (*Id*. at subd. (f).)

Counsel are necessary to ensure that the CARE Act effectively and efficiently reaches the "[t]housands of Californians . . . suffering from untreated schizophrenia spectrum and psychotic disorders." (*Id*. at subd. (a).) Under the circumstances, it would be practically infeasible, and therefore no real option at all, for counsel to decline to represent and advise county behavioral health agencies at the risk of "certain and

severe" consequences for CARE Act implementation. The CARE Act therefore at least practically compels compliance by county counsel.

ii. The CARE Act Creates New Programs Under Section 6

The requirements imposed on counties and other local agencies in the CARE Act are the very kind of mandated activities that warrant reimbursement because they create new programs under Section 6.

1. The Actions Required by the CARE Act Concern Programs Under Section 6

The actions by county counsel compelled by the CARE Act are programs under either prong of the Supreme Court's test because the statute (1) concerns "programs that carry out the governmental function of providing services to the public," and (2) "implement[s] a state policy, impose[s] unique requirements on local governments and do[es] not apply generally to all residents and entities in the state." (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 874 (citation omitted).) "[O]nly one of these findings is necessary to trigger reimbursement." (*Carmel Valley*, *supra*, 190 Cal. App. 3d at p. 537.)

First, the CARE Act requires actions that "carry out a governmental function of providing services to the public." Governor Newsom described the critical governmental function mandated by the CARE Act as effecting a "paradigm shift" away from the statutory status quo, which "provides support [to individuals suffering from certain mental illnesses] only after a criminal justice intervention or conservatorship," and towards

> providing a new pathway for seriously ill individuals before they end up cycling through prison, emergency rooms, or homeless encampments. . . . We are taking action to break the pattern that leaves people without hope and cycling repeatedly through homeless and incarceration. This is a new approach to stabilize people with the hardest-to-treat behavioral health conditions.

(Wheelehan Decl. Exh. E, at pp. 11-12.)

Similarly, SB 1338's author described the problem of the inadequacy of governmental services for individuals with behavioral health conditions and the attempt to resolve this problem with the CARE Act, as follows:

> County behavioral health departments provide Medi-Cal specialty mental health services to those who are enrolled in Medi-Cal and have severe mental illness. However, many of the most impaired and vulnerable individuals remain under or un-served because (a) the individual is so impaired they do not seek out services, (b) the necessary services are not available at the right time due to administrative complexities and/or legal barriers, (c) client care lacks coordination among providers and services, resulting in fragmentation among provided services, and (d) little accountability at various levels of the system results in

> poor outcomes for the client, who is often living on the streets. This legislation seeks to overcome these barriers by connecting individuals to services, requiring coordination, and adding a necessary layer of accountability through the courts.

(*Id*. at p. 15; *see also* Wheelehan Decl. Exh. F at p. 29 ("The [CARE Act] framework provides individuals with a clinically appropriate, community-based set of services and supports . . . which includes the short-term stabilization medications, wellness and recovery supports, and connection to social services and a housing plan.").)

Courts have repeatedly found that state laws aimed at providing beneficial and protective public services create programs or higher levels of service under this prong and accordingly involve reimbursable State mandates. For example, permitting conditions establishing heightened stormwater drainage requirements involved a program because they benefitted the public with increased pollution abatement. (*Department of Fin*., *supra*, 85 Cal. App. 5th at p. 555-56.) Similarly, a law requiring local agencies to contribute costs of educating area pupils with special needs at state schools created a program because "the education of handicapped children is clearly a governmental function providing a service to the public." (*Lucia Mar Unified Sch. Dist. v. Honig* (1988) 44 Cal. 3d 830, 835.) And a law requiring that public school districts afford hearings with specified protections to students facing expulsion created a higher level of service for an existing program because "[p]roviding public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public." (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 879.) Here, likewise, the CARE Act create a program subject to Section 6 because counsel participate in the process of providing access to county-operated behavioral health and social service programs to individuals who need them under the oversight of the civil court system.

Second, the CARE Act "implement[s] a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 874.) The CARE Act does not incorporate any rules requiring action by all state residents and entities but rather impose requirements only on local agencies. For this reason, it also creates a program under this prong. (*See, e.g.*, *Lucia Mar*, 44 Cal. 3d at p. 835 (statute was a program because it "impose[d] requirements on school districts not imposed on all the state's residents"); *San Diego Unified Sch. Dist.*, 33 Cal. 4th at p. 885 n.20 (statute mandating terms of school district expulsion hearings was a program because it "impose[d] unique requirements on local governments").) The obligations imposed on county behavioral health agencies and their counsel are not likewise imposed generally on all state residents and entities.

2. The Program Mandated by the CARE Act Is New

The program imposed by the CARE Act is new "in comparison with the preexisting scheme [because it] did not exist prior to the enactment of" the bill. (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 878; *see, e.g.*, *Lucia Mar*, *supra*, 44 Cal. 3d at p. 835 (finding that statute requiring local agencies to contribute to certain

education costs created new program because “at the time [the statute] became effective [agencies] were not required to contribute to the education of students from their districts”); *Department of Fin.*, *supra*, 85 Cal. App. 5th at pp. 559-60 (similar).)

The CARE Act does not expand, improve, or modify any existing program for mental health treatment, but instead creates a new program where there was previously no similar scheme. This novelty is emphasized repeatedly throughout the legislative history. For example, in its analysis of SB 1338, the Senate Judiciary Committee explains: “The state’s existing mechanisms to treat persons with mental illness include treatment for persons who are a danger to themselves or others, or ‘gravely disabled,’ under the Lanterman-Petris-Short (LPS) Act; assisted outpatient treatment (AOT) under Laura’s Law; and a housing conservatorship being implemented in San Francisco on a pilot basis. This bill establishes the [CARE Act], which would implement a *new* statewide procedure for treating persons suffering from specified mental illnesses through the courts.” (Wheelehan Decl. Exh. G, at p. 1 (emphasis added).) Similarly, the Senate Floor Analysis states, “This bill *does not seek to refine or better coordinate existing programs* for those with mental illness. Instead, it seeks to create and implement throughout California a *new program* for identifying those with mental illness who need treatment – the CARE program.” (Wheelehan Decl. Exh. E, at p. 13 (emphasis added).)

iii. No Conditions Exist That Create an Exception to the Requirement That the State Must Reimburse the County for County Counsel Compliance with the CARE Act

None of the circumstances enumerated in Government Code section 17556 or Section 6 that create an exception to the State’s requirement to reimburse local entities for State-mandated activities by county counsel exists with respect to the CARE Act. (Wheelehan Decl. ¶ 25.)

1. Section 6(a)(1) and Government Code section 17556(a) do not apply.

The County did not request that the State enact the CARE Act or grant it the legislative authority to implement the new program they create.

2. Section 6(a)(3) does not apply.

The CARE Act was not enacted prior to January 1, 1975.

3. Section 6(a)(4) does not apply.

The CARE Act is not contained in the Ralph M. Brown Act or California Public Records Act.

4. Government Code section 17556(b) does not apply.

The CARE Act does not affirm a mandate declared to be existing law by any court.

5. Government Code section 17556(c) does not apply.

The CARE Act does not impose requirements mandated by federal law or regulation, nor does it result in costs mandated by the federal government.

6. Government Code section 17556(d) does not apply.

The County lacks the authority to levy service charges, fees, or assessments to pay for the costs of compliance with the CARE Act. Fees are expressly prohibited by the CARE Act. (Welf. & Inst. Code, § 5975.3 ["There shall be no fee for filing under this chapter nor shall any fees be charged by any public officer for services in filing or serving papers or for the performance of any duty enjoined by the CARE Act."].)

7. Government Code section 17556(f) does not apply.

The CARE Act does not impose duties that are necessary to implement or are included in a California ballot measure approved by the voters.

8. Government Code section 17556(e) does not apply.

The CARE Act does not provide for offsetting savings that result in no net costs to the County.

Nor does the CARE Act "include[] additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the mandates," notwithstanding the fact that DHCS and the legislature have provided at least temporary reimbursement for certain mandated activities. *First*, the CARE Act *does not* "include additional revenue that was specifically intended to fund the costs of the state mandate." Although the legislature appropriated funds to allow some reimbursement to counties as recently as fiscal year 2023-2024, the CARE Act does not provide for revenue intended to fund the costs of the mandate. Therefore, there is no guarantee that such appropriations will continue and that counties won't be left holding the bill. *Second*, the appropriated funds *are not* allocated to counties "in an amount sufficient to fund the cost of the mandates." As discussed above, the reimbursement policies issued by DHCS to govern the allocation of the appropriated funds ensure that they do not reimburse certain activities the CARE Act mandates a county's counsel to undertake, and insufficiently reimburse others.

The reimbursement scheme established for the CARE Act is distinguishable from the reimbursement at issue in the Commission's recent decision finding that statutes governing the provision of transitional kindergarten implicated Government Code section 17556(e). (*See* Commission on State Mandates, Test Claim Decision on *Transitional Kindergarten*, No. 23-TC-02 (adopted May 23, 2025).) There, the test claim statute amended provisions of the Education Code relating to transitional kindergarten programs, including by expanding the range of birthdates used to determine student eligibility and requiring schools to maintain certain maximum class sizes. (*Id.* at 50-51.) The Commission determined that Government Code section 17556(e) applied because "[t]he Legislature has provided funding specifically for the TK program through the

[Local Control Funding Formula]," the statutory system for calculating school funding based on factors including student enrollment. (*Id.* at 55.) It reasoned that the *test claim statute* "states that the required activities are a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to [Education Code] Section 46300," of which subdivision (g)(1) "expressly states that in computing the [funding] for a school district, 'there shall be included the attendance of pupils in . . . a transitional kindergarten program." (*Ibid.*) That is, in the test claim statute "the state has provided funding to school districts specifically intended for the new requirements in the TK program in an amount sufficient to fund the cost of the state mandate through the LCFF entitlement." (*Id.* at 57.)

The statutory provision giving rise to the *Transitional Kindergarten* decision has no analogue in the CARE Act, which does not require the State to reimburse local governments for activities mandated by that law. Therefore, Government Code section 17556(e) does not similarly prevent the Commission from determining whether the CARE Act creates costs mandated by the State. Because the reimbursement policies created by DHCS are neither guaranteed by the CARE Act statutes nor sufficient to cover counties' costs of implementing counsel's mandated activities under the CARE Act, the Commission should find that Government Code section 17556(e) does not apply and should further find that the CARE Act creates costs mandated by the State.

9. Section 6(a)(2) and Government Code section 17556(g) do not apply.

The CARE Act's mandates for county counsel do not define, create, or eliminate a crime or infraction or change the penalty for a crime or infraction or an existing definition of a crime. In SB 1338 and SB 1400, the legislature suggests that reimbursement is not required under Section 6 for "certain costs that may be incurred" in complying with the CARE Act because it "creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of" Section 6. (SB 1338, sec. 11.) The legislature goes further in SB 42, asserting that "[n]o reimbursement is required by this act" under Section 6 "because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of" Section 6. (SB 42, sec. 12.)

These assertions misconstrue Government Code section 17556(g), which provides that "[t]he commission shall not find costs mandated by the state . . . if, after a hearing, the commission finds . . . [that] '[t]he statute *created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction*, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." (Emphasis added.) They similarly misconstrue Section 6, of which subsection (a)(2) provides that the legislature "need not[] provide a subvention of funds for . . . [l]egislation *defining a new crime or changing an existing definition of a crime*." (Emphasis added.)

No provision of the CARE Act creates a new crime or infraction, eliminates a crime or infraction, changes the penalty of a crime or infraction, or defines or changes the definition of a crime. Rather, the CARE Act creates a new purely *civil* procedure and nowhere relates to crimes or their penalties at all. The legislature specifies in SB 1338 that under the CARE Act, "California's *civil courts* will provide a new process for earlier action, support, and accountability" in the provision of behavioral health services. (SB 1338, section 1(c) (emphasis added); *see also* SB 42, Legis. Counsel's Digest, sec. 1 (the CARE Act "authorizes specified adult persons to petition *a civil court* to create a voluntary CARE agreement or a court-ordered CARE plan" (emphasis added)).)

The Commission's test claim decision on *Criminal Procedure: Discrimination* is analogous. There, the Commission found that a new law relating to habeas corpus proceedings was a reimbursable mandate that did not fall under these exceptions because "[a] habeas corpus proceeding is *not* a criminal action" but is instead "a civil proceeding serving civil purposes only." Draft Proposed Decision, *Criminal Procedure: Discrimination*, 24-TC-02, 46 (June 17, 2024). Likewise here, the CARE Act does not relate to crime enforcement but instead creates "a civil proceeding serving civil purposes only," namely, the adjudication of petitions to create and monitor mental health care treatment plans for people with specified psychological disorders. Moreover, unlike the law at issue in *Criminal Procedure: Discrimination*, the CARE Act does not create any potential for care recipients to challenge criminal judgments against them or change the penalties they face for prior crimes. (*Id*. (noting that "[w]hile a petitioner's original sentence might be vacated and it is possible for the penalty to be challenged if the petition [under the law at issue] is successful, . . . any change in the penalty is . . . not directly related to the enforcement of crime as required by section 17556(g)").)

V. Conclusion

For the foregoing reasons, the Commission should find that the State must compensate the County and other counties for the counsel costs they incur in complying with the CARE Act.

Bills

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 1338

CHAPTER 319

An act to add Section 1374.723 to the Health and Safety Code, to add Section 10144.54 to the Insurance Code, to amend Section 1370.01 of the Penal Code, and to amend Sections 5801 and 5813.5 of, and to add Part 8 (commencing with Section 5970) to Division 5 of, the Welfare and Institutions Code, relating to courts.

[Approved by Governor September 14, 2022. Filed with Secretary of State September 14, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1338, Umberg. Community Assistance, Recovery, and Empowerment (CARE) Court Program.

(1) Existing law, the Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, requires each county to offer specified mental health programs, unless a county or group of counties opts out by a resolution passed by the governing body, as specified. Existing law, the Lanterman-Petris-Short Act, provides for short-term and longer-term involuntary treatment and conservatorships for people who are determined to be gravely disabled.

This bill, contingent upon the State Department of Health Care Services developing an allocation to provide financial assistance to counties, would enact the Community Assistance, Recovery, and Empowerment (CARE) Act, which would authorize specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria. The bill would require the Counties of Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne and the City and County of San Francisco to implement the program commencing October 1, 2023, and the remaining counties to commence no later than December 1, 2024. The bill would require the Judicial Council to develop a mandatory form for use in filing a CARE process petition and would specify the process by which the petition is filed and reviewed, including requiring the petition to be signed under penalty of perjury, and to contain specified information, including the facts that support the petitioner's assertion that the respondent meets the CARE criteria. The bill would also specify the schedule of review hearings required if the respondent is ordered to comply with an up to one-year CARE plan by the court. The bill would make the hearings in a

CARE Act proceeding confidential and not open to the public, thereby limiting public access to a meeting of a public body. The bill would authorize the CARE plan to be extended once, for up to one year, and would prescribe the requirements for the graduation plan. By expanding the crime of perjury and imposing additional duties on the county behavioral health agencies, this bill would impose a state-mandated local program.

This bill would require the court to appoint counsel for the respondent, unless the respondent has retained their own counsel. The bill would require the Legal Services Trust Fund Commission at the State Bar to provide funding to qualified legal services projects to provide legal counsel in CARE Act proceedings, as specified. The bill would authorize the respondent to have a supporter, as defined. The bill would require the State Department of Health Care Services, in consultation with specified stakeholders, to provide optional training and technical resources for volunteer supporters on the CARE process, community services and supports, supported decisionmaking, and other topics, as prescribed.

This bill would require the California Health and Human Services Agency, or a designated department within that agency, to engage an independent, research-based entity to advise on the development of data-driven process and outcome measures for the CARE Act and to convene a workgroup to provide coordination and support among relevant state and local partners and other stakeholders throughout the phases of county implementation of the CARE Act. The bill also would require the State Department of Health Care Services to provide training and technical assistance to county behavioral health agencies to implement the act and to provide training to counsel, as specified. The bill would require the Judicial Council, in consultation with the department and others, to provide training to judges regarding the CARE process, as specified.

This bill would authorize the court, at any time during the CARE process, if it finds the county or other local government entity not complying with court orders, to report that finding to the presiding judge of the superior court or their designee. If the presiding judge or their designee finds, by clear and convincing evidence, that the local government has substantially failed to comply with the CARE process, the presiding judge may impose a fine of up to $1,000 per day and, if the court finds persistent noncompliance, to appoint a special master to secure court-ordered care for the respondent at the county's cost. The bill would establish the CARE Act Accountability Fund in the State Treasury to receive the fines collected under the Act, which would, upon appropriation, be allocated and distributed by the department to the local government entity that paid the fines to serve individuals who have schizophrenia spectrum or other psychotic disorders who are experiencing or are at risk of homelessness, criminal justice involvement, hospitalization, or conservatorship.

This bill would require the department, in consultation with the Judicial Council, to develop an annual reporting schedule for the submission of CARE Act data from the trial courts and would require the Judicial Council to aggregate the data and submit it to the department. The bill would require

the department, in consultation with various other entities, to develop an annual CARE Act report and would require county behavioral health agencies and other local governmental entities to provide the department with specified information for that report. The bill would require an independent, research-based entity retained by the department to develop an independent evaluation of the effectiveness of the CARE Act and would require the department to produce a preliminary and final report based on that evaluation. By increasing the duties of a local agency, this bill would impose a state-mandated local program.

This bill would exempt a county or an employee or agent of a county from civil or criminal liability for any action by a respondent in the CARE process, except when an act or omission constitutes gross negligence, recklessness, or willful misconduct.

Existing law, the Mental Health Services Act (MHSA), an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the Mental Health Services Fund (MHSF), a continuously appropriated fund, to fund various county mental health programs, including children's mental health care, adult and older adult mental health care, prevention and early intervention programs, and innovative programs.

This bill would clarify that MHSA funds may be used to provide services to individuals under a CARE agreement or a CARE plan.

(2) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plans and insurers to provide coverage for medically necessary treatment of mental health and substance use disorders. Violation of the Knox-Keene Act by a health care service plan is a crime.

This bill would require health care service plans and insurers to cover the cost of developing an evaluation for CARE process services and the provision of all health care services for an enrollee or insured when required or recommended for the person pursuant to a CARE plan, as specified, without cost sharing, except for prescription drugs, and regardless of whether the services are provided by an in-network or out-of-network provider. Because a violation of this requirement by a health care service plan would be a crime, this bill would impose a state-mandated local program.

(3) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, with the goal of returning the defendant to competency. Existing law suspends a criminal action pending restoration to competency.

This bill, for a misdemeanor defendant who has been determined to be incompetent to stand trial, would authorize the court to refer the defendant to the CARE process.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) This bill would state that its provisions are severable.

(6) This bill would incorporate additional changes to Section 1370.01 of the Penal Code proposed by SB 1223 to be operative only if this bill and SB 1223 are enacted and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Thousands of Californians are suffering from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death. These individuals, families, and communities deserve a path to care and wellness.

(b) With advancements in behavioral health treatments, many people with untreated schizophrenia spectrum and psychotic disorders can stabilize, begin healing, and thrive in community-based settings, with the support of behavioral health services, stabilizing medications, and housing. But too often this comprehensive care is only provided after arrest, conservatorship, or institutionalization.

(c) A new approach is needed to act earlier and to provide support and accountability, both to individuals with these untreated severe mental illnesses and to local governments with the responsibility to provide behavioral health services. California's civil courts will provide a new process for earlier action, support, and accountability, through a new Community Assistance, Recovery, and Empowerment (CARE) process.

(d) California has made unprecedented investments in behavioral health, housing, and combating homelessness, and the CARE process helps those with the greatest needs access these resources and services. The CARE process provides a framework to ensure counties and other local governments focus their efforts to provide comprehensive treatment, housing, and supportive services to Californians with complex behavioral health care needs so they can stabilize and find a path to wellness and recovery.

(e) Self-determination and civil liberties are important California values that can be advanced and protected for individuals with these untreated severe mental illnesses with the provision of legal counsel for CARE proceedings, agreements, and plans, as well as the promotion of supported decisionmaking.

(f) California continues to act with urgency to expand behavioral health services and to increase housing choices and end homelessness for all Californians. CARE provides a vital solution to ensure access to comprehensive services and supports for some of the most ill and most vulnerable Californians.

SEC. 2. Section 1374.723 is added to the Health and Safety Code, to read:

1374.723. (a) A health care service plan contract issued, amended, renewed, or delivered on or after July 1, 2023, that covers hospital, medical, or surgical expenses shall cover the cost of developing an evaluation pursuant to Section 5977.1 of the Welfare and Institutions Code and the provision of all health care services for an enrollee when required or recommended for the enrollee pursuant to a CARE agreement or a CARE plan approved by a court in accordance with the court's authority under Sections 5977.1, 5977.2, 5977.3, and 5982 of the Welfare and Institutions Code, regardless of whether the service is provided by an in-network or out-of-network provider.

(b) (1) A health care service plan shall not require prior authorization for services, other than prescription drugs, provided pursuant to a CARE agreement or CARE plan approved by a court pursuant to Part 8 (commencing with Section 5970) of Division 5 of the Welfare and Institutions Code.

(2) A health care service plan may conduct a postclaim review to determine appropriate payment of a claim. Payment for services subject to this section may be denied only if the health care service plan reasonably determines the enrollee was not enrolled with the plan at the time the services were rendered, the services were never performed, or the services were not provided by a health care provider appropriately licensed or authorized to provide the services.

(3) Notwithstanding paragraph (1), a health care service plan may require prior authorization for services as permitted by the department pursuant to subdivision (e).

(c) (1) A health care service plan shall provide for reimbursement of services provided to an enrollee pursuant to this section, other than prescription drugs, at the greater of either of the following amounts:

(A) The health plan's contracted rate with the provider.

(B) The fee-for-service or case reimbursement rate paid in the Medi-Cal program for the same or similar services as identified by the State Department of Health Care Services.

(2) A health care service plan shall provide for reimbursement of prescription drugs provided to an enrollee pursuant to this section at the health care service plan's contracted rate.

(3) A health care service plan shall provide reimbursement for services provided pursuant to this section in compliance with the requirements for timely payment of claims, as required by this chapter.

(d) Services provided to an enrollee pursuant to a CARE agreement or CARE plan, excluding prescription drugs, shall not be subject to copayment, coinsurance, deductible, or any other form of cost sharing. An individual or entity shall not bill the enrollee or subscriber, nor seek reimbursement from the enrollee or subscriber, for services provided pursuant to a CARE agreement or CARE plan, regardless of whether the service is delivered by an in-network or out-of-network provider.

(e) No later than July 1, 2023, the department may issue guidance to health care service plans regarding compliance with this section. This guidance shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Guidance issued pursuant to this subdivision shall be effective only until the department adopts regulations pursuant to the Administrative Procedure Act.

(f) This section does not excuse a health care service plan from complying with Section 1374.72.

(g) This section does not apply to Medi-Cal managed care contracts entered pursuant to Chapter 7 (commencing with Section 14000), Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14591) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(h) This section shall become operative on July 1, 2023.

SEC. 3. Section 10144.54 is added to the Insurance Code, to read:

10144.54. (a) An insurance policy issued, amended, renewed, or delivered on or after July 1, 2023, shall cover the cost of developing an evaluation pursuant to Section 5977.1 of the Welfare and Institutions Code and the provision of all health care services for an insured when required or recommended for the insured pursuant to a CARE agreement or CARE plan approved by a court in accordance with the court's authority under Sections 5977.1, 5977.2, 5977.3, and 5982 of the Welfare and Institutions Code, regardless of whether the service is delivered by an in-network or out-of-network provider.

(b) (1) An insurer shall not require prior authorization for services, other than prescription drugs, provided pursuant to a CARE agreement or CARE plan approved by a court pursuant to Part 8 (commencing with Section 5970) of Division 5 of the Welfare and Institutions Code.

(2) An insurer may conduct a postclaim review to determine appropriate payment of a claim. Payment for services subject to this section may be denied only if the insurer reasonably determines the insured was not insured at the time the services were rendered, the services were never performed, or the services were not provided by a health care provider appropriately licensed or authorized to provide the services.

(3) Notwithstanding paragraph (1), an insurer may require prior authorization for services as permitted by the department pursuant to subdivision (e).

(c) (1) An insurer shall provide for reimbursement of services provided to an insured pursuant to this section, other than prescription drugs, at the greater of either of the following amounts:

(A) The insurer's contracted rate with the provider.

(B) The fee-for-service or case reimbursement rate paid in the Medi-Cal program for the same or similar services as identified by the State Department of Health Care Services.

(2) An insurer shall provide for reimbursement of prescription drugs provided to an insured pursuant to this section at the insurer's contracted rate.

(3) An insurer shall provide reimbursement for services provided pursuant to this section in compliance with the requirements for timely payment of claims, as required by this chapter.

(d) Services provided to an insured pursuant to a CARE agreement or CARE plan, excluding prescription drugs, shall not be subject to copayment, coinsurance, deductible, or any other form of cost sharing. An individual or entity shall not bill the insured, nor seek reimbursement from the insured, for services provided pursuant to a CARE agreement or CARE plan, regardless of whether the service is delivered by an in-network or out-of-network provider.

(e) No later than July 1, 2023, the department may issue guidance to insurers regarding compliance with this section. This guidance shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Guidance issued pursuant to this subdivision shall be effective only until the department adopts regulations pursuant to the Administrative Procedure Act.

(f) This section does not excuse an insurer from complying with Section 10144.5.

SEC. 4. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence.

If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b) or (d) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(iv) Refer the defendant to the CARE program pursuant to Section 5978 of the Welfare and Institutions Code. A hearing to determine eligibility for CARE shall be held within 14 days after the date of the referral. If the hearing is delayed beyond 14 days, the court shall order the defendant, if

confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into CARE, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county behavioral health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

SEC. 4.5. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(iv) Refer the defendant to the CARE program pursuant to Section 5978 of the Welfare and Institutions Code. A hearing to determine eligibility for CARE shall be held within 14 days after the date of the referral. If the hearing is delayed beyond 14 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into CARE, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county behavioral health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may

modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

SEC. 5. Section 5801 of the Welfare and Institutions Code is amended to read:

5801. (a) A system of care for adults and older adults with severe mental illness results in the highest benefit to the client, family, and community while ensuring that the public sector meets its legal responsibility and fiscal liability at the lowest possible cost.

(b) The underlying philosophy for these systems of care includes the following:

(1) Mental health care is a basic human service.

(2) Seriously mentally disordered adults and older adults are citizens of a community with all the rights, privileges, opportunities, and responsibilities accorded other citizens.

(3) Seriously mentally disordered adults and older adults usually have multiple disorders and disabling conditions and should have the highest priority among adults for mental health services.

(4) Seriously mentally disordered adults and older adults should have an interagency network of services with multiple points of access and be assigned a single person or team to be responsible for all treatment, case management, and community support services.

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment, or the client is under a court order for assisted outpatient treatment pursuant to Section 5346 and, prior to the filing of the petition for assisted outpatient treatment pursuant to Section 5346, the client has been offered an opportunity to participate in treatment on a voluntary basis and has failed to engage in that treatment, or the client is under a court order for CARE pursuant to Part 8 (commencing with Section 5970) and, prior to the court-ordered CARE plan, the client has been offered an opportunity to enter into a CARE agreement on a voluntary basis and has declined to do so.

(6) Clients and families should directly participate in making decisions about services and resource allocations that affect their lives.

(7) People in local communities are the most knowledgeable regarding their particular environments, issues, service gaps and strengths, and opportunities.

(8) Mental health services should be responsive to the unique characteristics of people with mental disorders including age, gender, minority and ethnic status, and the effect of multiple disorders.

(9) For the majority of seriously mentally disordered adults and older adults, treatment is best provided in the client's natural setting in the community. Treatment, case management, and community support services should be designed to prevent inappropriate removal from the natural environment to more restrictive and costly placements.

(10) Mental health systems of care shall have measurable goals and be fully accountable by providing measures of client outcomes and cost of services.

(11) State and county government agencies each have responsibilities and fiscal liabilities for seriously mentally disordered adults and seniors.

SEC. 6. Section 5813.5 of the Welfare and Institutions Code is amended to read:

5813.5. Subject to the availability of funds from the Mental Health Services Fund, the state shall distribute funds for the provision of services under Sections 5801, 5802, and 5806 to county mental health programs. Services shall be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3. For purposes of this act, "seniors" means older adult persons identified in Part 3 (commencing with Section 5800) of this division.

(a) Funding shall be provided at sufficient levels to ensure that counties can provide each adult and senior served pursuant to this part with the medically necessary mental health services, medications, and supportive services set forth in the applicable treatment plan.

(b) The funding shall only cover the portions of those costs of services that cannot be paid for with other funds, including other mental health funds, public and private insurance, and other local, state, and federal funds.

(c) Each county mental health program's plan shall provide for services in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3.

(d) Planning for services shall be consistent with the philosophy, principles, and practices of the Recovery Vision for mental health consumers:

(1) To promote concepts key to the recovery for individuals who have mental illness: hope, personal empowerment, respect, social connections, self-responsibility, and self-determination.

(2) To promote consumer-operated services as a way to support recovery.

(3) To reflect the cultural, ethnic, and racial diversity of mental health consumers.

(4) To plan for each consumer's individual needs.

(e) The plan for each county mental health program shall indicate, subject to the availability of funds as determined by Part 4.5 (commencing with Section 5890) of this division, and other funds available for mental health services, adults and seniors with a severe mental illness being served by this program are either receiving services from this program or have a mental

illness that is not sufficiently severe to require the level of services required of this program.

(f) Each county plan and annual update pursuant to Section 5847 shall consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison. Funds may be used to provide services to persons who are participating in a presentencing or postsentencing diversion program or who are on parole, probation, postrelease community supervision, or mandatory supervision. When included in county plans pursuant to Section 5847, funds may be used for the provision of mental health services under Sections 5347 and 5348 in counties that elect to participate in the Assisted Outpatient Treatment Demonstration Project Act of 2002 (Article 9 (commencing with Section 5345) of Chapter 2 of Part 1), and for the provision of services to clients pursuant to Part 8 (commencing with Section 5970).

(g) The department shall contract for services with county mental health programs pursuant to Section 5897. After November 2, 2004, the term "grants," as used in Sections 5814 and 5814.5, shall refer to those contracts.

SEC. 7. Part 8 (commencing with Section 5970) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 8. THE COMMUNITY ASSISTANCE, RECOVERY, AND EMPOWERMENT ACT

Chapter 1. General Provisions

5970. This part shall be known, and may be cited, as Community Assistance, Recovery, and Empowerment (CARE) Act.

5970.5. This part shall be implemented as follows, with technical assistance and continuous quality improvement, pursuant to Section 5983:

(a) A first cohort of counties, which shall include the Counties of Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne, and the City and County of San Francisco, shall begin no later than October 1, 2023, unless the county is provided additional time pursuant to paragraph (2) of subdivision (c).

(b) A second cohort of counties, representing the remaining population of the state, shall begin no later than December 1, 2024, unless the county is provided additional time pursuant to paragraph (2) of subdivision (c).

(c) (1) The department shall issue guidelines under which counties can apply for, and be provided, additional time to implement this part. The guidelines shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(2) The department shall approve implementation delay for the first or second cohort if the county experiences a state or local emergency and the

delay of the provision of the CARE process is necessary as a result of the emergency.

(3) The department shall only grant extensions once and no later than December 1, 2025.

(d) This part shall become operative only upon the department, in consultation with county stakeholders, developing a CARE Act allocation to provide state financial assistance to counties to implement the care process in this act.

5971. Unless the context otherwise requires, the following definitions shall govern the construction of this part.

(a) "CARE agreement" means a voluntary settlement agreement entered into by the parties. A CARE agreement includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports.

(b) "CARE plan" means an individualized, appropriate range of community-based services and supports, as set forth in this part, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate, pursuant to Section 5982.

(c) "CARE process" means the court and related proceedings to implement the CARE Act.

(d) "Counsel" means the attorney representing the respondent, provided pursuant to Section 5980, or chosen by the respondent, in CARE Act proceedings and matters related to CARE agreements and CARE plans.

(e) "County behavioral health agency" means the local director of mental health services described in Section 5607, the local behavioral health director, or both as applicable, or their designee.

(f) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Section 5977.

(g) "Department" means the State Department of Health Care Services.

(h) "Graduation plan" means a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and that may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports. The graduation plan shall not place additional requirements on the local government entities and is not enforceable by the court.

(i) "Homeless outreach worker" means a person who engages people experiencing homelessness to assess for unmet needs, offer information, services, or other assistance, or provide care coordination.

(j) "Indian health care provider" means a health care program operated by the Indian Health Service, an Indian tribe, a tribal organization, or urban Indian organization (I/T/U) as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. Sec. 1603).

(k) "Licensed behavioral health professional" means either of the following:

(1) A licensed mental health professional, as defined in subdivision (j) of Section 4096.

(2) A person who has been granted a waiver of licensure requirements by the department pursuant to Section 5751.2.

(*l*) "Parties" means the petitioner, respondent, the county behavioral health agency in the county where proceedings under this part are pending, and other parties added by the court pursuant to paragraph (4) of subdivision (d) of Section 5977.1.

(m) "Petitioner" means the entity who files the CARE Act petition with the court. Additionally, if the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner. The petitioner who filed the petition may, at the court's discretion and in furtherance of the interests of the respondent, retain rights as described in subparagraph (A) of paragraph (7) of subdivision (b) of Section 5977.

(n) "Psychiatric advance directive" means a legal document, executed on a voluntary basis by a person who has the capacity to make medical decisions, that allows a person with mental illness to protect their autonomy and ability to self-direct care by documenting their preferences for treatment in advance of a mental health crisis.

(o) "Respondent" means the person who is subject to the petition for the CARE process.

(p) "Stabilization medications" means medications included in the CARE plan that primarily consist of antipsychotic medications, to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long-acting injections if clinically indicated. Stabilization medications shall not be forcibly administered.

(q) "Supporter" means an adult, designated pursuant to Chapter 4 (commencing with Section 5980), who assists the person who is the subject of the petition, which may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter shall not act independently.

Chapter 2. Process

5972. An individual shall qualify for the CARE process only if all of the following criteria are met:

(a) The person is 18 years of age or older.

(b) The person is currently experiencing a severe mental illness, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and

Statistical Manual of Mental Disorders. This section does not establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including, but not limited to, physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who has a current diagnosis of substance use disorder as defined in paragraph (2) of subdivision (a) of Section 1374.72 of the Health and Safety Code, but who does not meet the required criteria in this section shall not qualify for the CARE process.

(c) The person is not clinically stabilized in on-going voluntary treatment.

(d) At least one of the following is true:

(1) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.

(2) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as defined in Section 5150.

(e) Participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

(f) It is likely that the person will benefit from participation in a CARE plan or CARE agreement.

5973. (a) Proceedings under this part may be commenced in any of the following:

(1) The county in which the respondent resides.

(2) The county where the respondent is found.

(3) The county where the respondent is facing criminal or civil proceedings.

(b) If the respondent does not reside in the county in which proceedings are initiated under this subdivision, as determined in accordance with Section 244 of the Government Code, except as provided in subdivision (e) of Section 5982, and this part is operative in the respondent's county of residence, the proceeding shall, with the respondent's consent, be transferred to the county of residence as soon as reasonably feasible. Should the respondent not consent to the transfer, the proceedings shall continue in the county where the respondent was found.

5974. The following adult persons may file a petition to initiate the CARE process:

(a) A person with whom the respondent resides.

(b) A spouse, parent, sibling, child, or grandparent or other individual who stands in loco parentis to the respondent.

(c) The director of a hospital, or their designee, in which the respondent is hospitalized, including hospitalization pursuant to Section 5150 or 5250.

(d) The director of a public or charitable organization, agency, or home, or their designee, who has, within the previous 30 days, provided or who is currently providing behavioral health services to the respondent or in whose institution the respondent resides.

(e) A licensed behavioral health professional, or their designee, who is, or has been within the previous 30 days, either supervising the treatment of, or treating the respondent for a mental illness.

(f) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation pursuant to Section 5150, multiple attempts to engage the respondent in voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance.

(g) The public guardian or public conservator, or their designee, of the county in which the respondent is present or reasonably believed to be present.

(h) The director of a county behavioral health agency, or their designee, of the county in which the respondent resides or is found.

(i) The director of county adult protective services, or their designee, of the county in which the respondent resides or is found.

(j) The director of a California Indian health services program, California tribal behavioral health department, or their designee.

(k) The judge of a tribal court that is located in California, or their designee.

(*l*) The respondent.

5975. The Judicial Council shall develop a mandatory form for use to file a CARE process petition with the court and any other forms necessary for the CARE process. The petition shall be signed under the penalty of perjury and contain all of the following:

(a) The name of the respondent and, if known, the respondent's address.

(b) The petitioner's relationship to the respondent.

(c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972.

(d) Either of the following:

(1) An affidavit of a licensed behavioral health professional, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

(2) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days.

5975.1. Notwithstanding Section 391 of the Code of Civil Procedure, if a person other than the respondent files a petition for CARE Act proceedings that is without merit or is intended to harass or annoy the respondent, and the person has previously filed a pleading in CARE Act proceedings that was without merit or was intended to harass or annoy the respondent, the petition shall be grounds for the court to determine that the

person is a vexatious litigant for the purposes of Title 3A (commencing with Section 391) of Part 2 of the Code of Civil Procedure.

5976. The respondent shall:

(a) Receive notice of the hearings.

(b) Receive a copy of the court-ordered evaluation.

(c) Be entitled to be represented by counsel at all stages of a proceeding commenced under this chapter, regardless of the ability to pay.

(d) Be allowed to have a supporter, as described in Section 5982.

(e) Be present at the hearing unless the respondent waives the right to be present.

(f) Have the right to present evidence.

(g) Have the right to call witnesses.

(h) Have the right to cross-examine witnesses.

(i) Have the right to appeal decisions, and to be informed of the right to appeal.

5976.5. (a) Notwithstanding any other law, and except as otherwise provided in this section, a hearing held under this part is presumptively closed to the public.

(b) The respondent may demand that the hearing be public and be held in a place suitable for attendance by the public.

(c) The respondent may request the presence of any family member or friend without waiving the right to keep the hearing closed to the rest of the public.

(d) A request by any other party to the proceeding to make the hearing public may be granted if the judge conducting the hearing finds that the public interest in an open hearing clearly outweighs the respondent's interest in privacy.

(e) All reports, evaluations, diagnoses, or other information related to the respondent's health shall be confidential.

(f) Before commencing a hearing, the judge shall inform the respondent of their rights under this section.

5977. (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case without prejudice subject to consideration of Section 5975.1.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the

respondent. If no legal services project has agreed to accept these appointments, a public defender shall be appointed to represent the respondent. Unless replaced by respondent's own counsel, appointed counsel shall represent the respondent in any proceeding under this part, and shall represent the individual, as needed, in matters related to CARE agreements and CARE plans, including appeals.

(iii) Determine if the petition includes all of the following information, or order the county to submit a report within 14 court days that addresses all the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health director or their designee to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, and file a written report with the court within 14 court days and provide notice to the respondent and petitioner that a report has been ordered. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the 14-day report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(4) If, upon a request by the county, the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines that county's report does not support the petition's prima facie showing that the respondent is a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily

engage with individuals who do not meet CARE criteria, but who are in need of services and supports.

(C) If the court determines that county's report does support the petition's prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender to represent the respondent for all purposes related to this part, including appeals, unless the respondent has retained their own counsel. Unless replaced by respondent's own counsel, appointed counsel shall represent the respondent in any proceeding under this part, and shall represent the individual, as needed, in matters related to CARE agreements and CARE plans.

(iii) Order the county to provide notice of the hearing to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding on the record that conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) A supporter may be appointed.

(6) If the respondent self-identifies that they are enrolled in a federally recognized Indian tribe or otherwise receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present, subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(7) (A) If the petitioner is a person described in Section 5974 other than the director of a county behavioral health agency, or their designee, the court shall issue an order relieving the petitioner and appointing the director of the county behavioral health agency or their designee as the substitute petitioner.

(B) If the petitioner who is relieved pursuant to this paragraph is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The petitioner shall have the right to participate in the initial hearing to determine the merits of the petition, pursuant to subparagraphs (A) and (B) of paragraph (8).

(ii) The court may, in its discretion, assign ongoing rights of notice.

(iii) The court may, additionally, allow for participation and engagement in the respondent's CARE proceedings if the respondent consents.

(iv) The petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the petitioner who is relieved pursuant this paragraph is described in Section 5974, other than persons described in subparagraph (a) or (b) of that section, the court shall not assign ongoing rights to the entity that originally filed the CARE petition, other than the right to make a statement at the hearing on the merits of the petition as provided in subparagraphs (A) and (B) of paragraph (8).

(8) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine by clear and convincing evidence if the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including the report from the county required pursuant to paragraph (3) of subdivision (a) and any additional evidence presented by the parties, including the petition submitted by the petitioner who is relieved.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance on the petition upon stipulation of the petitioner and respondent and agreement by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds, by clear and convincing evidence, that the respondent does not meet the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, on the record, that the initial petitioner's filing was not in good faith.

(2) If, at the hearing on the merits of the petition, the court finds that the petitioner has shown by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement. The court shall set a case management hearing within 14 days.

(3) If the respondent is enrolled in a federally recognized Indian tribe, the respondent shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.

5977.1. (a) (1) At the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.

(2) If the court finds that the parties have entered, or are likely to enter, into a CARE agreement, the court shall do both of the following:

(A) Approve the terms of the CARE agreement or modify the terms of the CARE agreement and approve the agreement as modified by the court.

(B) Continue the matter and set a progress hearing for 60 days.

(b) If the court finds that the parties have not entered into a CARE agreement, and are not likely to enter into a CARE agreement, the court shall order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation shall address, at a minimum, the following:

(1) A clinical diagnosis of the respondent.

(2) Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.

(3) Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.

(4) An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

(c) (1) The court shall set a clinical evaluation hearing to review the evaluation within 21 days. The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent's counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(2) At the clinical evaluation review hearing, the court shall review the evaluation and any other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

(3) At the conclusion of the hearing, the court shall make orders as follows:

(A) If the court finds by clear and convincing evidence, after review of the evaluation and other evidence, that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days.

(B) If the court finds, in reviewing the evaluation, that clear and convincing evidence does not support that the respondent meets the CARE criteria, the court shall dismiss the petition.

(4) If the respondent is a self-identified American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), and 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is

otherwise receiving services from an Indian health care provider or tribal court, the county behavioral health agency shall use best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(5) The evaluation and all reports, documents, and filings submitted to the court shall be confidential.

(6) The date for the hearing to review and consider approval of the proposed CARE plan shall be set not more than 14 days from the date of the order to develop a CARE plan, unless the court finds good cause for an extension. The party requesting an extension of time for the CARE plan review hearing shall provide notice to the opposing party and their counsel of the request for extension of time, and the court's order if the request is granted.

(d) (1) At the CARE plan review hearing, the parties shall present their plans to the court. The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(2) After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan.

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

(4) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.

(5) If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(6) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(e) The issuance of an order approving a CARE plan pursuant to paragraph (2) of subdivision (d) begins the CARE process timeline, which shall not exceed one year.

5977.2. (a) (1) At intervals set by the court, but not less frequently than 60 days after the court orders the CARE plan, the court shall hold a status review hearing. The county behavioral health agency shall file with the court and serve on the respondent, and the respondent's counsel and supporter, a report not fewer than five court days prior to the review hearing with the following information:

(A) Progress the respondent has made on the CARE plan.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for changes to the services and supports to make the CARE plan more successful.

(2) The respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. The respondent shall be permitted to introduce their own information and recommendations.

(3) Subject to applicable law, intermittent lapses or setbacks described in this section of the report shall not impact access to services, treatment, or housing.

(b) The county behavioral health agency or the respondent may request, or the court upon its own motion may set, a hearing to occur at any time during the CARE process to address a change of circumstances.

5977.3. (a) (1) In the 11th month of the program timeline, the court shall hold a one-year status hearing. Not fewer than five court days prior to the one-year status hearing, the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter. The report shall include the following information:

(A) Progress the respondent has made on the CARE plan including a final assessment of the respondent's stability.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided, over the life of the program.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide.

(2) At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. Respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence

as to whether the respondent agrees with the report. The respondent may request either to be graduated from the program or to remain in the program.

(3) The court shall issue an order as follows:

(A) If the respondent elects to be graduated from the program, the court shall order the county behavioral health agency and the respondent to work jointly on a graduation plan. The court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the voluntary graduation plan and recite the terms on the record. The graduation plan shall not place additional requirements on local government entities and is not enforceable by the court, except that the graduation plan may, at respondent's election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.

(B) If the respondent elects to remain in the CARE process, respondent may request any amount of time, up to and including one additional year. The court may permit the ongoing voluntary participation of the respondent if the court finds both of the following:

(i) The respondent did not successfully complete the CARE plan.

(ii) The respondent would benefit from continuation of the CARE plan.

(C) The court shall issue an order permitting the respondent to continue in the CARE plan or denying respondent's request to remain in the CARE plan, and state its reasons on the record.

(b) The respondent may be involuntarily reappointed to the program only if the court finds, by clear and convincing evidence, that all of the following conditions apply:

(1) The respondent did not successfully complete the CARE process.

(2) All services and supports required through the CARE process were provided to the respondent.

(3) The respondent would benefit from continuation in the CARE process.

(4) The respondent currently meets the requirements in Section 5972.

(c) A respondent may only be reappointed to the CARE process once, for up to one additional year.

5977.4. (a) In all CARE Act proceedings, the judge shall control the proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Except when there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in the respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent. All evaluations and reports, documents, and filings submitted to the court pursuant to CARE Act proceedings shall be confidential.

(b) The hearings described in this chapter shall occur in person unless the court, in its discretion, allows a party or witness to appear remotely

through the use of remote technology. The respondent shall have the right to be in person for all hearings.

(c) Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section and in Sections 5977, 5977.1, 5977.2, and 5977.3 to promote statewide consistency, including, but not limited to, what is included in the petition form packet, the clerk's review of the petition, and the process by which counsel will be appointed.

5978. (a) A court may refer an individual from assisted outpatient treatment, as well as from conservatorship proceedings pursuant Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 (LPS conservatorship) to CARE Act proceedings. If the individual is being referred from assisted outpatient treatment, the county behavioral health director or their designee shall be the petitioner. If the individual is being referred from LPS conservatorship proceedings, the conservator shall be the petitioner pursuant to Section 5974.

(b) A court may refer an individual from misdemeanor proceedings pursuant to Section 1370.01 of the Penal Code.

Chapter 3. Accountability

5979. (a) (1) If, at any time during the proceedings, the court determines by clear and convincing evidence that the respondent is not participating in the CARE process, after the respondent receives notice, or is not adhering to their CARE plan, after the respondent receives notice, the court may terminate the respondent's participation in the CARE process.

(2) To ensure the respondent's safety, the court may utilize existing legal authority pursuant to Article 2 (commencing with Section 5200) of Chapter 2 of Part 1. The court shall provide notice to the county behavioral health agency and the Office of the Public Conservator and Guardian if the court utilizes that authority.

(3) If the respondent was timely provided with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including reasons for that failure, shall be a fact considered by the court in a subsequent hearing under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)), provided that the hearing occurs within six months of the termination of the CARE plan and shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.

(4) The respondent's failure to comply with an order shall not result in a penalty outside of this section, including, but not limited to, contempt or a failure to appear.

(5) The respondent's failure to comply with a medication order shall not result in any penalty, including under this section.

(b) (1) If, at any time during the CARE process, the court finds that the county or other local government entity is not complying with court orders, the court shall report that finding to the presiding judge of the superior court or their designee.

(2) (A) The presiding judge or their designee shall issue an order to show cause why the local government entity should not be fined as set forth in this section. The time set for hearing shall be no earlier than 15 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing to be served upon the local government entity.

(B) The presiding judge, or their designee, shall consider the matter on the record established at the hearing. If the presiding judge or their designee finds, by clear and convincing evidence, that the local government entity has substantially failed to comply with this part, or with lawful orders issued by a court under this part, the presiding judge or their designee may issue an order imposing a fine under this section.

(C) A fine under this section shall be in an amount of up to one thousand dollars ($1,000) per day, not to exceed $25,000 for each individual violation identified in the order imposing fines.

(D) (i) Funds collected pursuant to this subdivision shall be deposited in the CARE Act Accountability Fund, which is hereby created in the State Treasury. Upon appropriation, the department shall administer the funds annually, and shall issue guidance, as necessary, to local government entities, pursuant to subdivision (b) of Section 5984, regarding the distribution and conditions associated with the administered funds.

(ii) All moneys in the fund shall be allocated and distributed to the local government entity that paid the fines, to be used by that entity to serve individuals who have schizophrenia spectrum or other psychotic disorders and who are experiencing, or are at risk of, homelessness, criminal justice involvement, hospitalization, or conservatorship.

(3) If, after notice and hearing as set forth in paragraph (2), the presiding judge or their designee finds, by clear and convincing evidence, that the local government entity is persistently noncompliant with this part, or with lawful orders issued by a court under this part, the presiding judge or their designee may appoint a special master to secure court-ordered care for the respondent at the local government entity's cost. The presiding judge, or their designee, shall not make an order under this paragraph unless they have received five or more reports under paragraph (1) pertaining to the same local government entity within a one-year period.

(4) In determining the application of the remedies available under this section, the court shall consider whether there are any mitigating circumstances impairing the ability of the local government entity to fully comply with the requirements of this part, or with court orders issued under this part. The court may consider whether the local government entity is making a good faith effort to come into substantial compliance or is facing substantial undue hardships.

(c) Either the respondent or the county behavioral health agency may appeal an adverse court determination.

Chapter 4. Supporter and Counsel

5980. (a) Subject to appropriation, the department, in consultation with disability rights groups, county behavioral health and aging agencies, individuals with lived expertise, families, racial justice experts, and other appropriate stakeholders, shall provide optional training and technical resources for volunteer supporters on the CARE process, community services and supports, supported decisionmaking, people with behavioral health conditions, trauma-informed care, family psychoeducation, and psychiatric advance directives. The department may consult with other state and national public and nonprofit agencies and organizations and the Judicial Council to align supported decisionmaking training with best practices for persons with mental illnesses, intellectual and developmental disabilities, other disabilities, and older adults. The department may enter into a technical assistance and training agreement for this purpose, pursuant to Section 5984.

(b) The supporter shall do all of the following:

(1) Offer the respondent a flexible and culturally responsive way to maintain autonomy and decisionmaking authority over their own life by developing and maintaining voluntary supports to assist them in understanding, making, communicating, and implementing their own informed choices.

(2) Strengthen the respondent's capacity to engage in and exercise autonomous decisionmaking and prevent or remove the need to use more restrictive protective mechanisms, such as conservatorship.

(3) Assist the respondent with understanding, making, and communicating decisions and expressing preferences throughout the CARE process.

5981. (a) Notwithstanding any other provision of this part, the respondent may have a supporter present in any meeting, judicial proceeding, status hearing, or communication related to any of the following:

(1) An evaluation.

(2) Development of a CARE agreement or CARE plan.

(3) Establishing a psychiatric advance directive.

(4) Development of a graduation plan.

(b) A supporter is intended to do all the following:

(1) Support the will and preferences of the respondent to the best of their ability and to the extent reasonably possible.

(2) Respect the values, beliefs, and preferences of the respondent.

(3) Act honestly, diligently, and in good faith.

(4) Avoid, to the greatest extent possible, and disclose to the court, the respondent, and the respondent's counsel, minimize, and manage, conflicts of interest. A court may remove a supporter because of any conflict of interest with the respondent, and shall remove the supporter if the conflict cannot be managed in such a way to avoid any possible harm to the respondent.

(c) Unless explicitly authorized by the respondent with capacity to make that authorization, a supporter shall not do either of the following:

(1) Make decisions for, or on behalf of, the respondent, except when necessary to prevent imminent bodily harm or injury.

(2) Sign documents on behalf of the respondent.

(d) In addition to the obligations in this section, a supporter shall be bound by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. This section does not limit a supporter's civil or criminal liability for prohibited conduct against the respondent, including liability for fraud, abuse, neglect, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9), including, but not limited to, Sections 15656 and 15657.

(e) The supporter shall not be subpoenaed or called to testify against the respondent in any proceeding relating to this part, and the supporter's presence at any meeting, proceeding, or communication shall not waive confidentiality or any privilege.

5981.5. (a) The Legal Services Trust Fund Commission at the State Bar shall provide funding to qualified legal services projects, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to be used to provide legal counsel appointed pursuant to subdivision (c) of Section 5976, for representation in CARE Act proceedings, matters related to CARE agreements and CARE plans, and to qualified support centers, as defined in subdivision (b) of Section 6213 of, and Section 6215 of, the Business and Professions Code, for training, support, and coordination.

(b) For purposes of implementing this part, the Legal Services Trust Fund Commission may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis, or award grants, provided that they make a finding that both of the following are satisfied:

(1) The state agency will retain control over the distribution of funds to the contractor or grantee.

(2) The contract or grant includes provisions to ensure transparency, accountability, and oversight in delivering the services, including measurement of outcomes established pursuant to Sections 5984, 5985, and 5986.

Chapter 5. CARE Plan

5982. (a) The CARE plan may include only the following:

(1) Behavioral health services funded through the 1991 and 2011 Realignment, Medi-Cal behavioral health, health care plans and insurers, and services supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800).

(2) Medically necessary stabilization medications, to the extent not described in paragraph (1).

(3) Housing resources funded through the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare

and Institutions Code); California Housing Accelerator (Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code); the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code); the Homeless Housing, Assistance, and Prevention Program (Chapter 6 (commencing with Section 50216) of Part 1 of Division 31 of the Health and Safety Code); the Encampment Resolution Funding Program (Chapter 7 (commencing with Section 50250) of Part 1 of Division 31 of the Health and Safety Code); the Project Roomkey and Rehousing Program pursuant to Provision 22 of Item 5180-151-0001 of the Budget Act of 2021 (Ch. 21, Stats. 2021); the Community Care Expansion Program (Chapter 20 (commencing with Section 18999.97) of Part 6 of Division 9 of the Welfare and Institutions Code); the CalWORKs Housing Support Program (Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code); the CalWORKs Homeless Assistance pursuant to clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 11450 of Article 6 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code; the Housing and Disability Advocacy Program (Chapter 17 (commencing with Section 18999) of Part 6 of Division 9 of the Welfare and Institutions Code); the Home Safe Program (Chapter 14 (commencing with Section 15770) of Part 3 of Division 9 of the Welfare and Institutions Code); the Bringing Families Home Program (Article 6 (commencing with Section 16523) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Placement program for nonminor dependents (Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Program-Plus pursuant to subdivision (s) of Section 11400 and paragraph (2) of subdivision (a) of Section 11403.2 of Article 5 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code; the Behavioral Health Continuum Infrastructure Program (Chapter 1 (commencing with Section 5960) of Part 7 of Division 5 of the Welfare and Institutions Code); the Behavioral Health Bridge Housing Program; HUD-Veterans Affairs Supportive Housing Program (Section 8(o)(19) of the United States Housing Act of 1937 [42 U.S.C. Section 1437f(o)(19)]); Supportive Services for Veteran Families (Section 604 of the Veterans' Mental Health and Other Care Improvements Act of 2008 [38 U.S.C. Sec. 2044]); HUD Continuum of Care program (Section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11302]); the Emergency Solutions Grant (Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Secs. 11371-11378]); HUD Housing Choice Voucher program (Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]); the Emergency Housing Vouchers (Section 3202 of the American Rescue Plan Act of 2021 [Public Law 117-2]; Section 8(o) of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f(o)]); HOME Investment Partnerships Program (Title II of the Cranston-Gonzalez

National Affordable Housing Act [42 U.S.C. Sec. 12721 et seq.]); the Community Development Block Grant Program (Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. Sec. 5301 et seq.]); housing supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800); community development block grants; and other state and federal housing resources.

(4) Social services funded through Supplemental Security Income/State Supplementary Payment (SSI/SSP), Cash Assistance Program for Immigrants (CAPI), CalWORKs, California Food Assistance Program, In-Home Supportive Services program, and CalFresh.

(5) Services provided pursuant to Part 5 (commencing with Section 17000) of Division 9.

(b) Individuals who are CARE process participants shall be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program.

(c) If the county behavioral health agency elects not to enroll the respondent into a full service partnership, as defined in Section 3620 of Title 9 of the California Code of Regulations, the court may request information on the reasons for this and any barriers to enrollment.

(d) All CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes and regulations, contractual provisions, and policy guidance governing initial and ongoing program eligibility. In addition to the resources funded through programs listed in subdivision (a), the State Department of Health Care Services may identify other adjacent covered Medi-Cal services, including, but not limited to, enhanced care management and available community supports, which may be suggested, although not ordered, by the court, subject to all applicable federal and state statutes, regulations, contractual provisions, and policy guidance.

(e) This section does not prevent a county or other local government entity from recommending their own services that are their own responsibility not listed in subdivision (a) or (c). Any such recommendation is not required by this section and shall be made at the request of the county for the purposes of Section 6 of Article XIII B, and Sections 6 and 36 of Article XIII of the California Constitution.

(f) (1) For respondents who are Medi-Cal beneficiaries, the county in which the respondent resides is the county of responsibility as defined in Section 1810.228 of Title 9 of the California Code of Regulations.

(2) If a proceeding commences in a county where the respondent is found or is facing criminal or civil proceedings that is different than the county in which the respondent resides, the county in which the respondent is found or is facing criminal or civil proceedings shall not delay proceedings under this part and is the responsible county behavioral health agency for providing or coordinating all components of the CARE agreement or CARE plan.

(3) The county in which the respondent resides, as defined in paragraph (1), shall be responsible for the costs of providing all CARE agreement or

CARE plan behavioral health services, as defined in paragraph (1) of subdivision (a).

(4) In the event of a dispute over responsibility for any costs of providing components of the CARE agreement or CARE plan, the impacted counties shall resolve the dispute in accordance with the arbitration process established in Section 1850.405 of Title 9 of the California Code of Regulations for county mental health plans, including for respondents who are not Medi-Cal beneficiaries, and pursuant to any related guidance issued pursuant to subdivision (b) of Section 5984.

Chapter 6. Technical Assistance and Administration

5983. (a) The California Health and Human Services Agency, or a designated department within the agency, shall do both of the following:

(1) Engage an independent, research-based entity, as described in Section 5986, to advise on the development of data-driven process and outcome measures to guide the planning, collaboration, reporting, and evaluation of the CARE Act pursuant to this part.

(2) Convene a working group to provide coordination and on-going engagement with, and support collaboration among, relevant state and local partners and other stakeholders throughout the phases of county implementation to support the successful implementation of the CARE Act. The working group shall meet no more than quarterly. The working group shall meet during the implementation and shall end no later than December 31, 2026.

(b) The department shall provide training and technical assistance to county behavioral health agencies to support the implementation of this part, including training regarding the CARE process, CARE agreement and plan services and supports, supported decisionmaking, the supporter role, trauma-informed care, elimination of bias, psychiatric advance directives, family psychoeducation, and data collection.

(c) The Judicial Council, in consultation with the department, other relevant state entities, and the County Behavioral Health Directors Association, shall provide training and technical assistance to judges to support the implementation of this part, including training regarding the CARE process, CARE agreement and plan services and supports, working with the supporter, supported decisionmaking, the supporter role, the family role, trauma-informed care, elimination of bias, best practices, and evidence-based models of care for people with severe behavioral health conditions.

(d) The department, in consultation with other relevant state departments and the California Interagency Council on Homelessness, shall provide training to counsel regarding the CARE process and CARE agreement and plan services and supports.

5984. (a) For purposes of implementing this part, the California Health and Human Services Agency and the department may enter into exclusive

or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis. Contracts entered into or amended pursuant to this part shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and the State Administrative Manual, and shall be exempt from the review or approval of any division of the Department of General Services.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the California Health and Human Services Agency and the department may implement, interpret, or make specific this part, in whole or in part, by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.

5985. (a) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the department. The department shall determine the data measures and specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearances on the petition set pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The report shall include, at a minimum, all of the following:

(1) The demographics of participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, and county of residence, to the extent statistically relevant data is available.

(2) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided.

(3) The housing placements of all participants during the program and at least one year following the termination of the CARE plan, to the extent administrative data are available to report the latter. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment, community-based housing, community-based housing with services, shelter, and no housing.

(4) Treatments continued and terminated at least one year following termination of the CARE plan, to the extent administrative data are available.

(5) Substance use disorder rates and rates of treatment among active CARE plan participants and former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(6) Detentions and other Lanterman-Petris-Short Act involvement for participants with an active CARE plan and for former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(7) Criminal justice involvement of participants with an active CARE plan and for former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(8) Deaths among active participants and for former participants at least one year following termination of the CARE plan, along with causes of death, to the extent administrative data are available.

(9) The number, rates, and trends of petitions resulting in dismissal and hearings.

(10) The number, rates, and trends of supporters.

(11) The number, rates, and trends of voluntary CARE agreements.

(12) The number, rates, and trends of ordered and completed CARE plans.

(13) Statistics on the services and supports included in CARE plans, including court orders for stabilizing medications.

(14) The rates of adherence to medication.

(15) The number, rates, and trends of psychiatric advance directives created for participants with active CARE plans.

(16) The number, rates, and trends of developed graduation plans.

(17) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration,

reductions in involuntary treatment and conservatorship, and reductions in substance use.

(18) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available. Information released or published pursuant to this section shall not contain data that may lead to the identification of respondents or information that would otherwise allow an individual to link the published information to a specific person. Data published by the department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

5986. (a) An independent, research-based entity shall be retained by the department to develop, in consultation with county behavioral health agencies, county CARE courts, racial justice experts, and other appropriate stakeholders, including providers and CARE court participants, an independent evaluation of the effectiveness of the CARE Act. The independent evaluation shall employ statistical research methodology and include a logic model, hypotheses, comparative or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act

model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports. The independent evaluation shall include results from a survey conducted of program participants. The independent evaluation shall highlight racial, ethnic, and other demographic disparities, and include causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts.

(b) The department shall provide a preliminary report to the Legislature three years after the implementation date of the CARE Act and a final report to the Legislature five years after the implementation date of CARE Act. The department shall post the preliminary and final reports on its internet website.

(c) Each county behavioral health department, each county CARE court, and any other state or local governmental entity, as determined by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

5987. A county, or an employee or agent of a county, shall not be held civilly or criminally liable for any action by a respondent in the CARE process, except when the act or omission of a county, or the employee or agent of a county, constitutes gross negligence, recklessness, or willful misconduct. This section does not limit any immunity provided under any other law.

SEC. 8. The Legislature finds and declares that Section 7 of this act, which adds Sections 5976.5 and 5977.1 to the Welfare and Institutions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This act protects the sensitive medical information of the respondent in a CARE Act proceeding, including medical and psychological records.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 1370.01 of the Penal Code proposed by both this bill and SB 1223. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 1370.01 of the Penal Code, and (3) this bill is enacted after SB 1223, in which case Section 4 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this

act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 35

CHAPTER 283

An act to amend Section 1370.01 of the Penal Code, and to amend Sections 5970, 5970.5, 5971, 5972, 5973, 5974, 5975.1, 5976, 5976.5, 5977, 5977.1, 5977.2, 5977.3, 5977.4, 5978, 5981.5, 5982, 5983, and 5986 of, and to add Sections 5975.2 and 5975.3 to, the Welfare and Institutions Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2023. Filed with Secretary of State September 30, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 35, Umberg. Community Assistance, Recovery, and Empowerment (CARE) Court Program.

(1) Existing law, the Community Assistance, Recovery, and Empowerment (CARE) Act, authorizes specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services, to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria. Existing law requires all evaluations and reports, documents, and filings submitted to the court under CARE proceedings be kept confidential.

This bill would authorize CARE Act proceedings to be conducted by a superior court judge or by a court-appointed commissioner or other subordinate judicial officer. The bill would require that there is no fee for filing a petition nor any fees charged by any public officer for services in filing or serving papers or for the performance of any duty enjoined by the CARE Act. The bill would authorize that the respondent is entitled to have an interpreter in all proceedings if necessary for the respondent's full participation. This bill would require county behavioral health agencies to provide health information necessary to support findings in the filings to the court, as specified, and would exempt counties and their employees from civil or criminal liability for disclosure under these provisions. By increasing the reporting duties on county behavioral health agencies, this bill would create a state-mandated local program.

This bill would authorize health care providers and covered entities, as defined, to disclose specified health information to behavioral health agencies for some purposes and would require those entities to disclose that information for other specified purposes. The bill would authorize a county

behavioral health agency to apply, ex parte, for an order requiring health care providers or covered entities to provide information, as specified, to the court, the behavioral health agency, or both. The bill would require behavioral health agencies to notify respondent of disclosure, as specified. The bill would exempt health care providers and covered entities from civil or criminal liability for disclosure under these provisions and would exempt information disclosed to a county behavioral health agency by a provider of health care or a covered entity from disclosure or inspection under the Public Records Act.

Existing law authorizes a specified individual to commence the CARE process, known as the original petitioner. Under existing law, if the original petitioner is a person other than the director of a county behavioral health agency, the court is required to issue an order relieving the original petitioner and appointing the director of the county behavioral health agency, or their successor, as the substitute petitioner. Under existing law, the original petitioner retains specified rights, including the right to participate in the initial hearing to determine the merits of the petition.

This bill would revise the rights of the original petitioner, including giving them the right to be present and make a statement on the merits of the petition at the initial hearing and authorizing the court to assign ongoing rights to an original petitioner who resides with the respondent or is a spouse, parent, sibling, child, or grandparent or other person who stands in loco parentis to the respondent. This bill would additionally authorize the respondent to petition the court for an order sealing their records, as specified, and the filing of such petition would create a presumption in favor of sealing.

Existing law authorizes the court to find a person, other than respondent, who has previously filed a pleading in CARE Act proceedings that was without merit and who files an additional petition for CARE Act proceedings that is also without merit, a vexatious litigant.

This bill would provide that a member of the State Bar who files a petition in order to gain an advantage over the respondent in another legal proceeding is subject to discipline, as specified, if it is determined the member filed the petition knowing that the filing was made to gain an advantage.

Existing law requires the court to appoint a public defender to represent the respondent in specified circumstances.

This bill would additionally authorize the appointment of counsel working in the capacity of a public defender.

Existing law requires the act to be implemented with technical assistance and continuous quality improvement, as specified, including expected start dates for specified counties. Existing law also requires the State Department of Health Care Services to implement guidelines under which counties can apply for and be provided additional time to implement the above-described provisions. Existing law authorizes the department to grant an extension once, and no later than December 1, 2025.

Existing law requires the county behavioral health agency to provide the court with specified reports to determine eligibility for the CARE process.

The bill would exempt reports made to determine eligibility for the CARE process from the Public Records Act.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(2) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, with the goal of returning the defendant to competency. Existing law authorizes misdemeanor defendants who have been determined to be incompetent to stand trial to be referred to the CARE program and requires the court to conduct a hearing to determine eligibility for the CARE program within 14 days of the date of the referral. If the hearing is delayed beyond 14 days, existing law requires the defendant, if confined in county jail, to be released on their own recognizance pending that hearing.

This bill would require the court to conduct the hearing within 14 court days of the date the petition is filed and, if the hearing is delayed beyond 14 court days, to release a defendant who is confined in county jail, pending the hearing.

(3) The bill would also make technical and conforming changes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum

term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(iv) Refer the defendant to the CARE program pursuant to Section 5978 of the Welfare and Institutions Code. A hearing to determine eligibility for CARE shall be held within 14 court days after the date on which the petition for the referral is filed. If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into CARE, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county behavioral health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

SEC. 2. Section 5970 of the Welfare and Institutions Code is amended to read:

5970. This part shall be known, and may be cited, as the Community Assistance, Recovery, and Empowerment (CARE) Act.

SEC. 3. Section 5970.5 of the Welfare and Institutions Code is amended to read:

5970.5. This part shall be implemented as follows, with technical assistance and continuous quality improvement, pursuant to Section 5983:

(a) A first cohort of counties, which shall include the Counties of Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne, and the City and County of San Francisco, shall begin no later than October 1, 2023, unless the county is provided additional time pursuant to paragraph (2) of subdivision (c).

(b) A second cohort of counties, representing the remaining population of the state, shall begin no later than December 1, 2024, unless the county is provided additional time pursuant to paragraph (2) of subdivision (c).

(c) (1) The department shall issue guidelines under which counties can apply for, and be provided, additional time to implement this part. The guidelines shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(2) The department shall approve implementation delay for the first or second cohort if the county experiences a state or local emergency and the delay of the provision of the CARE process is necessary as a result of the emergency.

(3) The department shall only grant one extension per county and the final date for counties to implement under any circumstances shall be December 1, 2025.

(d) This part shall become operative only upon the department, in consultation with county stakeholders, developing a CARE Act allocation to provide state financial assistance to counties to implement the care process in this act.

SEC. 4. Section 5971 of the Welfare and Institutions Code is amended to read:

5971. Unless the context otherwise requires, the following definitions shall govern the construction of this part.

(a) "CARE agreement" means a voluntary settlement agreement entered into by the parties. A CARE agreement includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports.

(b) "CARE plan" means an individualized, appropriate range of community-based services and supports, as set forth in this part, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate, pursuant to Section 5982.

(c) "CARE process" means the court and related proceedings to implement the CARE Act.

(d) "Counsel" means the attorney representing the respondent, appointed pursuant to Section 5977, or chosen by the respondent, in CARE Act proceedings and matters related to CARE agreements and CARE plans. Representation of a respondent in these matters does not alter counsel's obligations under the State Bar Act and the Rules of Professional Conduct, including subdivision (e) of Section 6068 of the Business and Professions Code and rule 1.6 of the Rules of Professional Conduct.

(e) "County behavioral health agency" means the local director of mental health services described in Section 5607, the local behavioral health director, or both as applicable, or their designee.

(f) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Section 5977.1.

(g) "Department" means the State Department of Health Care Services.

(h) "Graduation plan" means a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and that may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports. The graduation plan shall not place additional requirements on the local government entities and is not enforceable by the court.

(i) "Homeless outreach worker" means a person who engages people experiencing homelessness to assess for unmet needs, offer information, services, or other assistance, or provide care coordination.

(j) "Indian health care provider" means a health care program operated by the Indian Health Service, an Indian tribe, a tribal organization, or urban Indian organization (I/T/U) as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. Sec. 1603).

(k) "Legal proceeding" means any administrative, civil, or criminal proceeding, including, but not limited to, juvenile court proceedings and family court proceedings and services, and any form of alternative dispute resolution, including arbitration and mediation, except for the following:

(1) A proceeding under this part.

(2) A proceeding under the Lanterman-Petris-Short Act described in paragraph (2) or (3) of subdivision (a) of Section 5979.

(3) A proceeding from which the respondent was referred to CARE Act proceedings as described in Section 5978.

(4) A disciplinary proceeding under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(5) An appeal from any of the proceedings identified in paragraphs (1) through (4), inclusive.

(*l*) "Licensed behavioral health professional" means either of the following:

(1) A licensed mental health professional, as defined in subdivision (j) of Section 4096.

(2) A person who has been granted a waiver of licensure requirements by the department pursuant to Section 5751.2.

(m) "Parties" means the petitioner, the respondent, the county behavioral health agency in the county where proceedings under this part are pending, and any local governmental entity added by the court pursuant to paragraph (4) of subdivision (d) of Section 5977.1.

(n) "Petitioner" means the person who files the CARE Act petition with the court. Additionally, if the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner. The original petitioner may, at the court's discretion and in furtherance of the interests of the respondent, retain rights as described in subparagraph (A) of paragraph (6) of subdivision (b) of Section 5977.

(o) "Psychiatric advance directive" means a legal document, executed on a voluntary basis in accordance with the requirements for advance health care directives in Division 4.7 (commencing with Section 4600) of the Probate Code, by a person who has the capacity to make medical decisions, that allows a person with mental illness to protect their autonomy and ability to direct their own care by documenting their preferences for treatment in advance of a mental health crisis.

(p) "Respondent" means the person who is the subject of the petition for the CARE process.

(q) "Stabilization medications" means medications included in the CARE plan that primarily consist of antipsychotic medications to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long-acting injections if clinically indicated. Stabilization medications shall not be forcibly administered.

(r) "Supporter" means an adult designated by the respondent who assists the person who is the subject of the petition, which assistance may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter shall not act independently.

SEC. 5. Section 5972 of the Welfare and Institutions Code is amended to read:

5972. An individual shall qualify for the CARE process only if all of the following criteria are met:

(a) The person is 18 years of age or older.

(b) The person is currently experiencing a serious mental disorder, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. This section does not establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including, but not limited to, physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who has a current diagnosis of substance use disorder as defined in paragraph (2) of subdivision (a) of Section 1374.72 of the Health and Safety Code but who does not also meet the required criteria in this section shall not qualify for the CARE process.

(c) The person is not clinically stabilized in on-going voluntary treatment.

(d) At least one of the following is true:

(1) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.

(2) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as used in Section 5150.

(e) Participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

(f) It is likely that the person will benefit from participation in a CARE plan or CARE agreement.

SEC. 6. Section 5973 of the Welfare and Institutions Code is amended to read:

5973. (a) Proceedings under this part may be commenced in any of the following:

(1) The county in which the respondent resides.

(2) The county where the respondent is found.

(3) The county where the respondent is facing criminal or civil proceedings.

(b) If the respondent does not reside in the county in which proceedings are initiated under this subdivision, as determined in accordance with Section 244 of the Government Code, except as provided in subdivision (f) of Section 5982, and this part is operative in the respondent's county of residence, the proceeding shall, with the respondent's consent, be transferred to the county of residence as soon as reasonably feasible. Should the respondent not consent to the transfer, the proceedings shall continue in the county where the respondent was found.

SEC. 7. Section 5974 of the Welfare and Institutions Code is amended to read:

5974. The following adult persons may file a petition to commence the CARE process:

(a) A person with whom the respondent resides.

(b) A spouse, parent, sibling, child, or grandparent or an individual who stands in loco parentis to the respondent.

(c) The director of a hospital in which the respondent is hospitalized, including hospitalized pursuant to Section 5150 or 5250, or the director's designee.

(d) The director of a public or charitable organization, agency, or home, or their designee, who has, within the previous 30 days, provided or who is currently providing behavioral health services to the respondent or in whose institution the respondent resides.

(e) A licensed behavioral health professional, or their designee, who is, or has been within the previous 30 days, either supervising the treatment of, or treating the respondent for a mental illness.

(f) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation pursuant to Section 5150, multiple attempts to engage the respondent in voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance.

(g) The public guardian or public conservator, or their designee, of the county in which the respondent resides or is found.

(h) The director of a county behavioral health agency, or their designee, of the county in which the respondent resides or is found.

(i) The director of county adult protective services, or their designee, of the county in which the respondent resides or is found.

(j) The director of a California Indian health services program, California tribal behavioral health department, who has, within the previous 30 days, provided or who is currently providing behavioral health services to the respondent, or the director's designee.

(k) The judge of a tribal court located in California before which the respondent has appeared within the previous 30 days, or the judge's designee.

(*l*) The respondent.

SEC. 8. Section 5975.1 of the Welfare and Institutions Code is amended to read:

5975.1. (a) Notwithstanding Section 391 of the Code of Civil Procedure, if a person other than the respondent files a petition for CARE Act proceedings that is without merit or is intended to harass or annoy the respondent, and the person has previously filed a pleading in CARE Act proceedings that was without merit or was intended to harass or annoy the respondent, the petition shall be grounds for the court to determine that the person is a vexatious litigant for the purposes of Title 3A (commencing with Section 391) of Part 2 of the Code of Civil Procedure.

(b) (1) If a person other than the respondent files a petition for CARE Act proceedings in order to gain an advantage over the respondent in another legal proceeding, then, notwithstanding any other provision of this part, it is cause for suspension, disbarment, or other discipline if a member of the State Bar is found to have filed the petition or assisted in the filing of the petition with knowledge that the filing was being made in order to gain that advantage.

(2) For purposes of this subdivision, "legal proceeding" shall not include:

(A) A proceeding under Part 1 (commencing with Section 5000) of Division 5.

(B) A proceeding under Section 300.

SEC. 9. Section 5975.2 is added to the Welfare and Institutions Code, to read:

5975.2. CARE Act proceedings may be conducted by a superior court judge or by a court-appointed commissioner or other subordinate judicial officer.

SEC. 10. Section 5975.3 is added to the Welfare and Institutions Code, to read:

5975.3. There shall be no fee for filing under this chapter nor shall any fees be charged by any public officer for services in filing or serving papers or for the performance of any duty enjoined by the CARE Act.

SEC. 11. Section 5976 of the Welfare and Institutions Code is amended to read:

5976. The respondent shall:

(a) Receive notice of the hearings.

(b) Receive a copy of the court-ordered evaluation.

(c) Be entitled to be represented by counsel at all stages of a proceeding commenced under this chapter, regardless of the ability to pay.

(d) Be allowed to have a supporter be present with them to perform the functions described in Sections 5980 and 5981, subject to the limits provided in those sections.

(e) Have the right to be present at the hearing unless the respondent waives that right.

(f) Have the right to present evidence.

(g) Have the right to call witnesses.

(h) Have the right to cross-examine witnesses.

(i) Have the right to appeal decisions, and to be informed of the right to appeal.

(j) Have the right to an interpreter in all proceedings if necessary for the respondent to fully participate.

SEC. 12. Section 5976.5 of the Welfare and Institutions Code is amended to read:

5976.5. (a) Notwithstanding any other law, and except as otherwise provided in this section, a hearing held under this part is presumptively closed to the public.

(b) The respondent may demand that the hearing be public and be held in a place suitable for attendance by the public.

(c) The respondent may request the presence of any family member or friend without waiving the right to keep the hearing closed to the rest of the public.

(d) A request by any other party to the proceeding to make the hearing public may be granted if the judicial officer conducting the hearing finds that the public interest in an open hearing clearly outweighs the respondent's interest in privacy.

(e) All reports, evaluations, diagnoses, or other information filed with the court related to the respondent's health shall be confidential. The respondent may at any time petition the court for an order sealing these records or any other court records in a proceeding held under this part. Notwithstanding any rule of court prohibiting records kept confidential by law from consideration for sealing, if such a petition is filed, there shall exist a presumption in favor of sealing.

(f) The fact that evidence is admitted at a proceeding held under this part shall not be the basis for admission of that evidence in any subsequent legal proceeding.

(g) Photographs, recordings, transcripts, other records of proceedings held under this part, and testimony regarding proceedings held under this part shall not be admissible in any subsequent legal proceeding except upon motion by one of the following in that subsequent legal proceeding:

(1) The respondent.

(2) The county behavioral health agency, the public guardian, or the public conservator.

(h) In a proceeding held under this part, this section shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for that opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

(i) Before commencing a hearing, the judicial officer shall inform the respondent of their rights under this section.

SEC. 13. Section 5977 of the Welfare and Institutions Code is amended to read:

5977. (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case without prejudice subject to consideration of Section 5975.1.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity shall be appointed to represent the respondent.

(iii) Determine whether the petition includes all of the following information and, if it does not, order the county behavioral health agency to submit a written report with the court within 14 court days that includes all of the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health agency to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, and file a written report with the court within 14 court days and provide notice to the respondent and petitioner that a report has been ordered. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the 14-day report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) The information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the report.

(4) If, upon a request by the county agency ordered to investigate and file a report under subparagraph (B) of paragraph (3), the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county agency no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county agency shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines that the county agency's report does not support the petition's prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

(C) If the court determines that the county agency's report does support the petition's prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county agency was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

(iii) Order the county agency to provide notice of the initial appearance to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding in open court that conducting the hearing without the

participation or presence of the respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) If the respondent asserts that they are enrolled in a federally recognized Indian tribe or are receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present, subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(6) (A) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall issue an order relieving the original petitioner and appointing the director of the county behavioral health agency or their designee as the successor petitioner.

(B) If the original petitioner is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The original petitioner shall have the right to be present and make a statement at the initial hearing on the merits of the petition held pursuant to paragraph (7).

(ii) The court may, in its discretion, assign ongoing rights of notice to the original petitioner.

(iii) To the extent that the respondent consents, the court may allow the original petitioner to participate in the respondent's CARE proceedings.

(iv) The original petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the original petitioner is not described in subdivision (a) or (b) of Section 5974, the court shall not assign ongoing rights to the original petitioner, other than the right to be present and make a statement at the hearing on the merits of the petition held pursuant to paragraph (7).

(7) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance upon stipulation of the successor petitioner and the respondent, subject to the approval by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds there is not clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, in open court, that the original petitioner's filing was not in good faith, in which case the dismissal shall be with prejudice.

(2) If, at the hearing on the merits of the petition, the court finds by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days.

(3) If the respondent is enrolled in a federally recognized Indian tribe, the respondent shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.

(d) The following shall apply to any written report submitted by a county behavioral health agency to the court pursuant to this section:

(1) The report is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(2) The report is inadmissible in any subsequent legal proceeding, except upon motion of the respondent in that subsequent legal proceeding.

(3) The report shall be confidential pursuant to subdivision (e) of Section 5976.5.

(4) This subdivision shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for such an opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

SEC. 14. Section 5977.1 of the Welfare and Institutions Code is amended to read:

5977.1. (a) (1) At the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.

(2) If the court finds that the parties have entered, or are likely to enter, into a CARE agreement, the court shall do one of the following:

(A) Approve the terms of the CARE agreement or modify the terms of the CARE agreement and approve the agreement as modified by the court, and continue the matter and set a progress hearing for 60 days.

(B) Continue the matter for 14 days to allow the parties additional time to enter into a CARE agreement, upon stipulation of the parties.

(b) If the court finds that the parties have not entered into a CARE agreement, and are not likely to enter into a CARE agreement, the court shall order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation shall address, at a minimum, the following:

(1) A clinical diagnosis of the respondent.

(2) Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.

(3) Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.

(4) An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

(c) (1) The court shall set a clinical evaluation hearing to review the evaluation within 21 days. The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent's counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(2) At the clinical evaluation review hearing, the court shall review the evaluation and other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

(3) At the conclusion of the hearing, the court shall determine whether the respondent, by clear and convincing evidence, meets the CARE criteria in Section 5972 and make orders as follows:

(A) If the court finds that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days.

(B) If the court does not find that clear and convincing evidence establishes that the respondent meets the CARE criteria, the court shall dismiss the petition.

(4) If the respondent is a self-identified American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), and 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is currently receiving services from an Indian health care provider or tribal court, the county behavioral health agency shall use its best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(5) The evaluation and all reports, documents, and filings submitted to the court shall be confidential.

(6) The date for the hearing to review and consider approval of the proposed CARE plan shall be set not more than 14 days from the date of the order to develop a CARE plan, unless the court finds good cause for an extension. The party requesting an extension of time for the CARE plan review hearing shall provide notice to the opposing party and their counsel

of the request for extension of time, and the court's order if the request is granted.

(d) (1) At the CARE plan review hearing, the parties shall present their plan or plans to the court. The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(2) After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan.

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

(4) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.

(5) If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(6) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(e) The issuance of an order approving a CARE plan pursuant to paragraph (2) of subdivision (d) begins the CARE process timeline, which shall not exceed one year.

SEC. 15. Section 5977.2 of the Welfare and Institutions Code is amended to read:

5977.2. (a) (1) At intervals set by the court and not less frequently than every 60 days after the court orders the CARE plan, the court shall hold a status review hearing. The county behavioral health agency shall file with the court and serve on the respondent, and the respondent's counsel and supporter, a report no fewer than five court days prior to the review hearing with the following information:

(A) The progress that the respondent has made on the CARE plan.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for changes to the services and supports to make the CARE plan more successful.

(2) The respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. The respondent shall be permitted to introduce their own information and recommendations.

(3) Subject to applicable law, intermittent lapses or setbacks described in this section of the report shall not impact access to services, treatment, or housing.

(b) The county behavioral health agency or the respondent may request, or the court upon its own motion may set, a hearing to occur at any time during the CARE process to address a change of circumstances.

SEC. 16. Section 5977.3 of the Welfare and Institutions Code is amended to read:

5977.3. (a) (1) In the 11th month of the process timeline, the court shall hold a one-year status hearing. Not fewer than five court days prior to the one-year status hearing, the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter. The report shall include the following information:

(A) The progress that the respondent has made on the CARE plan, including a final assessment of the respondent's stability.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided, over the life of the program.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide.

(2) At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. Respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence as to whether the respondent agrees with the report. The respondent may request either to be graduated from the program or to remain in the program.

(3) The court shall issue an order as follows:

(A) If the respondent elects to be graduated from the program, the court shall order the county behavioral health agency and the respondent to work jointly on a voluntary graduation plan. The court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the graduation plan and recite the

terms in open court. The graduation plan shall not place additional requirements on local governmental entities and is not enforceable by the court, except that the graduation plan may, at the respondent's election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.

(B) If the respondent elects to remain in the CARE process, respondent may request any amount of time, up to and including one additional year. The court may permit the ongoing voluntary participation of the respondent if the court finds both of the following:

(i) The respondent did not successfully complete the CARE plan.

(ii) The respondent would benefit from continuation of the CARE plan.

(C) The court shall issue an order permitting the respondent to continue in the CARE plan or denying respondent's request to remain in the CARE plan, and state its reasons in open court.

(b) The respondent may be involuntarily reappointed to the program only if the court finds, by clear and convincing evidence, that all of the following conditions apply:

(1) The respondent did not successfully complete the CARE process.

(2) All services and supports required through the CARE process were provided to the respondent.

(3) The respondent would benefit from continuation in the CARE process.

(4) The respondent currently meets the requirements in Section 5972.

(c) A respondent may only be reappointed to the CARE process once, for up to one additional year.

SEC. 17. Section 5977.4 of the Welfare and Institutions Code is amended to read:

5977.4. (a) In all CARE Act proceedings, the judicial officer shall control the proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Except when there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in the respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent. All evaluations and reports, documents, and filings submitted to the court pursuant to CARE Act proceedings shall be confidential.

(b) The hearings described in this chapter shall occur in person unless the court, in its discretion, allows a party or witness to appear remotely through the use of remote technology. The respondent shall have the right to be in person for all hearings.

(c) Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section and in Sections 5977, 5977.1, 5977.2, and 5977.3 to promote statewide consistency, including, but not limited to, what is included in the petition form packet, communications between the CARE Act court and

the juvenile court, if applicable, and the process by which counsel will be appointed.

(d) (1) Consistent with paragraph (9) of subdivision (b) of Section 56.10 of the Civil Code, the county behavioral health agency shall include in any report evaluation, or other document filed with the court, the information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the filing. The county behavioral health agency shall not, unless ordered to do so by the court, submit to the court original or photocopied records underlying the information in a report evaluation or other document required or ordered under this subdivision. The county behavioral health agency shall serve an unredacted copy of any report evaluation, or other document filed with the court on the respondent and the respondent's counsel and, with the consent of the respondent, on the supporter in a manner authorized by law. Neither a county nor an employee or agent thereof shall be held civilly or criminally liable for any disclosure authorized or required by this paragraph.

(2) (A) Consistent with paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code, a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, may disclose to the county behavioral health agency any information, including protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that is relevant to the county behavioral health agency's provision, coordination, or management of services and supports under this part, including, but not limited to, the preparation of any required investigations, evaluations, or reports. Such a disclosure is a disclosure for treatment purposes, which may be made only to the extent permitted under Section 164.506 of Title 45 of the Code of Federal Regulations. The information disclosed may include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(B) Consistent with paragraph (9) of subdivision (b) of Section 56.10 of the Civil Code, a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, that filed a CARE Act petition or executed an affidavit included with a CARE Act petition pursuant to paragraph (1) of subdivision (d) of Section 5975 shall provide to the county behavioral health agency any information, including protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that may be relevant in connection with an investigation, evaluation, or other report or hearing under this part, or with the provision of services and supports under this part. The provision of information under this paragraph is a disclosure required by law, which may be made only to the extent permitted under subdivision (a) of Section 164.512 of Title 45 of the Code of Federal Regulations. The information disclosed shall include substance use disorder patient records only to the

extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(C) The county behavioral health agency may apply to the court ex parte for an order requiring any provider of health care, as defined in Section 56.05 of the Civil Code, or any covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, to provide to the county behavioral health agency, to the court, or both, any information, including, but not limited to, protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that may be relevant in connection with an investigation, evaluation, or other report or hearing under this part, or with the provision of services and supports under this part. The provision of information under this paragraph is a disclosure required by law, which may be made only to the extent permitted under Section 164.512 of Title 45 of the Code of Federal Regulations. The information ordered to be disclosed may include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(D) A provider of health care or covered entity shall not be held civilly or criminally liable for any disclosure authorized or required by this section.

(E) The county behavioral health agency shall notify the respondent of a disclosure under this paragraph as follows:

(i) By mail at the respondent's last known address, if any.

(ii) To the respondent's counsel.

(iii) By including a copy of the notification under clause (i) or (ii) with the next notice of hearing served upon the respondent, if any.

(F) All information, including the facts and records, or summary thereof, shared under this subdivision shall further be disclosed to the respondent and the respondent's counsel, and with the consent of the respondent, to the supporter.

(3) (A) Except as expressly provided, further disclosure or redisclosure of information is not authorized by this subdivision.

(B) Information disclosed to a county behavioral health agency by a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(C) Disclosure of information under this part shall not be deemed to in any way alter the duties or responsibilities of a county behavioral health agency, of a provider of health care, as defined in Section 56.05 of the Civil Code, or of a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, with respect to the disclosed information under the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

SEC. 18. Section 5978 of the Welfare and Institutions Code is amended to read:

5978. (a) A court may refer an individual from assisted outpatient treatment, as well as from conservatorship proceedings pursuant Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 (LPS conservatorship) to CARE Act proceedings. If the individual is referred from assisted outpatient treatment, the county behavioral health director or their designee shall be the petitioner. If the individual is referred from LPS conservatorship proceedings, the conservator or proposed conservator shall be the petitioner pursuant to Section 5974.

(b) A court may refer an individual from misdemeanor proceedings pursuant to Section 1370.01 of the Penal Code to CARE Act proceedings. The county behavioral health director or their designee shall be the petitioner.

SEC. 19. Section 5981.5 of the Welfare and Institutions Code is amended to read:

5981.5. (a) The Legal Services Trust Fund Commission at the State Bar shall provide funding to qualified legal services projects, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to be used to provide legal counsel appointed pursuant to subdivision (c) of Section 5976, for representation in CARE Act proceedings, matters related to CARE agreements and CARE plans, and to qualified support centers, as defined in subdivision (b) of Section 6213 of, and Section 6215 of, the Business and Professions Code, for training, support, and coordination.

(b) For purposes of implementing this part, the Legal Services Trust Fund Commission may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis, or award grants, provided that they make a finding that both of the following are satisfied:

(1) The Legal Services Trust Fund Commission shall retain control over the distribution of funds to the contractor or grantee.

(2) The contract or grant includes provisions to ensure transparency, accountability, and oversight in delivering the services, including measurement of outcomes established pursuant to Sections 5984, 5985, and 5986.

SEC. 20. Section 5982 of the Welfare and Institutions Code is amended to read:

5982. (a) The CARE plan may include only the following:

(1) Behavioral health services funded through the 1991 and 2011 Realignment, Medi-Cal behavioral health, health care plans and insurers, and services supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800).

(2) Medically necessary stabilization medications, to the extent not described in paragraph (1).

(3) Housing resources funded through the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code); California Housing Accelerator (Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code); the Multifamily Housing Program (Chapter 6.7

(commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code); the Homeless Housing, Assistance, and Prevention Program (Chapter 6 (commencing with Section 50216) of Part 1 of Division 31 of the Health and Safety Code); the Encampment Resolution Funding Program (Chapter 7 (commencing with Section 50250) of Part 1 of Division 31 of the Health and Safety Code); the Project Roomkey and Rehousing Program pursuant to Provision 22 of Item 5180-151-0001 of the Budget Act of 2021 (Ch. 21, Stats. 2021); the Community Care Expansion Program (Chapter 20 (commencing with Section 18999.97) of Part 6 of Division 9 of the Welfare and Institutions Code); the CalWORKs Housing Support Program (Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code); the CalWORKs Homeless Assistance pursuant to clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 11450 of Article 6 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code; the Housing and Disability Advocacy Program (Chapter 17 (commencing with Section 18999) of Part 6 of Division 9 of the Welfare and Institutions Code); the Home Safe Program (Chapter 14 (commencing with Section 15770) of Part 3 of Division 9 of the Welfare and Institutions Code); the Bringing Families Home Program (Article 6 (commencing with Section 16523) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Placement program for nonminor dependents (Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Program-Plus pursuant to subdivision (s) of Section 11400 and paragraph (2) of subdivision (a) of Section 11403.2 of Article 5 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code; the Behavioral Health Continuum Infrastructure Program (Chapter 1 (commencing with Section 5960) of Part 7 of Division 5 of the Welfare and Institutions Code); the Behavioral Health Bridge Housing Program; HUD-Veterans Affairs Supportive Housing Program (Section 8(o)(19) of the United States Housing Act of 1937 [42 U.S.C. Section 1437f(o)(19)]); Supportive Services for Veteran Families (Section 604 of the Veterans' Mental Health and Other Care Improvements Act of 2008 [38 U.S.C. Sec. 2044]); HUD Continuum of Care program (Section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11302]); the Emergency Solutions Grant (Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Secs. 11371-11378]); HUD Housing Choice Voucher program (Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]); the Emergency Housing Vouchers (Section 3202 of the American Rescue Plan Act of 2021 [Public Law 117-2]; Section 8(o) of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f(o)]); HOME Investment Partnerships Program (Title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. Sec. 12721 et seq.]); the Community Development Block Grant Program (Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. Sec. 5301 et seq.]);

housing supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800); community development block grants; and other state and federal housing resources.

(4) Social services funded through Supplemental Security Income/State Supplementary Payment (SSI/SSP), Cash Assistance Program for Immigrants (CAPI), CalWORKs, California Food Assistance Program, In-Home Supportive Services program, and CalFresh.

(5) Services provided pursuant to Part 5 (commencing with Section 17000) of Division 9.

(b) Individuals who are CARE process participants shall be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program.

(c) If the county behavioral health agency elects not to enroll the respondent into a full service partnership, as defined in Section 3620 of Title 9 of the California Code of Regulations, the court may request information on the reasons for this and any barriers to enrollment.

(d) All CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes and regulations, contractual provisions, and policy guidance governing initial and ongoing program eligibility. In addition to the resources funded through programs listed in subdivision (a), the State Department of Health Care Services may identify other adjacent covered Medi-Cal services, including, but not limited to, enhanced care management and available community supports, which may be suggested, although not ordered, by the court, subject to all applicable federal and state statutes, regulations, contractual provisions, and policy guidance.

(e) This section does not prevent a county or other local governmental entity from recommending their own services that are their own responsibility not listed in subdivision (a) or (c). Any such recommendation is not required by this section and shall be made at the request of the county for the purposes of Section 6 of Article XIII B, and Sections 6 and 36 of Article XIII of the California Constitution.

(f) (1) For respondents who are Medi-Cal beneficiaries, the county in which the respondent resides is the county of responsibility as defined in Section 1810.228 of Title 9 of the California Code of Regulations.

(2) If a proceeding commences in a county where the respondent is found or is facing criminal or civil proceedings that is different than the county in which the respondent resides, the county in which the respondent is found or is facing criminal or civil proceedings shall not delay proceedings under this part and is the responsible county behavioral health agency for providing or coordinating all components of the CARE agreement or CARE plan.

(3) The county in which the respondent resides, as defined in paragraph (1), shall be responsible for the costs of providing all CARE agreement or CARE plan behavioral health services, as defined in paragraph (1) of subdivision (a).

(4) In the event of a dispute over responsibility for any costs of providing components of the CARE agreement or CARE plan, the impacted counties

shall resolve the dispute in accordance with the arbitration process established in Section 1850.405 of Title 9 of the California Code of Regulations for county mental health plans, including for respondents who are not Medi-Cal beneficiaries, and pursuant to any related guidance issued pursuant to subdivision (b) of Section 5984.

SEC. 21. Section 5983 of the Welfare and Institutions Code is amended to read:

5983. (a) The California Health and Human Services Agency, or a designated department within the agency, shall do both of the following:

(1) Engage an independent, research-based entity, as described in Section 5986, to advise on the development of data-driven process and outcome measures to guide the planning, collaboration, reporting, and evaluation of the CARE Act pursuant to this part.

(2) Convene a working group to provide coordination and on-going engagement with, and support collaboration among, relevant state and local partners and other stakeholders throughout the phases of county implementation to support the successful implementation of the CARE Act. The working group shall meet no more than quarterly. The working group shall meet during the implementation and shall end no later than December 31, 2026.

(b) The department shall provide training and technical assistance to county behavioral health agencies to support the implementation of this part, including training regarding the CARE process, CARE agreement and plan services and supports, supported decisionmaking, the supporter role, trauma-informed care, elimination of bias, psychiatric advance directives, family psychoeducation, and data collection.

(c) The Judicial Council, in consultation with the department, other relevant state entities, and the County Behavioral Health Directors Association, shall provide training and technical assistance to judicial officers to support the implementation of this part, including training regarding the CARE process, CARE agreement and plan services and supports, working with the supporter, supported decisionmaking, the supporter role, the family role, trauma-informed care, elimination of bias, best practices, and evidence-based models of care for people with severe behavioral health conditions.

(d) The department, in consultation with other relevant state departments and the California Interagency Council on Homelessness, shall provide training to counsel regarding the CARE process and CARE agreement and plan services and supports.

SEC. 22. Section 5986 of the Welfare and Institutions Code is amended to read:

5986. (a) An independent, research-based entity shall be retained by the department to develop, in consultation with county behavioral health agencies, county CARE courts, racial justice experts, and other appropriate stakeholders, including providers and CARE court participants, an independent evaluation of the effectiveness of the CARE Act. The independent evaluation shall employ statistical research methodology and

include a logic model, hypotheses, comparative or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports. The independent evaluation shall include results from a survey conducted of program participants. The independent evaluation shall highlight racial, ethnic, and other demographic disparities, and include causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts.

(b) The department shall provide a preliminary report to the Legislature by December 31, 2026, and a final report to the Legislature by December 31, 2028. The department shall post the preliminary and final reports on its internet website.

(c) Each county behavioral health department, each county CARE court, and any other state or local governmental entity, as determined by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 23. The Legislature finds and declares that Sections 13 and 17 of this act, which amend Sections 5977 and 5977.4 of the Welfare and Institutions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by the limitation and the need for protecting that interest:

In order to protect the highly sensitive personal information, including protected health information, of a respondent that is in the possession of public entities under the CARE Act, it is in the state's interest to limit public access to information.

SEC. 24. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

The CARE Act takes effect in October 2023, and therefore important changes to the act must take effect immediately to ensure the CARE Act's success.

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STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 42

CHAPTER 640

An act to amend Sections 5352.1, 5361, 5975, 5976.5, 5977, 5977.1, 5977.4, 5982, and 5985 of, and to add Sections 5978.1 and 5978.2 to, the Welfare and Institutions Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 42, Umberg. Community Assistance, Recovery, and Empowerment (CARE) Court Program: process and proceedings.

(1) Existing law, the Community Assistance, Recovery, and Empowerment (CARE) Act, authorizes specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services, to adults who are currently experiencing a qualifying severe mental illness and who meet other specified criteria. Existing law authorizes specified individuals to file a petition to commence the CARE process, including, but not limited to, a person with whom the respondent resides or a spouse, parent, sibling, child, or grandparent or an individual who stands in loco parentis to the respondent. Existing law authorizes the court to assign ongoing notification rights if the original petitioner is a person with whom the respondent resides, or a spouse, parent, sibling, child, or grandparent or an individual who stands in loco parentis to the respondent.

This bill would require, commencing July 1, 2025, that unless the court determines that it likely would be detrimental to the treatment or well-being of the respondent, the court provide ongoing notice throughout the CARE proceedings, including, but not limited to, when a continuance is granted or if the case is dismissed, if the original petitioner is a person with whom the respondent resides, or a spouse, parent, sibling, child, or grandparent or an individual who stands in loco parentis to the respondent. The bill would require the court, in the notice, to provide a general reason for the continuance if a continuance is granted, and specified reasons if the court grants dismissal. The bill would prohibit the court from disclosing certain health or medical information in the notice without the respondent's consent.

This bill would authorize a facility, as defined, to refer an individual treated under an involuntary hold to the county behavioral health agency of the county where the individual resides or the county where the individual is receiving involuntary treatment if they believe the individual meets or is

likely to meet CARE Act criteria. The bill would require the referral to include certain information, including the contact information for the referred individual, and other information as specified by the State Department of Health Care Services.

Existing law requires the State Department of Health Care Services, in consultation with certain entities, to develop an annual CARE Act report and post the annual report to its internet website.

The bill would additionally require the department to report certain data regarding the above-described referrals in its annual CARE Act report.

Existing law authorizes the court to dismiss a case without prejudice when the court finds that a petitioner has not made a prima facie showing that they qualify for the CARE process. Existing law requires the court to, if the court finds the petitioner has made a prima facie showing, and the petitioner is a person other than the director of a county behavioral health agency or their designee, order a county agency or their designee to investigate and file a written report within 14 court days.

This bill would authorize the petitioner to, subject to exception, amend the petition that was dismissed without prejudice, without refiling. The bill would require the county agency or designee to file the report as soon as practicable, or within 30 court days. The bill would also make conforming changes.

(2) Existing law requires the Judicial Council to develop a mandatory form for the CARE process that includes, among other information, the name of the respondent and the respondent's address if known, and certain evidence.

This bill would specify that the evidence may include documentary evidence from the facility where the respondent was detained, or a signed declaration from the petitioner if the petitioner has personal knowledge of the detentions. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

(3) Existing law authorizes a court to refer an individual from assisted outpatient treatment, misdemeanor proceedings, or specified conservatorship proceedings to CARE Act proceedings.

This bill would authorize the CARE Act court and the referring court to communicate regarding the respondent's cases, while the cases are pending in both courts. The bill would, except as provided, require a record, as defined, of communications between the courts be maintained and be accessible to the parties. The bill would additionally require all communications about the disposition of a respondent's case to be conducted in court and on the record.

(4) Existing law authorizes a court to establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator under specified circumstances.

This bill would require, if a petition for a temporary conservatorship is based on an affidavit from a certain professional, that an affidavit include an attestation by the professional that all available alternatives to conservatorship have been investigated, as specified, and appointment of a

temporary conservator is recommended because no suitable alternatives to conservatorship are available.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 5352.1 of the Welfare and Institutions Code is amended to read:

5352.1. (a) The court may establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator, on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5354, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for their recommendation, if the court is satisfied that the comprehensive report or affidavit shows the necessity for a temporary conservatorship.

(b) If the petition for establishment of a temporary conservatorship is based on an affidavit of the professional person who recommended conservatorship, the affidavit shall include an attestation by the professional person that all available alternatives to conservatorship, including, but not limited to, assisted outpatient treatment pursuant to Section 5346 and the CARE Act proceedings pursuant to Section 5978, as applicable, have been considered by the professional person or have been investigated pursuant to Section 5354, and that appointment of a temporary conservator is recommended because no suitable alternatives to conservatorship are available.

(c) Except as provided in this section, a temporary conservatorship shall expire automatically after 30 days, unless prior to that date the court conducts a hearing on the issue of whether or not the proposed conservatee is gravely disabled, as defined in subdivision (h) of Section 5008.

(d) If the proposed conservatee demands a court or jury trial on the issue of whether they are gravely disabled, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial, provided that the extension does not exceed 180 days.

SEC. 2. Section 5361 of the Welfare and Institutions Code is amended to read:

5361. (a) Conservatorship initiated pursuant to this chapter shall automatically terminate one year after the appointment of the conservator by the superior court. The period of service of a temporary conservator shall not be included in the one-year period. When the conservator has been

appointed as conservator of the estate, the conservator shall, for a reasonable time, continue to have the authority over the estate that the superior court, on petition by the conservator, deems necessary for (1) the collection of assets or income that accrued during the period of conservatorship, but were uncollected before the date of termination, (2) the payment of expenses that accrued during period of conservatorship and of which the conservator was notified prior to termination, but were unpaid before the date of termination, and (3) the completion of sales of real property when the only act remaining at the date of termination is the actual transfer of title.

(b) If, upon the termination of an initial or a succeeding period of conservatorship, the conservator determines that conservatorship is still required, the conservator may petition the superior court for reappointment as conservator for a succeeding one-year period. The petition shall include the opinion of two physicians or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders that the conservatee is still gravely disabled as a result of mental disorder or impairment by chronic alcoholism. If the conservator is unable to obtain the opinion of two physicians or psychologists, the conservator shall request that the court appoint them. The petition shall also include an attestation by the conservator that they have considered all available alternatives to conservatorship, including, but not limited to, assisted outpatient treatment pursuant to Section 5346 and the CARE Act program pursuant to Section 5978, as applicable, and that reappointment of a conservator is recommended because no suitable alternatives are available.

(c) (1) A facility in which a conservatee is placed shall release the conservatee at the conservatee's request when the conservatorship terminates. A petition for reappointment filed by the conservator or a petition for appointment filed by a public guardian shall be transmitted to the facility at least 30 days before the automatic termination date. The facility may detain the conservatee after the end of the termination date only if the conservatorship proceedings have not been completed and the court orders the conservatee to be held until the proceedings have been completed.

(2) A care coordination plan shall be developed by, at a minimum, the individual, the facility, the county behavioral health department, the health care payer, if different from the county, and other individuals designated by the individual as appropriate, and shall be provided to the conservatee prior to their release. The care coordination plan shall include a first followup appointment with an appropriate behavioral health professional. The appointment information shall be provided to the individual before the individual is released. In no event may the individual be involuntarily held based on the requirements of this paragraph beyond when they would otherwise qualify for release. All care and treatment after release shall be voluntary.

(3) For purposes of care coordination and to schedule a followup appointment, the health plan, mental health plan, primary care provider, or other appropriate provider to whom an individual leaving a facility has been

referred pursuant to paragraph (2) of subdivision (c) shall make a good faith effort to contact the referred individual no less than three times, either by email, telephone, mail, or in-person outreach, whichever method or methods are most likely to reach the individual.

(4) The requirement to develop a care coordination plan under this subdivision shall take effect immediately, without waiting for the department to create a model care coordination plan, as required pursuant to Section 5402.5.

SEC. 3. Section 5975 of the Welfare and Institutions Code is amended to read:

5975. The Judicial Council shall develop a mandatory form for use to file a CARE process petition with the court and any other forms necessary for the CARE process. The petition shall be signed under the penalty of perjury and contain all of the following:

(a) The name of the respondent and, if known, the respondent's address.

(b) The petitioner's relationship to the respondent.

(c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972.

(d) Either of the following:

(1) An affidavit of a licensed behavioral health professional, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

(2) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days. Evidence may include, but is not limited to, documentary evidence from the facility where the respondent was detained, or a signed declaration from the petitioner if the petitioner had personal knowledge of the detentions.

SEC. 4. Section 5976.5 of the Welfare and Institutions Code is amended to read:

5976.5. (a) Notwithstanding any other law, and except as otherwise provided in this section, a hearing held under this part is presumptively closed to the public.

(b) The respondent may demand that the hearing be public and be held in a place suitable for attendance by the public.

(c) The respondent may request the presence of any family member or friend without waiving the right to keep the hearing closed to the rest of the public.

(d) A request by any other party to the proceeding to make the hearing public may be granted if the judicial officer conducting the hearing finds

that the public interest in an open hearing clearly outweighs the respondent's interest in privacy.

(e) All reports, evaluations, diagnoses, or other information filed with the court related to the respondent's health shall be confidential. The respondent may at any time petition the court for an order sealing these records or any other court records in a proceeding held under this part. Notwithstanding any rule of court prohibiting records kept confidential by law from consideration for sealing, if such a petition is filed, there shall exist a presumption in favor of sealing.

(f) The fact that evidence is admitted at a proceeding held under this part shall not be the basis for admission of that evidence in any subsequent legal proceeding.

(g) Photographs, recordings, transcripts, other records of proceedings held under this part, and testimony regarding proceedings held under this part shall not be admissible in any subsequent legal proceeding except upon motion by one of the following in that subsequent legal proceeding:

(1) The respondent.

(2) The county behavioral health agency, the public guardian, or the public conservator.

(h) In a proceeding held under this part, this section shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for that opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

(i) Before commencing a hearing at the respondent's first court appearance, the judicial officer shall inform the respondent of their rights under this section. At subsequent hearings, the court is not required to advise the respondent of their rights under this section upon finding that the respondent understands and waives the additional advisement of their rights.

SEC. 5. Section 5977 of the Welfare and Institutions Code is amended to read:

5977. (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case and, if the court does so, it shall order that the dismissal is without prejudice, unless Section 5975.1 applies. Nothing other than Section 5975.1 prevents a petitioner whose petition was dismissed without prejudice from refiling the petition with amended information.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity shall be appointed to represent the respondent.

(iii) Determine whether the petition includes all of the following information and, if it does not, order the county behavioral health agency to submit a written report with the court within 14 court days that includes all of the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health agency to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, file a written report with the court as soon as practicable, but within 30 court days, and provide notice to the respondent and petitioner that a report has been ordered. Parties shall complete the investigation with appropriate urgency. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) The information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the report.

(4) If, upon a request by the county agency ordered to investigate and file a report under subparagraph (B) of paragraph (3), the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county agency no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county agency shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines, based on the county agency's report, that the evidence does not support a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

(C) If the court determines, based on the county agency's report, that the evidence does support a prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county agency was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

(iii) Order the county agency to provide notice of the initial appearance to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding in open court that conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) If the respondent asserts that they are enrolled in a federally recognized Indian tribe or are receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present, subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(6) (A) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall issue an order

relieving the original petitioner and appointing the director of the county behavioral health agency or their designee as the successor petitioner.

(B) If the original petitioner is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The original petitioner shall have the right to be present and make a statement at the initial hearing on the merits of the petition held pursuant to paragraph (7).

(ii) (I) Until July 1, 2025, the court may, in its discretion, assign ongoing rights of notice to the original petitioner.

(II) Commencing July 1, 2025, unless the court determines, either upon its own motion or upon the motion of the respondent, at any point in the proceedings, that it likely would be detrimental to the treatment or well-being of the respondent, the court shall provide ongoing notice of proceedings to the original petitioner throughout the CARE proceedings, including notice of when a continuance is granted or when a case is dismissed. If a continuance is granted, the notice shall provide a general reason for the continuance, including the absence of the respondent or one of the grounds pursuant to Rule 3.1332 of the California Rules of Court. If a case is dismissed, the notice shall specify the statutory basis for the dismissal. A notice pursuant to this clause shall not disclose any patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or this act, without the respondent's consent.

(iii) To the extent that the respondent consents, the court may allow the original petitioner to participate in the respondent's CARE proceedings.

(iv) The original petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the original petitioner is not described in subdivision (a) or (b) of Section 5974, the court shall not assign ongoing rights to the original petitioner, other than the right to be present and make a statement at the hearing on the merits of the petition held pursuant to paragraph (7).

(7) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner. A licensed behavioral health professional may testify as an expert concerning whether the respondent meets the CARE criteria in Section 5972 provided that the court finds that the professional has special knowledge, skill, experience, training, or education sufficient to qualify as an expert under Section 720 of the Evidence Code.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance upon stipulation of the successor petitioner and the respondent, subject to the approval by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds there is not clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, in open court, that the original petitioner's filing was not in good faith, in which case the dismissal shall be with prejudice.

(2) If, at the hearing on the merits of the petition, the court finds by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days.

(3) If the respondent is enrolled in a federally recognized Indian tribe, the respondent shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.

(d) The following shall apply to any written report submitted by a county behavioral health agency to the court pursuant to this section:

(1) The report is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(2) The report is inadmissible in any subsequent legal proceeding, except upon motion of the respondent in that subsequent legal proceeding.

(3) The report shall be confidential pursuant to subdivision (e) of Section 5976.5.

(4) This subdivision shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for such an opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

SEC. 6. Section 5977.1 of the Welfare and Institutions Code is amended to read:

5977.1. (a) (1) At the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.

(2) If the court finds that the parties have entered, or are likely to enter, into a CARE agreement, the court shall do one of the following:

(A) Approve the terms of the CARE agreement or modify the terms of the CARE agreement and approve the agreement as modified by the court, and continue the matter and set a progress hearing for 60 days.

(B) Continue the matter for 14 days to allow the parties additional time to enter into a CARE agreement, upon stipulation of the parties.

(3) Nothing in this subdivision shall prohibit the parties from agreeing to, and the court from approving, amendments to the CARE agreement.

(b) If the court finds that the parties have not entered into a CARE agreement, and are not likely to enter into a CARE agreement, the court shall order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation shall address, at a minimum, the following:

(1) A clinical diagnosis of the respondent.

(2) Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.

(3) Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.

(4) An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

(c) (1) The court shall set a clinical evaluation hearing to review the evaluation within 21 days. The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent's counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(2) At the clinical evaluation review hearing, the court shall review the evaluation and other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

(3) At the conclusion of the hearing, the court shall determine whether the respondent, by clear and convincing evidence, meets the CARE criteria in Section 5972 and make orders as follows:

(A) If the court finds that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days.

(B) If the court does not find that clear and convincing evidence establishes that the respondent meets the CARE criteria, the court shall dismiss the petition.

(4) If the respondent is a self-identified American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), and 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is currently receiving services from an Indian health care provider or tribal

court, the county behavioral health agency shall use its best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(5) The evaluation and all reports, documents, and filings submitted to the court shall be confidential.

(6) The date for the hearing to review and consider approval of the proposed CARE plan shall be set not more than 14 days from the date of the order to develop a CARE plan, unless the court finds good cause for an extension. The party requesting an extension of time for the CARE plan review hearing shall provide notice to the opposing party and their counsel of the request for extension of time, and the court's order if the request is granted.

(d) (1) At the CARE plan review hearing, the parties shall present their plan or plans to the court. The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(2) After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan and may be amended.

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

(4) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.

(5) If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(6) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(7) This subdivision does not prohibit the parties from agreeing to, and the court from approving, amendments to the CARE plan. The court may also approve amendments to the CARE plan upon the finding that those amendments are necessary to support the respondent in accessing appropriate services and supports, following a hearing on the issue.

(e) The issuance of an order approving a CARE plan pursuant to paragraph (2) of subdivision (d) begins the CARE process timeline, which shall not exceed one year.

SEC. 7. Section 5977.4 of the Welfare and Institutions Code is amended to read:

5977.4. (a) In all CARE Act proceedings, the judicial officer shall control the proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Except when there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in the respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent. The court and relevant local public agencies shall cooperate to develop a comprehensive set of objectives established to improve performance of the CARE system in a vigorous and ongoing manner. The court is authorized to coordinate and participate in meetings to improve system performance. All evaluations and reports, documents, and filings submitted to the court pursuant to CARE Act proceedings shall be confidential.

(b) The hearings described in this chapter shall occur in person unless the court, in its discretion, allows a party or witness to appear remotely through the use of remote technology. The respondent shall have the right to be in person for all hearings.

(c) Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section and in Sections 5977 to 5977.4, inclusive, to promote statewide consistency, including, but not limited to, what is included in the petition form packet, communications between the CARE Act court and the juvenile court, if applicable, the role of the judiciary to improve system performance, and the process by which counsel will be appointed.

(d) (1) Consistent with paragraph (9) of subdivision (b) of Section 56.10 of the Civil Code, the county behavioral health agency shall include in any report evaluation, or other document filed with the court, the information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the filing. The county behavioral health agency shall not, unless ordered to do so by the court, submit to the court original or photocopied records underlying the information in a report evaluation or other document required or ordered under this subdivision. The county behavioral health agency shall serve an unredacted copy of any report evaluation, or other document filed with the

court on the respondent and the respondent's counsel and, with the consent of the respondent, on the supporter in a manner authorized by law. Neither a county nor an employee or agent thereof shall be held civilly or criminally liable for any disclosure authorized or required by this paragraph.

(2) (A) Consistent with paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code, a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, may disclose to the county behavioral health agency any information, including protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that is relevant to the county behavioral health agency's provision, coordination, or management of services and supports under this part, including, but not limited to, the preparation of any required investigations, evaluations, or reports. Such a disclosure is a disclosure for treatment purposes, which may be made only to the extent permitted under Section 164.506 of Title 45 of the Code of Federal Regulations. The information disclosed may include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(B) Consistent with paragraph (9) of subdivision (b) of Section 56.10 of the Civil Code, a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, that filed a CARE Act petition or executed an affidavit included with a CARE Act petition pursuant to paragraph (1) of subdivision (d) of Section 5975 shall provide to the county behavioral health agency any information, including protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that may be relevant in connection with an investigation, evaluation, or other report or hearing under this part, or with the provision of services and supports under this part. The provision of information under this paragraph is a disclosure required by law, which may be made only to the extent permitted under subdivision (a) of Section 164.512 of Title 45 of the Code of Federal Regulations. The information disclosed shall include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(C) The county behavioral health agency may apply to the court ex parte for an order requiring any provider of health care, as defined in Section 56.05 of the Civil Code, or any covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, to provide to the county behavioral health agency, to the court, or both, any information, including, but not limited to, protected health information, and mental health records excluding psychotherapy notes, in its possession about the respondent that may be relevant in connection with an investigation, evaluation, or other report or hearing under this part, or with the provision of services and supports under this part. The provision of information under this paragraph is a disclosure required by law, which may be made only to the extent

permitted under Section 164.512 of Title 45 of the Code of Federal Regulations. The information ordered to be disclosed may include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(D) A provider of health care or covered entity shall not be held civilly or criminally liable for any disclosure authorized or required by this section.

(E) The county behavioral health agency shall notify the respondent of a disclosure under this paragraph as follows:

(i) By mail at the respondent's last known address, if any.

(ii) To the respondent's counsel.

(iii) By including a copy of the notification under clause (i) or (ii) with the next notice of hearing served upon the respondent, if any.

(F) All information, including the facts and records, or summary thereof, shared under this subdivision shall further be disclosed to the respondent and the respondent's counsel, and with the consent of the respondent, to the supporter.

(3) (A) Except as expressly provided, further disclosure or redisclosure of information is not authorized by this subdivision.

(B) Information disclosed to a county behavioral health agency by a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(C) Disclosure of information under this part shall not be deemed to in any way alter the duties or responsibilities of a county behavioral health agency, of a provider of health care, as defined in Section 56.05 of the Civil Code, or of a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, with respect to the disclosed information under the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

SEC. 8. Section 5978.1 is added to the Welfare and Institutions Code, to read:

5978.1. (a) For purposes of this section, "facility" means a facility that provides assessment, evaluation, and crisis intervention pursuant to subdivision (a) of Section 5150, or a designated facility as defined in subdivision (n) of Section 5008.

(b) A facility may refer an individual treated under an involuntary hold pursuant to Articles 1 to 4.7, inclusive, and Article 6 of Chapter 2 of Part 1 of this Division to the county behavioral health agency of the county in which the individual resides, or the county in which the individual is receiving involuntary treatment, if they believe that the individual meets or is likely to meet criteria to qualify for the CARE process, as described in Section 5972.

(1) Referrals pursuant to this section shall be authorized by a licensed behavioral health professional, employed, by or contracted by the facility, who has knowledge of the individual's case and has been involved in the individual's treatment during their involuntary hold. Documentation of the authority for a referral pursuant to this paragraph shall be signed by the licensed behavioral health professional or their designee.

(2) If the facility chooses to make a referral pursuant to subdivision (b), the facility shall make the referral pursuant to this section as soon as clinically indicated as part of the individual's discharge planning process.

(3) The facility referral shall include contact information for the referred individual, including a telephone number and address, if available, and other information as specified by the department.

(c) Within 14 business days of the referral by the facility, the county behavioral health agency shall complete assessment of the individual referred pursuant to this section and shall file a petition pursuant to Section 5975 if the county behavioral health agency determines that the individual meets or is likely to meet criteria for the CARE process and the individual does not engage in voluntary treatment.

(d) In accordance with subdivision (b) of Section 5984, the department shall develop a referral form to be used by the facility and issue guidance regarding the following:

(1) The procedure for a facility to refer an individual to a county behavioral health agency pursuant to this section.

(2) County behavioral health agency data reporting requirements regarding referrals made pursuant to this section include, but are not limited to, total referrals, outcomes of referrals, reason for not filing a petition, length of time from referral to outcome, and services provided for those engaged voluntarily.

(e) The department shall include data regarding referrals made pursuant to this section as part of the annual CARE Act report required by Section 5985.

(f) This section does not authorize a facility to continue an involuntary hold on a referred individual who no longer meets the criteria for involuntary treatment solely for the purpose of allowing the county behavioral health agency to complete its assessment pursuant to subdivision (b).

(g) This section does not affect the ability of a facility to make a referral for assisted outpatient treatment pursuant to Section 5346.

SEC. 9. Section 5978.2 is added to the Welfare and Institutions Code, to read:

5978.2. (a) (1) If a petition to initiate CARE Act proceedings has been filed based on a referral pursuant to Section 5978, the CARE Act court and the referring court may communicate with each other regarding the status of respondent's cases and any relevant court orders while the cases are still pending in both courts.

(2) If a petition to initiate CARE Act proceedings has been filed for a respondent within a juvenile court's dependency, delinquency, or transition jurisdiction, the CARE Act court and the juvenile court may communicate

with each other regarding the status of respondent's cases and any relevant court orders while the cases are still pending in both courts.

(b) The court may allow the parties to participate in the communication. All communications about the disposition of a respondent's case shall be conducted in court and on the record.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subdivision (c), a record must be made of a communication pursuant to this section. The parties shall be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SEC. 10. Section 5982 of the Welfare and Institutions Code is amended to read:

5982. (a) The CARE plan may include only the following:

(1) Behavioral health services funded through the 1991 and 2011 Realignment, Medi-Cal behavioral health, health care plans and insurers, and services supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800).

(2) Medically necessary stabilization medications, to the extent not described in paragraph (1).

(3) Housing resources funded through the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code); California Housing Accelerator (Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code); the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code); the Homeless Housing, Assistance, and Prevention Program (Chapter 6 (commencing with Section 50216) of Part 1 of Division 31 of the Health and Safety Code); the Encampment Resolution Funding Program (Chapter 7 (commencing with Section 50250) of Part 1 of Division 31 of the Health and Safety Code); the Project Roomkey and Rehousing Program pursuant to Provision 22 of Item 5180-151-0001 of the Budget Act of 2021 (Ch. 21, Stats. 2021); the Community Care Expansion Program (Chapter 20 (commencing with Section 18999.97) of Part 6 of Division 9 of the Welfare and Institutions Code); the CalWORKs Housing Support Program (Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code); the CalWORKs Homeless Assistance pursuant to clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 11450 of Article 6 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code; the Housing and Disability Advocacy Program (Chapter 17 (commencing with Section 18999) of Part 6 of Division 9 of the Welfare and Institutions Code); the Home Safe Program (Chapter 14 (commencing with Section 15770) of Part 3 of Division 9 of the Welfare and Institutions Code); the Bringing Families

Home Program (Article 6 (commencing with Section 16523) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Placement program for nonminor dependents (Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Program-Plus pursuant to subdivision (s) of Section 11400 and paragraph (2) of subdivision (a) of Section 11403.2 of Article 5 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code; the Behavioral Health Continuum Infrastructure Program (Chapter 1 (commencing with Section 5960) of Part 7 of Division 5 of the Welfare and Institutions Code); the Behavioral Health Bridge Housing Program; HUD-Veterans Affairs Supportive Housing Program (Section 8(o)(19) of the United States Housing Act of 1937 [42 U.S.C. Section 1437f(o)(19)]); Supportive Services for Veteran Families (Section 604 of the Veterans' Mental Health and Other Care Improvements Act of 2008 [38 U.S.C. Sec. 2044]); HUD Continuum of Care program (Section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11302]); the Emergency Solutions Grant (Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Secs. 11371-11378]); HUD Housing Choice Voucher program (Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]); the Emergency Housing Vouchers (Section 3202 of the American Rescue Plan Act of 2021 [Public Law 117-2]; Section 8(o) of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f(o)]); HOME Investment Partnerships Program (Title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. Sec. 12721 et seq.]); the Community Development Block Grant Program (Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. Sec. 5301 et seq.]); housing supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800); community development block grants; and other state and federal housing resources.

(4) Social services funded through Supplemental Security Income/State Supplementary Payment (SSI/SSP), Cash Assistance Program for Immigrants (CAPI), CalWORKs, California Food Assistance Program, In-Home Supportive Services program, and CalFresh.

(5) Services provided pursuant to Part 5 (commencing with Section 17000) of Division 9.

(6) Upon the consent of the respondent and the entity or individual financially responsible for the services, additional services to support the recovery and stability of the respondent.

(b) Individuals who are CARE process participants shall be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program.

(c) If the county behavioral health agency elects not to enroll the respondent into a full service partnership, as defined in Section 3620 of Title 9 of the California Code of Regulations, the court may request information on the reasons for this and any barriers to enrollment.

(d) All CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes and regulations, contractual provisions, and policy guidance governing initial and ongoing program eligibility. In addition to the resources funded through programs listed in subdivision (a), the State Department of Health Care Services may identify other adjacent covered Medi-Cal services, including, but not limited to, enhanced care management and available community supports, which may be suggested, although not ordered, by the court, subject to all applicable federal and state statutes, regulations, contractual provisions, and policy guidance.

(e) This section does not prevent a county or other local governmental entity from recommending their own services that are their own responsibility not listed in subdivision (a) or (c). Any such recommendation is not required by this section and shall be made at the request of the county for the purposes of Section 6 of Article XIII B, and Sections 6 and 36 of Article XIII of the California Constitution.

(f) (1) For respondents who are Medi-Cal beneficiaries, the county in which the respondent resides is the county of responsibility as defined in Section 1810.228 of Title 9 of the California Code of Regulations.

(2) If a proceeding commences in a county where the respondent is found or is facing criminal or civil proceedings that is different than the county in which the respondent resides, the county in which the respondent is found or is facing criminal or civil proceedings shall not delay proceedings under this part and is the responsible county behavioral health agency for providing or coordinating all components of the CARE agreement or CARE plan.

(3) The county in which the respondent resides, as defined in paragraph (1), shall be responsible for the costs of providing all CARE agreement or CARE plan behavioral health services, as defined in paragraph (1) of subdivision (a).

(4) In the event of a dispute over responsibility for any costs of providing components of the CARE agreement or CARE plan, the impacted counties shall resolve the dispute in accordance with the arbitration process established in Section 1850.405 of Title 9 of the California Code of Regulations for county mental health plans, including for respondents who are not Medi-Cal beneficiaries, and pursuant to any related guidance issued pursuant to subdivision (b) of Section 5984.

SEC. 11. Section 5985 of the Welfare and Institutions Code is amended to read:

5985. (a) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the

department. The department shall determine the data measures and specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearances on the petition set pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The report shall include, at a minimum, all of the following:

(1) The demographics of participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, and county of residence, to the extent statistically relevant data is available.

(2) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided.

(3) The housing placements of all participants during the program and at least one year following the termination of the CARE plan, to the extent administrative data are available to report the latter. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment, community-based housing, community-based housing with services, shelter, and no housing.

(4) Treatments continued and terminated at least one year following termination of the CARE plan, to the extent administrative data are available.

(5) Substance use disorder rates and rates of treatment among active CARE plan participants and former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(6) Detentions and other Lanterman-Petris-Short Act involvement for participants with an active CARE plan and for former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(7) Criminal justice involvement of participants with an active CARE plan and for former participants at least one year following termination of the CARE plan, to the extent administrative data are available to report the latter.

(8) Deaths among active participants and for former participants at least one year following termination of the CARE plan, along with causes of death, to the extent administrative data are available.

(9) The number, rates, and trends of petitions resulting in dismissal and hearings.

(10) The number, rates, and trends of supporters.

(11) The number, rates, and trends of voluntary CARE agreements.

(12) The number, rates, and trends of ordered and completed CARE plans.

(13) Statistics on the services and supports included in CARE plans, including court orders for stabilizing medications.

(14) The rates of adherence to medication.

(15) The number, rates, and trends of psychiatric advance directives created for participants with active CARE plans.

(16) The number, rates, and trends of developed graduation plans.

(17) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration, reductions in involuntary treatment and conservatorship, and reductions in substance use.

(18) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(19) Data regarding referrals made pursuant to Section 5978.1, as part of the CARE Act.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in

law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available. Information released or published pursuant to this section shall not contain data that may lead to the identification of respondents or information that would otherwise allow an individual to link the published information to a specific person. Data published by the department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect the health and safety of the state's most vulnerable individuals by providing additional housing and treatment services within this state, and to avoid a waste of resources, it is necessary that this act take effect immediately.

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STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 1400

CHAPTER 647

An act to amend Sections 1001.36 and 1370.01 of the Penal Code, and to amend Section 5985 of the Welfare and Institutions Code, relating to criminal procedure.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, Stern. Criminal procedure: competence to stand trial.

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and if the defendant is found incompetent to stand trial, the proceedings are suspended while the defendant receives treatment, with the goal of restoring the defendant to competency.

Existing law, in the case of a misdemeanor charge in which the defendant is found incompetent, requires the court to either dismiss the case or hold a hearing to determine if the defendant is eligible for diversion. Under existing law, if the defendant is not eligible for diversion, the court may hold another hearing to decide if the defendant should be referred for outpatient treatment, conservatorship, or the CARE program, or if the defendant's treatment plan should be modified. Existing law requires that the charges be dismissed if a defendant is accepted into outpatient treatment or the CARE program. Existing law also requires the court, if the defendant is already on a grant of diversion for a misdemeanor case, to dismiss the current case and return the defendant to supervision.

This bill would remove the option for the court to dismiss the case and would instead require the court to hold a hearing to determine if the defendant is eligible for diversion. If the defendant is not eligible for diversion, the bill would require the court to hold a hearing to determine whether the defendant will be referred to outpatient treatment, conservatorship, or the CARE program, or if the defendant's treatment plan will be modified. If the defendant is accepted into assisted outpatient treatment, has a petition for the establishment of a conservatorship filed, or is accepted into CARE, the bill would require the court to dismiss the charges at specified timeframes, except as specified. The bill would require the court to dismiss the case if a defendant does not qualify for the above-described services.

This bill would also remove the requirement that the court dismiss the case if the defendant is already on a grant of diversion for a misdemeanor case.

Existing law prohibits a court from suspending proceedings of a prosecution on a charge of driving under the influence of an alcoholic beverage for the purpose of allowing the defendant to participate in education, training, or treatment programs.

This bill would allow for a mentally incompetent defendant who is charged with misdemeanor driving under the influence to be placed in a mental health diversion program, as specified.

Existing law requires the State Department of Health Care Services, in consultation with the Judicial Council, to develop an annual reporting schedule for the submission of CARE Act data from the trial courts and requires the Judicial Council to aggregate the data and submit it to the department. Existing law requires the department, in consultation with various other entities, to develop an annual CARE Act report and requires county behavioral health agencies and other local governmental entities to provide the department with specified information for that report. Existing law requires the annual report to be posted on the department's internet website.

This bill would expand the data to be compiled and reported to the Judicial Council to include the total number of CARE plans ordered and CARE agreements approved, among other information, and would expand the information compiled from county behavioral health departments to include information on all active and former participants for a period of time after the conclusion of CARE program services, to be determined by the State Department of Health Care Services, in consultation with county behavioral health agencies and courts. The bill would also expand the information collected by county behavioral health departments and courts to include outreach and engagement activities provided by county behavioral health agencies, the number of days between a petition and its disposition, and, in consultation with the department and county behavioral health departments, the number, rates, and trends of contacts made to a county behavioral health agency about individuals eligible or likely to be eligible for the CARE process, among others. The bill would require the measures and reporting requirements to be developed by the department, in consultation with county behavioral health agencies. By increasing the duties of a local agency, this bill would impose a state-mandated local program. The bill would, beginning in 2026, require the department to include in its annual CARE Act report quantitative deidentified information to include specified information aggregated by county, such as demographic information of each CARE Act participant and the number of CARE petitions filed with the superior court, among others.

This bill would incorporate additional changes to Section 1001.36 of the Penal Code proposed by SB 1323 and additional changes to Section 5985 of the Welfare and Institutions Code proposed by SB 42, to be operative only if this bill and SB 1323 and SB 42 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, or a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (v) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, or the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (v) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may

summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the

Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(*l*) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

(n) This section shall become operative on July 1, 2024.

SEC. 1.5. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, or a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C), of, paragraph (1) of subdivision (a) of Section 1370, or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, or the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of Section 1370 or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and

argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the

Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(*l*) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

SEC. 2. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) (1) (A) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court shall conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) Notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a mental health diversion program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of a person arrested for a violation of Section 23152 or 23153 of the Vehicle Code.

(2) The hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(3) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(4) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine which one of the following actions the court will take:

(A) Order modification of an existing mental health diversion treatment plan in accordance with a recommendation from the treatment provider.

(B) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetency. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to assisted outpatient treatment, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of assisted outpatient treatment.

(C) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 30 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges shall be dismissed pursuant to Section 1385 90 days after the date of the filing of the petition, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of conservatorship proceedings.

(D) Refer the defendant to the CARE program pursuant to Section 5978 of the Welfare and Institutions Code. A hearing to determine eligibility for CARE shall be held within 14 court days after the date on which the petition for the referral is filed. If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into CARE, the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to CARE, unless the defendant's case

has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of CARE program proceedings.

(E) If the defendant does not qualify for services pursuant to subparagraphs (A) to (D), inclusive, dismiss the charges.

(c) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum period of treatment pursuant to subparagraphs (B) and (D) of paragraph (4) of subdivision (b) and subparagraph (A) of paragraph (1) of subdivision (b), if applicable. A defendant not in actual custody shall otherwise receive day for day credit against the term of treatment from the date the defendant is accepted into treatment in the event that the criminal charges have not previously been dismissed. "Actual custody" has the same meaning as in Section 4019.

(d) This section shall apply only as provided in subdivision (b) of Section 1367.

(e) It is the intent of the Legislature that the court shall consider all treatment options as provided in this section prior to dismissing criminal charges. However, nothing in this section limits a court's discretion pursuant to Section 1385.

SEC. 3. Section 5985 of the Welfare and Institutions Code is amended to read:

5985. (a) (1) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(2) The department, in consultation with county behavioral health agencies and courts, shall specify the length of time that data on former participants shall be reported pursuant to subdivision (e), which shall be a minimum of 12 months after completion of and a maximum of 36 months following engagement in CARE Act elective services, a CARE agreement, or CARE plan.

(3) For the purposes of this section, the following definitions shall apply:

(A) "Former participant" means an individual who enters into CARE Act elective services, a CARE agreement, or a CARE plan, but who has either graduated from CARE, or for whom CARE Act proceedings were dismissed or terminated. Counties shall not be responsible for reporting on any individual who is privately insured or who no longer resides in California.

(B) "Active participants" means an individual who is an elective client, or who has a CARE plan or CARE agreement.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the

department. The department shall determine the data measures and specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearances on the petition set pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(D) The total number of CARE plans ordered and CARE agreements approved.

(E) The total number of court petitions dismissed, as reported by the Judicial Council.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The measures and reporting requirements shall be developed by the department in consultation with county behavioral health agencies. The report shall include trial court petition data pursuant to paragraph (3) of subdivision (d) and, to the extent administrative data is available, all of the following information compiled from county behavioral health departments and courts:

(1) The demographics of all participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence.

(2) The petitioner's relationship to the CARE Act respondent as defined in Section 5974.

(3) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided to all active and former participants.

(4) The housing placements of all active and former participants. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment,

community-based housing, community-based housing with services, shelter, and no housing.

(5) Treatments continued and terminated of all active and former participants.

(6) Substance use disorder rates and rates of treatment among all active and former participants.

(7) Detentions and other Lanterman-Petris-Short Act involvement for all active and former participants.

(8) Criminal justice involvement of all active and former participants.

(9) Deaths among all active and former participants, along with the cause of death.

(10) Type, format, and frequency of outreach and engagement activities provided by a county behavioral health agency to engage an individual who is the subject of a referral or petition, including interactions about the individuals eligible or likely to be eligible and outcomes of these efforts.

(11) In consultation with the department and county behavioral health departments, the number, rates, and trends of contacts made to the county behavioral health agency about individuals eligible or likely to be eligible for the CARE process, including outcomes of those contacts.

(12) The number, rates, and source of referrals to county behavioral health departments, including, but not limited to, referrals resulting in a petition or reason for not filing a petition, length of time from referral to outcome, and services provided for those engaged voluntarily without a petition.

(13) The number, rates, and trends of petitions resulting in dismissal and hearings.

(14) Information on petition dispositions, including, but not limited to, disposition recommendations and the number of days from petition to disposition.

(15) The number, rates, and trends of supporters.

(16) The number, rates, and trends of approved CARE agreements.

(17) The number, rates, and trends of ordered and completed CARE plans.

(18) Statistics on the services and supports, including court orders for stabilizing medications.

(19) The rates of adherence to medication.

(20) The number, rates, and trends of psychiatric advance directives created for active participants.

(21) The number, rates, and trends of developed graduation plans.

(22) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration, reductions in involuntary treatment and conservatorship, and reductions in substance use.

(23) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

(h) (1) Beginning in 2026, the department shall include in its annual CARE Act report quantitative, deidentified information concerning the operation of this part.

(2) Based on information provided to the department in a form and manner specified by the department, in consultation with the Judicial Council and county behavioral health departments, in accordance with subdivision (b) of Section 5984, the report shall include all of the following information, aggregated by county, compiled from county behavioral health departments, courts, and the department, depending on the source:

(A) The number of contacts to the county behavioral health department about individuals eligible or likely to be eligible for the CARE process, including outcome of contacts.

(B) The number of CARE petitions filed with the superior court.

(C) The petitioner type for each petition filed with the superior court.

(D) Disposition of each petition filed with the superior court.

(E) The number of days between filing each petition and the petition's disposition.

(F) Demographic information of each CARE Act participant or potentially eligible CARE Act participant, including, but not limited to, age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence, to the extent administrative data is available and statistically relevant.

(G) The number of referrals of individuals in conservatorship proceedings made pursuant to subdivision (a) of Section 5978, including the disposition of each referral.

(H) The number of referrals made pursuant to Section 5978.1, including the disposition of each referral.

(i) Information publicly released or published pursuant to this part shall not contain data that may lead to the identification of participants or petitioners or information that would otherwise allow an individual to link the published information to a specific person. Data published by the department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

SEC. 3.5. Section 5985 of the Welfare and Institutions Code is amended to read:

5985. (a) (1) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(2) The department, in consultation with county behavioral health agencies and courts, shall specify the length of time that data on former participants shall be reported pursuant to subdivision (e), which shall be a minimum of 12 months after completion of and a maximum of 36 months following engagement in CARE Act elective services, a CARE agreement, or CARE plan.

(3) For the purposes of this section, the following definitions shall apply:

(A) "Former participant" means an individual who enters into CARE Act elective services, a CARE agreement, or a CARE plan, but who has either graduated from CARE, or for whom CARE Act proceedings were dismissed or terminated. Counties shall not be responsible for reporting on any individual who is privately insured or who no longer resides in California.

(B) "Active participants" means an individual who is an elective client, or who has a CARE plan or CARE agreement.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the department. The department shall determine the data measures and

specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearances on the petition set pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(D) The total number of CARE plans ordered and CARE agreements approved.

(E) The total number of court petitions dismissed, as reported by the Judicial Council.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The measures and reporting requirements shall be developed by the department in consultation with county behavioral health agencies. The report shall include trial court petition data pursuant to paragraph (3) of subdivision (d) and, to the extent administrative data is available, all of the following information compiled from county behavioral health departments and courts:

(1) The demographics of all participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence.

(2) The petitioner's relationship to the CARE Act respondent as defined in Section 5974.

(3) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided to all active and former participants.

(4) The housing placements of all active and former participants. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment, community-based housing, community-based housing with services, shelter, and no housing.

(5) Treatments continued and terminated of all active and former participants.

(6) Substance use disorder rates and rates of treatment among all active and former participants.

(7) Detentions and other Lanterman-Petris-Short Act involvement for all active and former participants.

(8) Criminal justice involvement of all active and former participants.

(9) Deaths among all active and former participants, along with the cause of death.

(10) Type, format, and frequency of outreach and engagement activities provided by a county behavioral health agency to engage an individual who is the subject of a referral or petition, including interactions about the individuals eligible or likely to be eligible and outcomes of these efforts.

(11) In consultation with the department and county behavioral health departments, the number, rates, and trends of contacts made to the county behavioral health agency about individuals eligible or likely to be eligible for the CARE process, including outcomes of those contacts.

(12) The number, rates, and source of referrals to county behavioral health departments, including, but not limited to, referrals resulting in a petition or reason for not filing a petition, length of time from referral to outcome, and services provided for those engaged voluntarily without a petition.

(13) The number, rates, and trends of petitions resulting in dismissal and hearings.

(14) Information on petition dispositions, including, but not limited to, disposition recommendations and the number of days from petition to disposition.

(15) The number, rates, and trends of supporters.

(16) The number, rates, and trends of approved CARE agreements.

(17) The number, rates, and trends of ordered and completed CARE plans.

(18) Statistics on the services and supports, including court orders for stabilizing medications.

(19) The rates of adherence to medication.

(20) The number, rates, and trends of psychiatric advance directives created for active participants.

(21) The number, rates, and trends of developed graduation plans.

(22) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration, reductions in involuntary treatment and conservatorship, and reductions in substance use.

(23) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(24) Data regarding referrals made pursuant to Section 5978.1, as part of the CARE Act.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

(h) (1) Beginning in 2026, the department shall include in its annual CARE Act report quantitative, deidentified information concerning the operation of this part.

(2) Based on information provided to the department in a form and manner specified by the department, in consultation with the Judicial Council and county behavioral health departments, in accordance with subdivision (b) of Section 5984, the report shall include all of the following information, aggregated by county, compiled from county behavioral health departments, courts, and the department, depending on the source:

(A) The number of contacts to the county behavioral health department about individuals eligible or likely to be eligible for the CARE process, including outcome of contacts.

(B) The number of CARE petitions filed with the superior court.

(C) The petitioner type for each petition filed with the superior court.

(D) Disposition of each petition filed with the superior court.

(E) The number of days between filing each petition and the petition's disposition.

(F) Demographic information of each CARE Act participant or potentially eligible CARE Act participant, including, but not limited to, age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence, to the extent administrative data is available and statistically relevant.

(G) The number of referrals of individuals in conservatorship proceedings made pursuant to subdivision (a) of Section 5978, including the disposition of each referral.

(H) The number of referrals made pursuant to Section 5978.1, including the disposition of each referral.

(i) Information publicly released or published pursuant to this part shall not contain data that may lead to the identification of participants or petitioners or information that would otherwise allow an individual to link the published information to a specific person. Data published by the department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

SEC. 4. (a) Section 1.5 of this bill incorporates amendments to Section 1001.36 of the Penal Code proposed by both this bill and Senate Bill 1323. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 1001.36 of the Penal Code, and (3) this bill is enacted after Senate Bill 1323, in which case Section 1 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 5985 of the Welfare and Institutions Code proposed by this bill and Senate Bill 42. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 5985 of the Welfare and Institutions Code, and (3) this bill is enacted after Senate Bill 42, in which case Section 5985 of the Welfare and Institutions Code, as amended by Senate Bill 42, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 1323

CHAPTER 646

An act to amend Sections 1001.36, 1368, 1369, 1370, and 1370.1 of the Penal Code, and to amend Section 4361 of the Welfare and Institutions Code, relating to criminal procedure.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1323, Menjivar. Criminal procedure: competence to stand trial.

(1) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and if the defendant is found incompetent to stand trial, the proceedings are suspended while the defendant receives treatment, with the goal of restoring the defendant to competency.

Existing law, if a doubt is raised as to the mental competence of a defendant, requires the court, either on the request of counsel or on its own motion, to hold a hearing, as specified, to determine the mental competence of the defendant.

This bill would instead, in lieu of a hearing, allow an evaluation of the defendant by one or 2 licensed psychologists or psychiatrists and would require them to submit a report, as specified, to the court. The bill would allow the court, if neither party objects to the reports of these experts, to make a determination based upon these reports. The bill would also require the court to make a determination regarding the defendant's capacity to make decisions regarding the administration of antipsychotic medication.

This bill would, if either party objects to the court making a determination based on the reports, require a hearing to be held to determine the competence of the defendant. The bill would apply a presumption of competence to the defendant and would place the burden of proof upon the party seeking a finding of incompetence. The bill would, as specified, require the hearing to be held by jury trial or bench trial.

(2) Existing law, in the case of a defendant charged with a felony, requires that, upon a finding of mental incompetence, the proceedings be suspended until the defendant regains competence. Existing law prescribes a program of pretrial diversion for defendants with a diagnosed mental disorder whose disorder was a significant factor in the commission of their offense. Under existing law, persons charged with certain offenses, including murder, rape, sexual abuse of a child, and possession of a weapon of mass destruction, are ineligible for diversion.

This bill would require the court, upon a finding of mental incompetence of a defendant charged with a felony that is not ineligible for diversion, to determine if it is in the interests of justice to restore the defendant to competence. The bill would require the court, if the restoration of the defendant's mental competence is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant, as specified.

If a defendant is returned to court having not been restored to mental competence, this bill would require the defendant to be presumed incompetent and be returned to treatment, as specified.

(3) The bill would make other conforming changes.

(4) This bill would incorporate additional changes to Section 1001.36 of the Penal Code proposed by SB 1400 and additional changes to Section 4361 of the Welfare and Institutions Code proposed by AB 3077, to be operative only if this bill and either one or both of those bills are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the

alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum

requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for

denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(*l*) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

SEC. 1.5. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence,

including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, or a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C), of, paragraph (1) of subdivision (a) of Section 1370, or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, or the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iii) of subparagraph (B) of, or clause (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of Section 1370 or subparagraph (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay

restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(*l*) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

SEC. 2. Section 1368 of the Penal Code is amended to read:

1368. (a) If, during the pendency of an action and prior to judgment, or during revocation proceedings for a violation of probation, mandatory supervision, postrelease community supervision, or parole, a doubt arises in the mind of the judge as to the mental competence of the defendant, the judge shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or defendant's counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.

(b) If counsel informs the court that they believe the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined pursuant to Sections 1368.1 and 1369. If counsel informs the court that they believe the defendant is mentally competent, the court may nevertheless order a determination by the court of the defendant's mental competence.

(c) Except as provided in Section 1368.1, when an inquiry into the present mental competence of the defendant has been commenced by the court all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined.

If a jury has been impaneled and sworn to try the defendant, the jury shall be discharged only if it appears to the court that undue hardship to the jurors would result if the jury is retained on call.

If the defendant is declared mentally incompetent, the jury shall be discharged.

SEC. 3. Section 1369 of the Penal Code is amended to read:

1369. A determination of the question of mental competence shall proceed in the following order:

(a) (1) The court shall suspend criminal proceedings and shall appoint at least one licensed psychologist or psychiatrist to examine the defendant's mental condition. If defense counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall, upon request of defense counsel, appoint two licensed psychologists or psychiatrists, one to be named by the defense and one to be named by the prosecution.

(2) If it is suspected the defendant has a developmental disability, the court shall appoint the director of the regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the director's designee, to examine the defendant to determine whether the defendant has a developmental disability. The regional center director or their designee shall determine whether the defendant has a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, and is therefore eligible for regional center services and supports. The regional center director or their designee shall provide the court with a written report informing the court of this determination.

(b) (1) A licensed psychologist or psychiatrist shall evaluate the defendant and submit a written report to the court. The report shall include the opinion of the expert regarding all of the following matters:

(A) A diagnosis of the defendant's mental condition, if any.

(B) Whether the defendant, as a result of a mental disorder or developmental disability, is able to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

(C) Whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future, with consideration as to whether the defendant would attain competency in response to treatment with antipsychotic medication.

(D) If requested by the defense, an opinion as to whether the defendant is eligible for mental health diversion pursuant to Section 1001.36.

(2) (A) The examining licensed psychologists or psychiatrists shall evaluate whether treatment with antipsychotic medication, as defined in subdivision (*l*) of Section 5008 of the Welfare and Institutions Code, is appropriate for the defendant. The evaluation of whether treatment with antipsychotic medication is appropriate shall be done in accordance with subparagraphs (B) and (C). The examining licensed psychologists or psychiatrists shall also opine whether the defendant lacks the capacity to make decisions regarding antipsychotic medication, as outlined in subclauses (I) and (II) of clause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of Section 1370.

(B) If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, their opinion shall be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion

shall not exceed the scope of their license. That opinion about the potential benefit of antipsychotic medication is not a prescription for that medication.

(C) If a psychiatrist examines the defendant and opines that treatment with antipsychotic medication is appropriate, the psychiatrist shall inform the court of their opinion as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments, as outlined in subclause (III) of clause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of Section 1370.

(c) (1) If neither party objects to any competency report submitted pursuant to subdivision (b), the court may determine the competency of the defendant based on any such competency report. The court shall also determine whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication.

(2) If either party objects to any competency report and requests a hearing, the court shall hold a hearing to determine competence and to determine whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication, pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 1370.

(3) In a hearing to determine competence, the defendant shall be presumed competent to stand trial unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent.

(4) If counsel for the defendant waives the right to a jury trial and the prosecution consents, or as provided in paragraph (5), the hearing shall be heard by the court. Otherwise, a determination of the defendant's competency to stand trial shall be decided by a jury. The verdict of the jury shall be unanimous.

(5) In a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole, the hearing shall be heard by the court.

(d) (1) The State Department of State Hospitals, on or before July 1, 2017, shall adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court pursuant to this section. To develop these guidelines, the State Department of State Hospitals shall convene a workgroup comprised of the Judicial Council and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accrediting bodies for psychologists and psychiatrists, and other interested stakeholders.

(2) When making an appointment pursuant to this section, the court shall appoint an expert who meets the guidelines established in accordance with this subdivision or an expert with equivalent experience and skills. If there is no reasonably available expert who meets the guidelines or who has equivalent experience and skills, the court may appoint an expert who does not meet the guidelines.

(e) This section does not preclude the court from appointing any other qualified expert to evaluate the defendant's mental condition in addition to a licensed psychologist or psychiatrist.

SEC. 4. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is not charged with an offense listed in subdivision (d) of Section 1001.36, the trial, the hearing on the alleged violation, or the judgment shall be suspended, and the court shall do all of the following:

(i) (I) Determine whether restoring the person to mental competence is in the interests of justice.

(II) In exercising its discretion pursuant to this clause, the court shall consider the relevant circumstances of the charged offense, including the harm done to the victim, the defendant's mental health condition, including, without limitation, any intellectual or developmental disability, the history of treatment, the criminal history of the defendant, whether the defendant is likely to face incarceration if convicted, whether the defendant has previously been found incompetent to stand trial, whether restoring the person to mental competence will enhance public safety, and any other relevant considerations. The court shall provide the defense and prosecution an opportunity to be heard on whether restoration is in the interests of justice.

(ii) If restoring the person to mental competence is in the interests of justice, the court shall state its reasons orally on the record and the case shall proceed as provided in subparagraph (C).

(iii) If restoring the person to mental competence is not in the interests of justice, the court shall conduct a hearing, pursuant to Section 1001.36, and, if the court deems the defendant eligible, grant diversion pursuant to that section for a period not to exceed two years from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter.

(I) The hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(II) If the defendant performs satisfactorily on diversion pursuant to this subclause, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(III) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b) or (g) of Section 1001.36, or if diversion is terminated unsuccessfully, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(ia) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ib) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetence. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(ic) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled, as defined in paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 30 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. The charges shall be dismissed pursuant to Section 1385 upon the filing of either a temporary or permanent conservatorship petition unless the basis for the petition is that the defendant is gravely disabled as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.

(id) Refer the defendant to the CARE program pursuant to Section 5978 of the Welfare and Institutions Code. A hearing to determine eligibility for the CARE program shall be held within 14 court days after the date on which the petition for the referral is filed. If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the charges shall be dismissed pursuant to Section 1385.

(ie) Reinstate competency proceedings, in which case the court shall credit any time spent in mental health diversion against the maximum term of commitment as specified in paragraph (1) of subdivision (c).

(C) If the defendant is found mentally incompetent and restoring the defendant to competence is in the interests of justice or they are charged with an offense listed in subdivision (d) of Section 1001.36, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.

(i) The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community-based residential treatment system approved by the community program director, or their designee, that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) (I) If a defendant has been found mentally incompetent, and the court has ordered commitment to a State Department of State Hospitals facility as described in Section 4100 of the Welfare and Institutions Code, and is not in the custody of the local sheriff, the department shall inform the sheriff when a placement in a facility becomes available and make reasonable efforts to coordinate a delivery by the sheriff to transport the defendant to the facility. If the department has made reasonable attempts for 90 days, starting with the date of commitment, and the defendant has not been transported, as originally ordered under clause (i), the department shall inform the court and sheriff in writing.

(II) If the sheriff has not delivered the defendant to a State Department of State Hospitals facility within 90 days after the department's written notice, the commitment to the State Department of State Hospitals shall be automatically stayed and the department may remove the defendant from the pending placement list until the court notifies the department in writing that the defendant is available for transport and the defendant shall regain their place on the pending placement list.

(iii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of persons with a mental health disorder, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section

290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(v) (I) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(II) Notwithstanding subclause (I), if a defendant is found mentally incompetent and is transferred to a facility described in Section 4361.6 of the Welfare and Institutions Code, the court may, at any time upon receiving any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, make a finding that the defendant is an appropriate candidate for diversion.

(vi) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (v), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1) of subdivision (c) or the applicable period described in subparagraph (C) of paragraph (1) of subdivision (f) of Section 1001.36. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (g) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vii) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (h) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(viii) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (iii) or (iv) for inclusion in the defendant's state summary criminal history information.

(D) If at any time after the finding of mental incompetence, but before the defendant begins treatment in a program or facility to promote the defendant's speedy restoration of mental competence pursuant to this section, there is a change in circumstance that affects the likelihood that the defendant will be able to be attain competence, either party may instead petition the court to proceed in accordance with subdivision (b).

(E) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section

1372. The court shall transmit a copy of its order to the community program director or a designee.

(F) A defendant charged with a violent felony may not be delivered to a State Department of State Hospitals facility or treatment facility pursuant to this subdivision unless the State Department of State Hospitals facility or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(G) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(H) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(I) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has attained competence. If, in the opinion of that expert, the defendant has attained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372.

(J) (i) The State Department of State Hospitals may, pursuant to Section 4335.2 of the Welfare and Institutions Code, conduct an evaluation of the defendant in county custody to determine any of the following:

(I) The defendant has attained competence.

(II) There is no substantial likelihood that the defendant will attain competence in the foreseeable future.

(III) The defendant should be referred to the county for further evaluation for potential participation in a county diversion program, if one exists, or to another outpatient treatment program.

(ii) If, in the opinion of the department's expert, the defendant has attained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372.

(iii) If, in the opinion of the department's expert, there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the committing court shall proceed pursuant to paragraph (3) of subdivision (c) no later than 10 days following receipt of the report.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) (i) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(ii) A defendant shall first be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if any such program is available, unless a court, based upon the recommendation of the community program director or their designee, finds that either the clinical needs of the defendant or the risk to community safety, warrant placement in a State Department of State Hospitals facility.

(B) The court shall hear and determine whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (b) of Section 1369, as applicable to the issue of whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

(I) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant lacks the capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to their physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another

while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, and based upon the opinion of the psychiatrist offered to the court pursuant to subdivision (b) of Section 1369, the involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is medically necessary and appropriate in light of their medical condition.

(ii) (I) If the court finds the conditions described in subclause (I) or (II) of clause (i) to be true, and if pursuant to the opinion offered to the court pursuant to subdivision (b) of Section 1369, a psychiatrist has opined that treatment with antipsychotic medications is appropriate for the defendant, the court shall issue an order authorizing the administration of antipsychotic medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

(II) If the court finds the conditions described in subclause (I) or (II) of clause (i) to be true, and if pursuant to the opinion offered to the court pursuant subdivision (b) of Section 1369, a licensed psychologist has opined that treatment with antipsychotic medication may be appropriate for the defendant, the court shall issue an order authorizing treatment by a licensed psychiatrist on an involuntary basis. That treatment may include the administration of antipsychotic medication as needed, to be administered under the direction and supervision of a licensed psychiatrist.

(III) If the court finds the conditions described in subclause (III) of clause (i) to be true, and if pursuant to the opinion offered to the court pursuant to subdivision (b) of Section 1369, a psychiatrist has opined that it is appropriate to treat the defendant with antipsychotic medication, the court shall issue an order authorizing the administration of antipsychotic medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

(iii) An order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter, including a county jail, shall remain in effect when the defendant returns to county custody pursuant to subparagraph (A) of paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c), or pursuant to

subparagraph (C) of paragraph (3) of subdivision (a) of Section 1372, but shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iv) In all cases, the treating hospital, county jail, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of their counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from their counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vii) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a State Department of State Hospitals facility or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the State Department of State Hospitals facility or other treatment facility, shall have the right to contact the patients' rights advocate regarding the defendant's rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws their consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate,

the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks the capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for the defendant's interests at the hearing, review the panel's final determination following the hearing, advise the defendant of their right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To be given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be

required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(vii) If the administrative law judge upholds the certification pursuant to clause (ii), the court may, for a period not to exceed 14 days, extend the certification and continue the hearing pursuant to stipulation between the parties or upon a finding of good cause. In determining good cause, the court may review the petition filed with the court, the administrative law judge's order, and any additional testimony needed by the court to determine if it is appropriate to continue medication beyond the 21-day certification and for a period of up to 14 days.

(viii) The district attorney, county counsel, or representative of a facility where a defendant found incompetent to stand trial is committed may petition the court for an order to administer involuntary medication pursuant to the criteria set forth in subclauses (II) and (III) of clause (i) of subparagraph (B). The order is reviewable as provided in paragraph (7).

(3) (A) When the court orders that the defendant be committed to a State Department of State Hospitals facility or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(i) The commitment order, which shall include a specification of the charges, an assessment of whether involuntary treatment with antipsychotic medications is warranted, and any orders by the court, pursuant to subparagraph (B) of paragraph (2), authorizing involuntary treatment with antipsychotic medications.

(ii) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(iii) (I) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(II) If a certificate of restoration of competency was filed with the court pursuant to Section 1372 and the court subsequently rejected the certification, a copy of the court order or minute order rejecting the certification shall be provided. The court order shall include a new computation or statement

setting forth the amount of credit for time served, if any, to be deducted from the defendant's maximum term of commitment based on the court's rejection of the certification.

(iv) State summary criminal history information.

(v) Jail classification records for the defendant's current incarceration.

(vi) Arrest reports prepared by the police department or other law enforcement agency.

(vii) Court-ordered psychiatric examination or evaluation reports.

(viii) The community program director's placement recommendation report.

(ix) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(x) Medical records, including jail mental health records.

(B) If a defendant is committed to a State Department of State Hospitals facility, and the department determines that additional medical or mental health treatment records are needed for continuity of care, any private or public entity holding medical or mental health treatment records of that defendant shall release those records upon receiving a written request from the State Department of State Hospitals within 10 calendar days after the request. The private or public entity holding the medical or mental health treatment records shall comply with all applicable federal and state privacy laws prior to disclosure. The State Department of State Hospitals shall not release records obtained during the admission process under this subdivision, pursuant to Section 1798.68 of the Civil Code, or subdivision (b) of Section 5328 of the Welfare and Institutions Code.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (iii) or (iv) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a State Department of State Hospitals facility or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a State Department of State Hospitals facility pursuant to this subdivision, the court shall commit the defendant to the State Department of State Hospitals.

(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the State Department of State Hospitals facility and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the

court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a State Department of State Hospitals facility or secure treatment facility pursuant to clause (iii) or (iv) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be electronically transferred or taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (iii) or (iv) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six-month progress reports pursuant to paragraph (1) of subdivision (b) to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) Within 60 days before the expiration of the one-year involuntary medication order, the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed may petition the committing court for a renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2). The

hearing on a petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(8) For purposes of subparagraph (D) of paragraph (2) and paragraph (7), if the treating psychiatrist determines that there is a need, based on preserving their rapport with the defendant or preventing harm, the treating psychiatrist may request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist. If the medical director of the facility designates another psychiatrist to act pursuant to this paragraph, the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the defendant prior to the hearing.

(b) (1) Within 90 days after a commitment made pursuant to subdivision (a), the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary.

If the defendant is in county custody, the county jail shall provide access to the defendant for purposes of the State Department of State Hospitals conducting an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code. Based upon this evaluation, the State Department of State Hospitals may make a written report to the court within 90 days of a commitment made pursuant to subdivision (a) concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary. If the defendant remains in county custody after the initial 90-day report, the State Department of State Hospitals may conduct an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary.

If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will attain mental competence in the foreseeable future, the defendant shall remain in the State Department of State Hospitals facility or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the State Department of State Hospitals facility or person in charge of the facility shall report, in writing, to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication

remains necessary. If the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court.

(A) If the report indicates that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The defendant shall be returned to the court for proceedings pursuant to paragraph (3) of subdivision (c) no later than 10 days following receipt of the report. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to subparagraph (A).

(C) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification made pursuant to clause (ii) of subparagraph (B), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(2) The reports made pursuant to paragraph (1) concerning the defendant's progress toward attaining competency shall also consider the issue of involuntary medication. Each report shall include, but not be limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks the capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to their physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if the defendant is not treated with antipsychotic medication.

(D) Whether the defendant has a mental disorder for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine if grounds for the involuntary administration of antipsychotic medication exist, whether or not an order was issued at the time of commitment, and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, any order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, any order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall determine whether to vacate the order or issue a new order for the involuntary administration of antipsychotic medication. The court shall consider the opinions in reports submitted pursuant to paragraph (1), including any opinions rendered pursuant to Section 4335.2 of the Welfare and Institutions Code. The court may, upon a showing of good cause, set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a). The court shall require witness testimony to occur remotely, including clinical testimony pursuant to subdivision (d) of Section 4335.2 of the Welfare and Institutions Code. In-person witness testimony shall only be allowed upon a court's finding of good cause.

(D) If the report states a basis for involuntary administration of antipsychotic medication and the court did not issue such order at the time of commitment, the court shall determine whether to issue an order for the involuntary administration of antipsychotic medication. The court shall consider the opinions in reports submitted pursuant to paragraph (1), including any opinions rendered pursuant to Section 4335.2 of the Welfare and Institutions Code. The court may, upon a finding of good cause, set a hearing within 21 days to determine whether an order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a). The court shall require witness testimony to occur remotely, including clinical testimony pursuant to subdivision (d) of Section 4335.2 of the Welfare and Institutions Code. In-person witness testimony shall only be allowed upon a court's finding of good cause.

(E) This paragraph also applies to recommendations submitted pursuant to subdivision (e) of Section 1372, when a recommendation is included as to whether an order for the involuntary administration of antipsychotic medications should be extended or issued.

(4) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court, and, if the defendant is not in county custody, returned to the custody of the county. The court shall transmit a copy of its order to the community program director or a designee.

(5) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the State Department of State Hospitals facility or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court, and custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall notify the community program director or a designee of the return and of any resulting court orders. The maximum term of commitment applies to the aggregate of all previous commitments.

(2) (A) The medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall provide notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to paragraph (1).

(B) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification pursuant to subparagraph (A), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(3) Whenever a defendant is returned to the court pursuant to paragraph (1) of this subdivision, subparagraph (D) of paragraph (1) of subdivision (a), or paragraph (1) or (4) of subdivision (b), and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of

the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(4) If a defendant is returned to court pursuant to paragraph (1) of this subdivision, subparagraph (D) of paragraph (1) of subdivision (a), or paragraph (1) or (4) of subdivision (b), and the prosecution elects to dismiss and refile charges pursuant to Section 1387, the court shall presume that the defendant is incompetent unless the court is presented with relevant and credible evidence that the defendant is competent. This evidence may include medical records, witness statements, or reports by qualified medical experts. If the court is satisfied that it has received substantial evidence that the defendant is competent, the court shall proceed as provided in Section 1369. Otherwise, the court shall find that the defendant is not mentally competent to stand trial and shall proceed as provided in paragraphs (1) and (3). The court shall not order the defendant returned to the custody of the State Department of State Hospitals for the purpose of restoration of competency.

(5) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(6) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, or in those instances where the defendant has been placed under a conservatorship pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (3) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter

to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to the initiation of proceedings that may be appropriate under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" does not include, except for State Department of State Hospitals facilities, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) This section does not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

SEC. 5. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and has been determined by a regional center to have a developmental disability, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement. The recommendation shall be made to the court by the director of a regional center or the director's designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital, developmental center, or any other available residential facility approved by the director of a regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600).

(ii) When the action against a defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the

subject of a pending Section 1368 proceeding arising out of a charge of an offense specified in Section 290. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in the defendant's state summary criminal history information.

(C) If the court finds that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the court shall proceed as provided in paragraph (2) of subdivision (c).

(D) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(E) The court shall transmit a copy of its order to the regional center director or the director's designee and to the Director of Developmental Services.

(F) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(G) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(H) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court

finds that the placement will not pose a danger to the health or safety of others.

(I) As used in this section, "developmental disability" has the same meaning as in Section 4512 of the Welfare and Institutions Code.

(2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or the director's designee to evaluate the defendant and to submit to the court, within 15 judicial days of the order, a written recommendation as to whether the defendant should be committed to a state hospital, a developmental center, or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or the director's designee.

(3) If the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents, which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of an offense specified in Section 290.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of an offense specified in Section 290.

(5) (A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital, a developmental center, or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal action or revocation proceedings before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to another facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed, shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, this report shall be made to the committing court by the regional center director or the director's designee. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a), or if the defendant becomes mentally competent, the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed shall report to the court and the regional center director or the director's designee regarding the defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, the regional center director or the director's designee shall make that report to the committing court. The court shall provide copies of all reports under this section to the prosecutor and defense counsel. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to

paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or the director's designee and to the executive director of the developmental center.

(2) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or the director's designee and to the executive director of the developmental center.

(3) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or the director's designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) (A) Except as provided in subparagraph (B), in the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(B) In revocation proceedings alleging a violation of mandatory supervision in which the defendant remains incompetent upon return to court under subparagraph (A), the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or

detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the court shall reinstate mandatory supervision and modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. Actions alleging a violation of mandatory supervision are not subject to dismissal under Section 1385.

(d) Except as provided in subparagraph (B) of paragraph (2) of subdivision (c), the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) If a defendant is returned to court pursuant to subparagraph (C) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c), and the prosecution elects to dismiss and refile charges pursuant to Section 1387, the court shall presume that the defendant is incompetent unless the court is presented with relevant and credible evidence that the defendant is competent. Such evidence may include medical records, witness statements, or reports by qualified medical experts. If the court is satisfied that it has received substantial evidence that the defendant is competent, the court shall proceed as provided in Section 1369. Otherwise, the court shall find that the defendant is not mentally competent to stand trial and proceed as provided in subdivision (c).

(f) If the defendant is found incompetent after the refiling of charges, the defendant may be further committed only for the balance of time remaining pursuant to subparagraph (A) of paragraph (1) of subdivision (c). The maximum term of commitment as specified in subparagraph (A) of paragraph (1) of subdivision (c) applies to the aggregate of all previous commitments. The court shall not order the defendant returned to the custody of the State Department of Developmental Services for the purposes of restoration of competency.

(g) For the purpose of this section, "secure treatment facility" does not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or a community board and care facility.

SEC. 6. Section 4361 of the Welfare and Institutions Code is amended to read:

4361. (a) As used in this section, "department" means the State Department of State Hospitals.

(b) The purpose of this chapter is to, subject to appropriation by the Legislature, promote the diversion of individuals with serious mental disorders as prescribed in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, and to assist counties in providing diversion for individuals with serious mental illnesses who have been found incompetent to stand trial for a felony charge. In implementing this chapter, the department shall consider local discretion and flexibility in diversion activities that meet the community's needs and provide for the safe and effective treatment of individuals with serious mental disorders across a continuum of care.

(c) (1) Subject to appropriation by the Legislature, the department may solicit proposals from, and may contract with, a county to help fund the development or expansion of pretrial diversion described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets all of the following criteria:

(A) Participants are individuals diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder, but excluding a primary diagnosis of antisocial personality disorder, borderline personality disorder, and pedophilia, and who are presenting non-substance-induced psychotic symptoms, who have been found incompetent to stand trial pursuant to clause (v) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code.

(B) There is a significant relationship between the individual's serious mental disorder and the charged offense, or between the individual's conditions of homelessness and the charged offense.

(C) The individual does not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18 of the Penal Code, if treated in the community.

(2) A county submitting a proposal for funding under this chapter shall designate a lead entity to apply for the funds. This lead entity shall show in its proposal that it has support from other county entities or other relevant entities, including courts, that are necessary to provide successful diversion of individuals under the contract.

(d) When evaluating proposals from the county, the department, in consultation with the Council on Criminal Justice and Behavioral Health within the Department of Corrections and Rehabilitation, shall prioritize proposals that demonstrate all of the following:

(1) Provision of clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care, as appropriate, to meet the individual needs of the diversion participant. For purposes of this section, "wraparound services" means services provided in addition to the mental health treatment necessary to meet the individual's needs for successfully managing the individual's mental health symptoms and to successfully live in the community. Wraparound services provided

by the diversion program shall include appropriate housing, intensive case management, and substance use disorder treatment, and may include, without limitation, forensic assertive community treatment teams, crisis residential services, criminal justice coordination, peer support, and vocational support.

(2) Collaboration between community stakeholders and other partner government agencies in the diversion of individuals with serious mental disorders.

(3) Connection of individuals to services in the community after they have completed diversion as provided in this chapter.

(e) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of providing postbooking assessment of defendants who are likely to be found incompetent to stand trial on felony charges to determine whether the defendant would benefit from diversion as included in the contract.

(f) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of in-jail treatment prior to the placement in the community for up to an average of 15 days for defendants who have been approved by the court for diversion as included in the contract.

(g) A county contracted pursuant to this chapter shall report data and outcomes to the department, within 30 days after the end of each month, regarding those individuals targeted by the contract and in the program. This subdivision does not preclude the department from specifying reporting formats or from modifying, reducing, or adding data elements or outcome measures from a contracting county, as needed to provide for reporting of effective data and outcome measures. Notwithstanding any other law, but only to the extent not prohibited by federal law, the county shall provide specific patient information to the department for reporting purposes. The patient information is confidential and is not open to public inspection. A contracting county shall, at a minimum, report all of the following:

(1) The number of individuals that the court ordered to postbooking diversion and the length of time for which the defendant has been ordered to diversion.

(2) The number of individuals participating in diversion.

(3) The name, social security number, criminal identification and information (CII) number, date of birth, and demographics of each individual participating in the program. This information is confidential and is not open to public inspection.

(4) The length of time in diversion for each participating individual. This information is confidential and is not open to public inspection.

(5) The types of services and supports provided to each individual participating in diversion. This information is confidential and is not open to public inspection.

(6) The number of days each individual was in jail prior to placement in diversion. This information is confidential and is not open to public inspection.

(7) The number of days that each individual spent in each level of care facility. This information is confidential and is not open to public inspection.

(8) The diagnoses of each individual participating in diversion. This information is confidential and is not open to public inspection.

(9) The nature and felony or misdemeanor classification of the charges for each individual participating in diversion. This information is confidential and is not open to public inspection.

(10) The number of individuals who completed diversion.

(11) The name, social security number, CII number, and birth date of each individual who did not complete diversion and the reasons for not completing. This information is confidential and is not open to public inspection.

(h) Contracts awarded pursuant to this chapter are exempt from the requirements contained in the Public Contract Code and the State Administrative Manual and are not subject to approval by the Department of General Services.

(i) The funds shall not be used to supplant existing services or services reimbursable from an available source but rather to expand upon them or support new services for which existing reimbursement may be limited.

(j) (1) Beginning July 1, 2021, subject to appropriation by the Legislature, the department may amend contracts with a county to fund the expansion of an existing department-funded pretrial diversion as described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets both of the following criteria:

(A) All participants identified for potential diversion are found incompetent to stand trial on a felony charge.

(B) Participants diverted through a program expansion suffer from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, excluding antisocial personality disorder, borderline personality disorder, and pedophilia.

(2) Counties expanding their programs under this section will not be required to meet any additional match funding requirements.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state hospitals and the department may implement, interpret, or make specific this section by means of a departmental letter or other similar instruction, as necessary.

(*l*) The department shall have access to the arrest records and state summary of criminal history of defendants who are participating or have participated in the diversion program. The information may be used solely for the purpose of looking at the recidivism rate for those patients.

(m) If the defendant is committed directly to a county program in lieu of commitment to the department, counties shall provide the minute order from the court documenting the incompetent to stand trial finding on a felony charge and the original alienist evaluation associated with that finding.

(n) For department-funded diversion programs funded through appropriations made by the Budget Act of 2018 or new county programs

funded through the Budget Act of 2021, participants in those county programs may include individuals diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder, who are likely to be found incompetent to stand trial for felony charges, pursuant to Section 1368 of the Penal Code, or who have been found incompetent to stand trial pursuant to clause (v) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code, until new funds are dispersed to the county. Counties shall continue to comply with all terms of the contract signed with the department, including matching fund and data reporting requirements.

SEC. 6.5. Section 4361 of the Welfare and Institutions Code is amended to read:

4361. (a) As used in this section, "department" means the State Department of State Hospitals.

(b) The purpose of this chapter is to, subject to appropriation by the Legislature, promote the diversion of individuals with serious mental disorders as prescribed in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, and to assist counties in providing diversion for individuals with serious mental illnesses who have been found incompetent to stand trial for a felony charge. In implementing this chapter, the department shall consider local discretion and flexibility in diversion activities that meet the community's needs and provide for the safe and effective treatment of individuals with serious mental disorders across a continuum of care.

(c) (1) Subject to appropriation by the Legislature, the department may solicit proposals from, and may contract with, a county to help fund the development or expansion of pretrial diversion described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets all of the following criteria:

(A) Participants are individuals diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder, but excluding a primary diagnosis of antisocial personality disorder and pedophilia, and who are presenting non-substance-induced psychotic symptoms, who have been found incompetent to stand trial pursuant to clause (v) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code.

(B) There is a significant relationship between the individual's serious mental disorder and the charged offense, or between the individual's conditions of homelessness and the charged offense.

(C) The individual does not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18 of the Penal Code, if treated in the community.

(2) A county submitting a proposal for funding under this chapter shall designate a lead entity to apply for the funds. This lead entity shall show in its proposal that it has support from other county entities or other relevant

entities, including courts, that are necessary to provide successful diversion of individuals under the contract.

(d) When evaluating proposals from the county, the department, in consultation with the Council on Criminal Justice and Behavioral Health within the Department of Corrections and Rehabilitation, shall prioritize proposals that demonstrate all of the following:

(1) Provision of clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care, as appropriate, to meet the individual needs of the diversion participant. For purposes of this section, "wraparound services" means services provided in addition to the mental health treatment necessary to meet the individual's needs for successfully managing the individual's mental health symptoms and to successfully live in the community. Wraparound services provided by the diversion program shall include appropriate housing, intensive case management, and substance use disorder treatment, and may include, without limitation, forensic assertive community treatment teams, crisis residential services, criminal justice coordination, peer support, and vocational support.

(2) Collaboration between community stakeholders and other partner government agencies in the diversion of individuals with serious mental disorders.

(3) Connection of individuals to services in the community after they have completed diversion as provided in this chapter.

(e) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of providing postbooking assessment of defendants who are likely to be found incompetent to stand trial on felony charges to determine whether the defendant would benefit from diversion as included in the contract.

(f) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of in-jail treatment prior to the placement in the community for up to an average of 15 days for defendants who have been approved by the court for diversion as included in the contract.

(g) A county contracted pursuant to this chapter shall report data and outcomes to the department, within 30 days after the end of each month, regarding those individuals targeted by the contract and in the program. This subdivision does not preclude the department from specifying reporting formats or from modifying, reducing, or adding data elements or outcome measures from a contracting county, as needed to provide for reporting of effective data and outcome measures. Notwithstanding any other law, but only to the extent not prohibited by federal law, the county shall provide specific patient information to the department for reporting purposes. The patient information is confidential and is not open to public inspection. A contracting county shall, at a minimum, report all of the following:

(1) The number of individuals that the court ordered to postbooking diversion and the length of time for which the defendant has been ordered to diversion.

(2) The number of individuals participating in diversion.

(3) The name, social security number, criminal identification and information (CII) number, date of birth, and demographics of each individual participating in the program. This information is confidential and is not open to public inspection.

(4) The length of time in diversion for each participating individual. This information is confidential and is not open to public inspection.

(5) The types of services and supports provided to each individual participating in diversion. This information is confidential and is not open to public inspection.

(6) The number of days each individual was in jail prior to placement in diversion. This information is confidential and is not open to public inspection.

(7) The number of days that each individual spent in each level of care facility. This information is confidential and is not open to public inspection.

(8) The diagnoses of each individual participating in diversion. This information is confidential and is not open to public inspection.

(9) The nature and felony or misdemeanor classification of the charges for each individual participating in diversion. This information is confidential and is not open to public inspection.

(10) The number of individuals who completed diversion.

(11) The name, social security number, CII number, and birth date of each individual who did not complete diversion and the reasons for not completing. This information is confidential and is not open to public inspection.

(h) Contracts awarded pursuant to this chapter are exempt from the requirements contained in the Public Contract Code and the State Administrative Manual and are not subject to approval by the Department of General Services.

(i) The funds shall not be used to supplant existing services or services reimbursable from an available source but rather to expand upon them or support new services for which existing reimbursement may be limited.

(j) (1) Beginning July 1, 2021, subject to appropriation by the Legislature, the department may amend contracts with a county to fund the expansion of an existing department-funded pretrial diversion as described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets both of the following criteria:

(A) All participants identified for potential diversion are found incompetent to stand trial on a felony charge.

(B) Participants diverted through a program expansion suffer from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, excluding antisocial personality disorder, borderline personality disorder, and pedophilia.

(2) Counties expanding their programs under this section will not be required to meet any additional match funding requirements.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state hospitals

and the department may implement, interpret, or make specific this section by means of a departmental letter or other similar instruction, as necessary.

(*l*) The department shall have access to the arrest records and state summary of criminal history of defendants who are participating or have participated in the diversion program. The information may be used solely for the purpose of looking at the recidivism rate for those patients.

(m) If the defendant is committed directly to a county program in lieu of commitment to the department, counties shall provide the minute order from the court documenting the incompetent to stand trial finding on a felony charge and the original alienist evaluation associated with that finding.

(n) For department-funded diversion programs funded through appropriations made by the Budget Act of 2018 or new county programs funded through the Budget Act of 2021, participants in those county programs may include individuals diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder, who are likely to be found incompetent to stand trial for felony charges, pursuant to Section 1368 of the Penal Code, or who have been found incompetent to stand trial pursuant to clause (v) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code, until new funds are dispersed to the county. Counties shall continue to comply with all terms of the contract signed with the department, including matching fund and data reporting requirements.

SEC. 7. (a) Section 1.5 of this bill incorporates amendments to Section 1001.36 of the Penal Code proposed by both this bill and Senate Bill 1400. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 1001.36 of the Penal Code, and (3) this bill is enacted after Senate Bill 1400, in which case Section 1 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 4361 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 3077. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 4361 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 3077, in which case Section 6 of this bill shall not become operative.

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STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 27

CHAPTER 528

An act to amend Section 1370.01 of the Penal Code, and to amend Sections 5971, 5972, 5975, 5977, 5977.1, 5977.3, 5978, and 5985 of the Welfare and Institutions Code, relating to courts.

[Approved by Governor October 10, 2025. Filed with Secretary of State October 10, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

SB 27, Umberg. Community Assistance, Recovery, and Empowerment (CARE) Court Program.

Existing law, the Community Assistance, Recovery, and Empowerment (CARE) Act, authorizes specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services, to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria. Existing law authorizes a specified individual to commence the CARE process, known as the original petitioner. Existing law authorizes the court to dismiss a case without prejudice when the court finds that a petitioner has not made a prima facie showing that they qualify for the CARE process. Existing law requires the court to take prescribed actions if it finds that a prima facie showing has been made, including, but not limited to, setting the matter for an initial appearance on the petition. Existing law requires the court, if it determines the parties have entered or are likely to enter into a CARE agreement, to either approve or modify the CARE agreement and continue the matter at a progress hearing in 60 days, or continue the matter for 14 days to allow the parties additional time to enter into an agreement.

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law requires the court to, for a person found mentally incompetent and not charged with certain offenses, among other things, determine whether restoring the person to mental competence is in the interests of justice. Existing law requires the court to, if restoring the person to mental competence is not in the interests of justice, conduct a hearing, as specified, and determine the person's eligibility for diversion. Under existing law, if the court determines, at the first hearing, that the person is ineligible for diversion, the court is required to hold a hearing to determine the person's other options, including the CARE program.

Existing law authorizes a court to refer an individual from, among other things, assisted outpatient treatment or conservatorship proceedings, as specified, to CARE Act proceedings. Existing law provides that if the individual is referred from assisted outpatient treatment, the county behavioral health director or their designee shall be the petitioner, whereas if the referral is from conservatorship proceedings, the conservator or proposed conservator is the petitioner.

This bill would allow the court to make a prima facie determination without conducting a hearing. The bill, in the first hearing to determine competence to stand trial, would authorize the court to consider the petitioner's eligibility for both diversion and the CARE program. The bill would authorize the court to refer the petitioner to the CARE Act court if the defendant or counsel for the defendant agrees to the referral and the court has reason to believe the petitioner may be eligible for the CARE program. If the petitioner is not accepted into the CARE program or if the CARE Act court refers the petitioner back to criminal court, as specified, the bill would require the criminal court to conduct a hearing to determine whether the petitioner is eligible for a diversion program. The bill would authorize the county behavioral health agency and jail medical providers to share confidential medical records and other relevant information with the court for the purpose of determining likelihood of eligibility for behavioral health services and programs.

The bill would authorize the court to call additional progress hearings after 60 days. The bill would also include persons suffering from bipolar I disorder with psychotic features, except for psychosis related to current intoxication, in the disorder class.

The bill would additionally authorize a court to refer an individual from felony proceedings, as specified, to the CARE Act program. The bill would authorize a CARE Act court to consider a referral as a petition for participation in the CARE program if certain requirements are met. The bill would make additional technical and conforming changes.

Existing law requires the Judicial Council to develop a mandatory form for use to file a CARE process petition with the court, and requires the petition to be signed under penalty of perjury and include either an affidavit of a licensed behavioral health professional, as defined, or evidence that the respondent was detained for a minimum of 2 intensive treatments, as specified.

The bill would additionally include a nurse practitioner and physician assistant as a licensed behavioral health professional for purposes of individuals authorized to prepare an affidavit supporting a CARE process petition.

By increasing various duties on county behavioral health agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do one or more of the following:

(1) (A) (i) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible and suitable, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(ii) Notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a mental health diversion program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of a person arrested for a violation of Section 23152 or 23153 of the Vehicle Code.

(B) Any hearing to determine eligibility and suitability for diversion shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(2) Refer the defendant to the CARE Act court pursuant to Section 5978 of the Welfare and Institutions Code, if the defendant or counsel for the defendant agrees to the referral and the court has reason to believe that the defendant may be eligible for the CARE program. The CARE Act court shall hold a hearing to determine eligibility for the CARE program within 30 court days after the date of the referral. If the hearing is delayed beyond 30 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the CARE Act court shall

notify the criminal court of the acceptance, and the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to the CARE program, unless the defendant's case has been referred back to the court prior to the expiration of that six-month time period. If the defendant is not accepted into the CARE program or if the CARE Act court refers the defendant back to criminal court before the expiration of the six-month time period, the court shall proceed as provided in paragraph (1). Except as provided in this section and Sections 5978 and 5978.2 of the Welfare and Institutions Code, this paragraph does not alter the confidential nature of CARE program proceedings.

(c) If the court finds the defendant ineligible or unsuitable for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine which one of the following actions the court will take:

(1) Order modification of an existing mental health diversion treatment plan in accordance with a recommendation from the treatment provider.

(2) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetency. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to assisted outpatient treatment, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of assisted outpatient treatment.

(3) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 30 days of the referral, the

court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges shall be dismissed pursuant to Section 1385 90 days after the date of the filing of the petition, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of conservatorship proceedings.

(4) Refer the defendant to the CARE Act court pursuant to Section 5978 of the Welfare and Institutions Code. The CARE Act court shall hold a hearing to determine eligibility for the CARE program within 14 court days after the date that the petition is filed. If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to the CARE program, unless the defendant's case has been referred back to the court prior to the expiration of that time period. Except as provided in this section and Sections 5978 and 5978.2 of the Welfare and Institutions Code, this paragraph does not alter the confidential nature of CARE program proceedings.

(5) If the defendant does not qualify for services pursuant to paragraphs (1) to (4), inclusive, dismiss the charges.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum period of treatment pursuant to paragraphs (2) and (4) of subdivision (c) and paragraphs (1) and (2) of subdivision (b), if applicable. A defendant not in actual custody shall otherwise receive day for day credit against the term of treatment from the date the defendant is accepted into treatment in the event that the criminal charges have not previously been dismissed. "Actual custody" has the same meaning as in Section 4019.

(e) The county behavioral health agency and jail medical providers may share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining likelihood of eligibility for behavioral health services and programs pursuant to this section. The disclosure of information pursuant to this subdivision is subject to applicable state and federal privacy laws.

(f) This section shall apply only as provided in subdivision (b) of Section 1367.

(g) It is the intent of the Legislature that the court shall consider all treatment options as provided in this section prior to dismissing criminal charges. However, nothing in this section limits a court's discretion pursuant to Section 1385.

SEC. 2. Section 5971 of the Welfare and Institutions Code is amended to read:

5971. Unless the context otherwise requires, the following definitions shall govern the construction of this part.

(a) "CARE agreement" means a voluntary settlement agreement entered into by the parties. A CARE agreement includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports.

(b) "CARE plan" means an individualized, appropriate range of community-based services and supports, as set forth in this part, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate, pursuant to Section 5982.

(c) "CARE process" means the court and related proceedings to implement the CARE Act.

(d) "Clinically stabilized in ongoing voluntary treatment" means both of the following:

(1) The person's condition is stable and not deteriorating.

(2) The person is currently engaged in treatment and managing symptoms through medication or other therapeutic interventions. Enrollment in treatment alone shall not be considered clinically stabilized in ongoing voluntary treatment.

(e) "Counsel" means the attorney representing the respondent, appointed pursuant to Section 5977, or chosen by the respondent, in CARE Act proceedings and matters related to CARE agreements and CARE plans. Representation of a respondent in these matters does not alter counsel's obligations under the State Bar Act and the Rules of Professional Conduct, including subdivision (e) of Section 6068 of the Business and Professions Code and rule 1.6 of the Rules of Professional Conduct.

(f) "County behavioral health agency" means the local director of mental health services described in Section 5607, the local behavioral health director, or both as applicable, or their designee.

(g) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Section 5977.1.

(h) "Department" means the State Department of Health Care Services.

(i) "Graduation plan" means a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and that may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports. The graduation plan shall not place additional requirements on the local government entities and is not enforceable by the court.

(j) "Homeless outreach worker" means a person who engages people experiencing homelessness to assess for unmet needs, offer information, services, or other assistance, or provide care coordination.

(k) "Indian health care provider" means a health care program operated by the Indian Health Service, an Indian tribe, a tribal organization, or urban Indian organization (I/T/U) as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. Sec. 1603).

(*l*) "Legal proceeding" means any administrative, civil, or criminal proceeding, including, but not limited to, juvenile court proceedings and family court proceedings and services, and any form of alternative dispute resolution, including arbitration and mediation, except for the following:

(1) A proceeding under this part.

(2) A proceeding under the Lanterman-Petris-Short Act described in paragraph (2) or (3) of subdivision (a) of Section 5979.

(3) A proceeding from which the respondent was referred to CARE Act proceedings as described in Section 5978.

(4) A disciplinary proceeding under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(5) An appeal from any of the proceedings identified in paragraphs (1) to (4), inclusive.

(m) "Licensed behavioral health professional" means either of the following:

(1) A licensed mental health professional, as defined in subdivision (j) of Section 4096.

(2) A person who has been granted a waiver of licensure requirements by the department pursuant to Section 5751.2.

(n) "Parties" means the petitioner, the respondent, the county behavioral health agency in the county where proceedings under this part are pending, and any local governmental entity added by the court pursuant to paragraph (4) of subdivision (d) of Section 5977.1.

(o) "Petitioner" means the person who files the CARE Act petition with the court. Additionally, if the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner. The original petitioner may, at the court's discretion and in furtherance of the interests of the respondent, retain rights as described in subparagraph (A) of paragraph (6) of subdivision (b) of Section 5977.

(p) "Psychiatric advance directive" means a legal document, executed on a voluntary basis in accordance with the requirements for advance health care directives in Division 4.7 (commencing with Section 4600) of the Probate Code, by a person who has the capacity to make medical decisions, that allows a person with mental illness to protect their autonomy and ability to direct their own care by documenting their preferences for treatment in advance of a mental health crisis.

(q) "Respondent" means the person who is the subject of the petition for the CARE process.

(r) "Stabilization medications" means medications included in the CARE plan that primarily consist of antipsychotic medications to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long-acting injections if clinically indicated. Stabilization medications shall not be forcibly administered.

(s) "Supporter" means an adult designated by the respondent who assists the person who is the subject of the petition, which assistance may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter shall not act independently.

SEC. 3. Section 5972 of the Welfare and Institutions Code is amended to read:

5972. An individual shall qualify for the CARE process only if all of the following criteria are met:

(a) The person is 18 years of age or older.

(b) The person is currently experiencing a serious mental disorder, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, or bipolar I disorder with psychotic features, except psychosis related to current intoxication, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. This section does not establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including, but not limited to, physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who has a current diagnosis of substance use disorder as defined in paragraph (2) of subdivision (a) of Section 1374.72 of the Health and Safety Code but who does not also meet the required criteria in this section shall not qualify for the CARE process.

(c) The person is not clinically stabilized in ongoing voluntary treatment.

(d) At least one of the following is true:

(1) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.

(2) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as used in Section 5150.

(e) Participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

(f) It is likely that the person will benefit from participation in a CARE plan or CARE agreement.

SEC. 4. Section 5975 of the Welfare and Institutions Code is amended to read:

5975. The Judicial Council shall develop a mandatory form for use to file a CARE process petition with the court and any other forms necessary for the CARE process. The petition shall be signed under the penalty of perjury and contain all of the following:

(a) The name of the respondent and, if known, the respondent's address.

(b) The petitioner's relationship to the respondent.

(c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972.

(d) Either of the following:

(1) An affidavit of a licensed behavioral health professional, including, for purposes of this section only, nurse practitioners as defined in Section 2835 of the Business and Professions Code and physician assistants as defined in subdivision (d) of Section 3501 of the Business and Professions Code, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

(2) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days. Evidence may include, but is not limited to, documentary evidence from the facility where the respondent was detained, or a signed declaration from the petitioner if the petitioner had personal knowledge of the detentions.

SEC. 5. Section 5977 of the Welfare and Institutions Code is amended to read:

5977. (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972. The court may make a prima facie determination without conducting a hearing.

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case and, if the court does so, it shall order that the dismissal is without prejudice, unless Section 5975.1 applies. Nothing other than Section 5975.1 prevents a petitioner whose petition was dismissed without prejudice from refiling the petition with amended information.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these

appointments, a public defender or other counsel working in that capacity shall be appointed to represent the respondent.

(iii) Determine whether the petition includes all of the following information and, if it does not, order the county behavioral health agency to submit a written report with the court within 14 court days that includes all of the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health agency to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, file a written report with the court as soon as practicable, but within 30 court days, and provide notice to the respondent and petitioner that a report has been ordered. Parties shall complete the investigation with appropriate urgency. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) The information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the report.

(4) If, upon a request by the county agency ordered to investigate and file a report under subparagraph (B) of paragraph (3), the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county agency no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county agency shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines, based on the county agency's report, that the evidence does not support a prima facie showing that the respondent is, or

may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

(C) If the court determines, based on the county agency's report, that the evidence does support a prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county agency was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

(iii) Order the county agency to provide notice of the initial appearance to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding in open court that conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) If the respondent asserts that they are enrolled in a federally recognized Indian tribe or are receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present, subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(6) (A) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall issue an order relieving the original petitioner and appointing the director of the county behavioral health agency or their designee as the successor petitioner.

(B) If the original petitioner is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The original petitioner shall have the right to be present and make a statement at the initial hearing on the merits of the petition held pursuant to paragraph (7).

(ii) (I) Until July 1, 2025, the court may, in its discretion, assign ongoing rights of notice to the original petitioner.

(II) Commencing July 1, 2025, unless the court determines, either upon its own motion or upon the motion of the respondent, at any point in the proceedings, that it likely would be detrimental to the treatment or well-being of the respondent, the court shall provide ongoing notice of proceedings to the original petitioner throughout the CARE proceedings, including notice of when a continuance is granted or when a case is dismissed. If a continuance is granted, the notice shall provide a general reason for the continuance, including the absence of the respondent or one of the grounds pursuant to Rule 3.1332 of the California Rules of Court. If a case is dismissed, the notice shall specify the statutory basis for the dismissal. A notice pursuant to this clause shall not disclose any patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or this act, without the respondent's consent.

(iii) To the extent that the respondent consents, the court may allow the original petitioner to participate in the respondent's CARE proceedings.

(iv) The original petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the original petitioner is not described in subdivision (a) or (b) of Section 5974, the court shall not assign ongoing rights to the original petitioner, other than the right to be present and make a statement at the hearing on the merits of the petition held pursuant to paragraph (7).

(7) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner. A licensed behavioral health professional may testify as an expert concerning whether the respondent meets the CARE criteria in Section 5972 provided that the court finds that the professional has special knowledge, skill, experience, training, or education sufficient to qualify as an expert under Section 720 of the Evidence Code.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance upon stipulation of the successor petitioner and the respondent, subject to the approval by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds there is not clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, in open court, that the original petitioner's

filing was not in good faith, in which case the dismissal shall be with prejudice.

(2) If, at the hearing on the merits of the petition, the court finds by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days.

(3) If the respondent is enrolled in a federally recognized Indian tribe, the county shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.

(d) The following shall apply to any written report submitted by a county behavioral health agency to the court pursuant to this section:

(1) The report is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(2) The report is inadmissible in any subsequent legal proceeding, except upon motion of the respondent in that subsequent legal proceeding.

(3) The report shall be confidential pursuant to subdivision (e) of Section 5976.5.

(4) This subdivision shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for such an opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

SEC. 6. Section 5977.1 of the Welfare and Institutions Code is amended to read:

5977.1. (a) (1) At the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.

(2) If the court finds that the parties have entered, or are likely to enter, into a CARE agreement, the court shall do one of the following:

(A) Approve the terms of the CARE agreement or modify the terms of the CARE agreement and approve the agreement as modified by the court, and continue the matter and set a progress hearing for 60 days.

(B) Continue the matter for 14 days to allow the parties additional time to enter into a CARE agreement, upon stipulation of the parties.

(3) Nothing in this subdivision shall prohibit the parties from agreeing to, and the court from approving, amendments to the CARE agreement.

(4) The court may, in its discretion, call additional progress hearings beyond the hearing set at 60 days, for the duration of the CARE agreement.

(b) If the court finds that the parties have not entered into a CARE agreement, and are not likely to enter into a CARE agreement, the court shall order the county behavioral health agency, through a licensed

behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation shall address, at a minimum, the following:

(1) A clinical diagnosis of the respondent.

(2) Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.

(3) Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.

(4) An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

(c) (1) The court shall set a clinical evaluation hearing to review the evaluation within 21 days. The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent's counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(2) At the clinical evaluation review hearing, the court shall review the evaluation and other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

(3) At the conclusion of the hearing, the court shall determine whether the respondent, by clear and convincing evidence, meets the CARE criteria in Section 5972 and make orders as follows:

(A) If the court finds that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days.

(B) If the court does not find that clear and convincing evidence establishes that the respondent meets the CARE criteria, the court shall dismiss the petition.

(4) If the respondent is a self-identified American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), and 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is currently receiving services from an Indian health care provider or tribal court, the county behavioral health agency shall use its best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(5) The evaluation and all reports, documents, and filings submitted to the court shall be confidential.

(6) The date for the hearing to review and consider approval of the proposed CARE plan shall be set not more than 14 days from the date of the order to develop a CARE plan, unless the court finds good cause for an extension. The party requesting an extension of time for the CARE plan review hearing shall provide notice to the opposing party and their counsel of the request for extension of time, and the court's order if the request is granted.

(d) (1) At the CARE plan review hearing, the parties shall present their plan or plans to the court. The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(2) After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan and may be amended.

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

(4) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.

(5) If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(6) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(7) This subdivision does not prohibit the parties from agreeing to, and the court from approving, amendments to the CARE plan. The court may also approve amendments to the CARE plan upon the finding that those amendments are necessary to support the respondent in accessing appropriate services and supports, following a hearing on the issue.

(e) The issuance of an order approving a CARE plan pursuant to paragraph (2) of subdivision (d) begins the CARE process timeline, which shall not exceed one year.

SEC. 7. Section 5977.3 of the Welfare and Institutions Code is amended to read:

5977.3. (a) (1) In the 11th month of the process timeline, the court shall hold a one-year status hearing. Not fewer than five court days prior to the one-year status hearing, the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter. The report shall include the following information:

(A) The progress that the respondent has made on the CARE plan, including a final assessment of the respondent's stability.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided, over the life of the program.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide.

(2) At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. The respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence as to whether the respondent agrees with the report. The respondent may request either to be graduated from the program or to remain in the program.

(3) The court shall issue an order as follows:

(A) If the respondent requests to be graduated from the program, and the respondent has successfully completed the CARE process, the court shall order the county behavioral health agency and the respondent to work jointly on a voluntary graduation plan and the court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the graduation plan and recite the terms in open court. The graduation plan shall not place additional requirements on local governmental entities and is not enforceable by the court, except that the graduation plan may, at the respondent's election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.

(B) If the respondent requests to remain in the CARE process, the respondent may request any amount of time, up to and including one additional year. The court may approve the request and thereby permit the ongoing voluntary participation of the respondent if the court finds both of the following:

(i) The respondent did not successfully complete the CARE plan.

(ii) The respondent would benefit from continuation of the CARE plan.

(C) The court shall issue an order permitting the respondent to continue in the CARE plan or denying the respondent's request to remain in the CARE plan, and state its reasons in open court.

(b) The respondent may be involuntarily reappointed to the program only if the court finds, by clear and convincing evidence, that all of the following conditions apply:

(1) The respondent did not successfully complete the CARE process.

(2) All services and supports required through the CARE process were provided to the respondent.

(3) The respondent would benefit from continuation in the CARE process.

(4) The respondent currently meets the requirements in Section 5972.

(c) A respondent may only be reappointed to the CARE process once, for up to one additional year.

SEC. 8. Section 5978 of the Welfare and Institutions Code is amended to read:

5978. (a) A court may refer an individual from assisted outpatient treatment, from conservatorship proceedings pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 (LPS conservatorship), from misdemeanor proceedings pursuant to Section 1370.01 of the Penal Code, or from felony proceedings pursuant to Section 1370 of the Penal Code to the CARE Act court.

(b) The CARE Act court may consider a referral made pursuant to this section to be a petition satisfying the requirements of paragraph (3) of subdivision (a) of Section 5977 if both of the following conditions are met:

(1) The referral contains all of the information required to be included in a CARE process petition pursuant to Section 5975.

(2) The information included in the referral makes a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(c) If the CARE Act court elects to consider a referral to be a petition pursuant to subdivision (b), the CARE Act court shall notify the referring court that the referral has been accepted as a petition for CARE Act proceedings.

(d) If the CARE Act court does not elect to consider a referral to be a petition pursuant to subdivision (b), the CARE Act court shall order the appropriate petitioner candidate to do the following within 14 court days:

(1) Complete an investigation to determine whether to file a petition on behalf of the referred individual.

(2) Notify the referring court whether it intends to file a CARE Act petition on behalf of the referred individual.

(e) If the appropriate petitioner candidate notifies the CARE Act court that it requires additional time to complete its investigation pursuant to paragraph (1) of subdivision (d), the CARE Act court may grant an extension of up to 30 court days.

(f) For purposes of this section, "appropriate petitioner candidate" means:

(1) For referrals from assisted outpatient treatment or from misdemeanor or felony proceedings, the county behavioral health director or their designee.

(2) For referrals from conservatorship proceedings, the conservator or proposed conservator.

SEC. 9. Section 5985 of the Welfare and Institutions Code is amended to read:

5985. (a) (1) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(2) The department, in consultation with county behavioral health agencies and courts, shall specify the length of time that data on former participants shall be reported pursuant to subdivision (e), which shall be a minimum of 12 months after completion of and a maximum of 36 months following engagement in CARE Act elective services, a CARE agreement, or CARE plan.

(3) For the purposes of this section, the following definitions shall apply:

(A) "Former participant" means an individual who enters into CARE Act elective services, a CARE agreement, or a CARE plan, but who has either graduated from CARE, or for whom CARE Act proceedings were dismissed or terminated. Counties shall not be responsible for reporting on any individual who is privately insured or who no longer resides in California.

(B) "Active participants" means an individual who is an elective client, or who has a CARE plan or CARE agreement.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the department. The department shall determine the data measures and specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearance hearings on the petition held pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(D) The total number of CARE plans ordered and CARE agreements approved.

(E) The total number of court petitions dismissed, as reported by the Judicial Council.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The measures and reporting requirements shall be developed by the department in consultation with county behavioral health agencies. The report shall include trial court petition data pursuant to paragraph (3) of subdivision (d) and, to the extent administrative data is available, all of the following information compiled from county behavioral health departments and courts:

(1) The demographics of all participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence.

(2) The petitioner's relationship to the CARE Act respondent as defined in Section 5974.

(3) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided to all active and former participants.

(4) The housing placements of all active and former participants. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment, community-based housing, community-based housing with services, shelter, and no housing.

(5) Treatments continued and terminated of all active and former participants.

(6) Substance use disorder rates and rates of treatment among all active and former participants.

(7) Detentions and other Lanterman-Petris-Short Act involvement for all active and former participants.

(8) Criminal justice involvement of all active and former participants.

(9) Deaths among all active and former participants, along with the cause of death.

(10) Type, format, and frequency of outreach and engagement activities provided by a county behavioral health agency to engage an individual who is the subject of a referral or petition, including interactions about the individuals eligible or likely to be eligible and outcomes of these efforts.

(11) In consultation with the department and county behavioral health departments, the number, rates, and trends of contacts made to the county behavioral health agency about individuals eligible or likely to be eligible for the CARE process, including outcomes of those contacts.

(12) The number, rates, and source of referrals to county behavioral health departments, including, but not limited to, referrals resulting in a petition or reason for not filing a petition, length of time from referral to outcome, and services provided for those engaged voluntarily without a petition.

(13) The number, rates, and trends of petitions resulting in dismissal and hearings.

(14) Information on petition dispositions, including, but not limited to, disposition recommendations and the number of days from petition to disposition.

(15) The number, rates, and trends of supporters.

(16) The number, rates, and trends of approved CARE agreements.

(17) The number, rates, and trends of ordered and completed CARE plans.

(18) Statistics on the services and supports, including court orders for stabilizing medications.

(19) The rates of adherence to medication.

(20) The number, rates, and trends of psychiatric advance directives created for active participants.

(21) The number, rates, and trends of developed graduation plans.

(22) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration, reductions in involuntary treatment and conservatorship, and reductions in substance use.

(23) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(24) Data regarding referrals made pursuant to Section 5978.1, as part of the CARE Act.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in

emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

(h) (1) Beginning in 2026, the department shall include in its annual CARE Act report quantitative, deidentified information concerning the operation of this part.

(2) Based on information provided to the department in a form and manner specified by the department, in consultation with the Judicial Council and county behavioral health departments, in accordance with subdivision (b) of Section 5984, the report shall include all of the following information, aggregated by county, compiled from county behavioral health departments, courts, and the department, depending on the source:

(A) The number of contacts to the county behavioral health department about individuals eligible or likely to be eligible for the CARE process, including outcome of contacts.

(B) The number of CARE petitions filed with the superior court.

(C) The petitioner type for each petition filed with the superior court.

(D) Disposition of each petition filed with the superior court.

(E) The number of days between filing each petition and the petition's disposition.

(F) Demographic information of each CARE Act participant or potentially eligible CARE Act participant, including, but not limited to, age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence, to the extent administrative data is available and statistically relevant.

(G) The number of referrals of individuals in conservatorship proceedings made pursuant to subdivision (a) of Section 5978, including the disposition of each referral.

(H) The number of referrals made pursuant to Section 5978.1, including the disposition of each referral.

(i) Information publicly released or published pursuant to this part shall not contain data that may lead to the identification of participants or petitioners or information that would otherwise allow an individual to link the published information to a specific person. Data published by the

department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

SEC. 10. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Court Decisions

7 Cal.App.5th 628
Court of Appeal, Third District, California.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Petitioner,
v.
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD, Respondent;
Garfield Beach CVS, LLC et al., Real Parties in Interest.

C078574
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Filed 1/17/2017

Synopsis

Background: Department of Alcoholic Beverage Control appealed decision of the Alcoholic Beverage Control Appeals Board, No. AB9434, which reversed suspension of store's off-sale general license for selling alcohol to a minor decoy.

Holdings: The Court of Appeal, Hoch, J., held that:

Alcoholic Beverage Control rule which required that minor decoys "truthfully answer any questions about his or her age," did not require minor decoy to truthfully respond to clerk's statement, after looking at driver's license, that "I would not have guessed it, you must get asked a lot," as rule only required decoys to answer questions, and

rule did not impose affirmative duty on minor decoy to speak up in order to clarify any mistake regarding age articulated by sales clerk.

Annulled; reinstated and remanded.

****132** ORIGINAL PROCEEDING: Petition for writ of review. Petition granted. Alcoholic Beverage Control Appeals Board No. AB9434.

Attorneys and Law Firms

Kamala D. Harris, Attorney General, Alicia M.B. Fowler, Assistant Attorney General, Peter D. Halloran and Lauren Sible, Deputy Attorneys General for Petitioner.

Linda A. Mathes, Sarah M. Smith, John D. Ziegler for Respondent Alcoholic Beverage Control Appeals Board.

****133** Solomon, Saltsman & Jamieson, Stephen Warren Solomon, Ralph Barat Saltsman, Stephen Allen Jamieson, R. Bruce Evans, Ryan M. Kroll, Jennifer L. Oden, Los Angeles, and Margaret Warner Rose for Real Parties in Interest.

Opinion

HOCH, J.

***630** California Constitution, article XX, section 22, prohibits the sale of alcoholic beverages to persons under 21 years of age. (See also Bus. & Prof. Code, § 25658, subd. (a)),[1] [making it a misdemeanor to sell alcohol to a person under 21 years of age]. Here, the Department of Alcoholic Beverage ***631** Control (Department) issued a 15–day suspension of an off-sale general license held by the Garfield Beach CVS LLC Longs Drug Stores California LLC, doing business as CVS Pharmacy Store 9174 (CVS) after an administrative law judge found the store clerk sold alcohol to a minor decoy.[2] The Alcoholic Beverage Control Appeals Board (Appeals Board) reversed the suspension based on California Code of Regulations, title 4, section 141 (Rule 141), which allows a law enforcement agency to use an underage decoy only "in a 'fashion that promotes fairness.' (*Id.*, subd. (a).) In the Appeals Board's view, the suspension was unfair because the minor decoy did not respond about his age when the store clerk looked at his driver license and remarked, "I would never have guessed it, you must get asked a lot." To challenge the reversal of the license suspension, the Department petitioned for a writ of review in this court. (§ 23090.)

1 Undesignated statutory references are to the Business and Professions Code.

2 The license is held by Garfield Beach CVS LLC Longs Drug Stores California LLC, doing business as CVS Pharmacy Store 9174.

The Department contends it correctly interprets Rule 141 to require minor decoys to answer only questions about their ages. Based on the administrative law judge's finding in this case that the store clerk's remark constituted a statement rather than a question, the Department argues its decision was legally correct and supported by substantial evidence. The Appeals Board counters Rule 141 is ambiguous and results "in confusion and manifest unfairness." CVS

argues the Department's interpretation of Rule 141 unfairly allows decoys to remain silent in the face of mistaken statements about age. According to CVS, affirming the license suspension would allow deceptive and misleading silence in the face of a store clerk's explicit mistake about the minor decoy's age.

We conclude Rule 141 is not ambiguous in requiring minor decoys to answer truthfully only questions about their ages. Because substantial evidence supports the administrative law judge's factual finding the decoy in this case was not questioned about his age, we determine as a matter of law that Rule 141 does not provide CVS with a defense to the accusation it sold an alcoholic beverage to an underage buyer. Accordingly, we annul the Appeals Board's decision.

BACKGROUND

The Department's Imposition of a 15–day License Suspension

In October 2013, the Department accused CVS of selling alcohol to an underage person at its Garfield Beach store. An administrative hearing was ***632** held in February 2014, in which the administrative law judge made the following findings of fact:

CVS has held an off-sale general license to sell alcohol since June 2009, with no prior record of discipline by the Department. On June 3, 2013, Joseph Childers was 18 years old and had the appearance and mannerisms of a person under the age of 21. On that date, Childers accompanied ****134** Department agents and law enforcement officers to conduct an alcoholic beverage decoy operation at the Garfield Beach CVS store. Childers entered the store at 2:30 p.m., went to the beer cooler where he selected a 24–ounce bottle of beer, and took the beer to the checkout line. The CVS store clerk scanned the bottle of beer and asked Childers for identification. Childers handed his California driver license to the clerk. The driver license indicated Childers's date of birth and had a red stripe with white letters that stated, "AGE 21 IN 2015." In addition, the driver license had a blue stripe with white letters that stated, "PROVISIONAL UNTIL AGE 18 IN 2012."

The administrative law judge made the following factual findings: "The clerk looked at Childers's [driver license], tried to scan it, and looked at the [license] again. She then stated, 'I would never have guessed it, you must get asked a lot,' or words to that effect. The clerk's remark was framed as a statement not a question. The decoy did not say anything to the clerk in response to her remark. He thought the clerk's statement was 'casual conversation.' The decoy also testified the statement might or might not have been related to his age. Thus, in his mind it was unclear what the clerk meant by her statement. [¶] The clerk sold Childers the 24-ounce bottle of Corona beer. At no time during the transaction did the clerk ask Childers how old he was or his age. Following the sale of the beer, the decoy exited the premises." The administrative law judge found Childers's testimony at the hearing to be clear, concise, and credible. On this basis, the administrative law judge decided there was cause to suspend CVS's off-sale general license for 15 days.

In April 2014, the Department adopted the administrative law judge's proposed decision as its decision in this case. CVS appealed the decision to the Appeals Board.

The Appeals Board's Reversal of License Suspension

In January 2015, the Appeals Board issued its decision. The Appeals Board's decision relied upon its prior decision to conclude Rule 141 required the decoy to respond to the store clerk's statement upon looking at his driver license. The Appeals Board's decision emphasized the following testimony by the decoy at the administrative hearing:

***633** "[Counsel for CVS]: [A]fter the clerk made that statement to you, what did you take that statement to mean?

"A. [Childers]: Casual conversation.

"Q. And [in] that casual conversation did you see it related in any way to your age?

"A. Yes and no.

"Q. When you say 'Yes and no,' what do you mean?

"A. Yes, that maybe *I looked younger*. No, because she *thought I was older* or thought that I do it a lot, you know."

The Appeals Board reasoned that "[w]hen the decoy believes, as here, that a clerk's remarks are ambiguous as to his or her age, the decoy has an obligation to respond verbally and truthfully. That is the plain meaning of rule 141(a)'s language

instructing that minor decoy operations must be conducted in a 'fashion that promotes fairness.' " (Italics omitted.) The Appeals Board further stated that whenever "the decoy him or herself interprets a seller's comments to *in any way* pertain to the decoy's age, the Department should insist that decoy err on the side of responding with clarification." On these grounds, the Appeals Board reversed the Department's decision and rescinded the ****135** suspension of CVS's off-sale general license.

Petition for Writ of Review

In February 2015, the Department filed in this court a petition for writ of review from the decision of the Appeals Board. We issued a writ of review in March 2015. (§ 23090.)

DISCUSSION

I

Standard of Review

In addition to prohibiting the sale of alcohol to minors, the California Constitution "vests the Department with broad discretion to revoke or suspend liquor licenses 'for good cause' if continuing the license would be 'contrary to public welfare or morals.' (Cal. Const., art. XX, § 22.) In the ***634** absence of a clear abuse of discretion, the courts will uphold the Department's decision to suspend a license for violation of the liquor laws. (E.g., *Martin v. Alcoholic Bev. etc. Appeals Bd.* (1959) 52 Cal.2d 238, 248–249 [340 P.2d 1].)" (*Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 566, 28 Cal.Rptr.2d 638, 869 P.2d 1163 (*Provigo*).) " 'The administration of the Alcoholic Beverage Control Act, within the scope of the purposes of that act, is initially vested in the department. Its decisions, however, are subject to administrative review by the board and a final order of the board is, in turn, subject to judicial review.' " (*Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1099, 121 Cal.Rptr.2d 758, quoting *Walsh v. Kirby* (1974) 13 Cal.3d 95, 102, 118 Cal.Rptr. 1, 529 P.2d 33.)

The scope of review of the Department's decisions is the same in the Appeals Board and this court. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1071, 123 Cal.Rptr.2d 278 (*Deleuze*).) Section 23090.2 provides that review "shall not extend further than to determine, based on the whole record of the department as certified by the board, whether: [¶] (a) The department has proceeded without or in excess of its jurisdiction. [¶] (b) The department has proceeded in the manner required by law. [¶] (c) The decision of the department is supported by the findings. [¶] (d) The findings in the department's decision are supported by substantial evidence in the light of the whole record. [¶] (e) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department." Section 23090.2 also excludes the power to make findings of fact from the scope of review. (*Ibid.*)

In conducting our review, " '[w]e defer to the Department's interpretation of its own rules, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12 [78 Cal.Rptr.2d 1, 960 P.2d 1031], (*Yamaha Corp.*).) Courts generally will not depart from the Department's contemporaneous construction of a rule enforced by the Department unless such interpretation is clearly erroneous or unauthorized. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1696 [1 Cal.Rptr.3d 339] ....)" (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2005) 128 Cal.App.4th 1195, 1205, 27 Cal.Rptr.3d 766.) In short, the Department's decisions are ****136** "subject to review only for insufficiency of the evidence, excess of jurisdiction, errors of law, or abuse of discretion." (*Deleuze*, at p. 1072, 123 Cal.Rptr.2d 278.)

***635** II

Rule 141

The Department contends it correctly rejected CVS's reliance on Rule 141 as providing a defense to its sale of alcohol to the underage decoy in this case. We agree.

A.

The Department's Reliance on Minor Decoys

The Department relies on minor decoy operations as an integral part of its enforcement of the constitutional and statutory prohibitions on sales of alcohol to persons under 21 years of age. (Cal. Const., art. XX, § 22; § 25658, subd. (a).) The California Supreme Court has approved of the practice, noting that "[t]he use of underage decoys to enforce laws against unlawful sales to minors clearly *promotes* rather than hinders" the California constitutional and statutory prohibitions on sales of alcoholic beverages to minors. (*Provigo*, *supra*, 7 Cal.4th at p. 567, 28 Cal.Rptr.2d 638, 869 P.2d 1163.)

The Business and Professions Code provides that "[p]ersons under 21 years of age may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors." (§ 25658, subd. (f).) In pertinent part, subdivision (f) of section 25658 further provides: "Guidelines with respect to the use of persons under 21 years of age as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act ...." To comply with subdivision (f) of section 25658, the Department promulgated Rule 141. (*Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Bd.* (1998) 67 Cal.App.4th 575, 579, 79 Cal.Rptr.2d 126 (*Acapulco Restaurants*).) In its entirety, Rule 141 states:

"(a) A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors (persons under the age of 21) and to reduce sales of alcoholic beverages to minors in a fashion that promotes fairness.

"(b) The following minimum standards shall apply to actions filed pursuant to Business and Professions Code Section 25658 in which it is alleged that a minor decoy has purchased an alcoholic beverage: [¶] (1) At the time of the operation, the decoy shall be less than 20 years of age; [¶] (2) The decoy ***636** shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense; [¶] (3) A decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification; a decoy who carries identification shall present it upon request to any seller of alcoholic beverages; [¶] (4) *A decoy shall answer truthfully any questions about his or her age*; [¶] (5) Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages.

****137** "(c) Failure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code Section 25658." (Italics added.)

B.

Availability of the Rule 141 Defense

The Appeals Board contends subdivision (b)(4) of Rule 141 required the minor decoy in this case to truthfully respond to the clerk's statement, "I would never have guessed it, you must get asked a lot." Similarly, CVS argues the minor decoy's lack of response violated Rule 141 and provided a defense to the Department's accusation. The Department counters by noting the administrative law judge made the factual finding that the CVS clerk's words to the minor decoy constituted a statement rather than a question. On this basis, the Department argues the defense supplied by Rule 141 does not apply here. Resolving these contentions requires us to construe the meaning of Rule 141.

As this court has previously explained, "Generally, the same rules governing the construction and interpretation of statutes apply to the construction and interpretation of administrative regulations. (*In re Richards* (1993) 16 Cal.App.4th 93, 97–98, 19 Cal.Rptr.2d 797.) Accordingly, ' "we begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." ' [Citations.] 'An equally basic rule of statutory construction is, however, that courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them.' [Citations.] Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. [Citations.] 'If the words of the statute are clear, the court should not add to or alter them to accomplish a ***637** purpose that does not appear on the face of the statute or from its legislative history.' (*California Teachers Assn. v. San Diego*

Community College Dist. (1981) 28 Cal.3d 692, 698 [170 Cal.Rptr. 817, 621 P.2d 856].)" (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1710–1711, 42 Cal.Rptr.2d 172.) " 'The construction of an administrative regulation and its application to a given set of facts are matters of law.' " (*Ibid.*, quoting *Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517, 263 Cal.Rptr. 278.)

In enacting the Alcoholic Beverage Control Act (Act) (§ 23000 et seq.), the Legislature declared the Act "involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people." (§ 23001.) The Act establishes the Department "to provide a governmental organization which will ensure a strict, honest, impartial, and uniform administration and enforcement of the liquor laws throughout the State." (§ 23049.) To that end, section 23001 declares that "[a]ll provisions of this division shall be liberally construed for the accomplishment of these purposes."

Rule 141, subdivision (b)(4) provides that "[a] decoy shall answer truthfully any questions about his or her age." The Rule's guidance is clear and unambiguous. Minor decoys do not need to respond to *statements* of any kind nor do they need to respond truthfully to *questions* other than those concerning their ages. Thus, Rule 141 does not require minor decoys to correct mistakes articulated by licensed alcohol sellers. Instead, the minor decoys need to respond truthfully only to questions about their ages. In short, Rule 141 sets forth clear, unambiguous, and fair guidance for minor decoys to follow during the Department's operations. Consequently, the Department properly construed the ****138** plain language of Rule 141 in determining the minor decoy in this case was not required to respond to the clerk's statement that might have related to the decoy's age.

The Appeals Board disagrees with the Department's plain-meaning interpretation of Rule 141, asserting the Rule is ambiguous and unfair. The Appeals Board argues that "the language of Rule 141[(b)(4)] is ambiguous, and decoys lack the expertise to make a fair decision about whether a clerk's words are a 'question' 'about his or her age.' " The Appeals Board bases its argument on the assertion that "[t]he word 'question' is, especially when uttered vocally as opposed to being written, not free from doubt." In support, the Appeals Board argues the ambiguity of the word "question" is demonstrated by the need for an evidentiary hearing to determine the nature of the store clerk's communication to the minor decoy. We reject the argument.

Courts have long resolved factual issues concerning whether a spoken communication constitutes a question that invited an answer. In ***638** *Rhode Island v. Innis* (1980) 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297, the United States Supreme Court articulated a test for determining when *Miranda* advisements must be given to a suspect that "come[s] into play whenever a person in custody is subjected to either express questioning or its functional equivalent." (*Id.* at pp. 300–301, 100 S.Ct. 1682.) The test under *Rhode Island v. Innis* requires that police officers understand not only whether they are engaging in "express questioning," but also when their words or actions "are reasonably likely to elicit an incriminating response from the suspect." (*Id.* at p. 301, 100 S.Ct. 1682. fn. omitted.) The United States Supreme Court's decision establishes the unproblematic nature of distinguishing between oral communications constituting questions (and even their functional equivalents) and statements not reasonably likely to elicit an incriminating answer. Courts even require law enforcement officers to distinguish between suggestive and nonsuggestive questions. (*People v. Saracoglu* (2007) 152 Cal.App.4th 1584, 1590, 62 Cal.Rptr.3d 418.) Here, the determination required of minor decoys is more clear than the *Rhode Island v. Innis* test or the distinction between suggestive and nonsuggestive questions because subdivision (b)(4) of Rule 141 applies *only* to questions relating to age. "Question" is not an ambiguous term and does not lead to confusion in limiting spoken communications to those involving inquiries that contemplate answers.

We also reject the Appeals Board's contention Rule 141 is ambiguous because "no definition is provided as to what 'fairness' means or how it is to be determined." The lack of a definition of fairness, by itself, does not render Rule 141 ambiguous. (Cf. *Nava v. Mercury Cas. Co.* (2004) 118 Cal.App.4th 803, 805, 13 Cal.Rptr.3d 816 [lack of definition does not render a term ambiguous].) Contrary to the Appeals Board's contention, Rule 141 provides specific guidance regarding how to preserve fairness in minor decoy operations. Subdivision (b) of Rule 141 implements the goal of fairness by imposing five specific requirements for every minor decoy operation. Decoys must be under the age of 20; have the appearance of a person under 21; carry their own actual identification and present that identification upon request; truthfully answer any questions about their ages; and make face-to-face identifications of the persons who sold the alcoholic beverages. (Rule 141, subd. (b)(1)-(5).) Fairness under Rule 141 is assured by a set of five expressly defined

safeguards, all of which must be fulfilled during a minor decoy operation. **139 (*Acapulco Restaurants, supra,* 67 Cal.App.4th at p. 580, 79 Cal.Rptr.2d 126.) Consequently, Rule 141's use of the word "fairness" does not render the rule ambiguous or confusing.

In support of the Appeals Board's argument Rule 141 is ambiguous regarding what constitutes fairness, it points to its earlier decisions in *7–Eleven, Inc. & Johal Stores, Inc.* (Oct. 1, 2014) AB–9403 (*7–Eleven*), *Equilon Enterprises, LLC* (July 26, 2002) AB–7845 (*Equilon*), *Lucky Stores, Inc*. (Oct. 13, 1999) AB–7227 (*Lucky*), *Southland Corp. & Dandona* (Apr. *639 16, 1999) AB–7099 (*Southland*), and *Thrifty Payless, Inc*. (Dec. 30, 1998) AB–7050 (*Thrifty*). We may take judicial notice of decisions of the Appeals Board. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd*. (2005) 128 Cal.App.4th 1195, 1208, fn. 5, 27 Cal.Rptr.3d 766; accord *Reimel v. Alcoholic Beverage Control Appeals Bd*. (1967) 254 Cal.App.2d 340, 62 Cal.Rptr. 54.) Thus, although we are not bound by the Appeals Board's decisions, we take judicial notice of the cited decisions and consider their reasoning for persuasive value.

Regarding agency decisions, the California Supreme Court has noted that "[w]here the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. [Citation.] Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Based on our review, we conclude the Appeals Board's cited decisions vary in their persuasiveness and fidelity to Rule 141.

In *7–Eleven*, *supra,* AB–9403, the Appeals Board affirmed the suspension of an off-sale license based on sale to a minor decoy after the store clerk looked at the minor decoy's identification and stated, "oh, you are so young." (*7–Eleven*, at pp. 2, 14.) In affirming the suspension, the Appeals Board concluded the minor decoy was not required to respond because the store clerk did not ask a question or indicate a mistake as to the minor decoy's age. The Appeals Board reasoned that "[t]he wor[d] 'young' is a subjective term, and gives no indication that the clerk has made a miscalculation and as a result believes the decoy to be over 21" years of age. (*Id.* at p. 12.) Under the reasoning of *7–Eleven*, the Appeals Board should have affirmed the license suspension in this case as well. Here, the administrative law judge found the store clerk did not ask a question of the minor decoy. And the store clerk did not clearly demonstrate confusion as to the minor's age in the statement, "I would never have guessed it, you must get asked a lot." The minor decoy testified he thought the statement might mean either that "she thought I was older *or thought that I do it a lot* ...." (Italics added.) Because the store clerk in this case made a statement akin to that in *7–Eleven*, the reasoning employed in *7–Eleven* should have led the Appeals Board to affirm the Department's decision.

We reject the reasoning contained in the remainder of the Appeals Board's earlier decisions because the reasoning in each would require minor decoys to speak up to clarify any mistake about their ages even in the absence of a question. (*Equilon,* supra, AB-7845, at p. 2 [concluding Rule 141 "was *640 violated when the decoy failed to respond to a statement by the clerk which implied that she was 21 years of age or older"], *Lucky*, supra, AB-7227, at p. 4 [same where minor decoy did not respond to mistaken statement, "1978. You are 21"], and *Southland*, supra, AB-7099, at pp. 6, 7 [same where decoy did not respond to statement, "You are 21"]. In each of these decisions, **140 the Appeals Board relied on the notion of fairness to craft a new requirement for Rule 141, namely the obligation of a minor decoy to respond to any indication of mistake regarding age even in the absence of a question. Rule 141, however, expressly requires minor decoys only to answer questions relating to their ages. (Rule 141, subd. (b)(4).) The Appeals Board lacks the power to add a new defense to Rule 141.

The Appeals Board's decision in *Thrifty, supra,* AB–7050 involved a reversal of the Board's decision based on the minor decoy's silent tendering of a driver license rather than answering the clerk's question about her age. (See *Thrifty*, at p. 6 [speculating about the minor decoy's motivation in offering her identification rather than answering about her age].) Unlike this case, *Thrifty* involved an actual question by the clerk about the minor decoy's age and is therefore inapposite in this case where the administrative law judge determined the clerk did not ask any questions. (*Id.* at pp. 5–6.) Consequently, we need not consider whether *Thrifty* was correctly decided in harmony with Rule 141.

Ultimately, we are not persuaded by the Appeals Board's prior decisions that Rule 141 is ambiguous in requiring decoys to answer truthfully only questions relating to their ages.

Next, the Appeals Board argues the principle of fairness upon which Rule 141 is founded imposes an affirmative duty on minor decoys to speak up in order to clarify any mistake regarding age articulated by the vendor. If the Department had wanted to provide license holders with a defense for mistakes about a minor decoy's age or based on a minor decoy's failure to respond to a statement by the clerk, the Department could have done so by including express language to that effect in Rule 141. However, as we explained above, the language of Rule 141 requires minor decoys to respond only to questions about their ages. We reject the Appeals Board's attempt to add a new defense to Rule 141 that is not expressed in the rule. (*Acapulco Restaurants*, *supra*, 67 Cal.App.4th at p. 580, 79 Cal.Rptr.2d 126.)

Acapulco Restaurants involved a minor decoy operation in which the Department did not comply with Rule 141's requirement the minor decoy make a face-to-face identification of the clerk who sold the alcoholic beverage. (Acapulco Restaurants, supra, 67 Cal.App.4th at p. 577, 79 Cal.Rptr.2d 126; see also Rule 141, subd. (b)(5).) Despite the failure to follow this express requirement ***641** of Rule 141, the Department imposed and the Appeals Board affirmed a 15–day license suspension on grounds a law enforcement officer witnessed the entire transaction. (*Acapulco Restaurants,* at p. 577, 79 Cal.Rptr.2d 126.) However, the *Acapulco Restaurants* court reversed, explaining, "[t]o ignore a rule and the defense that arises from law enforcement's failure to comply with that rule is not a matter of 'interpretation.' What the Department has done is to unilaterally decide that rule 141[ ](b)(5) applies in some situations but not others, a decision that exceeds the Department's power. By its refusal to apply rule 141[ ](b)(5) when a police officer is present at the time of the sale, the Department has crossed the line separating the interpretation of a word or phrase on one side to the legislation of a different rule on the other, thereby substituting its judgment for that of the rulemaking authority. It might as well have said that rule 141[ ](b)(5) applies on Mondays but not Thursdays." (*Acapulco Restaurants*, *supra*, 67 Cal.App.4th at p. 580, 79 Cal.Rptr.2d 126.)

The result in *Acapulco Restaurants* followed the well-established rule that " '[a]n exception to a statute is to be narrowly construed. (Citation.) When a statute specifies an exception, no others ****141** may be added under the guise of judicial construction. (Citations.)' " (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 267 Cal.App.2d 895, 898, 73 Cal.Rptr. 352, quoting *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control* (1968) 261 Cal.App.2d 181, 189, 67 Cal.Rptr. 734.) Fairness does not require the new exception to be judicially grafted into Rule 141 to provide additional defenses that require a minor decoy to speak up in the absence of a question by the store clerk. As the California Supreme Court has noted, "licensees have a ready means of protecting themselves from liability by simply asking any purchasers who could possibly be minors to produce bona fide evidence of their age and identity." (*Provigo*, *supra*, 7 Cal.4th at p. 570, 28 Cal.Rptr.2d 638, 869 P.2d 1163.)

Likewise, we reject the argument made by CVS that the minor decoy's silence in response the clerk's statement about his youthful appearance was "deceptive and misleading." As this court has previously noted in a case involving a claim a governmental agency engaged in fraudulent concealment, "Courts uniformly distinguish between the misleading half-truth, or partial disclosure, and the case in which defendant says nothing at all. The general rule is that silence alone is not actionable." (*Wiechmann Engineers v. State of California ex rel. Dept. Pub. Wks.* (1973) 31 Cal.App.3d 741, 751, 107 Cal.Rptr. 529.)

Here, the minor decoy did not say anything untrue. To the contrary, the minor decoy presented accurate information in the form of his driver license. Thus, the minor decoy did not engage in deceptive and misleading communication with the clerk. Notably, the California Supreme Court has rejected a claim the use of a "mature-looking" decoy constitutes an unfair practice by ***642** the Department in a case in which a minor decoy "simply bought beer and wine, *without attempting to pressure or encourage the sales in any way*." (*Provigo*, *supra*, 7 Cal.4th at p. 569, 28 Cal.Rptr.2d 638, 869 P.2d 1163, italics added.) The same reason applies here. The minor decoy's silence in this case did not involve any attempt to pressure or encourage the sale of an alcoholic beverage to him. The minor decoy's silence did not render the Department's operation unfair.

CVS's argument its clerk was deceived and misled by the minor decoy in this case is based on the same premise as that advanced by the Appeals Board, namely a minor decoy has a duty to speak up in response to a statement indicating a mistaken calculation of age. However, as we have explained, Rule 141 does not supply a defense based on a minor decoy's failure to respond to statements made by the clerk. Consequently, we conclude the Department properly

rejected CVS's argument the minor decoy's silence rendered the operation unfair under Rule 141.

C.

Substantial Evidence Supports the Department's Decision

As part of its argument Rule 141 is ambiguous, the Appeals Board asserts the minor decoy's testimony during the hearing was equally uncertain. Specifically, the Appeals Board asserts that "[t]he decoy's testimony is as ambiguous as [Rule 141], and certainly does not support the conclusion, reached by the Department, that the clerk's words were '[i]ndisputably a statement' falling outside the Rule." In light of the administrative law judge's factual finding, we disagree.

Viewed in the light most favorable to the Department's decision, we conclude substantial evidence supports the administrative law judge's decision. As the administrative law judge found, the minor decoy's ****142** testimony was clear and credible. The administrative law judge also expressly found the testimony established the store clerk's communication to the minor decoy was a statement and not a question. Under section 23090.2, the Appeals Board lacks power to disregard the Department's factual findings, which includes findings made by the administrative law judge. (*Hasselbach v. Department of Alcoholic Beverage Control* (1959) 167 Cal.App.2d 662, 667, 334 P.2d 1058 ["The statement made in the opinion of the appeals board was not a finding of fact for that board is without power to make findings of fact"].) Accordingly, we reject the Appeals Board's argument the store clerk's statement might have been a question instead of a statement.

***643** DISPOSITION

The decision of the Alcohol Beverage Control Appeals Board is annulled. The decision of the Department of Alcoholic Beverage Control is reinstated and the case is remanded to the Alcohol Beverage Control Appeals Board for further proceedings consistent with this opinion.

We concur:

BLEASE, Acting P.J.

RENNER, J.

All Citations

7 Cal.App.5th 628, 213 Cal.Rptr.3d 130, 17 Cal. Daily Op. Serv. 384, 2017 Daily Journal D.A.R. 402

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54 Cal.3d 765
Supreme Court of California,
In Bank.

Cynthia S. CALVERT, Petitioner,
v.
The STATE BAR OF CALIFORNIA, Respondent.

No. S015184.
|
Nov. 25, 1991.

Synopsis

Disciplinary proceedings were filed against an attorney. The Supreme Court held that: (1) failure to competently perform and continued representation of client despite lack of time to competently perform warrants three years suspension from practice, with one year probation and actual suspension from practice for 60 days of the probationary period; (2) court reporter's destruction of trial notes in violation of statutory duty to preserve notes for five years could not serve as factor in aggravation; and (3) attorney's failure to appear at all sessions of disciplinary proceeding was not an aggravating circumstance.

Suspended.

Attorneys and Law Firms

***769** ****425** *****685** Cynthia S. Calvert, in pro. per.

L.W. Holt, Berkeley, for petitioner.

Diane C. Yu, Richard J. Zanassi, Colin P. Wong and E. Lisa Vorgias, San Francisco, for respondent.

Opinion

BY ***770** THE COURT: [*]

[*] Before Lucas, C.J., Mosk, J., Panelli, J., Kennard, J., Arabian, J., George, J., and Low (Harry W.), J. (Presiding Justice, Court of Appeal, First Appellate District, Division Five, assigned by the Chairperson of the Judicial Council.

The Review Department of the State Bar Court (review department) has recommended that petitioner Cynthia S. Calvert be suspended from the practice of law in California for three years, that execution of the suspension order be stayed, and that she be placed on probation for one year upon conditions that include actual suspension from the practice of law for six months. The recommendation is based on the review department's findings that in one matter petitioner failed to perform competently, continued representation of her client though she knew she could not perform competently, and withdrew from employment without taking reasonable steps to avoid prejudice to the client.

Petitioner contends that a new hearing should be held before a new hearing panel because the hearing referee failed to disqualify himself when required by law to do so, that prejudicial errors in the exclusion of evidence require a new hearing, that certain aggravating circumstances were improperly found, and that the recommended discipline is excessive.

We conclude the following: petitioner waived the claim that the hearing referee improperly failed to disqualify himself; even though evidentiary errors occurred, they do not require a new hearing; the evidence is insufficient to support one of the three disciplinary violations found; two aggravating circumstances are unsupported by the record; and the recommended discipline is excessive. We further conclude that the period of actual suspension ****426** *****686** imposed should be 60 days, not 6 months as recommended by the review department.

BACKGROUND

Petitioner was admitted to the practice of law in California in January 1978. Petitioner has a prior record of discipline; she was suspended for 90 days in 1990. The review department's decision states that petitioner has no prior record of discipline; the decision, however, was issued before the July 1990 order suspending petitioner. [1]

[1] The prior discipline involved a failure to perfect a mechanic's lien, and a failure in the same matter to respond to letters from the State Bar. Petitioner and the State Bar entered into a stipulation as to facts, culpability, and recommended discipline. The stipulation provided that with the exception of the period of actual suspension, the discipline imposed would be concurrent with the discipline to be imposed in this case. The parties stipulated

that the period of actual suspension imposed in that matter, however, would be served consecutively to the period of actual suspension in this case.
This court imposed the recommended discipline in the mechanic's lien matter in July 1990, and denied a motion to consolidate that matter with this case in August 1990.

***771** 1. *The McKnight Matter*
This disciplinary proceeding arises from petitioner's representation of Doris McKnight (McKnight). This matter involves two critical issues: whether petitioner adequately communicated with McKnight, and whether petitioner's posttrial legal strategy was one that a competent attorney could reasonably have adopted. The parties presented sharply conflicting evidence on both critical issues. Because the evidentiary errors that are discussed below require an analysis of the effect of the errors on the hearing as a whole, a somewhat detailed review of the evidence is necessary. Although there were other witnesses, the key witnesses were McKnight and petitioner.

a. The State Bar's Evidence
In November 1982, McKnight substituted petitioner in place of Mary Louise Frampton (Frampton) as her attorney in an employment discrimination suit against her employer, Commercial Union Insurance Co. (Commercial Union). In May 1984, the case was tried. The trial court filed a statement of decision in McKnight's favor in September 1984 and awarded McKnight $23,895 in damages.

Five days later, petitioner wrote to McKnight that she had received the final decision of the court and would "see that judgment is entered and the cost bill and attorneys fee bill filed with the court and opposing counsel." But judgment was not entered. Commercial Union made a motion for a new trial, which was denied in November 1984.

In December 1984, petitioner wrote to McKnight, asking her to "get together all the bills and expenses [she] had incurred" so that petitioner could "file the judgment and cost bill ASAP." In early January 1985, McKnight delivered the requested documents to petitioner.

In January 1985, Commercial Union filed a notice of appeal, which was eventually withdrawn pending the entry of judgment. McKnight stated that petitioner called her to notify her that Commercial Union had filed the notice of appeal.

In February 1985, the Commercial Union office in Fresno closed. McKnight called petitioner and left word of the closure and her layoff with petitioner's secretary.

***772** McKnight testified that, apart from receiving monthly billing statements and a letter concerning witness fees from petitioner, she had no further communication with petitioner until December 1985. But McKnight had attempted to speak with petitioner over the telephone at least once a month and more frequently toward the end of the year. McKnight stated that petitioner was not available and did not return her calls.

In late 1985, McKnight called the courthouse to check on the status of the case. She was informed that Commercial Union had abandoned its appeal in February 1985. In early December 1985, she called petitioner at home and spoke with her; petitioner ****427** *****687** told McKnight that she had not filed the judgment, apologized for not doing so, and said she would take care of the matter when she returned from Christmas vacation.

McKnight testified that she called petitioner's office nine or ten times in the first three months of 1986 and that she kept notes of the conversations with petitioner, her secretary, or her law partner. These notes were admitted into evidence. In February 1986, McKnight was told that petitioner had insufficient time to attend to her case and that her case was not "emergency work." In early March 1986, petitioner's secretary called McKnight and told her petitioner was working on her case. In late March, McKnight called petitioner's office for the last time. Petitioner would not speak to McKnight, but her secretary told McKnight that petitioner was working on her case.

In early April 1986, McKnight filed a complaint with the Client Relations Committee of the Fresno County Bar Association. In mid-May, Jan Biggs, an attorney handling the matter for the association, sent a letter to petitioner requesting that she contact him regarding the complaint. Biggs called petitioner three or four times in the weeks after he sent the letter, but petitioner did not reply to the letter or return his phone calls. In mid-June 1986, Biggs sent petitioner another letter about McKnight's complaint; petitioner did not respond.

In July 1986, McKnight filed a complaint against petitioner with the State Bar. In November 1986, she substituted her former attorney, Mary Louise Frampton, as her attorney to replace petitioner. Frampton subsequently caused the

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judgment to be filed, and made a motion for attorney fees. The trial court awarded attorney fees of $21,199.95. Commercial Union then filed a notice of appeal. Approximately six months after Frampton became McKnight's attorney, the court reporter's notes for the trial were destroyed. Thereafter, the parties settled the lawsuit for $21,500.

***773** b. Petitioner's Evidence

Petitioner's evidence consisted of her own testimony and the testimony of Attorney Mary Louise Frampton.[2] Frampton's testimony, which was stricken by the hearing panel, is discussed below in connection with the argument that it was error to strike it.[3]

[2] Although petitioner was called as a witness by the State Bar, her testimony formed the basis of her defense to the disciplinary charges, and thus is summarized in this section.

[3] The pertinent testimony of the State Bar's witness Robert A. Hawley is also discussed in connection with this issue.

Petitioner testified that in early 1985, after Commercial Union filed its notice of appeal, she decided to use a strategy of waiting before having the judgment entered. This strategy was based on the "hard-line position" of Commercial Union and its attorneys, who were adamantly opposed to settlement and intent on vindication. Petitioner concluded that with the passage of time certain events might occur that would facilitate settlement of the case on favorable terms without an appeal.

Specifically, these anticipated events involved: (1) the planned retirement of McKnight's former supervisor, Mr. Rubke, who had appeared to be influential in Commercial Union's handling of the case and who had exhibited personal animosity toward McKnight; (2) an impending consolidation and reorganization of Commercial Union's management; (3) the impending closure of Commercial Union's Fresno office, at which McKnight continued to work; (4) the lessening of the "ego involvement" of Commercial Union's trial attorney with the passage of time; and (5) the possibility of a new attorney taking responsibility for the litigation. Petitioner concluded that if some of these events occurred, Commercial Union and its counsel would begin to evaluate the case "in a more realistic [fashion] ... not only legally but economically."

Petitioner stated that the judgment would include a provision that McKnight would receive 10 percent interest on the ****428** *****688** damages from the date the complaint was filed, and petitioner believed that this added to the attractiveness of the waiting strategy. Petitioner also explained that McKnight owed her approximately $6,000 in fees, that further expenses would be incurred on any appeal, and that the strategy would give McKnight "time to regroup."

Petitioner explained this choice of strategy to McKnight several times in 1985, and McKnight acquiesced in the strategy. Also, from February 1985 through May 1986, petitioner spoke with McKnight about her case several ***774** times, and was known by McKnight to be available to discuss the case at times convenient to McKnight.

When petitioner received the letter from the Fresno County Bar Association in May 1986, she telephoned McKnight. McKnight was very hostile to her. Petitioner asked McKnight to contact her later, but did not remember further details of the conversation. Petitioner explained that she did not respond to the letter from Attorney Biggs on behalf of the Fresno County Bar Association because Biggs had previously represented her in another matter and she had had a "very bad experience" with him, and because Biggs's firm had "gone on record saying they would never have a woman lawyer because they don't think women can be lawyers...." Petitioner also believed that it would hurt her relationship with McKnight to deal with Biggs.

Petitioner considered filing a motion to withdraw from the case, but because there were no other attorneys in Fresno who had expertise in employment discrimination cases brought by employees, she rejected this alternative as amounting to "abandonment." Petitioner made a considered decision that it would be in the best interests of her client to continue with her strategy.

Petitioner discussed with Mary Louise Frampton the possibility that Frampton would take over McKnight's case, and McKnight and Frampton made arrangements for Frampton to do so. Petitioner cooperated by preparing the substitution of attorney form, delivering her files to Frampton, and assisting in preparation of the attorney fee motion filed by Frampton.

2. *Proceedings Before Hearing Panel and Review Department*

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The hearing panel, consisting of a single referee, found that petitioner had violated former Rules of Professional Conduct, rules 2–111(A)(2) (withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to client), 6–101(A)(2) (intentionally or with reckless disregard failing to perform legal services competently), and 6–101(B)(1) (continuing legal representation with knowledge of insufficient time, resources or ability to perform competently).

The hearing panel generally accepted McKnight's version of events, but did not explain how petitioner's conduct violated each of the rules at issue. The hearing panel found that petitioner's posttrial legal strategy was motivated by a desire to discourage Commercial Union from pursuing an appeal; that petitioner did not "clearly explain the matter" to McKnight; that although Commercial Union's Fresno office did close down, petitioner did not ***775** pursue settlement negotiations; and that petitioner intentionally failed to return McKnight's telephone calls.

In mitigation, the hearing panel found that petitioner had no record of prior discipline, and that she was "known to be among the few attorneys in her community who regularly are available to represent minorities, women and less favored members of society."

In aggravation, the hearing panel concluded that petitioner's violations of former rules 2–111(A)(2), 6–101(A)(2) and 6–101(B)(1) of the Rules of Professional Conduct of the State Bar were wilful, and that although petitioner had attended the first four hearing sessions in the matter, she had failed to attend the remaining four hearing sessions. The hearing panel deemed this failure to attend to be a lack of cooperation, and found that petitioner had deprived the State Bar's counsel of the opportunity to examine her regarding issues that arose during cross-examination ****429** *****689** by petitioner's counsel. The hearing panel further found that petitioner's delay was the "primary cause" of the destruction of the reporter's notes.

The hearing panel recommended that petitioner be suspended from the practice of law for three years, that execution of the suspension be stayed, and that she be placed on probation for one year and actually suspended for six months.

The review department, by a vote of nine to two, adopted the decision and recommendation of the hearing panel.

DISCUSSION

1. *Disqualification of Referee*

Petitioner contends a new hearing is necessary because the hearing referee improperly failed to disqualify himself.

After the fourth day of hearings in this matter, on September 12, 1988, petitioner filed a "declaration of disqualification," seeking to disqualify the referee for cause under rule 230 of the Rules of Procedure of the State Bar (rule 230) and Code of Civil Procedure section 170.3, based on certain comments the referee made off the record.

On September 22, 1988, the referee issued a written ruling declining to disqualify himself, but drawing petitioner's attention to her right to seek review of his decision under the Rules of Procedure of the State Bar.

***776** The disciplinary hearing proceeded on several hearing dates and, on March 30, 1989, the referee issued a written decision on the merits. Petitioner did not raise the issue of disqualification again until April 1989, after the referee's decision.

The State Bar contends that by failing to timely seek review of the referee's decision not to disqualify himself, petitioner waived the issue. We agree.

Under rule 230 petitioner had 10 days from the referee's denial of her challenge to file a motion with the presiding referee seeking the recusal of the referee she had challenged. [4] Petitioner did not do so. We conclude she waived the claim of prejudice by failing to seek timely review. (See *Tarver v. State Bar* (1984) 37 Cal.3d 122, 130, fn. 2, 207 Cal.Rptr. 302, 688 P.2d 911; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 878, 153 Cal.Rptr. 602, 591 P.2d 1254.)

4 Rule 230 provides, in pertinent part: "A referee assigned to a particular matter may recuse himself or herself. Where grounds for a challenge have been established, the referee shall recuse himself or herself. If recusal is not made ... [and if] the challenged referee was not assigned at a master calendar session ... the motion for disqualification may be presented to the presiding referee within ten (10) days after the affected referee denied the

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challenge, and the presiding referee shall act on the motion within five (5) days of its receipt."

Petitioner's argument that the final paragraph of rule 230 compels a different result has no merit. That paragraph provides: "Situations in which the grounds for disqualification are discovered or arise after the referee has made one or more rulings shall be governed by the provisions of section 170.3, subdivision (b)(3), of the Code of Civil Procedure." That subdivision, which has since been renumbered as subdivision (b)(4), states: "In the event that grounds for disqualification are first learned ... after the judge has made one or more rulings ... the judge shall, unless the disqualification be waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge."

Contrary to petitioner's contention, rule 230's incorporation of Code of Civil Procedure section 170.3, subdivision (b)(4) does not abrogate the 10–day period within which to seek review of a referee's refusal to disqualify himself or herself. The rule merely addresses the continuing effect of rulings made by a referee before the referee was disqualified.

2. *Evidentiary Errors*

Petitioner makes two claims of evidentiary error. She contends that the referee erred in refusing to allow petitioner to impeach complaining witness ***777** McKnight with evidence of financial bias, and in striking the entire testimony of defense witness ****430** *****690** Mary Louise Frampton, the successor to petitioner as McKnight's attorney.

The rules of evidence in civil cases are generally followed in attorney discipline hearings. (Rules Proc. of State Bar, rule 556.)

a. Refusal to Allow Impeachment of McKnight

Petitioner contends that the referee erroneously refused to allow her to impeach complaining witness McKnight with evidence of financial bias.

As noted earlier, petitioner's testimony and McKnight's differed substantially on several material issues. Petitioner testified that McKnight consented to the strategy to delay entering the judgment; McKnight testified that she was not aware of the strategy. Petitioner testified that during the period from February 1985 through May 1986 she spoke with McKnight about her case several times, and was known by McKnight to be available to discuss the case at times convenient to McKnight; McKnight testified that she attempted to speak with petitioner numerous times during this period, but was never able to reach her, and petitioner never returned McKnight's phone calls.

On cross-examination, petitioner attempted to impeach McKnight with evidence of her financial interest in the outcome of the disciplinary proceeding. Specifically, petitioner sought to elicit evidence showing that McKnight had intentionally failed to timely pay petitioner's bills in full and had falsely complained to the State Bar as part of a scheme to evade paying the remainder of her attorney fees.

The referee refused to allow petitioner to inquire into these matters for impeachment purposes. The referee cited no specific evidentiary basis for his ruling, but stated that he had "never heard of anything so outrageous in my life."

The refusal to allow impeachment of the witness was erroneous. Generally, any fact or circumstance tending to show that a witness has a financial interest in the outcome of a legal proceeding is a proper ground for impeachment. (3 Witkin, Cal. Evidence (3d ed. 1986) Introduction of Evidence at Trial, §§ 1915, 1919, pp. 1870, 1873; see Evid.Code, §§ 780, subd. (f), 785.) In this case, the hearing panel should have allowed petitioner to attempt to show that McKnight had a financial incentive in seeing that petitioner was disciplined, as a means of strengthening her malpractice case.

***778** This court generally requires a showing of specific prejudice for procedural errors to invalidate the determination of the hearing panel. (*Stuart v. State Bar* (1985) 40 Cal.3d 838, 845, 221 Cal.Rptr. 557, 710 P.2d 357.) The rules of criminal procedure do not apply in attorney discipline proceedings, and reversible error will be found only when the errors complained of resulted in a deprivation of a fair hearing. (*Id.* at p. 845, 221 Cal.Rptr. 557, 710 P.2d 357; *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1115–1116, 264 Cal.Rptr. 825, 783 P.2d 184; *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634, 238 Cal.Rptr. 377, 738 P.2d 723; see also Rules Proc. of State Bar, rule 556.)

Here, the referee's erroneous refusal to allow petitioner to impeach McKnight does not require a new hearing. Petitioner was able to elicit testimony on essentially the same grounds later in the hearing. Petitioner's further cross-examination of McKnight revealed that at the time of the disciplinary

hearing McKnight had owed petitioner more than $6,000 in attorney fees for almost four years. Petitioner also elicited from McKnight that she had filed a civil complaint against petitioner. This evidence, though not precisely congruent with the impeachment evidence petitioner was precluded from introducing, did tend to show that McKnight had a financial interest in the outcome of the proceeding. Under the circumstances, we conclude that the referee's erroneous refusal to allow impeachment of McKnight did not deprive petitioner of a fair hearing. (See *Stuart v. State Bar, supra,* 40 Cal.3d at p. 845, 221 Cal.Rptr. 557, 710 P.2d 357.)

****431 ***691** b. Striking of Defense Witness Frampton's Testimony

Petitioner further contends that the referee erred in striking the entire testimony of defense witness Mary Louise Frampton.

On direct examination, Frampton testified that she was the original attorney for McKnight in the action against her employer; that Frampton was substituted out of the case due to a conflict in 1982; and that on Frampton's recommendation, petitioner became McKnight's new counsel. Frampton described petitioner as a highly qualified and competent attorney and as one of only two attorneys in the Fresno area who was available to take plaintiffs' discrimination cases on a regular basis. Frampton added that if during the spring of 1986 petitioner had withdrawn as counsel for McKnight, it would have been difficult for McKnight to obtain successor counsel.

Frampton testified that the "tactical waiting strategy" used by petitioner could be a "very positive strategy for the plaintiff" in light of the closing of the Commercial Union office in Fresno after the trial and in view of the uncertainties of appeal. In Frampton's opinion, it was "very likely" that if a ***779** judgment in McKnight's case had been entered and an appeal taken, there would be no decision yet.

Frampton stated that petitioner had a very good reputation for truthfulness and competency in the community, and that she had a very good opinion of petitioner's truthfulness and competency.

On cross-examination, the State Bar inquired into McKnight's communications with Frampton during the period petitioner represented McKnight. Frampton provided details concerning when she had been contacted by McKnight, but when the hearing examiner for the State Bar asked Frampton about the purpose of a particular communication with McKnight, petitioner raised the issue of attorney-client privilege. Petitioner further requested that the State Bar be instructed not to inquire into conversations between Frampton and McKnight because such questions went beyond the scope of direct examination. Frampton then conferred off the record with McKnight, who was present.

When the hearing resumed, Frampton said that she was "not sure" whether the testimony she had previously given created an attorney-client conflict or could jeopardize McKnight in forthcoming negotiations with her former employer. The referee then stated he would entertain a motion to excise the entire testimony of Frampton. The State Bar so moved, petitioner opposed the motion, and it was granted.

Petitioner contends that it was prejudicial error for the referee to strike Frampton's testimony.

The apparent basis for the referee's ruling was Frampton's statement that she was unsure whether her testimony created a conflict or would jeopardize McKnight's case. Thus, although the referee did not state it in these terms, the basis for striking the testimony was the attorney-client privilege.

The attorney-client privilege protects "confidential communication between client and lawyer...." (Evid.Code, § 954.) Confidential communications include information transmitted between attorney and client, and "a legal opinion formed and the advice given by the lawyer in the course of that relationship." (Evid.Code, § 952.)

Some of Frampton's testimony was not privileged. For example, not falling within the privilege are Frampton's statements regarding petitioner's reputation for truthfulness and competence, Frampton's opinion of petitioner's truthfulness and competence, and Frampton's statements about the ***780** number of attorneys available to litigate discrimination actions in the Fresno area and the difficulty of obtaining legal services in such cases.

Frampton's testimony regarding the "tactical waiting strategy" used by petitioner presents a closer question. Although this testimony comprises neither information transmitted between Frampton and McKnight nor advice given to McKnight by Frampton, it is not clear whether this testimony communicates "a legal opinion formed ... by the lawyer in ****432 ***692** the course of" the attorney-client relationship. (Evid.Code, § 952.)

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But we need not decide whether Frampton's testimony concerning petitioner's posttrial strategy was a confidential communication, because we conclude that even if the testimony may have been a confidential communication, the attorney-client privilege was waived.

Evidence Code section 912, subdivision (a) provides that a privilege is waived when a holder of a privilege fails to claim the privilege in a proceeding in which he or she has the standing and opportunity to do so. In this case, those conditions were met and the privilege must be held waived. McKnight was a holder of the privilege; as a witness who was present at the hearing she had standing and opportunity to claim it; she consulted with her attorney when the issue was raised by petitioner; and she evidently failed to instruct Frampton to claim the privilege. Frampton, as McKnight's attorney, stated she was "not sure" whether her testimony created a conflict or would jeopardize McKnight's case. This equivocal statement by McKnight's attorney after consultation with McKnight amounts to a failure to claim the privilege when the opportunity arose. [5]

[5] We note that during petitioner's testimony and prior to Frampton's, McKnight orally waived the attorney-client privilege as to petitioner only. But nothing in Evidence Code section 912 indicates that an assertion of a privilege at one time precludes its waiver by conduct at a later time.

Moreover, at the next hearing session, the State Bar's attorney testified in detail as to confidential communications between Frampton and McKnight that were revealed to the State Bar; and at a later hearing date, McKnight herself testified in detail about her confidential communications with Frampton. These subsequent events in the same proceeding fortify our conclusion that the attorney-client privilege was waived. Accordingly, it follows that it was error for the hearing panel to strike Frampton's testimony.

We turn to an assessment of this error. Frampton's testimony about petitioner's truthfulness and competence were important to petitioner's case. On the questions whether petitioner adequately communicated with ***781** McKnight and whether McKnight consented to petitioner's strategy, the case was essentially a credibility contest. Petitioner's argument as to her credibility would have been considerably strengthened by Frampton's testimony.

Frampton's testimony concerning the merits of petitioner's "tactical waiting strategy" was vital to petitioner's defense. The importance of the issue of the reasonableness of petitioner's choice of strategy is underscored by the testimony of the State Bar's expert witness, Robert A. Hawley. Hawley, a partner in a San Francisco law firm who generally restricts his practice to the defense of large companies in employment matters, testified in response to a hypothetical question based on the facts of this case, that a delaying strategy such as that used by petitioner "is not a strategy that makes any sense to me." He further stated that the strategy was "totally perplexing" and "inconceivable."

Thus, the effect of striking Frampton's testimony concerning the reasonableness of petitioner's strategy was to remove from consideration the only testimony from a disinterested witness that supported petitioner's choice of strategy and countered the testimony of the State Bar's expert that the strategy was not one that a competent attorney could reasonably have adopted.

Nevertheless, we conclude that this error does not require a new hearing. As the discussion in the following section will make clear, even accepting petitioner's version of events and petitioner's view of the merits of the legal strategy, discipline is still warranted in this case.

3. *Sufficiency of Evidence* [6]

[6] Petitioner has not separately raised the issue of the sufficiency of the evidence, but in view of the discussion in the preceding section, we conclude that an analysis of the sufficiency of the evidence is warranted.

In reviewing State Bar cases, we accord great weight to the evidentiary findings ****433** *****693** of the review department. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931, 258 Cal.Rptr. 235, 771 P.2d 1323.) But we independently examine the record and weigh the evidence; we are not bound by the review department's findings of fact or conclusions of law. Petitioner bears the burden of demonstrating error in the review department's findings and conclusions. (Bus. & Prof. Code, § 6083, subd. (c); see also *Sands v. State Bar* (1989) 49 Cal.3d 919, 928, 264 Cal.Rptr. 354, 782 P.2d 595.) The charges against an attorney must, however, be supported by convincing proof to a reasonable certainty. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1215–1216, 270 Cal.Rptr. 315, 791 P.2d 994.)

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***782** As noted earlier, the review department found that petitioner had violated former rules 2–111(A)(2), 6–101(A)(2) and 6–101(B)(1) of the Rules of Professional Conduct (unless otherwise indicated, all further references to former rules are to this source). We discuss the application of each of these rules.

Former rule 6–101(A)(2) provided that "[a] member of the State Bar shall not intentionally or with reckless disregard or repeatedly fail to perform legal services competently."

We conclude that this disciplinary violation is supported by the evidence. Putting aside the merits of petitioner's waiting strategy, and even accepting petitioner's version of the factual dispute as to communications with McKnight, the evidence shows that petitioner did not adequately communicate with McKnight even after receiving the letter from the Fresno County Bar Association in May 1986. This failure to communicate was unjustifiable. Adequate communication with clients is an integral part of competent professional performance as an attorney.

Former rule 6–101(B) stated: "[A] member of the State Bar shall not ... (1) ... continue representation in a legal matter when the member knows that the member does not have ... sufficient time, resources and ability to, perform the matter with competence...."

The finding that petitioner violated former rule 6–101(B)(1) is supported by the evidence. Nothing in this record shows that petitioner lacked the ability or resources to perform competently in McKnight's case. On the contrary, the evidence demonstrates that petitioner did perform competently, obtaining good results through the trial phase of the action. But there is considerable evidence that petitioner did not devote sufficient time to McKnight's case after trial. Moreover, certain uncontradicted testimony of McKnight shows that when she did speak to petitioner and petitioner's secretary in February 1986, she was told that petitioner had insufficient time to attend to her case and that her case was not "emergency work." The evidence supports the finding that petitioner continued representation of McKnight when she knew she lacked sufficient time to devote to McKnight's case.

Former rule 2–111(A)(2) provided that "a member of the State Bar shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client...." The State Bar's theory is that petitioner's failure to adequately communicate with her client amounted to a withdrawal from employment. We have previously indicated that gross negligence in failing to communicate with clients may be construed ***783** as abandonment. (*Walker v. State Bar, supra,* 49 Cal.3d 1107, 1117, 264 Cal.Rptr. 825, 783 P.2d 184.) In this case, however, petitioner continued to regard herself as McKnight's attorney and continued to adhere to her legal strategy; when she concluded that the attorney-client relationship had irretrievably deteriorated, petitioner assisted in locating other counsel for McKnight. Petitioner then fully cooperated in making the successful attorney fees motion. Under the circumstances, there is no convincing proof of client abandonment, as distinguished from inexcusable failure to communicate. Moreover, the finding that petitioner withdrew from employment is inconsistent with the finding that petitioner ****434** *****694** continued representation when she knew she did not have sufficient time to perform competently.

We conclude that the evidence is sufficient to support the findings that petitioner failed to perform legal services competently and continued representation though she knew she did not have the time to perform competently, in violation of former rules 6–101(A)(1) and 6–101(B)(1), respectively. But the evidence is insufficient to support the finding that petitioner withdrew from employment without taking steps to avoid prejudice to her client, in violation of former rule 2–111(A)(2).

4. *Challenged Findings in Aggravation*

As will be recalled, the court reporter's notes of the trial were destroyed some three years after trial and six months after successor counsel had taken over McKnight's case. In aggravation, the review department found that petitioner "did not protect the trial record of her client's case nor did she advise the client that the record might be destroyed by the court reporter some three years after trial, in the normal course of events, thus precluding her client's ability to preserve the record if necessary." The review department further concluded that petitioner's failure to take steps to protect the record caused her client significant financial harm.

Petitioner contends that in light of the court reporter's duty to preserve trial notes, this conclusion cannot stand. We agree. Government Code section 69955, subdivision (d) provides that no court reporter or court clerk may destroy reporting notes until five years after the notes are taken, and then only upon court order. The notes were prematurely destroyed, contrary to the provisions of the Government Code. Petitioner

had no responsibility for this act, and it cannot serve as a factor in aggravation.

The review department further found in aggravation that although petitioner attended the first four hearing sessions in this matter, she did not attend the remaining four sessions. Noting that petitioner was called as a witness and examined by the State Bar, and then cross-examined by her own ***784** counsel, the review department concluded that petitioner's failure to appear deprived the State Bar of the opportunity to further examine petitioner.

Petitioner contends this factor in aggravation is also improper. Petitioner appeared through counsel at all hearing sessions. Although an accused attorney must initially appear and answer the accusation (Bus. & Prof.Code, § 6111), there is no absolute obligation for attorneys to be personally present at all sessions of a disciplinary hearing. (See *Hawk v. State Bar* (1988) 45 Cal.3d 589, 597, 247 Cal.Rptr. 599, 754 P.2d 1096.) The State Bar could have issued a subpoena compelling petitioner's presence for the purpose of redirect examination (Bus. & Prof.Code, § 6049, subd. (a)(3)), but did not. Petitioner's brief explains that she was not present because she practiced and lived in Fresno, a considerable distance from the hearing site in San Francisco, and attending further hearing sessions would have caused financial hardship. The review department's findings on this matter are contradictory; although it found petitioner's failure to be present to be an aggravating circumstance, the review department also stated it was "unaware of [petitioner] being uncooperative with the State Bar." We conclude that the review department erred in finding petitioner's absence from some of the hearing sessions was an aggravating circumstance.

5. *Appropriate Discipline*

We accord great weight to the disciplinary recommendation of the review department. (*Hartford v. State Bar* (1990) 50 Cal.3d 1139, 1154, 270 Cal.Rptr. 12, 791 P.2d 598.) Petitioner bears the burden of demonstrating that the recommended discipline is erroneous or unlawful. (*In re Abbott* (1977) 19 Cal.3d 249, 253, 137 Cal.Rptr. 195, 561 P.2d 285.) But we exercise our independent judgment in deciding appropriate discipline (*Howard v. State Bar* (1990) 51 Cal.3d 215, 220, 270 Cal.Rptr. 856, 793 P.2d 62), considering all relevant aggravating and mitigating circumstances (*Waysman* ****435 ***695** *v. State Bar* (1986) 41 Cal.3d 452, 457, 224 Cal.Rptr. 101, 714 P.2d 1239).

Significant harm to a client is an accepted factor in aggravation. (Rules Proc. of State Bar, div. V, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iv).) The review department found that petitioner's misconduct significantly harmed McKnight both financially and emotionally. The finding of financial harm was based on the destruction of the reporter's notes. Yet, as we have seen, the destruction of the reporter's notes, which resulted in the settlement of McKnight's suit against Commercial Union for less than might otherwise have been realized, cannot be attributed to petitioner. Moreover, although McKnight's efforts to communicate with PETITIONER ***785** after trial were no doubt frustrating, the record does not show that McKnight suffered legally cognizable emotional harm as a consequence of petitioner's failure to adequately communicate. No evidence was presented, for example, that McKnight sought therapy or counseling of any sort, or experienced any unusual symptoms of stress.

The existence of a prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, div. V, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b)(i), 1.7.) Petitioner has a prior record of discipline; in July 1990, this court suspended her for 90 days for misconduct in a matter arising from her failure to perfect a mechanic's lien. The misconduct in this case was contemporaneous with the misconduct for which petitioner was earlier disciplined. In imposing the earlier discipline, pursuant to a stipulation of the parties we considered as a factor in aggravation the State Bar Court's decision to impose discipline in this case. As the State Bar's counsel acknowledged at oral argument, for this reason it would be inappropriate to consider the earlier discipline as a factor in aggravation in this proceeding. A contrary determination would result in the anomaly that petitioner would suffer the enhancement for two prior incidents of discipline when only one incident could be prior in time to the other.

In mitigation, the review department found that petitioner "is known to be among the few attorneys in her community who regularly are available to represent minorities, women and less favored members of society." In addition, the record in petitioner's prior disciplinary matter shows that petitioner has a substantial record of pro bono activities and community service. We have previously held that service to the community is a mitigating factor that is entitled to "considerable weight." (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799, 239 Cal.Rptr. 111, 739 P.2d 1279.)

Petitioner's misconduct was not insignificant. All attorneys owe a duty to communicate adequately with their clients and to use reasonable speed in accomplishing the purposes for which they were employed. (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 790–791, 263 Cal.Rptr. 660, 781 P.2d 952.) Petitioner's breach of this duty in this case is a cause for discipline including a period of actual suspension. But the review department's recommendation of six months' actual suspension is based in significant part on its erroneous findings that petitioner's conduct was the cause of substantial financial and emotional harm to her client.

Under the circumstances, we conclude that the purposes of attorney discipline would be served by imposing the discipline recommended by the State Bar, with the exception that the period of actual suspension be 60 days instead of 6 months. This discipline is proportionate to the misconduct and ***786** consistent with standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, div. V). That standard provides: "Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."

DISPOSITION

We order that Cynthia S. Calvert be suspended from the practice of law for three ****436** *****696** years, that execution of the suspension order be stayed, and that she be placed on probation for one year on all the conditions of probation adopted by the review department at its September 14, 1989 meeting, except that petitioner shall be actually suspended from the practice of law for only the first sixty days of the probationary period. The period of probation shall run concurrently with the probation previously imposed in case No. S015180. The period of actual suspension shall commence upon finality of decision, and shall be consecutive to the period of actual suspension imposed in case No. S015180. Costs are awarded to the State Bar.

This order is effective upon finality of this decision in this court. (See Cal. Rules of Court, rule 953(a).)

All Citations

54 Cal.3d 765, 819 P.2d 424, 1 Cal.Rptr.2d 684

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48 Cal.4th 131
Supreme Court of California

CONSERVATORSHIP OF the PERSON of JOHN L.
San Diego County Health and Human
Services Agency, Petitioner and Respondent,
v.
John L., Objector and Appellant.

No. S157151.
|
Feb. 25, 2010.

Synopsis

Background: Public conservator filed ex parte petition for appointment of conservator under Lanterman-Petris-Short (LPS) Act for gravely disabled person. After excusing proposed conservatee's absence from hearing, the Superior Court, San Diego County, No. MH99550, Kerry Wells, J., entered judgment establishing conservatorship. Conservatee appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Baxter, J., held that:

appointed counsel had authority under LPS Act to communicate proposed conservatee's waiver of his statutory right to be present at hearing, and

trial court's finding that conservatee waived his rights to presence and trial did not violate due process.

Affirmed.

Opinion, 65 Cal.Rptr.3d 393, superseded.

Attorneys and Law Firms

*****427** Linda M. Fabian, San Diego, under appointment by the Supreme Court, for Objector and Appellant.

Morten P. Cohen for California Association of Mental Health Patients' Rights Advocates as Amicus Curiae on behalf of Objector and Appellant.

Anne E. Menasche for Protection & Advocacy, Inc., as Amicus Curiae on behalf of Objector and Appellant.

John J. Sansome, County Counsel, Leonard W. Pollard II and William A. Johnson, Jr., Deputy County Counsel, for Petitioner and Respondent.

Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Petitioner and Respondent.

Opinion

BAXTER, J.

***139** ****557** At a hearing on April 4, 2006, the superior court considered a petition to establish a conservatorship of the person of John L. pursuant to the Lanterman–Petris–Short Act (LPS Act or Act; Welf. & Inst.Code, § 5000 et seq.). [1] A report prepared by a conservatorship investigator the month before the hearing stated that John "made it clear" he did not want a conservator and did not need any assistance. At the hearing, however, John's appointed attorney informed the court that John did not want to be present in court and was not contesting the conservatorship. Relying on the attorney's representations, the court excused John's presence, granted the petition, and appointed the *****428** Public Conservator of San Diego County as conservator of John's person. We conclude the superior court did not commit any statutory or due process violation in doing so. We therefore affirm the judgment of the Court of Appeal.

1 Unless otherwise indicated, all further statutory references are to this code.

****558 FACTUAL AND PROCEDURAL BACKGROUND

The LPS Act authorizes the superior court to establish a conservatorship of a person who is gravely disabled as a result of a mental disorder. (§§ 5350, 5008, subd. (h)(1).) Here, the Public Conservator of San Diego County (Public Conservator) sought to establish an LPS conservatorship of the person of 60–year-old John L. The relevant facts, all of which occurred in 2006, are undisputed.

***140** On February 15, John was taken to an emergency psychiatric unit in San Diego on an involuntary basis. He was yelling and screaming and unable to provide a

chief complaint. Later that day, John was transferred to the behavioral health unit at Palomar Hospital, under the care of Dr. Christopher Gorman. During John's stay, he was described as extremely manic, grandiose, nondirectable, intrusive, manipulative, and having poor boundaries. He refused antipsychotic medication until February 22, when a court-appointed hearing officer found that he lacked the capacity to withhold his consent on the matter. (See *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 271 Cal.Rptr. 199.)

On February 24, Dr. Gorman executed a declaration recommending a conservatorship based on his belief that John was gravely disabled as a result of a mental disorder, diagnosed as "Bipolar Disorder, manic [with] psychotic features." (§ 5352.1.) He cited the circumstances that John had been evicted from his apartment, and that while residing at Palomar Hospital he took food from other patients' trays, barricaded the door to his room (which required fire department intervention), often walked around with his shirt open, and had attempted to leave his room one night naked from the waist down. Although Dr. Gorman considered other alternatives to conservatorship, he found no suitable alternative available for John.

Dr. Gorman executed a second declaration stating he had informed John that a recommendation for conservatorship of the person was being filed with the court, and that a petition for appointment of a conservator also might be filed. He explained to John what the appointment of a conservator meant and identified the possible orders that could result from a hearing on the petition. He also informed John of his rights to be present at the hearing, to hire an attorney of his choice or to have one appointed for him, to demand a court or jury trial on the issue of grave disability, to confront and cross-examine witnesses, and to produce witnesses in opposition to the petition.

On March 7, the Public Conservator filed an "Ex Parte Petition for Appointment of Temporary Conservator and Conservator of the Person" for John (the petition), along with Dr. Gorman's two declarations. (§§ 5350, 5352.) That same day, the court appointed the Public Conservator as temporary conservator. (§ 5352.1.)

On March 17, a "Citation for Conservatorship" was issued, notifying John he was required to appear at a hearing on April 4, at which time the court would determine whether to appoint the Public Conservator as a conservator of his person. (§ 5350; Prob.Code, § 1823.) The temporary conservator filed a "Conservatorship Investigation Report" (the investigation report), prepared by investigator Candy Elson of the Public Conservator's office, which ***141** recommended that a conservatorship be *****429** established to ensure John would obtain necessary mental health treatment. (§ 5354.) The investigation report summarized John's lengthy history of mental illness dating back to the early 1960's and noted both his previous diagnosis of schizophrenia and his current diagnosis as "Bipolar Manic with Psychosis." The report recounted that John had numerous past involuntary hospitalizations with a long history of medication noncompliance, a significant history of violent, agitated, and obstreperous behavior when hospitalized, and an "extremely turbulent" present course at Palomar Hospital.

The investigation report additionally described investigator Elson's meeting with John at Palomar Hospital on March 3. According to Elson, John appeared somewhat subdued and sedated, and also was "religiously preoccupied" and delusional. John, however, "made it clear that he did not want a Conservator and thought that he did not need any assistance." The report concluded ****559** there was no viable alternative to conservatorship, and recommended "a closed, locked facility" as "the least restrictive, most appropriate placement to meet [John's] needs." (§ 5354.)

John was personally served with the petition and citation for conservatorship. His appointed counsel, Lidia Garcia, was served with the petition, the investigation report, and notice of the April 4 hearing for the appointment of the Public Conservator as a conservator of the person for John.

John did not attend the April 4 hearing. As relevant here, Garcia appeared at the hearing on John's behalf and reported to the court, "Your [H]onor, I have visited with him at Telecare Choices. Recently he was here. He had requested a writ which he took off calendar. At any rate Mr. L[.] is doing much better. [¶] We discussed the conservatorship and on Friday then he wished to put it over until yesterday so that he could think about it. When we met he indicated that at this time he was not contesting the conservatorship. He did not want to be present in court. So we would ask the court to excuse his presence."

After excusing John's presence from the hearing, the superior court received the investigation report into evidence. (§ 5354.) It then ordered the appointment of the Public Conservator as conservator of the person of John and further ordered that John not be permitted to vote or contract, to

possess a driver's license or a firearm, or to refuse or consent to medical treatment. Consistent with the investigation report's recommendation, the court determined that the least restrictive placement available and necessary for John was a closed, locked treatment facility.

On appeal, John contended his rights under the LPS Act, as well as his state and federal constitutional due process rights, were violated when the ***142** superior court proceeded with the April 4 conservatorship hearing in his absence and ordered the conservatorship without any admissible evidence that he knowingly and intelligently waived his right to appear at the hearing. The Court of Appeal affirmed. [2]

2 John's conservatorship ended during the pendency of the appellate process. "We exercise our discretion to decide this otherwise moot case because it raises important issues that are capable of repetition but likely to evade review." (*In re Lemanuel C.* (2007) 41 Cal.4th 33, 38, fn. 4, 58 Cal.Rptr.3d 597, 158 P.3d 148; see *Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1011, fn. 5, 36 Cal.Rptr.2d 40, 884 P.2d 988.)

DISCUSSION

The central issue is whether the superior court properly proceeded with the April *****430** 4, 2006, hearing on the petition to establish a conservatorship of the person in John's absence. It bears emphasis that, before his appeal, John raised no objection to the court's actions; in fact, it is undisputed he told his appointed attorney he was not contesting the proposed conservatorship and did not wish to appear at the hearing. The court excused John's presence and appointed a conservator only after hearing the attorney's representations on the matter.

We first review the requirements of the LPS Act to determine whether a violation occurred when the superior court excused John's absence based upon his appointed counsel's representations. If no statutory violation appears, we must then determine if the court nonetheless deprived John of due process in establishing the conservatorship as it did. These are legal issues subject to de novo review. (See *Smith v. Rae–Venter Law Group* (2002) 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367; *Conservatorship of Christopher A.* (2006) 139 Cal.App.4th 604, 610, 43 Cal.Rptr.3d 427.)

A. The LPS Act

The LPS Act governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled. (§ 5150 et seq.) The Act authorizes the superior court to appoint a conservator of the person for one who is determined to be gravely disabled (§ 5350 et seq.), so that he or she may receive individualized treatment, supervision, and placement (§ 5350.1). As defined by the Act, a person is "gravely disabled" if, as a ****560** result of a mental disorder, the person "is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).)

Integral to the LPS Act is its procedure for ascertaining whether a conservatorship of the person should be established. Each county is required ***143** to designate an agency to undertake an investigation to aid the court in determining whether a conservatorship is appropriate (§ 5351), and the investigating officer must submit a comprehensive written report to the court prior to the conservatorship hearing (§ 5354). The written report must include "all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and information obtained from the person's family members, close friends, social worker or principal therapist." (*Ibid.*) It must also state whether the investigator recommends a conservatorship and, if not, identify all available alternatives. (*Ibid.*) When a conservatorship is recommended, the report must make recommendations concerning a suitable conservator, the powers and duties to be granted and imposed upon the conservator, the legal disabilities to be imposed upon the proposed conservatee, and the appropriate placement. (§§ 5355, 5356.)

The procedures for establishing a conservatorship include a number of requirements pertaining to notice, hearing and trial rights, and other matters. Specifically, the petition for appointment of a conservator of the person and the citation for conservatorship must be served upon the proposed conservatee at least 15 days before the scheduled hearing date, and the proposed conservatee must be given notice of the privileges and rights subject to deprivation as part of the conservatorship. (§ 5350; Prob.Code, §§ 1823, 1824.) A hearing must be held within 30 days of the date of the petition, and the court must "appoint the public defender or other attorney for the ... proposed conservatee within five days after the date of the petition." (§ 5365.) The proposed conservatee *****431** "shall have the right to demand a court or jury trial on the issue whether he or she is gravely disabled," but must

do so before or within five days following the hearing on the conservatorship petition. (§ 5350, subd. (d).) The party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt, and a jury verdict finding such disability must be unanimous. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235, 152 Cal.Rptr. 425, 590 P.2d 1.) An LPS conservatorship automatically terminates after one year, and reappointment of the conservator must be sought by petition. (§ 5361.)

To determine whether the superior court violated the LPS Act when it proceeded with the April 4, 2006, hearing in John's absence, we must first find what the Act requires. In construing the Act, our goal is to ascertain and effectuate the Legislature's intent. (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 666, 94 Cal.Rptr.3d 685, 208 P.3d 623; *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559.)

We start by observing that the LPS Act makes no express mention of any specific requirement for the presence of a proposed conservatee at a ***144** hearing to establish a conservatorship of the person. Section 5350, however, mandates that LPS conservatorships shall be established pursuant to the procedure set forth in the Probate Code, subject to certain listed exceptions. As pertinent here: "The procedure for establishing ... a conservatorship under this chapter shall be the same as that provided in Division 4 ... of the Probate Code, *except as follows:* [¶] ... [¶] (f) Conservatorship investigation shall be conducted pursuant to this part and shall not be subject to Section 1826 ... of the Probate Code. [¶] ... [¶] (h) As otherwise provided in this chapter." (§ 5350, italics added.) In turn, division 4 of the Probate Code embodies the Guardianship–Conservatorship Law (Prob.Code, § 1400 et seq.), a separate statutory scheme governing the appointment of conservators of the person for "adults who for any reason are incapable of taking care of themselves." (38 Cal.Jur.3d (2006) Incompetent Persons, § 3, p. 180.) [3]

[3] Henceforth, this opinion will refer to conservatorships established pursuant to the Guardianship–Conservatorship Law as probate conservatorships.

****561** Before delving into the relevant Probate Code procedures, we briefly review some important distinctions between LPS conservatorships and probate conservatorships. Unlike an LPS conservatorship, a probate conservatorship does not depend on a showing of grave disability resulting from a mental disorder, and involuntary commitment is not contemplated. (See generally 38 Cal.Jur.3d, *supra,* Incompetent Persons, § 3, p. 180.) While LPS conservatorship proceedings may be initiated only by the agency-designated conservatorship investigator (§ 5352), the proposed conservatee, spouse, domestic partner, relative, or other "interested" agency, person, or friend has standing to file a petition for a probate conservatorship (Prob.Code, § 1820, subd. (a)). Finally, the court need not appoint counsel in all proceedings to establish a probate conservatorship because, unlike the situation in LPS conservatorships, there is no risk of involuntary commitment. [4] But because *****432** the person seeking the probate conservatorship may or may not be acting free of ulterior motives, the court generally must appoint a "court investigator" to perform an independent and comprehensive investigation. (Prob.Code, § 1454; Prob.Code, § 1826 [providing exception in subd. (*o*) when the proposed conservatee personally executes the petition or nominates the conservator, and attends the hearing].) [5]

[4] In contrast to LPS procedures, appointment of counsel in a probate conservatorship proceeding is mandatory only if the proposed conservatee requests counsel, or if the court determines, based on information contained in the court investigator's report or obtained from any other source, that the appointment would be helpful to the resolution of the matter or is necessary to protect the proposed conservatee's interests. (Prob.Code, § 1471, subds. (a), (b).)

[5] The individual appointed as the "court investigator" may not have a personal or other beneficial interest in the proceeding (Prob.Code, § 1454, subd. (a)), and must have the following qualifications: "(1) The training or experience, or both, necessary (i) to make the investigation required under this division, (ii) to communicate with, assess, and deal with persons who are or may be the subject of proceedings under this division, and (iii) to perform the other duties required of a court investigator. [¶] (2) A demonstrated sufficient knowledge of law so as to be able to inform conservatees and proposed conservatees of the nature and effect of a conservatorship proceeding and of their rights, to answer their questions, and

to inform conservators concerning their powers and duties." (Prob.Code, § 1454, subd. (b).)

***145** We now return to section 5350, requiring that the conservatorship procedures set forth in division 4 of the Probate Code be followed in establishing LPS conservatorships where they do not conflict with LPS Act provisions. As relevant here, division 4 contains Probate Code section 1825, which provides that "[t]he proposed conservatee shall be produced" at the hearing to establish a conservatorship, subject to three exceptions. We are concerned with the exception set forth in subdivision (a)(3) of that section (Probate Code section 1825(a)(3)), providing that a proposed conservatee may be excused from attending the hearing if he expressly informs the "court investigator" that he is unwilling to attend and does not contest the conservatorship or oppose the proposed conservator.[6] To aid in the operation of Probate Code section 1825, Probate Code section 1826 requires the court investigator to interview the proposed probate conservatee personally, to provide relevant information regarding the hearing to establish a conservatorship and the proposed conservatee's rights, to determine the individual's inability or unwillingness ****562** to attend the hearing and desire to contest the establishment of the conservatorship or appointment of the proposed conservator, and to report the investigator's determinations to the court. (Prob.Code, § 1826, subds. (c), (e), (f), (k).)[7] The Probate *****433** Code's mechanism for excusing a proposed ***146** conservatee's production and attendance through a court investigator promotes the dual legislative goals of minimizing the individual's unwanted court appearances, while guarding against abuse of the conservatorship process by ensuring the individual actually wants to forgo attendance and opposition to the proposed conservatorship.

6 Probate Code section 1825, subdivision (a), requires that the proposed conservatee "be produced" at the hearing to establish a probate conservatorship, "except in the following cases: [¶] (1) Where the proposed conservatee is out of the state when served and is not the petitioner. [¶] (2) Where the proposed conservatee is unable to attend the hearing by reason of medical inability. [¶] (3) Where the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing." This case does not implicate the first two statutory exceptions, pertaining to proposed conservatees who are out of state and those who are unable to attend the hearing because of medical inability. (§ 1825, subd. (a)(1), (2).)

7 Probate Code section 1826 provides in pertinent part that, regardless of whether the proposed conservatee attends the hearing, the court investigator shall interview the proposed conservatee personally (*id.,* subd. (a)); inform the proposed conservatee of the nature, purpose, and effect of the proceeding, and of the right to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel, and to have legal counsel appointed by the court if the proposed conservatee is unable to retain counsel (*id.,* subd. (b)); determine whether it appears the proposed conservatee is unable or unwilling to attend the hearing (*id.,* subd. (c)); determine whether the proposed conservatee wishes to contest the establishment of the conservatorship (*id.,* subd. (e)); determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator (*id.,* subd. (f)) and whether the proposed conservatee wishes to be represented by legal counsel and desires appointment of legal counsel (*id.,* subds. (g), (i)); determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the proposed conservatee's interests in any case where the proposed conservatee does not plan to retain legal counsel and has not requested appointment of counsel (*id.,* subd. (j)); and report to the court in writing "[w]hether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator" (*id.,* subd. (k)(2)).

In determining whether and to what extent the procedures set forth in Probate Code section 1825 apply to LPS conservatorship proceedings, we must give effect to Welfare and Institutions Code section 5350's explicit command

that the procedure for establishing LPS conservatorships shall be the same as that provided for establishing probate conservatorships, except that "[c]onservatorship investigation shall be conducted pursuant to [the LPS Act] and shall not be subject to [Probate Code] Section 1826." (§ 5350, subd. (f).) The quoted language is critical for, as noted above, the Probate Code contemplates the use of a court-appointed investigator to conduct an independent investigation into whether a conservatorship should be established, and, in particular, Probate Code section 1826 requires the court investigator to interview the proposed conservatee in order to ascertain and report the information necessary to trigger the application of Probate Code section 1825(a)(3). (Prob.Code, § 1826, subds. (c), (e), (f), (k).) By contrast, the agency-designated official charged with conducting a conservatorship investigation in an LPS proceeding has none of the duties specified in Probate Code section 1826 (see *ante,* fn. 7), and in particular has no obligation to investigate or report on the proposed conservatee's unwillingness to attend the hearing or nonopposition to the conservatorship. (See Welf. & Inst.Code, §§ 5354, 5356.)

In order to give effect to Welfare and Institutions Code section 5350's mandate that LPS conservatorships be established pursuant to the same procedure used to establish probate conservatorships where there is no conflict between the two schemes, we hold that Probate Code section 1825(a)(3) 's procedure pertaining to a proposed conservatee's production and attendance at the hearing must be followed in LPS cases, with one exception. That exception, rooted in section 5350, subdivision (f), effectively bars the authorization and use of a court-appointed investigator to convey the desire of a proposed conservatee not to appear at a hearing. Section 5350's prohibition on the use of court investigators, however, does not foreclose using other procedures generally applicable in civil proceedings, namely, Code of Civil Procedure section 283, subdivision 1, which permits an attorney to ***147** make binding representations in court on behalf *****434** of her client. Indeed, as we explain below, construing ****563** the LPS Act to permit counsel for proposed LPS conservatees to seek excusal of their clients' presence is logical and furthers the purposes of the Act.

In providing that the procedure set forth in division 4 of the Probate Code shall apply in establishing LPS conservatorships absent a statutory conflict, Welfare and Institutions Code section 5350 plainly requires the operation of Probate Code section 1827, which provides in full: "The court shall hear and determine the matter of the establishment of the conservatorship *according to the law and procedure relating to the trial of civil actions,* including trial by jury if demanded by the proposed conservatee." (Italics added.) While proceedings under the LPS Act are already commonly viewed as being civil in nature (e.g., *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 537, 53 Cal.Rptr.3d 856, 150 P.3d 738 (*Ben C.*)), Probate Code section 1827 makes it all the more clear that the laws of civil procedure apply in LPS conservatorship proceedings. (See *Conservatorship of Maldonado* (1985) 173 Cal.App.3d 144, 148, 218 Cal.Rptr. 796.)

Of significance here is Code of Civil Procedure section 283, subdivision 1, which prescribes the manner in which an attorney may bind her client in a civil proceeding. (See *City of Fresno v. Baboian* (1975) 52 Cal.App.3d 753, 757, 125 Cal.Rptr. 332.) Under that statute, an attorney "shall have authority" to "bind [her] client in any of the steps of an action or proceeding by [her] agreement filed with the Clerk, or entered upon the minutes of the Court." (Code Civ. Proc., § 283, subd. 1.) In view of Welfare and Institutions Code section 5350, Probate Code section 1827, and Code of Civil Procedure section 283, subdivision 1, we hold that a client who tells his appointed attorney he is unwilling to attend the hearing and does not wish to contest a proposed LPS conservatorship may reasonably expect his attorney to report such information to the court, with binding effect. (See *Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265, 271, 285 Cal.Rptr. 618 (*Mary K.*); *Conservatorship of Maldonado, supra,* 173 Cal.App.3d at p. 148, 218 Cal.Rptr. 796.) [8]

8 We express no opinion on the situation where an appointed attorney seeks to excuse her client's presence at the hearing without the client's consent or over the client's objection.

Although Probate Code section 1825 speaks in terms of requiring that a proposed conservatee "be produced" at the hearing unless one of three exceptions is shown, John suggests the provision is properly understood as conferring a "right" upon a proposed conservatee to attend the hearing. (Cf.Prob. Code, § 1823, subd. (b)(5).) John's interpretation of the statute, however, does not support a different outcome. Even assuming Probate Code section 1825 grants such a right of attendance, the right is of legislative origin ***148** and not a constitutional right. When a statutory right in a civil commitment scheme is at issue, the proposed conservatee may waive the right through counsel if no

statutory prohibition exists. (E.g., *People v. Rowell* (2005) 133 Cal.App.4th 447, 452–454, 34 Cal.Rptr.3d 843 [in sexually violent predator recommitment proceeding, trial court properly accepted counsel's representation that client wanted court trial instead of jury trial]; *Mary K., supra,* 234 Cal.App.3d at p. 271, 285 Cal.Rptr. 618.) Our review of the LPS Act discloses no provision purporting to bar a proposed conservatee's reliance on counsel to convey to the court a waiver of the right to attend a hearing to establish an LPS conservatorship. [9]

9 John also suggests the term "court investigator," as used in Probate Code sections 1825 and 1826, may include persons, such as investigator Candy Elson in the instant case, who conduct conservatorship investigations in LPS proceedings. Starting from this premise, he contends that Elson's investigation report did not satisfy Probate Code section 1825(a)(3) 's requirement for excusing his production at the April 4 hearing because it indicated he was opposed to the conservatorship. These contentions are lacking in merit. First, we have already explained that an agency-appointed LPS conservatorship investigator has no obligation to investigate or report on the matters addressed in Probate Code section 1825(a)(3). Second, the LPS Act, properly construed, allowed John to obtain court excusal of his production through his attorney. Third, although John evidently told Elson in early March that he was opposed to a conservatorship, there is no dispute he told his attorney otherwise shortly before the April 4 hearing.

****564** *****435** Moreover, allowing a proposed LPS conservatee to communicate such matters through counsel is substantially consistent with the procedure applicable in probate conservatorships, without posing any conflict with LPS Act provisions. As indicated above, Probate Code section 1825(a)(3) contemplates that a person who has no objection to a proposed conservatorship or conservator and no desire to attend the hearing may have his production at the hearing excused after informing the court of his views through a court investigator, i.e., one who has "demonstrated sufficient knowledge of law so as to be able to inform ... proposed conservatees of the nature and effect of a conservatorship proceeding and of their rights, [and] to answer their questions." (Prob.Code, § 1454, subd. (b)(2); see *ante,* fn. 5.) Our interpretation of the LPS Act allows a person who has no objection to a proposed LPS conservatorship, and no desire to attend the hearing, to similarly have his production excused when he has communicated his wishes to the court through an advocate who is professionally obligated to perform these same advisory duties. Permitting counsel to serve this function is only logical, and satisfies the Legislature's intent both to safeguard the rights of proposed conservatees and "to minimize, when appropriate and warranted, actual court appearances" in proceedings to establish a conservatorship. (*Conservatorship of Moore* (1986) 185 Cal.App.3d 718, 731, 229 Cal.Rptr. 875 (*Moore*).) [10]

10 Relying on an unenacted bill that he claims was "later revised and became" the bill that was enacted as a predecessor of Probate Code section 1825, John contends the Legislature considered, but later rejected, a provision that would have allowed the proposed conservatee's attorney to waive presence at the probate conservatorship hearing. (Assem. Bill No. 4260 (1973–1974 Reg. Sess.) § 17; see Assem. Com. on Judiciary, Dig. of Assem. Bill No. 4260 (1973–1974 Reg. Sess.) p. 2.) Even assuming the unenacted bill may be considered a part of the legislative history of Probate Code section 1825, we reject John's suggestion that the Legislature's action (or inaction) evinces an intent to preclude attorney waivers of presence.

The unenacted bill reflects that, prior to the time the Probate Code provided authority for court investigators in 1976, the Legislature considered a provision requiring appointment of counsel in all proceedings to establish a probate conservatorship. (Assem. Bill No. 4260 (1973–1974 Reg. Sess.) § 17; see Assem. Com. on Judiciary, Dig. of Assem. Bill No. 4260 (1973–1974 Reg. Sess.) p. 2; cf. Stats. 1976, ch. 1357, § 7, p. 6184; Assem. Com. on Judiciary, Dig. of Assem. Bill No. 1417 (1975–1976 Reg. Sess.) as amended May 15, 1975, p. 3.) But because the Legislature decided not to mandate counsel in all such proceedings, its decision to forgo the accompanying provision for waivers through counsel is hardly surprising.

***149** In this case, John's appointed attorney, Lidia Garcia, informed the superior court at the April 4 hearing that she had discussed the conservatorship with John, and that John indicated to her (1) "at this *****436** time he was not contesting the conservatorship" and (2) he "did not

want to be present in court." There is no suggestion that Garcia misrepresented what John told her or that she lacked actual authority to waive John's presence on his behalf. (See *Conservatorship of Maldonado, supra,* 173 Cal.App.3d at p. 148, 218 Cal.Rptr. 796.) Garcia's conveyance of John's stated desire to absent himself from the hearing was duly entered upon the minutes of the court, and was thus effective to bind John. (§ 5350; Prob.Code, § 1827; Code Civ. Proc., § 283, subd. 1.) The superior court did not violate the LPS Act when it excused John's production and proceeded with the April 4 hearing without him in attendance.

B. Due Process

Because a conservatorship may result in an involuntary civil commitment, John contends that the interests involved in conservatorship proceedings are no less fundamental than those at stake in criminal proceedings, and that therefore many of the due process safeguards against the erroneous deprivation of liberty in the criminal context—such as the right to a hearing, the right to trial, and the right to confront witnesses—are equally important and apply in the conservatorship context. John claims he was denied due process because the superior court found he waived these fundamental rights, without any showing his waiver was valid. More specifically, although John does not dispute that his attorney accurately informed the court he did not want to attend the hearing or contest the conservatorship, he argues that the court improperly relied on the attorney's unsworn statements without ****565** asking her any questions to determine whether he was capable of providing, and had provided, a knowing and intelligent waiver of his rights. (See *Thorn v. Superior Court* (1970) 1 Cal.3d 666, 675, 83 Cal.Rptr. 600, 464 P.2d 56 (*Thorn*) [absent the patient's understanding "of the nature of his detention and ***150** of his rights, it is difficult to perceive how he could knowingly decide whether or not to exercise them"].)

" 'The question of whether due process has obtained can only be answered by scrutinizing the circumstances in which the deprivatory action arose. [Citations.] "Because of the broad spectrum of concerns to which the term must apply, flexibility is necessary to gear the process to the particular need; the quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error. [Citation.]" ' [Citation.]" (*Conservatorship of Tian L.* (2007) 149 Cal.App.4th 1022, 1028, 57 Cal.Rptr.3d 382.) In conservatorship cases, we balance three factors to determine whether a particular procedure or absence of a procedure violates due process: the private interests at stake, the state or public interests, and the risk that the procedure or its absence will lead to erroneous decisions. (*Ben C., supra,* 40 Cal.4th at pp. 538–539, 53 Cal.Rptr.3d 856, 150 P.3d 738 [relying on *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 and *In re Sade C.* (1996) 13 Cal.4th 952, 55 Cal.Rptr.2d 771, 920 P.2d 716].) We also consider " 'the availability of prompt remedial measures.' " (*Thorn, supra,* 1 Cal.3d at p. 673, 83 Cal.Rptr. 600, 464 P.2d 56.)

There can be no doubt that "[t]he liberty interests at stake in [an LPS] conservatorship proceeding are significant. A person found to be gravely disabled may be involuntarily confined for up to one year, and the conservatorship may be extended for additional one-year periods, so long as the person remains gravely disabled." *****437** (*Ben C., supra,* 40 Cal.4th at p. 540, 53 Cal.Rptr.3d 856, 150 P.3d 738.) In addition to such confinement, a conservatorship may result in the loss of other personal rights, including driving privileges, contracting and voting rights, and the right to refuse or consent to medical treatment. (See *ibid.;* § 5357.) A person also has a reputational interest in not being improperly or unfairly stigmatized. (See *Conservatorship of Roulet, supra,* 23 Cal.3d at pp. 228–230, 152 Cal.Rptr. 425, 590 P.2d 1.)

Likewise, there is no question that the public interests promoted by the LPS Act are substantial. The goals of the Act include " 'ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program. (§ 5001.)' [Citation.] The Act also serves to protect the mentally ill from criminal victimization (§ 5001, subd. (g)) and from the myriad forms of suffering endured by those unable to care for themselves." (*Ben C., supra,* 40 Cal.4th at p. 540, 53 Cal.Rptr.3d 856, 150 P.3d 738.)

***151** As much as the private interests at stake are weighty and deserving of protection, the stated purposes of the LPS Act foreclose any argument that an LPS commitment is equivalent to criminal punishment in its design or purpose. Because of their differing objectives, "the analogy between criminal proceedings and proceedings under the LPS Act is imperfect at best and ... not all of the safeguards required in the former are appropriate to the latter." (*Ben C., supra,* 40 Cal.4th at p. 538, 53 Cal.Rptr.3d 856, 150 P.3d 738 [declining

to require *Anders/ Wende* procedures in LPS conservatorship appeals]; see *Conservatorship of Susan T., supra,* 8 Cal.4th at p. 1020, 36 Cal.Rptr.2d 40, 884 P.2d 988 [exclusionary rule inapplicable in LPS conservatorship proceedings]; *Conservatorship of Joel E.* (2005) 132 Cal.App.4th 429, 439–440, 33 Cal.Rptr.3d 704 [no constitutional right to self-representation]; *Conservatorship of Bones* (1987) 189 Cal.App.3d 1010, 1015–1016, 234 Cal.Rptr. 724 [no constitutional right not to testify].)

Nonetheless, because the private interests implicated in an LPS conservatorship are ****566** significant, "several layers of important protections" have been built into the system (*Ben C., supra,* 40 Cal.4th at p. 540, 53 Cal.Rptr.3d 856, 150 P.3d 738) to "vigilantly guard[ ] against erroneous conclusions" in such proceedings (*id.* at p. 542, 53 Cal.Rptr.3d 856, 150 P.3d 738). For starters, the LPS Act provides for a "carefully calibrated series of temporary detentions for evaluation and treatment" before a person may be found to be gravely disabled and subject to a year-long commitment. (*Ben C.,* at p. 541, 53 Cal.Rptr.3d 856, 150 P.3d 738.) The process begins with an initial 72–hour detention for evaluation and treatment (§ 5150), which may be extended by certification for 14 days of intensive treatment (§ 5250) and is subject to additional extension periods of detention and involuntary commitment when further intensive treatment is found necessary (e.g., §§ 5270.15, 5300).

Moreover, a number of notice requirements must be satisfied before a conservatorship may be imposed. The proposed conservatee must be advised of the right to a hearing, the right to representation of counsel, and the right to demand a court or jury trial. (§§ 5350, 5365; Prob.Code, § 1823; *In re Gandolfo* (1984) 36 Cal.3d 889, 897 & fn. 3, 206 Cal.Rptr. 149, 686 P.2d 669.) Additionally, the proposed conservatee is entitled to service of the conservatorship *****438** petition and the citation for conservatorship at least 15 days before the specified hearing date (§ 5350; Prob.Code, § 1824), as well as notice of the privileges and rights subject to deprivation as part of the conservatorship and a copy of the conservatorship investigation report (§§ 5350, 5356; Prob.Code, § 1823).

Another important protection is the requirement that the court appoint an attorney for the proposed LPS conservatee within five days after the date of the petition. (§ 5365.) Like all lawyers, the court-appointed attorney is obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his ***152** behalf. (Bus. & Prof.Code, § 6068, subd. (c); *Conservatorship of David L.* (2008) 164 Cal.App.4th 701, 710, 79 Cal.Rptr.3d 530 [a proposed LPS conservatee has a statutory right to effective assistance of counsel]; *Conservatorship of Benevenuto* (1986) 180 Cal.App.3d 1030, 1037, fn. 6, 226 Cal.Rptr. 33 ["Implicit in the mandatory appointment of counsel is the duty of counsel to perform in an effective and professional manner."]; see *Mary K., supra,* 234 Cal.App.3d at p. 272, 285 Cal.Rptr. 618; *Conservatorship of Ivey* (1986) 186 Cal.App.3d 1559, 1566, 231 Cal.Rptr. 376.) The attorney must also refrain from any act or representation that misleads the court. (Bus. & Prof.Code, § 6068, subd. (d); Rules Prof. Conduct, rule 5–200(B).)

Finally, prompt remedial relief is available through several mechanisms after a conservatorship has been established. As indicated, an LPS conservatorship automatically terminates after one year. (§ 5361.) During this one-year period, the conservatee may twice petition for rehearing as to his status as a conservatee (§ 5364), and need only prove by a preponderance of the evidence at the rehearing that he is no longer gravely disabled. (*Ben C., supra,* 40 Cal.4th at p. 541, 53 Cal.Rptr.3d 856, 150 P.3d 738.) Additionally, the conservatee may twice petition for a hearing to contest the rights denied under section 5357 or the powers granted to the conservator under section 5358. (§ 5358.3.) The availability of these remedial measures "will *ordinarily* insure that any change in the conservatee's condition or other circumstance affecting the appropriateness of the restrictions placed on him is recognized within a reasonable time." (*In re Gandolfo, supra,* 36 Cal.3d at p. 899, 206 Cal.Rptr. 149, 686 P.2d 669.)

We now assess the risk that judicial reliance on an attorney's unsworn statements in court regarding a proposed conservatee's waiver of presence and trial rights will lead to erroneous conservatorship decisions. To aid in our consideration, we find it useful to look to the Court of Appeal's analysis in *Moore, supra,* 185 Cal.App.3d 718, 229 Cal.Rptr. 875, a case addressing a similar due process challenge in the analogous context of a petition to reestablish an LPS conservatorship. In *Moore,* the public conservator had served the petition and all required notices on the conservatee and his appointed attorney. ****567** (See § 5362.) Prior to the noticed hearing date, the attorney filed a sworn declaration stating she had ascertained that the conservatee did not oppose reestablishment of conservatorship and did not request a hearing. On the basis of that declaration and the submitted medical evidence, the superior court followed statutory procedures and, on its own motion and without a formal hearing, reappointed the public conservator and

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reimposed a restriction that the conservatee could not refuse treatment directly bearing on his grave disability. (*Moore,* at p. 724, 229 Cal.Rptr. 875.)

In analyzing the adequacy of the statutory ex parte reestablishment procedures followed by the superior court, *Moore* reviewed ***439** the relevant statutory ***153** notice, hearing, and trial provisions[11] and additionally considered the application of the local rules that directed counsel to inform the court, via a sworn affidavit, if the conservatee had no opposition to the conservator's reappointment. *Moore* determined that not only did the combination of these procedures provide "constitutionally sound safeguards against error," but they affirmatively "welcomed and encouraged [the conservatee's] participation in the conservatorship decision." (*Moore, supra,* 185 Cal.App.3d at p. 730, 229 Cal.Rptr. 875.) Moreover, by ensuring that counsel would inform the court of any nonopposition to the proposed reestablishment, the procedures allowed the conservatee "to avoid a potentially uncomfortable and disruptive court appearance which, in light of his nonopposition to reestablishment, would have likely been brief and pro forma." (*Ibid.*) *Moore* further observed that, even assuming the court acts in error, any "loss of liberty would have arguably been de minimus" because the conservatee could challenge the ex parte reestablishment under statutory provisions (§§ 5362, 5364) or anytime by writ of habeas corpus. (*Moore,* at p. 730, 229 Cal.Rptr. 875; cf. *In re Gandolfo, supra,* 36 Cal.3d at pp. 899–900, 206 Cal.Rptr. 149, 686 P.2d 669 [habeas corpus available only in extraordinary circumstances where the statutory procedures are shown to be inadequate and to result in unreasonable consequences greatly detrimental to conservatee].)

11 The LPS Act provides that the right to demand a court or jury trial on the issue of grave disability also applies in proceedings to reestablish conservatorship. (§ 5350, subd. (d); see § 5362.)

In a passage that speaks to the situation here, *Moore* emphasized the significance of a conservatee's representation by counsel in determining the validity of the conservatee's waiver of a hearing or trial: " 'When counsel is present, a voluntary and intelligent waiver of known rights may properly be inferred from the record, without a specific on-the-record showing as to each right.' " (*Moore, supra,* 185 Cal.App.3d at p. 733, 229 Cal.Rptr. 875.) *Moore* also rejected the contention that conservatees who have been found gravely disabled are unable to knowingly and intelligently waive their right to a hearing. As the decision observed, "conservatees are not, by reason of their conservatorship, automatically considered incompetent, and their ability to knowingly and intelligently waive their hearing rights is a question of fact." (*Id.* at p. 732, 229 Cal.Rptr. 875; see § 5331 ["No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder ..., regardless of whether such evaluation or treatment was voluntarily or involuntarily received."]; *In re Qawi* (2004) 32 Cal.4th 1, 17, 7 Cal.Rptr.3d 780, 81 P.3d 224 [" 'one of the cardinal principles of LPS' " is " 'that mental patients may not be presumed incompetent solely because of their hospitalization' "]; *Riese v. St. Mary's Hospital & Medical Center, supra,* 209 Cal.App.3d at p. 1319, 271 Cal.Rptr. 199 ["LPS recognizes that patients may be involuntarily committed yet nevertheless remain capable of giving informed consent."].)

***154** Returning to the instant case, we reach a conclusion similar to the one obtained in *Moore, supra,* 185 Cal.App.3d 718, 229 Cal.Rptr. 875. When we consider the combination of due process protections that have been built or read into the LPS Act, including the prehearing notice and counsel requirements and the requirement for a comprehensive conservatorship investigation report, as well as ***440** the familiar duties imposed ****568** on counsel in the representation of LPS clients and the availability of remedies after a conservatorship is in place, we have no difficulty concluding that these numerous checks sufficiently guard against the risk of erroneous conservatorship decisions, without the need to impose additional waiver-related requirements. Accordingly, a superior court may properly find a waiver of presence and trial rights when informed by the attorney that the proposed conservatee does not want to attend the hearing to establish the LPS conservatorship and does not oppose the conservatorship. Whether the proposed conservatee has knowingly and intelligently waived his presence and trial rights is a question of fact; it may not be presumed that a person found gravely disabled, or one who has been evaluated or treated for a mental disorder, is incompetent to waive such rights.

Here, John does not deny he informed his appointed attorney, Lidia Garcia, that he did not wish to attend the hearing and did not contest the proposed LPS conservatorship. John claims, however, that Garcia's representations on the matter were contradicted by investigator Elson's report stating that, in their meeting on March 3, John "made it clear that he did not want a Conservator and thought that he did not need any assistance." We disagree. As reported by Garcia and confirmed by court

records, John's actions after his meeting with Elson gave rise to the reasonable implication that his views substantially changed during the month preceding the Tuesday, April 4, 2006, hearing.

At the April 4 hearing, Garcia described the following chronology of events to the superior court. After the March 3 meeting with investigator Elson, John filed a writ petition opposing his detention, and he thereafter appeared in court but decided not to pursue the writ. In this regard, Garcia was referring to events already known to the court. [12] Garcia then explained that she and John discussed the conservatorship, and that on the Friday before the April 4 hearing John wanted more time to think about it. When the two later met, John told Garcia he was not contesting the conservatorship and did not want to be present in court. On this record, the court could reasonably conclude that while John initially opposed a conservatorship when asked ***155** about the subject on March 3, he subsequently changed his mind and decided he no longer wished to contest the conservatorship and did not want to attend the April 4 hearing. [13]

12 The record before us reflects that the judge who handled John's writ petition was the same judge presiding at the April 4 hearing. John's petition, denying he had a mental disorder that rendered him dangerous or gravely disabled, was presented to the court on March 6 and set for hearing the next day. The court issued a writ requiring John's production at the March 7 hearing, and John appeared at the hearing but withdrew the writ petition.

13 On February 22, a court-appointed hearing officer found that John lacked the capacity to withhold his consent to antipsychotic medication. On March 7, John was placed under a temporary conservatorship that restricted his rights to vote and contract, and his right to consent or refuse to consent to medical treatment. Because these circumstances were apparent from the record at the time of the April 4 hearing, John contends the superior court should not have assumed he was capable of knowingly or intelligently waiving his presence and trial rights. We are not persuaded.

As the record indicates, John began taking antipsychotic medication after the hearing officer's February 22 finding. He thus had been on medication for well over a month by the time he met with Garcia shortly before the April 4 hearing. Garcia reported at the hearing that John was "doing much better," and that not only was he able to discuss the conservatorship with her, but he even asked for more time to "think about it" before making a decision. On this record, the court cannot be faulted for accepting the proffered waiver. (See § 5331.)

*****441** John complains the court should not have relied on his attorney's representations because they were not given under oath. We conclude that sworn statements are not necessary in this context. Misrepresenting to the court that a client has no objection to a conservatorship is, among other things, a serious violation of the Business and Professions Code and the State Bar Rules of Professional Conduct. (Bus. & Prof.Code, §§ 6068, subd. (d), 6106; Rules Prof. Conduct, rule 5–200(B).) Because an attorney remains answerable for such misconduct ****569** (Bus. & Prof.Code, §§ 6077, 6100; see *Clark v. Willett* (1868) 35 Cal. 534, 539), there is little to be gained by requiring counsel to submit her statements under oath.

More importantly, the Code of Civil Procedure provides that an attorney "shall have authority" to "bind [her] client in any of the steps of an action or proceeding by [her] agreement ... entered upon the minutes of the Court." (Code Civ. Proc., § 283, subd. 1.) That is exactly what happened here. John told his appointed attorney he did not contest the proposed conservatorship and did not want to attend the hearing. The attorney then informed the court of John's position, which was duly entered upon the court minutes. No more was necessary. (See *Mary K., supra,* 234 Cal.App.3d at p. 271, 285 Cal.Rptr. 618; *Conservatorship of Maldonado, supra,* 173 Cal.App.3d at p. 148, 218 Cal.Rptr. 796.) [14]

14 *People v. Davis* (2005) 36 Cal.4th 510, 31 Cal.Rptr.3d 96, 115 P.3d 417 does not compel otherwise. In *Davis,* we held that an attorney did not effectuate a valid waiver of the defendant's federal and state rights to presence at a pretrial hearing because, even though the attorney informed the court that the defendant was aware of the purpose of the hearing and had decided to waive his presence, the defendant had not submitted a waiver in written form and there was no evidence he understood the right he was waiving and the consequences of doing so. (*Davis,* at pp. 529–532, 31 Cal.Rptr.3d 96, 115 P.3d 417.) That decision, however, involved the federal constitutional right

> to be personally present at a criminal trial (U.S. Const., 6th & 14th Amends.), as well as a statutory right of presence that could not be waived absent the defendant's personal written waiver (Pen.Code, § 977, subd. (b)). As explained above, we find this case to present another of those situations where "the analogy between criminal proceedings and proceedings under the LPS Act is imperfect at best and ... not all of the safeguards required in the former are appropriate to the latter." (*Ben C., supra,* 40 Cal.4th at p. 538, 53 Cal.Rptr.3d 856, 150 P.3d 738.)

***156** Finally, both John and amicus curiae California Association of Mental Health Patients' Rights Advocates contend a proposed LPS conservatee must appear in court in person, or the court must go to him, so the court may observe the individual directly and conduct personal questioning in order to evaluate his capacity and ensure his waivers are intelligent and knowing. We disagree.

We find that the value of requiring an unwilling proposed conservatee to appear before the court is too slight to justify its adoption as part of the conservatorship process. First, although a court's observation of an individual might be useful in some circumstances, an attorney will generally have a more extensive opportunity to confer with her client about his rights and to weigh the client's behavior. (See *Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 288, 139 Cal.Rptr. 357.) Second, compelling a proposed conservatee to appear before the court, irrespective of his stated nonopposition to conservatorship and request to be absent, would effectively *****442** render his right to waive presence and a trial meaningless. Third, mandating attendance under such circumstances might also result in "a potentially uncomfortable and disruptive court appearance" for the proposed conservatee which, in light of his nonopposition, would likely be "brief and pro forma." (*Moore, supra,* 185 Cal.App.3d at p. 730, 229 Cal.Rptr. 875.)

In sum, we conclude the superior court did not deprive John of due process when it established the conservatorship of his person in his absence. This conclusion is consistent with decisions generally recognizing that, even though certain rights implicated in civil proceedings are substantial, they may be waived by an attorney with the client's express consent. (*Mary K., supra,* 234 Cal.App.3d at pp. 269–271, 285 Cal.Rptr. 618 [bench trial held after counsel reported client's wish to waive jury trial]; cf. *Linsk v. Linsk* (1969) 70 Cal.2d 272, 278, 74 Cal.Rptr. 544, 449 P.2d 760 [counsel cannot abdicate a substantial right of the client *contrary to express instructions*]; *Conservatorship of Christopher A., supra,* 139 Cal.App.4th at p. 613, 43 Cal.Rptr.3d 427 [attorney may not, *without the client's express consent,* enter into a stipulated judgment regarding placement, disabilities, and conservator powers].) It also finds support in prior decisions acknowledging that, in the absence of any contrary indication, the superior court may assume that an attorney is competent and fully communicates with the proposed conservatee about the entire proceeding. (E.g., *Mary K., supra,* 234 Cal.App.3d at p. 272, 285 Cal.Rptr. 618; *Conservatorship of Ivey, supra,* 186 Cal.App.3d at p. 1566, 231 Cal.Rptr. 376; see also ***157** *People v. Ngo* (1996) 14 Cal.4th 30, 37, 57 Cal.Rptr.2d 456, 924 P.2d 97 [an attorney admitted to the California Bar is presumptively competent].) [15]

****570**

> 15 John argues that the superior court's error in excusing him from the proceedings led to a second error, namely, that the court failed to conduct an on-the-record voir dire as required under Probate Code section 1828. No voir dire is required, however, when the court excuses the proposed conservatee's attendance pursuant to Probate Code section 1825(a)(3). (Prob.Code, § 1828, subd. (c).) Because the court properly accepted John's waiver of his rights through counsel, this contention fails.

CONCLUSION AND DISPOSITION

The superior court did not violate John's statutory or due process rights when it proceeded, in John's absence, with the April 4, 2006, hearing on the petition to establish a conservatorship of his person. The judgment of the Court of Appeal is affirmed.

WE CONCUR: GEORGE, C.J., KENNARD, WERDEGAR, CHIN, MORENO, and CORRIGAN, JJ.

All Citations

48 Cal.4th 131, 225 P.3d 554, 105 Cal.Rptr.3d 424, 10 Cal. Daily Op. Serv. 2328, 2010 Daily Journal D.A.R. 2811

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70 Cal.App.3d 23
Court of Appeal, Second District, Division 3, California.

Baxter WARD, Supervisor, Fifth Supervisorial District and Chairman of the Board of Supervisors for the County of Los Angeles, Carl Lance Brisson, a public employee, and Neil Frerichs, a public employee, Petitioners,
v.
SUPERIOR COURT OF the STATE of California FOR the COUNTY OF LOS ANGELES, Honorable Alfred L. Margolis, Judge of said Superior Court, Respondents, Philip E. WATSON, Individually and as a taxpayer and resident of the County of Los Angeles, Real Party in Interest.

Civ. 50557
|
May 24, 1977.
|
Hearing Denied July 21, 1977.

Synopsis

Supervisor for supervisorial district and chairman of board of supervisors for county, and two county employees, petitioned for writ of mandate to compel Superior Court, Los Angeles County, to vacate its order granting motion of county assessor to disqualify county counsel from representing petitioners in lawsuit in which assessor sought damages and injunctive relief for violation of his constitutional rights and for publishing libelous and slanderous statements. The Court of Appeal, Ford, P.J., held that: (1) no attorney-client relationship existed between county counsel and county assessor within meaning of rule forbidding an attorney from accepting employment adverse to a former client; (2) communications by assessor with respect to operations of his office made to the county counsel were not subject to claim of privilege as between assessor and members of board of supervisors charged with duty of supervising conduct of assessor's office.

Writ issued.

Attorneys and Law Firms

***26** ****533** John H. Larson, County Counsel, Peter R. Krichman, Division Chief, and Louis V. Aguilar, Deputy County Counsel, Los Angeles, for petitioners.

***27** No appearance for respondent.

de Krassel & Tierney and Peter de Krassel, Los Angeles, for real party in interest.

Opinion

FORD, Presiding Justice.

Petitioners Baxter Ward, Supervisor for the Fifth Supervisorial District and Chairman of the Board of Supervisors for the County of Los Angeles, and Carl Lance Brisson and Neil Frerichs, employees of the County of Los Angeles, seek a writ of mandate compelling respondent superior court to vacate its order of January 7, 1977, granting the motion of the real party in interest, Philip E. Watson, to disqualify the county counsel, John H. Larson, from representing ****534** petitioners [1] in a lawsuit brought against petitioners by Watson 'individually and as a taxpayer and resident of the County of Los Angeles.' In a 21-count complaint brought pursuant to the Civil Rights Act (42 U.S.C. s 1983) Watson sought damages and injunctive relief, claiming that petitioners violated his constitutional rights by subjecting his person and residence to unlawful surveillance, by unlawfully attempting to obtain his confidential Internal Revenue Service records and tax returns, and by publishing libelous and slanderous statements concerning him.

1 The validity of an order barring an attorney from further representation of a party may be reviewed upon an application for a writ of mandate. (Big Bear Mun. Water Dist. v. Superior Court, 269 Cal.App.2d 919, 925, 75 Cal.Rptr. 580; Earl Scheib, Inc. v. Superior Court, 253 Cal.App.2d 703, 61 Cal.Rptr. 386.)

In support of his motion to disqualify the county counsel from further representation of petitioners in the action, Watson took the position that such representation is in violation of rule 4—101 of the Rules of Professional Conduct of the State Bar of California. Rule 4—101 provides as follows: 'A mumber of the State Bar shall not accept employment adverse to a client or former client, without the informed and written consent of the client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client.'

The body of Watson's declaration in support of his motion to disqualify the county counsel was as follows: '1. I am

the incumbent Assessor for the County of Los Angeles and have been the Assessor since ***28** September 3, 1962. This Declaration is made in my personal and official capacity. ( ) 2. At all times during my incumbency, Los Angeles County Counsel has been the legal representative of my office and in that capacity has advised this Office on questions of law regarding taxability of all property subject to taxation in Los Angeles County, including but not limited to, possessory interests, oil and gas companies' leaseholds and personal property, oil and other companies' work in process, inventories of finished goods, and leased equipment of all types. Furthermore, County Counsel has counseled me on personal matters. In these regards, County Counsel has received communications from me in the context of attorney-client relationships. County Counsel has advised me individually on questions of law in civil actions in which I was individually named as a defendant. ( ) 3. During the course of its representation, County Counsel has appeared on behalf of this office in virtually every case brought in Superior Court regarding property taxation as well as all appeals taken therefrom. Additionally, County Counsel has appeared with respect to various properties on behalf of this office before the Assessment Appeals Board. Furthermore, County Counsel has appeared on my behalf personally and has further agreed to do so in any actions brought against me. Specifically, County Counsel has defended me in my capacity as County Assessor and as an individual in the following cases: Docter v. Watson, et al., LASC Case No. C 128604; Houston v. Watson, LASC Case No. C 177013; Levy v. Ostley, et al., LASC Case No. C 81867; and Silver v. Watson, 26 Cal.App.3d (sic) 905, 103 Cal.Rptr. 576. ( ) 4. At no time have I authorized County Counsel to represent the defendants in said action as during the course of my personal representation by County Counsel confidential communications were transmitted to his office.'

In his declaration in opposition to the motion, the county counsel, John H. Larson, stated as follows: '1. That he is the County Counsel of the County of Los Angeles, that as County Counsel he is the attorney for the County of Los Angeles and the Board of Supervisors and all County officers thereof in all matters and questions of law pertaining to their duties and has exclusive charge and control of all civil actions and proceedings in which the County or any officer thereof is concerned or is a party. ( ) 2. That Philip E. Watson as a public officer has been represented by County Counsel and members of his staff in various civil ****535** actions. ( ) 3. That neither County Counsel nor members of his staff have represented Philip E. Watson in personal matters unrelated to his duties and responsibilities as a public officer. ( ) 4. That to my knowledge neither County Counsel nor members of his staff have received ***29** confidential communications from Philip E. Watson which relate to the subject matter of this lawsuit.'

In its memorandum with respect to its ruling, the trial court expressed its reasons for granting Watson's motion to disqualify the county counsel as follows: 'The Court expressed concern that litigation of causes of action 9 through 21, and discovery related thereto, will ultimately involve questions relating to the operation of the Assessor's office and the Assessor, as to which the office of County Counsel has knowledge and information gained in its professional capacity and which is therefore confidential. ( ) The Court inquired of counsel for defendants whether the defense of truth would be waived to the causes of action charging defamation. The answer was 'No.' ( ) The Court inquired of counsel for defendants whether it would be feasible that this case be handled only by deputies who have not previously and are not now representing the Assessor or his office, and that this case and those deputies be insulated from the rest of the office, i.e., that those deputies have no communication regarding this case with others in the office. Counsel for defendants replied that this course is not possible because he and practically all of the other deputies in the office have represented and continue to represent the Assessor and/or his office. ( ) Accordingly, in view of Rule 4—101 of the Rules of Professional Conduct of the State Bar of California, and because of the inherent responsibility of the Court to all litigants, the motion of plaintiff was granted. Further, the Court expressed its belief that not only must impropriety be avoided, but also the appearance of impropriety. ( ) Counsel for defendants suggested that perhaps the granting of the motion is premature, urging that if a conflict of interests became apparent, it could be dealt with then. The Court expressed its strong belief that considering the likely breadth of scope of the case and the candid statements of counsel respecting prior and present representation of the Assessor and his office, it would be unwise and indeed hazardous to delay the granting of the motion. The prospects of a conflict and the great difficulties likely to be met in unraveling it require prompt and not belated action.'

The parties have cited no analogous cases with respect to the application of rule 4—101 in a case involving a public attorney, such as the county counsel, nor has our independent research disclosed any such case. It is to be noted that the basis of the attorney-client relationship in the case of public attorneys is not contractual, as is the case in the normal attorney-client relationship, but rather is statutory or mandated by a county or city charter. The function of

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the Los ***30** Angeles County Counsel is governed by the county charter. Thus, as was said by the court in Board of Supervisors v. Simpson, 36 Cal.2d 671, at pages 673—674, 227 P.2d 14, at page 16: 'Apparently the county counsel of Los Angeles County is appointed pursuant to its charter which has provided for such office since its adoption in 1913, rather than the Political Code and its successor, the Government Code. That being true, the provisions of the Government Code relating to county counsel would not apply to the situation where the office of county counsel is established by charter in the manner here appearing.'

The function of the Los Angeles County Counsel is set forth in article VI, section 21, of the Los Angeles County Charter as follows: 'The County Counsel shall represent and advise the Board of Supervisors and all County, township and school district officers, in all matters and questions of law pertaining to their duties, and shall have exclusive charge and control of all civil actions and proceedings in which the County, or any officer thereof, is concerned or is a party.'

Government Code section 995 provides in pertinent part as follows: 'Except as otherwise ****536** provided in sections 995.2 and 995.4 upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.' Thus, the county counsel has a duty imposed by law to represent county officers and employees in civil actions. (Sinclair v. Arnebergh, 224 Cal.App.2d 595, 597—598, 36 Cal.Rptr. 810.)

While the Los Angeles County Counsel's representation of the county, the board of supervisors or a public officer is required by law as opposed to being based on a contractual commitment, he is nevertheless, like all attorneys, subject to the Rules of Professional Conduct which govern his profession. Thus rule 1—100 provides that 'these rules shall be binding upon all members of the State Bar.' But rule 1—100 also provides that '(n)othing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof.' (See Hutchins v. Municipal Court, 61 Cal.App.3d 77, 86, fn. 9, 132 Cal.Rptr. 158.)

We turn then to a consideration of the applicability of rule 4—101 in the context of the case before us. As was said by the court in Kraus v. Davis, 6 Cal.App.3d 484, at page 490, 85 Cal.Rptr. 846, at page 849, quoting from ***31** Galbraith v. State Bar, 218 Cal. 329, 23 P.2d 291: "A reasonable construction of this rule (rule 5 of the Rules of Professional Conduct, now rule 4—101) suggests that the subsequent representation of another against a former client is forbidden not merely when the attorney Will be called upon to use confidential information obtained in the course of the former employment, but in every case when, by reason of such subsequent employment, he May be called upon to use such confidential information. In subdivision 5 of section 282 of the Code of Civil Procedure it is declared to be the duty of an attorney 'to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client'. (Now found in Bus. & Prof.Code, s 6068, subd. (e).) (See, also, Anderson v. Eaton, 211 Cal. 113, 293 P. 788 . . .) In Wutchumna Water Co. v. Bailey, 216 Cal. 564, 15 P.2d 505 . . ., it is declared that 'an attorney is forbidden to do either of two things after severing his relationship with a former client. He may not do anything which will injuriously affect his former client in any matter in which he formerly represented him nor may he at any time use against his former client knowledge or information acquired by virtue of the previous relationship." (218 Cal. at pp. 332—333, 23 P.2d at p. 292. . . .)'

There are established exceptions to the general rule which are succinctly set forth in Grove v. Grove Valve & Regulator Co., 213 Cal.App.2d 646, at page 652, 29 Cal.Rptr. 150, at page 154 as follows: 'The generally recognized exceptions are: (1) where the relationship of attorney and client was never in fact created between the attorney and the complaining party (citations); (2) where the new employment is not inconsistent with the former employment (citation); (3) where the client expressly or impliedly consents to the adverse representation (citation).'

Petitioners contend that the first exception is applicable here. Thus petitioners assert that '(t)he county counsel is in an exclusive attorney-client relationship with the County of Los Angeles' and that '(t)here can be no separate attorney-client relationship between the County Counsel and each separate officer, department, and/or employee of the County of Los Angeles.' As was stated in Kraus v. Davis, supra, 6 Cal.App.3d 484, at page 491, 85 Cal.Rptr. 846, at page 850: 'The determination of the existence of an attorney-client relationship . . . is one of law. 'However where there is a conflict in the evidence the factual basis for the determination must first be determined, and it is for the trial court to evaluate the evidence. (Citation.)' (Citations.)'

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***32** ****537** There is no conflict in the evidence respecting the factual basis of the claimed attorney-client relationship in this matter. It is clear from the record that if an attorney-client relationship existed between the county counsel and real party in interest Philip Watson, it arose out of the county counsel's obligation pursuant to the Los Angeles County Charter to represent and advise county officers in matters pertaining to their duties and to exercise exclusive charge and control of all civil actions in which the county or any county officer is concerned or is a party. Accordingly, the determination as to whether the county counsel's obligations pursuant to the Los Angeles County Charter gave rise to an attorney-client relationship between the county counsel and Philip Watson as to which rule 4—101 is applicable is solely a question of law with respect to which this court is not bound by the trial court's determination.

The Los Angeles County Counsel has only one client, namely, the County of Los Angeles.[2] (See Woolwine v. Superior Court, 182 Cal. 388, 391, 188 P. 569.) Of course, the county acts through its board of supervisors, its officers and its employees, much as does a private corporation. Under the mandate of Los Angeles County Charter article VI, section 21, the county counsel must represent county officers in civil actions, but only as to matters wherein such officers acted in their representative capacity and within the scope of their official duties. Thus the county counsel's representation of county officers is analogous to the representation afforded officers of a corporation by corporate counsel.

[2] Los Angeles County Charter, article XII, section 55, provides as follows: 'The . . . county counsel, and . . . (his) deputies, shall not engage in any private law practice, and they shall devote all their time and attention during business hours, to the duties of their respective offices.'

In Meehan v. Hopps, 144 Cal.App.2d 284, 301 P.2d 10, the appellate court held that the mere fact that attorneys Edwards and Angell served as corporate counsel to the Rhode Island Insurance Co. on various matters did not establish an attorney-client relationship between Hopps, a former director, chairman of the executive committee, chairman of the board of directors and principal shareholder of the corporation, and the former corporate counsel, Edwards and Angell. In that case an action was brought on behalf of the shareholders, policyholders and creditors of the corporation for an accounting and other relief. Plaintiffs contended that Hopps had dominated and managed the corporation for his own private gain. Hopps moved the trial court to restrain Edwards and Angell from further participation in the case and from disclosing information ***33** pertaining thereto on the ground that he had turned over to that firm as his lawyers certain files and documents which were to be used, or might be used, against him in the pending action. In affirming the trial court's order denying Hopps' motion, the appellate court stated (144 Cal.App.2d at pp. 290—293, 301 P.2d at pp. 15—16): 'Appellant has not cited, nor have we found, any case holding that an attorney for a corporation is disqualified from representing it in an action brought by it against one of its officers, nor that in such an action the attorney may not use information received from such officers in connection with company matters. The attorney for a corporation represents it, its stockholders and its officers in their representative capacity. He in nowise represents the officers personally. It would be a sorry state of affairs if when a controversy arises between an attorney's corporate client and one of its officers he could not use on behalf of his client information which that officer was Required by reason of his position with the corporation to give to the attorney. . . . ( ) Assuming that some of the information obtained from Hopps by counsel as representatives of the corporation is that upon which the receiver's contention that Hopps dominated the corporation, its officers and companies, to its damage, is partially based, nevertheless such fact would not prevent counsel from representing either the corporation or the ****538** receiver in a controversy with Hopps nor from using that information against him. To hold that it would do so, would, in effect, grant an immunity to Hopps to which he was not entitled. The fact that in the several matters in which counsel represented the corporation what appeared to be for the benefit of the corporation also was for Hopps' benefit as a principal stockholder and because of his interest in the allied companies, did not make counsel his personal attorneys. If this were true, then the attorney representing a corporation in any given matter becomes the personal attorney of each stockholder because the attorney's actions benefiting the corporation likewise benefit the stockholder. Such relationship would disqualify the attorney from acting adversely to the stockholder concerning that particular matter in any controversy between the stockholder and a third party, but obviously would not prevent the attorney from representing the corporation in any controversy between it and the stockholder. As attorneys for the corporation, counsel's first duty is to it. Likewise, as an officer of the corporation, it was Hopps' duty to disclose to it all information necessary for its purposes. To hold that the giving of such information in that more or less intimate relationship which

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necessarily must exist between an officer of the corporation and its attorneys would prevent the corporation attorneys from thereafter using it in favor of the corporation in litigation against the officer, would be unfair to the corporation and its stockholders, and ***34** would violate the above mentioned very important precept, namely, that the attorney's first duty is to his client.' (Emphasis added.) (To the same effect see: U.S. Industries Inc. v. Goldman, D.C., 421 F.Supp. 7, 11; Jacuzzi v. Jacuzzi Bros., Inc., 218 Cal.App.2d 24, 29, 32 Cal.Rptr. 188.)

Having found no cases dealing with the duties of public attorneys in situations similar to that involved in this case, we find the analogy to the duties of corporate counsel to be apt, and the reasoning of the court in Meehan v. Hopps, supra, to be compelling. Accordingly, we hold that no attorney-client relationship existed between the county counsel and real party in interest Watson within the meaning of rule 4—101.

Our decision that the trial court erred in granting Watson's motion to disqualify the county counsel is further supported by the following reasoning. The purpose of rule 4—101 forbidding an attorney from accepting employment adverse to a former client is to protect the former confidential relationship. Thus the rule does not apply where an attorney accepts employment adverse to a former client if the matter bears no relationship to confidential information acquired by the attorney as a result of the former attorney-client relationship. (Goldstein v. Lees, 46 Cal.App.3d 614, 619, 12 Cal.Rptr. 253.)

In the matter before us, Watson's declaration in support of his motion to disqualify the county counsel set forth no facts showing the nature of the alleged confidential communications between himself and the county counsel, but merely stated that '(i)n these regards, County Counsel has received communications from me in the context of attorney-client relationships,' and that '(a)t no time have I authorized County Counsel to represent the defendants in said action as during the course of my personal representation by County Counsel confidential communications were transmitted to his office.' However, in Watson's points and authorities filed herein in opposition to the issuance of a writ of mandate it is made clear that the type of confidential communications Watson seeks to protect by asserting the disqualification of the county counsel are communications concerning the operation of the county tax assessor's office. Thus it is stated in Watson's points and authorities as follows: '(t)he fact remains as illustrated in Exhibit '5' of petition for Writ of Mandate, that questions involving the operation of the Assessor's office will be an issue and that County Counsel deputies representing or handling matters concerning the office will in fact be handling defense for the defendant. ( ) Therefore, ****539** such information gained through the ***35** attorney-client relationship will be compromised by allowing the County Counsel to continue as attorneys for the defendant.'[3]

3 Watson's reference to questions as to the operation of the assessor's office involved in the underlying suit presumably relates to the fact that the statements alleged to be defamatory in counts 9 through 21 of Watson's complaint were statements alleged to have been made by Supervisor Ward and largely concerned claimed improprieties in the manner in which Watson conducted his duties as tax assessor for the County of Los Angeles.

The tax assessor's office is merely an arm of county government over which the board of supervisors has direct supervision. Thus Government Code section 25303 provides as follows: 'The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly those charged with the assessing, collecting, safekeeping, management, or disbursement of the public revenues. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.'[4]

4 Article III, section 10, of the Los Angeles County Charter provides as follows: 'The Board of Supervisors shall have all the jurisdiction and power which are now or which may hereafter be granted by the constitution and laws of the State of California or by this Charter.'

Any communication between Watson and the county counsel, pursuant to the discharge of their respective duties, concerning the operation of the assessor's office could not be considered a secret confidential communication so as to bar the county, acting through the board of supervisors, from obtaining that information. The assessor is an agent of the county. (People v. Vallerga, 67 Cal.App.3d 847, 876, 136 Cal.Rptr. 429.) As such, the assessor has a duty of full disclosure to his principal, the county. Communications by the assessor with respect to the operations of his office made to the county counsel are not subject to a claim of privilege as between the assessor and members of the board of supervisors, who are charged by law with the duty of supervising the conduct of the assessor's office.[5]

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5 Evidence Code section 962 provides that '(w)here two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest).'

***36** For the reasons stated herein we hold that the trial court erred in granting real party in interest Watson's motion to disqualify the county counsel from further representation of defendants.

Let a peremptory writ issue directing respondent court to vacate the order of January 7, 1977, granting the motion of real party in interest Watson to disqualify the Los Angeles County Counsel from further representation of petitioners in Los Angeles Superior Court case No. C 180581, entitled Philip E. Watson, individually and as a taxpayer and resident of the County of Los Angeles, v. Baxter Ward, et al., and to enter a new and different order denying said motion.

ALLPORT, and POTTER, JJ., concur.

Hearing denied; MOSK, J., dissenting.

All Citations

70 Cal.App.3d 23, 138 Cal.Rptr. 532

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Declarations

DECLARATION OF MEGAN WHEELEHAN

1. I, Megan Wheelehan, declare:

2. I have personal knowledge of the facts set forth in this Declaration, as well as the information presented in the adjoining test claim, and if called to testify to the statements made herein, I could and would do so competently.

3. I have been employed by the County of Santa Clara (the "County") since November 14, 2022, and currently hold the title of Deputy Director of the Behavioral Health Services Department ("BHSD"). I have occupied this role since February 3, 2025.

4. As Deputy Director of BHSD, I am responsible for overseeing all facets of BHSD operations and programs throughout the County. This work includes oversight of facilities, staffing, and services. At least 500 subordinate staff report up to my position.

5. In this role, I oversee the County's actions in carrying out the new program or enhanced level of service mandated by various elements of the Community Assistance, Recovery, and Empowerment (CARE) Act. In total, the CARE Act is comprised of several recently-enacted bills: Senate Bill No. 1338 (Stats. 2022, ch. 319), Senate Bill No. 35 (Stats. 2023, ch. 283), Senate Bill No. 42 (Stats. 2024, ch. 640), Senate Bill 1400 (Stats.2024, ch. 647), Senate Bill 1323 (Stats. 2024, ch. 646), and Senate Bill 27 (Stats. 2025, ch. 528).

6. As relevant to the test claim before the Commission on State Mandates, the CARE Act imposes a new program or higher level of service by requiring counties to incur costs for legal activities mandated by Welfare and Institutions Code sections 5970-5987, as added or amended by Statutes 2022, chapter 319, Statutes 2023, chapter 283, Statutes 2023, chapter 640, Statutes 2024, chapter 647, Statutes 2024, chapter 646, and Statutes 2025, chapter 528.

7. The aforementioned provisions in the CARE Act require the BHSD to undertake several new activities that require counsel support. Counsel perform the following functions to support BHSD:

    a. Assist in the preparation of the mandated petition according to statutory requirements, including where the director of a county behavioral health agency or their designee determines it must file an initiating petition on its own or after a treatment facility or another court refers an individual to the county behavioral health agency and the agency determines that the individual is eligible for the CARE process. (Welf. & Inst. Code, §§ 5974, subd. (h); 5975, subds. (a)-(d)(1), (2); 5978, subds. (d)-(f); 5978.1, subd. (c).)

b. Provide notice of the initial hearing to the respondent, the respondent's counsel, and, if in a different jurisdiction, the county behavioral health agency in the county of the respondent's residence. (Welf. & Inst. Code, § 5977, subd. (a)(3)(A)(iv).)

c. Represent the county behavioral health agency director or their designee at the initial hearing and, if the court determines the petition lacks the required information, advise the agency on submission of an additional report. (Welf. & Inst. Code, § 5977, subds. (a)(3)(A)(i), (iii), (iv), (b)(4).)

d. Where the petitioner is not the county behavioral health agency director or their designee, advise the agency in complying with the court's order to file a written report with evidentiary support following investigation and engagement and give notice to the respondent and petitioner of the filing or court-ordered extensions. (Welf. & Inst. Code, § 5977, subds. (a)(3)(B), (a)(4).)

e. Advise the county behavioral health agency director or their designee if the court orders them to replace the original petitioner as successor. (Welf. & Inst. Code, § 5977, subd. (b)(6)(A).)

f. Where the court determines that the respondent is or may be eligible for the CARE process based on the report filed under Welfare and Institutions Code section 5977, subdivision (a)(3)(B), advise and represent the county behavioral health agency director or their designee at the initial appearance on the petition and provide notice to the petitioner, respondent, respondent's counsel, and the behavioral health agency in the respondent's county of residence, if different from the county where the CARE process has commenced. (*Id.* § 5977, subds. (a)(5)(C)(i), (iii).)

g. Provide counsel to the county behavioral health agency before and during the merits hearing, including preparing expert testimony by reviewing expert reports and providing advice about the evidentiary standard, presenting evidence by qualifying experts, conducting examinations, and presenting additional material. (Welf. & Inst. Code, § 5977, subd. (b)(7)(A).)

h. Advise the county behavioral health agency director or their designee in assessing and responding to respondent's counsel's communications and evidence, witnesses, and appeals. (Welf. & Inst. Code, § 5976, subds. (c), (f)-(i).)

i. Represent the county behavioral health agency at case management hearings, present evidence as needed, and provide legal advice to the agency if the court orders it to work with the respondent and respondent's

counsel to engage the respondent in treatment and work towards a CARE agreement. (Welf. & Inst. Code, §§ 5977, subd. (c)(2); 5977.1, subds. (a)(1), (a)(2)(A), (B).)

j. Represent the county behavioral health agency at additional progress hearings held during the duration of the CARE agreement. (Welf. & Inst. Code, § 5977.1, subd. (a)(4).)

k. If the court orders the behavioral health agency to conduct a clinical evaluation of the respondent, advise the agency in preparing and filing required documents for and participate in the subsequent clinical evaluation hearing, which might include preparing and presenting evidence and witness testimony. (Welf. & Inst. Code, § 5977.1, subds. (c)(1), (2).)

l. Advise the county behavioral health agency as it prepares the CARE plan and prepare for and participate in hearings to review and consider approval of the proposed CARE plan, potentially including notice of requests for extensions of time and court orders. (Welf. & Inst. Code, § 5977.1, subds. (c)(3)(A), (c)(6), (d)(1), (d)(6).)

m. Advise the county behavioral health agency to ensure proper compliance when the court issues orders to support the respondent in accessing elements of the CARE plan. (Welf. & Inst. Code, § 5977.1, subds. (d)(2)-(5).)

n. Advise the county behavioral health agency to ensure compliance in devising CARE plans and communicating with the court following orders and requests for information relating to services and supports. (Welf. & Inst. Code, § 5982, subds. (a)-(e).)

o. Represent the county behavioral health agency at evidentiary hearings including status review hearings, the one-year status hearing, the graduation plan hearing, and any additional hearings ordered by the court, and advise the agency as it develops and files reports and graduation plans. (Welf. & Inst. Code, § 5977.2, subds. (a)(1), (b); Welf. & Inst. Code, § 5977.3, subds. (a)(1)-(3).)

p. Advise the county behavioral health agency regarding patient confidentiality and notice requirements associated with report evaluations and other documents filed with the court throughout the CARE process and disclosures of protected information. (Welf. & Inst. Code, § 5977.4, subds. (d)(1), (d)(2)(E), (F), (d)(3)(A)-(C).)

q. Advise the county behavioral health agency regarding ex parte applications for an order requiring health care providers to supply relevant

records about the respondent. (Welf. & Inst. Code, § 5977.4, subd. (d)(2)(C).)

8. The aforementioned activities constitutes a new program or higher level of service for the County. Prior to the adoption of the CARE Act, counsel to county behavioral health agencies did not perform any of the aforementioned tasks, as the CARE process did not exist.

9. There are no sufficient and dedicated funding sources available from the federal government or any State agency to offset the counsel costs of implementing the CARE Act Mandates. The State has at least temporarily allocated funding to offset certain costs associated with the CARE Act Mandates, but this funding is restricted to specific activities and reimbursement amounts.

10. BHSD cannot pass on the costs of counsel onto any non-County entity because the CARE Act prohibits charging a fee. (WIC, § 5975.3.)

11. Counsel is additionally required to provide legal services to BHSD without fee. (Gov. Code, §§ 26520; 26529, subd. (a).)

12. Attached to this declaration as Exhibit A is a true and correct copy of Department of Health Care Services ("DHCS") Behavioral Health Information Notice 22-059, which details the general uses of CARE Act startup funding.

13. Attached to this declaration as Exhibit B is a true and correct copy of DHCS Behavioral Health Information Notice 24-015, which details CARE Act reimbursement rates and billing guidance.

14. Attached to this declaration as Exhibit C is a true and correct copy of a DHCS presentation detailing administrative claiming for the CARE Act.

15. According to Exhibit C, DHCS reimburses legal costs for BHSD as a subdivision of an overhead rate.

16. The DHCS, which administers the CARE reimbursement scheme, prohibits billing time for counsel. Attached as Exhibit D is a true and correct copy of the website for the DHCS vendor that administers CARE reimbursements for counties, which was downloaded at: https://care-act.org/library/faqs/.

17. The DHCS reimbursement for legal costs is insufficient because actual legal costs exceed the legal counsel rate incorporated as a subdivision of the overhead rate.

18. Because the State declines to reimburse the full cost of legal services for implementing the CARE Act, as described above, the County must assume the balance of the cost for these services.

19. Were counsel to decline providing legal services to BHSD in implementing the CARE Act, severe and certain consequences would follow.

    a) Without counsel present to put on evidence, complete direct examination and cross examination, and advise BHSD on a variety of issues including compliance with court orders, patient confidentiality, and other legal requirements, the CARE process itself would be severely weakened.

    b) Counsel are crucial to ensuring that BHSD understands the requirements of the CARE Act, including both the law itself and orders issued by the court in CARE proceedings.

    c) County expert witnesses need assistance from counsel to prepare expert reports, and to prepare for examination during CARE proceedings.

    d) Counsel are crucial to ensuring that CARE proceedings adequately consider evidence and facilitate agreement between the parties.

    e) Without counsel, BHSD will not be equipped to collaborate with respondents, and may proceed much more slowly through the CARE process.

    f) These consequences are severe because the CARE Act concerns a severe set of circumstances.

20. To the best of my knowledge, there are no legislatively determined mandates as to the aforementioned CARE Act statutes, or to any element of the CARE Act.

21. To the best of my knowledge, there is no prior mandate determination related to the CARE Act.

22. Attached as Exhibit E is a true and correct copy of the Senate Third Reading of SB 1338, which was found on the State of California's website containing legislative history records, accessible at the following hyperlink:

23. Attached as Exhibit F is a true and correct copy of the report of the Assembly Committee on Health as to SB 1338, which was found on the State of California's website containing legislative history records, accessible at the following hyperlink:

24. Attached as Exhibit G is a true and correct copy of the report of the Senate Judiciary Committee report on SB 1338, which was found on the State of California's website containing legislative history records, accessible at the following hyperlink:

25. To the best of my knowledge, none of the circumstances enumerated in Government Code section 17556 or Section 6 of Article XIIIB of the California

Constitution create an exception to the State's requirement to reimburse local entities for State-mandated activities exists with respect to the CARE Act Mandates.

26. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

27. Executed on 8/12/2026 at San José, California.

DocuSigned by:
Megan Wheelehan
09E48CE8693043D...

MEGAN WHEELEHAN
Deputy Director
Behavioral Health Services Department
County of Santa Clara
(408) 793-1809
Megan.Wheelehan@hhs.sccgov.org

Exhibit A

State of California—Health and Human Services Agency
Department of Health Care Services

MICHELLE BAASS
DIRECTOR

GAVIN NEWSOM
GOVERNOR

DATE: November 9, 2022

Behavioral Health Information Notice No.: 22-059

TO: California State Association of Counties
County Behavioral Health Directors Association
Urban Counties of California
Rural County Representatives of California
California Association of Public Administrators, Public Guardians and Public Conservators
County Welfare Directors Association

SUBJECT: General Uses of the Community Assistance, Recovery, and Empowerment (CARE) Act Startup Funding

PURPOSE: The purpose of this Behavioral Health Information Notice (BHIN) is to notify counties of the purposes of the startup funds distributed in support of the implementation of the CARE Act.

REFERENCE: Senate Bill (SB) 1338 (Umberg, Chapter 319, Statutes of 2022)
Assembly Bill (AB) 179 (Ting, Section 135, Provision 32(a)-(c), Budget Act of 2022)

BACKGROUND:
On September 14, 2022, the Governor approved SB 1338, which enacted the CARE Act. The CARE Act creates a process, called the CARE process, in California's civil courts to provide earlier action, support, and accountability for both individuals with untreated schizophrenia spectrum and psychotic disorders, and the local governments responsible for providing behavioral health services to these individuals. The program will be implemented in two phases, with Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne Counties, and the City and County of San Francisco (Cohort I) required to implement the CARE process by October 1, 2023. All other counties are required to implement the CARE process by December 1, 2024.[1]

AB 179 appropriated $57 million in funding to the Department of Health Care Services (DHCS) for the implementation of the CARE Act. Of the $57 million, $26 million was appropriated to be distributed to Cohort I, and the remaining $31 million was appropriated to be distributed to all counties and the City and County of San Francisco.

[1] This BHIN does not provide guidance under which counties can apply for, and be provided, additional time to implement the CARE process pursuant to the Welfare & Institutions Code section 5970.5.

DHCS consulted with counties, the California State Association of Counties, Urban Counties of California, and Rural County Representatives of California to develop an allocation of these funds amongst the counties. Enclosure 1 displays the allocation of the $26 million amongst Cohort 1, and Enclosure 2 displays the allocation of the $31 million.

POLICY:
Of the $57 million, $31 million is available for each county and the City and County of San Francisco to support planning and preparation activities, including, but not limited to, hiring, training, and development of policies and procedures, and to support information technology infrastructure costs, including, but not limited to, changes needed to electronic medical record systems, changes to collect needed reporting data, and case tracking and new billing processes to bill commercial plans, and excluding capital expenses.

Of the $57 million, $26 million is available to support Cohort I county planning and preparation to implement the CARE Act.

The allocation amounts to each county are currently in process, and the funding will be remitted to counties within the next 30 days.

Questions regarding this BHIN may be directed to BHFSOps@dhcs.ca.gov.

Sincerely,

Original signed by

Brian Fitzgerald, Chief
Local Governmental Financing Division

Enclosures

Exhibit B

DHCS
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES
Michelle Baass | Director

DATE: April 15, 2024

Behavioral Health Information Notice No: 24-015

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: Community Assistance, Recovery, and Empowerment (CARE) Act Reimbursement Rates and Billing Guidance.

PURPOSE: To notify counties about the Community Assistance, Recovery, and Empowerment (CARE) Act reimbursement rates and to provide guidance on how to submit claims for CARE Act activities.

REFERENCE: Senate Bill (SB) 1338 (Umberg, Chapter 319, Statutes of 2022); Welfare and Institutions (W&I) Code Sections 5970 through 5987; Behavioral Health Information Notice (BHIN) 22-059; BHIN 23-016; Assembly Bill (AB) 102 (Ting, Section 133, Provision 24(a)-(d), Budget Act of 2023); SB 35 (Umberg, Chapter 283, Statutes of 2023)

BACKGROUND:

The Community Assistance, Recovery, and Empowerment (CARE) Act (Chapter 319, Statutes of 2022) provides community-based behavioral health services and supports for individuals with untreated schizophrenia spectrum or other psychotic disorders through a new civil court process. Counties will be required to perform a number of administrative functions (Attend Court Hearings, Prepare Court Reports, Outreach and Engagement, Notifying CARE Court Respondents, and Data Reporting) to implement the CARE Act. The Fiscal Year 2023-24 Budget Act appropriated $52,334,000 State General Funds (Regular Policy Change 193) to reimburse counties for costs incurred to

implement the CARE Act. This Behavioral Health Information Notice informs counties about the process by which counties will be reimbursed for these activities.

POLICY:

DHCS will reimburse counties an hourly rate for time spent performing the following activities:

- **Court Hearing Time:** Includes activities that occur during court time such as initial hearings, hearings on the merits, case management hearings, CARE agreement process meetings, clinical evaluation review hearings, CARE plan review hearings, regular status update hearings, one-year status hearings, evidentiary hearings, graduation hearings, and reappointment to CARE hearings, and hearings that can occur at any time during the CARE process to address a change of circumstances.
- **Court Report:** Includes drafting reports such as prima facie county reports, CARE agreement reports, clinical evaluation reports, CARE plan reports, supplemental reports, regular status update reports for CARE Act scheduled hearings, one-year status reports, graduation plan reports, and reappointment to CARE reports.
- **Outreach and Engagement:** Includes all outreach and engagement activities required pursuant to W&I Code, sections 5977(a)(5)(A) and 5977(c)(2) to engage the respondent and develop a CARE agreement with the respondent, and outreach done to engage the respondent in jointly preparing a graduation plan pursuant to 5977.3(a)(3).
- **Notice:** Includes drafting notices that may include prima facie respondent county notices, 30 additional days to engage respondent notices, initial appearance notices, hearing on the merits notices, case management hearing notices, CARE agreement progress meeting notices, clinical evaluation review hearing notices, CARE plan review hearing notices, regular status update report (months 3, 5, 7, and 9) notices, one-year status hearing (month 11) notices, evidentiary hearing notices, graduation hearing notices, and reappointment to CARE notices.
- **Data Reporting:** Includes collecting and reporting data measures outlined in BHIN 23-052, including but not limited to, demographics of participants, housing placements, continuation of treatment information, and other data as determined by the department and other stakeholders.

The rate for each CARE activity is based on wage data for the professionals and practitioners most likely to complete the activity. The rate includes the median hourly wage based on Bureau of Labor Statistic (BLS) wage, adds an inflator from the May 2021 BLS wage data based on the Center for Medicare & Medicaid Services Home Health Agency Market Basket Index of 14.5%, adds a benefits percentage of 62.25%

derived from the California State Budget for employees, and adds an overhead percentage of the inflated and benefited wage of 47.36%.

CLAIMING:

Counties must submit a claim form to DHCS to be reimbursed for performing these activities. Counties are required to complete BHIN 24-015: Enclosure 1 by entering the appropriate information into the “Data Entry” and “Claim Form” tabs. Specifically, counties will select the appropriate CARE Act activity for which they are claiming, entering the employee’s name completing the activity, employee type, and the hours spent performing the CARE Act activity. Please see instruction on completion of the BHIN 24-015: Enclosure 1 in the “Instructions” tab for additional detail. Hours spent performing each CARE Act activity, detailed above, includes time ancillary to the performance of the activity, which is limited to preparation time, internal meeting time and oversight by supervisors and managers related to the activities above. The county must complete the quarter and fiscal year being claimed for, the county name, and certification signature on the “Claim Form” tab for DHCS to accept the enclosure.

CLAIM FORM SUBMISSION

Upon completion of data entry, “Save As PDF” the claim form, ensure the appropriate county staff member signs the claim form, and submit the signed claim form along with the workbook to DHCS at CARE_Claiming@DHCS.CA.GOV. The submitted claim should have either a wet signature, or a validated electronic signature that meets the standards outlined by the California Secretary of State (SOS). The SOS has defined standards for electronic/digital signatures that requires the use of self-authenticating digital signatures (i.e. ones that are self-authenticating like Adobe Acrobat Pro DC Self-signed with Digital ID function and DocuSign).

Claims may be submitted to DHCS on a quarterly basis and must be received by DHCS within one year following the end of the quarter. Cohort 1 counties may submit claims for activities performed beginning October 1, 2023, LA County may submit claims for activities performed beginning December 1, 2023. And all other counties may submit claims for activities performed when the CARE Process is implemented pursuant to W&I Code Section 5970.5. Counties should maintain an internal tracking of time spent on CARE Act activities down to the minute. Claims for CARE Act activities may be subject to audit by DHCS. Please see the following table for the State Fiscal Year quarters.

Quarter	Start Date	End Date
1st Quarter	July 1st	September 30th
2nd Quarter	October 1st	December 31st
3rd Quarter	January 1st	March 31st
4th Quarter	April 1st	June 30th

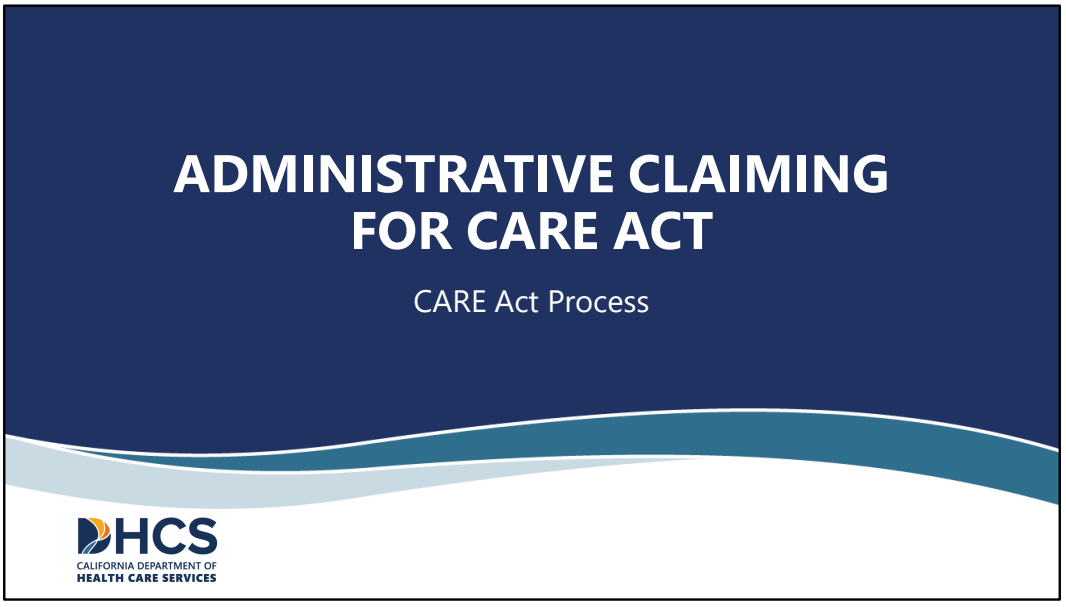
Questions regarding this BHIN and requests for technical assistance on the CARE Act claiming process may be directed to CARE_Claiming@DHCS.CA.GOV.

Sincerely,

Original signed by

Brian Fitzgerald
Local Governmental Financing Division

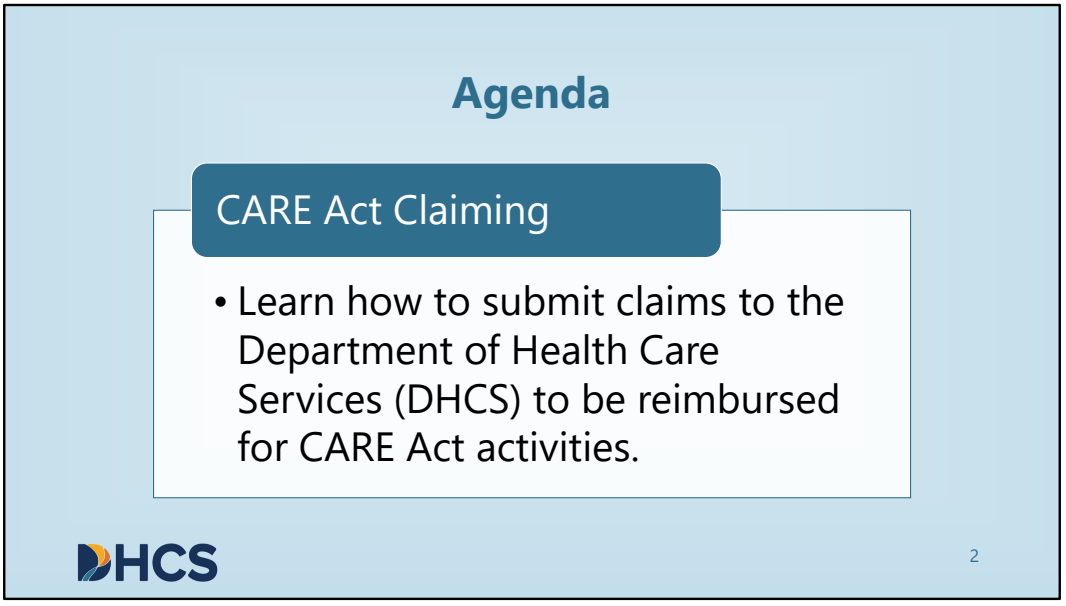
Exhibit C



[Slide Image Description: This cover slide introduces the title and category of this training. It contains the logos for the California Department of Health Care Services.]

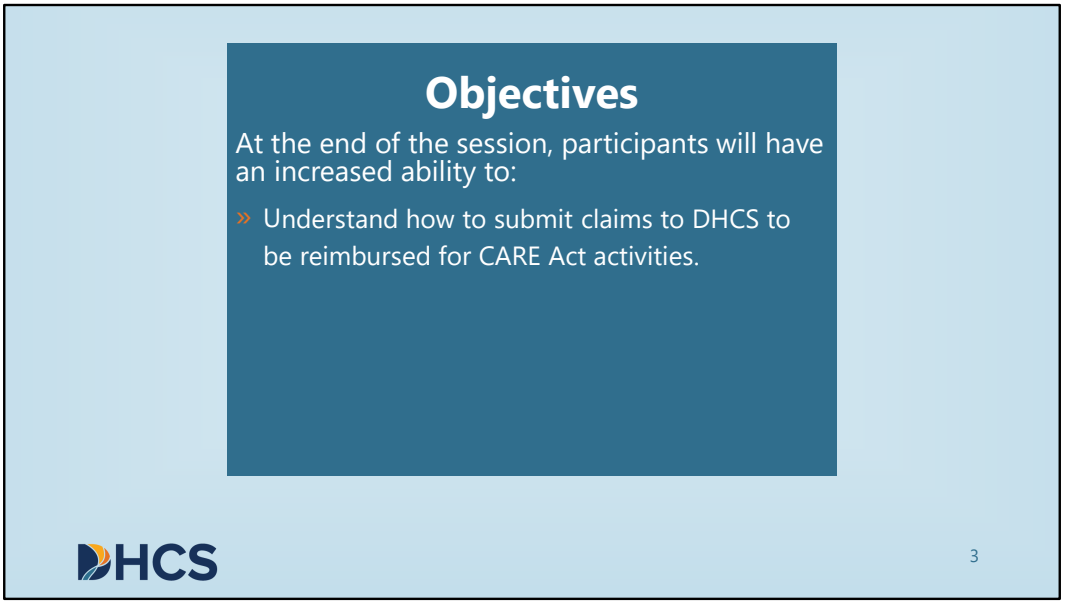
The topic of this training is submitting claims for administrative activities under the CARE Act.

This session is presented by Health Management Associates (HMA). The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement by, California Department of Health Care Services (DHCS).



[Slide Image Description: This slide shows the major sections of this training on a light blue background.]

This training will cover the CARE Act claiming process on how to submit claims to DHCS to be reimbursed for CARE Act activities.



[Slide Image Description: This slide shows the learning objectives for this training with a light blue background.]

At the end of the session, participants will have an increased ability to:

- Understand how to submit claims to DHCS to be reimbursed for CARE Act activities.

DHCS
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES

HMA

Presenters



AMANDA TERNAN, PMP

Principal
Health Management Associates

DHCS

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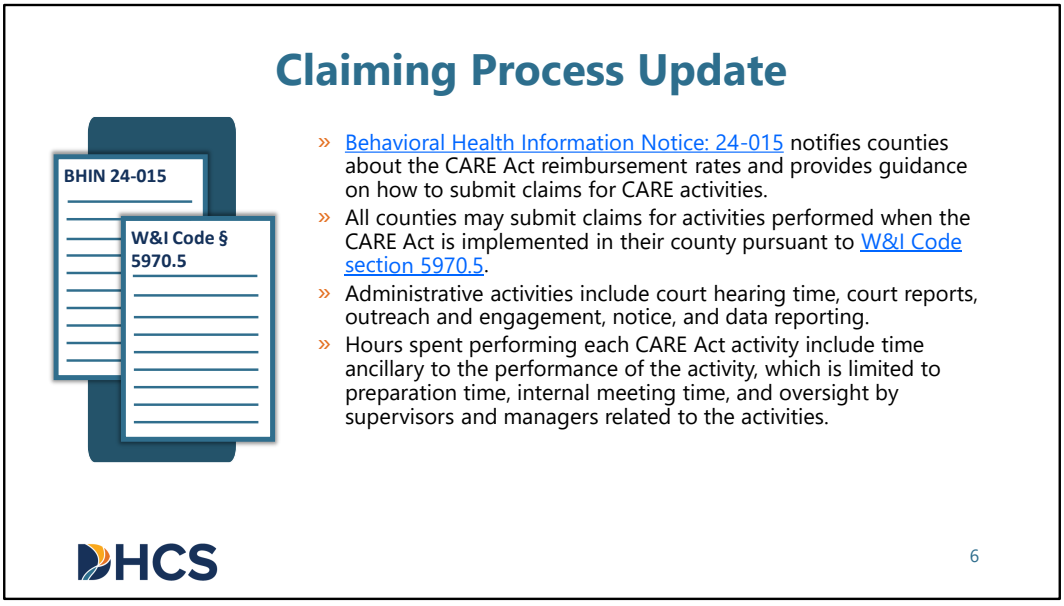
[Slide Image Description: This slide includes names of the presenter of this training on a light blue background.]

This training is presented by Amanda Ternan. Amanda is a principal with Health Management Associates (HMA). HMA is the TTA partner for DHCS for the CARE Act implementation. This training was created in collaboration with the Local Governmental Finance Division (LGFD). LGFD provides management and oversight of all county and local government federal reimbursement and financial oversight activities critical to ensuring access to high-quality and cost-efficient health care through DHCS' contracted local governmental agencies.



[Slide Image Description: This is a section divider slide to indicate a major section of this training.]

This second section demonstrates how to submit claims to the Department of Health Care Services (DHCS) to be reimbursed for CARE Act activities.



[Slide Image Description: This slide includes information about CARE Act claiming process updates and shows images of documents representing the BHIN 24-015 and W&I Code section 5970.5.]

Claiming Process Update:

- Behavioral Health Information Notice: 24-015 (released on 4/15/2024) notifies counties about the CARE Act reimbursement rates and provides guidance on how to submit claims for CARE activities.
- All counties may submit claims for activities performed when the CARE Act is implemented in their county pursuant to W&I Code section 5970.5.
- Administrative activities include court hearing time, court reports, outreach and engagement, notice, and data reporting.
- Hours spent performing each CARE Act activity include time ancillary to the performance of the activity, which is limited to preparation time, internal meeting time, and oversight by supervisors and managers related to the activities.

https://www.dhcs.ca.gov/Documents/BHIN-24-015-CARE-Act-Reimbursement-Rates-and-Billing-Guidance.pdf
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=5970.5.



[Slide Image Description: This slide lists the five different administrative activity categories, with icons of a gavel, two documents, two individuals at a table, and a data chart.]

Here is an overview of the different administrative activity categories that will be covered in more detail on the following slides, including court hearing, court report, outreach and engagement, notice, and data reporting activities.

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HEALTH CARE SERVICES

HMA

Court Hearing Time



Includes activities that occur during court time such as:

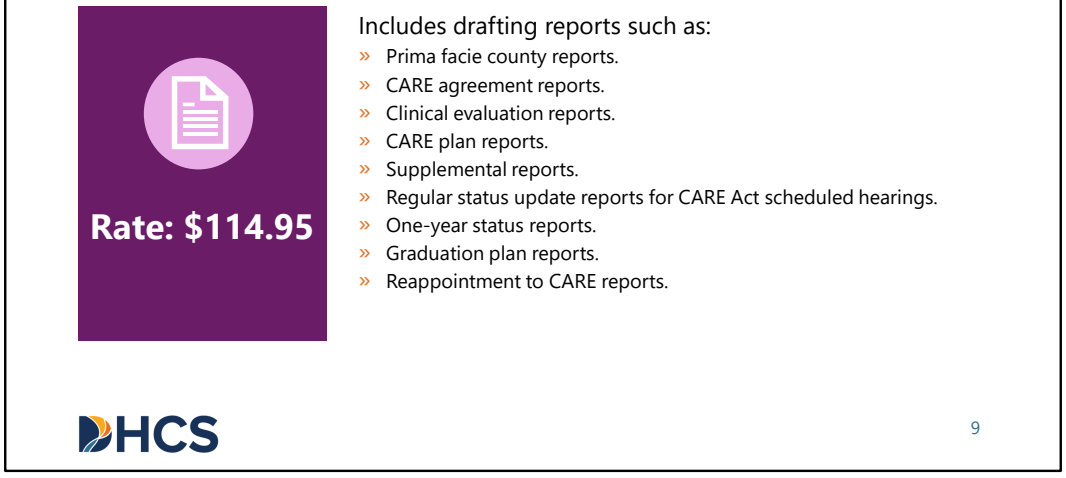
- Initial hearings.
- Hearings on the merits.
- Case management hearings.
- CARE agreement process meetings.
- Clinical evaluation review hearings.
- CARE plan review hearings.
- Regular status update hearings.
- One-year status hearings.
- Evidentiary hearings.
- Graduation hearings.
- Reappointment to CARE hearings.
- Hearings that can occur at any time during the CARE process to address a change of circumstances.

DHCS

8

[Slide Image Description: This slide describes court hearing time activities and includes the rate with an icon of a gavel.]

Court hearing time includes activities that occur during court time such as initial hearings; hearings on the merits; case management hearings; CARE agreement process meetings; clinical evaluation review hearings; CARE plan review hearings; regular status update hearings; one-year status hearings; evidentiary hearings; graduation hearings; reappointment to CARE hearings; and hearings that can occur at any time during the CARE process to address a change of circumstances. The court hearing time activity rate is $91.63.



[Slide Image Description: This slide describes court reporting time activities and includes the rate, with an icon of a document.]

Court reporting activities include drafting reports such as prima facie county reports; CARE agreement reports; clinical evaluation reports; CARE plan reports; supplemental reports; regular status update reports for CARE Act scheduled hearings; one-year status reports; graduation plan reports; and reappointment to CARE reports. The court report activity time rate is $114.95.

Outreach and Engagement



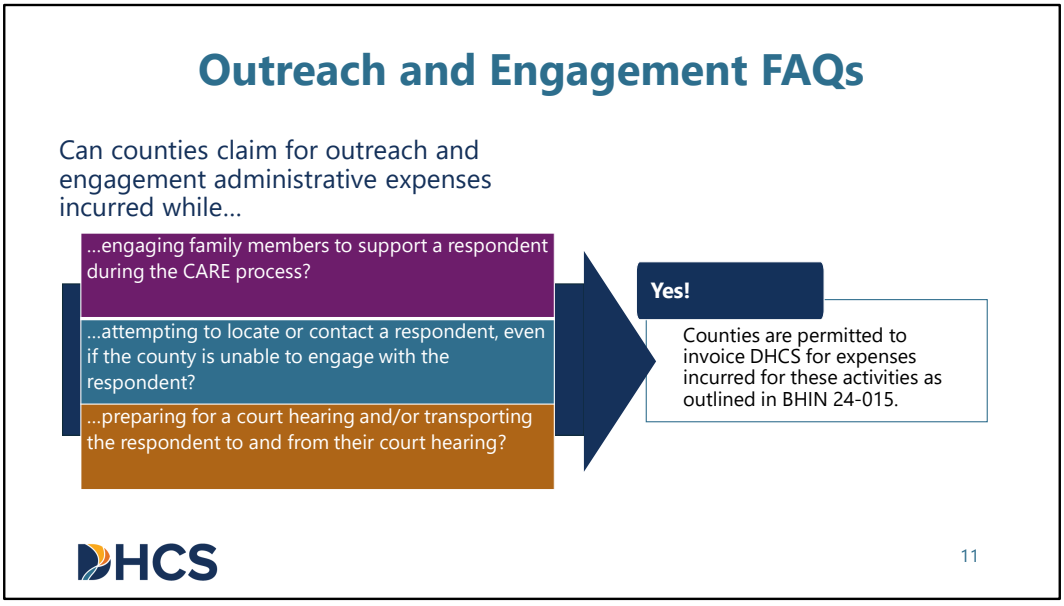
Includes all outreach and engagement activities required pursuant to W&I Code sections 5977(a)(5)(A) and 5977(c)(2):

- Engaging the respondent and developing a CARE agreement with the respondent.
- Outreach done to engage the respondent in jointly preparing a graduation plan pursuant to W&I Code section 5977.3(a)(3).

10

[Slide Image Description: This slide describes outreach and engagement activities and includes the rate, with an icon of two individuals sitting at a table.]

Outreach and engagement activities include all activities required pursuant to W&I Code sections 5977(a)(5)(A) and 5977(c)(2) to engage the respondent and develop a CARE agreement with the respondent and outreach done to engage the respondent in jointly preparing a graduation plan pursuant to W&I Code section 5977.3(a)(3). The outreach and engagement activity rate is $78.68.



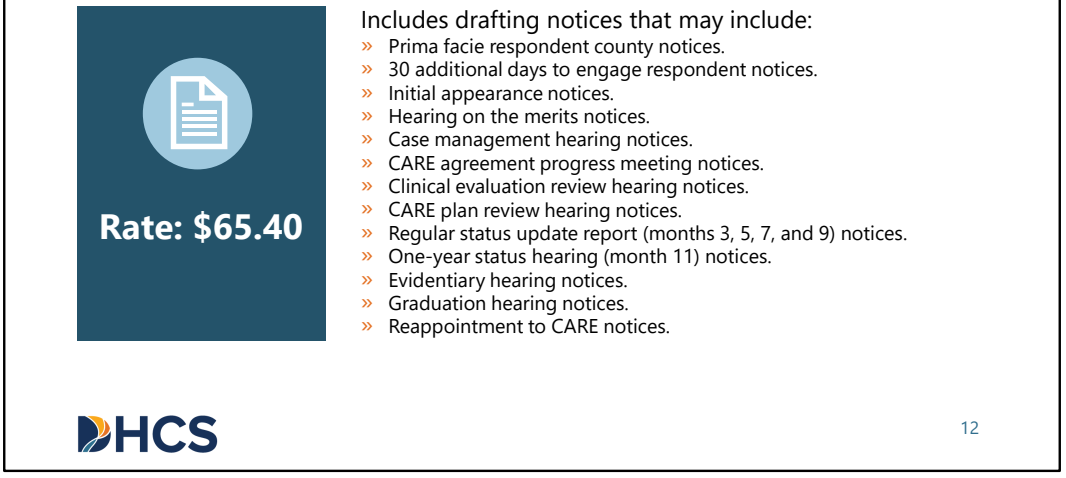
[Slide Image Description: This slide shows outreach and engagement frequently asked questions in colorful boxes.]

FAQs – Outreach and Engagement:

Question: Can counties claim for outreach and engagement administrative expenses incurred:

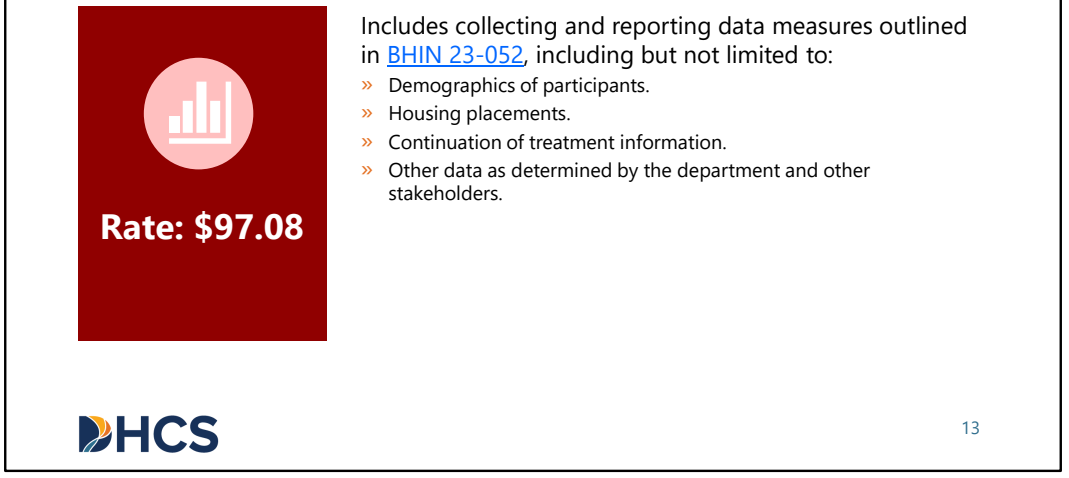
- While engaging family members to support a respondent during the CARE process?
- While attempting to locate or contact a respondent, even if the county is unable to engage with the respondent?
- While preparing for a court hearing and/or transporting the respondent to and from their court hearing?

Answer: Yes, counties are permitted to invoice DHCS for expenses incurred while engaging family members to support a respondent during the CARE process; while attempting to locate or contact a CARE Act respondent, even if the county is unable to engage the respondent; and while preparing for and/or transporting a respondent to and from their court hearing. DHCS will reimburse counties for these outreach and engagement activities to support CARE Act services, as outlined in BHIN 24-015.



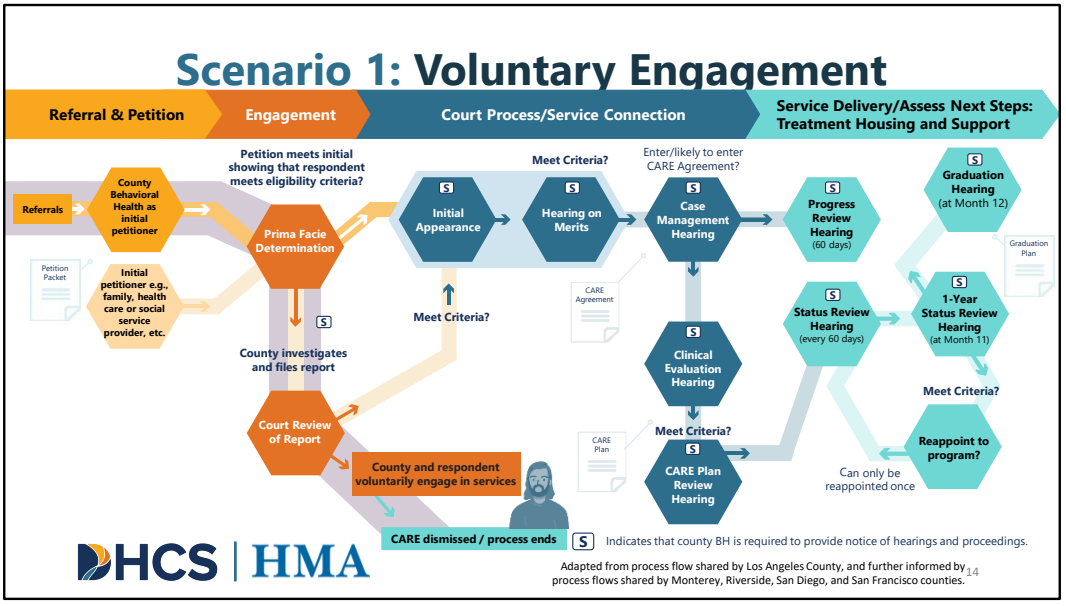
[Slide Image Description: This slide describes notice activities and includes the rate, with an icon of a document.]

Notice activities include drafting notices that may include prima facie respondent county notices; 30 additional days to engage respondent notices; initial appearance notices; hearing on the merits notices; case management hearing notices; CARE agreement progress meeting notices; clinical evaluation review hearing notices; CARE plan review hearing notices; regular status update report (months 3, 5, 7, and 9) notices; one-year status hearing (month 11) notices; evidentiary hearing notices; graduation hearing notices; and reappointment to CARE notices. The notice activity rate is $65.40.



[Slide Image Description: This slide describes data reporting activities and includes the rate, with an icon of a data chart.]

Data reporting activities include collecting and reporting data measures outlined in BHIN 23-052 including, but not limited to, demographics of participants, housing placements, continuation of treatment information, and other data as determined by the Department and other stakeholders. The data reporting activity rate is $97.08.



[Slide Image Description: This slide shows a process flow with an example of pathways through the CARE Act process.]

To understand how the administrative activities align with the CARE process, let's look at one scenario, in which an individual voluntarily engages in services. Up until when the respondent voluntarily engages in services, claims can be made for all administrative activity types. This can include up to 24 months, which includes 12 months of active services and one-year follow-up period.

After the individual engages voluntarily in services and the case is dismissed, claims would not continue for court hearing time, court reporting, outreach and engagement, or notice. However, data reporting activities will continue through the end of the follow-up period.

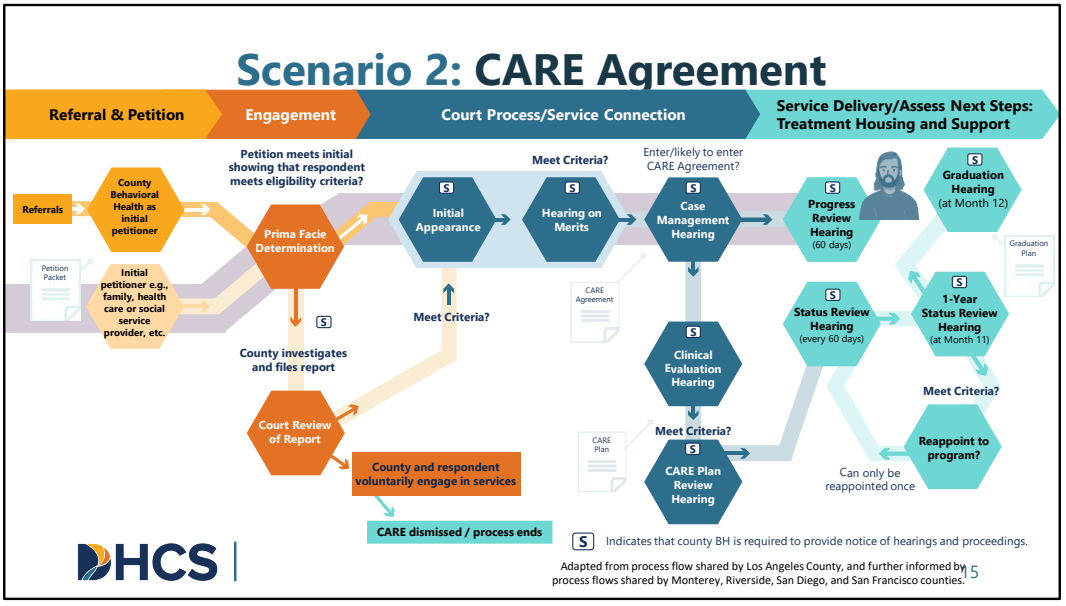
Description of flow:

1. Informal and formal referrals can be made to the county behavioral health (BH) agency.
2. Petitioner files a petition. This can be county BH or another initial petitioner.
3. There will be a Prima Facie Determination to see if the respondent meets the

criteria.

- If someone other than the county BH agency is the petitioner, and if the respondent is found to meet the criteria, the county BH agency will investigate and file a CARE report.
- If they do not voluntarily engage in services and the county BH report finds that the respondent meets the criteria, they will progress to the initial hearing.

1. If the respondent meets the criteria, there will be an initial appearance (with the petitioner present). There will also be a hearing on the merits (which can be combined with the Initial Appearance).
2. If the respondent still meets the criteria, then there will be a Case Management Hearing.
    - If it is determined in this hearing that a CARE agreement is likely to be reached, then there will be at least one progress review hearing (but potentially there could be more).
3. If it is determined at the Case Management Hearing that a CARE agreement is not likely to be reached, the court will order a Clinical Evaluation and then a hearing to review. That evaluation is required to include an assessment of respondent's capacity to make an informed decision around psychiatric medications.
4. If the clinical evaluation finds that the respondent is eligible, a CARE plan will be developed and then reviewed in a hearing.
5. There will then be a status review hearing at least every 60 days.
6. At month 11, there will be a one-year status review hearing to determine next steps:
    - The respondent will graduate (and have a graduation hearing at month 12).
    - The respondent will be reappointed to the program, which can only happen once.



[Slide Image Description: This slide shows a process flow with an example of pathways through the CARE Act process.]

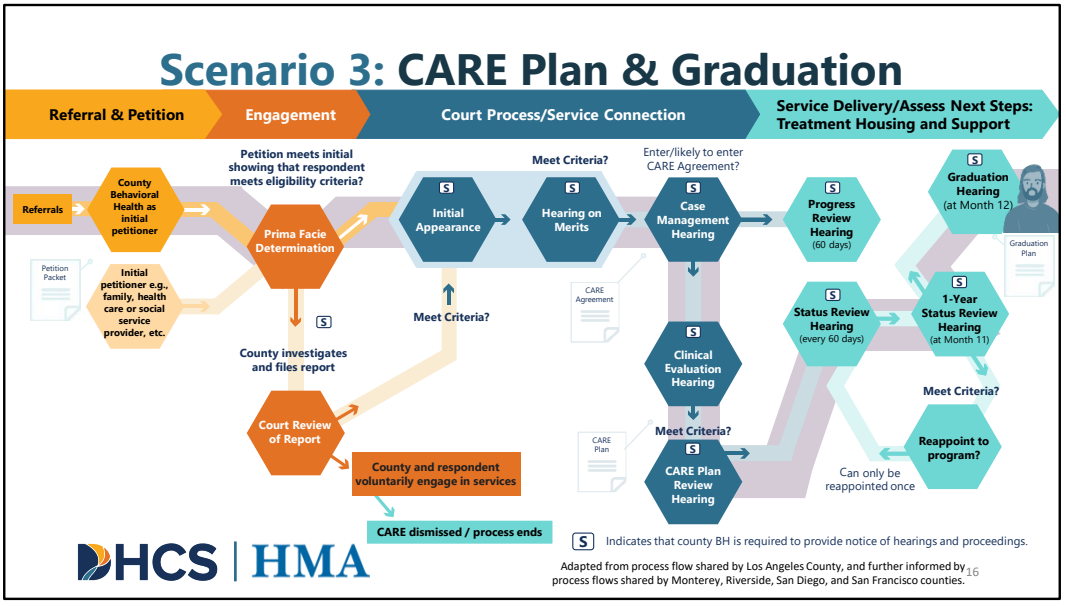
Here is a second scenario. Let's say that the individual has progressed to a CARE agreement, and the parties were able to agree on what services and supports were part of that plan. Per statute, there is one more required progress review hearing at 60 days. After this final progress review hearing, claims would not continue for court hearing time, court reporting, outreach and engagement, or notice. However, data reporting activities will continue up to a one-year follow-up period. This can include up to 24 months, including 12 months of active service and one-year follow-up period.

Some courts are choosing to have more than one progress hearing for a CARE agreement. In this case, staff could continue to submit claims for court hearing time, court reporting, outreach and engagement, or notice as applicable, in addition to data reporting.

Description of flow:

1. Informal and formal referrals can be made to the county behavioral health (BH) agency.

2. Petitioner files a petition. This can be county BH or another initial petitioner.
3. There will be a Prima Facie Determination to see if the respondent meets the criteria.
    - If someone other than the county BH agency is the petitioner, and if the respondent is found to meet the criteria, the county BH agency will investigate and file a CARE report.
    - If they do not voluntarily engage in services and the county BH report finds that the respondent meets the criteria, they will progress to the initial hearing.
4. If the respondent meets the criteria, there will be an initial appearance (with the petitioner present). There will also be a hearing on the merits (which can be combined with the Initial Appearance).
5. If the respondent still meets the criteria, then there will be a Case Management Hearing.
    - If it is determined in this hearing that a CARE agreement is likely to be reached, then there will be at least one progress review hearing (but potentially there could be more).
6. If it is determined at the Case Management Hearing that a CARE agreement is not likely to be reached, the court will order a Clinical Evaluation and then a hearing to review. That evaluation is required to include an assessment of respondent's capacity to make an informed decision around psychiatric medications.
7. If the clinical evaluation finds that the respondent is eligible, a CARE plan will be developed and then reviewed in a hearing.
8. There will then be a status review hearing at least every 60 days.
9. At month 11, there will be a one-year status review hearing to determine next steps:
    - The respondent will graduate (and have a graduation hearing at month 12).
    - The respondent will be reappointed to the program, which can only happen once.



[Slide Image Description: This slide shows a process flow with an example of pathways through the CARE Act process.]

This last scenario shows that the individual has entered into a CARE Plan. Claims for administrative services can continue throughout the status review hearings through the one-year status review hearing. If the case is dismissed, claims would not continue for court hearing time, court reporting, outreach and engagement, or notice. However, data reporting activities will continue up to a one-year follow-up period. This can include up to 24 months, 12 months of active service and one-year follow-up period.

If the respondent is reappointed to the process, claims for administrative services will continue up to 36 total months (24 months active services and one-year follow-up period).

There could be instances where the judge dismisses an individual and the county terminates services for the individual (e.g., unable to be located, incarceration, death). At this point, claims could no longer be submitted.

_____

Description of flow:

1. Informal and formal referrals can be made to the county behavioral health (BH) agency.
2. Petitioner files a petition. This can be county BH or another initial petitioner.
3. There will be a Prima Facie Determination to see if the respondent meets the criteria.
    - If someone other than the county BH agency is the petitioner, and if the respondent is found to meet the criteria, the county BH agency will investigate and file a CARE report.
    - If they do not voluntarily engage in services and the county BH report finds that the respondent meets the criteria, they will progress to the initial hearing.
4. If the respondent meets the criteria, there will be an initial appearance (with the petitioner present). There will also be a hearing on the merits (which can be combined with the Initial Appearance).
5. If the respondent still meets the criteria, then there will be a Case Management Hearing.
    - If it is determined in this hearing that a CARE agreement is likely to be reached, then there will be at least one progress review hearing (but potentially there could be more).
6. If it is determined at the Case Management Hearing that a CARE agreement is not likely to be reached, the court will order a Clinical Evaluation and then a hearing to review. That evaluation is required to include an assessment of respondent's capacity to make an informed decision around psychiatric medications.
7. If the clinical evaluation finds that the respondent is eligible, a CARE plan will be developed and then reviewed in a hearing.
8. There will then be a status review hearing at least every 60 days.
9. At month 11, there will be a one-year status review hearing to determine next steps:
    - The respondent will graduate (and have a graduation hearing at month 12).
    - The respondent will be reappointed to the program, which can only happen once.

Rates Methodology

- The rate for each CARE activity is based on wage data for the professionals and practitioners most likely to complete the activity. The rate:
  - Is based on the median hourly wage reported by Bureau of Labor Statistic (BLS).
  - Adds an inflator from the May 2021 BLS wage data based on the Center for Medicare and Medicaid Services (CMS) Home Health Agency Market Basket Index (14.5%).
  - Adds a benefits percentage (62.25%) derived from the California State Budget for employees.
  - Adds an overhead percentage of the inflated and benefited wage (47.36%).



DHCS

17

[Slide Image Description: This slide includes information about rates methodology for CARE activities, with an image of two individuals signing a document and a screenshot of the U.S. Bureau of Labor Statistics logo.]

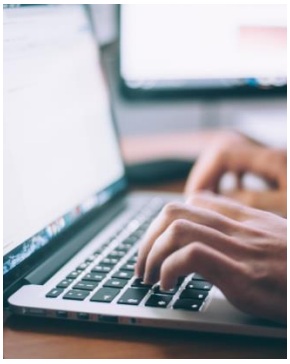
This slide details the methodology behind creating the rates for the CARE Act activities. Each CARE activity is based on wage data for the professionals and practitioners most likely to complete the activity. The rates include:

- Median hourly wage based on the Bureau of Labor Statistics (BLS).
- Adds an inflator from the May 2021 BLS wage data used based on the Center for Medicare and Medicaid Services (CMS) Home Health Agency Market Basket Index of 14.5%.
- Adds a benefits percentage of 62.25%, derived from the California State Budget for employees.
- Adds an overhead percentage of the inflated and benefited wage of 47.36%. The overhead percentage includes all the overhead including infrastructure and support services like human resources, payroll, and legal.

DHCS
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES

HMA

Claiming Process



Counties will claim on a quarterly basis similar to the current administrative claiming process.

- Claims for a quarter may be submitted after the end of the quarter.
- Claims must be emailed to CARE_Claiming@DHCS.CA.GOV.
- Claims must be received by DHCS within one year following the end of the quarter.
- Cohort I counties may submit claims for activities performed beginning October 1, 2023, and Los Angeles County may submit claims for activities performed beginning December 1, 2023.
- Upon CARE Act implementation, counties can begin filing for claims, even if a county chooses to implement early.
- Counties should maintain internal tracking of time spent on CARE Act activities down to the minute for audit purposes, although claiming will be based on 15-minute increments.
- Claims for CARE Act activities may be subject to audit by DHCS.

DHCS

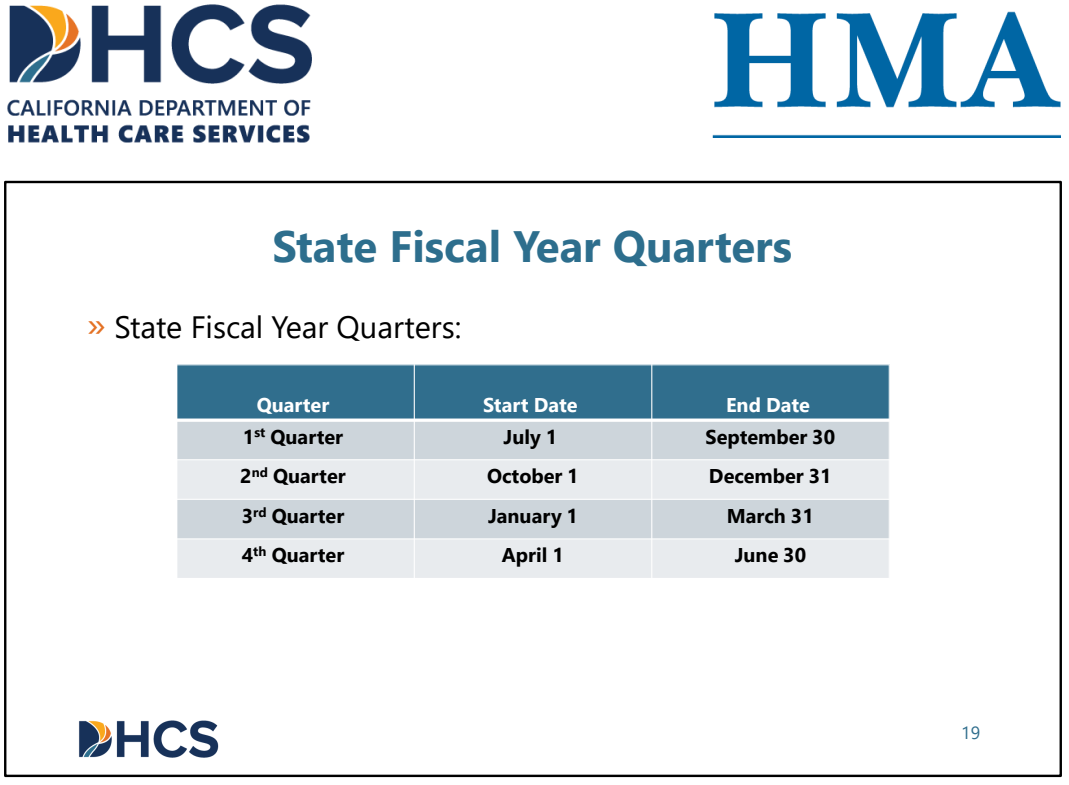
18

[Slide Image Description: This slide gives an overview of the CARE Act claiming process, with an image of an individual typing on a laptop.]

Detailed here is an overview of the CARE Act claims process:

- Counties will claim on a quarterly basis similar to the current administrative claiming process:
    - Claims for a quarter can be submitted after the end of the quarter.
    - Claims must be emailed to CARE_Claiming@DHCS.CA.GOV.
    - Claims must be received by DHCS within one year following the end of the of the quarter.
    - Cohort I counties may submit claims for activities performed beginning October 1, 2023, and Los Angeles County may submit claims for activities performed beginning December 1, 2023.
    - Upon CARE Act implementation, counties can begin filing for claims, even if a county chooses to implement early.

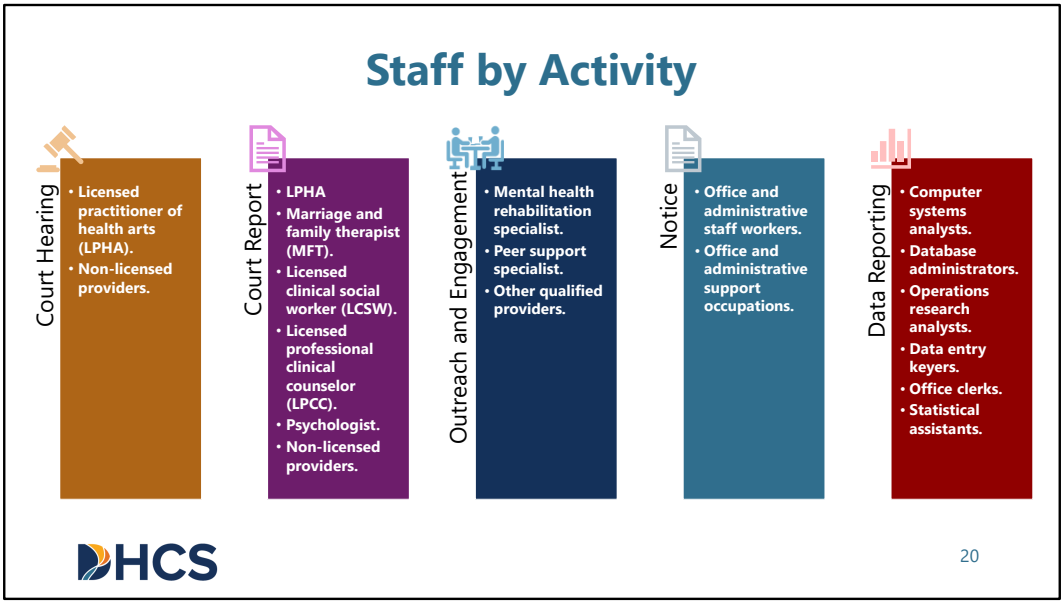
- Counties should maintain an internal tracking of time spent on CARE Act activities down to the minute for audit purposes, although claiming will be based on 15-minute increments.
- Claims for CARE Act activities may be subject to audit by DHCS.



[Slide Image Description: This slide shows a table that details California state fiscal year quarters.]

Next, we have a quick overview of the fiscal quarters for this year:

- 1st Quarter: Begins on July 1 and ends on September 30.
- 2nd Quarter: Begins on October 1 and ends on December 31.
- 3rd Quarter: Begins on January 1 and ends on March 31.
- 4th Quarter: Begins on April 1 and ends on June 30.



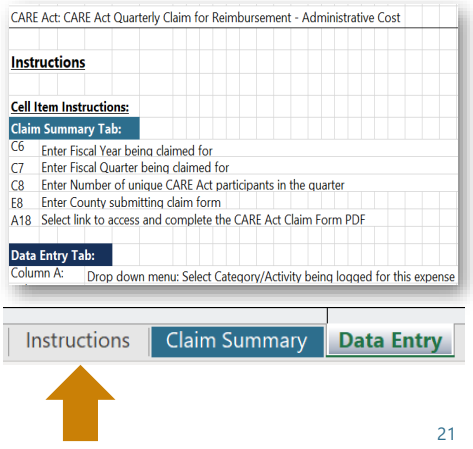
[Slide Image Description: This slide lists CARE Act claiming staff by activity, with icons of a gavel, two documents, two individuals at a table, and a data chart.]

CARE Act activity rates are based on wages of the staff likely to complete the task. A rate for each activity was developed by averaging the mean wage of the job titles (these are examples but not an exhaustive list of available staff types that can be selected):

- Court Hearing Time Activity: Job titles can include licensed practitioner of healing arts (LPHA) and non-licensed providers.
- Court Report Activity: Job titles can include LPHA, marriage and family therapist (MFT), licensed clinical social worker (LCSW), licensed professional clinical counselor (LPCC), psychologist, and non-licensed providers.
- Outreach and Engagement Activity: Job titles can include mental health rehabilitation specialist, peer support specialist, and other qualified providers.
- Notice Activity: Job titles can include office and administrative staff workers and office and administrative support occupations.
- Data Reporting Activity: Job titles can include computer systems analysts, database administrators, operations research analysts, data entry keyers, office clerks, and statistical assistants.

Claiming

- Counties must submit a claim form to DHCS to be reimbursed for performing the described activities.
- Counties are required to complete BHIN 24-015: Enclosure 1 by entering the appropriate information into the Data Entry and Claim Form tabs.
- Review the Instructions tab within BHIN 24-015: Enclosure 1 for additional detail.



DHCS

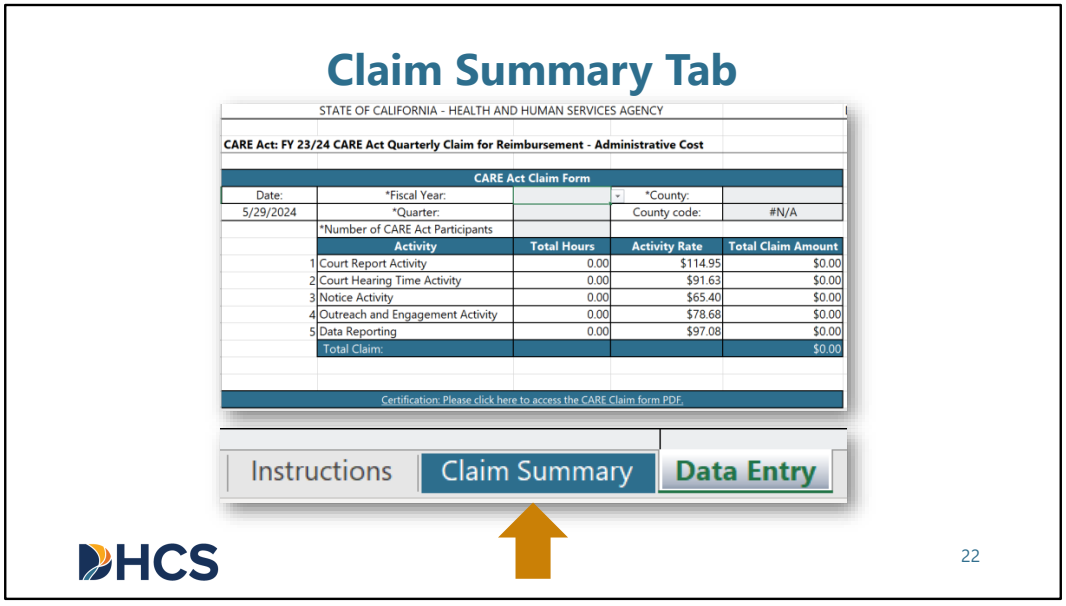
21

[Slide Image Description: This slide shows a yellow arrow pointing toward a screenshot of the Instructions tab within BHIN 24-015: Enclosure 1.]

This workbook is BHIN 24-015: Enclosure 1. Counties must submit a claim form to DHCS to be reimbursed for performing the described activities.

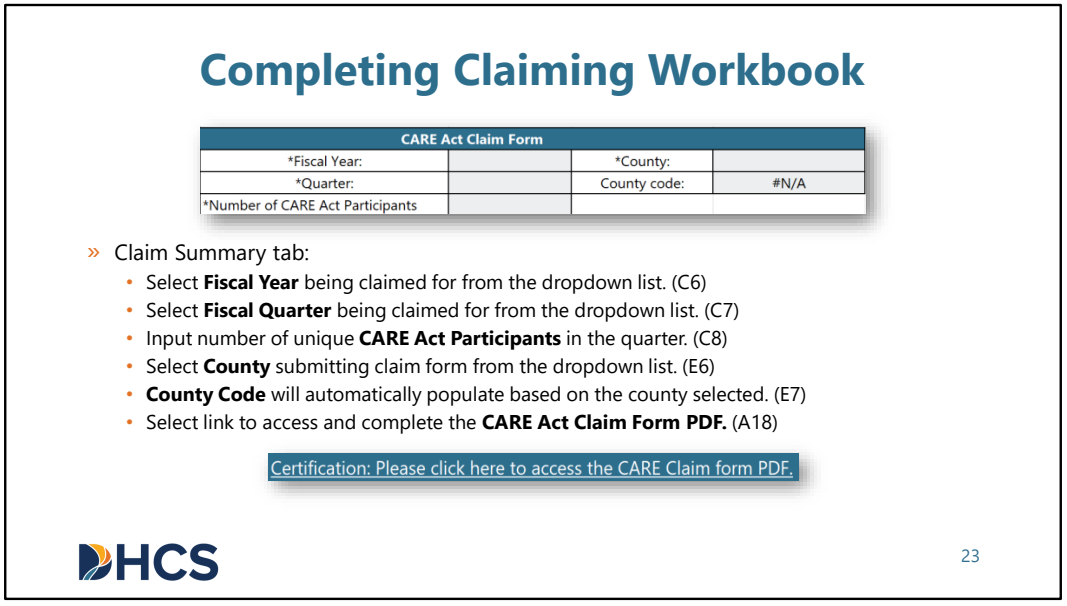
The workbook contains three tabs: Instructions, Claim Summary, and Data Entry.

The Instructions tab provides cell item instructions for both the Claim Summary tab and Data Entry tab. The Instructions tab also provides the certification requirements. The certification will be completed on a separate CARE Act Claim Form PDF titled “CARE Act Quarterly Administrative Cost Reimbursement Claim.” Review the Instructions tab within BHIN 24-015: Enclosure 1 for additional detail.



[Slide Image Description: This slide shows a yellow arrow pointing toward a screenshot of the Claim Summary tab within BHIN 24-015: Enclosure 1.]

This is the Claim Summary tab. The next slide includes instructions on inputs.

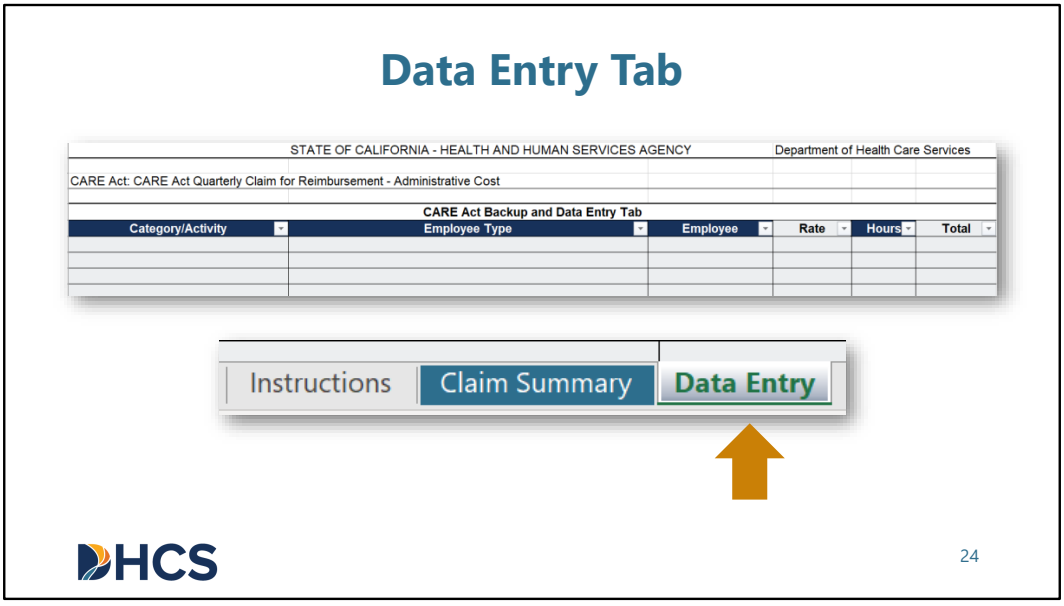


[Slide Image Description: This slide shows a screenshot and a list of steps to follow to complete the Claim Summary tab within BHIN 24-015: Enclosure 1.]

On the Claim Summary tab, select options from cell dropdown lists and input information in appropriate cells:

- Cell C6 *Fiscal Year: Use the dropdown list to select the fiscal year being claimed.
- Cell C7 *Quarter: Use the dropdown list to select the fiscal quarter being claimed.
- Cell C8 *Number of CARE Act Participants: Input the number of unique CARE Act participants in the quarter (this is a free-form cell that counties can fill out). The number of unique CARE Act participants in the quarter are already being tracked internally by the counties, and the information should be available.
- Cell E6 *County: Use the dropdown list to select the county submitting the claim. This will automatically populate the corresponding county code in cell E7 *County Code.

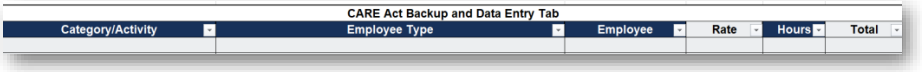
Before the table below populates, you must first complete the Data Entry tab. It does not matter which tab is completed first, but both must be completed before beginning certification requirements.



[Slide Image Description: This slide shows a yellow arrow pointing toward a screenshot of the Data Entry tab within BHIN 24-015: Enclosure 1.]

This is the Data Entry tab. The next slide includes instructions on inputs.

Completing Claiming Workbook



» Data Entry Tab:

- Select the **Category/Activity** being logged for this expense from the dropdown list. (Column A)
- Select **Employee Type** being logged for this expense from the dropdown list. (Column B)
- Type in **Employee Name** that completed the task. (Column C)
- **Rate** – no entry necessary/allowed. This is the rate that will be paid per hour for this entry. (Column D)
- Enter **Hours** performed doing this particular task/entry rounded to the nearest quarter hour. (Column E)
- **Total** – no entry necessary/allowed. This is the total claim amount for this entry. (Column F)

DHCS 25

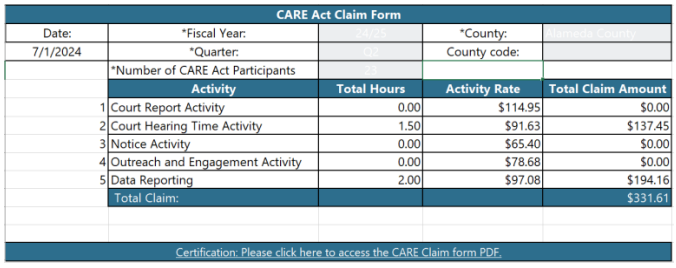
[Slide Image Description: This slide shows a screenshot and a list of steps to follow to complete the Data Entry tab within BHIN 24-015: Enclosure 1.]

On the Data Entry tab, select options from cell dropdown lists and input information in appropriate cells:

- Column A Category/Activity: Use the dropdown list to select the Category/Activity being logged for this expense. Column D Rate will automatically populate with the rate that corresponds to the selected category/activity. Therefore, no entry is necessary or allowed. This is the rate that will be paid per hour for this entry.
- Column B Employee Type: Use the dropdown list to select the Employee Type that completed the work.
- Column C Employee: Input the Name of the Employee that completed the activity (this is a free-form cell counties can fill out).
- Column E Hours: Enter the Hours performed by the employee doing this particular task, rounded to the nearest quarter hour. Column F Total will automatically calculate based on the rate and hours; therefore, no entry is necessary or allowed. This is the total claim amount for this entry.

Completing Claiming Workbook Continued

- Once the Data Entry tab is complete, you will see that the table with the activity, total hours, activity rate, and total claim amount have been populated on the Claim Summary.
- You are now ready to start the certification process. Certification will be completed on a separate CARE Act Claim Form PDF found by following the link in cell A18 on the Claim Summary tab or accessing BHIN 24-015: Enclosure 2.



CARE Act Claim Form				
Date:	*Fiscal Year:	[illegible]	*County:	[illegible]
7/1/2024	*Quarter:	Q2	County code:	
	*Number of CARE Act Participants	23		
	Activity	Total Hours	Activity Rate	Total Claim Amount
1	Court Report Activity	0.00	$114.95	$0.00
2	Court Hearing Time Activity	1.50	$91.63	$137.45
3	Notice Activity	0.00	$65.40	$0.00
4	Outreach and Engagement Activity	0.00	$78.68	$0.00
5	Data Reporting	2.00	$97.08	$194.16
	Total Claim:			$331.61
	Certification: Please click here to access the CARE Claim form PDF.			

26

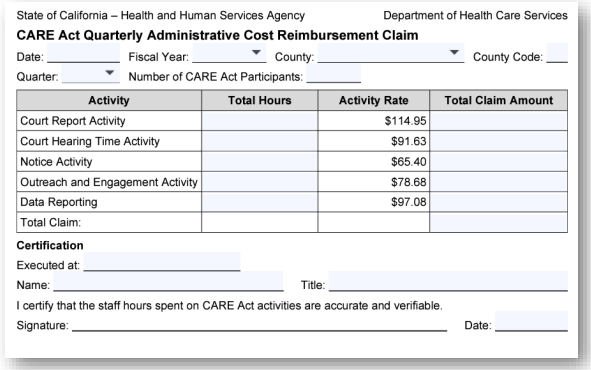
[Slide Image Description: This slide shows a yellow arrow pointing toward a screenshot and list of steps to follow to complete the Data Entry tab within BHIN 24-015: Enclosure 1.]

Once the Data Entry tab is complete, you will see that the table with the activity, total hours, activity rate, and total claim amount have been populated.

You are now ready to start the certification process. Certification will be completed on a separate CARE Act Claim Form PDF found by following the link in cell A18 on the Claim Summary Tab or accessing BHIN 24-015: Enclosure 2.

Certification

- Input the **Date Completed** and select both **Fiscal Year** and **Quarter** being claimed for.
- Enter the number of **CARE Act Participants** as reported on the Claim Summary tab.
- Select the **County** name being claimed for and input the **Total Hours** for each activity as reported on the Claim Summary tab.



State of California – Health and Human Services Agency Department of Health Care Services

CARE Act Quarterly Administrative Cost Reimbursement Claim

Date: _____ Fiscal Year: _____ County: _____ County Code: ___

Quarter: _____ Number of CARE Act Participants: _____

Activity	Total Hours	Activity Rate	Total Claim Amount
Court Report Activity		$114.95	
Court Hearing Time Activity		$91.63	
Notice Activity		$65.40	
Outreach and Engagement Activity		$78.68	
Data Reporting		$97.08	
Total Claim:			

Certification

Executed at: _____

Name: _____ Title: _____

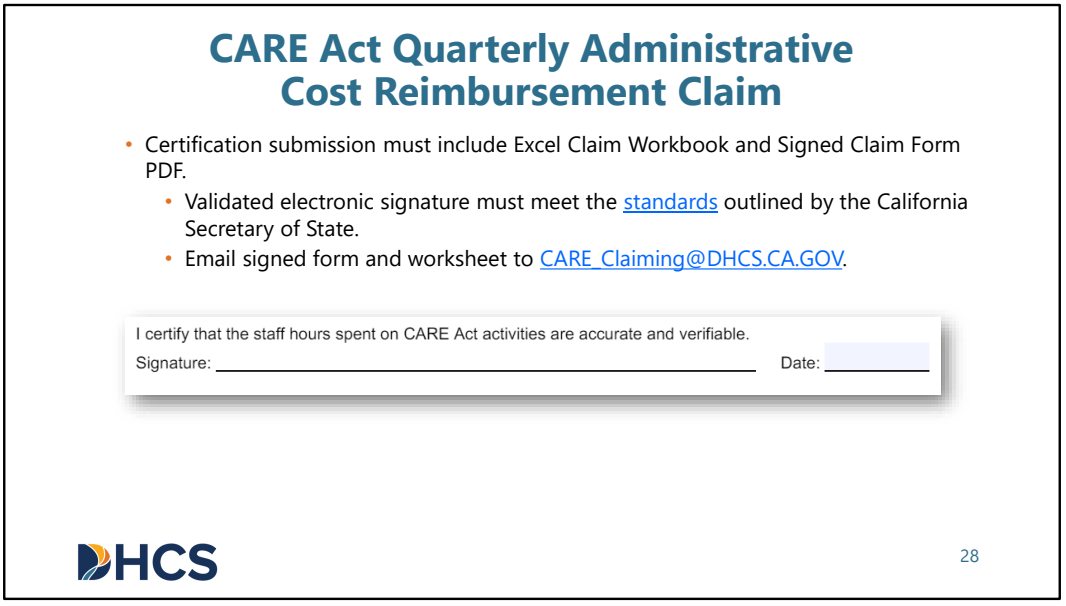
I certify that the staff hours spent on CARE Act activities are accurate and verifiable.

Signature: _____ Date: _____

27

[Slide Image Description: This slide shows a screenshot of the “CARE Act Quarterly Administrative Cost Reimbursement Claim” used for certification that can be accessed from the Claim Summary tab of BHIN 24-015: Enclosure 1.]

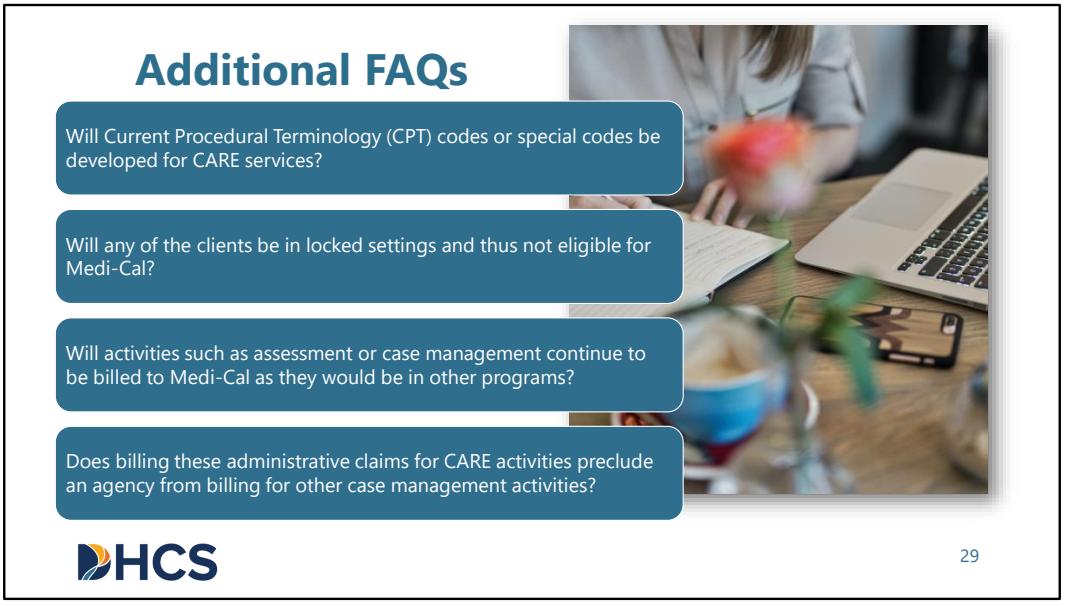
After clicking the hyperlink, the PDF will open. First, input the Date Completed and then select both Fiscal Year and Quarter being claimed for from the dropdown lists. Then enter the number of CARE Act Participants. This number should be the same number reported on in cell C8 of the Claim Summary tab. Then select the County name being claimed for from the dropdown list. The County Code field will automatically populate. Using the table in the Claim Summary tab of the workbook, input the Total Hours for each activity into the Claim Form PDF. The Total Claim Amount per activity and Total Claim will automatically populate after entering in the total hours.



[Slide Image Description: This slide shows a screenshot list of steps to follow to complete the "CARE Act Quarterly Administrative Cost Reimbursement Claim" that is accessed through BHIN 24-015: Enclosure 2.]

The Claim Form PDF must include the signed certification of the local mental health director or their designee (wet signature or validated electronic signature) and be dated. Certification submission must include the Excel CARE Act Claiming Workbook and Signed Claim Form PDF. Validated electronic signature must meet the standards outlined by the California Secretary of State. Email signed CARE Act Quarterly Administrative Cost Reimbursement Claim Form and the Excel CARE Act Claiming Workbook to CARE_Claiming@DHCS.CA.GOV.

To use the electronic signature, click on the signature line and use the pop-up to sign. Once signed, you can save a copy and input the date. To use a wet signature, print a copy of the PDF and sign.



[Slide Image Description: This slide shows an image of an individual writing in a notebook and lists additional FAQs in blue boxes.]

Additional FAQs:

Question: Will Current Procedural Terminology (CPT) codes or special codes be developed for CARE services?

- Answer: CARE Act claims will not be billed using CPT codes.

Question: Will any of the clients be in locked settings and thus not eligible for Medi-Cal?

- Answer: The provisions of the CARE Act do not necessarily prohibit the engagement of otherwise eligible CARE respondents that are in "locked settings," but one of the primary purposes of the CARE Act is to engage individuals in community-based behavioral health services. The CARE Act requires that an individual's participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

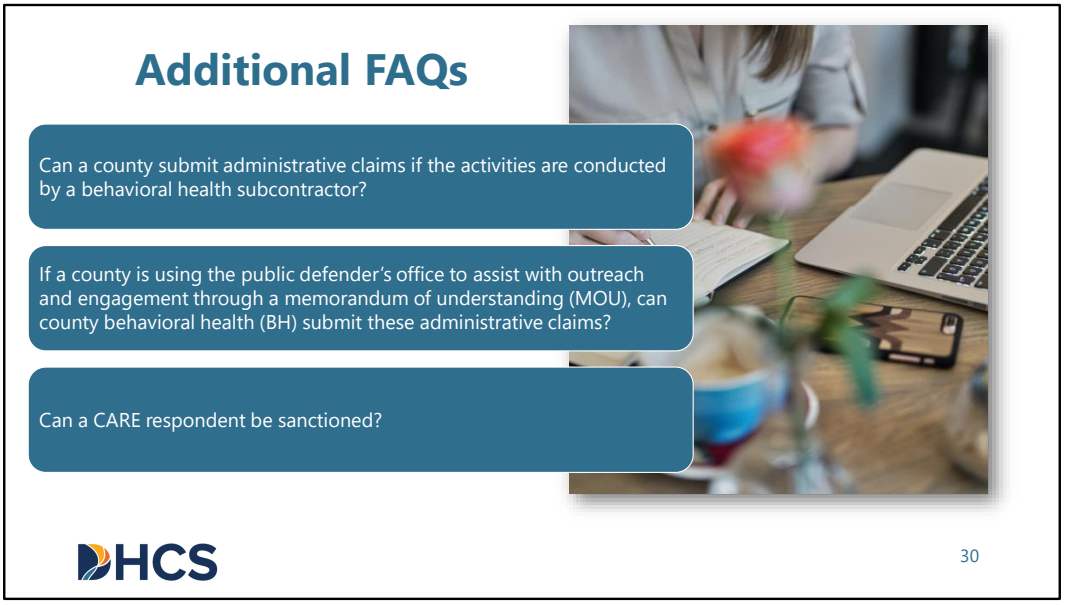
Question: Will activities such as assessment or case management continue to be billed

to Medi-Cal as they would be in other programs?

- Answer: Yes, other activities such as assessment or case management would continue to be billed to Medi-Cal or commercial health plans as appropriate.

Question: Does billing these administrative claims for CARE activities preclude an agency from billing for other case management activities?

- Answer: In addition to sending in claims for CARE-related activities, county behavioral health (BH) agencies should continue to bill for their work with individuals as they have been.



[Slide Image Description: This slide shows an image of an individual writing in a notebook and lists additional FAQs in blue boxes.]

Additional FAQs:

Question: Can a county submit administrative claims if the activities are conducted by a behavioral health subcontractor? Or only if county BH provides these services?

- Answer: Yes, counties are able to claim for administrative functions outlined in BHIN 24-015 that are completed by a subcontractor. The county would need to include the subcontractor's name and role in the claim form.

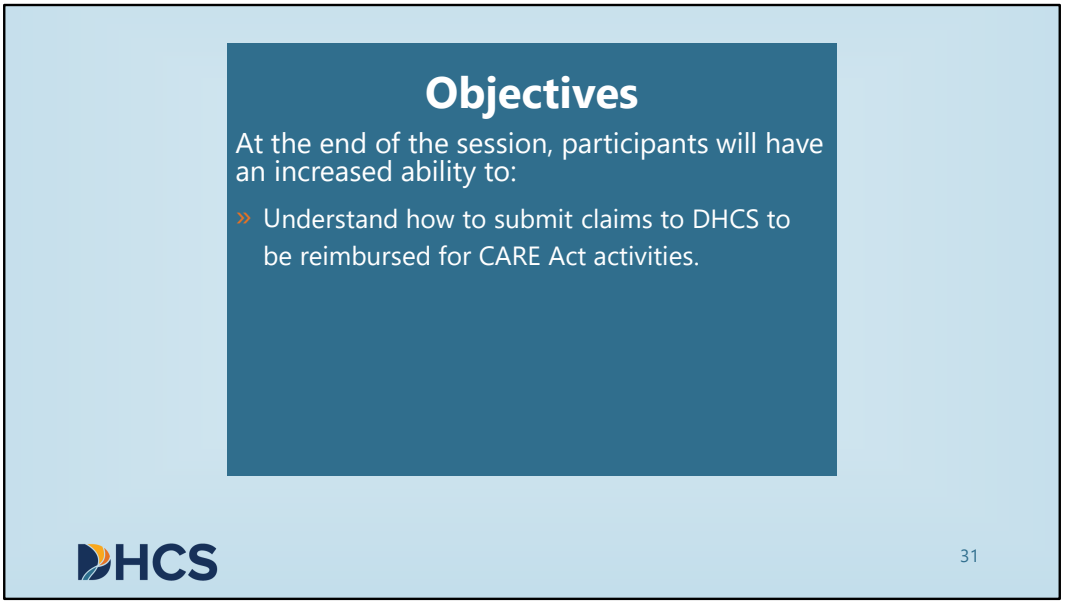
Question: Similarly, if a county is using another department (e.g., public defender's office) to assist with outreach and engagement through an MOU, can county BH submit these administrative claims?

- Answer: Public defenders should bill 100% of their CARE contracts with the Legal Services Trust Fund Commission (LSTFC). Public defenders should not be billed to DHCS for CARE Act services.

Question: Can a CARE respondent be sanctioned?

- Answer: Non-participation in the CARE process will not result in any penalties. On the other hand, if at any time during the CARE process the court finds that the county or other local government entity is not complying with lawful orders issued by the court, the court shall report that finding to the presiding judge of the superior court. If the judge finds by clear and convincing evidence that county or other local government entity has substantially failed to comply with court orders, or with lawful orders issued by a court, the judge may issue an order imposing a fine on the county or other local government entity.

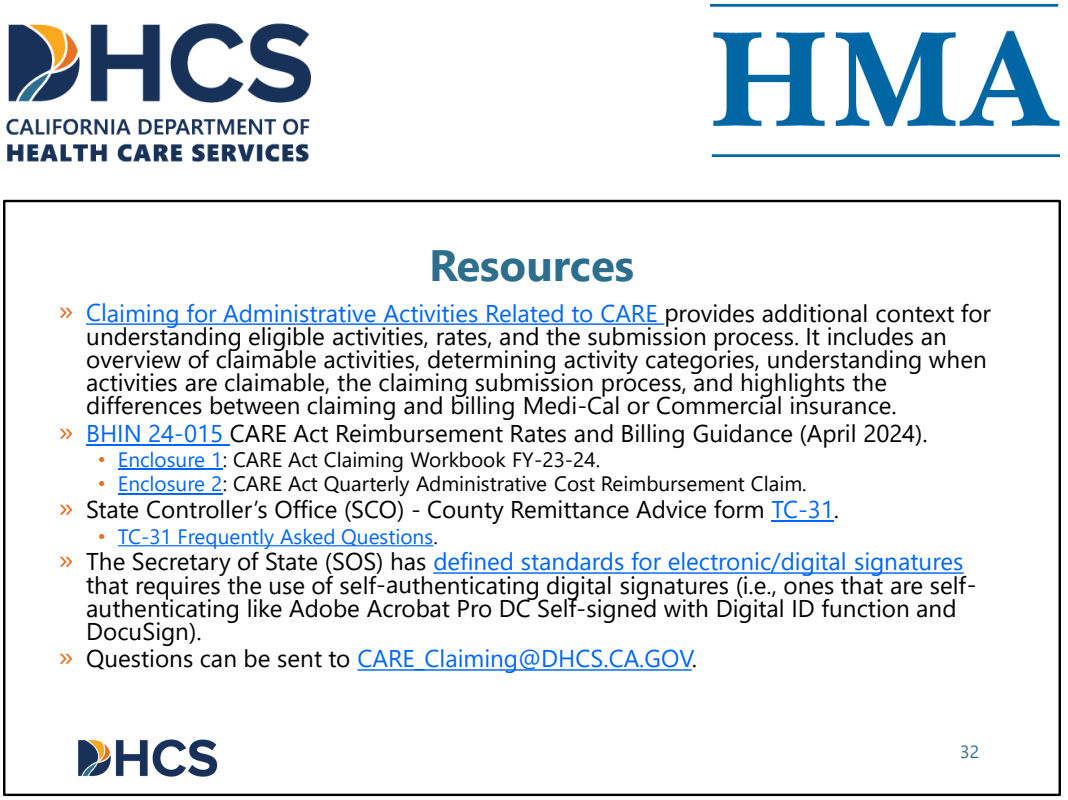
Additional FAQs related to CARE respondents who do not adhere to their CARE plan, as well as how the CARE Act and the Lanterman-Petris-Short (LPS) Act provisions related to evaluation, intensive treatment, and conservatorship interact, are available on the CARE Act Resource Center.



[Slide Image Description: This slide recaps the learning objectives for this training with a light blue background.]

At the end of the session, participants will have an increased ability to:

- Understand how to submit claims to DHCS to be reimbursed for CARE Act activities.



[Slide Image Description: This slide lists resources that apply to the training.]

- Claiming for Administrative Activities Related to CARE provides additional context for understanding eligible activities, rates, and the submission process. It includes an overview of claimable activities, determining activity categories, understanding when activities are claimable, the claiming submission process, and highlights the differences between claiming and billing Medi-Cal or Commercial insurance.
- BHIN 24-015 CARE Act Reimbursement Rates and Billing Guidance (April 2024).
    - Enclosure 1: CARE Act Claiming Workbook FY-23-24.
    - Enclosure 2: CARE Act Quarterly Administrative Cost Reimbursement Claim.
- State Controller's Office (SCO) - County Remittance Advice form TC-31.
    - TC-31 Frequently Asked Questions.
- The Secretary of State (SOS) has defined standards for electronic/digital signatures that requires the use of self-authenticating digital signatures (i.e., ones that are self-authenticating like Adobe Acrobat Pro DC Self-signed with Digital ID function and DocuSign).
- Questions can be sent to CARE_Claiming@DHCS.CA.GOV.



[Slide Image Description: This slide shows the DHCS CARE Act Claiming email address.]

For questions, please email CARE_Claiming@DHCS.CA.GOV.

Exhibit D

For training and technical assistance needs or questions, please email **info@CARE-Act.org (mailto:info@CARE-Act.org)**.

English

Home About New

(https://care-act.org)

Home About News & Announcements Trainings Resource Library Contact

Frequently Asked Questions

CARE Act TTA Frequently Asked Questions

The following are frequently asked questions related to Community Assistance, Recovery, and Empowerment (CARE) Act training and technical assistance. For background information on the CARE Act, please visit our **About page (https://care-act.org/about/)** and/or visit the **CalHHS CARE Act landing page (https://www.chhs.ca.gov/care-act/)**.

Have a question or comment? Please **reach out to us (https://care-act.org/contact/)** to share your question and feedback. We value your expertise and experience.

LOOKING FOR DATA COLLECTION & REPORTING FAQS?

Visit the **Data Collection & Reporting Resources page (https://care-act.org/library/data-collection-reporting-resources/#datafaqs)**.

Search the Frequently Asked Questions

What keyword(s) are you looking for? ...

Select a Topic(s)

Behavioral Health | CARE Act Basics | CARE Act Process | Case Worker / Case Manager | Claims / Billing & Sanctions | Counsel/Courts | Data Collection & Reporting | Data Dictionary | Delayed Implementation Plan Development | Eligibility Criteria | Equitable & Person Centered Care | Housing/Community Supports | Other | Policy/Advocacy | Serious Mental Illness & Evidenced-based Care | Volunteer Supporter

Reset Search Form

+ What is the CARE Act?

+ Who is the intended audience of the CARE Act training and technical assistance?

+ When was the CARE Act implemented?
+ Who is eligible for CARE?
+ What is a CARE agreement and a CARE plan?
+ Who can file a petition?
+ What happens during the CARE process?
+ What information does the CARE Act annual report provide?
+ What is a licensed behavioral health professional as defined in the CARE Act statute?
+ What is the impact on the process if an individual voluntarily engages in services?
+ What are the options if a CARE respondent cannot attend or does not wish to attend a CARE Act hearing?
+ Can a supporter be subpoenaed to testify against the respondent?
+ Can a supporter be removed from the CARE process due to a conflict of interest?
+ How can family members participate in CARE Act proceedings?
+ Can someone who is experiencing a mental health crisis participate in a supported decisionmaking arrangement?
+ What happens if a CARE respondent does not participate in or adhere to a CARE agreement or CARE plan?
+ What are the legal roles throughout the CARE process?
+ What is the difference between a progress review hearing and a status review hearing?
+ What is the court's role in ensuring that the volunteer supporter is following the supported decisionmaking framework?
+ What is the role of the volunteer supporter?
+ What are the requirements for official service notifying a respondent of the CARE Act proceedings?
+ When do counties start tracking CARE respondents?
+ How is the data collected shared with the public?
+ Will the respondent receive notice of disclosure of their health information?
+ What is a Psychiatric Advance Directive (PAD)?
+ Can a Psychiatric Advance Directive (PAD) be registered with the State?
+ What is the role of a Psychiatric Advance Directive in the CARE process?
+ What options are available for respondents who would like a supporter but do not have someone who can fulfill this role?
+ What resources are available to those submitting a petition?
+ Can a court order another county to provide services or support such as behavioral health treatment or housing under a CARE plan?
+ Is the court able to request and/or compel reporting of health information from non-County or non-Medi-Cal providers?
+ Can the original petitioner remain informed of the CARE process once the behavioral health agency has replaced them as the petitioner?

+ If a respondent's case is dismissed due to non-participation or other circumstances, what resources are available to support their transition out of the CARE process?

+ What guidance is available related to billing health plans for services in a CARE agreement or CARE plan?

+ What resources are available to peers who are interested in supporting CARE respondents?

+ Can counties claim for outreach and engagement administrative activities incurred while preparing for a court hearing and/or transporting the respondent to and from their court hearing?

+ Can counties claim for outreach and engagement administrative activities incurred while attempting to locate or contact a respondent, even if the county is unable to engage with them?

+ Can counties claim for outreach and engagement administrative activities incurred while engaging family members in the CARE process?

+ How do CARE Act and the Lanterman-Petris-Short (LPS) Act provisions related to evaluation, intensive treatment and conservatorship interact?

+ How does Senate Bill (SB) 43 impact the CARE Act?

+ Can family members or other individuals submit a referral to county behavioral health instead of filing a petition with the court?

+ Where can I find data collection and reporting resources?

+ Where should I start to learn the basics about the CARE Act?

+ Where can I find information about the CARE Act Data Dictionary?

+ What is the process for facilities to make a CARE referral?

+ What constitutes a prima facie showing under the CARE Act?

+ Can an individual be eligible for CARE if they are already participating in mental health treatment?

+ What specific activities are reimbursable for the CARE Act?

− Can county behavioral health agencies claim for CARE Act administrative costs incurred for county counsel staff?

County behavioral health (BH) agencies may not claim CARE Act administrative costs for county counsel staff. County counsel staff are not considered eligible employee types, even if they perform CARE-related duties such as petitioning or appearing in court.

While county counsel staff time itself cannot be claimed, counties may consider reassigning certain administrative tasks—such as preparing and serving notices or coordinating with the court—to designated county BH agency administrative staff.

For more information, review the **Claiming for Administrative Activities Related to CARE (https://care-act.org/resource/claiming-for-administrative-activities-related-to-care/)** brief, the **Administrative Claiming for the CARE Act (https://care-act.org/training-material/care-act-sanctions-and-claiming-process/)** training. For additional questions, contact **care_claiming@dhcs.ca.gov (mailto:care_claiming@dhcs.ca.gov)**.

Topics:
CARE Act Process, Claims / Billing & Sanctions, Other

+ Can county behavioral health agencies submit administrative claims if the activities are conducted by a behavioral health subcontractor?

+ If a county is working with the public defender's office to assist with outreach and engagement through a Memorandum of Understanding (MOU), can the county behavioral health agency submit these administrative claims?

- Is substance/medication-induced psychotic disorder (SIPD) an eligible CARE Act diagnosis?
- Can counties claim for outreach and engagement administrative activities incurred before a petition is filed?
- How does Title 42 of the Code of Federal Regulations (CFR) Part 2 impact how a county behavioral health (BH) agency shares information with the court during the CARE process?
- Can individuals be referred from Lanterman-Petris-Short (LPS) Act conservatorship proceedings to CARE Act proceedings?
- How might counties be expected to support the CARE Act Independent Evaluation?
- How can we stay updated on data collection and reporting requirements?
- What is the process for CARE Act referrals for individuals deemed Incompetent to Stand Trial (IST)?
- If a person is stable under involuntary treatment (e.g., Lanterman-Petris-Short conservatorship), do they still meet the CARE eligibility criteria of "not stabilized in voluntary treatment"?
- Is evidence of an intensive treatment required to support CARE petition?
- Can a CARE petition be filed if some identifying information about the respondent (e.g., legal name, location) is unknown?
- When is a county required to conduct an investigation and submit a report to the court?
- What are some examples of ancillary activities that are reimbursable for hours spent performing each CARE Act activity as indicated in Behavioral Health Information Notice No: 24-015?
- How should the CARE Act Claiming Workbook be completed when the employee type is not listed or if multiple employees completed the activity?
- If a respondent will not participate in an assessment during the county investigation, how should county behavioral health (BH) proceed?
- How can county behavioral health (BH) support a CARE respondent's participation in hearings?
- How should a county behavioral health agency proceed if the county determines it is necessary to terminate services for a CARE participant (such as when they are not participating in the CARE process)?
- How is the volunteer supporter role different from a peer worker on the county behavioral health team?
- How often are the reimbursement rates for CARE Act administrative activities updated?
- When can county behavioral health agencies claim for administrative CARE Act services?
- What are the main pathways for transitioning out of CARE?
- What happens if a CARE participant is incarcerated or hospitalized?
- What evidence and forms are needed to file a CARE Act petition?
- What is the Behavioral Health Centers of Excellence (COE) Resource Hub?
- Can a participant be reappointed to a CARE plan?
- How does Senate Bill (SB) 27 impact the CARE Act?
- Can counties claim for Data Reporting administrative activities after dismissal or graduation from CARE?
- Can counties claim for outreach and engagement administrative activities after dismissal or graduation from CARE?

+ What diagnoses are eligible for CARE?
+ What information could be included in a CARE Act petition to demonstrate eligibility?
+ What does it mean to be clinically stabilized in ongoing voluntary treatment?
+ What is the difference between a formal referral and an informal referral to CARE?

If you or someone you know is struggling or in crisis, help is available. Call or text 988 (tel:988) or chat with the 988 Suicide and Crisis Lifeline (https://988lifeline.org). (988lifeline.org)

988 SUICIDE & CRISIS LIFELINE

988 LÍNEA DE PREVENCIÓN DEL SUICIDIO Y CRISIS

For training and technical assistance needs or questions, please email us. **info@CARE-Act.org (mailto:info@CARE-Act.org)**

ADA SITE COMPLIANCE ACCESSIBILITY POLICY (https://adasitecompliancetools.com/ap.asp?h=CREACT)

Non-Discrimination Policy and Language Access (https://www.dhcs.ca.gov/Pages/Language_Access.aspx)

العربية (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#arabic) | Հայերեն (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#armenian) | ខ្មែរ (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#cambodian)| 繁體中文 (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#chinese) | فارسی (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#farsi) | हिंदी (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#hindi)| Hmoob (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#hmong) | 日本語 (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#japanese)| 한국어 (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#korean)| ລາວ (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#laotian)| Mienh waac (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#mienhwaac)| ਪੰਜਾਬੀ (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#punjabi)| Русский (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#russian)| Español (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#spanish)| Tagalog (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#tagalog)| ภาษาไทย (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#thai)| Українська (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#ukrainian)| Tiếng Việt (https://www.dhcs.ca.gov/Pages/Language_Access.aspx#vietnamese)

Accessibility Certification (https://www.dhcs.ca.gov/Documents/Web-Accessibility-Cert.pdf)

Exhibit E

1) SENATE THIRD READING

2) SB 1338

(Umberg and Eggman)
As Amended August 25, 2022
Majority vote

SUMMARY

Establishes the Community Assistance, Recovery, and Empowerment (CARE) Act.

Major Provisions

1) Establishes the CARE Act, which must be implemented by Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne Counties by October 1, 2023, and the remaining counties by December 1, 2024, subject to delays based on a state or local emergency, or discretionary approval by the Department of Health Care Services (DHCS), up until December 1, 2025. Provides that the CARE Act only becomes operative upon DHCS, in consultation with county stakeholders, developing a CARE Act allocation to provide state financial assistance to counties to implement the CARE process.

2) Defines, for purposes of the CARE Act, certain terms, including:

   a) "CARE agreement" is a voluntary settlement agreement, which includes the same elements as a CARE plan.

   b) "CARE plan" is an individualized, appropriate range of services and supports consisting of behavioral health care, stabilization medications, housing, and other supportive services, as provided.

   c) "Graduation plan" is a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing services and supports. A graduation plan may not place additional requirements on the local government entities and is not enforceable by the court.

   d) "Parties" are the person who file the petition, respondent and the county behavioral health agency, along with other parties that the court may add if they are providing services to the respondent.

   e) "Petitioner" is the entity who files the CARE Act petition, but if other than the county behavioral health agency, the court is required, at the initial hearing, to substitute the director of county behavioral health agency or their designee as the petitioner, limiting the initial petitioner's rights to potentially receiving ongoing notice of the proceedings, and the right to make a statement at the hearing on

the merits of the petition, with broader participation rights only if the respondent consents.

f) "Respondent" is the person who is subject to the petition for the CARE process.

g) "Supporter" is an adult who assists the respondent, which may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan.

3) Provides that a respondent may qualify for the CARE process only if all of the following criteria are met:

a) The person is 18 years of age or older.

b) The person is currently experiencing a severe mental illness, as defined, and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. Specifically exempts specified others conditions or disorders.

c) The person is not clinically stabilized in on-going voluntary treatment.

d) At least one of the following is true:

d.i) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.

d.ii) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others.

e) Participation in a CARE plan or agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

f) It is likely that the person will benefit from participation in a CARE plan or agreement.

4) Provides venue provisions for where CARE Act proceedings may be brought.

5) Allows a petition to initiate a CARE proceedings to be brought by one of the following adults:

a) A person with whom the respondent resides or a spouse, parent, sibling, child, or grandparent of the respondent, or another individual who stands in loco parentis to the respondent.

b) The director of a hospital, or their designee, in which the respondent is hospitalized, or the director of a public or charitable organization, agency, or home, or their designee, that is currently, or within the previous 30 days, providing behavioral health services to the respondent or in whose institution the respondent resides.

c) A licensed behavioral health professional, or their designee, who is treating, or has been treating within the last 30 days, the respondent for a mental illness.

d) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions, as provided, multiple attempts to engage the respondent in voluntary treatment or other repeated efforts to aid the respondent in obtaining professional assistance.

e) The public guardian or public conservator, or their designee (and a respondent may be referred from conservatorship proceedings).

f) The director of a county behavioral health agency of the county in which the respondent reside or is present (and a respondent may be referred from assisted outpatient treatment proceedings).

g) The director of the county Adult Protective Services or their designee.

h) The director of a California Indian health services program, California tribal behavioral health department, or their designee.

i) The judge of a tribal court that is located in California, or their designee.

j) The respondent.

6) Allows a court, if a criminal defendant is found to be mentally incompetent and ineligible for a diversion, to refer the defendant to the CARE program, as provided,

7) Requires the CARE petition, which must be developed as a mandatory form by the Judicial Council (along with other forms necessary for the CARE process) and must be signed under penalty of perjury, to include, among other things:

a) The name of the respondent, their address, if known, and the petitioner's relationship with the respondent.

b) Facts that support petitioner's allegation that the respondent meets the criteria in 3).

c) Either of the following:

c.i) An affidavit of a licensed behavioral health professional stating that the health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of submission of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets, the diagnostic criteria for CARE proceedings.

c.ii) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to under the Lanterman-Petris-Short (LPS) Act, the most recent of which must be no longer ago than 60 days from the date of the petition.

8) Provides that if a person other than the respondent files a petition for CARE Act proceedings that is unmeritorious or intended to harass or annoy the respondent, and that person had previously filed a petition for CARE Act proceedings that was unmeritorious or intended to harass or annoy the respondent, the petition is grounds to declare the person a vexatious litigant, as provided.

9) Sets out the respondent's rights, including the right to be represented by counsel at all stages of a CARE proceeding, and requires the court to appoint specified counsel if the respondent does not have their own attorney.

10) Provides that all CARE Act hearings are presumptively closed to the public. Allows the respondent to demand that the hearings be public or allows them to request the presence of a family member or friend without waiving their right to keep the hearing closed to the rest of the public. A request by another party to make a hearing public may be granted if the court finds that the public interest clearly outweighs the respondent's privacy interest.

11) Requires, for all CARE Act proceedings, that the judge control all hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Except where there is a contested issue of fact or law, requires the proceedings to be conducted in an informal, non-adversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent.

12) Requires that all reports, evaluations, diagnoses, or other information related to the respondent's health are confidential. Requires that all evaluations and reports, documents, and filings submitted to the court pursuant to CARE Act proceedings are confidential.

13) Upon receipt of a CARE Act petition the court shall promptly review the petition to see if it makes a prima facie showing that the respondent is or may be a person described in 3).

    a) If the court finds the petitioner has not made a prima facie showing that the respondent is or may be a person described in 3), the court shall dismiss without prejudice, subject to 8).

    b) If the court finds the petitioner has made a prima facie showing that the respondent is or may be a person described in 3), and the petitioner is the county behavioral health agency, the court shall do all of the following: (i) set the matter for an initial appearance; (ii) appoint counsel; (iii) determine if the petition includes all the required information and, if not, order the county to submit a report with the information; and (iv) require notice be provided.

c) If the court finds the petitioner has made a prima facie showing that the respondent is or may be a person described in 3), and the petitioner is not the county behavioral health agency, the court shall order the county agency to investigate whether the respondent meets the CARE proceedings criteria and is willing to engage voluntarily with the county, file a written report with the court, and provide notice, as required.

14) If the county agency is making progress to engage the respondent, allows the agency to request up to an additional 30 days to continue to engage and enroll the individual in treatment and services.

15) Within five days of the receipt of the report in 13), requires the court to review the report and do one of the following:

a) If the court determines that voluntary engagement with the respondent is effective, as provided, requires the court to dismiss the matter.

b) If the court determines that the county's report supports the petition's prima facie showing that the respondent meets the CARE criteria, and engagement is not effective, requires the court to: (i) set an initial hearing within 14 days; (ii) appoint counsel, unless the respondent has their own counsel; and (iii) provide notice of the hearing, as provided.

c) If the court determines that the county's report does not support the petition's prima facie showing that the respondent meets the CARE criteria, requires the court to dismiss the matter.

16) At the initial hearing:

a) If the petitioner is not present, allows the court to dismiss the matter.

b) If the respondent elects not to waive their appearance and is not present, allows the court to conduct the hearing in the respondent's absence if the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, and conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.

c) Requires a county behavioral health agency representative to be present, allows a supporter to be appointed, and allows a tribal representative to attend for a respondent who is tribal member, as provided, and subject to the respondent's consent.

d) If the court finds that there is no reason to believe that the facts stated in the petition are true, requires the court to dismiss the case without prejudice, unless the court makes a finding on the record that the petitioner's filing was not in good faith.

e) If the court finds that there is reason to believe that the facts stated in the petition appear to be true, requires the court to order the county behavioral health agency to work with the respondent and the respondent's counsel and CARE supporter

to engage in behavioral health treatment. Requires the court to set a case management hearing within 14 days.

f) If the petitioner is other than the county behavioral health director, substitutes the county behavioral health director or their designee for the petitioner, as provided in 2e).

g) Requires the court to shall set a hearing on the merits of the petition, which may be conducted concurrently with the initial appearance on the petition upon stipulation of the petitioner and respondent and agreement by the court.

17) At the hearing on the merits:

a) If the court finds that the petitioner has not shown, by clear and convincing evidence, that the respondent meets the CARE criteria, requires the court to dismiss the case without prejudice, unless the court makes a finding, on the record, that the petitioner's filing was not in good faith.

b) If the court finds that the petitioner has shown by clear and convincing evidence that the respondent meets the CARE criteria, requires the court to order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement. Requires the court to set a case management hearing. Requires notice to the tribe, if applicable.

18) At the case management hearing:

a) If the parties have entered, or are likely to into, a CARE agreement, requires the court to approve or modify and approve the CARE agreement, stay the matter, and set a progress hearing for 60 days.

b) If the court finds that the parties have not entered, and are not likely to enter, into a CARE agreement, requires the court to order a clinical evaluation of the respondent, as provided. Requires the evaluation to address, at a minimum, a clinical diagnosis, whether the respondent has capacity to give informed consent regarding psychotropic medication, other information, as provided, and an analysis of recommended services, programs, housing, medications, and interventions that support the respondent's recovery and stability. Requires the court to set a clinical evaluation hearing.

19) At the clinical evaluation review hearing:

a) Requires the court to consider the evaluation, and other evidence, including calling witnesses, but only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

b) If the court finds, by clear and convincing evidence, after review of the evaluation and other evidence, that the respondent meets the CARE criteria, requires the court to order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan.

c) If the court finds, in reviewing the evaluation, that clear and convincing evidence does not support that the respondent meets the CARE criteria, requires the court to dismiss the petition.

20) At the hearing to review the proposed CARE plan:

a) Either or both parties may present a CARE plan.

b) Requires the court to adopt the elements of a CARE plan that support the recovery and stability of the respondent. Allows the court to issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding, as provided. These orders are the CARE plan.

c) Allows a court to order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent that the court orders medically necessary stabilization medications, prohibits the medication from being forcibly administered and the respondent's failure to comply with a medication order may not result in a penalty, including but not limited to contempt or the accountability measures in 29).

d) Allows for supplemental information to be provided to the court, as provided.

21) The issuance of any orders in 20) begins the up to one-year CARE program timeline.

22) Requires that a status review hearing occur at least every 60 days during the CARE plan implementation.

a) Requires the petitioner to file with the court, and serve on the respondent and the respondent's counsel and supporter, a report not less than five court days prior to the hearing, with specified information, including progress the respondent has made on the CARE plan, what services and supports in the CARE plan were provided, and what services and supports were not provided, and any recommendations for changes to the services and supports to make the CARE plan more successful.

b) Allows the respondent to respond to the report and introduce their own information and recommendations.

c) Allows the petitioner, the respondent, or the court to request more frequent reviews as necessary to address changed circumstances.

23) Requires the court, in the 11th month, to hold a one-year status hearing, which is an evidentiary hearing, to determine if the respondent graduates from the CARE plan or should be reappointed for another year.

a) Requires a report by the petitioner before the status conference, as provided. Allows respondent to call witnesses and present evidence.

b) Provides that the respondent may be graduated from the CARE program and may be allowed to enter into a voluntary graduation plan with the county. However, such plan may not place additional requirements on the county and is not enforceable, other than a psychiatric advance directive if included.

c) If the respondent elects to accept voluntary reappointment to the program, the respondent may request to be re-appointed to the CARE program for up to one additional year, subject to meeting certain criteria and court approval.

d) Allows the court to involuntarily reappoint the respondent to the CARE program for up to one year if the court finds, by clear and convincing evidence, that (i) the respondent did not successfully complete the CARE process; (ii) all of the required services and supports were provided to the respondent; (ii) the respondent would benefit from continuation of the CARE process; and (iv) the respondent currently meets the requirements in 3).

e) Provides that a respondent may only be reappointed to the CARE program for up to one additional year.

24) Provides mandatory timeframes, as well as continuances for good cause, throughout the CARE court proceedings.

25) Requires hearings to occur in person unless the court allows a party or a witness to appear remotely. Provides the respondent with the right to be in-person for all hearings.

26) Allows the respondent and the county behavioral health agency to appeal an adverse court determination.

27) Requires the Judicial Council to adopt rules to implement the CARE court provisions.

28) Allows the court, at any point in the proceedings, if it determines, by clear and convincing evidence, that the respondent, after receiving notice, is not participating in the CARE proceedings, to terminate respondent's participation in the CARE process. Allows the court to make a referral under the LPS Act, as provided.

29) Requires that, if a respondent was provided timely with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including the reasons for that failure: a) is a fact considered by a court in a subsequent hearing under the LPS Act, provided that hearing occurs within six months of termination of the CARE plan; and b) creates a presumption at that hearing that the respondent needs additional interventions beyond the supports and services provided by the CARE plan. Prohibits a respondent's failure to comply with any order from resulting in nay penalty outside of this paragraph, including, but not limited to contempt or failure to appear. Prohibits a respondent's failure to comply with a medication order from resulting in any penalty, including under this paragraph.

30) Creates a process for penalizing counties or other local government entities that do not comply with CARE court orders. If the presiding judge or designee of the county finds, by clear and convincing evidence, that a local government entity has substantially failed to comply with an order, the presiding judge or designee may impose a fine of up to $1,000 per day for noncompliance, not to exceed $25,000 for each violation. Requires that any fines be deposited in the CARE Act Accountability Fund and used, upon appropriation, by DHCS to support that local government's efforts that will serve individuals who have schizophrenia or other psychotic disorders and who experience, or are at risk of, homelessness, criminal justice involvement, hospitalization, or conservatorship. Allows the presiding judge or designee, if a county is found to be persistently noncompliant, to appoint a special master to secure court-ordered care for the respondent at the county's cost. In determining the application of the remedies available, requires the court to consider whether there are any mitigating circumstances impairing the ability of the county agency or local government entity to fully comply with the CARE Act requirements.

31) Requires DHCS, in consultation with specified groups, to provide optional training and technical resources for volunteer supporters. Requires that a CARE supporter do the following:

   a) Offer the respondent a flexible and culturally responsive way to maintain autonomy and decisionmaking authority over their own life by developing and maintaining voluntary supports to assist them in understanding, making, communicating, and implementing their own informed choices;

   b) Strengthen the respondent's capacity to engage in and exercise autonomous decision making and prevent or remove the need to use more restrictive protective mechanisms, such as conservatorship; and

   c) Assist the respondent with understanding, making, and communicating decisions and expressing preferences throughout the CARE court process.

32) Allows a respondent to have their supporter be in any meeting, judicial proceedings, status hearing, or communication related to an evaluation; creation of the CARE plan; establishing a psychiatric advance directive; and development of a graduation plan.

33) Sets forth the duties and limitations of the supporter. Bounds a supporter by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. Prohibits a supporter from being subpoenaed or called to testify against the respondent in any CARE Act proceeding, and provides that the supporter's presence at any meeting, proceeding, or communication does not waive confidentiality or any privilege.

34) Requires the Legal Services Trust Fund Commission to provide funding to qualified legal services projects to provide appointed legal counsel in CARE proceedings. Allows the Legal Services Trust Fund Commission to enter into no bid contracts.

35) Sets forth the provisions of the CARE plan, which may only include:

a) Specified behavioral health services;

b) Medically necessary stabilization medications;

c) Housing resources, as provided;

d) Social services, as provided; and

e) General assistance, as provided.

36) Requires that CARE participants be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program. If the county behavioral health agency elects not to enroll the respondent into a full service partnership, as defined, allows the court to review why not.

37) Provides that all CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes, regulations, contractual provisions and policy guidance governing program eligibility, as provided.

38) Sets forth rules by which a county is responsible for the costs of providing services to CARE participants.

39) Requires the Health and Human Services Agency, as provided, to (a) engage an independent, research-based entity to advise on the development of data-driven process and outcome measures to guide the planning, collaboration, reporting, and evaluation of the CARE Act; (b) convene a working group to provide coordination and on-going engagement with, and support collaboration among, relevant state and local partners and other stakeholders throughout the phases of county implementation to support the successful implementation of the CARE Act, including during implementation.

40) Requires DHCS to provide training and technical assistance to county behavioral health agencies to support the implementation of the CARE Act, including trainings regarding the CARE statutes, CARE plan services and supports, supported decisionmaking, the supporter role, trauma-informed care, elimination of bias, psychiatric advance directives, and data collection.

41) Requires the Judicial Council, in consultation with others, to provide training and technical assistance to judges to support the implementation of the CARE Act.

42) Requires DHCS, in consultation with others, to provide training to counsel on the CARE statutes, and CARE plan services and supports.

43) Allows the Health and Human Services Agency and DHCS to enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis.

44) Allows the Health and Human Services Agency and DHCS to implement, interpret, or make specific the CARE Act by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.

45) Requires DHCS, in consultation with specified others, to prepare an annual CARE Act report. Requires state or local governmental entities to provide data required by DHCS. Requires DHCS to provide information on the populations served and demographic data, stratified as specified. Requires that the report include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. Requires the annual report to examine data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

46) Requires DHCS to report on court data, as specified.

47) Requires an independent, research-based entity retained by DHCS, in consultation with others, to develop an independent evaluation of the effectiveness of the CARE Act. Requires the independent evaluation to employ statistical research methodology and include a logic model, hypotheses, comparative or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports, highlighting racial, ethnic, and other demographic disparities, and including causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts. Requires DHCS to provide a preliminary evaluation of the effectiveness of the CARE Act to the Legislature three years after its implementation and a final report five years after implementation.

48) Requires a health care service plan and an insurance policy, after July 1, 2023, to cover various costs under the CARE program. Sets out requirements for health care services plans and insurance policies, effective July 1, 2023, to cover CARE plans, as provided.

49) Provides immunity to a county, or an employee or agent of a county, for any action by a respondent in the CARE process, except when the act or omission of a county, or the employee or agent of a county, constitutes gross negligence, recklessness, or willful misconduct.

50) Adds a severability clause.

51) Adds chaptering out amendments with SB 1223.

COMMENTS

This bills seeks to implement Governor Newsom's CARE Court program, which would allow civil courts to order those suffering from certain mental illnesses into treatment programs at the community level, similar to today's Assisted Outpatient Treatment under the LPS Act, but with, hopefully, more community-based supports and services, and more court oversight. In support of his proposal, the Governor has stated:

> Sadly, the status quo provides support only after a criminal justice intervention or conservatorship. CARE Court is a paradigm shift, providing a new pathway for seriously ill individuals before they end up cycling through prison, emergency rooms, or homeless encampments." In addition he states that, "CARE Court is about meeting people where they are and acting with compassion to support the

thousands of Californians living on our streets with severe mental health and substance use disorders. We are taking action to break the pattern that leaves people without hope and cycling repeatedly through homelessness and incarceration. This is a new approach to stabilize people with the hardest-to-treat behavioral health conditions.

The growing problem of homelessness in California. Beyond simply seeing the growing number of tent encampments and unhoused people living on the streets, the most recent data on homelessness makes clear that California has a massive problem that, despite significant spending and efforts aimed at reducing it, continues to grow. The most recent single-night count from January 2020 (a count was made in 2022, but data has not yet been released) found that California had 28 percent of the nation's homeless population – over 160,000 – of which 70.4 percent were unsheltered, both of which are the highest rates in the nation. (California Senate Housing Committee, *Fact Sheet: Homelessness in California* (updated May 2021), *available at* https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Homelessness%20in%20CA%202020%20Numbers.pdf.)

While there are many causes of homelessness, the high cost of housing in California is a significant contributor. (Legislative Analyst's Office, *California's Homelessness Challenges in Context*, Presentations to Assembly Budget Subcommittee No. 6 (Feb. 13, 2020).) Wages have not kept pace with housing costs, particularly for low-income households. (*Ibid.*)

According to the 2019 annual point-in-time count, 23 percent of California's homelessness population is severely mentally ill and 17 percent has a chronic substance abuse disorder. (Legislative Analyst's Office, *California's Homelessness Challenges in Context*, *supra*, citing the U.S. Department of Housing and Urban Development's 2019 point-in-time homelessness.)

California's mental health crisis. Mental illness is pervasive in California. About one in six Californians experience mental illness and one in 25 experience a serious mental illness. (California Budget & Policy Center, *Mental Health in California: Understanding Prevalence, System Connections, Service Delivery, and Funding* (March 2020).) These rates are higher among people of color and those living below the poverty line. (*Ibid.*) Among those experiencing homelessness, one in four individuals report having a serious mental illness. (*Ibid.*)

The pandemic exacerbated mental illness rates in California, and the state continues to face a shortage of facilities, services, and workers to appropriately care for its mentally ill population. For example, since 1995, the number of inpatient psychiatric beds in California has been decreasing, despite population growth and increased rates of mental illness. (California Hospital Association, *California Psychiatric Bed Annual Report* (Aug. 2018).) The state is projected to continue to face a shortfall of thousands of psychiatric beds for adult inpatient and residential care. (McBain, *et al., Adult Psychiatric Bed Capacity, Need, and Shortage Estimates in California* (2021) RAND Corporation.) Despite the high rates of mental illness among individuals experiencing homelessness, there is a dire shortage of supportive housing and wrap-around services to adequately treat mental illness within this population. The behavioral health workforce is insufficient to meet the growing demand for mental healthcare. One report projected

that, if current trends continue, by 2028 California will have 41 percent fewer psychiatrists and 11 percent fewer psychologists, therapists, and social workers than are likely to be needed. (Coffman, *et al., California's Current and Future Behavioral Health Workforce* (Feb. 2018) Healthforce Center at the University of California – San Francisco, p. 55.) The growing mental health crisis has led to calls for reforming the mental healthcare system in California, including reforming existing law providing for involuntary detentions and treatment due to mental illness. Less attention has been paid, however, to the lack of services and support given to individuals who are involuntarily detained pursuant to standards now in place under existing law.

Constitutional and federal limitations on depriving individuals of liberty though involuntary confinement or forced treatment. Federal and state constitutional law prohibits individuals from being deprived of their liberty without due process of law. The 14th Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The California Constitution provides: "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (Cal. Constitution, Art. I, Sec 7.) In the 1975 U.S. Supreme Court case *O'Connor v. Donaldson*, the Court declared that a person had to be a danger to themselves or to others for confinement to be constitutional. (*O'Connor v. Donaldson* (1975) 422 U.S. 563.) In *O'Connor,* the plaintiff was confined to a mental hospital in Florida for 15 years, received a minimal amount of psychiatric care, and challenged his confinement numerous times before successfully suing his attending physician for violating his 14th Amendment right to liberty. The Court upheld the verdict in favor of the plaintiff:

> The fact that state law may have authorized confinement of the harmless mentally ill does not itself establish a constitutionally adequate purpose for the confinement. . . . Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if, in fact, it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed. (*O'Connor v. Donaldson* (1975) 422 U.S. at 574-75)

In the specific facts presented in *O'Connor*, the Court held that a person could not be placed on a conservatorship if others were willing to care for that person, holding that a state "cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." (*Id.* at 576.) While the Court recognized that the government might subject a mentally ill person to involuntary holds and treatments when necessary to prevent harm to that person or others, the government's power to do so is not unlimited and must respect the due process and liberty interests protected by the 14th Amendment. Understandably, the Court has not drawn any bright lines or offered up any neat "factor" test for identifying the precise conditions that would justify treating mentally ill persons against their will. Most states, including California, have statutes setting forth the requisite conditions in purposefully general language, and those statutes, and the manner in which they are implemented, are subject to judicial review. In addition to baseline constitutional requirements, the Supreme Court has determined that the federal Americans with Disabilities Act (ADA) prohibits the segregation of individuals with disabilities. In *Olmstead v. L.C.*, the Court held that placing individuals with mental illness in institutions "severely diminishes the everyday

life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment" (*Olmstead v. L.C.* (1999) 527 U.S. 581, 601), and unjustified institutionalization constitutes discrimination under the ADA. (*Id.* at 597-98.) Integrated services in the community should be provided instead.

This bill. This bill does not seek to refine or better coordinate existing programs for those with mental illness. Instead, it seeks to create and implement throughout California a new program for identifying those with mental illness who need treatment -- the CARE program. While the details of how the CARE program will operate are set forth in the SUMMARY, above, the basic premise is that a broad range of individuals--including family members, behavioral health professionals, and first responder--with knowledge of a person suffering from severe mental illness and a current diagnosis of schizophrenia spectrum or other psychotic disorder, could petition the civil court to have the person either enter into a voluntary CARE agreement, or be court-ordered into a treatment plan. The person would only qualify for the CARE program if, among other things, the person is currently experiencing a severe mental illness and has a current diagnosis of schizophrenia spectrum or other psychotic disorder.

The bill sets out the evidence that must be presented and timeframes for all court hearings. The individual (called the respondent, but the analysis will use the term participant once the person has a CARE plan) is provided with an attorney and, perhaps, a supporter for the duration of the process. They choose their own counsel and supporter, or the court will appoint an attorney for them. If the petitioner sets forth a prima facie case (sufficient initial evidence) that the respondent qualifies for the CARE program, the court must provide the participant and the county behavioral health agency with the opportunity to arrive at a voluntary CARE plan for the treatment of the participant, with the supports and services necessary, including housing, subject to many limitations, including availability and available funding.

The bill is designed to provide opportunities for the respondent to voluntarily agree to participate in a CARE agreement and to get the supports and services set forth in the agreement. However, if an agreement cannot be reached, and an evaluation proves that the respondent meets the CARE Act criteria, the bill directs the respondent and the county behavioral health agency to develop a CARE plan, which is then brought back to court for review, approval, or modification. Once the plan is approved, the bill provides for ongoing status hearings so the court can stay abreast of the progress being made and take corrective action, if necessary. To ensure that both the court is informed of the progress and to help the participant navigate the labyrinth of support and services, the bill requires that county behavioral health reports to the court at each status hearing. The plan can last up to a year, but can be extended for an additional year if certain criteria were met.

While housing with supportive or wrap-around services would clearly be required for any unhoused participant to be successful in the CARE program, the bill does not require that housing be provided, but instead prioritizes the participant for certain housing. It is hoped that that the CARE program will have sufficient resources to provide housing, with wrap-around services, to those in the program who lack stable housing.

The bill contains a number of "accountability" measures designed to keep participants and counties on track. If a participant fails to complete the program, they may be dropped from the program; and their failure 1) is a fact that must be considered by a court in a subsequent LPS hearing, provided that the hearing occurs within six months of termination of the CARE plan; and 2) creates a presumption at that hearing that the respondent needs additional interventions beyond the supports and services provided by the CARE plan. Further, if the presiding judge or their designee finds that a county or other local government entity is not complying with a court order, the judge may fine the county or other entity up to $1,000 for each day of noncompliance, up to $25,000 per incident; and if the county or other local government entity is consistently noncompliant, the presiding judge may, at the county's or other entity's cost, appoint a special master to secure the compliance. These penalties are subject to due process protections and mitigating factors and any penalty collected must be used to support activities in that county serving individuals with serious mental illness.

Being a brand new program, the CARE Act program appropriately requires an evaluation of the program so that the Legislature can learn how the CARE Act is working and what, if any, changes need to be made in order to make the program more successful. The report would be required to include demographic information about participants; services ordered and services provided to participants; success rates; participant involvement with the LPS system and the criminal justice system; and a survey of participants themselves. An interim report is due to the Legislature three years after the program begins, with a final report due in five years.

According to the Author
County behavioral health departments provide Medi-Cal specialty mental health services to those who are enrolled in Medi-Cal and have severe mental illness. However, many of the most impaired and vulnerable individuals remain under or un-served because (a) the individual is so impaired they do not seek out services, (b) the necessary services are not available at the right time due to administrative complexities and/or legal barriers, (c) client care lacks coordination among providers and services, resulting in fragmentation among provided services, and (d) little accountability at various levels of the system results in poor outcomes for the client, who is often living on the streets. This legislation seeks to overcome these barriers by connecting individuals to services, requiring coordination, and adding a necessary layer of accountability through the courts.

Arguments in Support
In support of this bill, local governments from San Diego, including the City and County of San Diego County, write:

> The creation of CARE Courts by SB 1338 represents a thoughtful approach to addressing the behavioral health crisis we are witnessing on our streets and getting people connected with the care they need earlier. It appropriately recognizes the continuum of care that this small but highly visible segment of the population with significant mental health disorders deserve. As with local agencies throughout the State, San Diego's communities are facing a daunting homelessness crisis.

However, the unsheltered population is as diverse as the general population, all who come to their housing situation with different backgrounds, upbringings, and traumas. It is imperative that we provide multi-faceted solutions to help the myriad situations our fellow Californians face. Some unsheltered individuals recently lost a job and need quick and focused assistance; some have serious mental health and substance use disorder issues that have developed over many years resulting in an inability to care for themselves. . . .

CARE Court will provide a new and focused civil justice alternative to those struggling with schizophrenia spectrum or psychotic disorders and who lack medical decision-making capacity. The CARE plan envisioned by SB 1338 provides numerous safeguards to ensure personal civil liberties are respected and protected. Distinct from the Lanterman Petris Short (LPS) conservatorship process, this bill requires the County Health and Human Services Agency to establish a cadre of "supporters" who have the obligation to advocate for each person enrolled or potentially enrolled in CARE Court. Further, CARE Court enrollment is time-limited and is intended to last only one year, although it can be extended for one additional year. During the enrolled period, CARE plans can provide the needed time and intensive care to assist those more seriously ill on our streets.

Arguments in Opposition

A coalition of over 40 advocacy organizations, including Disability Rights California, writes in opposition:

CARE Court is antithetical to recovery principles, which are based on self-determination and self-direction. The CARE Court proposal is based on stigma and stereotypes of people living with mental health disabilities and experiencing homelessness.

While the organizations submitting this letter agree that State resources must be urgently allocated towards addressing homelessness, incarceration, hospitalization, conservatorship, and premature death of Californians living with severe mental illness, CARE Court is the wrong framework. The right framework allows people with disabilities to retain autonomy over their own lives by providing them with meaningful and reliable access to affordable, accessible, integrated housing combined with voluntary services. . . .

Instead of allocating vast sums of money towards establishing an unproven system of court-ordered treatment that does not guarantee housing, the state should expend its resources on a proven solution to homelessness for people living with mental health disabilities: guaranteed housing with voluntary services. Given that housing is proven to reduce utilization of emergency services and contacts with the criminal legal system, a team of UC Irvine researchers concluded that it is "fiscally irresponsible, as well as inhumane" not to provide permanent housing for Californians experiencing homelessness. . . .

Despite SB 1338's use of the terms "recovery" and "empowerment," CARE Court sets up a system of coerced, involuntary outpatient civil commitment that deprives people with mental health disabilities of the right to make self-determined decisions about their own lives. Evidence does not support the conclusion that involuntary outpatient treatment is more effective than intensive voluntary outpatient treatment provided in accordance with evidence-based practices. Conversely, evidence shows that involuntary, coercive treatment is harmful. . . .

CARE Court is not the appropriate tool for providing a path to wellness for Californians living with mental health disabilities who face homelessness, incarceration, hospitalization, conservatorship, and premature death. Instead, California should invest in evidence-based practices that are proven to work and that will actually empower people living with mental health disabilities on their paths to recovery and allow them to retain full autonomy over their lives without the intrusion of a court. (Footnotes omitted.)

FISCAL COMMENTS

According to the Assembly Appropriations analysis:

1) Costs (General Fund (GF)) in the tens of millions of dollars to Judicial Council of California (JCC) for courts to operate the CARE Act. The 2022 Budget allocates $39.5 million from the GF in fiscal year (FY) 2022-23 and $37.7 million ongoing for the courts to conduct CARE court hearings and provide resources for self-help centers. According to the Administration, it is continuing to work with the JCC and counties to estimate costs associated with this new process. JCC estimates costs of approximately $40 million to $50 million related to conducting additional hearings, expanding self-help centers, and updating court case management systems.

2) Possibly reimbursable costs (GF and local funds) in the hundreds of millions of dollars to low billions of dollars to counties, including local behavioral health departments, to provide services to CARE court participants. According to the California State Association of Counties (CSAC), costs include as much as $40,000 per participant for at least 12,000 participants (although county offices believe the number of participants could be much higher - as high as 50,000 participants), court-ordered investigations, evaluations, and reporting requirements, and one-time start-up costs. Costs to the GF will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

3) Possible cost pressure (GF) to the California Department of Health and Human Services (CHHSA), possibly in the millions of dollars to engage in an independent, research-based entity to advise on the development of data-drive processes and outcome measure for the CARE Act and provide

support and coordination between stakeholders during the implementation process.

4) Costs (GF) possibly in the tens of millions of dollars to the Department of Health Care Services (DHCS) to provide training to support to people enrolled in CARE court. Costs include providing technical assistance to counties and contractors, overseeing stakeholder engagement on the CARE Court model, developing guidance for counties on CARE Court responsibilities; implementing processes to support ongoing data collection and reporting; analyzing data and developing an annual legislative report; and, publishing an independent evaluation. Costs may also result from increased Medi-Cal utilization rates by individuals referred to the CARE court program, who otherwise may not have been existing beneficiaries. Possible cost savings to state public health systems to the extent that peer support services provide support and assistance to Medi-Cal beneficiaries with mental illness and reduce the need for more expensive downstream services, such as inpatient hospitalizations or incarceration.

5) Possibly reimbursable costs (GF and local funds) in the millions of dollars to counties for public defender services. This bill requires a person to receive counsel before ruling on a CARE court petition. Section 5977, subdivision (a)(5)(A)(ii)(II) requires a court to appoint a qualified legal services project to represent any person in the CARE court program that does not already have counsel. If a legal services project declines representation, the public defender is appointed. Only 14 counties have legal services organizations and most do not have enough attorneys to handle even their existing workload. Therefore, it seems far more likely this bill will result in increased duties on county public defenders. Existing law already requires public defenders to represent individuals in LPS and other conservatorships.

6) Cost pressure (GF), possibly in the hundreds of millions of dollars on state and local housing programs, to the extent this bill increases utilization of the specified housing programs, including the Bridge Housing program, HOME Investment Partnership Program, Housing and Urban Development (HUD) Continuum of Care program, and emergency housing vouchers, among other programs identified in this bill. In addition, as this bill reprioritizes CARE plan program participants in the Behavioral Health Bridge Housing program, it does not increase the funding for Bridge Housing in this bill. The 2021 Budget Act allocated a $12 billion multi-year investment for local governments to build housing and provide critical supports and homelessness services. The 2022 Budget Act includes an additional $3.4 billion GF over three years to continue the state's efforts by investing in immediate behavioral health housing and treatment, as well as encampment cleanup grants, and extends for an additional year support for local government efforts. It is unknown whether existing allocations for housing will be sufficient.

7) Costs (GF) to the Department of Insurance (CDI) of $17,000 in FY 2022-23 and $12,000 FY 2023-24.

8) California Department of Social Services (CDSS) reports no costs. However, this bill may result in considerable cost pressures, possibly in the millions of dollars, downstream to local county welfare departments. The Care Act will likely result in increased use of several programs such as the CalWORKS Housing Support Program, SSI/SSP, Cash Assistance Program for immigrants, CalWORKs, CalFresh, and homeless housing assistance and prevention. This bill may generate costs in the form of local assistance, as county welfare departments will have to conduct participant eligibility, redetermination, and screening for programs. While the bill would be implemented on a county-level, the workload for CDSS to provide technical assistance, program monitoring, and to issue new or updated guidance or all county letters to implement the bill may result in the need for GF money.

9) Department of Managed Health Care (DMHC) reports costs (GF) to draft regulations and provider technical assistance will be minor and absorbable.

VOTES

SENATE FLOOR: 39-0-1
YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
ABS, ABST OR NV: Hertzberg

ASM JUDICIARY: 9-1-0
YES: Stone, Cunningham, Bloom, Davies, Haney, Kiley, Maienschein, Reyes, Robert Rivas
NO: Kalra

ASM HEALTH: 14-0-1
YES: Wood, Waldron, Aguiar-Curry, Arambula, Carrillo, Flora, Maienschein, Mayes, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Akilah Weber
ABS, ABST OR NV: Bigelow

ASM APPROPRIATIONS: 13-0-3
YES: Holden, Calderon, Arambula, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty
ABS, ABST OR NV: Bigelow, Bryan, Megan Dahle

UPDATED

VERSION: August 25, 2022

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334 FN: 0004277

Exhibit F

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 1338(Umberg) – As Amended June 16, 2022
AS PROPOSED TO BE AMENDED

SENATE VOTE: Not relevant

SUBJECT: Community Assistance, Recovery, and Empowerment (CARE) Court Program.

SUMMARY: Establishes the Community Assistance, Recovery, and Empowerment (CARE) Court Program and the CARE Act to provide comprehensive treatment, housing and support services to Californians with complex behavioral health care needs. Specifically, **this bill**:

I. Specifies the Following Findings and Declarations

1) That thousands of Californians are suffering from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death. These individuals, families, and communities deserve a path to care and wellness.

2) With advancements in behavioral health treatments, many people with untreated schizophrenia spectrum and psychotic disorders can stabilize, begin healing, and thrive in community-based settings, with the support of behavioral health services, stabilizing medications, and housing. Too often, this comprehensive care is only provided after arrest, conservatorship, or institutionalization.

   California has made unprecedented investments in behavioral health, housing, and combating homelessness and CARE Court helps those with the greatest needs access these resources and services. CARE Court provides a framework to ensure counties and other local government entities focus their efforts to provide comprehensive treatment, housing and support services to Californians with complex behavioral health care needs so they can stabilize and find a path to wellness and recover.

3) A new approach is needed to act earlier and to provide support and accountability, both to individuals with these untreated severe mental illnesses (SMI) and to local governments with the responsibility to provide behavioral health services. California's civil courts will provide a new process for earlier action, support, and accountability, through a new CARE Court Program.

4) Self-determination and civil liberties are important California values that can be advanced and protected for individuals with these untreated SMI with the establishment of a new CARE Supporter role, in addition to legal counsel, for CARE proceedings.

5) California continues to act with urgency to expand behavioral health services and to increase housing choices and end homelessness for all Californians. CARE provides a vital solution for some of the most ill and most vulnerable Californians.

II. General Provisions

1) Establishes the CARE Act and states it is the intent of the Legislature that the CARE Act be implemented in a manner that ensures it is effective.

2) Requires the CARE Act to be implemented, with technical assistance and continuous quality improvement as follows:

   a) A first cohort of counties, representing at least half of the population of the State, will begin no later than July 1, 2023, with additional funding provided to support the earlier implementation date; and,
   b) A second cohort of counties, representing the remaining population of the State, will begin no later than July 1, 2024.

3) Defines, for purposes of this bill, certain terms, including:

   a) "CARE agreement" means a voluntary settlement agreement, which includes the same elements as a CARE plan in accessing community-based services and supports;
   b) "CARE plan" means an individualized, appropriate range of community-based services and supports as set forth in the CARE Act, which includes clinically appropriate behavioral health care and stabilization medications, housing and other supportive services as appropriate;
   c) "Counsel" means the attorney representing the respondent, as provided by the CARE Act or chosen by the respondent, in CARE proceedings and matters related to CARE agreements and CARE plans;
   d) "County behavioral health agency" means the local director of mental health services, the local behavioral health director or both as applicable, or their designee;
   e) "Court-ordered evaluation" means an evaluation ordered by a superior court under the CARE Act.
   f) "Graduation plan" means a voluntary agreement entered into by the parties at the end of the CARE program that shall include a strategy to support a successful transition out of court jurisdiction and may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing services and supports. A graduation plan may not place additional requirements on local government entities and is not enforceable by the court;
   g) "Indian health care provider" means a health care program operated by the Indian Health Services, an Indian tribe, a tribal organization, or urban Indian organization, as specified in the federal Indian Health Care Improvement Act;
   h) "Licensed behavioral health professional" means either of the following:
      i) A licensed mental health professional, as defined; or,
      ii) A person who has been granted a waiver of licensure requirements by the California Department of Health Care Services (DHCS).
   i) "Parties" means the respondent, the county behavioral health agency in the county where CARE Court proceedings under the CARE Act are pending, and other parties that the court may add if they are providing services to the respondent;
   j) "Psychiatric advance directive" means a legal document, executed on a voluntary basis by a person who has the capacity to make medical decisions that allows a person with mental illness to protect their autonomy and ability to self-direct care by documenting their preferences for treatment in advance of a mental health crisis;
   k) "Respondent" means the person who is subject to the petition for CARE Court proceedings;

l) "Stabilization medications" means medications included in the CARE plan that primarily consist of antipsychotic medication to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long acting injections if clinically indicated. Stabilization medication cannot be forcibly administered;
m) "Supporter" means an adult, as designated, who assists the respondent to include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE Court process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter may not act independently.
n) "Trauma-informed care" means practices that recognize and respond to the signs, symptoms, and risks of trauma to better support the health needs of patients who have experienced Adverse Childhood Experiences (ACEs) and toxic stress.

III. Process:

1) Requires a respondent to qualify for CARE proceedings only if all of the following criteria are met:

   a) The person is 18 years of age or older;
   b) The person is currently experiencing a SMI, as defined and has a diagnosis of schizophrenia spectrum or other psychotic disorder as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, provided that nothing is construed to establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including but not limited to physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. Prohibits a person who has a current diagnosis of substance use disorder (SUD) as defined but who does not meet the required criteria above, from qualifying for CARE proceedings;
   c) The person is not clinically stabilized in on-going treatment;
   d) At least one of the following is true:
      i) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating; and/or,
      ii) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others;
   e) Participation in the CARE proceedings would be the least restrictive alternative necessary to ensure the person's recovery and stability; and,
   f) It is likely that the person will benefit from CARE proceedings.

2) Permits proceedings to commence in any of the following:

   a) The county in which the respondent resides;
   b) The county where the respondent is found. If the respondent does not reside in the county in which proceedings are initiated under the CARE Act and, and the CARE Act is operative in the respondent's county of residence, the proceeding will, with the respondent's consent, be transferred to the county of residence as soon as reasonably feasible. Should the respondent not provide consent to the transfer, the proceedings will continue in the county where the respondent was found; and,
   c) The county where the respondent is facing criminal or civil proceedings.

3) Allows a petition to initiate a CARE proceedings to be brought by:

    a) A person 18 years of age or older with whom the respondent resides or a spouse, parent, adult sibling, adult child, or grandparent of the respondent, or another adult who stands in loco parentis to the respondent;
    b) The director of a hospital, or their designee, in which the respondent is hospitalized, or the director of a public or charitable organization, agency, or home, or their designee, that is currently, or within the previous 30 days, providing behavioral health services to the respondent or in whose institution the respondent resides;
    c) A licensed behavioral health professional, or their designee, who is treating, or has been treating within the last 30 days, the respondent for a mental illness;
    d) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation under the Lanterman-Petris-Short (LPS) Act, multiple attempts to engage the respondent in voluntary treatment or other repeated efforts to aid the respondent in obtaining professional assistance;
    e) The public guardian or public conservator, or their designee of the county in which the respondent is present or reasonably believed to be present (a respondent may be referred from conservatorship proceedings);
    f) The director of a county behavioral health agency, or their designee, of the county in which the respondent resides or is found (a respondent may be referred from assisted outpatient treatment (AOT) proceedings);
    g) The director of the county Adult Protective Services or their designee of the county in which the respondent resides or is found;
    h) The director of a California Indian health services program, California tribal behavioral health department, or their designee;
    i) The judge of a tribal court that is located in California, or their designee;
    j) A prosecuting attorney (a respondent may be referred from misdemeanor proceedings, as provided); and,
    k) The respondent.

4) Requires the CARE petition to be signed under penalty of perjury and to contain all of the following:

    a) The name of the respondent, their address, if known, and the petitioner's relationship with the respondent;
    b) Facts that support petitioner's allegation that the respondent meets the criteria in III.1) above; and,
    c) Either of the following:
        i) An affidavit of a licensed behavioral health professional stating that the health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of submission of the petition, and that the licensed behavioral health professional has determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets, the diagnostic criteria for CARE proceedings; or,

   ii) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to the LPS Act, the most recent of which must be within 60 days from the date of the petition.

5) Provides that if a person other than the respondent files a petition for CARE proceedings that is unmeritorious or intended to harass or annoy the respondent, and that person had previously filed petitions for CARE proceedings that were unmeritorious or intended to harass or annoy the respondent, the petition is grounds to declare the person a vexatious litigant, as provided.

6) Requires the respondent to:

   a) Receive notice of the hearings;
   b) Receive a copy of the court-ordered evaluation;
   c) Be represented by counsel at all stages of a proceeding regardless of the ability to pay;
   d) Be allowed to have a supporter;
   e) Be present at the hearing unless the respondent waives the right to be present;
   f) Have the right to present evidence;
   g) Have the right to all witnesses; and,
   h) Have the right to appeal decisions, and to be informed of the right to appeal.

7) Requires all CARE Court hearings to be presumptively closed to the public. Allows the respondent to demand that the hearings be public and allows them to request the presence of a family member or friend without waiving their right to keep the hearing closed to the rest of the public. Permits a request by another party to make a hearing public to be granted if the judge conducting the hearing finds that the public interest clearly outweighs the respondent's privacy interest. Requires before commencing a hearing, the judge to inform the respondent of their rights.

8) Requires upon receipt of a CARE Court petition, the court to promptly review the petition to determine if it meets the requirements in III. 4) above. Specifies the following about the petition:

   a) If the court finds the petition does not meet the requirements in III. 4) above , the court is to dismiss without prejudice, subject to III. 5) above; and,
   b) If the court finds that the petition may meet the requirements in III. 4) above, the court is to order a county agency, or their designee, as determined by the judge, to investigate as necessary and file a written report with the court within 21 days that includes:
      i) A determination as to whether the respondent meets, or is likely to meet, the criteria for CARE proceedings; and,
      ii) The outcome of efforts made to voluntarily engage the respondent during the 21-day report period. Requires the court to provide notice to the respondent and petitioner that a report has been ordered.

9) Requires the agency in III. 8 b) above to submit a written report to the court with the findings and conclusions of its investigation, along with any recommendations. Provides that if the agency is making progress to engage the respondent, it may request up to an additional 30 days to continue to engage and enroll the individual in treatment and services.

10) Requires the court within five days of the receipt of the report in III. 9) above, to review the report and do one of the following:

    a) If the court determines that respondent meets, or likely meets, the CARE criteria, and engagement is not effective, the court is to do the following:

        i) Set an initial hearing within 14 days;
        ii) Appoint counsel, unless the respondent has their own counsel;
            (1) If the respondent has not retained legal counsel and does not plan to retain legal counsel, whether or not the respondent lacks or appears to lack legal capacity, the court is to, before the time of the initial hearing, appoint a qualified legal services project, as defined, or if no legal services project has agreed to accept such appointments a public defender to represent the respondent for all purposes related to the CARE Act, including appeals; and,
            (2) Counsel appointed in this case will have the authority to represent the individual in any proceeding the CARE Act, and will have the authority to represent the individual, as needed, in matters related to CARE agreements and CARE plans.
        iii) Allows the respondent to select a supporter, unless the respondent chooses not to have one; and,
        iv) Provide notice of the hearing to the petitioner, the respondent, the appointed counsel, the supporter, and the county behavioral health agency in the county where the respondent resides and, if different, the county where the CARE Court proceedings have commenced.

    b) Requires the court, if it determines that the individual meets, or likely meets the CARE criteria, that voluntary engagement is effective, and that the individual has enrolled in behavioral health treatment, to dismiss the matter; or,
    c) Requires the court, if it determines that the individual does not meet, or is likely not to meet the CARE criteria, to dismiss the matter. Requires the court to notify the petitioner and the respondent of the dismissal and the reason for dismissal. Provides that the petitioner may request reconsideration of the dismissal within 10 days.

11) Provides that the court may at the initial hearing, permit the respondent to substitute their own counsel for appointed counsel and substitute their own supporter for the appointed CARE supporter or elect to proceed without a supporter.

12) Specifies that all of the following apply at the initial hearing:

    a) If the petitioner is not present, allows the court to dismiss the matter;
    b) The respondent may waive their appearance and appear through their counsel. If the respondent elects not to waive their appearance and is not present, and appropriate attempts to elicit the attendance of the respondent have failed, allows the court to conduct the hearing in the respondent's absence. If the hearing is conducted without the respondent present, requires the court to set forth the factual basis for doing so and the reasons the proceedings will be successful without the respondent's presence;
    c) Requires a county behavioral health agency representative to be present;
    d) Allows a supporter to be present, subject to the consent of the respondent;
    e) Allows a tribal representative to attend for a respondent who is tribal member, as provided, and subject to the respondent's consent;

f) Requires the court to make a determination whether the petitioner has presented prima facie evidence that the respondent meets the CARE criteria. In making the determination, the court is to consider all evidence properly before it, including the report from the county and any additional evidence presented by the parties;
g) If the court finds there is no reason to believe that the facts stated in the petition are true, requires the court is to dismiss the case without prejudice, unless the court makes a finding on the record that the petitioner's filing was not in good faith. Requires any new petition to be based on changed circumstances that warrant a new petition;
h) If the court finds there is reason to believe that the facts stated in the petition appear to be true, the court is to order the county behavioral health agency to work with the respondent and the respondent's counsel and supporter to engage in behavioral health treatment. Requires the court to set a case management hearing within 14 days; and,
i) If the respondent is enrolled in a federally recognized Indian tribe, the court is to provide notice of the case management hearing to the tribe subject to the respondent's consent.

13) Requires at the case management hearing for the court to make a determination whether the parties may enter into a CARE agreement and requires a recitation of all terms and conditions on the record.

14) Requires the court, if the parties have agreed to a CARE agreement and the court agrees with the terms, to stay the matter and set a progress hearing in 60 days.

15) Requires the court, if the court finds that the parties have not and are not likely to reach a CARE agreement, to order a clinical evaluation of the respondent, as provided. Requires the evaluation to address the clinical diagnosis and the issue of whether the defendant has capacity to give informed consent regarding psychotropic medication.

16) Requires the county behavioral health agency, through a licensed behavioral health professional, to conduct the evaluation unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. Requires the court to set a clinical evaluation hearing to review the evaluation within 14 days.

17) Requires the court to review the evaluation and any other evidence from the petitioner, the county behavioral health agency, the respondent, and, if requested by the respondent, the supporter.

18) Permits the petitioner and the respondent to present evidence and call witnesses, including the person who conducted the evaluation.

19) Requires the court to only consider relevant and admissible evidence that fully complies with the rules of evidence.

20) Permits the clinical evaluation hearing to be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

21) Requires, if the court finds, by clear and convincing evidence, that the respondent meets the CARE criteria, the court to order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan. Allows, if another

entity will provide services or supports under the CARE plan, that entity to be joined as a party.

22) Requires if the court finds that the evidence does not, by clear and convincing evidence, support that the respondent meets the CARE criteria, the court to dismiss the petition.

23) Allows the respondent and the county behavioral health agency to request appellate review of an order to develop a CARE plan.

24) Requires if the respondent is an American Indian or Alaska Native individual as defined, or is otherwise receiving services from an Indian health care provider or tribal court, the county behavioral health agency is to use best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

25) Requires the date for the hearing to review and consider approval of the proposed CARE plan not be set more than 14 days from the date of the order to develop a CARE plan, unless there is good cause for an extension.

26) Permits the county behavioral health agency or the respondent, or both, to present a proposed CARE plan.

27) Allows the court to issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding, as provided.

28) Allows a court to order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary medication, including antipsychotic medication. Requires that to the extent that the court orders medically necessary stabilization medications, the medication may not be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including but not limited to contempt or the accountability measures in IV. 1) and IV. 2) below.

29) Allows supplemental information to be provided to the court, as provided.

30) Specifies that the issuance of any orders in III. 27) above begins the "up to one-year CARE program" timeline.

31) Requires that a status review hearing occur at least every 60 days during the CARE plan implementation.

32) Requires county behavioral health agency to file with the court, and serve on the respondent and the respondent's counsel and supporter, a report not less than seven days prior to the hearing, with specified information, including progress the respondent has made on the CARE plan, what services and supports in the CARE plan were provided, and what services and supports were not provided, any issues the respondent expressed or exhibited in adhering to the CARE plan; and, recommendations for changes to the services and supports to make the CARE plan more successful.

33) Requires that, subject to applicable law, intermittent lapses or setbacks described in the report may not impact access to services, treatment, or housing

34) Requires the status review hearing to occur unless waived by all parties and approved by the court.

35) Allows the county behavioral health agency, the respondent, or the court to request more frequent reviews, as necessary.

36) Requires the court, in the 11th month of the program, to hold a one-year status hearing, which is an evidentiary hearing, to determine if the respondent graduates from the CARE plan or should be reappointed for another year.

37) Requires that at least seven days prior to the one-year status hearing, the county behavioral health agency to submit to the court, the respondent, the respondent's counsel, and the respondent's supporter, a report on the progress the respondent has made on the CARE plan as provided in III.32) above.

38) Grants the respondent the right to call witnesses and present evidence information at the one-year status hearing as to whether or not the respondent agrees with the report.

39) Specifies that if the respondent has successfully completed the CARE program, the respondent will not be reappointed to the program. Requires the court to review with the parties the voluntary agreement for a graduation plan to support a successful transition out of court jurisdiction and which may include a psychiatric advance directive. Prohibits the graduation plan from placing additional requirements on local government entities and is not enforceable by the court.

40) Permits at the one-year status hearing, the respondent to request reappointment to the CARE proceedings.

    a) If the respondent elects to accept voluntary reappointment to the program, the respondent can request to be re-appointed to the CARE program for up to one additional year; and,
    b) Allows the court to reappoint the respondent to the CARE program for up to one year if the court finds, by clear and convincing evidence, that: i) the respondent did not successfully complete the program; ii) all of the required services and supports were provided to the respondent; iii) the respondent would benefit from continuation of the CARE program; and, iv) the respondent currently meets the requirements in III. 1) above.

41) Provides that a respondent can only be reappointed to the CARE program for up to one additional year.

42) Specifies mandatory timeframes, as well as continuances for good cause, throughout the CARE Court proceedings.

43) Requires hearings to occur in person unless the court allows a party or a witness to appear remotely. Provides the respondent with the right to be in-person for all hearings.

44) Allows the Judicial Council to adopt rules to implement the CARE Court provisions.

45) Requires, for all CARE proceedings, the judge to control all hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Requires where there is a contested issue of fact or law, the proceedings to be conducted in an informal, non-adversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent.

46) Requires all evaluations and reports, documents, and filings submitted to the court pursuant to CARE proceedings to be confidential.

IV. Accountability

1) Allows the court, at any point in the proceedings, if it determines, by clear and convincing evidence, that the respondent, after receiving notice, is not participating in the CARE proceedings, to terminate respondent's participation in the CARE program. Allows the court to make a referral under the LPS Act, as provided.

2) Requires that, if a respondent was provided timely with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including the reasons for that failure: a) is a fact considered by a court in a subsequent hearing under the LPS Act, provided that hearing occurs within six months of termination of the CARE plan; and, b) creates a presumption at that hearing that the respondent needs additional interventions beyond the supports and services provided by the CARE plan.

3) Allows the court, at any time in the proceeding, if it finds that the county, or other local government entity, is not complying with its orders, to fine the county, or other local government entity, up to $1,000 per day for noncompliance. Allows the court, if a county is found to be persistently noncompliant, to appoint a receiver to secure court-ordered care for the respondent at the county's cost. In determining the application of the remedies available, requires the court to consider whether there are any mitigating circumstances impairing the ability of the county agency or local government entity to fully comply with the CARE Act requirements.

4) Establishes the CARE Act Accountability Fund (fund) in the State Treasury to receive penalty payments from each county as collected. Requires that all monies in the fund are reserved and continuously appropriated, without regard to fiscal years. Requires that subject to approval from the Department of Finance, DHCS will determine the use of the funds to support local government efforts that will serve individuals who have schizophrenia or other psychotic disorders who experience or are at risk of homelessness, criminal justice involvement, hospitalization or conservatorship.

V. The Supporter and Counsel

1) Requires, subject to appropriation, DHCS to provide optional training and technical resources for volunteer supporters on CARE Act proceedings, community services and supports, Supported Decision Making, and people with behavioral health conditions, trauma-informed care and psychiatric advance directives, with support and input from relevant stakeholders. Allows DHCS to enter into a technical assistance and training agreement.

2) Provides that the supporter is designed to do all of the following:

    a) Offer the respondent flexible and culturally responsive ways to maintain autonomy and decisionmaking authority over their own life by developing and maintaining voluntary supports to assist them in understanding, making, communicating and implementation their own informed choices;
    b) Strengthen the respondent's capacity to engage in and exercise autonomous decisionmaking and prevent or remove the need to use more restrictive protective mechanisms, such as conservatorship; and,
    c) Assist the respondent with understanding, making and communicating decisions, and expressing preferences throughout the CARE Court process.

3) Permits that notwithstanding any other provisions of the CARE Act, the respondent to have a supporter present in any meeting, judicial proceeding, status hearings, or communications related to an evaluation, development of a CARE agreement or CARE plan; establishing a psychiatric advance directive; and, development of a graduation plan.

4) Specifies that a supporter is intended to do all of the following:

    a) Support the will and preferences of the respondent to the best of their ability and to the extent reasonably possible;
    b) Respect the values, beliefs, and preferences of the respondent;
    c) Act honestly, diligently, and in good faith; and,
    d) Avoid, minimize and manage, to the greatest extent possible, conflicts of interest. Disclose conflicts of interest to the court, the respondent and the respondent's counsel. Allows a court to remove a supporter because of any conflict of interest with the respondent, and to remove the supporter if the conflict cannot be managed in such a way to avoid any possible harm to the respondent.

5) Prohibits a supporter, without explicit authorization by the respondent with capacity to make that authorization from making decisions for, or on behalf of, the respondent, except when necessary to prevent imminent bodily harm or injury, and to sign documents on behalf of the respondent.

6) Provides that in addition to the obligations specified, a supporter is bound by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. Specifies that the CARE Act does not limit a supporter's civil or criminal liability for prohibited conduct against the respondent, including liability for fraud, abuse, neglect, coercion or mistreatment including liability under the Elder Abuse and Dependent Adult Civil Protection Act.

7) Requires subject to appropriation, the Judicial Council to provide funding to qualified legal services projects, as defined to be used to provide legal counsel appointed under III. 10) a) above for representation in CARE proceedings, matters related to CARE agreements and CARE plans, and to qualified support center as defined for training, support and coordination.

VI. Care Plan

1) Requires the CARE plan to only include the following:

    a) Behavioral health services funded through the 1991 and 2011 Realignment, Medi-Cal behavioral health, health care plans and insurers, services provided as specified within portions of the County Aid and Relief to Indigents and services supported by the Mental Health Services Act (MHSA) as specified;
    b) Medically necessary stabilization medication to the extent not described in VI. 1) above;
    c) Housing resources funded through programs as specified including but not limited to the No Place Like Home Program; the California Housing Accelerator; the Homeless Housing Assistance and Prevention Program, the Project Roomkey and Rehousing Program; the Community Care Expansion Program; the Transitional Housing Placement Program; the Behavioral Health Continuum Infrastructure Program; and, the Community Development Block Grant Program; and,
    d) Social services funded through the Supplemental Security Income/State Supplementary Payment Case Assistance program for Immigrants, CalWORKs, California Food Assistance Program, In-Home Supportive Services. and Cal Fresh.

2) Requires individuals who are CARE program participants to be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program.

3) Requires all CARE plan services and supports ordered by the court to be subject to all applicable federal and state statutes and regulations, contractual provisions and policy guidance governing program eligibility and available funds. Requires that in addition to the resourced funded through programs listed in VI. 1) above, DHCS to identify other adjacent covered Medi-Cal services, including but not limited to, enhanced case management and available community supports, which may be provided, although not ordered by the court, subject to all applicable federal and state statute, regulations contractual provisions, and policy guidance.

4) Requires that for respondents who are Medi-Cal beneficiaries, the county in which the respondent resides is the county of responsibility, as defined.

5) Provides that if a proceeding commences in a county where the respondent is found or is facing criminal or civil proceedings that is different than the county in which the respondent resides, the county in which the respondent is found or is facing criminal or civil proceedings cannot delay proceedings and is the responsible county behavioral health agency for providing or coordinating all components of the CARE agreement and CARE plan.

6) Provides that the county in which respondent resides as defined in VI. 4) above is responsible for the costs of providing all CARE agreement or CARE plan behavioral health services as defined in V.1) a) above.

7) Requires, in the event of a dispute over responsibility for any costs of providing components of the CARE agreement or CARE plan, the impacted counties to resolve the dispute in accordance with the arbitration process established for county mental health plans, including for respondents who are not Medi-Cal beneficiaries.

VII. Technical Assistance and Administration:

1) Requires, subject to appropriation, the California Health and Human Services Agency (CHSSA) or a designated department within CHSSA to:

    a) Engage an independent, research-based entity, as described in VII. 12) below, to advise on the development of data-driven process and outcome measures to guide the planning, collaboration, reporting, and evaluation of the CARE Act; and,
    b) Provide coordination, on-going engagement, and support collaboration among relevant state and local partners and other stakeholders throughout the phases of county implementation to support the successful implementation of the CARE Act.

2) Requires, subject to appropriation, DHCS to provide training and technical assistance to county behavioral health agencies to support the implementation of the CARE Act, including training regarding the CARE statute, CARE plan services and supports, supported decision making, the supporter role, trauma-informed care, elimination of bias, psychiatric advance directives, and data collection.

3) Requires, subject to appropriation, the Judicial Council, in consultation with DHCS, other relevant state entities, and the County Behavioral Health Directors Association, to provide training and technical assistance to judges to support the implementation of the CARE Act, including training regarding the CARE statutes, CARE plan services and supports, working with the supporter, supported decision making, the role of the supporter, trauma -informed care, elimination of bias, best practices, and evidence-based models of care for people with severe behavioral health conditions.

4) Permits for purposes of implementing the CARE Act, the CHSSA and DHCS to enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis.

5) Permits CHHSA and DHCS to implement, interpret, or make specific the CARE Act, by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.

6) Requires DHCS to develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, and other appropriate stakeholders, an annual report. Requires DHCS to post the annual report on its internet website.

7) Requires county behavioral health agencies and any other state or local governmental entity, as identified by DHCS to provide to DHCS data related to the CARE Act participants, services, and supports. Requires DHCS to determine the data measures and specifications, and publish through guidance.

8) Requires each county behavioral health department and any other state and local governmental entity, as identified by DHCS, to provide the required data in a format and frequency as directed by DHCS

9) Requires DHCS to provide information on the populations served and demographic data, stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation and gender identity, and county, to the extent statistically relevant data is available.

10) Requires the report to include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. Requires the annual report to include process measures to examine the scope of impact and monitor the performance of the CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and, the number, rates, and trends of developed graduation plans. Requires the report to include outcome measures to assess the effectiveness of the model, such as improvement in housing status, gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reduction in substance use. Requires the annual report to examine these data through the lens of health equity to identify racial/ethnic and other demographic disparities and inform disparity reduction efforts.

11) Requires that the outcomes be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

12) Requires that an independent, research-based entity be retained by DHCS to develop, in consultation with county behavioral health agencies, county CARE Courts, and other appropriate stakeholders, an independent evaluation of the effectiveness of the CARE Act.

13) Requires the independent evaluation to employ statistical research methodology and include a logic model, hypotheses, comparative and/or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports. Requires the independent evaluation to highlight racial/ethnic and other demographic disparities, and include causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts.

14) Requires DHCS to provide a preliminary report to the Legislature three years after the implementation date of the CARE Act and a final report to the Legislature five years after the implementation date of the CARE Act. Requires DHCS to post the preliminary and final reports on its internet website.

15) Requires each county behavioral health department, each county CARE Court, and any other state or local governmental entity, as determined by DHCS, to provide the required data to DHCS, in a format and frequency as directed by DHCS.

VIII. Health Plans and Insurance

1) Requires a health care service plan (health plan) contract that covers hospital, medical, or surgical expenses and an insurance policy, issued, amended, renewed, or delivered on or after July 1, 2023, to cover the cost of developing an evaluation as defined in III. 15) above and the provision of all health care services for an enrollee when required or recommended for

the enrollee under a CARE agreement or a CARE plan approved by a court in accordance with the court's authority under the CARE Act regardless of whether the services are provided by an in-network or out-of-network provider.

2) Prohibits a health care service plan or an insurer from requiring prior authorization for services, other than prescription drugs, required under a CARE agreement or CARE plan approved by a court under the CARE Act.

3) Permits a health plan or an insurer to conduct a postclaim review to determine appropriate payment of a claim. Allows payment for services to be denied only if the health plan or insurer reasonably determines the enrollee was not enrolled at the time the services were rendered, the services were never performed, or the services were not provided by a health care provider appropriately licensed or authorized to provide the services.

4) Permits, notwithstanding VIII. 2) above, a health plan or insurer to require prior authorization for services as permitted by the Department of Managed Health Care (DMHC) or the Department of Insurance (CDI) under VIII. 9) below.

5) Requires a health plan or insurer to provide for reimbursement of services provided to an enrollee under the CARE Act, other than prescription drugs, at the greater of either of the following amounts:

   a) The health plan's or insurer's contracted rate with the provider; or,
   b) The fee-for-service or case reimbursement rate paid in the Medi-Cal program for the same or similar services as identified by the DHCS.

6) Requires a health plan or insurer to provide for reimbursement of prescription drugs provided to an enrollee under the CARE Act at the contracted rate of the health plan/insurer.

7) Requires a health plan or insurer to provide reimbursement for services provided under the CARE Act in compliance with the requirements for timely payment of claims, as specified.

8) Prohibits from subjecting services provided to an enrollee pursuant to a CARE agreement or CARE plan, excluding prescription drugs, to copayment, coinsurance, deductible, or any other form of cost sharing. Prohibits an individual or entity from billing the enrollee or subscriber, nor seek reimbursement from the enrollee or subscriber, for services provided pursuant to a CARE agreement or CARE plan regardless of whether such service is delivered by an in-network or out-of-network provider.

9) Requires no later than July 1, 2023, DMHC and CDI to issue guidance to health plans or insurers regarding compliance with the CARE Act. Exempts the guidance from being subject to the Administrative Procedure Act (APA). Provides that such guidance is effective only until DMHC and CDI adopt regulations under the APA.

10) Requires a health plan or insurer to comply with the California Mental Health Parity Act of 2020.

11) Specifies that the health plan/insurer provision does not apply to Medi-Cal managed care contracts between DHCS and a health plan for enrolled Medi-Cal beneficiaries as specified.

12) Specifies that the health plan/insurer provisions become operative on July 1, 2023.

IX. Miscellaneous

1) Permits, if a person who is charged with a misdemeanor or misdemeanors only, or a violation of formal or informal probation for a misdemeanor, where the judge finds reason to believe that the defendant has a mental health disorder, and may, as a result of the mental health disorder, be incompetent to stand trial, and the individual after a hearing is determined to be ineligible for diversion, the court to refer the defendant to the CARE Program.

2) Requires that a hearing to determine eligibility for the CARE Program to be held within 14 days after the date of the referral in IX. 1) above. Requires that if the hearing is delayed beyond 14 days, the court to order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. Requires that if the defendant is accepted into CARE Program, the charges pending against the defendant to be dismissed.

3) Expands the systems of care for adults and older adults with SMI that calls for a client to be fully informed and volunteer for all treatment provided, unless danger to self or others or gravely disabled requiring temporary involuntary treatment to also include if the client is under a court order for CARE Court and prior to the court-ordered CARE plan, the client has been offered an opportunity to enter into a CARE agreement on a voluntary basis and has declined to do so.

4) Permits when included in a county's MHSA County Plan and annual update, MHSA funds to be used for the provisions of services to clients under the CARE Program.

EXISTING LAW:

1) Establishes the LPS Act to end inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to provide prompt evaluation and treatment of those with mental health disorders or impaired by chronic alcoholism.

2) Defines, as a basis for involuntary commitment under the LPS Act, "grave disability" as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter, or is found to be mentally incompetent under the Penal Code. Excludes from that definition persons with intellectual disabilities by reason of that disability alone.

3) Provides that if a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility.

4) Allows a person who has been detained for 72 hours to be detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment.

5) Allows a person to be held at the expiration of a 14-day period of intensive treatment for further intensive treatment of up to 14 days if, during the detention period, a person threatened or attempted to take their own life or was detained because they threatened or attempted to their own life and continues to present an imminent threat of taking their own life and other specified condition.

6) Allows a person who has been detained for 14 days of intensive treatment to be detained for up to 30 additional days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment.

7) Requires a certification review hearing to be held within four days of the date on which a person is certified for a 14-day period of intensive treatment or 30 additional days of intensive treatment unless judicial review has been requested or a postponement is requested by a person or their attorney or advocate.

8) Grants every person detained by certification for intensive treatment with a right to a hearing by writ of habeas corpus for their release. Enumerates specified requirements and procedures for judicial review.

9) Allows for antipsychotic medication to be administered to any person subject to specified detentions under the LPS Act if that person does not refuse that medication. Allows antipsychotic medication to be administered when a detained individual indicates refusal of that medication only when the treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient and upon a determination of that person's incapacity to refuse the treatment in a hearing. In the case of emergency, allows for antipsychotic medication to be administered over a detained person's objection prior to a capacity hearing if the medication is required to treat the emergency and is provided in the manner least restrictive to the personal liberty of the patient. Enumerates specified requirements and procedures for capacity hearings pertaining to administering antipsychotic medication.

10) Allows, under the LPS Act, a court to order an imminently dangerous person to be confined under a conservatorship for further inpatient intensive health treatment for an additional 180 days, as provided.

11) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept treatment; and requires the conservatorship investigator, if they concur with the recommendation, to petition the superior court to establish an LPS conservatorship. Provides that a person for whom an LPS conservatorship is sought has the right to demand a court or jury trial on the issue of whether they are gravely disabled.

12) Requires an officer providing conservatorship investigation to investigate all available alternatives to conservatorship and recommend conservatorship to the court only if no suitable alternatives are available. Requires the officer to render to the court a comprehensive written report containing all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, information concerning the person's property, and information obtained from the person's family members, close friends, social

worker, or principal therapist. Requires the officer, if they recommend against conservatorship, to set forth all alternatives available.

13) Requires a conservator under an LPS conservatorship to place the conservatee in the least restrictive alternative placement, as provided. Gives the LPS conservator the right, if specified in the court order, to require the conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled.

14) Requires counties, unless they opt out, to provide AOT, also known as "Laura's Law," for people with serious mental illnesses when a court determines that a person's recent history of hospitalizations or violent behavior, and noncompliance with voluntary treatment, indicates the person is likely to become dangerous or gravely disabled without the court-ordered outpatient treatment.

15) Establishes a pilot program, until January 1, 2024, for Los Angeles and San Diego Counties, and the City and County of San Francisco, upon authorization by their respective boards of supervisors, to implement a "housing conservatorship" procedure for a person who is incapable of caring for their health and well-being due to a serious mental illness and substance use disorder, as evidenced by eight or more detentions for evaluation and treatment under Section 5150 in the preceding 12 months.

16) Permits, under the Probate Code, any interested person to petition the court for the appointment of a "conservator of the person" for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter, and permits the appointment of a "conservator of the estate" for a person who is unable to manage their financial resources or resist fraud or undue influence. Provides that no conservatorship of the person or of the estate may be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

17) Creates a court diversion program for those charged with certain drug offenses.

18) Creates a court diversion program for those with "mental disorders," as defined.

19) Allows a court, if a criminal defendant is found to be mentally incompetent, to, among other things, determine if the defendant is eligible for a diversion program, or, if ineligible, to, among other things, refer the defendant to AOT or to an LPS conservatorship investigation.

20) Defines "Housing First" to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. States that Housing First providers offer services as needed and requested on a voluntary basis and do not make housing contingent on participation in services.

21) Requires all agencies and departments administering state programs, created on or after July 1, 2017, to collaborate with the California Interagency Council on Homelessness to adopt guidelines and regulations to incorporate core components of Housing First.

22) Establishes the Medi-Cal program, which is administered by DHCS, under which qualified low-income individuals receive health care services.

23) Makes children age 18 and under with family incomes up to 266% of the federal poverty level eligible for Medi-Cal.

24) Establishes a schedule of benefits in the Medi-Cal program, which includes mental health and SUD services included in the essential health benefits package adopted by the state for purposes of implementing the federal Patient Protection and Affordable Care (ACA) requirement for benefits that must be included in health plans offered in the private individual and small group market and to the Medicaid expansion population.

25) Requires DHCS to implement managed mental health care for Medi-Cal beneficiaries through contracts with mental health plans (MHPs). Permits MHPs to include individual counties, counties acting jointly, or an organization or nongovernmental entity determined by DHCS to meet MHP standards. Permits a contract to be exclusive and may be awarded on a geographic basis. Requires MHPs to be responsible for providing Specialty Mental Health Services (SMHS) to enrollees.

26) Requires county MHPs to be governed by specified guidelines, which include a requirement that MHPs provide SMHS to eligible Medi-Cal beneficiaries, including both adults and children.

28) Establishes the DMHC to regulate health plans and the CDI to regulate health insurers.

29) Requires health plans and health insurers providing health coverage in the individual and small group markets to cover, at a minimum, essential health benefits (EHBs), including the 10 EHB benefit categories in the ACA, as specified in state law, which include the following 10 categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; Mental Health and SUD services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and, pediatric services, including oral and vision care.

30) Requires health plans to provide basic health care services, including: physician services; hospital inpatient and ambulatory care services; diagnostic laboratory and diagnostic and therapeutic radiologic services; home health services; preventive health services; emergency health care services; and, hospice care.

31) Requires emergency health care services to be available and accessible to enrollees on a 24 hour a day, seven days a week, basis within the health plan area. Requires emergency health care services to include ambulance services for the area served by the plan to transport the enrollee to the nearest 24 hour emergency facility with physician coverage, designated by the health plan.

32) Requires every health plan contract issued, amended, or renewed on or after January 1, 2021 to provide coverage for medically necessary treatment of Mental Health and SUD under the same terms and conditions applied to other medical conditions, as specified.

33) Defines medically necessary treatment of mental health and SUD as a service or product addressing the specific needs of that patient, for the purposes of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of that illness, injury, condition, or its symptoms, in a manner as specified.

35) Establishes the MHSA, enacted by voters in 2004 as Proposition 63, to provide funds to counties to expand services, develop innovative programs, and integrated service plans for mentally ill children, adults, and seniors through a 1% income tax on personal income above $1 million.

36) Specifies that the MHSA can only be amended by a two-thirds vote of both houses of the Legislature and only as long as the amendment is consistent with and furthers the intent of the MHSA. Permits provisions clarifying the procedures and terms of the MHSA to be amended by majority vote.

FISCAL EFFECT: Unknown. This bill, as amended, has not been analyzed by a fiscal committee.

COMMENTS:

1) **PURPOSE OF THIS BILL**. According to the author, county behavioral health departments provide Medi-Cal specialty mental health services to those who are enrolled in Medi-Cal and have severe mental illness. However, many of the most impaired and vulnerable individuals remain under or un-served because: a) the individual is so impaired they do not seek out services; b) the necessary services are not available at the right time due to administrative complexities and/or legal barriers; c) client care lacks coordination among providers and services, resulting in fragmentation among provided services; and, d) little accountability at various levels of the system results in poor outcomes for the client, who is often living on the streets. The author concludes, this bill seeks to overcome these barriers by connecting individuals to services, requiring coordination, and adding a necessary layer of accountability through the courts.

   Governor Newsom, when introducing his CARE Court proposal, stated that sadly, the status quo provides support only after a criminal justice intervention or conservatorship. CARE Court is a paradigm shift, providing a new pathway for seriously ill individuals before they end up cycling through prison, emergency rooms, or homeless encampments. He further stated that, CARE Court is about meeting people where they are and acting with compassion to support the thousands of Californians living on our streets with severe mental health and substance use disorders. The Governor concluded by stating that we are taking action to break the pattern that leaves people without hope and cycling repeatedly through homelessness and incarceration. CARE Court is a new approach to stabilize people with the hardest-to-treat behavioral health conditions.

2) **BACKGROUND**.

   a) **CARE Court proposal**. In early 2022, Governor Newsom proposed the CARE Court program to help connect a person in crisis with a court-ordered CARE plan for up to 12 months, with the possibility to extend for an additional 12 months. The framework provides individuals with a clinically appropriate, community-based set of services and

supports that are culturally and linguistically competent, which includes short-term stabilization medications, wellness and recovery supports, and connection to social services and a housing plan. According to the CHHSA's website, housing is an important component—finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent, or in a vehicle. CHHSA states that CARE Court is an upstream diversion to prevent more restrictive conservatorships or incarceration, based on evidence that demonstrates many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. With advances in treatment models, new longer-acting antipsychotic treatments, and the right clinical team and housing plan, individuals who have historically suffered tremendously on the streets or during avoidable incarceration can be successfully stabilized and supported in the community. CHHSA further states that CARE Court is not for everyone experiencing homelessness or mental illness; rather it focuses on people with schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity, before they enter the criminal justice system or become so impaired that they end up in a LPS conservatorship due to mental illness. CHSSA states that although homelessness has many faces in California, among the most tragic is the face of the sickest who suffer from treatable mental health conditions, and the CARE Court proposal aims to connect these individuals to effective treatment and support, mapping a path to long-term recovery. CARE Court is estimated to help thousands of Californians on their journey to sustained wellness. SB 1338 (Umberg and Eggman) and AB 2830 (Bloom) of this Legislative Session implement the CARE Court proposal.

b) Housing First: In 2016, the state's efforts to address homelessness shifted to the use of Housing First core components. SB 1380 (Mitchell) Chapter 847, Statutes of 2016, which created the California Interagency Council on Homelessness to oversee implementation of the Housing First regulations and coordinate the state's response to homelessness, as well as create partnerships among state agencies and departments, local government agencies, nonprofits, and federal agencies to prevent and end homelessness in California. SB 1380 also aligned the Housing First guidelines for any state program that provides housing and supportive services to people experiencing homelessness. Housing First is an evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and do not make housing contingent on participation in services.

As currently in print, this bill includes a housing plan as part of the respondent's CARE plan. This bill provides for the housing plan to describe the housing needs of the respondent and the housing resources that will be considered in support of an appropriate housing placement. It also gives the respondent diverse housing options, including, but not limited to, housing in clinically enhanced interim or bridge housing, licensed adult and senior care settings, and supportive housing. Since this bill goes on to state that "counties may offer appropriate housing placements in the region as early as feasible in the engagement process" it appears this provision "does not allow the court to order housing or to require the county to provide housing," thus an individual could be participating in CARE Court, be required to meet certain treatment plan goals and requirements, and yet remain unhoused. Under the existing Housing First framework, the state is supposed to be working with local governments and Continuums of Care to ensure housing is used as a tool in an individuals' overall path to wellness rather than as a

reward for recovery, even for those with SUD or SMI.

It is unclear how an individual meeting the requirements for participation in CARE Court can truly make progress, in terms of complying with the components of their CARE plan, if they remain unhoused. Additionally, the language of this bill is currently silent on whether an individual who is housed through the CARE Court program may lose their housing if they fail to comply with their CARE plan, stop taking their psychotropic medications, or experience a relapse. These raise questions on how the program complies with existing Housing First principals.

c) **California's mental health crisis.** Mental illness is pervasive in California. About one in six Californians experience mental illness and one in 25 experience a SMI. (California Budget & Policy Center, "Mental Health in California: Understanding Prevalence, System Connections, Service Delivery, and Funding*"* (March 2020)). These rates are higher among people of color and those living below the poverty line. Among those experiencing homelessness, one in four individuals report having a SMI.

The COVID-19 pandemic exacerbated mental illness rates in California, and the state continues to face a shortage of facilities, services, and workers to appropriately care for its mentally ill population. For example, since 1995, the number of inpatient psychiatric beds in California has been decreasing, despite population growth and increased rates of mental illness. The state is projected to continue to face a shortfall of thousands of psychiatric beds for adult inpatient and residential care. Despite the high rates of mental illness among individuals experiencing homelessness, there is a dire shortage of supportive housing and wrap-around services to adequately treat mental illness within this population. Further, the behavioral health workforce is insufficient to meet the growing demand for mental healthcare. One report projected that, if current trends continue, by 2028 California will have 41% fewer psychiatrists and 1% fewer psychologists, therapists, and social workers than are likely to be needed. The growing mental health crisis has led to calls for reforming the mental healthcare system in California, including reforming existing law providing for involuntary detentions and treatment due to mental illness.

d) **A significant portion of California's homeless population is severely mentally ill.** While accurate data on the number of people among California's unhoused population who are mentally ill is available, it is clear that a significant portion of that population has mental health disabilities. According to the 2019 annual point-in-time count, 23% of California's homelessness population is severely mentally ill. A *Los Angeles Times* review of the 2019 point-in-time homelessness count for Los Angeles County found that 51% of homeless were either reported or observed to be affected by mental illness; 46% were affected by substance abuse; and, 67% were affected by either mental illness or substance abuse. A study from the University of California's California Policy Lab, linking Los Angeles County Department of Mental Health records to Street Outreach data, found that 20% of Street Outreach clients had been diagnosed with a SMI within the previous 12 months. That study also found that homeless clients of the Street Outreach program waited, on average, 101 days for interim housing; 112 days for rapid re-housing; and, 188 days for permanent housing.

e) LPS ACT: mandatory treatment options for those with mental illness. California law provides a number of options for forcibly detaining and treating individuals with SMI. The primary option is the 1967 LPS Act, which provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided that certain requirements or preconditions are met. The goal of the LPS Act is to "end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities."

i) *LPS involuntary holds and conservatorships.* Under the LPS Act, an individual may be involuntary committed for varying lengths of time for the purpose of treatment and evaluation, provided that certain requirements are met. Additionally, the LPS Act provides for LPS conservatorships, resulting in involuntary commitment for the purposes of treatment, if an individual is found to meet the "grave disability" standard in which a person, as a result of a mental disorder or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter.

Typically, a person's first interaction with the LPS Act is through what is commonly referred to as a 5150 hold. This allows an approved facility to involuntarily commit a person for up to 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled. (Section 5150.) The peace officer, or other authorized person, who detains the individual must know of facts that would lead a person of ordinary care and prudence to believe that the individual meets this standard. When making this determination, the peace officer, or other authorized person, may consider the individual's past conduct, character, and reputation, so long as the case is decided on facts and circumstances presented to the detaining person at the time of detention.

Following a 72-hour hold, the individual may be held for an additional 14-days, without court review, if they are found to still be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled. (Section 5250.) When determining whether the individual is eligible for an additional 14-day confinement, the professional staff of the agency or facility providing evaluation services must find that the individual has additionally been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. Additionally, the individual cannot be found at this point to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or third parties who are both willing and able to help. The individual may request judicial review of this involuntary detention, and if judicial review is not requested, the individual must be provided a certification review hearing.

If a person is still found to remain gravely disabled and unwilling or unable to accept voluntary treatment following their additional 14 days of intensive treatment, they may be certified for an additional period of not more than 30 days of intensive treatment. (Section 5270) The individual may request judicial review of this involuntary detention, and if judicial review is not requested, the individual must be provided a certification review hearing. Additionally, the professional staff of the agency or facility providing the treatment, must analyze the person's condition at

intervals not to exceed 10 days, and determine whether the person continues to meet the criteria for continued confinement. If the person is found to no longer meet the requirements of the 30-day hold, then their certification should be terminated.

Finally, the LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism. (Section 5350.) The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for the gravely disabled individual. The individual for whom such a conservatorship is sought has the right to demand a court or jury trial on the issue of whether they meet the gravely disabled requirement, and they have the right to be represented by counsel. An LPS conservatorship lasts for one year, but can be renewed.

ii) *Laura's Law.* As an alternative to an LPS conservatorship, current law provides for court-ordered outpatient treatment through Laura's Law, or the AOT Demonstration Project, enacted in 2002. In participating counties, the court may order a person into an AOT program if the court finds that the person either meets existing involuntary commitment requirements under the LPS Act or the person meets non-involuntary commitment requirements, including that the person has refused treatment, their mental health condition is substantially deteriorating, and AOT would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community. Originally, Laura's Law was only operative in those counties in which the county board of supervisors, by resolution, authorized its application and made a finding that no voluntary mental health program serving adults and no children's mental health program would be reduced in order to implement the law. The initial sunset provision provided for within Laura's Law was extended several times until 2020 when legislation was passed requiring that, rather than counties opting into Laura's Law, counties have to, by board of supervisors resolution, opt out of the program. Additionally, the sunset provision was removed, making the program permanent.

Laura's Law is designed to provide counties with tools for early intervention in mental health crises. It allows for family members, relatives, cohabitants, treatment providers, or peace officers to initiate the AOT process with a petition to the county behavioral health director or the director's designee. The health director or designee must then determine how to proceed. If the individual is found to meet the AOT eligibility requirements, a preliminary care plan is developed to meet that person's needs. If this process results in the person voluntarily engaging with treatment, then the patient is deemed to no longer meet the criteria and the petition is no longer available. However, if the client declines their preliminary plan, then a public defender is assigned and the petition process proceeds. A judge either grants or rejects the AOT petition; and if an AOT petition is approved, treatment is ordered and continues for up to 180 days.

iii) *Housing Conservatorship Pilot.* In 2018, the Legislature created a pilot project, known as the "housing conservatorship," for those who have both SMI and SUD (SB 1045 (Wiener & Stern) Chapter 845, Statutes of 2018, and SB 40 (Wiener & Stern) Chapter 467, Statutes of 2019) The counties of Los Angeles, San Diego, and San

Francisco may, through January 1, 2024, elect to establish this new conservatorship, but only after, among other requirements, the board of supervisors determines that money will not be taken from other mental health and conservatorship programs and the board of supervisors ensures that necessary services are available in sufficient quantity, resources, and funding levels to serve the identified population, including access to supportive community housing with wraparound services, public conservators, mental health services, substance use disorder services, and service planning and delivery services.

This new six-month conservatorship, which may be established following a 28-day temporary conservatorship, is designed for those who are incapable of caring for their own health and well-being due to a SMI and SUD, as evidenced not by a contemporary grave disability, but by at least eight 72-hour involuntary holds under Section 5150 in the preceding 12 months. To ensure that this new conservatorship is truly filling a gap and not replacing any existing conservatorship or program, the investigator must consider all alternatives to the proposed conservatorship and only recommend the new conservatorship if no less restrictive alternatives exist and it appears the individual will not qualify for a conservatorship under the Probate Code or the LPS Act. So far, only San Francisco has elected to participate in the pilot and, as of earlier this year, it appears that only two individuals have been conserved under the program, though more individuals could soon be eligible because they are approaching the requisite number of 5150 holds. The pilot requires a thorough evaluation, which should assist the Legislature in determining the need for, and success of, the program.

iv) *Probate Conservatorship.* In California, if an adult is, based on clear and convincing evidence, unable to provide properly for their personal needs for physical health, food, clothing, or shelter, a conservator of the person may be appointed by the court. If an adult who is, based on clear and convincing evidence, substantially unable to manage their own financial resources or resist fraud or undue influence, a conservator of the estate may be appointed by a court to manage the adult's financial matters. The appointment process requires an investigation by a court investigator and approval by the court. The conservator can be a family member, friend, a professional fiduciary, or, more rarely, a county public conservator. A conservatorship involves a court-appointed third party – the conservator – making far-reaching, life-changing decisions on behalf of the conservatee. Historically, a conservatorship lasts until the death of the conservatee or a court order terminating it, based on someone seeking a petition for termination. However, AB 1194 (Low) Chapter 417, Statutes of 2021, requires that these conservatorships be reviewed annually by the probate court and terminated unless the court can legally reestablish them. AB 1194 cannot be implemented until the Legislature specifically allocates funding for it, thus allowing conservatorships to continue indefinitely, despite the recent change in state law.

f) ***California State Auditor (CSA) report on the LPS.*** In July of 2020, the CSA released a report entitled, "Lanterman-Petris-Short Act: California Has Not Ensured That Individuals with Serious Mental Illnesses Receive Adequate Ongoing Care." The Joint Legislative Audit Committee called for the audit and the CSA examined the implementation of the LPS Act in Los Angeles County, San Francisco County, and Shasta County. Essentially the audit found that California has not ensured adequate care

of individuals with SMI in its broader mental health system. The audit found that, "perhaps most troublingly, many individuals were subjected to repeated instances of involuntary treatment without being connected to ongoing care that could help them live safely in their communities." The CSA found that the LPS Act's criteria for involuntary mental health treatment allows counties sufficient authority to provide involuntary treatment to people who need it and no evidence was found to justify expanding the "grave disability" criteria, which could "potentially infringe upon people's liberties." However, while the LPS Act's criteria are sufficient for involuntary holds and conservatorships, significant issues were found with how Californians with SMI are cared for in the LPS system:

i) Individuals on conservatorships have limited treatment options – many could not receive specialized care in state hospital facilities for an average of one year because of a shortage of available treatment beds;
ii) Individual existing involuntary holds have not been enrolled consistently in subsequent care to help them live safely in their communities – in two counties, no more than 9% of these individuals were connected to ongoing services and supports; and,
iii) Less than one-third of the State's counties – only 19 at the time of the audit – had adopted AOT even though it is an effective community-based approach to mental health treatment to help prevent future involuntary holds and conservatorships.

g) Non-mandatory options for treating those with mental illness. Today there are a number of alternatives to the court-ordered involuntary holds or treatment that provide more autonomy, or advance choice, to the individual, while still providing them with necessary treatment and support. These include a durable power of attorney and advance health care directive, as well as supported decisionmaking. More broadly, there are voluntary, community-based supports and services. In addition to other community-based voluntary mental health services and supports, in 2004 California voters adopted Proposition 63, which created the MHSA. The MHSA imposed a one-percent surtax on the wealthiest Californians in order to fund mental health programs and services across the state. Under the MHSA, the DHCS allocates Proposition 63 funds to mental health programs and services through contracts with individual counties.

MHSA programs have three key components: community services and support (CSS); prevention and early intervention (PEI); and innovation. CSS programs, which account for about 80% of allocated funds, provide direct services to individuals with SMI. The guiding concept of CSS programs is to do "whatever it takes" to meet the mental health needs of those who are unserved or underserved. PEI programs, which may account for up to 20% of a county's funding, seek to identify early mental illness (especially in children and young adults) before it becomes severe and disabling. Finally, counties may use up to 5% of their funding for "innovation," or developing, testing, and implementing new approaches that may not yet have demonstrated effectiveness.

While the LPS Act and MHSA have different histories and functions, they share the common goal of helping people obtain treatment for mental illness in the least restrictive and most effective manner possible. The MHSA has the potential to provide alternatives to the choices presented by the LPS system.

h) California's muddled mental health system. While the CSA rightly noted the shortcomings of LPS holds and conservatorships, those shortcomings are not solely attributable to problems within the LPS Act, its definitions, or its implementation. LPS cannot "connect" persons to "ongoing care" if such care does not exist. The LPS Act, was enacted to "end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders." Its primary purpose is not to provide mental health services per se, but to establish commitment criteria that protect the due process rights of persons who are experiencing a dangerous or debilitating mental health crisis. In the absence of voluntary and less restrictive treatment options, the various professionals who make determinations under the LPS Act too often face the choice of releasing a seriously mentally ill person back into the community, or committing them against their will to a locked psychiatric facility.

It was precisely this lack of alternatives in the wider mental health system that prompted California voters in 2004 to adopt the MHSA. A 2016 report by the Little Hoover Commission (Commission) cites several successful and promising local programs developed through the MHSA, but the Commission's overall conclusion was that a "muddled" governance structure makes it difficult to determine if counties use MHSA funds in the most efficient and effective manner, and who should be held accountable when they do not. For example, current law assigns various responsibilities for implementation of the MHSA to three different agencies: DHCS, which absorbed the administrative responsibilities of the now-disbanded Department of Mental Health Services in 2012; the Mental Health Services Oversight and Accountability Commission (MHSOAC), which although created by Proposition 63, has oversight responsibilities for the mental health care system as a whole; and the Mental Health Planning Council, which reviews program performance of the overall mental health system, including MHSA programs. Unfortunately, members of these three agencies informed the Commission that the broad and sometimes overlapping responsibilities mean, in practice, that there is no clear designation of who is responsible for what.

On one key issue, the Commission's report on MHSA found (and the same problem that the State Auditor found in the LPS system) was insufficient data collection. "Despite compelling claims that the MHSA has transformed mental health services in communities across California," the Commission stated, "the state cannot yet demonstrate meaningful, statewide outcomes across the range of programs and services supported by Proposition 63 dollars." Without robust data, policymakers cannot know which programs work with which specific populations. The Commission found that some counties – Los Angeles in particular – have done better than others in tracking outcomes of specific programs. The Commission recommended that the Legislature establish a MHSA data working group within DHCS to build upon the best of the county programs and develop a statewide MHSA database. As guidance, the Commission suggested that the Legislature look to the experience of a working group established in 2014 to collect data on the effectiveness of juvenile justice programs.

If effectively utilized, the MHSA programs may well obviate the need for an LPS hold or conservatorship in the first place, or they might provide less expensive and more effective alternatives to the choice of either releasing or committing persons who are experiencing mental illness. However, LPS decision-makers must first have knowledge of these

programs and their effectiveness with various populations, which would require much more data and analysis, as well as cooperation and collaboration.

i) **Cities and counties have a split position on CARE Courts.** Cities tend to support the legislation and counties and their associated entities, while not opposed, have raised many issues of concern with the legislation. This split is likely due to the fact that many unhoused individuals with mental illness can be found in cities, while the counties will be called upon to provide the supports and services required by the bill (although creation of housing, in large part, is limited by cities).

City support is exemplified by the City of Santee, which recognizes the bill as:

> "An important measure to provide California's civil courts with a new process for earlier action, support, and accountability to protect and care for some of our State's most vulnerable residents. This bill would provide individuals with a clinically appropriate, community-based, court-ordered care plan, including behavioral health care, stabilization medication, and housing support to adults who are suffering from specified mental health disorders (schizophrenia spectrum and psychotic disorders) and who lack medical decision making capacity.
>
> As this legislation could serve as an important tool to help in the City's effort to help address the challenges of homelessness and increase services and safety for those experiencing homelessness, the City Council of the City of Santee passed a unanimous resolution in support of the bill."

County concerns are well illustrated by the letter from the County of Humboldt:

> "…Humboldt County strongly supports a comprehensive, holistic approach to addressing the homeless crisis. However, this bill so far fails to include additional funding for the impact CARE Court would have on our behavioral health, public defender and public guardian offices. Additionally, while we and the cities are working to build our housing stock and behavioral health workforce and infrastructure utilizing recent state investments, we are not yet prepared or funded to implement this new program effectively or operate it ongoing.
>
> New expectations, whether for CARE Court or other programs, require new resources to meet them, especially given decades of underfunding for behavioral health services and zero state investment in the county public guardian offices. Importantly, much of the work envisioned by the CARE Court proposal is not reimbursed by Medi-Cal or private insurance.
>
> Additionally, the proposed sanctions are not appropriate. Our county cannot bear sanctions related to an entirely new program in which we lack the sole authority, housing units and funding to implement. Sanctions would exacerbate the issues our overloaded and underfunded public defender and behavioral health departments are already experiencing, including a severe workforce shortage."

If cities (who may be focused on moving out their unhoused residents) and counties (who will be required to place and serve those individuals) cannot work together to support

CARE Court participants, the program will most likely experience difficulties in succeeding, helping neither counties nor cities, nor, most importantly, the program participants themselves.

j) CARE Court Allocations in Budget. The Governor's May Revision (reflecting the April 7, 2022 version of this bill) includes a total of $64.7 million General Fund in 2022-23 for the support of a new CARE Court process. This amount includes: i) $39.5 million ($37.7 million ongoing) to the judicial branch for court proceedings; ii) $15.2 million (about $1 million ongoing) to the DHCS for training, technical assistance, and data collection; and, iii) $10 million ongoing to the Department of Aging (DOA) for the CARE Court Supporter program (DOA responsibility for the supporter role has been removed from the most recent bill version so it is unknown if these monies will be transferred to DHCS who in this version of the bill is charged with facilitating the supporter role.

3) SUPPORT. Over 45 cities, including the Big City Mayor Coalition write in support of the bill. Specifically, local governments from San Diego, including the City and County of San Diego County (SD), state in support that the creation of CARE Courts represents a thoughtful approach to addressing the behavioral health crisis we are witnessing on our streets and getting people connected with the care they need earlier. It appropriately recognizes the continuum of care that this small but highly visible segment of the population with significant mental health disorders deserve. As with local agencies throughout the State, SD's communities are facing a daunting homelessness crisis. However, the unsheltered population is as diverse as the general population, all who come to their housing situation with different backgrounds, upbringings, and traumas. It is imperative that we provide multi-faceted solutions to help the myriad situations our fellow Californians face. Some unsheltered individuals recently lost a job and need quick and focused assistance; some have SMI and SUD issues that have developed over many years resulting in an inability to care for themselves. SD states that CARE Court will provide a new and focused civil justice alternative to those struggling with schizophrenia spectrum or psychotic disorders and who lack medical decision-making capacity. The CARE plan envisioned by this bill provides numerous safeguards to ensure personal civil liberties are respected and protected.

The California Chamber of Commerce (Chamber), along with 27 local chambers of commerce and business associations, also in support state, the CARE Court is a thoughtful, measured response to the tragedy of homeless mentally ill or substance abuse disordered individuals. It attempts to thread the needle of providing necessary care and treatment in an environment appropriate to deliver those services; that is, a supportive setting that is neither outdoors or incarcerated. Importantly, the individuals to be served by this approach lack the capacity to make medical decisions for themselves; the only alternatives are the status quo, which is continued desperate deterioration living outdoors, or in a far more restrictive conservatorship or incarceration. The Chamber states in conclusion that California employers have a clear stake in improving the treatment and outcomes for severely mentally disabled individuals without a fixed residence. First, they are our fellow Californians, in severe need, for whom we have an obligation of care. Second, many employers share neighborhoods with mentally disabled or substance abuse disordered individuals, so have first-hand experience with the failure of our institutions to adequately serve them and address their misery. Finally, as taxpayers and business leaders, employers want to see their private investment return healthy, thriving communities.

4) **OPPOSITION**. A coalition of over 40 advocacy groups, including Disability Rights California, American Civil Liberties Union, and the Depression and Bipolar Support Alliance (Coalition), write in opposition to this bill. The Coalition states that the CARE Court framework this bill seeks to establish is unacceptable for a number of reasons:

   a) It perpetuates institutional racism through a system of coerced treatment and worsens health disparities, directly harming Black, Indigenous and People of Color;
   b) It denies a person's right to choose and have autonomy over personal healthcare decisions;
   c) It does not guarantee housing provided with fidelity to principles that prioritize voluntary services, an approach that is backed by evidence;
   d) Community evidence-based practices and scientific studies show that adequately-resourced intensive voluntary outpatient treatment is more effective than court-ordered treatment; and,
   e) It will not matter that the terms used are called "Supportive Decision-Making" and "Supporter" because the Supporter's role is to implement an involuntary medical plan ordered by a civil court, and disregards the importance of voluntary decisions in mental health treatment.

   The Coalition continues that CARE Court is antithetical to recovery principles, which are based on self-determination and self-direction. The CARE Court proposal is based on stigma and stereotypes of people living with mental health disabilities and experiencing homelessness. While the Coalition agrees that State resources must be urgently allocated towards addressing homelessness, incarceration, hospitalization, conservatorship, and premature death of Californians living with SMI, CARE Court is the wrong framework. The right framework allows people with disabilities to retain autonomy over their own lives by providing them with meaningful and reliable access to affordable, accessible, integrated housing combined with voluntary services. In concluding, the Coalition states that because CARE Court will harm Californians with disabilities, they strongly oppose this bill and instead, would welcome a proposal developed with input from the people CARE Court seeks to help. The Coalition believes a community-based approach would be far more likely to succeed. Such an approach would expand resources for permanent affordable housing with voluntary supports and increase early access to voluntary, community-based treatment based on principles of trauma-informed care and the complete removal of law enforcement and the courts from the process.

5) **CONCERNS**. Numerous organizations write in with significant concerns regarding this bill, including 13 individual counties. One County Coalition (CC) representing the California State Association of Counties, the Rural County Representatives of California, the Urban Counties of California, the County Behavioral Health Director's Association, the County Welfare Directors Association and the California State Association of Public Administrators, Public Guardians and Public Conservators. CC states that as currently drafted, this bill requires all 58 counties to establish a CARE Court. Counties would play a key and substantial role in implementation as the state's partners in providing critical behavioral health and social services. For these reasons, CC strongly advocates the adoption of the following policy recommendations and local investments to help ensure CARE Courts can be implemented in a practical and achievable manner in all 58 counties:

a) Phased-In Implementation**:** The path to success for counties – more importantly, for those who stand to benefit from CARE Court – must be grounded in an incremental phase-in model, in which counties most prepared to implement are the first adopters. This includes, but is not limited to, the resources and ability of courts to establish the new processes and procedures without contributing to further court backlogs; the staffing and funding capacity for behavioral health and social services to provide the necessary services to existing and new populations; and local solutions for ongoing housing shortages, which presents one of the biggest challenges and most critical elements for program success;

b) Resources: The CARE Court program includes new responsibilities and obligations imposed on counties that require additional resources and ongoing funding, likely in the hundreds of millions of dollars. Adequate and sustainable funding, as well as start-up funding is required across multiple departments, including county behavioral health, public defender, county counsel, public guardians and conservators, and county social services. This is in addition to funding required for court administration, operation, and staffing;

c) Fiscal Protections: The CARE Court proposal must provide protections to counties for any new responsibilities and costs. To ensure our counties have the appropriate long-term resources, we recommend fiscal provisions that preserve current funding and services, while also providing a mechanism for determining and allocating supplementary annual funding for new activities and duties required by this bill;

d) Sanctions: Sanctions should be reserved for deliberate and chronic deficiencies, imposed only after meaningful engagement within the existing regulatory framework along with the appropriate procedural safeguards. In addition, sanctions should not begin until after the program has been fully funded and implemented; and,

e) Housing: Housing is imperative for the successful treatment of those with SMI and foundational to addressing the larger problem of homelessness across California. To ensure that the state's recent housing investments are available to serve the CARE population, counties support recent amendments authorizing the Superior Court to order housing providers that have received specified state funds to accept placement of CARE participants at any available housing option or program as appropriate to meet the respondent's needs.

6) DOUBLE REFERRAL. This bill is double referred. It passed out of the Assembly Judiciary Committee with a 9-1 vote on June 21, 2022.

7) RELATED LEGISLATION.

a) AB 2220 (Muratsuchi) creates the Homeless Courts Pilot Program, which would be administered by the Judicial Council for the purpose of providing comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, individuals who are chronically involved with the criminal justice system. AB 2220 was held in the Assembly Appropriations Committee.

b) AB 2830 (Bloom) is identical to the April 7, 2022, version of this bill. AB 2830 was pulled from hearing in the Assembly Judiciary Committee by the author.

c) SB 1416 (Eggman) expands the definition of "gravely disabled" to include the inability of an individual to provide for their basic personal needs for medical care for the purpose of involuntarily detaining the individual for evaluation and treatment of a mental health

condition, as specified. SB 1416 was not set for hearing in the Assembly Judiciary Committee.

8) **COMMITTEE CONCERNS.** Given the very significant concerns that continue to be raised about the bill by the opposition and those with concerns (many of whom will be required to implement CARE Courts), the authors and the Governor may consider further amending the bill as it moves forward, to address those concerns and other issues, including the following:

   a) Further extend the phased-in implementation period to ensure that counties have adequate time to establish the requisite infrastructure needed to meet the needs of program participants, including all needed housing, supports and services, and sufficient staff to ensure the supports and services are provided timely;
   b) Not order any unhoused individual to participate in the CARE Court unless and until housing, with wrap-around supportive services, can be guaranteed for the duration of the court order and, ideally, even after completion of the program;
   c) Revise the sanctions against counties to ensure that no county is sanctioned unless it has sufficient housing, available services, and other resources to provide the necessary supports and services to program participants. If a fine were necessary, ensure that the fine would not reduce funding for voluntary behavioral health services and supports;
   d) Ensure that funding for voluntary, community-based services is not reduced as a result of CARE Court. Reduction of voluntary services would be counterproductive and would increase the need for more expensive and likely less effective involuntary treatment; and,
   e) Provide indemnification for licensed professionals participating in the CARE Court processes, similar to that which is contained in the LPS Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Families Advocating for The Seriously Mentally Ill
Bay Area Council
Big City Mayors
Building Owners and Managers Association
California Association of Code Enforcement Officers
California Chamber of Commerce
California Downtown Association
California Hospital Association
California Professional Firefighters
California Travel Association (CALTRAVEL)
Central City Association of Los Angeles
City of Alhambra
City of Bakersfield
City of Berkeley
City of Beverly Hills
City of Buena Park
City of Carlsbad
City of Chino Hills
City of Chula Vista
City of Concord

City of Corona
City of Coronado
City of Del Mar
City of El Cajon
City of Encinitas
City of Escondido
City of Fontana
City of Fullerton
City of Garden Grove
City of Half Moon Bay
City of Huntington Beach
City of Imperial Beach
City of Irvine
City of La Mesa
City of Lemon Grove
City of Mission Viejo
City of Montclair
City of National City
City of Oceanside
City of Ontario
City of Paramount
City of Poway
City of Rancho Palos Verdes
City of Redwood City
City of Riverside
City of San Diego
City of San Marcos
City of Santa Monica
City of Santa Rosa
City of Santee
City of Solana Beach
City of Upland
City of Vista
County of San Diego
Family and Consumer Advocates for The Severely Mentally Ill
Family Services Association
Fontana Chamber of Commerce
Fremont Chamber of Commerce
Garden Grove Chamber of Commerce
Golden Gate Restaurant Association (GGRA)
Govern for California
Harbor Association of Industry & Commerce
Hotel Council of San Francisco
Inland Empire Economic Partnership (IEEP)
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Business Council
Los Angeles County Business Federation (BIZFED)

National Alliance on Mental Illness (NAMI-CA)
Neighborhood Partnership Housing Services, INC.
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Psychiatric Physicians Alliance of California (PPAC)
Redondo Beach Chamber of Commerce
Sage Leadership Academy
San Diego County District Attorney's Office
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce
San Francisco Travel Association
San Pedro Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Rosa Metro Chamber of Commerce
Santee Chamber of Commerce
South Bay Association of Chambers of Commerce
Tulare Chamber of Commerce
Valley Industry and Commerce Association
West Ventura County Business Alliance

Opposition

A & L Association
Abolition Study Group of Psychologists for Social Responsibility
American Civil Liberties Union (ACLU), Center for Advocacy & Policy CA
American Civil Liberties Union California Action
American Civil Liberties Union of California
Anti Police-terror Project
Bay Area Legal Aid
California Behavioral Health Planning Council
Cal Voices
California Advocates for Nursing Home Reform
California Assoc. of Mental Health Peer Run Organizations (CAMHPRO)
California Democratic Party Black Caucus Legislative Committee
California Pan-ethnic Health Network
Caravan 4 Justice
Care First California
Corporation for Supportive Housing (CSH)
County of Humboldt
Depression and Bipolar Support Alliance
Dignity and Power Now
Disability Rights Advocates
Disability Rights California
Disability Rights Education & Defense Fund (DREDF)
Disability Rights Legal Center
Drug Policy Alliance
Ella Baker Center for Human Rights

Funders Together to End Homelessness San Diego
Housing California
Housing Is a Human Right - Orange County
Human Rights Watch
Inland Equity Partnership
Justice in Aging
Justice LA
Justice Teams Network
Justice2jobs Coalition
Kelechi Ubozoh Consulting
LA Defensa
Law Foundation of Silicon Valley
Los Angeles Community Action Network
Lotus Collective
Love and Justice in The Streets
Loyola Law School
Mental Health Advocacy Services
Mental Health America of California
NAACP San Mateo Branch #1068 Housing Committee
National Association of Social Workers, California Chapter
National Health Law Program
National Homelessness Law Center
Nextgen California
No CARE Court California Coalition
Norcal Resist
Peers Envisioning and Engaging in Recovery Services (PEERS)
People's Budget Orange County
People's Homeless Task Force Orange County
Project Amiga
Public Interest Law Project
Racial and Ethnic Mental Health Disparities Coalition
Rosen Bien Galvan & Grunfeld, LLP
Sacramento Homeless Organizing Committee
Sacramento LGBT Community Center
Sacramento Regional Coalition to End Homelessness
San Bernardino Free Them All
San Francisco Pretrial Diversion Project
San Francisco Public Defender's Office
Senior & Disability Action
Senior and Disability Action
Starting Over INC.
Stop the Musick Coalition
Street Watch LA
Stronger Women United
The Bar Association of San Francisco
The Coelho Center for Disability Law Policy and Innovation
Western Center on Law & Poverty
Western Regional Advocacy Project

Women's Wisdom Art
10 individuals

Analysis Prepared by: Judith Babcock / HEALTH / (916) 319-2097

Exhibit G

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1338 (Umberg, Eggman)
Version: April 7, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Community Assistance, Recovery, and Empowerment (CARE) Court Program

DIGEST

This bill creates the CARE court program, which authorizes specified persons to petition a civil court to create a CARE plan and implement services for individuals suffering from specified mental health disorders; if the court determines the individual is eligible for the CARE Court Program, the court will order the implementation of a CARE plan, as devised by the relevant county behavioral services agency, and oversee the individual's participation in the plan.

EXECUTIVE SUMMARY

The California Legislature has long sought to achieve the right balance between providing for the safety and well-being of those suffering from severe mental illness, those who are seen as gravely disabled or at risk of harming themselves or others, and recognizing their inherent due process and civil rights. The state's existing mechanisms to treat persons with mental illness include treatment for persons who are a danger to themselves or others, or "gravely disabled," under the Lanterman-Petris-Short (LPS) Act; assisted outpatient treatment (AOT) under Laura's Law; and a housing conservatorship being implemented in San Francisco on a pilot basis.

This bill establishes the Community Assistance, Recovery, and Empowerment (CARE) Act, which would implement a new statewide procedure for treating persons suffering from specified mental illnesses through the courts. A person is eligible for CARE court jurisdiction if they are 18 years of age or older; suffer from schizophrenia or another psychotic disorder; are not currently stabilized and in treatment with a county behavioral health agency; and currently lack medical decisionmaking capacity. An individual may be referred to the CARE court through a petition from specified medical and county professionals, specified peace officers, and specified persons in the individual's life such as a roommate or family member; an individual can also be

referred from misdemeanor trial proceedings if they have been found incompetent to stand trial, or from conservatorship or AOT proceedings. For purposes of establishing the lack of capacity, the petition may present an affidavit from a mental health practitioner who examined, or failed to examine, the individual within the last 90 days, or evidence that the person had been held in a 14-day hold under the LPS Act within the last 90 days.

Once a petition is filed, counsel and a "support person" are appointed to assist the individual. The CARE process begins with a series of hearings, first to determine whether the petition presents prima facie evidence that the individual is eligible for CARE court; if so, the individual works with county behavioral health to determine if they can reach a voluntary settlement plan for the individual's care. If they cannot, the court orders an evaluation of the individual and, based on the results of the evaluation, orders the individual, their counsel, their support person, and county behavioral health to develop a CARE plan.

Once the court approves the CARE plan, the person is required to follow the plan for the CARE term of one year. The CARE plan must include medically necessary treatment, including medication if recommended, and a housing plan, but the court may not order the county to provide housing. After one year, the individual may request an additional one-year term in CARE court, or to be graduated. If the individual fails to comply with the plan or the CARE proceedings can result in termination of the plan and a presumption, for purposes of establishing a conservatorship under the LPS Act, that there are no suitable community alternatives. If the county fails to comply with the CARE plan, the court may fine the county or, in the case of persistent noncompliance, appoint a receiver to provide the court-ordered treatment at the county's expense.

This bill is sponsored by Governor Gavin Newsom and supported by the California Hospital Association, Families Advocating for the Seriously Mentally Ill and NAMI-CA. This bill is opposed by over 50 organizations and one individual, including ACLU California Action, Bay Area Legal Aid, Disability Rights California, Human Rights Watch, and the Western Center on Law and Poverty, and numerous other disability rights, homelessness, and mental health advocacy organizations. The California Association of Public Administrators, Public Guardians, and Public Conservators, the California State Association of Counties, the County Behavioral Health Directors Association, the County Welfare Directors of California, the Rural County Representatives of California, and the Urban Counties of California have also provided feedback and concerns with the bill.

If this bill is passed by this Committee, it will then be heard by the Senate Health Committee. Because this bill contains matter within the jurisdiction of the Senate Public Safety Committee, namely misdemeanor diversion, this analysis contains comments from that Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)
    a) "Grave disability" is defined as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for the person's basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code, § 5008(h)(1)(A), (2).)
    b) Provides that, when applying the definition of a mental disorder for purposes of, among other things, a 14-day involuntary detention described in 2)(b), the historical course of the person's medical disorder be considered; "historical course" is defined to include evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. (Welf. & Inst. Code, § 5008.2.)

2) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable 1-year conservatorship for a person determined to be gravely disabled. Specifically:
    a) If a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility (known as a "5150 hold"). (Welf. & Inst. Code, § 5150.)
    b) A person who has been detained for 72 hours may be further detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (Welf. & Inst. Code, § 5250.)
    c) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5260, 5270.15.)

3) Establishes the following review procedures for the 14-day and 30-day intensive treatment detentions set forth in 2(b) and 2(c):
    a) The person certified must be notified that they are entitled to a certification review hearing to determine whether probable cause exists for the continued detention related to the mental disorder or chronic alcoholism, or, in lieu of

the hearing, to seek judicial review by habeas corpus. (Welf. & Inst. Code, §§ 5254, 5254.1, 5270.15.)

b) A certification review hearing must be held within four days of the date the person was certified for additional treatment unless postponed at the request of the attorney or advocate for the person certified. (Welf. & Inst. Code, § 5256.)
c) The certification review must be conducted by either a court-appointed commissioner or referee, or a certification review hearing officer who must be either a state-qualified administrative law hearing officer or a medical professional as specified. (Welf. & Inst. Code, § 5256.1.)
d) At the hearing, evidence in support of the certification must be presented by a person designated by the director of the facility in which the person is being detained, and a district attorney or county counsel may, at their discretion, also present evidence. (Welf. & Inst. Code, § 5256.2.)
e) The person certified must be present at the hearing unless they, with the assistance of counsel or an advocate, waive that right. The person may represent themselves or be represented by counsel, and may present evidence in their defense. (Welf. & Inst. Code, § 5256.4(a).)
f) The hearing must be conducted in an impartial and informal manner and the person conducting the hearing is not bound by the rules of procedure or evidence applicable in judicial proceedings. All evidence relevant to establishing that the person certified is or is not gravely disabled must be admitted and considered. (Welf. & Inst. Code, § 5256.4(b), (d).)
g) If the person conducting the hearing finds, at the conclusion of the hearing, that there is no probable cause to believe that the person certified is gravely disabled, then the person certified may no longer be involuntarily detained. (Welf. & Inst. Code, § 5256.5.)
h) As an alternative to the hearing procedures above, the person certified may seek judicial review by a writ of habeas corpus. The person certified has the right to counsel, appointed by the county if necessary, in the habeas proceeding. The person must be released if the court finds that the person is not gravely disabled or a danger to themselves or others, had not been advised of the option of voluntary treatment, had accepted voluntary treatment, or the facility providing the intensive treatment is not equipped to do so. (Welf. & Inst. Code, § 5276.)

4) Provides that, at the end of a 30-day detention for intensive treatment, the person must be released unless:
   a) The person agrees to receive further treatment on a voluntary basis;
   b) The patient is the subject of a conservatorship petition, as set forth in 5); or
   c) The patient is the subject of a petition for postcertification treatment of a dangerous person pursuant to article 6 of part 1 of division 5 of the Welfare and Institutions Code. (Welf. & Inst. Code, § 5270.35(b).)

5) Provides that a person in charge of a facility providing a 5150 hold or 14- or 30-day involuntary detention for intensive treatment may recommend an LPS conservatorship for the person treated, when the person being treated is unwilling or unable to accept voluntary treatment; if the county conservatorship investor agrees, the county must petition the superior court to establish an LPS conservatorship. (Welf. & Inst. Code, §§ 5350 et seq.)
    a) If, while a petition for a full LPS conservatorship is pending, the investigating officer recommends a "temporary conservatorship" until the petition is ruled on, the court may establish a temporary conservatorship of no more than 30 days, until the point when the court makes a ruling on whether the person is "gravely disabled." (Welf. & Inst. Code, § 5352.1.)

6) Requires, when it appears during a 14-day detention that a gravely disabled person is likely to qualify for a conservator even after an additional 30 days of intensive treatment, the professional person in charge of the facility should make the conservatorship referral during the 14-day period of intensive treatment. (Welf. & Inst. Code, § 5270.55(a).)

7) If a conservatorship referral was not made during the 14-day period and it appears during the 30-day period that the person is likely to require the appointment of a conservator, the referral for a conservatorship must be made to allow sufficient time for conservatorship investigation and other related procedures.
    a) If a temporary conservatorship is obtained pursuant to the pending petition, the temporary conservatorship period must run concurrently with the 30-day intensive treatment period, not consecutively.
    b) The maximum involuntary detention period for gravely disabled persons pursuant to the 5150 hold and the 14-day and 30-day intensive treatment detentions is 47 days. (Welf. & Inst. Code, § 5270.55.)

8) Provides that a person for whom an LPS conservatorship is sought has the right to demand a court or jury trial on the issue of whether they are gravely disabled. (Welf. & Inst. Code, § 5350(d).)

9) Provides that the court or the jury must find that a person is gravely disabled beyond a reasonable doubt, and in the case of a jury trial, the verdict must be unanimous, in order for a conservatorship to be established. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.)

10) Establishes Laura's Law, which sets forth the procedures and requirements for AOT. (Welf. & Inst. Code, div. 5, pt. 1, ch. 2, art. 9, § 5345.)

11) Authorizes a county behavioral health director, or the director's designee, to file in superior court a petition for an order authorizing AOT for an individual, at the request of:

a) A person 18 years of age or older with whom the person who is the subject of the petition resides.
b) A person who is the parent, spouse, or sibling or child 18 years or older of the person who is the subject of the petition.
c) The director of a public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides.
d) The director of a hospital in which the person who is the subject of the petition is hospitalized.
e) A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition.
f) A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.
g) A judge of a superior court before whom the person who is the subject of the petition appears. (Welf. & Inst. Code, § 5346(b)(1).)

12) Provides that a person may be ordered to AOT if the court finds, by clear and convincing evidence, that the facts stated by the verified petition establish all of the following criteria:
    a) The person is 18 years of age or older.
    b) The person is suffering from a mental illness, as defined.
    c) There has been a clinical determination that, in view of the person's treatment history and current behavior, at least one of the following is true:
        i. The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
        ii. The person is in need of AOT in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others, as defined for purposes of a 5150 hold.
    d) The person has a history of lack of compliance with treatment for the person's mental illness, in that at least one of the following is true:
        i. The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
        ii. The person's mental illness has resulted in one or more acts of serious and violent behavior toward themselves or another, or threats, or attempts to cause serious physical harm to themselves or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

e) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or the director's designee, provided that the treatment plan includes specified services, and the person continues to fail to engage in treatment.
f) Participation in the AOT program would be the least restrictive placement necessary to ensure the person's recovery and stability.
g) It is likely that the person will benefit from assisted outpatient treatment. (Welf. & Inst. Code, § 5346(a).)

13) Provides that, upon receipt of a petition for AOT, the court must fix the date for a hearing not later than five court days from the date the petition is received, and the petitioner must personally serve the person who is the subject of the petition and send copies to specified treatment providers.

14) Provides that the court may not order AOT unless an examining licensed mental health treatment provider who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within 10 days after the petition was filed, testifies at the hearing.
a) The examining mental health professional may appear before the court by videoconferencing means.
b) If the person who is the subject of the petition refuses to be examined at the request of the court, and the court finds reasonable cause to believe that the allegations of the petition are true, the court may order any person designated to take custody of a person for a 5150 hold to take custody of the person for examination by a licensed mental health treatment provider as soon as is practicable. Detention of the person may not exceed 72 hours. (Welf. & Inst. Code, § 5346(d)(1)-(3).)

15) Provides that the person who is the subject of an AOT petition has the following rights:
a) To receive adequate notice of the hearings, as well to have notice provided to parties designated by the person who is the subject of the petition.
b) To receive a copy of the court-ordered evaluation.
c) To counsel. If the person has not retained counsel, the court shall appoint a public defender.
d) To be informed of the right to judicial review by habeas corpus.
e) To be present at the hearing unless the person waives the right to be present.
f) To present evidence.
g) To call witnesses on their behalf.
h) To appeal decisions, and to be informed of the right to appeal. (Welf. & Inst. Code, § 5346(d)(4).)

16) Provides that, if after hearing all relevant evidence, the court:

a) Finds that the person who is the subject of the petition does not meet the criteria for AOT, the court must dismiss the petition.
b) Finds that the person who is the subject of the petition meets the criteria for AOT, and that there is no appropriate and less restrictive alternative, the court may order the person to receive AOT for an initial period not to exceed six months. The order shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person, and state the categories of treatment that the person is to receive. (Welf. & Inst. Code, § 5346(d)(5).)

17) Provides that where, in the clinical judgment of a licensed mental health treatment provider, the person has failed to comply with the AOT ordered by the court, efforts were made to secure compliance, and the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that the person be taken into custody by persons authorized to execute a 5150 hold for an examination and to determine if the person is in need of a 5150 hold. The hold may last up to 72 hours; a hold of a longer period must be as a 5150 hold. Failure to comply with an AOT order alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court. (Welf. & Inst. Code, § 5346(f).)

18) Requires the director of the outpatient treatment program to file affidavits with the court, at intervals of not fewer than 60 days, affirming that the person continues to meet the criteria for AOT; the person who is the subject of the order has the right to a hearing on whether they meet the criteria if they disagree with the affidavit. If the person who is the subject of the order believes they are being wrongfully retained in AOT in the middle of a 60-day period, the person may file a petition for a writ of habeas corpus to require the director to prove that the person continues to meet the criteria. (Welf. & Inst. Code, § 5346(h), (i).)

19) Requires a county to implement Laura's Law unless it specifically opts out by a resolution passed by a governing body that states the reasons for opting out and any facts or circumstances relied on in making that decision. (Welf. & Inst. Code, § 5349.)

20) Establishes a pilot program authorizing the County of Los Angeles, the County of San Diego, and the City and County of San Francisco to opt to implement a "housing conservatorship" program, to run until January 1, 2024, for persons suffering from both a serious mental illness, as defined, and a substance use disorder. Before adopting the pilot program, the county's board of supervisors must make certain findings relating to the availability of certain services that will be available to the persons within the program. (Welf. & Inst. Code, § 5450.)

21) Provides that a person is eligible for a housing conservatorship when:

a) They have been detained eight or more times in a 5150 hold in a 12-month period. (Welf. & Inst. Code, §§ 5451, 5465.5.)
b) The person has both a serious mental illness and a substance use disorder, as defined. (Welf. & Inst. Code, § 5451(a)(2)(E)(i).)
c) As a result of the serious mental illness and substance use disorder, the person has functional impairments, or a psychiatric history demonstrating that, without treatment, it is more likely than not that the person will decompensate to functional impairment in the near future. (Welf. & Inst. Code, § 5451(a)(2)(E)(ii).
d) As a result of the functional impairment and circumstance, the person is likely to become so disabled as to require public assistance, services, or entitlements. (Welf. & Inst. Code, § 5451(a)(2)(E)(iii).)

22) Establishes a temporary housing conservatorship, not to exceed 28 days, for persons who meet the criteria for a housing conservatorship, if the court is satisfied that the supporting report or affidavit establishes that the person is presently incapable of caring for their own health and well-being due to a serious mental disorder and substance abuse disorder, that a temporary conservatorship is necessary, and that the county health director or their designee has satisfied certain preliminary steps and made certain preliminary findings. (Welf. & Inst. Code, § 5465.5.)

23) Provides that the housing conservatorship shall be established under the same procedures through which a conservatorship is established under the Probate Code (Prob. Code, div. 4, §§ 1400 et seq.), except:
    a) The court may appoint the public conservator in the county of resident of the person to be conserved if the person requesting the appointment establishes, and the court expressly finds, that it is necessary for the protection of the proposed conservatee, that the proposed conservatee is 18 years of age or older, and that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
    b) The conservator may be appointed only if the court finds, by clear and convincing evidence, that person is presently incapable of caring for their own health and well-being due to a serious mental illness and substance abuse disorder. (Welf. & Inst. Code, § 5451(a).)

24) Provides that the person for whom the housing conservatorship is sought shall have the right to demand a court or jury trial based on whether the person is shown to be, beyond a reasonable doubt, incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, and requires the trial to commence within 10 days of the date of the demand except upon request of the proposed conservatee. (Welf. & Inst. Code, § 5451(b).)

25) Provides that, if the person who is the subject of a housing conservatorship is not represented by counsel, the court shall appoint the public defender for the

conservatee or proposed conservatee within five days after the date of the petition at the county's or city and county's expense. (Welf. & Inst. Code, § 5465.)

26) Requires the housing conservator to file a report with the court every 60 days setting forth the conservatee's progress and engagement with treatment, including the reasons for continuing the conservatorship and why the treatment plan is the least restrictive alternative. The court must terminate the conservatorship if the court is not satisfied that the conservatorship continues to be justified. (Welf. & Inst. Code, § 5462.)

27) Provides that a housing conservatorship automatically terminates after six months of the appointment of a conservator, or at an earlier time if ordered by the court. If, upon termination of an initial or succeeding conservatorship period, the conservator determines that the conservatorship is still required, the conservator may petition the superior court for reappointment for another six-month or shorter period. (Welf. & Inst. Code, § 5462.)

28) Provides that a person shall not be tried or adjudged to punishment or have their probation, mandatory supervision, postrelease community supervision, or parole revoked while they are mentally incompetent.
    a) For purposes of this provision, a person is "mentally incompetent" if, as a result of a mental health disorder or developmental disability, the person is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367.)

29) Provides that, where a person is found mentally incompetent before standing trial for a misdemeanor or misdemeanors, the court may:
    a) Order pretrial diversion for persons with a mental disorder, as defined, if the court is satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense and certain other criteria are met pursuant to Penal Code section 1001.36.
    b) If the person is not eligible for diversion, hold a hearing to determine whether to order modification of the defendant's treatment plan, refer the defendant to AOT, or refer the defendant to the county conservatorship investigator for possible conservatorship proceedings under the LPS Act. If the person satisfactorily completes AOT or the conservatorship, the charges shall be dismissed.
    c) Dismiss the charges. (Welf. & Inst. Code, §§ 1367, 1370.01.)

This bill:

1) Establishes the Community Assistance, Recovery, and Empowerment (CARE) Act.

2) Provides the following definitions:

a) "Court-ordered evaluation" is an evaluation ordered by a court pursuant to the CARE Act.
b) "CARE plan" is an individualized, clinically appropriate range of behavioral health-related services and supports provided by a county behavioral health agency, including, but not limited to, clinical care, stabilization, and a housing plan.
c) "Graduation plan" means a plan that is developed by the person who is the subject of the petition, with assistance from a supporter, as needed, and the person's treatment team. The graduation plan shall include a strategy to support a successful transition out of court jurisdiction and may include a psychiatric advanced directive. The graduation plan may also include, but is not limited to, ongoing behavioral health services, including medication management, peer support services, housing and related support services, vocational or educational services, and psychoeducation.
d) "Psychiatric advance directive" means a legal document that allows a person with mental illness to protect their autonomy and ability to self-direct care by documenting their preferences for treatment in advance of a mental health crisis.
e) "Respondent" means the person who is subject to the petition for CARE court proceedings.
f) "Supporter" means an adult, trained as required under this bill, who assists the respondent, which may include supporting the respondent to understand, make, communicate, implement, or act on their own life decisions.

3) Provides that a court may order a person to participate in CARE court proceedings if the court finds, by clear and convincing evidence, that the facts stated in the petition are true and establish that the requisite CARE court criteria are met, including all of the following:
   a) The person is 18 years of age or older.
   b) The person has a diagnosis of schizophrenia spectrum or other psychotic disorder, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.
   c) The person is not clinically stabilized in ongoing treatment with the county behavioral health agency.
   d) The person currently lacks medical decisionmaking capacity.

4) Provides that CARE court proceedings may be commenced in any of the following:
   a) The county in which the respondent resides.
   b) The county where the respondent is found.
   c) The county where the respondent is facing criminal charges.

5) Authorizes the following persons to file a petition to initiate CARE court proceedings:
   a) A person 18 years of age or older with whom the respondent resides.

b) A spouse, parent, sibling, or adult child of the respondent.
c) The director of a hospital, or their designee, in which the respondent is hospitalized, including hospitalization under a 5150 hold or a 14-day hold under the LPS Act.
d) The director of a public or charitable organization, agency, or home, or their designee, currently or previously providing behavioral health services to the respondent or in whose institution the respondent resides.
e) A qualified behavioral health professional, or their designee, who is or has been either supervising the treatment of, or treating the respondent for, a mental illness.
f) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker.
g) The public guardian or public conservator, or their designee, of the county in which the respondent is present or reasonably believed to be present.
h) The director of a county behavioral health agency, or their designee, of the county in which the respondent is present or reasonably believed to be present.

6) Requires a CARE court petition to be signed under penalty of perjury and contain all of the following:
   a) The name of the court to which it is addressed.
   b) The title of the proceeding.
   c) The name, age, and address, if any, of the respondent.
   d) The code section and the subdivision under which the proceedings are instituted.
   e) The petitioner's relationship with the respondent.
   f) Facts that support the petitioner's belief that the respondent meets the CARE criteria, including identification of the county behavioral health agency with responsibility for providing care to the respondent, if known.
   g) Either of the following:
      i. An affirmation or affidavit of a qualified behavioral health professional, stating that the qualified behavioral health professional or their designee has examined the respondent within three months of the submission of the petition, or has made appropriate attempts, but has not been successful, in eliciting the cooperation of the respondent to submit to an examination, and that the qualified behavioral health professional had determined that, based on an examination or a review of records and collateral interviews, the respondent meets, or is likely to meet, the diagnostic criteria for CARE proceedings; or
      ii. Evidence that the respondent was detained for intensive treatment of at least a 14-day hold under the LPS Act within the previous 90 days.

7) Provides that the respondent has all of the following rights:

a) To receive notice of the hearings.
b) To receive a copy of the court-ordered evaluation.
c) To be represented by counsel at all stages of a CARE court proceeding.
d) To a supporter.
e) To be present at the hearing, unless the respondent waives appearance or appears remotely, or the court makes specified findings.
f) To present evidence.
g) To call witnesses.
h) To cross-examine witnesses.
i) To appeal decisions and to be informed of the right to appeal.

8) Requires a court, upon receipt by the court of a CARE petition, to set an initial hearing not later than 14 days from the date the petition is filed.

9) Requires a court to appoint counsel and a supporter for the respondent within five calendar days of the filing of the petition.

10) Requires the petitioner to provide notice of the hearing to the respondent, respondent's counsel and supporter, and the county behavioral health agency in the county where the respondent resides.

11) Provides that the court shall determine at the initial hearing whether the respondent meets the CARE criteria. All of the following are required for the hearing:
    a) The petitioner must be present, or the matter must be dismissed.
    b) The respondent may waive appearance and appear through counsel. If respondent does not waive appearance and does not appear at the hearing, and appropriate attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing without the respondent present. If the hearing is conducted without the respondent present, the court must set forth the factual basis for doing so.
    c) A representative from the county behavioral health agency must be present.
    d) The supporter may be present.

12) Provides that, if the court finds that the petitioner has not presented sufficient prima facie evidence that the respondent meets the CARE criteria at the initial hearing, the court must dismiss the case without prejudice unless the court makes a finding on the record that the petitioner's filing was not in good faith.

13) Provides that, if the court finds that the petitioner has submitted prima facie evidence that the respondent meets the CARE criteria at the initial hearing, the court must order the county behavioral agency to work with the respondent, respondent's counsel, and respondent's supporter to determine if the respondent must engage in a treatment plan. A case management conference must be set no later than 14 days after the court makes its finding at the initial hearing.

14) Provides that the case management conference may be continued for up to 14 days upon stipulation by the respondent and the county behavioral health agency.

15) Provides that, at the case management conference, the court shall determine if a settlement agreement may be entered into by the parties.
    a) The court's findings that a settlement agreement may be entered into by the parties requires a recitation of all the terms and conditions of the settlement agreement into the record.
    b) If the court finds that the parties have agreed to a settlement agreement, and the court agrees with the terms of the agreement, the court shall stay the matter and set a progress hearing for 60 days.

16) Provides that if, at the case management conference, the court finds that the parties are not likely to reach a settlement agreement, the court shall order a clinical evaluation of the respondent unless the parties stipulate otherwise.
    a) The court must order the county behavioral health agency to conduct the evaluation, unless the parties stipulate otherwise.
    b) The court must set a hearing to review the evaluation within 14 days. The hearing may be continued a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency.
    c) The evaluation shall be confidential, consistent with LPS Act confidentially requirements.

17) Provides that, at the evaluation review hearing, the court shall review the evaluation and any other evidence from all interested individuals, including, but not limited to, evidence from the petitioner, the county behavioral health agency, the respondent, and the supporter.

18) Provides that, if the court finds that the evaluation and other evidence demonstrate by clear and convincing evidence that the respondent meets the CARE criteria, the court shall order the county behavioral agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan.
    a) The court must set a hearing to approve the CARE plan not more than 14 days from the date of the order to develop the plan.
    b) The respondent and the county behavioral health agency may request appellate writ review of the order to develop a CARE plan.

19) Provides that, if the court finds that the evidence does not, by clear and convincing evidence, support that the respondent meets the CARE criteria, the court must dismiss the petition without prejudice.

20) Provides that, at the hearing to approve the CARE plan, the plan may be presented by both or either of the parties. After the presentation, the court may do any of the following:

a) Approve the plan as presented and make any orders necessary for the implementation of the plan.
b) Order the plan modified to better meet the needs of the parties, approve the plan as modified, within the scope of the county behavioral agency's services, and make any orders necessary for the implementation of the plan.
c) Reject the plan and order the parties to continue to work on the plan. The court shall set a subsequent hearing for no more than 14 days after rejecting the proposed plan.
d) If there is no plan because the parties have not had sufficient time to complete it, grant a continuance for no more than 14 days.

21) Provides that, at a subsequent hearing to approve the CARE plan continued pursuant to 20)(c) or (d), the court may either:
a) Approve the plan as presented and make any orders necessary to implement the plan; or
b) Order the plan modified, within the scope of the county behavioral health agency's services, to better meet the needs of the parties, approve the plan as modified, and make any orders necessary to implement the plan.

22) Provides that court approval of the CARE plan begins the one-year CARE program timeline.

23) Requires the court to schedule a status conference for 60 days after the approval of the CARE plan to review the progress of its implementation, and regular status conferences thereafter, at intervals of at least every 180 days.

24) Requires the court in the 11th month of the program timeline to hold a one-year status hearing. At that hearing, the court must determine whether to graduate the respondent from the program with a graduation plan or to reappoint the respondent for another term, not to exceed one year.
a) Parties may speak and present evidence at the one-year status hearing.
b) The county behavioral health agency must provide recommendations at the hearing.

25) Provides that, if the respondent successfully completed participation in the one-year CARE program, the respondent shall not be appointed to the program. However, the respondent may request voluntary reappointment to the program, for up to and including one year.

26) Provides that, if the respondent requests to be graduated from, or times out of, the program, the court shall officially graduate the respondent and terminate its jurisdiction with a graduation plan.

27) Provides that, if a respondent was transferred to another court, the referring court shall be given notice of the respondent's completion and the underlying matter shall be terminated.

28) Provides that the CARE court hearings and conferences shall occur in person unless the court, in its discretion, determines that a party may appear remotely through the use of remote technology.

29) Requires the Judicial Council of California (Judicial Council) to adopt rules to implement the policies and provisions in this section to promote statewide consistency, including, but not limited to, what is included in the petition form packet, the clerk's review of the petition, and the process by which counsel and the supporter will be appointed.

30) Authorizes a court to refer an individual from AOT and conservatorship proceedings to CARE proceedings.

31) Authorizes a court to refer an individual from misdemeanor proceedings when the individual is incompetent to stand trial, as set forth in Penal Code section 1370.01.

32) Provides that if, at any time during the proceedings, the court determines by a preponderance of the evidence that the respondent is not participating in CARE proceedings after the respondent received notice, or that the respondent is failing to comply with their CARE plan, the court may terminate the respondent's participation in the CARE program.
    a) The court may utilize existing authority under the LPS Act to ensure the respondent's safety.
    b) Subsequent proceedings under the LPS Act may use the CARE proceedings as a factual presumption that no suitable community alternatives are available to treat the individual.

33) Provides that, if at any time during the proceedings, the court finds that the county is not complying with court orders, the court may fine the county up to $1,000 per day for noncompliance. If a county is found to be persistently noncompliant, the court may appoint a receiver to secure court-ordered care for the respondent at the county's cost.

34) Authorizes the respondent and the county behavioral health agency to appeal an adverse court determination to the appellate division of the superior court.

35) Requires, subject to appropriation, the California Department of Aging (CDA) to administer the CARE Supporter program, which shall make available a trained supporter to a respondent. The CDA must train supporters on:

a) Supported decisionmaking with individuals who have behavioral health conditions; and
b) The use of psychiatric advance directives, with support and input from peers, family members, disability groups, providers, and other relevant stakeholders.

36) Authorizes the CDA to enter into a technical assistance and training agreement to provide trainings either directly to supporters or to the contracted entities who will be responsible for hiring and matching supporters to respondents. The CARE Supporter program contracts must include labor standards.

37) Requires the CARE Supporter program to be designed to do all of the following:
a) Offer the respondent a flexible and culturally responsive way to maintain autonomy and decisionmaking authority over their own life by developing and maintaining voluntary supports to assist them in understanding, making, communicating, and implementing their own informed choices.
b) Strengthen the respondent's capacity and prevent or remove the need to use more restrictive protective mechanisms, such as a conservatorship.
c) Assist the respondent with understanding, making, and communicating decisions and expressing preferences throughout the CARE court process.

38) Authorizes the respondent to have a supporter not trained pursuant to the CARE Act, provided that the person serves as a supporter without compensation.

39) Provides that the respondent may have their supporter present, if available, in any meeting, judicial proceeding, or communication related to any of the following:
a) An evaluation.
b) Creation of a CARE plan.
c) Development of a graduation plan.

40) Requires a supporter to do all of the following, to the best of their ability and to the extent reasonably possible:
a) Support the will and preferences of the respondent.
b) Respect the values, beliefs, and preferences of the respondent.
c) Act honestly, diligently, and in good faith.
d) Avoid, to the greatest extent possible, and disclose, minimize, and manage conflicts of interest.

41) Prohibits a supporter from doing the following, unless explicitly authorized:
a) Making decisions for, or on behalf of, the respondent, except when necessary to prevent imminent bodily harm or injury.
b) Signing documents on behalf of the respondent.
c) Substituting their own judgment for the decision or preference of the respondent.

42) Provides that a supporter shall be bound by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. The bill does not limit a supporter's civil or criminal liability for prohibited conduct against the respondent, including liability under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, div. 9, pt. 3, ch. 11, §§ 15600 et seq.).

43) Provides that the CARE plan shall be created by the respondent, their supporter and counsel, and the county behavioral health agency, and must include the following components:
    a) Behavioral health treatment, which includes medically necessary mental health or substance abuse disorder treatment, or both.
        i. If the respondent is enrolled in Medi-Cal, the county shall provide all medically necessary specialty mental health and substance disorder treatment services as provided under Medi-Cal.
        ii. If the respondent is an enrollee in a health care services plan other than Medi-Cal, the services shall be provided and reimbursed as set forth in 47).
        iii. Counties are encouraged to employ medically necessary, evidence-based practices and promising practices supported with community-defined evidence, which may include assertive community treatment, peer support services, and psychoeducation.
    b) Medically necessary stabilization medications, where applicable, including antipsychotic medications. If medically necessary, medications may be provided as long-acting injections.
        i. Court-ordered stabilization medications shall not be forcibly administered absent a separate order by the court under the LPS Act.
        ii. Medically necessary stabilization medication may be prescribed by the treating licensed behavioral health care provider and medication support services must be offered. The respondent, in the development and ongoing maintenance of the plan, shall work with their behavioral care provider and supporter to address medication concerns and make changes to the treatment plan.
    c) A housing plan that describes the housing needs of the respondent and the housing resources that will be considered in support of an appropriate housing placement.
        i. The respondent must have diverse housing options, including, but not limited to, housing in clinically enhanced interim or bridge housing, licensed adult and senior care settings, and supportive housing.
        ii. Counties may offer appropriate housing placements in the region as early as feasible in the engagement process.
        iii. The court may not order housing or require the county to provide housing.

44) Makes the following provisions for technical assistance, subject to appropriation:
    a) The State Department of Health Care Services (DHCS) shall provide technical assistance to county behavioral health agencies to support the implementation of the CARE program, including trainings regarding the CARE model and statute and data collection.
    b) The DHCS shall administer the Behavioral Health Bridge Housing program to provide funding for clinically enhanced bridge housing settings to serve individuals who are experiencing homelessness and have behavioral health conditions.
    c) Judicial Council shall provide technical assistance to judges to support the implementation of the CARE Act, including trainings regarding the CARE model and statutes, working with the supporter, best practices, and evidence-based models of care for people with severe behavioral health conditions.

45) Provides that the California Health and Human Services Agency, the DHCS, and the CDA may:
    a) For purposes of implementing the CARE Act, enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis, which are exempt from certain specified statutory contracting requirements.
    b) Implement, interpret, or make specific the CARE Act, in whole or in part, by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.

46) Requires a health care service plan contract issued, amended, renewed, or delivered on or after July 1, 2023, that covers hospital, medical, or surgical expenses to cover the cost of developing an evaluation under the CARE Act and the provision all health care services for an enrollee when required or recommended pursuant to a CARE plan. Additionally:
    a) The health care service plan shall not require prior authorization for services provided pursuant to a CARE plan, unless provided for in regulations developed by the Department of Managed Health Care (DMHC).
    b) A health care service plan may conduct a postclaim review to determine appropriate payment of a claim. Payment for services relating to a CARE court evaluation or CARE plan may be denied only if the health care service plan reasonably determines that the enrollee was not enrolled with the plan at the time the services were rendered, the services were never performed, or the services were not provided by a health care provider appropriately licensed or authorized to provide the services.

47) Requires a health care service plan to provide for reimbursement of services provided to an enrollee under the CARE Act at the greater of either:
    a) The health plan's contracted rate with the provider; or

b) The fee-for-service or case reimbursement rate paid in the Medi-Cal program for the same or other similar services, including prescription drugs, as identified by DHCS.

48) Provides that services provided to an enrollee pursuant to a CARE plan shall be subject to copayment, coinsurance, deductible, or any other form of cost sharing. An individual or entity shall not bill the enrollee or subscriber or seek reimbursement from the enrollee or subscriber for services provided pursuant to a CARE plan.

49) Allows the DMHC, no later than July 1, 2023, to issue guidance to health care service plans regarding compliance with 46)-48), which shall not be subject to the Administrative Procedure Act (APA) (Gov. Code, tit. 2, div. 3, pt. 1, ch. 3.5, §§ 11340); the guidance shall be effective only until the DMHC adopts regulations pursuant to the APA.

50) Provides that 46)-49) do not apply to Medi-Cal managed care contracts entered between DHCS and a health care service plan for enrolled Medi-Cal beneficiaries, as specified.

51) Provides that, when a defendant has been found to be mentally incompetent to stand trial for a misdemeanor or misdemeanors, and the defendant is not eligible for existing diversion programs, the court may, in addition to its existing options, refer the defendant to the CARE program.
   a) A hearing to determine the defendant's eligibility for the CARE program must be held within 14 days of the referral.
   b) If the hearing is delayed beyond that point, the court must order the defendant, if confined in county jail, to be released on their own recognizance pending the hearing.
   c) If the defendant successfully completes the CARE program, the charges shall be dismissed pursuant to Penal Code section 1385.

52) Makes findings and declarations relating to the thousands of Californians suffering from untreated schizophrenia spectrum and psychotic disorders, and the need for a new approach to act earlier and provide support and accountability.

COMMENTS

1. Author's comment

According to the author:

> SB 1338 creates the CARE Court program which is a proposed framework to deliver mental health and substance use disorder services to the most severely impaired Californians who too often languish – suffering in homelessness or

incarceration – without the treatment they desperately need. The proposed CARE court program is a response to the urgent need for innovative solutions for individuals who are suffering with untreated schizophrenia spectrum and psychotic disorders, often unhoused in our communities, and who face high risks for repeated hospitalization, incarceration, institutionalization, mental health conservatorship, and premature death. In California and nationally, comprehensive care, medication, and housing have been clinically proven to successfully treat and stabilize individuals with severe mental illness, but are too often available only after arrest or in secure facilities. Therefore, SB 1338 will create a program to connect a person in crisis with a court-ordered Care Plan for up to 12 months, with the possibility to extend for an additional 12 months. The program provides individuals with a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent. This includes short-term stabilization medications, wellness and recovery supports, and connection to social services, including housing.

2. The existing framework: the LPS Act, Laura's Law/AOT, and the housing conservatorship pilot program

The CARE Court Program is intended to serve persons whom, according to the bill's supporters, fall through the cracks of our mental health care system. They believe the changes proposed by this legislation are needed to ensure that those who suffer from schizophrenia and related psychotic disorders receive the services and support they need to keep them safe and improve their conditions. Existing law provides for both evaluation and treatment through involuntary commitment—for varying lengths of time given certain conditions are met—and court-ordered outpatient therapy and services for those who are suffering from grave disability or other severe mental health needs, as well as a pilot program in San Francisco intended to provide persons suffering from specific mental health and substance abuse disorders with care and housing. These existing statutory regimes are explained below.

a. The LPS Act Framework

In the 1960s, the Legislature enacted the LPS Act to develop a statutory process under which individuals could be involuntarily held and treated in a mental health facility in a manner that safeguarded their constitutional rights.[1] The goals of the Act include "ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment,

[1] *See* Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.

supervision and placement services for the gravely disabled by means of a conservatorship program."[2]

The LPS Act provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met.[3] The LPS Act also authorizes the establishment of LPS conservatorships, which can result in involuntary commitment for the purposes of treatment, if an individual is found to meet the "grave disability" standard.[4] The common thread within the existing LPS framework is that the person must be found to have a "grave disability" that results in physical danger or harm to the person. This "grave disability" finding requires that the person *presently* be unable to provide for food, clothing, and shelter due to a mental disorder, or severe alcoholism, to the extent that this inability results in physical danger or harm to the person.[5] In making this determination, the trier of fact must consider whether the person would be able to provide for these needs with a family member, friend, or other third party's assistance if credible evidence of such assistance is produced at the LPS conservatorship hearing.[6]

Typically, a person is generally brought under the ambit of the LPS act through what is commonly referred to as a "5150 hold." This allows an approved facility to involuntarily commit a person for 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled.[7] Following a 72-hour hold, the individual may be held for an additional 14 days without court review if the professional staff of the agency or facility evaluating the individual finds that the individual continues to be, as a result of a mental health disorder, a threat to themselves or others or gravely disabled.[8] The professional staff conducting the evaluation must also find that the individual has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.[9] The certification for the 14-day hold must be reviewed at a certification hearing before an appointed hearing officer, unless the individual seeks judicial review via a petition for habeas corpus.[10]

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[2] *Id.*, § 5001.
[3] *Id.*, §§ 5150 et seq.
[4] *Id.*, §§ 5350 et seq.
[5] Welf. & Inst. Code, § 5008(h).
[6] *Id.*, §§ 5250(c), 5350(e); *Conservatorship of Benevuto* (1986) 180 Cal.App.3d 1030; *Conservatorship of Early* (1983) 35 Cal.App.3d 244; *Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453. SB 1416 (Eggman, 2022), expands the definition of "gravely disabled" within the LPS Act to include persons unable to provide for their basic needs for medical care, and defines a person unable to provide for those needs as a person at risk of substantial bodily harm, dangerous worsening of any concomitant physical illness, or serious psychiatric deterioration. SB 1416 is pending before the Senate Judiciary Committee and is scheduled to be heard on the same day as this bill.
[7] Welf. & Inst. Code, § 5150.
[8] Welf. & Inst. Code, § 5250.
[9] *Id.*, § 5250(c).
[10] *Id.*, §§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.

If professional staff finds that the person is still gravely disabled and unwilling or unable to accept voluntary treatment following their additional 14 days of intensive treatment, they may be certified for an additional period of not more than 30 days of intensive treatment.[11] Like the 14-day hold, the 30-day hold must be reviewed by a hearing officer or, at the request of the individual, in a habeas corpus proceeding.[12] For the duration of the 30-day treatment, the professional staff of the agency or facility providing the treatment must analyze the person's condition at intervals not to exceed 10 days, and determine whether the person continues to meet the criteria for continued confinement.[13] If the person is found to no longer meet the requirements for the 30-day hold before the 30 days is up, the certification must be terminated.[14]

"This series of temporary detentions may culminate in a proceeding to determine whether the person is so disabled that he or she should be involuntarily confined for up to one year."[15] The LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism.[16] An LPS conservatorship is intended to provide individualized treatment, supervision, and placement for the gravely disabled individual.[17]

Because an LPS conservator's powers often include the power to confine a person in a treatment facility, courts have recognized that the liberty, property, and reputational interests at stake are comparable to those in criminal proceedings; consequently, the party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt and the finding must be made by the court or a unanimous jury.[18] The proposed conservatee has the right to counsel at their proceeding—appointed for them, if necessary—and is entitled to demand a jury trial on the issue of their grave disability.[19] A conservatee may twice petition for rehearing twice during the one-year conservatorship.[20] At a rehearing, a conservatee need only prove by a preponderance of the evidence that they are no longer gravely disabled.[21]

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[11] *Id.*, § 5270.15.
[12] *Id.*, § 5270.15(b).
[13] *Id.*, § 5270.15(b)(2).
[14] *Ibid.*
[15] *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 541. SB 1227 (Eggman, 2022) would authorize staff to commence a second 30-day hold on top of the existing 30-day hold rather than commence a petition for conservatorship. SB 1227 is pending before this Committee and will be heard on the same day as this bill.
[16] Welf. & Inst. Code, § 5350.
[17] *Id.*, § 5350.1.
[18] *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235; *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at pp. 537-538
[19] Welf. & Inst. Code, § 5350, 5365.
[20] *Id.*, § 5364.
[21] *Conservatorship of Everette M.* (1990) 219 Cal. App. 3d 1567, 1573.

b. Laura's Law

As an alternative to commitment and a conservatorship under the LPS Act, state law provides for court-ordered outpatient treatment through Laura's Law, or the Assisted Outpatient Mental Health Treatment Program (AOT) Demonstration Project. In participating counties, the court may order a person into an AOT program if the court finds that the person meets existing involuntary commitment requirements under the LPS Act or other specified commitment requirements and that AOT would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community.[22] A county originally had to opt into providing AOT, but it is now provided on an opt-out basis.[23] While Laura's Law was initially codified with a sunset provision, the sunset was eliminated in 2020.[24]

One of the goals of AOT is to prevent individuals with severe mental illnesses from deteriorating to a level that would require a 5150 hold under the LPS Act. Laura's Law allows family members, relatives, cohabitants, treatment providers or their supervisors, or peace officers to initiate the AOT process with a petition.[25] If the individual meets the AOT eligibility requirements, an individual preliminary care plan is developed to meet that person's needs.[26] If this process results in the person voluntarily engaging with treatment, then the patient is deemed to no longer meet the criteria and the petition is no longer available.[27]

If, however, the individual declines to voluntarily participate in treatment, the petition for AOT is heard by a superior court. The subject of the AOT petition has the right to be represented by counsel in the proceeding, and counsel must be provided for them if necessary.[28] To grant a petition for AOT, a court must find by clear and convincing evidence that the person is unlikely to survive safely in the community without supervision, that they have a history of failing to comply with a treatment program, that their condition is substantially deteriorating, and that the treatment will prevent the person from becoming gravely disabled or a danger to self or others.[29] The AOT must include a treatment plan submitted by the local mental health provider and approved by the court.[30]

AOT may be ordered for up to six months and subsequently renewed.[31] While an AOT is ongoing, the director of the local AOT program must submit an affidavit within 60-

[22] Welf. & Inst. Code, §§ 5346 et seq.
[23] *Id.*, § 5349.
[24] *See* A.B. 1976 (Eggman, Ch. 140, Stats. 2020).
[25] Welf. & Inst. Code, § 5346(b)(2).
[26] *Id.*, § 5346(b)(5)(A)(ii).
[27] *Ibid.*
[28] *Id.*, § 5346(c).
[29] Welf. & Inst. Code, § 5346(a).
[30] *Id.* at § 5346(e).
[31] *Id.* at § 5346(d), (g).

day intervals affirming that the person continues to meet the AOT criteria, which may be challenged by filing a writ of habeas corpus.[32] A person who fails to comply with their AOT treatment plan can be referred for a 72-hour hold under the LPS Act.[33]

c. The SB 1045/SB 40 housing conservatorship pilot program

In 2018, the Legislature enacted SB 1045,[34] which created a pilot program in specified counties to implement "housing conservatorships" as a means of assisting persons with repeat 5150 holds and chronic mental health and substance abuse issues. The next year, SB 40 made several amendments to the housing conservatorship pilot program, including shortening the maximum duration from one year to six months.[35]

Under the current pilot program, the County of Los Angeles, the County of San Diego, and the City and County of San Francisco may opt to implement a "housing conservatorship" program for certain individuals who are incapable of caring for their own health and well-being due to a serious mental disorder and substance use disorder, as evidenced by eight or more 5150 holds in the preceding 12 months.[36] A housing conservatorship is intended "to provide the least restrictive and most clinically appropriate alternative needed for the protection of a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder."[37] The pilot program is set to expire January 1, 2024.[38] At this time, only San Francisco has opted to implement the housing conservatorship program.[39]

For counties implementing the pilot program, the relevant county agency must take numerous steps before an individual can be eligible for a housing conservatorship to ensure that the individual has notice of the potential consequences, beginning at the persons third 5150 hold in a 12-month period.[40] The behavioral health director, at some point before seeking a housing conservatorship, must have petitioned unsuccessfully to establish an AOT for the individual, which was either (1) denied, or (2) insufficient to treat the individual in lieu of conservatorship.[41] Once the individual has reached their

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[32] *Id.* at § 5346(i)
[33] *Id.* at § 5346(f).
[34] SB 1045 (Wiener, Ch. 845, Stats. 2018).
[35] *See* SB 40 (Wiener, Ch. 467, Stats. 2019).
[36] Welf. & Inst. Code, §§ 5450-5451, 5465.5.
[37] *Id.*, § 5453.
[38] *Id.*, § 5466.
[39] *See* San Francisco Department of Public Health, Housing Conservatorship, https://www.sfdph.org/dph/comupg/knowlcol/housingconserv/default.asp (last visited Apr. 12, 2022); Grant, *San Diego County Opts Out of Law Allowing it to Create Mental Health Pilot*, Voice of San Diego (Nov. 20, 2020), https://voiceofsandiego.org/2020/11/20/san-diego-county-opts-out-of-law-allowing-it-to-create-mental-health-pilot/ (last visited Apr. 12, 2022).
[40] Welf. & Inst. Code, § 5465.5(a).
[41] *Id.*, § 5456.

eighth 5150 hold in a 12-month period despite the county's efforts, the county may seek a temporary conservatorship of up to 28 days.[42] If a county does not seek a temporary conservatorship, it must file its petition for a full conservatorship within 28 days of the person's release from their eighth 5150 hold.[43]

After a petition for a housing conservatorship has been filed, the public conservator must commence an investigation into whether the individual is incapable of caring for themselves due to a serious mental illness and substance abuse disorder. The conservatorship investigation is the same as the investigation for LPS conservatorships.[44] The officer conducting the conservatorship investigation may recommend the housing conservatorship only if no less restrictive alternatives exist and it appears that the individual does not qualify for a Probate Code conservatorship or an LPS conservatorship.[45]

A person for whom a conservatorship is sought may demand a jury or court trial on the question of whether they are incapable of caring for their own health and wellness.[46] The individual is entitled to counsel—which must be appointed for them, if necessary—at any hearing or trial under these provisions.[47] For a housing conservatorship to be established, the finder of fact must determine, by clear and convincing evidence, that the individual (1) has both a serious mental illness and a substance use disorder; (2) as a result of those conditions, has functional impairments or a psychiatric history demonstrating that without treatment, that make it more likely than not that they will decompensate to functional impairment in the near future; and (3) as a result of the functional impairment and circumstance, is likely to become so disabled as to require public assistance, services, or entitlements.[48]

Once appointed, a housing conservator under must provide the least restrictive and most clinically appropriate placement for the conservatee, which must be the conservatee's residence or a community-based residential care setting in supportive community housing that provides wraparound services, such as onsite physical and behavioral health services, unless the court, for good cause, orders otherwise.[49] At any time, a conservatee or any person on the conservatee's behalf with the consent of the conservatee or the conservatee's counsel, may petition the court for a hearing before a

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[42] *Id.*, § 5465.5(a).
[43] *Id.*, § 5451(g).
[44] *Id.*, § 5451(c).
[45] *Id.*, § 5457.
[46] *Id.*, § 5451(b)(1). If the county has met a list of procedural requirements, including giving the individual notice of the potential conservatorship after each 5150 hold starting with the fifth in the prior 12-month period, the court can establish a 28-day temporary hold between the end of the eighth 5150 hold and the establishment of a housing conservatorship. (*Id.*, 5465.5.)
[47] *Id.*, § 5465.
[48] *Id.*, § 5451(a)(2)(E).
[49] *Id.*, § 5460.

court to contest the powers granted to the conservator.[50] Additionally, at any time, a conservatee may petition the court for a rehearing as to their status as a conservatee.[51]

A housing conservatorship may last for up to six months, or shorter if so ordered by the court.[52] The conservator must, every 60 days, file a report with the court regarding the conservatee's progress and engagement with treatment, and demonstrate the reasons for continuing the conservatorship.[53] If the court is not satisfied that the conservatorship continues to be justified, the court must terminate the conservatorship.[54] The conservator may petition for reappointment at least 30 days before the automatic termination date.[55]

3. <u>This bill establishes an additional framework for providing persons with specified mental illnesses with a court-ordered treatment plan</u>

a. An overview of the CARE court program

This bill establishes the CARE court program, which is intended to connect persons struggling with specified untreated mental illnesses with a court-ordered treatment plan (a CARE plan) for up to 24 months. The bill is sponsored by Governor Gavin Newsom. The administration estimates that the CARE program could serve between 7,000 and 12,000 Californians.

Unlike prior developments in mental illness treatment, such as Laura's Law or the housing conservatorship program, the CARE Court program will not be implemented on a pilot basis, but instead will be implemented statewide all at once. Accordingly, the CARE Court program represents a massive development in the state's mental illness framework. The administration has indicated that they plan to hold meetings with stakeholders going forward to address concerns that the stakeholders have with the bill—many of which were also submitted to this Committee. It therefore appears likely that the version of the bill currently in print will be amended, perhaps significantly, in the future.

In its current form, the CARE court program is similar to AOT, with a few key differences. Eligibility for the CARE court program requires only four criteria:

1. The subject must be 18 years of age or older;
2. The subject must have a diagnosis of schizophrenia spectrum or other psychotic disorder, as set forth in the most current version of the Diagnostic and Statistical Manual of Mental Disorders;

[50] *Id.*, § 5161.
[51] *Id.*, § 5464.
[52] *Id.*, § 5462.
[53] *Id.*, § 5462(c)(1).
[54] *Id.*, § 5462(c)(2).
[55] *Id.*, § 5462(b).

3. The person is not clinically stabilized in ongoing treatment with a county behavioral health agency; and
4. The person currently lacks medical decisionmaking capacity.

In AOT, specified persons who are familiar with the individual believed to need treatment may recommend to the county behavioral health director that it file a petition to place the individual in AOT, but leaves the decision to move forward with a petition for AOT to the professionals. The CARE court program lets the specified persons themselves file a petition to place an individual into CARE court. Persons who may file a petition include persons over 18 who live with the individual; the person's spouse, parent, sibling, or adult child; specified medical professionals, peace officers, and first responders; and various government officers, including the public guardian or conservator or the director of a county behavioral health agency. The petition must set forth facts establishing the four eligibility factors, and must include either an affidavit from a qualified health professional who believes the individual meets the diagnostic criteria for CARE court, or evidence that the individual was detained in a 14-day hold under the LPS Act within the previous 90 days. Alternatively, a court may refer an individual from AOT or conservatorship proceedings, or a person who has been found incompetent to stand trial for a misdemeanor under specified circumstances, to CARE court proceedings.

Once the petition is filed, the court must appoint counsel (likely a public defender) and a support person, discussed below, for the individual who is the subject of the petition. The court then holds a series of hearings at 14-day intervals to determine whether the prima facie criteria for CARE court are met, and if so, whether the individual can reach a voluntary care plan (a "settlement") with the county that does not require a court order. If a settlement is determined to be impossible, the court must order a clinical evaluation of the individual unless the parties stipulate otherwise; the hearing to review the evaluation must be set for within 14 days of the hearing setting the evaluation. At the evaluation hearing, if the court finds that the evaluation and other evidence demonstrate by clear and convincing evidence that the individual meets the CARE criteria, the court must order the county behavioral agency, the individual, and the individual's counsel and supporter to develop a CARE plan. The CARE plan hearing must be set for within 14 days.

The CARE plan developed by the county and the individual and their representatives must include behavioral health treatment, and may include medication if necessary to stabilize the individual. The medication may not be forcibly administered absent a separate order from the court finding that the person lacks competence to make medical decisions, pursuant to existing procedures through the LPS Act.[56] The CARE plan should include a housing plan that "describes" the housing needs of the individual; the

[56] *See* Welf. & Inst. Code, §§ 5332-5336.

bill allows the county to place the individual in appropriate housing places in the "region" but prohibits the court from ordering the county to provide housing.

At the hearing to review the CARE plan, the court may approve, reject, or modify the plan based on the court's own judgment of what is necessary. If the court rejects the plan or the parties have not reached a plan, the court may continue the matter for up to 14 days. At the continued hearing, the court must approve the plan as presented or modify it and approve it. The approval of the plan begins the one-year CARE court term.

During the one-year term, the court must hold a status conference 60 days from the approval, and hold at least one other conference 180 days from that point. The court must review any "[i]ntermittent lapses or setbacks experienced by the" individual during the one-year term. In the 11th month of the term, the court must hold a status hearing to determine whether to graduate the individual from the CARE program or, if at the request of the individual, voluntarily reappoint them. If the person requests graduation, the person is provided with an unspecified "graduation plan."

If, at any time, the court determines that the individual is not participating in the CARE proceedings or their CARE plan, the court may terminate the individual's participation in the plan; to the extent there are any other legal options available, such as referring the person to an LPS hold, the court may refer the individual for that option, and the individual's failure to participate in the CARE proceedings may be used as a factual presumption that there are no suitable community alternatives to treat the individual. If the court determines that the county is not complying with CARE court orders, the court may fine the county $1,000 per day for noncompliance; if the county is consistently out of compliance, the court may appoint a receiver to secure court-ordered care for the individual at the county's cost.

The support person role established by the bill will be managed by the Department of Aging. The supporter program will be designed to offer a flexible and culturally responsive way for the individual to maintain autonomy and decisionmaking over their own life by developing and maintaining voluntary supports to assist them in understanding and communicating their choices during the CARE process. The supporter is prohibited from making decisions or signing documents on the individual's behalf. The individual may also opt for a supporter who was not trained by the Department of Aging, in which case the supporter may serve on a voluntary basis. There is no mandate that the supporter appear at every relevant proceeding, and no system in place by which the court can inquire into the fitness of a supporter.

Finally, the bill provides that various departments and agencies within the state government will provide technical assistance for the plan. The bill also requires health insurance to cover certain aspects of the treatment provided by the CARE plan, with limits on the need for pre-approval.

NAMI-CA, writing in support of the bill, states:

> NAMI-CA believes that the availability of effective, comprehensive, community-based systems of care for person suffering from serious mental illnesses will diminish the need for involuntary commitment and/or court-ordered treatment. Before we reach the stage of last resort, we must fully fund, build, and staff our community-based system, so all who need care can access it long before they reach a crisis level.
>
> NAMI-CA is heartened to see that accountability of the CARE Court framework. We must hold the system accountable at all delivery points. We cannot take anything for granted in the implementation of a framework, as its effectiveness lies in the words that end up in the statute, how it is implemented through the regulatory process, and to how each of our 58 counties will interpret and implement the framework. For these reasons, NAMI-CA supports SB 1338.

b. Considerations for the CARE program and arguments in opposition

At this time, the bill's opponents have raised a number of questions and concerns about how the CARE program will operate in practice. These questions range from the constitutional to the very practical. These questions and concerns include:

- Eligibility concerns – diagnostic criteria: the County Behavioral Health Directors Association (CBHDA) Association expresses concern that eligibility for individuals with schizophrenia spectrum or "other psychotic disorders" is much broader than the bill may intend, in that it could include psychotic disorders due to dementia, traumatic brain injury, or other medical conditions that are not treatable through county behavioral services; additionally, the CARE plan does not seem to encompass treatment for these other causes. A coalition of over 40 organizations dedicated to disability rights, mental illness treatment, ending homelessness, and protecting civil liberties, including Disability Rights California and ACLU Action California (the Coalition), writing in opposition to the bill, are concerned that the diagnostic criteria will result in nonwhite individuals being disparately ordered into CARE plans that, for reasons detailed below, they believe are likely to be unsuccessful.
- Eligibility concerns – capacity: the Coalition notes that Californians are presumed competent to make health care decisions, and that the process to determine whether a person lacks that competence requires a court hearing because of the fundamental liberty and due process concerns at issue. They point out that the CARE process does not appear to require any of these protective steps, and that it allows unacceptable shortcuts such as allowing evidence through an affidavit from a behavioral health professional based on an evaluation that occurred in the last 90 days, or not at all, or evidence of a 14-day hold within the last 90 days. They also note that the CARE process seems to provide for a finding of capacity first, then an offer of services, which is

backwards—a person must be offered voluntary treatment first, be given information about the risks and benefits, and only when they decline to participate can a finding of incapacity be made. Additionally, they note that there appears to be an irreconcilable tension in the bill's requirement that an individual lack capacity in order to be eligible for CARE court: the premise is that a person can opt for a court-ordered treatment plan or settlement, but if the person lacks capacity, then by definition they cannot make medical decisions. It is thus unclear how the incapacitated persons who are eligible for this program could be meaningfully involved in their own treatment decisions.

- Eligibility concerns – adequate basis for jurisdiction/constitutional concerns: relatedly, stakeholders have questioned whether the bill provides adequate legal basis for ordering a person into treatment. Unlike the LPS Act, which requires a finding that a person is a danger to themselves or others or "gravely disabled" in order to have jurisdiction over an individual, or AOT, which requires a range of medical findings about a person's noncompliance and deteriorating condition, the CARE court has jurisdiction over any person who is (1) 18 or older, (2) not currently under care, (3) diagnosed with certain disorders, and (4) lacking medical decisionmaking capacity. It is unclear whether these factors are constitutionally adequate to bring an individual under the jurisdiction of a court for purposes of ordering treatment and imposing consequences if they fail to comply. Some stakeholders have addressed this tension by interpreting the program as voluntary throughout, specifically, by interpreting the court-ordered evaluation and the steps afterward as voluntary; under this interpretation, an individual may opt to decline the evaluation and exit the court's jurisdiction rather than be forced into further involuntary evaluations and treatment. It is not clear on the face of the bill, however, that the evaluation is voluntary—it refers to a court-ordered evaluation, with no provision for the individual to decline. Other stakeholders do not view the bill as creating a voluntary program; Human Rights Watch characterizes the program as "a new pathway for government officials and family members to place people under state control and take away their autonomy and liberty" that puts in place overly broad systems of coerced treatment, in violation of constitutional limits and the Convention on the Rights of Persons with Disabilities.
- Presumption concerns: Stakeholders such Bay Area Legal Aid and the California State Association of Counties (CSAC) express concern at a presumption created by the bill, that when a person's participation in CARE court is terminated for undefined "noncompliance," that termination creates a presumption in a proceeding under the LPS Act that there are no suitable community alternatives. Bay Area Legal Aid argues that this presumption "significantly lower[s] the burden of demonstrating grave disability by authorizing courts to place an individual who does not comply with their CARE plan under a conservatorship, regardless of the reason."
- Involuntary treatment concerns: the Coalition expresses concern that the CARE program is fundamentally involuntary, and involuntary outpatient treatment has

not been shown to improve mental illness treatment results. While the CARE program has an off-ramp early on for individuals who are able to reach a "settlement agreement" with the county behavioral health agency, the CARE plan is a court-ordered plan, and the Coalition argues that evidence demonstrates that such plans are less likely to succeed.

- Support person concerns: the Coalition argues that the bill's use of the support person is inconsistent with the traditional definition of support-based decisionmaking and is unlikely to have the same results. Supported Decision Making (SDM) is a practice that enables individuals to make choices about their lives with the help of a team of people they choose; it is the fact that the team is known and trusted that makes the individual comfortable with allowing the team to assist in decisions. The CARE supporter, however, appears to default to a court-appointed stranger to the individual, who is part of a system that may ultimately coerce the individual into a conservatorship if they do not comply with the CARE plan; the Coalition argues it is unlikely that the individual will be able to trust or rely on the CARE supporter in a way that will provide meaningful benefits.
- Housing concerns: the Coalition argues that the bill's failure to require housing for individuals ordered into a CARE plan is contrary to evidence-based approaches for ending homelessness. They are concerned that, because the bill "specifically precludes a court from ordering housing and does not require a county to provide housing, CARE Court will create a system of distrust and further hinder participants from obtaining appropriate treatment and services by employing a coercive model." Bay Area Legal Aid also argues that evidence shows that a treatment model that provides housing "without requiring initial participation in treatment more effectively improves mental health and housing stability than a model that requires participants to participate in treatment without first securing housing." They note that "without stable housing, many people experiencing homelessness continuously prioritize finding safe places to sleep, eat, and care for themselves, which impedes their ability to seek out and engage in treatment." CSAC expresses concerns that the administration's proposed funding for housing will be insufficient to meet the state's needs, particularly in the immediate term.
- "Graduation" and individual noncompliance concerns: the Coalition notes that several of the terms in the bill relating to what constitutes "graduation" and what constitutes "noncompliance" are undefined. Given that, e.g., noncompliance with a CARE plan can be the basis for a presumption that there are no available community alternatives when determining whether a person should be placed into a conservatorship—which is itself constitutionally questionable—it appears that these terms should be defined with greater precision.
- County noncompliance concerns: the California Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPGPC), CSAC, CBHDA, County Welfare Directors of California (CWDA), Rural County Representatives of California (RCRC), and Urban Counties of California (UCC)

(collectively, the County Entities) express reservations about the bill's penalties and potential receivership for noncompliant counties. They state that the bill insufficiently defines the expectations for counties in the CARE court process, and that county behavioral health agencies' ability to provide services that go beyond existing Medi-Cal entitlement services "will depend entirely on the state's willingness to fund these activities." As such, authorizing a court to order services beyond counties' existing contracted obligations could result in corrective action when a county simply does not have the funding to provide those services.

- Resourcing concerns: CBHDA has concerns about extending eligibility for CARE court only to persons with schizophrenia spectrum or other psychotic disorders. They state that "[b]y *expanding* the county behavioral health responsibility to include any and all individuals on the basis of these diagnoses, regardless of payer or available resources, and to hold county behavioral health solely responsible as outlined in SB 1338 appears to side-step county behavioral health's larges entitlement responsibilities under Medi-Cal, local discretion beyond Medi-Cal entitlement, or the state's ability to adequately resource that expanded set of responsibilities." CBHDA points out that they already have a "severe workforce crisis," and that "adding a new paradigmatic shift in responsibility without new resources will increase workforce exhaustion, lower morale, and undermine the goals of CARE Court to successfully engage individuals into services prior to conservatorship or law enforcement involvement."
- Workforce concerns: The RCRC and UCC both express concerns that the bill will exacerbate a preexisting health workforce shortage. County behavioral health agencies are already facing staffing vacancies upwards of 30-40 percent, and counties in the Central Valley and Inland Empire are facing severe shortages. Given that this bill will add to the county agencies' workloads, these entities are concerned that the county agencies will not be able to keep up with the added burdens imposed throughout the CARE process. The UCC further expresses concern that the public defenders tasked with representing individuals in the CARE process will need additional resources to adequately take on the new CARE court caseload.
- Liability concerns: the California Psychological Association (CPA) states that the "initial substantive language of the CARE Court Program raises serious functional problems for psychologists and other behavioral health professionals who would be operating within the program" because, unlike the LPS Act, this bill contains no safe harbor provision for the professionals operating within the program. CPA argues that the risk of exposure to these professionals warrants statutory immunity from criminal and civil liability for the mental health professionals who are involved in the program. CAPAPGPC also expresses concern that the bill is unclear with respect to the potential liability of persons conducting evaluations and the supporters.

- Racial inequality concerns: CBDHA notes that Black and Latinx individuals are more likely that white individuals to be misdiagnosed with schizophrenia disorders, and that Black individuals are more likely than white individuals to be diagnosed with psychotic disorder; they express concern that, by limiting the CARE program to persons with schizophrenia spectrum and psychotic disorders, the bill may unintentionally increase stigma and discrimination toward individuals who already face significant discrimination and disproportionate institutionalization. The Coalition also argues that the CARE program is likely to perpetuate institutional racism and exacerbate health disparities due to Black, indigenous, and people of color being diagnosed with psychotic disorders at disproportionate rates.
- Structural concerns: the Coalition argues that "CARE Court is antithetical to recovery principles, which are based on self-determination and self-direction." They argue that, although state resources are urgently needed to address homelessness and Californians living with severe mental illness, the state needs a framework that "allows people with disabilities to retain autonomy over their own lives by providing them with meaningful and reliable access to affordable, accessible, integrated housing combined with voluntary services." The County Entities also question whether the civil court system is the proper venue for trying to obtain care for persons who initially lack capacity, and whether the CARE court is redundant to existing programs.

To address these concerns, the Legislature may wish to consider amending the bill in the following areas:

- Diagnostic criteria: consider expanding the diagnostic criteria, or narrowing it with safeguards, to ensure that the persons who can be adequately cared for through a county behavioral health program are included. Other stakeholders have recommended that the criteria be expanded to allow other individuals not on the schizophrenia spectrum or with psychotic disorders, but who are aware that they are in need of care to avoid destabilization (e.g., individuals coming off of an LPS hold or out of a conservatorship) to opt into the program, which they cannot do (1) because opt-ins are not allowed, and (2) because they would not satisfy the criterion of currently lacking capacity. If the goal is to help more individuals, allowing for opt-ins from persons who know they need help appears to be a reasonable way to achieve that goal.
- Establishing prima facie eligibility: CBDHA recommends removing the provision that allows a health professional to attest to the eligibility of an individual on the basis of a review of records and collateral interviews in lieu of an actual examination. CBDHA notes that this will protect due process and minimum clinical and ethical standards for clinicians.
- Capacity and related criteria: clarify that an individual qualifies for CARE court while they are currently capable of making medical decisions—so that they can meaningfully participate in the process—but have a history that suggests a likelihood of deterioration without intervention, and require that the history be

proven with more than an affidavit and an incident within the last 90 days. The Legislature may wish to use criteria similar to those currently in place for AOT. Alternatively, CBDHA recommends that, if incapacitation remains a criterion for eligibility, the bill expressly add the existing procedural safeguards for involuntary medication.

- Voluntary participation: the Coalition suggests that, in lieu of a court-ordered plan, the bill could implement an Assertive Community Treatment program, which provides community-based intervention in the form of delivery of clinical treatment with intensive case management. Human Rights Watch similarly suggests that the Legislature direct resources toward voluntary treatment in lieu of a redundant coercive model.
- Settlement agreements: CBDHA recommends clarifying the purpose and elements of the settlement agreement provided for in the bill and, to the extent an agreement is meant to reflect an individual who is willing to voluntarily enter services, ensure that person has the requisite medical decisionmaking capacity.
- Support person: the Coalition suggests that the bill use an actual SDM model for its support person, such as the program that is part of AB 1663 (Maienschein, 2022), which is now pending before the Assembly Appropriations Committee.
- Housing: the Coalition suggests that, instead of beginning a new statewide CARE program, the state could use the money to create low-barrier, deeply affordable, accessible integrated housing for people experiencing homelessness. They suggest this housing could be made available with access to voluntary, trauma-informed, culturally responsive, evidence-based services that uses housing as a tool for recovery rather than a reward. Alternatively, the CARE program could be contingent upon a county having adequate housing, which could be supplied by the state.
- Definitions and concepts: the Coalition, CSAC, and the CPA suggest clarifying the meanings of key terms and concepts, including "not currently stabilized in on-going treatment with the county behavioral health agency"; "qualified behavioral health professional"; the criteria for graduation from CARE court; the criteria for reappointment to CARE court; the criteria and process for finding that a person is not participating in CARE proceedings or failing to comply with the CARE plan; and the criteria and process for terminating a participant from CARE court participation.
- Scope: the County Entities recommend that the Legislature introduce the CARE court program on an opt-in a pilot basis, to give the program time to develop and work out issues before implementing the program statewide.
- Phased-in implementation: the UCC recommends, as an alternative to a limited pilot program, that the CARE court program could be phased in over time to give courts and counties additional time to prepare.

4. Senate Public Safety Committee Comments

The following has been provided by the Senate Public Safety Committee:

The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if an offender has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in their defense, the court may determine that the offender is incompetent to stand trial (IST).[57] For misdemeanor defendants, if after an examination and hearing the defendant is found to be IST, the criminal proceedings must be suspended and the court may either conduct a hearing to determine whether the defendant is eligible for mental health diversion pursuant to Penal Code Section 1001.36 or dismiss the charges.[58]

If the court opts to conduct a hearing on the defendant's eligibility for mental health diversion and the court deems the defendant eligible, the court shall grant diversion for a period not to exceed one year. To be eligible for mental health diversion, specified criteria must be met including the defendant's agreement to comply with a mental health treatment plan approved by the judge.[59] During the period of diversion, the provider of the mental health treatment program in which the defendant is placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.[60] If the defendant successfully completes diversion the charges are dismissed.[61]

If the court determines that the defendant is ineligible for diversion or was granted diversion and is not performing satisfactorily or is gravely disabled, the court may (1) order modification of the treatment plan, (2) refer the defendant to assisted outpatient treatment (AOT) pursuant to Welfare and Institutions Code section 5346; if the defendant is accepted into AOT, the charges shall be dismissed, (3) refer the defendant to the county conservatorship investigator for possible conservatorship proceedings; if the outcome of the conservatorship proceedings results in the establishment of a conservatorship, the charges shall be dismissed.[62] In these proceedings, the defendant has the right to counsel which for indigent defendants will mean a public defender.

This bill adds the CARE program as another option for the court to refer the defendant when the court has determined the defendant is not eligible for mental health diversion or fails to perform satisfactorily in the diversion program. However, the bill states that the defendant's misdemeanor charges will only be dismissed once the defendant

[57] Pen. Code, § 1367.
[58] Pen. Code, § 1370.01(b).
[59] Pen. Code, § 1001.36(b).
[60] Pen. Code, § 1001.36(c)(2).
[61] Pen. Code, § 1001.36(e).
[62] Pen. Code, § 1370.01(b)(1)(D).

successfully completes CARE, which is unlike its existing authority when referring defendants to AOT or conservatorship. The rationale for dismissing the criminal charges once a person has been moved into AOT or conservatorship is the understanding that the criminal justice system cannot treat the defendant's mental health disorder and would be better treated in the civil system. If the court has already determined that the person is IST, thus suspending the criminal proceedings, and the CARE program has approved a plan for the defendant that the defendant accepts, should the criminal court dismiss the underlying misdemeanor charges?

SUPPORT

Governor Gavin Newsom (sponsor)
California Hospital Association
Families Advocating for the Seriously Mentally Ill
NAMI-CA

OPPOSITION

ACLU—California Action
Anti-Police Terror Project
Bay Area Legal Aid
Bazelon Center
Cal Voices
California Advocates for Nursing Home Reform
California Association of Mental Peer-Run Organizations
California Psychological Association
Caravan4Justice
Care First California
Corporation for Supportive Housing
County Behavioral Health Directors Association
Decarcerate Sacramento
Disability Rights Advocates
Disability Rights California
Disability Rights Education & Defense Fund
Disability Rights Legal Center
Funders Together to End Homelessness
Housing California
Housing is a Human Right Orange County
Human Rights Watch
Justice in Aging
JusticeLA
Law Foundation of Silicon Valley
Los Angeles Community Action Network
Love & Justice In The Streets

Mental Health Advocacy Services
Mental Health America of California
Mental Health First
National Health Law Project
National Homelessness Law Center
New Life Ministries of Tulare County
People's Budget Orange County
Project Amiga
Psychologists for Social Responsibility
Public Interest Law Project
Racial & Ethnic Mental Health Disparities Coalition
Rosen Bien Galvan & Grunfeld LLP
Sacramento Homeless Organizing Committee
Sacramento LGBT Community Center
Sacramento Regional Coalition to End Homelessness
San Bernardino Free Them All
San Francisco Pretrial Diversion Project
San Francisco Public Defender's Office
Starting Over, Inc.
Street Watch LA
The Coelho Center for Disability Law, Policy & Innovation
The Justice Teams Network
The SmithWaters Group
Western Center on Law and Poverty
Western Regional Advocacy Project
One individual

RELATED LEGISLATION

Pending Legislation:

SB 1416 (Eggman, 2022) expands the definition of "gravely disabled" within the LPS Act to include persons unable to provide for their basic needs for medical care or self-protection and safety, and defines a person unable to provide for those needs as person at risk of substantial bodily harm, dangerous worsening of any concomitant physical illness, serious psychiatric deterioration, of mismanagement of their basic needs that could result in substantial bodily harm. SB 1416 is pending before the Senate Judiciary Committee and is scheduled to be heard on the same day as this bill.

SB 1238 (Eggman, 2022) requires the State Department of Health Care Services, in consultation with each council of governments, to determine the existing and projected need for behavioral health services, including AOT, for each region in a specified manner and would require, as part of that process, councils of governments to provide the department-specified data. SB 1238 is pending before the Senate Health Committee.

SB 1227 (Eggman, 2022) modifies the Lanterman-Petris-Short (LPS) Act to allow a second 30-day intensive treatment hold for a person who has been certified as "gravely disabled" on top of the existing 3-day, 14-day, and 30-day treatment holds, without needing to file a conservatorship petition or seek judicial review. SB 1227 is pending before the Senate Judiciary Committee and is scheduled to be heard on the same day as this bill.

SB 1154 (Eggman, 2022) requires, by January 1, 2024, the State Department of Public Health, in consultation with DHCS and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display information about beds in inpatient psychiatric facilities, crisis stabilization units, residential community mental health facilities, and licensed residential alcoholism or drug abuse recovery or treatment facilities in order to facilitate the identification and designation of facilities for the temporary treatment of individuals in mental health or substance use disorder crisis. SB 1154 is pending before the Senate Appropriations Committee.

SB 1035 (Eggman, 2022) requires that, when a court orders a person to assisted outpatient treatment (AOT), the court include in its order self-administered medication included in the treatment plan. SB 1035 is pending before the Senate Judiciary Committee and is scheduled to be heard on May 3, 2022.

SB 929 (Eggman, 2022) requires DHCS to collect and publish annually quantitative data relating to the LPS Act, including information relating to, among other things, the number of persons detained for 72-hour evaluation and treatment, clinical outcomes for individuals placed in each type of hold, services provided in each category, waiting periods, and needs for treatment beds, as specified. The bill would additionally require each other entity involved in implementing the provisions relating to detention, assessment, evaluation, or treatment for up to 72 hours to provide data to the department upon its request, as specified. SB 929 is pending before the Senate Appropriations Committee.

AB 2830 (Bloom, 2022) would implement the CARE Act and CARE courts and is virtually identical to this bill. AB 2830 is pending before the Assembly Judiciary Committee.

AB 2020 (Gallagher, 2022) authorizes a county to elect between two definitions of "gravely disabled" for the LPS Act: the definition currently in statute, or "a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, the person's own basic personal needs for food, clothing, or shelter without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential

needs that could result in bodily harm." AB 2020 is pending before the Assembly Health Committee.

AB 1663 (Maienschein, 2022) among other things, establishes a supported decisionmaking process for adults with disabilities under the Guardianship-Conservatorship Law that allows the individual with a disability to choose one or more adults to serve as a support person in the course of making, understanding, and communicating their choices. AB 1663 is pending before the Assembly Appropriations Committee.

SB 516 (Eggman, 2021) provides that a person's medical condition may be considered in determining their mental condition for purposes of certifying them for a 14- or 30-day involuntary detention for treatment and evaluation under the LPS Act. SB 516 is pending before the Assembly Health Committee.

Prior Legislation:

SB 782 (Glazer, 2021) as heard by this Committee, would have implemented a State Auditor recommendation to ensure former LPS Act conservatees are eligible for AOT. SB 782 was held in the Assembly Rules Committee after it was significantly amended.

SB 507 (Eggman, Ch. 426, Stats. 2021) broadened the criteria to permit AOT for a person who is in need of AOT services, as specified, without also requiring the person's condition to be substantially deteriorating; permitted specified individuals to testify at an AOT hearing via videoconferencing, as specified; and permitted a court to order AOT for eligible conservatees, as specified, when certain criteria are met.

SB 1251 (Moorlach, 2020) would have expanded the housing conservatorship pilot program to all counties in the state on an opt-in basis. SB 1251 died in the Senate Judiciary Committee.

AB 2679 (Gallagher, 2020) would have expanded the housing conservatorship pilot program to allow the County of Butte to opt in. AB 2679 died in the Assembly Health Committee.

AB 2015 (Eggman, 2020), which was substantially similar to SB 516 (Eggman, 2021), would have expanded on the type of information that could be admitted at a hearing on the certification of a person for a 14-day or 30-day detention for intensive treatment, to include matters relating to the historical course of the person's mental illness and treatment compliance. AB 2015 died in the Senate Judiciary Committee.

AB 1976 (Eggman, Ch. 140, Stats. 2020) implemented Laura's Law statewide, effective July 1, 2021, and permits counties to opt out of providing AOT services, as specified; and deleted the sunset date for Laura's Law.

SB 40 (Wiener, Ch. 467, Stats. 2019) modified the housing conservatorship pilot program enacted in SB 1045 (Wiener, Ch. 845, Stats. 2018) by, among other things, shortening the maximum duration of a housing conservatorship to six months and tying eligibility to eight 5150 holds in a 12-month period.

SB 1045 (Wiener, Ch. 845, Stats. 2018) authorized the Counties of Los Angeles and San Diego, and the City and County of San Francisco, to establish a procedure for the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as specified, in order to provide the least restrictive and most clinically appropriate alternative needed for the protection of the person; and establishes a working group to evaluate the effectiveness of the program. The bill is set to sunset on January 1, 2024.

AB 2156 (Chen, 2018) would have changed the definition of "gravely disabled" for LPS purposes to read, in part, a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, his or her own basic personal needs for food, clothing, shelter, or medical care without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of his or her essential needs that could result in bodily harm. This bill died in the Assembly Health Committee

AB 1971 (Santiago, 2018) would have expand the definition of "gravely disabled" in the LPS Act as implemented in the County of Los Angeles, until January 1, 2024, to also include a condition in which a person, as a result of a mental health disorder or chronic alcoholism, is unable to provide for his or her medical treatment if the failure to receive medical treatment results in a deteriorating physical condition or death; and defined "medical treatment" to mean the administration or application of remedies for a mental health condition, as identified by a licensed mental health professional, or a physical health condition, as identified by a licensed medical professional. AB 1971 died on the Senate Floor.

SB 565 (Portantino, Ch. 218, Stats. 2017) required a mental health facility holding a person under a section 5270.15 30-day hold to make reasonable attempts to notify family members or any other person designated by the patient at least 36 hours prior to the certification review hearing for the additional 30 days of treatment, except as specified.

AB 1539 (Chen, 2017) would have expanded the definition of "gravely disabled" similar to AB 1971 (Santiago, 2018). This bill died without a hearing in Assembly Health Committee.

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DECLARATION OF HILARY KERRIGAN

1. I, Hilary Kerrigan, declare:

2. I have personal knowledge of the facts set forth in this Declaration, as well as the information presented in the adjoining test claim, and if called to testify to the statements made herein, I could and would do so competently.

3. I have been employed by the County of Santa Clara (the "County") since October of 2011 as a Deputy County Counsel within the Office of the County Counsel ("CCO").

4. In my role as Deputy County Counsel, I represented and advised the Behavioral Health Services Department ("BHSD") of the County of Santa Clara. As relevant to adjoining test claim, I represented and advised BHSD on matters involving the Community Assistance, Recovery, and Empowerment (CARE) Act.

5. As a Deputy County Counsel, I provided legal services to BHSD without fee pursuant to Government Code section 26529, subdivision (a), and Government Code section 26520.

6. The CARE Act imposes a variety of mandates on BHSD which require the representation and advice of counsel. In particular, I performed the following legal services:

    a. Assisted in the preparation of the mandated petition according to statutory requirements, including where the director of a county behavioral health agency or their designee determines it must file an initiating petition on its own or after a treatment facility or another court refers an individual to the county behavioral health agency and the agency determines that the individual is eligible for the CARE process. (Welf. & Inst. Code, §§ 5974, subd. (h); 5975, subds. (a)-(d)(1), (2); 5978, subds. (d)-(f); 5978.1, subd. (c).)

    b. Provided notice of the initial hearing to the respondent, the respondent's counsel, and, if in a different jurisdiction, the county behavioral health agency in the county of the respondent's residence. (Welf. & Inst. Code, § 5977, subd. (a)(3)(A)(iv).)

    c. Represented the county behavioral health agency director or their designee at the initial hearing and, if the court determined the petition lacks the required information, advised the agency on submission of an additional report. (Welf. & Inst. Code, § 5977, subds. (a)(3)(A)(i), (iii), (iv), (b)(4).)

d. Where the petitioner was not the county behavioral health agency director or their designee, advised the agency in complying with the court's order to file a written report with evidentiary support following investigation and engagement and gave notice to the respondent and petitioner of the filing or court-ordered extensions. (Welf. & Inst. Code, § 5977, subds. (a)(3)(B), (a)(4).)

e. Advised the county behavioral health agency director or their designee if the court ordered them to replace the original petitioner as successor. (Welf. & Inst. Code, § 5977, subd. (b)(6)(A).)

f. Where the court determined that the respondent is or may be eligible for the CARE process based on the report filed under Welfare and Institutions Code section 5977, subdivision (a)(3)(B), advised and represented the county behavioral health agency director or their designee at the initial appearance on the petition and provided notice to the petitioner, respondent, respondent's counsel, and the behavioral health agency in the respondent's county of residence, if different from the county where the CARE process has commenced. (*Id.* § 5977, subds. (a)(5)(C)(i), (iii).)

g. Provided counsel to the county behavioral health agency before and during the merits hearing, including preparing expert testimony by reviewing expert reports and providing advice about the evidentiary standard, presenting evidence by qualifying experts, conducting examinations, and presenting additional material. (Welf. & Inst. Code, § 5977, subd. (b)(7)(A).)

h. Advised the county behavioral health agency director or their designee in assessing and responding to respondent's counsel's communications and evidence, witnesses, and appeals. (Welf. & Inst. Code, § 5976, subds. (c), (f)-(i).)

i. Represented the county behavioral health agency at case management hearings, presented evidence as needed, and provided legal advice to the agency if the court ordered it to work with the respondent and respondent's counsel to engage the respondent in treatment and work towards a CARE agreement. (Welf. & Inst. Code, §§ 5977, subd. (c)(2); 5977.1, subds. (a)(1), (a)(2)(A), (B).)

j. Represented the county behavioral health agency at additional progress hearings held during the duration of the CARE agreement. (Welf. & Inst. Code, § 5977.1, subd. (a)(4).)

k. If the court ordered the behavioral health agency to conduct a clinical evaluation of the respondent, advised the agency in preparing and filing

required documents for and participate in the subsequent clinical evaluation hearing, which might include preparing and presenting evidence and witness testimony. (Welf. & Inst. Code, § 5977.1, subds. (c)(1), (2).)

l. Advised the county behavioral health agency as it prepared the CARE plan and prepared for and participate in hearings to review and consider approval of the proposed CARE plan, potentially including notice of requests for extensions of time and court orders. (Welf. & Inst. Code, § 5977.1, subds. (c)(3)(A), (c)(6), (d)(1), (d)(6).)

m. Advised the county behavioral health agency to ensure proper compliance when the court issued orders to support the respondent in accessing elements of the CARE plan. (Welf. & Inst. Code, § 5977.1, subds. (d)(2)-(5).)

n. Advised the county behavioral health agency to ensure compliance in devising CARE plans and communicating with the court following orders and requests for information relating to services and supports. (Welf. & Inst. Code, § 5982, subds. (a)-(e).)

o. Represented the county behavioral health agency at evidentiary hearings including status review hearings, the one-year status hearing, the graduation plan hearing, and any additional hearings ordered by the court, and advised the agency as it developed and filed reports and graduation plans. (Welf. & Inst. Code, § 5977.2, subds. (a)(1), (b); Welf. & Inst. Code, § 5977.3, subds. (a)(1)-(3).)

p. Advised the county behavioral health agency regarding patient confidentiality and notice requirements associated with report evaluations and other documents filed with the court throughout the CARE process and disclosures of protected information. (Welf. & Inst. Code, § 5977.4, subds. (d)(1), (d)(2)(E), (F), (d)(3)(A)-(C).)

q. Advised the county behavioral health agency regarding ex parte applications for an order requiring health care providers to supply relevant records about the respondent. (Welf. & Inst. Code, § 5977.4, subd. (d)(2)(C).)

7. As counsel, I also met and conferred with various partners to the CARE process, including respondents' counsel, court administration, State officials, first responders, and the District Attorney's office

8. The Office of the County Counsel first provided BHSD legal counsel pursuant to

the aforementioned statutes on February 11, 2025, when I advised first BHSD in connection with a CARE petition.

9. Executed on 8/12/26 at San José, California.

HILARY KERRIGAN
Deputy County Counsel
Office of the County Counsel
County of Santa Clara
(408) 299-5925
Hilary.Kerrigan@cco.sccgov.org

DECLARATION OF RAJIV NARAYAN

1. I, Rajiv Narayan, declare:

2. I have been employed by the County of Santa Clara (the "County") since September 2022 and currently hold the title of Deputy County Counsel for the Office of the County Counsel ("CCO"). I have been in this role since April 2023.

3. I have personal knowledge of the facts in this Declaration and the attached exhibit, as well as the information presented in the test claim, and if called to testify to the statements made herein, I could and would do so competently.

4. This Declaration provides detailed information about the costs associated with complying with the CARE Act provisions noted in the adjoining test claim. The underlying data that is used to determine these costs come from CCO's legal case management system, which tracks attorney hours. CCO calculates hourly attorney wage rates annually using payroll costs, expenses, services and supplies, and overhead costs. Both of these figures, meaning attorney hours and billing rates, are approved by CCO management.

5. CCO calculates the actual cost associated of complying with the mandated CARE Act provisions in three steps:

    a. First, CCO determines the hourly rate of the attorneys. This is the hourly rate for attorneys who counsel BHSD. This hourly rate changes with each fiscal year consistent with the labor agreements and the indirect costs associated with the staff line.

    b. Second, CCO determines the number of hours these attorneys spend providing legal services to BHSD for the mandated activities.

    c. Third, by multiplying the hourly rate against the number of hours billed each month, I find the total monthly cost of CCO providing legal services pursuant to the CARE Act mandates.

6. CCO calculates the estimated costs associated with complying with the mandated CARE Act provisions in three steps:

    a. First, CCO identifies the average number of hours spent per month by counsel for BHSD on the mandated activities between fiscal years 2024-2025 and 2025-2026.

    b. Second, CCO identifies the average cost per month by multiplying the average number of hours per month by the hourly rate of counsel in fiscal year 2025-2026.

c. Third, CCO multiplies the average monthly cost of counsel by the number months remaining in fiscal year 2025-2026.

7. A true and correct copy of the figures and calculations used to make the following statements is attached as Exhibit A.

8. Because the County cannot bill any external entity for these legal services, and because reimbursement from the State is insufficient to fully cover the costs incurred by the County in connection with the mandated activities, the County absorbs the balance of the costs remaining, meaning that the balance of the costs for legal services performed pursuant to the CARE Act mandates are ultimately drawn down from the County's General Fund.

9. In Fiscal Year 2024-2025 ("FY 2025"), the actual costs arising from the County's implementation of the CARE Act mandated activities totaled approximately $37,218.90. During this period, County Counsel billed an actual 127.9 hours for these activities, which were multiplied by an hourly rate of $291.00. Because the County first incurred costs for the mandated activities in February 2025, these figures represent cost and billable hours data from February 2025 through June 2025.

10. In Fiscal Year 2025-2026, ("FY 2026"), the costs of implementing the CARE Act mandates are estimated to reach approximately $118,351.80. For FY 2026, the hourly rate of attorneys was determined to be $303.00. During this period, the County incurred an actual $62,902.80 for 207.6 hours billed between July 2025 and December 2025, and it expects to incur an additional $55,449.00 through the end of FY 2026, from January 2026 through June 2026.

11. The actual and estimated cost to the County General Fund of implementing the CARE Act provisions pled in the test claim exceed $1,000.

12. The County estimates that counties will spend approximately $6,864,404 in aggregate during the 2025-2026 fiscal year to comply with the CARE Act Mandates. The County calculated this figure by multiplying its actual and expected costs for fiscal year 2025-2026 by 58, which represents the number of counties in California.

13. Executed on 2/9/26 at San José, California.



Rajiv Narayan
Deputy County Counsel
Office of the County Counsel
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Exhibit A

Fiscal Year & CCO Rate	Calendar Year	Month	Hours Billed for Legal Service for CARE Act Mandates	County Costs	
2025 Hourly Rate: $291.00	2025	February	10	$2,910.00	Actual Costs
		March	11.5	$3,346.50	
		April	23.8	$6,925.80	
		May	41.1	$11,960.10	
		June	41.5	$12,076.50	
		July	37.3	$11,301.90	
		August	25.9	$7,847.70	
		September	35.5	$10,756.50	
		October	43.6	$13,210.80	
		November	36.4	$11,029.20	
2026 Hourly Rate: $303.00		December	28.9	$8,756.70	
	2026	January	30.5	$9,241.50	Expected Costs
		February	30.5	$9,241.50	
		March	30.5	$9,241.50	
		April	30.5	$9,241.50	
		May	30.5	$9,241.50	
		June	30.5	$9,241.50	

	County Costs	Hours Billed for Legal Service for CARE Act Mandates
FY 2025 Actual	$37,218.90	127.9
FY 2026 Actual	$62,902.80	207.6
Total of Actuals	$100,121.70	335.5
FY 2026 Estimated	$55,449.00	183
FY 2026 Actuals + FY 2026 Estimated	$118,351.80	390.6

	Figure	Calculation	Explanation
Avg. Hours Per Month	30.5	335.5 ÷ 11	Total Actual Hours ÷ Total Actual Months
Avg. Cost Per Month	$9,241.50	30.5 x $303	Avg. Hours Per Month x FY 2026 Hourly Rate
FY 2026 Estimated Cost	$55,449.00	$9,241.50 x 6	Avg. Cost Per Month x Remaining FY 2026 Months

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 27, 2026, I served the:

- **Current Mailing List dated July 29, 2026**
- **Second Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued August 27, 2026**
- **Response to Request for Clarification of Pleading and Second Notice of Incomplete Test Claim filed August 18, 2026**
- **Test Claim filed by the County of Santa Clara (claimant) on February 9, 2026 revised on August 18, 2026**

  CARE Act County Legal Counsel, 25-TC-02
  Welfare & Institutions Code Sections 5970-5987, as added and amended by Statutes 2022, Chapter 319 (SB 1338); Statutes 2023, Chapter 283 (SB 35); Statutes 2023, Chapter 640 (SB 42); Statutes 2024, Chapter 647(SB 1400); Statutes 2024, Chapter 646 (SB 1323); and Statutes 2025, Chapter 528 (SB 27)
  County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 27, 2026 at Sacramento, California.

Jill Magee
_____

Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/29/26

Claim Number: 25-TC-02

Matter: CARE Act County Legal Counsel

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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