SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1338 (Umberg, Eggman)
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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-

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[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;

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[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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