

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 42 (Umberg)
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AWM

PURSUANT TO SENATE RULE 29.10(d)

SUBJECT

Community Assistance, Recovery, and Empowerment (CARE) Court Program: process
and proceedings

DIGEST

This bill makes various changes to the Community, Assistance, Recovery, and Empowerment (CARE) Act, which has been implemented in at least eight counties and will be implemented by the remaining counties on or before December 1, 2024.

EXECUTIVE SUMMARY

In 2022, the Legislature enacted, and the Governor signed, SB 1338 (Umberg, Ch. 319, Stats. 2022), known as the CARE Act, which is intended to deliver mental health and substance use disorder services for persons with certain severe mental illness diagnoses as an alternative to incarceration in a jail or psychiatric facility or to being subjected to a conservatorship under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.). The CARE Act provides for CARE agreements and court-ordered CARE plans for qualified persons suffering from a mental health or substance abuse disorder crisis for up to 12 months, with the potential for an extension. CARE agreements and plans are supposed to provide individuals with clinically appropriate, community-based services.

A first cohort of seven counties implemented the CARE Act on October 1, 2023, and the County of Los Angeles elected to implement the CARE Act in December 2023. The remaining counties must implement the CARE Act by December 1, 2024.

This bill amends the CARE Act and addresses concerns raised by some stakeholders in advance of the statewide implementation date. Among other things, the bill clarifies what evidence may establish a respondent's eligibility for CARE proceedings; reduces a CARE court's obligation to inform the respondent of their rights; requires a CARE

petition's dismissal to be without prejudice unless specific criteria are met; and gives original petitioners the right to notice of ongoing CARE proceedings unless the court specifically finds that notice would be detrimental to the respondent. This bill was gutted and amended into its current form in the Assembly, so this Committee has not yet heard the provisions in this bill. Accordingly, this bill was referred to this Committee pursuant to Senate Rule 29.10(d) when it returned to the Senate.

This bill is sponsored by the author and is supported by California Professional Firefighters and Families Advocating for the Seriously Mentally Ill. This bill is opposed by ACLU California Action, Cal Voices, the California Youth Empowerment Network, Disability Rights California, and Mental Health America of California.

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, as defined, or a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)
- 2) Establishes the Assisted Outpatient Treatment Demonstration Project of 2002, which provides for court-ordered assisted outpatient treatment (AOT) under specified circumstances. (Welf. & Inst. Code, div. 5, pt. 1, ch. 2, art. 9.)
- 3) Establishes the CARE Act. (Welf. & Inst. Code, div. 5, pt. 8, §§ 5970 et seq.)
- 4) Defines the following relevant terms:
 - a) "Care agreement" is a voluntary settlement agreement entered into by the parties, and includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports.
 - b) "Care plan" is an individualized, appropriate range of community-based services and supports, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate.
 - c) "CARE process" is the court and related proceedings to implement the CARE Act.
 - d) "Court-ordered evaluation" means an evaluation ordered by the court in connection with a CARE Act petition, as specified.
 - e) "Department" is the State Department of Health Care Services (DHCS).
 - f) "Petitioner" is the entity who files a CARE Act petition with the court; if the petitioner is a person other than the director of a county behavioral health agency (CBHA), or their designee, the court shall substitute the director or their designee for the county in which the proceedings are filed as the petitioner at the first hearing.

- g) “Respondent” is the person who is subject to the petition for the CARE process. (Welf. & Inst. Code, § 5971.)
- 5) Provides that the CARE Act shall be implemented as follows:
 - a) A first cohort of counties, including Glenn, Orange, Riverside, San Diego, Stanislaus, Tuolumne, and the City and County of San Francisco, shall begin no later than October 1, 2023.
 - b) A second cohort of counties, representing the remaining counties in the state, shall begin no later than December 1, 2024.
 - c) DHCS shall issue guidelines under which counties can apply for, and be provided, additional time in which to implement the CARE Act, subject to certain conditions and restrictions; DHCS may grant only one extension per county, and the latest a county may implement the CARE Act is December 1, 2025. (Welf. & Inst. Code, § 5970.5.)
- 6) Establishes criteria for a person to qualify for the CARE process, including that the person is 18 years of age or older; the person is experiencing a serious mental disorder, as defined, and has a diagnosis in the disorder class of schizophrenia spectrum and other psychotic disorders; the person is not clinically stabilized in ongoing voluntary treatment; and participation in a CARE plan or agreement would be the least restrictive alternative necessary to ensure the person’s recovery and stability. (Welf. & Inst. Code, § 5972.)
- 7) Provides that the following adult persons may file a petition to commence the CARE process:
 - a) A person with whom the respondent resides.
 - b) A spouse, parent, sibling, child, or grandparent of, or individual who stands in loco parentis to, the respondent.
 - c) The director of a hospital in which the respondent is hospitalized, including pursuant to certain temporary holds under the LPS Act, or their designee.
 - d) The director of a public or charitable home, or a licensed behavioral health professional, or their designee, who has had a specified interaction with the respondent within the previous 30 days.
 - e) A first responder, as specified, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportations pursuant to the LPS Act, multiple attempts to engage the respondent in the form of voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance.
 - f) The public guardian or public conservator, or their designee, of the county in which the respondent resides or is found.
 - g) The director of a CBHA or county adult protective services, or their designee, of the county in which the respondent resides or is found.
 - h) The director of a California Indian health services program, California tribal behavioral health department, or their designee, who has, within the previous

- 30 days, provided or is providing behavioral health services to the respondent.
- i) The judge of a tribal court that is located in California, or their designee, who has, within the previous 30 days, provided or is providing behavioral health services to the respondent.
 - j) The respondent. (Welf. & Inst. Code, § 5974.)
- 8) Allows a court, if a criminal defendant is found to be mentally incompetent and ineligible for a diversion, to refer the defendant to the CARE program, as provided. (Pen. Code, § 1370.1(b)(1)(D)(iv).)
- 9) Requires the Judicial Council to create a mandatory court form to file a CARE process petition, together with any other forms necessary during the CARE process. The petition must be signed under penalty of perjury and set forth specified information, including either an affidavit of a licensed behavioral health professional setting forth specified information about the respondent, or evidence that the respondent was detained for a minimum of two intensive treatments pursuant to the LPS Act, the most recent of which was no more than 60 days prior to the date of the petition. (Welf. & Inst. Code, § 5975.)
- 10) Provides for sanctions for a person who wrongfully files a CARE Act petition, as follows:
- a) If a person other than the respondent files a petition for CARE Act proceedings that is without merit or is intended to harass or annoy the respondent, and the person has previously filed such a CARE Act pleading, the petition shall be grounds for the court to determine that the person is a vexatious litigant, as provided.
 - b) If a person other than the respondent files a petition for CARE Act proceedings in order to gain advantage over the respondent in another legal proceeding, it is cause for suspension, disbarment, or other discipline if a member of the State Bar is found to have filed the petition or assisted in the filing with the knowledge that the filing was made in order to gain that advantage. (Welf. & Inst. Code, § 5975.1.)
- 11) Establishes the rights of the respondent, including the right to receive notice of the hearings and the court-ordered evaluation; the right to be represented by counsel at all stages of a CARE proceeding, regardless of ability to pay; the right to present evidence and call witnesses; and the right to an interpreter in all proceedings if necessary for the respondent to fully participate. (Welf. & Inst. Code, § 5976.)
- 12) Establishes the following with respect to CARE Act hearings:
- a) Hearings are presumptively closed to the public, but the respondent may demand that the hearings be public.

- b) The respondent may request the presence of a family member or friend without waiving the right to keep the hearing closed to the rest of the public.
 - c) The court may grant a request by another party to make a hearing public if the judge conducting the hearing finds that the public interest clearly outweighs the respondent's interest in privacy.
 - d) All reports, evaluations, diagnoses, or other information related to the respondent's health are confidential, and the respondent may petition the court for an order sealing those records.
 - e) The fact that evidence is admitted under a CARE Act proceeding is not the basis for the admission of that evidence in any subsequent legal proceeding, and records of the proceeding shall not be admitted in a subsequent legal proceeding except by a motion by the respondent or by the county behavioral health agency, public guardian, or public conservator.
 - f) The judicial officer, before commencing a hearing, must inform the respondent of their rights under this section. (Welf. & Inst. Code, § 5976.5.)
- 13) Requires the court, upon receipt of a CARE Act petition, to promptly review it to determine whether a prima facie showing has been made that the respondent is or may be a person described in 6), and then do one of the following:
- a) If the court finds the petitioner has not made the required prima facie showing, then dismiss the case without prejudice. (Welf. & Inst. Code § 5977(a)(2).)
 - b) If the court finds the petitioner has made the required prima facie showing, and the petitioner is the director of a CBHA, then the court must do all of the following:
 - i. Set the matter for initial hearing within 14 court days.
 - ii. Appoint counsel.
 - iii. Determine if the petition includes a determination as to whether the respondent meets the criteria for the CARE process and is willing to engage voluntarily with services, and, if not, order the county behavioral health agency to submit a written report containing specified information within 14 court days.
 - iv. Require the CBHA to provide notice to the respondent, respondent's counsel, and the CBHA where the respondent resides. (Welf. & Inst. Code § 5977(a)(3)(A).)
 - c) If the court finds the petitioner has made the required prima facie showing, but the petitioner is not a CBHA, then the court must do all of the following:
 - i. Order a county agency to investigate whether the respondent meets the criteria for the CARE process and is willing to engage voluntarily with services; the CBHA must a written report with the court within 14 court days.
 - ii. Provide notice to the respondent and the petitioner that a report has been ordered.
 - iii. Upon receipt of the report, within 5 days, do one of the following:

1. If the county's report does not support a prima facie showing under 6), or if the county determines that the respondent has enrolled or is likely to enroll in voluntary behavioral health treatment, dismiss the matter.
 2. If the county's report does support a prima facie showing under 6), set the matter for initial hearing within 14 court days, appoint counsel, and order the county to provide notice of the hearing as specified. (Welf. & Inst. Code § 5977(a)(3)(B).)
- 14) Provides that, if a CBHA is making progress with a respondent named in a petition, the CBHA may request up to 30 additional days to continue to engage and enroll the respondent in treatment and services. (Welf. & Inst. Code, § 5977(a)(4).)
- 15) Requires a court, within five days of receipt of a report from the CBHA pursuant to 13), to review the report and do one of the following:
- a) To dismiss the matter, if the court determines that voluntary engagement with the respondent is effective, as provided.
 - b) If the court determines that the county's report supports the petition's prima facie showing that the respondent meets the CARE criteria, and engagement is not effective, to:
 - i. Set an initial hearing within 14 days;
 - ii. Appoint counsel, unless the respondent has their own counsel; and
 - iii. Provide notice of the hearing, as provided.
 - c) If the court determines that the county's report does not support the petition's prima facie showing that the respondent meets the CARE criteria, to dismiss the matter. (Welf. & Inst. Code, § 5977(a)(5).)
- 16) Provides the following with respect to initial CARE Act hearing:
- a) If the petitioner is not present, the court may dismiss the matter.
 - b) If the respondent elects not to waive their appearance and is not present, the court may conduct the hearing in the respondent's absence if the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, and conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.
 - c) A CBHA representative must be present, a supporter may be appointed, and a tribal representative may attend for a respondent who is a tribal member, as provided, and subject to the respondent's consent.
 - d) If the court finds that there is no reason to believe that the facts stated in the petition are true, 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.
 - e) If the court finds that there is reason to believe that the facts stated in the petition appear to be true, the court must order the CBHA to work with the respondent, respondent's counsel, and respondent's CARE supporter to

- engage in behavioral health treatment; the court must set a case management hearing within 14 days.
- f) If the petitioner is other than the county behavioral health director, the court must substitute the county behavioral health director or their designee for the petitioner, as specified.
 - g) If the court does not dismiss the petition, the court must set a hearing on the merits of the petition, which may be conducted concurrently with the initial appearance on the petition upon stipulation of the petitioner and respondent and agreement by the court. (Welf. & Inst. Code, § 5977(b).)
- 17) Provides the following with respect to a CARE Act hearing on the merits:
- a) If the court finds that the petitioner has not shown, by clear and convincing evidence, that the respondent meets the CARE criteria, 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.
 - b) If the court finds that the petitioner has shown by clear and convincing evidence that the respondent meets the CARE criteria, the court must order the CBHA to work with the respondent, respondent's counsel, and the supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement; in this case, the court must set a case management hearing, and notice of must be provided to the respondent's tribe, as applicable. (Welf. & Inst. Code, § 5977(c).)
- 18) Provides the following with respect to a CARE Act case management hearing:
- a) If the parties have entered, or are likely to enter, a CARE agreement, the court must approve, or modify and approve, the CARE agreement, stay the matter, and set a progress hearing for 60 days; the court may continue the matter for 14 days to allow the parties additional time to enter into a CARE agreement.
 - b) If the court finds that the parties have not entered, and are not likely to enter, into a CARE agreement, the court must order a clinical evaluation of the respondent, as provided; the evaluation must address, at a minimum, a clinical diagnosis, whether the respondent has capacity to give informed consent regarding psychotropic medication, other information, as provided, and an analysis of recommended services, programs, housing, medications, and interventions that support the respondent's recovery and stability.
 - c) If the court orders an evaluation, it must also set a clinical evaluation review hearing to review the evaluation within 21 days, and the county must file the evaluation with the court and provide the evaluation to respondent's counsel no later than 5 days prior to the hearing. This hearing may be continued for a maximum of 14 days upon stipulation of the respondent and CBHA, unless there is good cause for a longer extension. (Welf. & Inst. Code, § 5977.1)
- 19) Provides the following with respect to a CARE Act clinical evaluation review hearing:

- a) The court must consider the evaluation, and other evidence, including calling witnesses; but only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.
 - b) If the court finds, by clear and convincing evidence, after review of the evaluation and other evidence, that the respondent meets the CARE criteria, the court must order the CBHA, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan.
 - c) If the court finds, in reviewing the evaluation, that clear and convincing evidence does not support that the respondent meets the CARE criteria, the court must dismiss the petition. (Welf. & Inst. Code, § 5977.1(c).)
- 20) Provides the following with respect to a hearing to review a proposed CARE plan:
- a) Either or both parties may present a CARE plan.
 - b) The court must adopt the elements of a CARE plan that support the recovery and stability of the respondent, and may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding, as provided. These orders are the CARE plan.
 - c) A court may to order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent that the court orders medically necessary stabilization medications, prohibits the medication from being forcibly administered and the respondent's failure to comply with a medication order may not result in a penalty, including but not limited to contempt or the accountability measures in 26)-28).
 - d) If the court determines that additional information is needed, the court must order a supplemental report to be filed by the CBHA, which must be filed within 14 days unless there is good cause for a longer extension.
 - e) If there is no CARE plan because the parties have not had time to complete it, the court may grant a continuance of up to 14 days unless there is good cause to grant a longer extension. (Welf. & Inst. Code, § 5977.1(d).)
- 21) Provides that an issuance of an order adopted by the court adopting a CARE plan begins the one-year CARE program timeline. (Welf. & Inst. Code, § 5977.1(e).)
- 22) Requires the court to hold a status review hearing during the duration of the CARE plan at least every 60 days, with the parties submitting information prior to the hearing as provided. (Welf. & Inst. Code, § 5977.2.)
- 23) Requires the court, in the 11th month of the CARE plan, to hold a one-year status hearing, which is an evidentiary hearing, to determine if the respondent graduates from the CARE plan or should be reappointed for another year.

- a) The CBHA must file a report and provide it to the respondent, respondent's counsel, and supporter no fewer than five days before the hearing; the report must address specified information, including the respondent's progress in the CARE plan, their stability, what services were provided or not provided, and recommendations for the next steps.
 - b) At the hearing, the respondent shall be provided the opportunity to respond to the report and present evidence, including witnesses.
 - c) Following the hearing, the court must issue an order either graduating the respondent, if they elect to leave the program, and ordering the respondent and CBHA to work on a voluntary graduation plan; or permitting the respondent to remain in the program for up to an additional year, if the respondent elects to remain in the program and specified conditions are met.
 - d) The court may involuntarily reappoint the respondent to the CARE program only if the court finds, by clear and convincing evidence, that the respondent did not successfully complete the care process; that all services and supports required through the CARE process were provided; the respondent would benefit from the CARE process; and the respondent meets all the CARE Act criteria.
 - e) A respondent may be reappointed to the care process only once, for up to one additional year. (Welf. & Inst. Code, § 5977.3.)
- 24) Requires hearings to occur in person unless the court allows a party or a witness to appear remotely; the respondent has the right to be in-person for all hearings. (Welf. & Inst. Code, § 5977.4(b).)
- 25) Requires the Judicial Council to adopt rules to implement the CARE Act provisions. (Welf. & Inst. Code, § 5977.4(c).)
- 26) Allows the court, at any point during CARE proceedings, if it determines, by clear and convincing evidence, that the respondent, after receiving notice, is not participating in the CARE process or is not adhering to their CARE plan, to terminate respondent's participation. The court is then permitted to make a referral under the LPS Act, as provided. (Welf. & Inst. Code § 5979(a).)
- 27) Provides that, if a respondent was provided timely with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including the reasons for their failure:
- a) May be considered by a court in a subsequent hearing under the LPS Act, provided that hearing occurs within six months of termination of the CARE plan; and
 - b) Creates a presumption at a hearing under the LPS Act that the respondent needs additional interventions beyond the supports and services provided by the CARE plan. (Welf. & Inst. Code, § 5979(a)(3).)

- 28) Prohibits a respondent's failure to comply with any order from resulting in any penalty outside of 27), including, but not limited to contempt or failure to appear; and prohibits a respondent's failure to comply with a medication order from resulting in any penalty, including under 27). (Welf. & Inst. Code, § 5979(a)(4), (5).)
- 29) Creates a process for penalizing counties or other local government entities that do not comply with CARE court orders. (Welf. & Inst. Code § 5979(b).)
- 30) Provides that either a respondent or a CBHA may appeal an adverse court determination. (Welf. & Inst. Code, § 5979(c).)
- 31) Permits a court to refer an individual from AOT, LPS Act conservatorship, or misdemeanor proceedings to CARE Act proceedings; the CBHA shall be designated as the petitioner in such a referral. (Welf. & Inst. Code, § 5978.)
- 32) Requires DHCA, in consultation with specified groups, to provide optional training and resources for supporters, and establishes requirements for CARE supporters, as specified. (Welf. & Inst. Code, §§ 5980, 5981.)
- 33) Establishes the components of a CARE plan, which may include only:
 - a) Behavioral health services, funded through specified sources.
 - b) Medically necessary stabilization medications.
 - c) Housing resources, funded through specified state and federal sources.
 - d) Social services funded through specified county, state, and federal sources.(Welf. & Inst. Code, § 5982(a).)
- 34) Requires CARE participants to be prioritized for any appropriate bridge housing funded by the Behavioral Health Bridge Housing program; if the CBHA elects not to enroll the respondent into a full service partnership, as defined, the court may review the reason for that election. (Welf. & Inst. Code, § 5982(b), (c).)
- 35) Provides that all CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes, regulations, contractual provisions and policy guidance governing program eligibility, as provided; and sets forth rules by which a county is responsible for the costs of providing services to CARE participants. (Welf. & Inst. Code, § 5982(d)-(f).)
- 36) Requires the Health and Human Services Agency (CalHHS), DHCS, and the Judicial Council to engage in data-gathering, and to provide technical assistance and training for entities participating in the CARE process, as provided. (Welf. & Inst. Code, § 5983.)
- 37) Requires DHCS to collect data relating to the CARE Act implementation from CBHAs and other entities, and to coordinate with the Judicial Council to develop an

annual reporting schedule for the submission of CARE Act data from the trial courts on an annual basis. (Welf. & Inst. Code, § 5985.)

38) Requires an independent, research-based entity retained by DHCS, in consultation with others, to develop an independent evaluation of the effectiveness of the CARE Act; the independent evaluation must employ statistical research methodology and include a logic model, hypotheses, comparative or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports, highlighting racial, ethnic, and other demographic disparities, and including causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts. DHCS must also provide a preliminary evaluation of the effectiveness of the CARE Act to the Legislature three years after its implementation and a final report five years after implementation. (Welf. & Inst. Code, § 5986.)

39) Provides immunity to a county, or an employee or agent of a county, for any action by a respondent in the CARE process, except when the act or omission of a county, or the employee or agent of a county, constitutes gross negligence, recklessness, or willful misconduct. (Welf. & Inst. Code, § 5987.)

This bill:

- 1) Requires an affidavit submitted by a professional person in support of the establishment of a temporary conservatorship under the LPS Act to include an attestation that the professional person has considered all available alternatives to the conservatorship, including AOT and CARE Act proceedings, and that the appointment of a temporary conservator is recommended because no suitable alternative is available.
- 2) Requires a petition for the reappointment of a conservator under the LPS Act to include an attestation by the conservator stating that they have considered all available alternatives to conservatorship, including AOT and CARE Act proceedings, and that reappointment of a conservator is recommended because no suitable alternative is available.
- 3) Clarifies that, in connection with a CARE Act petition, evidence that a respondent has met the minimum intensive treatment requirement may include, but is not limited to, documentary evidence from the facility in which the facility was detained or a signed declaration from the petitioner if the petitioner has personal knowledge of the detentions.
- 4) Provides that, in a CARE Act proceeding, a court must inform a respondent of their rights at the first hearing at which the respondent makes an appearance, and that the

court need not inform the respondent of their rights at subsequent hearings if the court finds that the respondent understands and waives the additional advisement of rights.

- 5) Clarifies that, if the court finds that a CARE Act petition fails to make a prima facie showing that the respondent is, or may be, eligible for CARE Act proceedings, the court may dismiss the case and that the dismissal shall be without prejudice unless the court finds that the petition was filed under circumstances addressed in Welfare and Institutions Code section 5975.1; and provides that nothing other than Welfare and Institutions Code section 5975.1 prevents a petitioner whose petition was dismissed without prejudice from refileing the petition with amended information.
- 6) Extends the time in which a county agency must investigate the circumstances surrounding a petition filed by a person other than the county behavioral health agency and file a report with the court, from 14 court days to as soon as practicable but within 30 court days; and requires the parties to complete the investigation with appropriate urgency.
- 7) Provides that, beginning July 1, 2025, unless a court determines, on its own motion or on the motion of a respondent, that it would likely be detrimental to the treatment or wellbeing of the respondent, that the court shall provide ongoing notice of CARE Act proceedings to the original petitioner throughout the CARE Act proceedings, including notice of when a continuance is granted or when a case is dismissed.
 - a) If a continuance is granted, the notice shall provide a general reason for the continuance, i.e., the absence of the respondent or one of the grounds listed in California Rule of Court Rule 3.1332.
 - b) If the case is dismissed, the notice shall specify the statutory basis for the dismissal.
 - c) The notice of continuance or dismissal shall not provide any patient information protected by specified state or federal laws unless the respondent consents.
- 8) Provides that, at a hearing on the merits of a CARE Act petition, a licensed behavioral health professional may testify as an expert concerning whether the respondent meets the criteria for CARE Act eligibility, provided that the court finds that the professional has special knowledge, skill, experience, training, or education sufficient to qualify as an expert under Evidence Code section 720.
- 9) Clarifies that the parties may agree to, and the court may approve, amendments to a CARE agreement; and that a court may, after a hearing, approve amendments to a CARE plan upon the finding that the amendments are necessary to support the respondent in accessing appropriate services and supports.

- 10) Requires a court and all relevant local public agencies to cooperate to develop a comprehensive set of objectives established to improve performance of the CARE system in a vigorous and ongoing manner, and authorizes the court to coordinate and participate in meetings to improve systems performance.
- 11) Clarifies the scope of rules which the Judicial Council may adopt to implement the CARE Act.
- 12) Permits a facility, as defined, to refer an individual being involuntarily treated under the LPS Act to a county behavioral health agency if they believe the individual meets or is likely to meet the criteria for the CARE process.
 - a) Such a referral must be authorized by a licensed behavioral health professional employed by or contracted by the facility, who has knowledge of the individual's case, and who has been involved in the individual's treatment during their involuntary hold.
 - b) The referral must be made as soon as clinically indicated as part of the individual's discharge planning process, and the referral must include specified contact information for the referred individual.
 - c) The county behavioral health agency must complete an assessment of the referred individual within 14 business days of the referral and file a CARE Act petition if it determines that the individual meets or is likely to meet the criteria for the CARE Act and does not engage in voluntary treatment.
 - d) DHCS must develop a referral form to be used by a facility, issue guidance relating to the referral process, and include data relating to this referral process in its annual CARE Act report.
 - e) This provision does not authorize a facility to continue an involuntary hold on a referred person who no longer meets the criteria for involuntary treatment solely for the purpose of allowing the county behavioral health agency to complete the referral assessment; and does not affect a facility's ability to make an AOT referral.
- 13) Provides that, if a CARE Act petition has been filed pursuant to a referral from an AOT court, LPS Act conservatorship proceeding, misdemeanor proceeding, or for a respondent within a juvenile court's dependency, delinquency, or transition jurisdiction, the CARE Act court and the referring or juvenile court may communicate with each other regarding the status of the respondent's cases and any relevant court orders while both cases are pending.
 - a) The courts may allow the parties to participate in the communication; all communications about the disposition of a respondent's case shall be conducted in court and on the record.
 - b) Communication between courts regarding schedules, calendars, court records, and similar matters may be conducted without informing the parties and off the record; a record must be made of all other communications

- between the courts, and the parties must be promptly notified of the communications and given access to the record.
- c) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 14) Permits a CARE plan to include, with the consent of the respondent and the entity or facility responsible for the services, additional services not otherwise specified in statute to support the recovery and stability of the respondent.
- 15) Requires DHCS to include, in its annual report to the Legislature regarding the implementation of the CARE Act, data regarding inter-court referrals made pursuant to 12).
- 16) Makes technical and nonsubstantive clarifying changes to the CARE Act.
- 17) Includes an urgency clause.

COMMENTS

1. Author's comment

SB 42 is a CARE Court clean-up bill that is urgently needed to assist in the implementation of California's CARE Court program before the program starts in all counties on December 1st of this year. The bill contains several CARE Court process changes requested by governmental entities in charge of CARE Court's implementation. Specifically this bill: ensures health professionals consider other alternatives before recommending the patient's conservatorship; updates the process by allowing the utilization of documents from past treatments, such as records and personal statements, as evidence; updates the rights advisement process; requires an investigatory report by the county agency regarding a CARE petition to be completed as soon as practicable, but within 30 court days rather than 14 court days; allows mental healthcare professionals to testify as experts ; allows additional services to support the recovery and stability of the respondent; and lastly, the bill gives the court will the discretion to provide ongoing notice throughout the CARE proceedings, thereby enhancing transparency.

2. Background on the CARE Act

In 2022, the Legislature passed SB 1338 (Umberg, Ch. 319, Stats. 2022), which established the CARE Act. The CARE Act is intended to provide essential mental health and substance use disorder services to severely mentally ill Californians – many of whom are homeless or incarcerated – while also preserving these individuals' self-

determination to the greatest extent possible. The CARE Act was subsequently modified by SB 35 (Umberg, Ch. 283, Stats. 2023), which made a number of clean-up changes to the CARE process and related changes before the first cohort of counties implemented the CARE Act.

The CARE Act is currently in the middle of a two-stage implementation rollout. The first cohort of counties – comprised of the Counties of Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne, and the City and County of San Francisco – implemented the CARE Act on October 1, 2023.¹ The remaining counties must implement the CARE Act no later than December 1, 2024.² Some counties in the second cohort have already implemented the CARE Act ahead of schedule: the County of Los Angeles began accepting CARE Act petitions in December of 2023, and the County of San Mateo began accepting CARE Act petitions in July of this year.³ DHCS may approve an implementation delay if a county experiences a state or local emergency and the implementation is necessary as a result of that emergency; an extension may be granted only once per county, and to no later than December 1, 2025.⁴

DHCS's first report to the Legislature regarding the implementation of the CARE Act from October 1, 2023, to June 30, 2024, is not due until December 1, 2024, so there is no comprehensive data regarding how many individuals are currently participating in the CARE Act process.⁵ Reports suggest, however, that fewer CARE petitions have been filed, and fewer respondents have received CARE agreements or plans, than anticipated. For example, Los Angeles expected to receive 4,000 CARE petitions in its first year, but as of July 2024, only 203 petitions had been filed, of which at least 14 petitions resulted in agreements with the Los Angeles County Department of Mental Health and at least 4 resulted in court-ordered care plans.⁶ Similarly, San Mateo reported only two CARE petitions were filed in the first six weeks of implementation.⁷ As of the end of May 2024, an estimated 502 petitions had been filed statewide.⁸

¹ Welf. & Inst. Code, § 5970.5(a).

² *Id.*, § 5970.5(b).

³ See County of Los Angeles Homeless Initiative, *Care Court in LA County* (Dec. 1, 2023), available at <https://homeless.lacounty.gov/news/care-court-in-la-county/>; San Mateo County Health, *Care Court in San Mateo County*, <https://www.smchealth.org/care>. All links in this analysis are current as of August 29, 2024.

⁴ Welf. & Inst. Code, § 5970.5(c).

⁵ See AB 102 (Ting, Ch. 38, Stats. 2023) § 133(24)(b).

⁶ Khairzada, *About 200 petitions filed for LA County CARE Court so far*, Spectrum News 1 (Jul. 29, 2024), <https://spectrumnews1.com/ca/la-west/health/2024/07/29/about-200-petitions-have-been-filed-for-la-county-care-court-so-far>.

⁷ Mata, *CARE Court links residents to resources*, San Mateo Daily Journal (Aug. 19, 2024), available at https://www.smdailyjournal.com/news/local/care-court-links-residents-to-resources/article_6f0c463e-5e0b-11ef-8a51-538eff8c3a7d.html.

⁸ Garrova, *California's Big Plan To Get Help For People With Serious Mental Illness Is Off To A Slow Start*, LAist (Jun. 5, 2024), <https://laist.com/news/health/6-months-in-la-county-is-far-behind-projections-for-care-court-program-leader-says-the-work-takes-time>.

3. The CARE Act process

The CARE process is largely overseen by the courts, which are trusted with ensuring that eligible individuals – termed “respondents” – are delivered mental health and substance use disorder services, as an alternative to involuntary conservatorship or imprisonment. CalHHS describes the CARE process as “an upstream diversion to prevent more restrictive conservatorship or incarceration.”⁹

The CARE process is unique within the state insofar as the court process can be initiated by a person who has a relationship with the potential respondent; other mental health procedures that go through the courts, such as AOT, require a county actor to initiate the process.¹⁰ Eligible petitioners include the CBHA; a spouse, parent, sibling, child, or grandparent of the respondent; a treating behavioral health professional; the county public guardian or public conservator; and other enumerated persons and entities.¹¹

There are strict criteria for CARE Act eligibility, including that the respondent suffer from a serious mental disorder, as defined; not be currently clinically stabilized in ongoing voluntary treatment; and either be unlikely to survive safely in the community, or need services and supports to avoid grave disability or the risk of serious harm to themselves or others.¹² The CARE Act also imposes strict, and short, deadlines for the CARE process; for example, after a petition is filed, the court must set the matter for an initial appearance on the petition within 14 court days if the petition establishes a prima facie case for CARE eligibility;¹³ and if the court orders a clinical evaluation of the respondent, the hearing to review the evaluation must be held within 21 days, and the evaluation must be provided to the respondent’s counsel no later than five days before that hearing.¹⁴

The CARE Act provides for two avenues to a court-ordered set of services. If the respondent and the CBHA are able to agree on a plan, it is known as a “CARE agreement”; the court may approve that agreement and set further hearings to monitor the respondent’s progress under the agreement.¹⁵ If parties are unable to reach an agreement, one or both parties may present a proposed “CARE plan” to the court; the court may accept a proposed plan or adopt a modified plan, which becomes a court

⁹ See CalHHS, Community Assistance, Recovery & Empowerment Act, <https://www.chhs.ca.gov/care-act/>.

¹⁰ *E.g.*, Welf. & Inst. Code, § 5346 (AOT petition must be filed by a county behavioral health director or their designee; specified family members or other persons may request that a petition be filed, but may not file the petition themselves).

¹¹ *Id.*, § 5974.

¹² *Id.*, § 5972.

¹³ *Id.*, § 5977.

¹⁴ *Id.*, § 5977.1(b). The court may continue the evaluation hearing for a maximum of 14 days upon stipulation of the respondent and the CBHA, unless there is good cause for a longer extension.

¹⁵ *Id.*, § 5977.1(a)(2).

order that lasts for up to one year.¹⁶ The CARE Plan may provide for behavioral health services and housing supports, as well as other services.¹⁷ The court may order medication only if it finds, by clear and convincing evidence, that the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication; to the extent such medication is administered, the medication may not be forcibly administered, and the respondent's failure to comply with a medication order shall not result in a penalty, such as terminating the CARE process.¹⁸

Eleven months after the CARE Plan was put in place, the court shall hold a hearing to determine whether to graduate the respondent from the CARE Plan or whether, with or without the consent of the respondent, as specified, to keep the respondent in the CARE program.¹⁹ A respondent may be appointed to the CARE process only once, for up to one additional year.²⁰

4. This bill makes a number of changes to the CARE Act process in advance of the statewide CARE Act implementation

This bill is intended to modify the CARE Act in advance of the December 1, 2024, deadline for the second cohort of counties to implement the CARE Act. The bill includes an urgency clause, so that the changes take effect prior to the implementation deadline.

The bill's changes to the CARE Act include:

- Clarifying that evidence of a respondent's past involuntary treatment under the LPS Act may be presented in a CARE Act petition through documentary evidence or a declaration from a petitioner with personal knowledge of the detentions.
- Eliminating a CARE court's ongoing obligation to inform a respondent of their rights if, after informing the respondent of their rights at the first hearing at which the respondent makes an appearance, the court finds that the respondent understands and waives the additional advisement.
- Requiring that a dismissal of a CARE petition be without prejudice unless a petition was specifically found to violate the CARE Act's prohibition on vexatious petitions and filing petitions for purposes of gaining advantage in a lawsuit.
- Extending the time window in which a CBHA must investigate a respondent and file a report in cases where the initial petition was filed by a person other than the CBHA, from 14 court days to "as soon as practicable, but within 30 court days."

¹⁶ *Id.*, § 5977.1(d).

¹⁷ *Id.*, § 5982.

¹⁸ *Id.*, § 5977.1(d)(3).

¹⁹ *Id.*, § 5977.3.

²⁰ *Ibid.*

- Clarifying that parties may agree to amendments to a CARE agreement or plan, with the court's approval.
- Requiring the courts and relevant local public agencies to cooperate develop a comprehensive set of objectives established to improve performance of the CARE system in a vigorous and ongoing manner; and providing that a court may coordinate and participate in meetings to improve system performance.
- Clarifying that a CARE plan may include services to support the recovery and stability of a respondent not listed specifically in statute, with the consent of the respondent and the entity or individual financially responsible for the services.

Additionally, modifies, beginning July 1, 2025, when an original CARE Act petitioner who is not a CBHA – for example, a family member or roommate of the respondent – may receive ongoing notices of the proceedings. Current law permits the CARE court judge to determine, in its discretion, whether to provide ongoing notice to an original petitioner after the CBHA has been substituted in as the petitioner. This bill instead establishes, beginning July 1, 2025, a presumption that an original petitioner will receive ongoing notice of the proceedings, unless the court determines on its own motion or on a motion from the respondent that notice to the original petitioner would be detrimental to the treatment or wellbeing of the respondent. The notice relating to continuances and the dismissal of a case must include specified information regarding the reason for the continuance or dismissal; however, the bill is clear that the notice may not include patient information protected by specified state or federal laws without the respondent's consent. Opponents of the bill have expressed concern that this provision permits notice over the objection of the respondent, which may hurt their recovery.

5. This bill establishes more connections between the CARE Act, the LPS Act, and other courts

In addition to the changes listed above, this bill adds provisions to the CARE Act and the wider Welfare and Institutions Code to create more connectivity between CARE courts, the courts and professionals involved in LPS Act and misdemeanor cases, and other courts which may refer individuals to CARE proceedings. These provisions will also be implemented on an urgency basis.

First, the bill requires a petition for the establishment of an LPS Act conservatorship and a petition to reappoint an LPS Act conservator to include an attestation from the relevant professional person or conservator that they have considered all alternatives to the conservatorship, including AOT and CARE Act proceedings, and that no suitable alternatives to the conservatorship are available.

Second, this bill authorizes a facility that is treating a person involuntarily under the LPS Act to refer that person to CARE Act proceedings if, in their professional opinion, the individual meets or is likely to meet the CARE Act criteria. A CBHA must complete an assessment of the referred person within 14 business days of the referral. The bill

explicitly states that this law does not permit a facility to detain a person who no longer meets the criteria for an involuntary hold for purposes of determining whether they may meet the CARE Act criteria. Opponents of the bill have expressed concern that facilities will nevertheless hold individuals longer than permitted under the LPS Act for purposes of completing CARE Act assessments. The bill also requires the DHCS to report on referrals made through this provision, giving the Legislature the opportunity to review whether LPS Act detentions are being illegally extended.

Third, this bill authorizes a CARE court judge to communicate with a judge who referred the respondent from an AOT, LPS Act, or misdemeanor proceeding, or with a judge of the juvenile court who referred the respondent under the court's dependency, delinquency, or transition jurisdiction. The bill permits the judges to communicate off the record and without notice to the parties on ministerial matters – schedules, calendars, and court records – but requires any substantive communication to be on the record, with the parties notified and given access to the record promptly. The bill also permits the judges to allow the parties to participate in the communication, and specifies that all communications about the disposition of a respondent's case must be conducted in court and on the record.

6. Arguments in support

According to California Professional Firefighters:

CARE Court as established by SB 1338 (Umberg, 2022) presents an important new method for providing behavioral health treatment to the Californians who most need it but are least able to access services. Once enrolled in a CARE plan, an individual is connected with much-needed services such as behavioral health care, medication, and supportive housing services in order to assist them with recovery and achieving stability. These services are intended for those with severe schizophrenia spectrum and psychotic disorders who are unable to care for themselves or make the complex decisions needed to direct their own care.

Oftentimes, the individual petitioners who began the process of having someone enrolled in CARE Court are a close friend or family member with close relationships with that person. That relationship, along with the fact that the petitioner has a legal tie to the individual in CARE, means that it is important for them to be aware of every step of the Court process and understand when a continuance is ordered or a case is dismissed. SB 42 provides clarity regarding when and to whom notifications are issued on those steps in the process, and ensures transparency and full understanding for all involved.

7. Arguments in opposition

According to ACLU California Action, Cal Voices, the California Youth Empowerment Network, Disability Rights California, and Mental Health America of California:

Disability Rights California (DRC), Mental Health America of California (MHAC), Cal Voices, ACLU California Action (ACLU) and the California Youth Empowerment Network (CAYEN) regretfully oppose SB 42 because it makes numerous changes to CARE Court that water down due process, reinforce coercive aspects of the program and threaten to harm the very people CARE Court is supposed to help. In addition, this bill was unnecessarily rushed through the Legislature with no opportunity for meaningful feedback...

We have not yet fully analyzed this measure, but our objections include the following:

- The bill provides ongoing notice rights to nonparties, even when the respondent objects. We support a family member's involvement if the respondent consents. Forcing continued involvement of family members on respondents violates their privacy and is not conducive to recovery.
- CARE Court requires a petition to include evidence of a person's prior mental health history. SB 42 permits evidence of prior hospitalizations to consist of a petitioner's declaration from personal knowledge, with no regard for the meaning of personal knowledge in the Evidence Code, and in case law.
- SB 42 eliminates, after the first hearing, the requirement that a court advise the respondent of their rights, if the court finds the respondent understands and waives additional advisement. This provision applies even when the respondent is not assisted by counsel.
- This bill permits a facility to refer a detained individual to CARE Court and allows a county 14 business days to evaluate the individual. This clearly incentivizes referring physicians to hold the person involuntarily in a hospital in order for the county to be able to find and assess this individual. Persons may not be held involuntarily in a mental hospital unless they meet criteria set out in the Lanterman-Petris-Short Act and also in the United States Supreme Court decision in *O'Connor v. Donaldson*. Nothing in the bill protects involuntary patients from being detained illegally.
- SB 42 permits courts to communicate about a respondent's case when there are proceedings in more than one court, e.g., Assisted Outpatient Treatment (AOT) and CARE Court simultaneously. Respondents should not be subject to multiple and duplicative civil commitment proceedings at one time. Communication between courts regarding multiple and duplicative proceedings seems calculated to ensure unfairness in the process.

SUPPORT

California Professional Firefighters
Families Advocating for the Seriously Mentally Ill

OPPOSITION

ACLU California Action
Cal Voices
California Youth Empowerment Network
Disability Rights California
Mental Health America of California

RELATED LEGISLATION

Pending Legislation: SB 1400 (Stern, 2024) among other things, modifies how a respondent must participate in the CARE Act process in order to have pending criminal charges dismissed. SB 1400 is pending before on Assembly Floor.

Prior Legislation:

SB 35 (Umberg, Ch. 283, Stats. 2023) made various modifications to the CARE Act in advance of the first cohort's implementation of the CARE Act in 2024.

SB 1338 (Umberg, Ch. 319, Stats. 2022) enacted the CARE Act and implements the CARE Court framework in a two-phased rollout, with the first cohort of counties to commence implementation on October 1, 2023, and the second cohort of counties to commence implementation on December 1, 2024.

PRIOR VOTES:

Assembly Floor (the official vote count was not available at the time this analysis was released)

Assembly Appropriations Committee (Ayes 11, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

[Because this bill was gutted and amended in the Assembly, the votes preceding the Assembly Judiciary Committee's vote are not relevant.]
