

Community Assistance,  
Recovery, and  
Empowerment (CARE)

# COURT PROGRAM

PRESENTATION TO THE ADULT COMMITTEE OF THE MENTAL  
HEALTH ADVISORY BOARD, APRIL 26, 2022

# SB 1338 & AB 2830

- ▶ Governor Newsome's vague CARE court proposal earlier this year has come into focus with these bills.
- ▶ Both bills introduced in February 2022 but have been significantly amended as recently as early April.
- ▶ SB 1338 (Senators Umberg and Eggman) set for hearing in the Senate Judiciary Committee on April 26<sup>th</sup> at 10:00 a.m. (for instructions how to listen in on the hearing, see: <https://sjud.senate.ca.gov>)

# What are the Legislative Findings that Support the Need for the CARE Courts?

- ▶ *Thousands of Californians suffer from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death. These individuals, families, and communities deserve a path to care and wellness.*
- ▶ *With advancements in behavioral health treatments, many people with untreated schizophrenia spectrum and psychotic disorders can stabilize, begin healing, and thrive in community-based settings, with the support of behavioral health services, stabilizing medications, and housing. But too often this comprehensive care is only provided after arrest, conservatorship, or institutionalization.*

# What are the Legislative Findings that Support the Need for the CARE Courts?

- ▶ *A new approach is needed to act earlier and to provide support and accountability, both to individuals with these untreated severe mental illnesses and to local governments with the responsibility to provide behavioral health services. California's civil courts will provide a new process for earlier action, support, and accountability, through a new Community Assistance, Recovery, and Empowerment (CARE) Court Program.*
- ▶ *Self-determination and civil liberties are important California values that can be advanced and protected for individuals with these untreated severe mental illnesses and without current capacity for medical decisionmaking, with the establishment of a new CARE Supporter role, in addition to legal counsel, for CARE proceedings.*
- ▶ *California continues to act with urgency to expand behavioral health services and to increase housing choices and end homelessness for all Californians. CARE provides a vital solution for some of the most ill and most vulnerable Californians.*

# Who is Eligible to be in a CARE Court?

- ▶ 18 years of age or older; and
- ▶ A diagnosis of schizophrenia spectrum or other psychotic disorder; and
- ▶ Not clinically stabilized in on-going treatment with the county behavioral health agency; and
- ▶ Currently lacks medical decision-making capacity; and
- ▶ Residing in, ***found in***, or facing criminal/civil court proceedings in the county.

# Who Can File a Petition to Initiate CARE Court Proceedings?

- ▶ An adult who resides with the client (“respondent”).
- ▶ An adult spouse, parent, sibling, or child of the client.
- ▶ The director of a hospital, or their designee, in which the client is hospitalized (including hospitalization pursuant to “5150” and “5250”).
- ▶ The director of a public or charitable organization, agency, or home, or their designee, currently or previously providing behavioral health services to the client or in whose institution the client resides.
- ▶ A qualified behavioral health professional, or their designee, who is or has been either supervising the treatment of, or treating the client.
- ▶ A first responder (peace officer, fire fighter, paramedic, EMT, mobile crisis response worker, homeless outreach worker).
- ▶ The Public Guardian or conservator, or their designee.
- ▶ The Director of a county behavioral health agency, or their designee.
- ▶ AND, a COURT may refer an individual from AOT, Conservatorship proceedings, and Misdemeanor incompetency proceedings to the CARE Court program.

# What Must be Contained in the Petition?

- ▶ **Facts supporting the petitioner's belief that the client meets CARE court criteria; and**
- ▶ **EITHER of the following:**
  - ▶ **An affirmation or affidavit of a qualified behavioral health professional, stating that based on an examination of the client within the last three months OR a review of records and collateral interviews (if the client did not wish to be examined), the client meets CARE court criteria.**
  - ▶ **The client was “detained for intensive treatment” pursuant to section 5250 within the previous 90 days.**

# What Rights Does the Client Have During the CARE Court Process?

- ▶ To receive notice of the proceedings.
- ▶ To receive a copy of the court ordered evaluation.
- ▶ To be represented by counsel at all stages of the proceedings.
- ▶ **To be supported by a “Supporter” at ALL stages of the proceedings.**
- ▶ To be present at all the proceedings (in person or “remotely”).
- ▶ To present evidence, call witnesses, cross-examine witnesses.
- ▶ To appeal decisions.

# What Happens Once a Petition is Filed? (Part I)

- ▶ Court appoints counsel and a "**Supporter**" and sets an initial hearing within 14 days.
- ▶ Client's presence at the hearing may be waived or excused.
- ▶ Court orders the county behavioral health agency to work with the client, counsel, and the supporter to see if the client will engage in a treatment plan.
- ▶ If the client agrees to a treatment plan, a "settlement agreement" is entered into and the matter is continued 60 days for a progress report.

# What Happens Once a Petition is Filed? (Part II)

- ▶ If there is no settlement agreement, the court orders the county behavioral health agency to evaluate the client.
- ▶ If the court finds that based on the evaluation and any other evidence, the client meets the criteria, then the county behavioral health agency, the client, counsel, and the supporter will all be ordered to jointly develop a “**CARE Plan.**”
- ▶ Court approval of the **CARE Plan** begins the ONE YEAR CARE program timeline.
- ▶ The Care Plan means appropriate services and supports, including but not limited to **clinical care, stabilization medications,** and a **housing plan.**

# What Happens Once a Petition is Filed? (Part III)

- ▶ Regular “status conferences” set to monitor progress
- ▶ “One year status conference” set in the 11<sup>th</sup> month to determine whether to graduate the client from the program with a “**graduation plan**” OR to continue the CARE plan for up to one more year, at the client’s choosing.
  - ▶ The “**graduation plan**” is a strategy to “support a successful transition from the court jurisdiction and may include on-going behavioral health care services, such as medication management, peer support, housing support, etc.
- ▶ The “graduation plan” also may include a “**Psychiatric Advance Directive (“PAD”)**.”
  - ▶ A Psychiatric Advance Directive is a legal document that allows a person who suffers from a mental illness to protect their autonomy by documenting their preferences for treatment in advance of a mental health crisis.

# What Happens if the Client is Not Participating in the CARE Proceedings?

- ▶ *“If, at any time during the proceedings, the court determines by a preponderance of evidence that the respondent is not participating in CARE proceedings, after the respondent receives notice, or is failing to comply with their CARE plan, the court may terminate the respondent’s participation in the CARE program. **The court may utilize existing legal authority pursuant to Article 4 (commencing with Section 5200) of Chapter 2 of Part 1, to ensure the respondent’s safety.** The subsequent proceedings may use the CARE proceedings as a factual presumption that no suitable community alternatives are available to treat the individual.”*

# What Happens if the County is Not Complying with Court Orders?

- ▶ *“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 one thousand dollars (\$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.”*

# Who is the Supporter and What is Their Role?

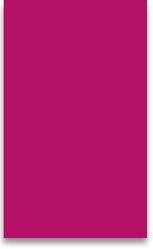
- ▶ Specified training will be required.
- ▶ Client can, but doesn't have to, choose who the Supporter is.
- ▶ Expressed goal is to promote autonomy and informed decision-making and prevent "more restrictive protective mechanisms, such as conservatorship.
- ▶ Client may have Supporter present at ALL proceedings.

# What is the CARE Plan?

- ▶ All medically necessary mental health or substance abuse treatment, or both.
- ▶ “Specialty mental health services and substance use disorder treatment,” when medically necessary, must be part of the CARE plan.
- ▶ Assertive Community Treatment (ACT) is encouraged.
- ▶ May include medically necessary anti-psychotic medications which may be provided as long lasting injections (court cannot issue Involuntary Medication Order as part of Care Plan).
- ▶ A Housing Plan must be part of the plan BUT **CARE courts cannot order housing or require a county to provide housing.**
- ▶ However, CARE court clients shall have **priority** for any bridge housing, if funded.

# Comparison with Assisted Outpatient Treatment (AOT)

- ▶ Eligibility criteria is different (broader in some ways, narrower in others).
- ▶ Counties cannot “opt out.”
- ▶ Court has power to fine counties who do not comply.
- ▶ Path to conservatorship for non-compliance is slightly different.
- ▶ The “Supporter” is unique to the CARE court proposal.
- ▶ But the similarities arguably outweigh the differences. So, the question is: **IF AOT HAS FAILED TO PROVIDE EFFECTIVE TREATMENT TO THIS POPULATION, WHAT IS IT ABOUT THE CARE COURT PROPOSAL THAT WILL MAKE THE DIFFERENCE??**



**Questions & Thoughts?**