

Proposed Revisions to Care Court Legislation
SB 1338, as amended May 19, 2022
(6/6/22)

SECTION 1.

The Legislature finds and declares all of the following:

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

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

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

(d) Self-determination and civil liberties are important California values that can be advanced and protected for individuals with these untreated severe mental illnesses with the establishment of a new CARE Supporter role, in addition to legal counsel, for CARE proceedings.

(e) 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.

(f) Implementation of CARE will require both the investment of substantial State resources, and adequate time to allow development of service networks capable of providing the required services and supports. It is therefore appropriate to ramp up the statewide implementation of CARE through a deliberate process that involves ongoing review of the performance of the CARE program in accordance with established metrics, and legislative oversight as the program expands.

(g) Because CARE may require individuals to participate in proceedings to which they would not otherwise consent, it is proper only in the most serious cases where CARE proceedings are the least restrictive option, consistent with Section 5600.1 of the Welfare and Institutions Code.

SEC. 2.

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

Commented [AJW1]: This language is a placeholder for further discussions regarding the ramp up of CARE programming statewide. See Section 5 below.

1374.723.

(a) A health care service plan contract issued, amended, renewed, or delivered on or after July 1, 2023, shall cover the cost of investigations and evaluations pursuant to Section 5977 of the Welfare and Institutions Code and the provision of all health care services for an enrollee when required or recommended for the enrollee pursuant to a CARE agreement or a CARE plan approved by a court in accordance with the court's authority under Sections 5977 and 5982 of the Welfare and Institutions Code, regardless of whether the services are provided by an in-network or out-of-network provider.

Commented [AJW2]: Intake investigations for new CARE court petitions are anticipated to be one of the highest volume elements of the CARE process representing significant public cost. It is therefore critical that those costs be covered by any private insurance the respondent may have.

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

(2) A health care service plan may conduct a postclaim review to determine appropriate payment of a claim. Payment for services subject to this section may be denied only if the health care service plan reasonably determines the enrollee was not enrolled with the plan at the time the services were rendered, the services were never performed, All services arranged or delivered by a county behavioral health agency shall be reimbursed.

Deleted: , or the services were not provided by a health care provider appropriately licensed or authorized to provide the services.

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

Commented [AJW3]: This catch-all is necessary to ensure that the cost of all CARE-related behavioral health services for insured individuals are covered by their insurance, and do not become a public expense.

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

(B) The average of the contracted commercial rates paid by the health care service plan for the same or similar services in the geographic region.

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

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

Commented [AJW4]: This will ensure that insurers do not use their bargaining leverage to reimburse providers of CARE-related services at lower rates than paid to other (private) providers.

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(2) Services provided to an enrollee pursuant to this section for which there is no Medi-Cal fee-for-service or commercial rate shall be reimbursed at a rate equal to 100 percent of the service provider's actual costs, including indirect costs calculated in accordance with the uniform cost principles promulgated by the federal Office of Management and Budget.

Commented [AJW5]: CARE entails a suite of new services and activities (e.g., the aforementioned investigation) for which there may not be an established rate. It is therefore necessary to specify a method of determining the reimbursement rate in those cases. (Actual cost plus overhead is a common method of fee-setting in the governmental and nonprofit context. For the applicable OMB uniform cost principles, see 2 CFR § 200.400 et seq.)

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

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

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

until the department adopts regulations pursuant to the Administrative Procedure Act. Such regulations shall be adopted no later than July 1, 2024.

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

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

SEC. 3.

Section 10144.54 is added to the Insurance Code, to read:

10144.54.

(a) An insurance policy issued, amended, renewed, or delivered on or after July 1, 2023, shall cover the cost of investigations and evaluations pursuant to Section 5977 of the Welfare and Institutions Code and the provision of all health care services for an insured when required or recommended for the insured pursuant to a CARE agreement or a CARE plan approved by a court in accordance with the court's authority under Sections 5977 and 5982 of the Welfare and Institutions Code, regardless of whether the services are provided by an in-network or out-of-network provider.

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

(2) An insurer may conduct a postclaim review to determine appropriate payment of a claim. Payment for services subject to this section may be denied only if the insurer reasonably determines the insured was not insured at the time the services were rendered, the services were never performed. All services arranged or delivered by a county behavioral health agency shall be reimbursed.

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

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

(B) The average of the contracted commercial rates paid by the insurer for the same or similar services in the geographic region.

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

(2) Services provided to an insured pursuant to this section for which there is no Medi-Cal fee-for-service or commercial rate shall be reimbursed at a rate equal to 100 percent of the service provider's actual costs, including indirect costs calculated in accordance with the uniform cost principles promulgated by the federal Office of Management and Budget.

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

(d) Services provided to an insured pursuant to a CARE agreement or a CARE plan shall not be subject to copayment, coinsurance, deductible, or any other form of cost sharing. An individual

Commented [AJW6]: This cross-reference to the California Mental Health Parity Act is meant to clarify that insurers' obligations under the CARE Act complement, rather than supersede, their existing obligations to provide mental health parity.

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

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

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or entity shall not bill the insured, nor seek reimbursement from the insured, for services provided pursuant to a CARE agreement or CARE plan, regardless of whether such service is delivered by an in-network or out-of-network provider.

(e) No later than July 1, 2023, the department may issue guidance to insurers regarding compliance with this section. This guidance shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Guidance issued pursuant to this subdivision shall be effective only until the department adopts regulations pursuant to the Administrative Procedure Act. Such regulations shall be adopted no later than July 1, 2024.

(g) This section does not excuse a health care service plan from complying with Section 10144.5.

SEC. 3. SEC. 4.

Section 1370.01 of the Penal Code is amended to read:

1370.01.

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

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

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

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

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

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

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

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the

Commented [AJW7]: This sentence appears to be referring to a treatment plan ordered under Penal Code section 1001.36 (i.e., diversion), rather than a CARE plan. The reference to CARE here is likely an error.

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defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

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

(iv) Refer the defendant to the county behavioral health agency for possible CARE proceedings. If the defendant is accepted into CARE, the charges shall be dismissed pursuant to Section 1385.

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

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

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

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

SEC. 5.

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

Commented [AJW8]: This revision conforms to and integrates the new investigation/screening mechanism proposed for the "front end" of the CARE Court process.

Deleted: *CARE program pursuant to Section 5978 of the Welfare and Institutions Code*

Deleted: *A hearing to determine eligibility for CARE shall be held within 14 days after the date of the referral. If the hearing is delayed beyond 14 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing.*

Commented [AJW9]: Limitation of MHSA funding to services that are strictly "voluntary in nature" has been an integral principle of this program since the earliest days of implementation. (See https://petris.org/wp-content/uploads/2013/02/PetrisBriefingPaper_MentalHealthServicesAct.pdf - p. 6.) While the level of legal coercion in the CARE process is not entirely clear as a practical matter, court-ordered services, or those to which an individual submits under threat of court order, are not entirely voluntary in nature, and are this inappropriate for MHSA funding.

Deleted: *SEC. 5.1
Section 5801 of the Welfare and Institutions Code is amended to read:*

¶

5801.1

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

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

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

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

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

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

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment, or the client is under a court order for assisted outpatient treatment pursuant to Section 5346 and, prior to the filing of the petition for assisted outpatient treatment pursuant to Section 5346, the client has been offered an opportunity to participate in a treatment plan on a voluntary basis and has failed ...

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PART 8. The Community Assistance, Recovery, and Empowerment Act
CHAPTER 1. General Provisions

5970.

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

5970.5.

(a) This part shall apply to and be operative in the Initial Cohort Counties. For purposes of this section, "Initial Cohort Counties" means those counties, not more than ten (10), selected by the State Department of Health Care Services, with the concurrence of the Board of Supervisors, for the initial implementation of the CARE program.

(b) This Part shall become operative on January 1, 2024.

(c) This section shall remain in effect only until January 1, 2029, and as of that date, is repealed, unless a later enacted statute that is enacted before January 1, 2029, deletes or extends that date.

(d) Notwithstanding any other law, repeal of this section, as set forth in subdivision (b), renders the operation of this Part subject to review by the appropriate policy committees of the Legislature, who shall consider how to extend the operation of this Part, and how to expand this Part to additional counties, based upon the demonstrated results of the CARE program and any reports submitted pursuant to Section 5986.

5971.

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

(a) "CARE agreement" means an agreement entered into through the initial engagement period in the CARE court process that does not include court orders. A CARE agreement includes the same elements as a CARE plan to support the respondent in accessing services and supports.

(b) "CARE plan" means an individualized, appropriate range of services and supports as set forth in this Part, which may include clinically appropriate behavioral health care services and stabilization medications, housing, and enumerated services, pursuant to Section 5982.

(c) "CARE supporter" means an adult, designated pursuant to Chapter 4 (commencing with Section 5980), who assists the person who is the subject of the petition, which may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE court process.

(d) "County behavioral health agency" means the local director of mental health services described in Section 5607, or their designee. The county behavioral health agency shall consult with and assist with coordination of services provided by other county agencies under a CARE agreement or CARE plan.

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

Commented [AJW10]: This language is a placeholder for further discussions regarding the ramp up of CARE programming statewide. Counties strongly urge that a realistic, readiness-based implementation schedule, in which better-resourced and willing counties are the first adopters, is absolutely critical to setting the program up for long-term success. However, the specific details of that schedule remain open for further conversation.

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Commented [AJW11]: It is necessary to specify that all behavioral health services and medications must be clinically appropriate, as only such services are reimbursable by Medi-Cal. More broadly, Section 5982 sets forth important guardrails regarding the contents of a CARE plan, which are important to cross-reference here.

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Commented [AJW12]: To avoid confusion and inter-agency conflict, it is necessary to specify *one* clearly identifiable agency to have principal responsibility for coordinating the county's services under this program. However, since behavioral health is itself not responsible for providing many of the services to be coordinated through CARE, it is equally important to ensure ongoing consultation with other responsible agencies throughout the CARE process.

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(f) "Graduation plan" means a CARE plan that is developed by the person who is the subject of the petition, with assistance from a CARE supporter, as needed, and the person's treatment team and any other party who may be responsible for providing or paying for services to the respondent after completion of CARE proceedings. The graduation plan shall include a strategy to support a successful transition out of court jurisdiction and may include a psychiatric advance directive. Services identified in a graduation plan shall not be court-ordered or otherwise subject to this Part.

Commented [AJW13]: This clarification is needed to clearly delineate CARE services from the non-court ordered long-term treatment provided to CARE graduates.

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

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

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

(2) A person who has been granted a waiver of licensure requirements by the State Department of Health Care Services pursuant to Section 5751.2.

(i) "Parties" means the respondent, the county behavioral health agency in the county where proceedings under this part are pending, and other parties added by the court pursuant to Section 5977.

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

(k) "Respondent" means the person who is subject to the petition for CARE court proceedings.

Commented [AJW14]: Behavioral health practitioners have indicated that the proposed definition of "schizophrenia spectrum," etc. was unhelpful and superfluous to the DSM criteria – and could potentially become outdated in the future as the state of knowledge in this area evolves.

CHAPTER 2. Process **5972.**

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

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

(b) The person is currently experiencing severe mental illness, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis of schizophrenia spectrum or other psychotic disorder, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, provided that nothing in this section shall be construed to establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature including but not limited to physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who meets the criteria set forth in this section shall not be ineligible to participate in a CARE plan if they also have a co-occurring diagnosis of substance use disorder as defined in Section 5452.

Deleted: (l) "Schizophrenia spectrum and other psychotic disorders" is the category of mental health conditions in which psychosis is the primary symptom. Psychosis involves hallucinations or delusions.¶

Commented [AJW15]: This provision has been revised to use terminology more common in the behavioral health field, and to clarify that certain medical conditions that are not amenable to behavioral health treatment are not subject to the CARE process.

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(c) The person is not clinically stabilized in on-going treatment with the county behavioral health agency or other treatment provider.

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

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

(f) It is likely that the person will benefit from CARE court.

5973.

Proceedings under this part may be commenced in any of the following:

(a) ~~The respondent's county of residence.~~

(b) ~~The county where the respondent is found. If the respondent does not reside in the county in which proceedings are initiated under this subdivision, as determined in accordance with Section 244 of the Government Code, and this Part is operative in the respondent's county of residence, the proceeding shall be transferred to the county in which the respondent's county of residence as soon as reasonably feasible. The expense of the transfer and all expenses in connection with the transfer and for services provided to the respondent shall be the responsibility of the transferor county until the receipt and filing of the finding and order of transfer in the court of the transferee county.~~

(c) The county where the respondent is facing ~~criminal proceedings.~~

5974.

The following persons may file a petition to initiate CARE proceedings:

(a) A person 18 years of age or older with whom the respondent resides.

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

(c) The director of a ~~general acute care or psychiatric hospital licensed pursuant to Section 1250 of the Health and Safety Code, or their designee, in which the respondent is hospitalized, including hospitalization pursuant to Section 5150 or 5250.~~

(d) ~~A licensed behavioral health professional, who is either supervising the treatment of, or treating the respondent for a mental illness.~~

(e) ~~A first responder, as defined in Section 8562 of the Government Code, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation pursuant to Section 5150, multiple attempts to engage the respondent in voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance.~~

(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 county behavioral health agency, or their designee, of the county in which the respondent ~~resides or is found.~~

Commented [AJW16]: The proposed criterion regarding "impaired insight," etc. is overly broad – and highly subjective and discretionary – and would result in both dramatic expansion of the CARE program beyond the intended population, and inconsistent outcomes from case-to-case.

Deleted: *At least one of the following is true:¶*
(1) The person's impaired insight or judgment presents a risk to their health and safety.¶
(2)

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Commented [AJW17]: Compare Welfare and Institutions Code section 376 (pertaining to transfer of child welfare cases).

The provisions for determining appropriate venue – and thus which county has responsibility – have potentially significant consequences that may place counties at odds with one another. Further consideration by counties stakeholders is encouraged.

Commented [AJW18]: There is no specified referral mechanism into CARE from "civil proceedings" – and the venue statutes for civil cases (Code Civ. Proc. §§ 392 et seq.) do not ensure any meaningful connection between where such proceedings may be pending and the respondent's physical location, residence, or service needs.

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Commented [AJW19]: The revisions in this section have the common theme of ensuring that those persons most directly affected have the ability to initiate CARE proceedings, while balancing that interest with the need to avoid overloading the "front end" of the system (and due ...)

Deleted: *(d) The director of a public or charitable organization, agency, or home, or their designee, current ...*

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Commented [AJW20]: The general reference to "first responders" (and non-exclusive list of examples) was ...

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

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

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(j) The respondent.

Commented [AJW21]: We do not recommend injecting prosecuting attorneys into the CARE court process.

5975.

The petition shall be signed under the penalty of perjury and contain all of the following:

Deleted: (k) A prosecuting attorney, pursuant to subdivision (b) of Section 5978.¶

(a) The name of the court to which it is addressed.

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(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 assertion that the respondent meets the CARE criterion, including identification of any providers who have provided behavioral health treatment services to the respondent, including county agencies, if known.

Deleted: the county behavioral health agency in the county where the respondent resides

(g) Either of the following:

(1) A request for investigation by the county behavioral health agency pursuant to Section 5977, subdivision (a)(2),

Commented [AJW22]: As noted below, we have proposed significantly revising the "front end" of the CARE process, to include an initial screening investigation by the county behavioral health agency.

(2) Evidence that the respondent was detained for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 within the previous 90 days.

We strongly urge against the suggested affidavit provisions for several reasons. Where other states require submission of a professional's affidavit - e.g., New York's Kendra's law - they typically incorporate a much larger role for the professional, including that they participate and testify in the court proceedings. (See NY CLS Men Hyg § 9.60, subds. (e)(3) and (h)(1).) Further, they generally require that the professional personally examine the respondent. (Id., subds. (h)(2)-(3).) More broadly, requiring that such an affidavit be presented with the petition may perversely disadvantage those who most need CARE services - i.e., those who do not themselves - or their families - have the resources to engage such a professional. Our proposed screening investigation mechanism avoids these inequities.

5976.

The respondent shall:

(a) Receive notice of the hearings.

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

(c) Be represented by counsel at all stages of a proceeding commenced under this chapter.

(d) Have a CARE supporter, as described in Section 5982.

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

(f) Have the right to present evidence.

(g) Have the right to call witnesses.

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

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

Deleted: An affidavit of a licensed behavioral health professional, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made appropriate attempts, but has not been successful, in eliciting the cooperation of the respondent to submit to an examination, and that the licensed 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

5976.5.

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

Deleted: or the court makes a finding described in Section 5977 or appears remotely

(b) The individual who is the subject of the proceeding may demand that the hearing be public and be held in a place suitable for attendance by the public.

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

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

(e) Before commencing a hearing, the judge, hearing officer, or other person conducting the hearing shall inform the respondent of their rights under this section.

5977.

(a) (1) Upon receipt by the court of a petition, except a petition described in subdivision (g)(2) of Section 5975, the clerk of the court shall refer the matter to the county behavioral health agency for an investigation in accordance with subdivision (b). Upon receipt by the court of a petition described in subdivision (g)(2) of Section 5975, the clerk of the court shall refer the matter to the county behavioral health agency for an evaluation pursuant to subdivision (c).

(2) The court shall appoint counsel, unless the respondent has their own counsel, and a CARE supporter, unless the respondent chooses their own CARE supporter or chooses not to have a CARE supporter, within five calendar days of filing.

(3) The petitioner shall be responsible for serving a copy of the petition upon, and providing notice of the hearing to, the respondent, the respondent's counsel and CARE supporter, and the county behavioral health agency in the county where the petition is filed.

(b)(1) The county behavioral health agency shall immediately investigate as necessary to determine whether the respondent meets, or is likely to meet, the diagnostic criteria for CARE proceedings. The investigation shall be completed no later than twenty-one (21) days after receiving the referral.

(2) If the county behavioral health agency determines that the respondent does not meet, and is not likely to meet, the diagnostic criteria for CARE proceedings, the county behavioral health agency shall file a report and recommendation with the court. The court set an initial hearing in accordance with subdivision (e) not later than 14 days from the date the report is filed.

(c)(1) If the county behavioral health agency determines that the respondent meets, or is likely to meet, the diagnostic criteria for CARE proceedings, or receives a petition described in subdivision (g)(2) of Section 5975, the county behavioral health agency shall conduct a clinical evaluation of the respondent through a licensed behavioral health professional. The evaluation shall be completed within thirty (30) days.

(2) The county behavioral health agency shall work with the respondent and the respondent's counsel and, subject to the respondent's consent, the CARE supporter to engage in voluntary treatment consistent with the evaluation through a CARE Agreement. A copy of the CARE agreement signed by the respondent, the respondent's counsel, and an authorized

Commented [AJW23]: We have proposed to re-design the "front end" of the CARE process to promote efficiency, while retaining robust court oversight. This initial investigation is contemplated to involve something less than a full independent clinical evaluation, and is expected to more closely resemble the screening-type inquiry undertaken by the county social worker in child welfare cases (Welfare and Institutions Code sections 329 and 331). If the investigation concludes that the respondent likely meets criteria, the case automatically moves to the clinical evaluation stage. If petition is "screened out," the matter is set for court review. Subsequent stages are similarly designed so that the process moves administratively if the respondent is found to meet criteria and the parties are in agreement, but are brought promptly before the court if disputes develop. This approach reduces the number of court hearings, while ensuring that the court retains ultimate control to ensure that CARE is provided appropriately.

Commented [AJW24]: As part of the re-design of the front end, a number of provisions have been re-located within the statute without substantive change.

Commented [AJW25]: Service of the paperwork is both necessary as a practical matter – to ensure adequate notice – and is appropriate as a legal matter to bring all relevant parties into the jurisdiction of the court.

representative of the county behavioral health agency shall be filed with the court. The clerk of the court shall set a progress hearing for 60 days after filing of the CARE agreement.

(3) If the respondent and the county behavioral health agency do not reach a CARE agreement within (30) days after the evaluation is completed, a copy of the evaluation shall be filed with the court. The court shall set a clinical evaluation review hearing in accordance with subdivision (f) not later than 14 days from the date the evaluation is filed.

(d) If the county behavioral health agency is unable to locate the respondent during the investigation or evaluation, or the respondent refuses to cooperate with the investigation or evaluation, the county behavioral health agency shall file a report stating these facts with the court. The court shall set a review hearing not later than 14 days from the date the report is filed. At the review hearing, the court may order the respondent to cooperate with the investigation or evaluation, and continue the hearing for not less than sixty (60) days to allow for a further investigation or evaluation in accordance with this subdivision. If the respondent does not cooperate or cannot be located for the further investigation or evaluation, such that the county behavioral health agency cannot determine whether the respondent meets the diagnostic criteria for CARE proceedings, the court shall dismiss the petition without prejudice.

(e) (1) At an initial hearing, the court shall determine if the respondent, prima facie, meets the CARE criteria. The court shall consider any report and recommendation filed by the county behavioral health agency. The report, and any hearsay evidence contained in it, is admissible and constitutes competent evidence upon which the determination of whether the respondent, prima facie, meets the CARE criteria may be based.

(2) If the court finds that the evidence does not support a finding that the respondent, prima facie, meets CARE criteria, the court shall dismiss the case without prejudice, unless the court makes a finding on the record that the petitioner's filing was not in good faith in which case the dismissal shall be with prejudice. Any new petition shall be based on changed circumstances that warrant a new petition.

(3) If the court finds that the respondent, prima facie, meets the CARE criteria, the court shall order a clinical evaluation of the respondent in accordance with subdivision (c).

(f) (1) At a clinical evaluation review hearing, the court shall review the evaluation and any other evidence submitted by the petitioner, the county behavioral health agency, or the respondent. The petitioner and respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court, except as provided in subsection (2).

(2) (A) The evaluation, and any hearsay evidence contained in it, is admissible and constitutes competent evidence upon which the determination of whether the respondent meets the CARE criteria may be based.

(B) The preparer of the evaluation shall be made available for cross-examination upon a timely request by a party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request.

Commented [AJW26]: It is critical to clearly and appropriately address circumstances where the respondent cannot be found, or does not cooperate. Counties cannot serve persons they cannot find, and CARE provides no mechanism for counties to compel individuals to engage. We have proposed a mechanism for allowing the court to exert pressure on uncooperative respondents, while ensuring that counties are not held responsible for providing services when they are unable to do so due to the respondent's conduct.

Commented [AJW27]: This determination should include all information available to the court, including anything submitted by the county, not just the petitioner's evidence. ("Prima facie" does not describe a uniform quantum of evidence in all circumstances, and in many contexts allows for consideration of evidence beyond that submitted by the moving party. See, e.g., *In re K.L.* (2016) 248 Cal.App.4th 52, 61-62; *People v. Scott* (2015) 61 Cal.4th 363, 384.)

Deleted: set an initial hearing not later than 14 days from the date the petition is filed with the court.¶

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Deleted: which shall occur 14 days after the petition is filed with the court

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Commented [AJW28]: Given the preliminary nature of the initial hearing, and the limited determination the court

Deleted: (2) All of the following shall be required for the hearing:¶

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Commented [AJW29]: Compare Welf. & Inst. Code, § 355 and Senate Bill 965 (Eggman), as amended Apr. 6, 2022.

(C) This section shall not be construed to limit the right of a party to subpoena a witness whose statement is contained in the evaluation or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

(3) The hearing may be continued a maximum of 30 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(3) (A) If the court finds that the evaluation and other evidence submitted in accordance with this subdivision prove by clear and convincing evidence that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the CARE supporter to jointly develop a CARE plan within the scope set forth in Section 5982. In developing the CARE plan, the county behavioral health agency shall use its best efforts to coordinate with agencies and entities providing those services and supports described in Section 5982 that are not the responsibility of the county behavioral health agency, and shall report any input received from those agencies or entities to the court.

(B) (i) The CARE plan shall be developed by the county behavioral health agency, the respondent, and subject to the respondent's consent, the CARE supporter.

(ii) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, or through any entity that is receiving funds under a program identified in Section 5982, that entity may agree to provide the service or support or the court may, on motion of either party, add the entity as a party to the CARE proceeding and order that entity to provide the services and supports set forth in the CARE plan consistent with Section 5982.

(iii) If the respondent is an American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), or 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is otherwise receiving services from an Indian health care provider or tribal court, the county behavioral health agency shall use best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(C) The order to develop a CARE plan may be appealed by the petitioner, the county behavioral health agency, or the respondent in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.

(D) The date for the hearing to review the proposed CARE plan shall be set not more than 60 days from the date of the order to develop a CARE plan.

(4) If the court finds that the evidence does not, by clear and convincing evidence, support that the respondent meets the CARE criteria, the court shall dismiss the petition with prejudice, and any new petition must be based on changed circumstances that warrant a new petition.

(g) All of the following shall be required for an initial hearing or clinical evaluation review hearing conducted under this subdivision:

(A) The petitioner shall appear in person or through counsel. If the petitioner does not appear, the matter shall be dismissed.

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Commented [AJW30]: For reasons noted above, we recommend cross-referencing both the permissible scope of the CARE plan and the coordinating role of county behavioral health in this section.

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Commented [AJW31]: This provision has been amended to both (1) clarify the court's authority, and (2) include within that authority all organizations that receive funding under the programs designated in Section 5982, including non-governmental organizations (which have received large percentages of the available funds under many of the designated programs).

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Commented [AJW32]: Compare Welfare and Institutions Code section 395.

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(B) The respondent may waive their appearance and appear through their counsel. Counsel may not waive the respondent's personal appearance without the informed consent of the respondent. If the respondent does not waive their appearance and does not appear at the hearing, and appropriate attempts to elicit the attendance of the respondent have failed, the matter shall be dismissed.

(C) A representative from the county behavioral health agency shall be present, and may be represented by the county counsel.

(D) The CARE supporter shall be allowed to be present, subject to the consent of the respondent.

(E) If the respondent is enrolled in a federally recognized Indian tribe or is otherwise receiving services from an Indian health care provider, tribal court, or tribal organization, a representative from the program, tribe, or tribal court shall be allowed to be present, subject to the consent of the respondent.

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

(h) (1) The hearing to review the proposed CARE plan shall occur within 30 days after the date of the order to develop a CARE plan, unless there is good cause for an extension.

(2) The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(3) (A) After reviewing the proposed CARE plan and hearing from the parties, and finding that the proposed CARE plan is consistent with this Part, the court may issue any orders necessary to implement the plan, including prioritization for those services and supports, subject to available funding and in compliance with applicable laws pursuant to Section 5982.

(B) To the extent that the court orders medically necessary stabilization medications, including antipsychotic medications, the medication shall not be forcibly administered, absent a separate order by the court pursuant to Sections 5332 to 5336, inclusive.

(4) If the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed and the court may grant a continuance for no more than 30 days, unless there is good cause for an extension.

(5) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance for no more than 30 days, unless there is good cause for an extension.

(6) If the parties have not developed a CARE plan consistent with this Part, and the court finds that the parties are not likely to develop a CARE plan consistent with this Part due to statutes and regulations governing eligibility for the necessary services and support or lack of available funding, as set forth in Section 5982, or other cause, the court may dismiss the matter without prejudice.

(7) The court issuing an order pursuant to this section begins the up to one-year CARE program timeline.

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Commented [AJW33]: Section 5982 has been structure to incorporate guardrails regarding the scope of the required services (and thus the associated state cost). It is critical to cross-reference those guardrails in the provisions setting forth the court's authority.

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Commented [AJW34]: There may be circumstances in which developing a CARE plan is impossible for any party – e.g., because existing eligibility requirements or available funding preclude the services a respondent may need. The CARE process should include a mechanism for address these situations.

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~~(j)~~ (1) The court shall schedule a status conference for 60 days after the approval of the CARE plan to review the progress of the CARE plan's implementation.

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(2) At least seven days prior to the status hearing, the county behavioral health agency shall submit to the court and to the respondent, ~~the respondent's counsel, and, subject to the respondent's consent, the respondent's CARE supporter,~~ a report on the progress the respondent has made on the CARE plan, what services and supports in the CARE plan were provided, what services and supports were not provided, any issues the respondent had in adhering to the plan, and recommendations for changes to the services and supports to make the respondent more successful on the CARE plan.

~~(j)~~ (1) The 60-day status conference shall be followed by regular status conferences set by the court, at least every 180 days. At least seven days prior to every status hearing, the county behavioral health agency shall provide a report with the information in paragraph (2) of subdivision (f). Intermittent lapses or setbacks experienced by the respondent shall not be reason alone for precluding the respondent from receiving any treatment services or for making the respondent ineligible for any housing options that have been ordered pursuant to the CARE plan.

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(2) Intermittent lapses or setbacks experienced by the respondent shall be reviewed by the court. Either the county behavioral health agency or the respondent may request a hearing at an earlier time.

~~(k)~~ (1) If a county behavioral health agency or the respondent requests a hearing, the hearing shall be scheduled not more than 30 days from the date of the request.

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(2) At least seven days prior to every status hearing, the county behavioral health agency shall provide a report with the information in paragraph (2) of subdivision (f).

~~(l)~~ (1) In the 11th month of the program timeline, the court shall hold a one-year status hearing. At that hearing, the court shall determine whether ~~the respondent has successfully completed the CARE plan and should be graduated from the program with a graduation plan, or whether the respondent has not successfully completed the CARE plan and still meets the CARE criteria, and should be reappointed to the program for another term, not to exceed one year. A respondent can only be reappointed to the CARE program once, for up to one additional year.~~

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(2) The one-year status hearing shall be an evidentiary hearing. At least seven days prior to the one-year status hearing, the county behavioral health agency shall submit to the court and to the respondent, ~~the respondent's counsel, and, subject to the respondent's consent, the respondent's CARE supporter,~~ a report on the progress the respondent has made on the CARE plan, what services and supports in the CARE plan were provided, what services and supports were not provided, any issues the respondent had in adhering to the plan, and any recommendations for completion and graduation or continuation in CARE court.

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(3) If the respondent has successfully completed participation in the one-year CARE program, the respondent shall not be reappointed to the program. ~~The court shall officially graduate the respondent and terminate its jurisdiction with a graduation plan.~~

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(4) Successful completion of the CARE plan means the respondent has substantially complied with all components of the CARE plan.

(5) The respondent may be reappointed to the program only if all of the following conditions apply:

(A) The respondent did not successfully complete the program.

(B) All services and supports required by the CARE plan were provided to the respondent, within the limits of available funding and applicable laws pursuant to Section 5982.

(C) The court finds, by clear and convincing evidence, that the respondent currently meets the requirements in Section 5972.

(m) The hearings described in this section shall occur in-person unless the court, in its discretion, determines that a party may appear remotely through the use of remote technology.

(n) Consistent with its constitutional rulemaking authority, the Judicial Council shall 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 CARE supporter will be appointed.

5978.

(a) A court may refer an individual from assisted outpatient treatment or conservatorship proceedings to the county behavioral health agency for possible CARE proceedings,

(b) A court may refer an individual from misdemeanor proceedings pursuant to Section 1370.01 of the Penal Code to the county behavioral health agency for possible CARE proceedings,

CHAPTER 3. Accountability

5979.

(a) If, at any time during the proceedings, the court determines by clear and convincing 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 refer the respondent to the county conservatorship investigator in the respondent's county of residence for possible conservatorship proceedings pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A respondent shall only be referred to the conservatorship investigator if, based on the opinion of the county behavioral health agency, the respondent appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the respondent's county of residence. The court shall transmit a copy of the referral to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian/conservator shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The public guardian/conservator may elect to use the CARE proceedings as a factual presumption that no suitable alternatives to conservatorship are available,

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(4) At the one-year status hearing, the respondent may request graduation or reappointment to the CARE program. If the respondent elects to accept voluntary reappointment to the program, the respondent may request any amount of time, up to and including one additional year, to be reappointed to the CARE program. A respondent may only be reappointed to the CARE program once, for up to one additional year.¶

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Commented [AJW35]: We strongly urge against provisions retaining persons who no longer meet criteria within the CARE court process, thereby diverting resources from persons who do currently meet criteria and have immediate needs.

Deleted: (B) If the courts finds that (i) the respondent has not successfully completed the program, (ii) the respondent would benefit from continuation of the program, and (iii) the court cannot find, by clear and convincing evidence, that the respondent currently meets the requirements in Section 5972, but (iv) the respondent voluntarily requests to continue the program, the court may require that the county continue to provide the services and supports required in the CARE plan for another year.¶

(6) Upon completion, for a respondent who was transferred from another court, the referring court shall be given notice of completion and the underlying matter shall be terminated.¶

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Commented [AJW36]: The section has been amended to reflect the revised front end process we propose – and eliminate the involvement of prosecuting attorneys in CARE proceedings.

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Deleted: . If the individual is being referred from assisted outpatient treatment, the county behavioral health director or their designee may be the petitioner. If the ...

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Commented [AJW37]: This language of this section has been revised to more precisely describe the process and ...

Deleted: terminate the respondent's participation in the CARE program. The court may utilize existing legal ...

(b) An order under this section shall be appealable under Section 904.1 of the Code of Civil Procedure.

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5979.5

(a) The State Department of Health Care Services may enforce the obligations of a county agency under this Part through an action in the Superior Court in accordance with this section.

Commented [AJW38]: This section is adapted from the sanctions mechanism for jurisdictions that fail to comply with their obligations under certain state housing laws, enacted by Assembly Bill 101 of 2019 after significant negotiation. (Government Code section 65585, subdivisions (k)-(m).)

(b) Prior to the State Department of Health Care Services bringing any suit for a violation of this Part and seeking remedies available pursuant to this section, the department shall offer the county agency the opportunity for two meetings in person or via telephone to discuss the alleged violation, and shall provide the county agency written findings regarding the alleged violation.

(c) In any action brought by the Department of Health Care Services to enforce this Part, the Department may request, upon a finding of the court based on clear and convincing evidence, that the county agency has substantially and persistently failed to comply with its obligations under this Part, that the court issue an order or judgment directing the county agency to comply with its obligations under this Part. The court shall retain jurisdiction to ensure that its order or judgment is carried out.

(d) If a county agency has not complied with the order or judgment after 12 months, the court shall conduct a status conference. Following the status conference, upon a determination that the county agency failed to comply with the order or judgment compelling compliance with the requirements of this Part, the court may impose fines on the county agency, which shall be deposited into the General Fund. Any fine levied pursuant to this paragraph shall be in an amount up to one thousand dollars (\$1,000) per day. In the event that the county agency fails to pay fines imposed by the court in full and on time, the court may require the Controller to intercept any available state and local funds and direct such funds to the General Fund to correct the county agency's failure to pay. The intercept of the funds by the Controller for this purpose shall not violate any provision of the California Constitution.

(e) If the county agency has not complied with the order or judgment six months following the imposition of fines described in subdivision (d), the court shall conduct a status conference. Upon a determination that the county agency substantially failed to comply with the order or judgment, the court may order remedies available pursuant to Section 564 of the Code of Civil Procedure, under which the agent of the court may take all governmental actions necessary to bring the county agency into substantial compliance pursuant to this Part in order to remedy identified deficiencies.

(f) In determining the application of the remedies available under subdivisions (d) and (e), the court shall consider whether there are any mitigating circumstances impairing the ability of the county agency to fully comply with the requirements of this Part. The court may consider whether the county agency is making a good faith effort to come into substantial compliance or is facing substantial undue hardships. The court shall not order any remedies under this section where the failure to comply is due in whole or in part to circumstances beyond the control of the county behavioral health agency, including without limitation lack of available funding or resources to provide the services required under one or more CARE Plans, denial of coverage by health insurers or health care service plans, legal restrictions upon the provision

of services under Medi-Cal or other applicable programs, or lack of cooperation by other participants in CARE proceedings.

(g) Prior to issuing an order or judgment under subdivision (c), or applying any remedies under subdivisions (d) or (e) based upon an order or judgment previously issued, the court shall make a finding that the State has provided adequate supplementary funding in accordance with Section 5988 for all activities and services required by the order or judgment that are not otherwise reimbursed by the Medi-Cal program, health care service plan, or private insurance.

(h) Any order under this section shall be appealable under Section 904.1 of the Code of Civil Procedure.

5979.6

An order made or entered pursuant to this Part may be enforced by the court against any party other than those identified in Sections 5979 and 5979.5, including a party added pursuant to Section 5977, by the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.

CHAPTER 4. The CARE Supporter 5980.

(a) Subject to appropriation, the California Department of Health Care Services shall administer the CARE Supporter program, which shall make available a trained or certified peer support specialist to serve as CARE supporter for the respondent, who may accept, decline, or choose their own CARE supporter. The department shall train CARE supporters on supported decisionmaking with individuals who have behavioral health conditions and on the use of psychiatric advance directives, with support and input from peers, family members, disability groups, providers, the County Behavioral Health Directors Association, and other relevant stakeholders. The department may enter into a technical assistance and training agreement to provide training directly to either CARE supporters or to the contracted entities who will be responsible for hiring and matching CARE supporters to respondents. The CARE Supporter program contracts shall include labor standards under state and federal law.

(b) The CARE Supporter program shall be designed to do all of the following:

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

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

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

(c) If the respondent chooses to have a CARE supporter outside of the CARE Supporter program, that person may serve as a volunteer CARE supporter without compensation. Optional training shall be made available and strongly encouraged for volunteer CARE supporters.

Commented [AJW39]: Compare Fam. Code, § 290.

Special sanctions mechanisms are appropriate for counties, given their primary and consistent role in CARE proceedings; however, such mechanisms are not necessary or appropriate for other entities whose involvement in CARE proceedings may be limited and infrequent (e.g., cities who provide housing services). For those entities, the court's usual enforcement powers (e.g., contempt) will be sufficient in most cases.

Deleted: (b) If, at any time during the proceedings, the court finds that the county or other local government entity is not complying with court orders, the court may fine the county or other local government entity 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.¶

(c) Either the respondent or the county behavioral health agency may appeal an adverse court determination to the appellate division of the superior court.

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(d) If a respondent does not identify a volunteer supporter, the department shall ensure the availability of a trained or certified peer support specialist.

5981.

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

- (1) An evaluation.
- (2) Creation of a CARE plan.
- (3) Establishing a psychiatric advance directive.
- (4) Development of a graduation plan.

(b) A CARE supporter shall do all the following:

- (1) Support the will and preferences of the respondent to the best of their ability and to the extent reasonably possible.
- (2) Respect the values, beliefs, and preferences of the respondent.
- (3) Act honestly, diligently, and in good faith.
- (4) Avoid, to the greatest extent possible, and disclose, minimize, and manage, conflicts of interest.

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

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

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

CHAPTER 5. CARE Plan

5982.

(a) The CARE plan may only include the following, subject to available funding, and to all applicable statutes and regulations governing eligibility and prioritization, as set forth in subdivision (c):

(1) Behavioral health services provided through the applicable county mental health plan contract approved by the State Department of Health Care Services pursuant to Section 14712 of the Welfare and Institutions Code, and if appropriate, substance use disorder treatment provided through

Commented [AJW40]: This limitation is a critical guardrail for the CARE program, necessary to control potentially unlimited state and local costs, and should be clearly stated "up front" in the statute.

Commented [AJW41]: This provision has been revised for clarity (e.g., removing the unclear term "non-Medi-Cal behavioral health"), and to clearly delineate the required behavioral health services as (1) those covered by Medi-Cal; (2) those covered by insurance; and (3) those for which the state provides supplemental funding.

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the applicable county Drug Medi-Cal contract approved pursuant to Section 14124.20 or Section 11758.20 of the health and Safety Code or Drug Medi-Cal organized delivery system contract authorized under the CalAIM Initiative pursuant to Article 5.5 (commencing with Section 14184.101) or a successor waiver, or services funded through a health care services plan or insurance policy, and services for which adequate supplementary funding has been provided in accordance with Section 5988.

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Deleted: supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800)

(2) Housing resources funded through No Place Like Home Program; Project Homekey; Homeless Housing, Assistance, and Prevention; Encampment Resolution Funding program; Family Homelessness Challenge Grants and Technical Assistance Program; Project Roomkey Community Care Expansion Program; Homeless Emergency Aid Program, Behavioral Health Bridge Housing program; the Housing and Disability Advocacy Program; Veterans Support to Self-Reliance; the Veterans Affairs Supportive Housing voucher program; the federal Department of Veterans Affairs Supportive Services for Veteran Families program; CalAIM housing-related community supports; Housing and Homelessness Incentive Program; HUD Continuum of Care program; Emergency Solutions Grant Program; Family Unification Program vouchers; emergency housing vouchers; Federal Housing Choice vouchers; the HOME Investment Partnership Program; community development block grants; and other state and federal housing resources, including housing and homelessness funding allocated pursuant to SEC. 19.56 of Chapter 69, Statutes of 2021, and other direct or indirect housing and homelessness funding allocated in a previous or prospective Budget Act.

Commented [AJW42]: This provision has been revised to add certain housing programs that appear appropriate for this population, and to remove those for which existing regulatory provisions render them inappropriate or unavailable for CARE participants.

Deleted: CalWORKs Housing Support Program; CalWORKs Homeless Assistance Program;

Deleted: the Home Safe Program; the Bringing Families Home Program; the Transitional Housing Program; the Transitional Housing Placement Plus Foster Care program; the Transitional Housing Program Plus;

(3) Benefits funded by Cash Assistance Program for Immigrants (CAPI), CalWORKs, and CalFresh.

Commented [AJW43]: SSI/SSP eligibility determinations are made, and benefits provided by, federal agencies that are likely not amenable to the jurisdiction and orders of the Superior Court, and therefore should not be included in a CARE plan.

Deleted: Social services

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Deleted: Supplemental Security Income/State Supplementary Payment (SSI/SSP),

(b) Individuals who are CARE program participants shall be prioritized for any appropriate housing funded through a program listed in paragraph (2) of subdivision (a), to the extent permitted by applicable statutes and regulations.

Commented [AJW44]: We strongly object to inclusion of Welfare and Institutions Code section 17000, which is funded entirely from County general funds and may thus create uncontrolled local costs. Further, the precise contours of services required under Section 17000 are not entirely clear, which guarantees litigation, and may invite courts to view this as a "catchall" for ordering services that are not available to a respondent under the specific programs carefully delineated elsewhere in this section.

(c) All CARE plan services and supports ordered by the court are subject to available funding, and to all applicable statutes and regulations governing eligibility and prioritization, including, but not limited to, the following:

Deleted: (4) Services provided pursuant to Part 5 (commencing with Section 17000) of Division 9.

(1) Medically necessary behavioral health treatment pursuant to Sections 14712 and 14124.20 of this code or Section 11758.20 of the Health and Safety Code, subject to county behavioral health plan contracts and notices.

Deleted: bridge

(2) Housing resources funded through the programs listed in paragraph (2) of subdivision (a).

Deleted: by the Behavioral Health Bridge Housing

(3) CAPI, CalWORKs, and CalFresh.

Deleted: all applicable statutes and regulations governing eligibility and

(d) This section does not prevent a county from voluntarily recommending services that are a county responsibility not listed in subdivision (a) or (c). Any such recommendation is not required by this section and shall not require provision of supplementary funding by the State in accordance with Section 5988.

Deleted: SSI/SSP,

Deleted: be made at the request of the county for the purposes of Section 6 of Article XIII B, and Sections 6 and 36 of Article XIII of the California Constitution

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Deleted: 5982.5

CHAPTER 6. Technical Assistance and Administration
5983.

(a) Subject to appropriation, the State Department of Health Care Services shall provide technical assistance to county behavioral health agencies to support the implementation of this part, including training regarding the CARE statute, CARE plan services and supports, psychiatric advance directives, supporters, and data collection.

(b) Subject to appropriation, the Judicial Council, in consultation with the State Department of Health Care Services, other relevant state entities, and the County Behavioral Health Directors Association, shall provide training and technical assistance to judges to support the implementation of this part, including training regarding the CARE statutes, CARE plan services and supports, working with the CARE supporter, best practices, and evidence-based models of care for people with severe behavioral health conditions.

(c) Subject to appropriation, the State Department of Health Care Services, in consultation with other relevant state departments and the California Interagency Council on Homelessness, shall provide training to counsel regarding the CARE statute and CARE plan services and supports.

5984.

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

(b) The California Health and Human Services Agency and the State Department of Health Care Services, may adopt regulations to implement this part, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

5985.

(a) The State Department of Health Care Services shall develop, in consultation with county behavioral health agencies, CARE supporters, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(b) County behavioral health agencies and any other state or local governmental entity, as determined by the department, shall provide data related to the CARE Act participants, services, and supports to the department. The department shall determine the data measures and specifications, and the department may adopt regulations to implement this part, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

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

Deleted: Notwithstanding any other provision of law, to the extent permitted by federal law, a county agency shall prioritize the provision of services identified in an approved CARE plan.¶
¶

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Commented [AJW45]: Given the gravity of these regulations – and their potential effect on both counties and the civil liberties and benefits available to individuals with mental health conditions statewide – it is appropriate that they be adopted through the APA's public process.

Deleted: Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

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Deleted: notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

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Deleted: whole or in part, by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory

(d) The department shall provide information on the populations served and demographic data, stratified by age, sex, race, ethnicity, languages spoken, and disability, to the extent statistically relevant data is available.

(e) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing homelessness, criminal justice involvement, conservatorships, and hospitalization of participants.

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

5986.

(a) The State Department of Health Care Services shall develop, in consultation with county behavioral health agencies, county CARE courts, and other appropriate stakeholders, an independent evaluation of the effectiveness of the CARE Act.

(b) The evaluation shall further address both of the following:

(1) Readiness of those counties not included in the Initial Cohort Counties to implement the CARE program, if the program expanded into those counties.

(2) Policy recommendations regarding the potential extension and expansion of the CARE program, including recommendations to improve respondent outcomes, including engagement into voluntary treatment services and CARE Court outcomes.

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

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

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

5987.

Neither a county, nor any employee or agent thereof, shall be held civilly or criminally liable for any action by a person who is subject to a petition for CARE court proceedings or participates in a CARE plan.

CHAPTER 7. State Participation and Accountability.

5988.

(a) This Part shall apply to a county or county agency only to the extent that the State provides supplementary annual funding to the county for any activities and services required by this Part that are not otherwise reimbursed by the Medi-Cal program, health care service plan, or private insurance. Pre-existing funding received by the county any source shall not be treated as offsetting or otherwise satisfying the annual obligation of the state to provide supplementary funding under this section. Counties and county agencies shall not be required to implement or

Commented [AJW46]: If the CARE program is to succeed, its expansion must take county readiness into account – particularly for smaller counties, and those with fewer resources. These factors should consequently be part of the program’s review and data collection.

Commented [AJW47]: This is placeholder language for evaluation metrics relating to the “ramp up” of CARE court statewide, which remains under discussion.

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Commented [AJW48]: Compare Welfare and Institutions Code section 5358.1.

This provision is truly critical to ensuring to reducing litigation risks for counties (and consequent diversion of resources from service provision).

Commented [AJW49]: This language is adapted from a combination of Cal. Const., art. 13, section 30 (i.e., Prop. 30) and Government Code section 17581. It is designed to ensure that stated commitment to limiting CARE to existing programs and funding (and thus limiting the state’s mandate subvention obligations) is realized in practice.

give effect to any provision of this Part, and shall not be obligated to provide any services or activities described in this Part, above the level for which such supplementary funding has been provided.

(b) The Department of Finance, in consultation with the State Department of Healthcare Services, the County Behavioral Health Directors Association, the California State Association of Counties, the Rural County Representatives of California, and the Urban Counties of California, shall develop and implement a methodology for determining each county's supplementary annual funding required for activities and services required by this Part, and a payment methodology for providing this funding to counties in a timely manner to avoid service disruptions.

SEC. 6.

The Legislature finds and declares that Section 7 of this act, which adds Section 5973.5 to the Welfare and Institutions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

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

SEC. 7.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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