

COMMUNITY ASSISTANCE, RECOVERY, AND EMPOWERMENT (CARE) ACT

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Judge of the Superior Court
County of Placer (Ret.)

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I. INTRODUCTION

The Community Assistance, Recovery, and Empowerment (CARE) Act was enacted in 2022 by Senate Bill No. 1338 (SB 1338).¹ The CARE Act (the Act) authorizes “specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria.” (SB 1338, Legislative Counsel’s Digest, § 1.)

Act contingent on funding

The CARE Act provides that it “shall become operative only upon the [State Department of Health Care Services], in consultation with county stakeholders, developing a CARE Act allocation to provide state financial assistance to counties to implement the care process in this act.” (Welf. & Inst. Code, § 5970.5, subd. (d).²)

“All CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes and regulations, contractual provisions, and policy guidance governing initial and ongoing program eligibility. In addition to the resources funded through programs listed in subdivision (a), the State Department of Health Care Services may identify other adjacent covered Medi-Cal services, including, but not limited to, enhanced care management and available community supports, which may be suggested, although not ordered, by the court, subject to all applicable federal and state statutes, regulations, contractual provisions, and policy guidance.” (§ 5982, subd. (d).)

There is some effort in SB 1338 to require private health care plans to cover certain aspects of CARE Act services starting July 1, 2023. (See Health & Safety Code, § 1374.723, and Insurance Code, § 10144.54.) How these provisions operate in the context of the Act and the services they cover are matters beyond the scope of this discussion

¹ See Appendix II for the full CARE Act.

² Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

A. Purpose of CARE Act

The purpose of the legislation is explained in SB 1338’s preamble. The Legislature observed that “[t]housands of Californians are suffering from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death. These individuals, families, and communities deserve a path to care and wellness.” (SB 1138, § 1, subd. (a).) The Legislature found that although advancements in mental health treatment can stabilize and begin treatment of persons in community-based settings, the “care is only provided after arrest, conservatorship, or institutionalization.” (SB 1338, § 1, subd. (b).)

“A new approach is needed to act earlier and to provide support and accountability, both to individuals with these untreated severe mental illnesses and to local governments with the responsibility to provide behavioral health services. California’s civil courts will provide a new process for earlier action, support, and accountability, through a new Community Assistance, Recovery, and Empowerment (CARE) process.” (SB 1338, § 1, subd. (c).) “The CARE process provides a framework to ensure counties and other local governments focus their efforts to provide comprehensive treatment, housing, and supportive services to Californians with complex behavioral health care needs so they can stabilize and find a path to wellness and recovery.” (SB 1338, § 1, subd. (d).) At the same time, CARE is to observe individual rights: “Self-determination and civil liberties are important California values that can be advanced and protected for individuals with these untreated severe mental illnesses with the provision of legal counsel for CARE proceedings, agreements, and plans, as well as the promotion of supported decisionmaking.” (SB 1338, § 1, subd. (e).)

B. Effective date of CARE actions and services

Implementation of the CARE Act will occur in two stages. Services in the first cohort of eight³ counties (Glenn, Los Angeles, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne) are to begin October 1, 2023. (§ 5970.5, subd. (a).) The CARE program is to begin no later than December 1, 2024, for the second cohort representing the balance of the counties in the state. (§ 5970.5, subd. (b).)

The State Department of Healthcare Services may grant one extension to counties in either cohort to no later than December 1, 2025, “if the county experiences a state or local emergency.” (§ 5970.5, subd. (c)(2) and (3).) The department will issue guidelines for the application for an extension. (§ 5970.5, subd. (c)(1).) The Act does not specify a target date for the completion of the guidelines.

³ The statutory directive specifies the original cohort at seven counties; Los Angeles County joined the first cohort voluntarily.

II. ACCESS TO CARE SERVICES

Services made available by the CARE Act may be accessed in four ways, depending on the respondent's circumstances: 1) a petition filed pursuant to sections 5970, *et seq.* (discussed in section III, *infra*); 2) a referral to CARE because the respondent was found ineligible for mental health diversion under Penal Code, section 1370.01; 3) a referral to CARE from assisted outpatient treatment; or 4) a referral to CARE from conservatorship proceedings commenced under section 5350. In each of these circumstances the referral triggers the preparation of a petition filed pursuant to sections 5970, *et seq.* The initial petitioner will be one of the persons listed in section 5974, discussed in section III(C), *infra*.

Persons ineligible for diversion under Penal Code, section 1370.01

Penal Code, section 1370.01 provides for the disposition of misdemeanor crimes or misdemeanor violations of probation where the respondent is found incompetent to stand trial. Under such circumstances, section 1370.01, subdivision (b), gives the court two options: 1) grant diversion pursuant to Penal Code, section 1001.36; or 2) dismiss the misdemeanor charges in the interests of justice pursuant to Penal Code, section 1385.

If the respondent is found ineligible for diversion based on circumstances specified in Penal Code, section 1001.36, subdivision (b) [failure to meet any of the requirements for diversion] or subdivision (d) [termination of the respondent from diversion], the court is given several options under Penal Code, section 1370.01, subdivision (b)(1)(D), including the ability to refer the respondent to a CARE program under section 5978. (Pen. Code, § 1370.01, subd. (b)(1)(D)(iv).)

If the respondent is referred to a CARE program, 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 respondent, if confined in county jail, to be released on their own recognizance pending that hearing. If the respondent is *accepted* into CARE, the charges shall be dismissed pursuant to Section 1385." (Pen. Code, § 1370.01, subd. (b)(1)(D)(iv), italics added.) Dismissal is not dependent on the *successful completion* of the CARE program. The Act does not provide for the reinstatement of the criminal charges if the respondent does not successfully complete the CARE program. Presumably it is the intent of the Legislature that once the respondent has been accepted into the CARE program, all further proceedings will be in accordance with the civil law and what remedies may be available under the Act, without the ability to reinstate the criminal case.

Consistent with Penal Code, section 1370.01, subdivision (b)(1)(D)(iv), section 5978, subdivision (b), acknowledges the ability of the court to refer the respondent for CARE proceedings from diversion. Unlike referrals from assisted outpatient treatment or conservatorship proceedings, the statute does not specify who is to be the petitioner when the referral is made because of an ineligibility for or exclusion from diversion under Penal Code, section 1370.01. Presumably the petitioner could be any of the individuals listed in section 5974, discussed in section III(C), *infra*.

Likely the most expedient selection would be the county behavioral health director (or designee).

Outstanding warrants or other charges not serving as basis for referral under Penal Code, section 1370.01, subdivision (b)(1)(D)(iv)

As noted above, if the respondent is ineligible for mental health diversion and is accepted into the CARE program, the underlying criminal charges serving as the basis for the referral under the Act are to be dismissed in the interests of justice under Penal Code section 1385. (Pen. Code, § 1370.01, subd. (b)(1)(D)(iv).) It would not be unusual, however, for a respondent to have additional outstanding low-level criminal charges, warrants, and unpaid fees and fines from unrelated cases. Nothing in the Act directly addresses the disposition of these cases.

Consistent with the spirit of the Act, the court should endeavor to clean up as many of these unrelated cases as is reasonably possible. The court could consider adding these cases to the application for mental health diversion so that they would be part of any referral under section 1370.01, subdivision (b)(1)(D)(iv), and the dismissal under Penal Code section 1385. The court also may consider use of its broad authority under Penal Code section 1385, subdivision (a), to enter a direct dismissal in the interests of justice (including all outstanding fees and fines) without the initial referral to mental health diversion. Such action by the court is certainly appropriate where there is consensus that the respondent should be treated under the civil law and the existence of the unrelated criminal cases poses an unnecessary barrier to the successful completion of the CARE program.

Referral from assisted outpatient treatment

Section 5978 permits the court to refer persons from assisted outpatient treatment under section 5348 to CARE Act proceedings. If such a referral is made, the county behavioral health director (or designee) is to be the petitioner for CARE services according to the procedures in sections 5970, *et seq.* (§ 5978, sub. (a).)

Referral from conservatorship proceedings

Section 5978 permits the court to refer persons from conservatorship proceedings conducted pursuant to sections 5350, *et seq.*, to CARE. If such a referral is made, the conservator is to be the petitioner for CARE services according to the procedures in sections 5970, *et seq.* (§ 5978, sub. (a).) Likely it is the intention of the legislation that although the conservator is the original petitioner, the conservator will be replaced by the behavioral health director at the first court appearance pursuant to section 5971, subdivision (m): “[I]f the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner.” Section 5974, subdivision (g),

includes as a potential petitioner the “public guardian or public conservator, or their designee, of the county in which the respondent is present or reasonably believed to be present.”

III. PETITION FOR CARE SERVICES

A. Persons eligible for CARE services

Section 5972 specifies the following persons are eligible for CARE “only if all of the following criteria are met:”

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

- (b) The person is currently experiencing a severe mental illness, as defined in section 5600.3, subdivision (b)(2), and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. This section does not establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including, but not limited to, physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who has a current diagnosis of substance use disorder as defined in Health and Safety Code, section 1374.72, subdivision (a)(2),⁴ but who does not meet the required criteria in this section does not qualify for the CARE process.

Section 5600.3, subdivision (b)(2), defines “serious mental disorder” to mean “a mental disorder that is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.”

⁴ Health and Safety Code, § 1374.72, subd. (a)(2), provides: “For purposes of this section, ‘mental health and substance use disorders’ means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the International Classification of Diseases or that is listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders or the World Health Organization’s International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.”

- (c) The person is not clinically stabilized in on-going voluntary treatment.
- (d) At least one of the following is true:
 - (1) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
 - (2) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as defined in section 5150.
- (e) Participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.
- (f) It is likely that the person will benefit from participation in a CARE plan or CARE agreement.

The Judicial Council is required to draft a mandatory form petition for the use under the Act. (§ 5975.) To be included in the petition are “[f]acts that support the petitioner’s assertion that the respondent meets the CARE criteria in Section 5972.” (§ 5975, subd. (c).) Presumably the petition must address each of the forgoing qualifying elements. (See discussion of the form petition in section III(D), *infra*.)

B. Venue where petition may be filed

Section 5973, subdivision (a), permits the petition to be filed in the respondent’s county of residence, in the county where the respondent is found, and in the county where the respondent is facing criminal or civil proceedings.

If the respondent is not a resident of the county where the proceedings are initiated, unless the county is voluntarily providing its own services under section 5982, subdivision (e), the proceedings are to be transferred “as soon as reasonably feasible” to the respondent’s county of residence if:

- The CARE act is operative in respondent’s county of residence, and
- The respondent consents to the transfer.

If the respondent does not consent to the transfer, the proceedings are to remain in the county where the respondent was found. (§ 5973, subd. (b).)

C. Who may initiate CARE proceedings

Section 5974 lists the adult persons who may file a petition to initiate the CARE process. The list of potential petitioners is extensive. The statute is designed to maximize the number of available persons who may file a petition for services. Once the petition is filed, however, at the first court appearance on the matter, the director of the county behavioral health agency, or their designee, will be substituted in as the petitioner: “[I]f the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but *at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner.*” (§ 5971, subd. (m), italics added.) Similarly, section 5977, subdivision (b)(7)(A), provides: At the initial appearance on the petition, “[i]f the petitioner is a person described in Section 5974 other than the director of a county behavioral health agency, or their designee, *the court shall issue an order relieving the petitioner and appointing the director of the county behavioral health agency or their designee as the substitute petitioner.*” (Italics added.) Thereafter the original petitioner has little or no role in the proceedings, unless the court, in its discretion, grants limited participation in accordance with section 5977, subdivision (b)(7)(B), discussed in section VI(C), *infra*.

The following adult persons may initiate proceeding under the CARE Act:

- (a) A person with whom the respondent resides.
- (b) A spouse, parent, sibling, child, or grandparent or other individual who stands in loco parentis to the respondent.
- (c) The director of a hospital, or their designee, in which the respondent is hospitalized, including hospitalization pursuant to Section 5150 or 5250.
- (d) The director of a public or charitable organization, agency, or home, or their designee, who has, within the previous 30 days, provided or who is currently providing behavioral health services to the respondent or in whose institution the respondent resides.
- (e) A licensed behavioral health professional, or their designee, who is, or has been within the previous 30 days, either supervising the treatment of, or treating the respondent for a mental illness.
- (f) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation pursuant to Section 5150, multiple attempts to engage the respondent in voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance. What may constitute “repeated interactions,” “multiple arrests,” “multiple detentions,” or “multiple attempts” to engage respondent,

is not further defined in the statute; it will be a matter to determine within the court's discretion.

- (g) The public guardian or public conservator, or their designee, of the county in which the respondent is present or reasonably believed to be present.
- (h) The director of a county behavioral health agency, or their designee, of the county in which the respondent resides or is found.
- (i) The director of county adult protective services, or their designee, of the county in which the respondent resides or is found.
- (j) The director of a California Indian health services program, California tribal behavioral health department, or their designee.
- (k) The judge of a tribal court that is in California, or their designee.
- (l) The respondent. Although clearly it is legally inconsistent for the same person to be both petitioner and respondent in the same action, the Legislature believes the respondent should have the right to self-initiate proceedings under the Act. Because the respondent, as petitioner, will be substituted out at the first appearance on the matter, there likely is no serious practical problem in that rare circumstance where the respondent initiates their own action.

D. Form petition by the Judicial Council

Section 5975 requires the Judicial Council to prepare a mandatory form petition and other necessary forms to be used in CARE proceedings. The petition is to contain the following information:

- (a) The name of the respondent and, if known, the respondent's address.
- (b) The petitioner's relationship to the respondent.
- (c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972. Likely the form petition will need to address each of the six eligibility factors listed in section 5972, discussed in section III(A), *supra*.
- (d) Either of the following:
 - (1) An affidavit of a licensed behavioral health professional stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an

examination, within 60 days of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

(2) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days. The Act clearly distinguishes the 14-day hold for intensive treatment authorized under section 5250 required by the Act from the 72-hour hold authorized by section 5150.

Potential delay of dismissal of petition

Section 5977, subdivision (a)(1), requires the court to “promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in section 5972” as qualifying for CARE services. The failure to include all the elements of the petition required by section 5975 may result in the dismissal of the case because the prima facie showing has not been made. (See full discussion of the prima facie determination in section V, *infra*.) Where the petitioner is a layperson, particularly as to those persons listed in section 5974, subdivisions (a) and (b) [a roommate or relative], there is a significant chance the petition will be deficient. It is unlikely such petitioners will have the knowledge or ability to address all the factors to be included in the petition or to obtain the necessary affidavit or evidence of treatment required by section 5975, subdivision (d). Because section 5977, subdivision (a)(1), does not *mandate* dismissal for failure to establish the prima facie basis for relief, the court may find it expedient to defer a ruling on the petition and advise the petitioner of the deficiencies. Such a process may prove helpful to respondent’s family and avoid additional burden on the court by forcing the serial filing of multiple petitions in search of a prima facie showing.

E. Respondent’s rights

Section 5976 lists the rights held by the respondent in CARE proceedings. Since the rights are not tied to a particular stage of the proceedings, presumably these rights will apply whenever relevant to the matter pending in the court.

1. Right to counsel

The respondent is entitled to be represented by counsel at all stages of a proceeding commenced under the Act, regardless of the ability to pay. If the respondent requests appointed counsel, the court is required to provide an attorney without the need for a financial determination of an ability to pay.

Section 5981.5, subdivision (a), provides that the Legal Services Trust Fund Commission at the State Bar is to provide funding to qualified legal services projects to be used to provide legal counsel appointed pursuant to section 5976, subdivision (c), for representation in CARE Act proceedings, matters related to CARE agreements and CARE plans, and to qualified support centers for training, support, and coordination. The Trust Fund is given authority to enter contracts and award grants for these services. (§ 5981.5, subd. (b).)

In appointing counsel for the respondent, the court is to first utilize a qualified legal services project in the county. If no legal services project has agreed to accept these appointments, the court is to appoint the public defender. (§ 5977, subd. (a)(3)(A)(ii).) The respondent may at any time substitute their own counsel. (*Ibid*; see also § 5971, subd. (d).)

Right of self-representation

It is not clear whether the respondent has the right of self-representation in CARE proceedings. Proceedings under the Act are civil in nature, not criminal. “California’s *civil courts* will provide a new process for earlier action support, and accountability, a new [CARE] process.” (SB 1338, § 1, subd. (c), italics added.) As a matter of constitutional principle, the Sixth Amendment due process right to self-representation applies only to criminal proceedings. As explained by the California Supreme Court in *People v. Allen* (2008) 44 Cal.4th 843 (*Allen*), in the context of proceedings under the Sexually Violent Predator Act (SVPA): “Proceedings to commit an individual as a sexually violent predator in order to protect the public are civil in nature. [Citations.] Therefore, the Fifth Amendment’s guarantee against compulsory self-incrimination does not apply in proceedings under the SVPA. [Citations.] *Nor do the Sixth Amendment rights to self-representation* and to confront witnesses apply in such proceedings. [Citation.]” (*Allen, supra*, 44 Cal.4th at p. 860, italics added; *People v. Fraser* (2006) 138 Cal.App.4th 1430, 1446-1449 (*Fraser*).)

Although *Fraser*, like *Allen*, found no *constitutional* right to self-representation, it found there was a *statutory* right to such representation. As observed by *Fraser*: “We recognize that, as we have discussed, the SVPA provides that a person subject to commitment as a sexually violent predator has a right to counsel, as stated in section 6603, subdivision (a): ‘A person subject to this article shall be entitled ... to the assistance of counsel.’ Language in other statutory schemes providing a right to counsel has been construed to provide a corresponding right to self-representation by implication. [¶] In [*People v. Williams* (2003) 110 Cal.App.4th 1577 (*Williams*)], the appellate court found that the language of the [Mentally Disordered Offender (MDO)] commitment statutes implicitly provides a right to self-representation. [Penal Code] Section 2972 states that in a hearing for continued involuntary commitment as an MDO the ‘court shall advise the person of his or her right to be represented by an attorney....’ [Citation.] The *Williams* court reasoned that ‘[Penal Code, section 2972] expressly gives

the right to counsel to defendants in MDO proceedings and surely they have by implication the right to refuse appointed counsel and represent themselves.’ [Citation.]” (*Fraser, supra* 138 Cal.App.4th at p. 1449.) *Fraser* also observed that other courts have found a common law right to self-representation in civil cases. (*Fraser, supra*, 138 Cal.App.4th at p. 1450.)

The right to counsel in a CARE proceeding, as articulated in section 5976, subdivision (c), substantially parallels similar provisions for persons undergoing proceedings under the SVPA or as an MDO. As discussed in *Fraser* and *Williams*, likely there is a non-statutory right to self-representation in a proceeding under the CARE Act. The improper denial of the statutory or common law right of self-representation will be reviewed under the abuse of discretion standard. (*Fraser, supra*, 138 Cal.App.4th at p. 1450.)

2. Additional rights held by the respondent

Section 5976 specifies the respondent has the following additional rights:

- (a) To receive notice of the hearings. The statute does not specify the period of notice, the method of notice (written or oral), nor the method of service (personal service or service on counsel). Since the statute requires “notice of the hearings” without limitation, presumably notice will be required for all hearings conducted under the Act.

Code of Civil Procedure, sections 1005, subdivision (a)(13), and 1010, specify written notice must be given when no other method is required by law or by the court. “Notices and other papers may be served upon *the party or attorney* in the manner prescribed in [chapter 5 of the Code of Civil Procedure], when not otherwise provided by this code.” (Code of Civ. Proc., § 1010, italics added.)

Until the notice requirement is further clarified by the Legislature or an appellate court, it is suggested the following notice procedure be observed:

- Unless otherwise specified by the code, the petitioner is required to provide notice of all hearings. For example, section 5977, subdivision (a)(3)(A)(iv), specifies the court is to order the director of the county behavioral health agency (or designee) to give notice of hearing.
- Notice must be in writing. Notice may be given electronically if otherwise permitted.
- Notice may be served on either the respondent personally or substituted service on counsel for the respondent.

- The period of notice should account for the statutory timing of the hearing being noticed. For example, section 5977, subdivision (a)(3)(A)(i), requires the court to set the initial appearance on the petition within 14 court days of finding of a prima facie basis to proceed; subdivision (b)(8)(A) requires a hearing to be set within 10 calendar days. Notice should be served within a time calculated to give respondent a reasonable opportunity to prepare for the hearing.⁵
 - Future notices of hearing may be waived by counsel.
- (b) To receive a copy of a court-ordered evaluation. The statute does not preclude service of the evaluation on counsel for respondent. Giving the evaluation directly to the respondent could be quite problematic. Whether the respondent should be given a personal copy of the evaluation should be a matter determined between the respondent and their counsel.⁶
- (c) To be allowed to have a supporter, as described in sections 5980 and 5981.⁷ Section 5971, subdivision (q), defines a “supporter” as “an adult, designated pursuant to Chapter 4 (commencing with Section 5980), who assists the person who is the subject of the petition, which may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter shall not act independently.” For a full discussion of the “supporter,” see the discussion in section XIII, *infra*.
- (d) To be present at the hearing unless the respondent waives the right to be present. The statute does not preclude waiver by counsel for the respondent. Section 5977, subdivision (b)(3), for example, provides the respondent may waive their personal appearance and appear through counsel at the initial hearing on the petition.
- (e) To have the right to present evidence.
- (f) To have the right to call witnesses.
- (g) To have the right to cross-examine witnesses.

⁵ See Appendix I for a table of all notice periods under the Act. Courts must be cautious in their reading of the Act’s time limitations. At times the Act specifies “court days,” thus excluding weekends and holidays from the time period, and at times there is simply a reference to the number of days – meaning “calendar days.”

⁶ There are times the Act requires service on the respondent and respondent’s counsel. For example, section 5977.2, subdivision (a)(1), requires such service of the 60-day progress reports. At other times, the Act requires service only on counsel for respondent, as with section 5977.1, subdivision (c)(1), for service of an evaluation.

⁷ Section 5976, subdivision (d), references the supporter “as described in Section 5982.” The reference to section 5982 undoubtedly is a drafting error since section 5982 describes the contents of the CARE plan.

(h) To have the right to appeal decisions, and to be informed of the right to appeal. Presumably the court will be required to advise the respondent of the right to appeal after making an appealable order on the merits of the petition for CARE services. The advisement can be written or oral. Likely counsel can waive the advisement.

(i) To have a closed hearing. Section 5976.5, subdivision (a), specifies: “Notwithstanding any other law, and except as otherwise provided in this section, a hearing held under this part is presumptively closed to the public.”

(j) Additionally, section 5976.5 specifies:

- The respondent may demand that any hearing be public and be held in a place suitable for attendance by the public. (§ 5976.5, subd. (b).)
- The respondent may request the presence of any family member or friend without waiving the right to keep the hearing closed to the rest of the public. (§ 5976.5, subd. (c).) Although not expressly provided in the statute, the presence of a supporter also will not waive the right to keep the hearing closed to the public. (§ 5981, subd. (e).)
- A request by “any other party” to the proceeding to make the hearing public may be granted if the judge conducting the hearing finds that the public interest in an open hearing clearly outweighs the respondent’s interest in privacy. (§ 5976.5, subd. (d).) The only “other party” would be the county director of behavioral health services (or designee), or another government agency designated as a party by the court pursuant to section 5977.1, subdivision (d)(4).
- All reports, evaluations, diagnoses, or other information related to the respondent’s health are confidential. (§ 5976.5, subd. (e).) Similarly, section 5977.1, subdivision (c)(5), specifies the “evaluation [authorized by section 5977.1, subdivision (b)] and all reports, documents, and filings submitted to the court shall be confidential.”
- Before commencing a hearing, the judge must inform the respondent of their rights under section 5976.5. (§ 5976.5, subd. (f).) The advisement of the rights associated with a closed hearing should be given at the beginning of any hearing under the Act unless waived by counsel for the respondent.

(k) To have the petitioner declared a vexatious litigant, if appropriate. Section 5975.1 appears designed to protect a respondent from a meritless petition or

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

Similarly, section 5977, subdivision (c)(1), provides that if the court finds after consideration of the merits of the petition that the respondent does not meet the requirements of the CARE Act, the court must dismiss the petition without prejudice, “unless the court makes a finding, on the record, that the initial petitioner’s filing was not in good faith.” Presumably a petition not filed in good faith is to be dismissed “with prejudice.”

F. Role of the court; nature of the proceedings

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

“The hearings described in this chapter shall occur in person unless the court, in its discretion, allows a party or witness to appear remotely through the use of remote technology. The respondent shall have the right to be in person for all hearings.” (§ 5977.4, subd. (b).)

“Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section and in Sections 5977, 5977.1, 5977.2, and 5977.3 to promote statewide consistency, including, but not limited to, what is included in the petition form packet, the clerk’s review of the petition, and the process by which counsel will be appointed.” (§ 5977.4, subd. (c).) It is unclear what the Legislature means by the reference to “the clerk’s review of the petition.” Unless the petition is facially flawed to the point that it can’t be filed, such as not being on the required Judicial Council form, the clerk of the court is not permitted to refuse to accept the petition – whether the petition is legally sufficient for relief is for a judicial officer to determine.

IV. SUMMARY OF PROCEDURAL STEPS UNDER CARE ACT

The CARE Act has at least eight procedural steps after the filing of a petition for services. Each step usually is accompanied by a hearing where the court is directed to take specified action. Each of these steps is more fully explained in the materials that follow.⁸

A. Prima facie review of petition (§ 5977, subd. (a)(1).)

The prima facie review is to occur “promptly” after the filing of the petition. The review is a non-appearance action taken by the court. If a prima facie basis for services is shown, the court is to set an initial appearance in the matter, appoint counsel for the respondent, and order a specified report.

B. Initial appearance (§ 5977, subd. (b).)

At the initial appearance of the petition, the court substitutes the director of the county behavioral health department as petitioner (if required), sets the rights of the original petitioner, appoints a support person, and sets a hearing on the merits of the petition.

C. Hearing on the merits of the petition (§ 5977, subd. (b)(8).)

The hearing on the merits of the petition is an evidentiary proceeding. The petitioner has the burden of proving eligibility for services by clear and convincing evidence.

D. Case management conference (§ 5977.1, subd. (a).)

If the petition is upheld, the court orders the parties to collaboratively create the CARE plan. The court may order a clinical evaluation if necessary.

E. Plan review hearing (§ 5977.1, subd. (d).)

The court receives input from all parties and formally adopts the CARE plan. Medications and other supportive services may be included in the plan.

F. Status review hearings (§ 5977.2(a).)

The court is to hold a status review of the respondent’s progress under the CARE plan at no greater than 60-day intervals. The respondent may participate in the hearings.

⁸ See Appendix I for a table of dates for CARE Act hearings. Courts must be cautious in their reading of the Act’s time limitations. At times the Act specifies “court days,” thus excluding weekends and holidays from the time period, and at times there is simply a reference to the number of days – meaning “calendar days.”

G. One-year status review – 11th month (§ 5977.3, subd. (a).)

The court is to hold a hearing during the eleventh month of the CARE plan to order the creation of a graduation plan, or to permit the respondent to have an extension of the plan for up to one additional year. The petitioner can seek an involuntary extension.

H. Graduation hearing – 12th month (§ 5977.3, subd. (a)(3)(A).)

The court is to hold a graduation hearing during the twelfth month of the CARE program. The graduation plan is to be placed on the record.

V. PRIMA FACIE REVIEW OF PETITION

Section 5977 provides for a prima facie review of the sufficiency of the petition for CARE services.

A. Prompt review

Section 5977, subdivision (a)(1), provides: “The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.” The Act does not specify the time within which the court must rule on the sufficiency of the petition. The spirit of the Act suggests that a decision within two or three business days likely is sufficient; a decision much after that likely would not be appropriate. The “prompt review” will give the court the opportunity to dismiss a deficient petition, to set a hearing date for the first appearance if there is a prima facie basis shown in the petition, or to order the county agency to conduct an investigation when it appears from the petition, though defective, that the respondent may be eligible for services.

B. Prima facie basis not shown

Dismissal without prejudice

Section 5977, subdivision (a)(2), provides: “If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court *may dismiss* the case without prejudice subject to consideration of Section 5975.1.” (Italics added.) The court may, but is not required to, dismiss the petition for failure to make a prima facie showing for relief. For example, the failure to include all the elements of the petition required by section 5975 may result in the dismissal of the case because the prima facie showing has not been made. Where the petitioner is a layperson, particularly as to those persons listed in section 5974, subdivisions (a) and (b) [a roommate or relative], there is a significant chance the petition will be deficient. It is unlikely such a petitioner will have the knowledge or ability to address all the factors to be included in the petition or to obtain the necessary affidavit or evidence of treatment required by section 5975, subdivision (d). Because

section 5977, subdivision (a)(1), does not *mandate* dismissal for failure to establish the prima facie basis for relief, the court may find it expedient to defer a ruling on the petition and advise the petitioner of the deficiencies. Such a process may prove helpful to respondent's family and avoid an extra burden on the court by forcing the serial filing of multiple petitions in search of a prima facie showing.

Dismissal with prejudice

Although the statute is somewhat vague, it appears the reference in section 5977, subdivision (a)(2), to section 5975.1 is to emphasize that if a second or subsequent petition is filed without merit or with the intent to harass the respondent, the court is to dismiss the petition *with* prejudice.

C. Prima facie basis is shown

If the petitioner makes a prima facie showing that the respondent is or may be a person eligible for CARE services, the court's response will depend on whether the initial petitioner is the director of the county behavioral health agency (or designee) or someone else listed in section 5974.

1. Petitioner is the director of the county behavioral health agency

If the petitioner is the director of the county behavioral health agency (or designee), the court must do the following if it finds a prima facie basis for the petition:

- Set the matter for an initial hearing on the petition within 14 *court* days. (§ 5977, subd. (a)(3)(A)(i).)
- Appoint counsel for the respondent. (§ 5977, subd. (a)(3)(A)(ii).) The attorney may come from a qualified legal services project, or the public defender if there is no legal services project to take these appointments. "Unless replaced by respondent's own counsel, appointed counsel shall represent the respondent in any proceeding under this part, and shall represent the individual, as needed, in matters related to CARE agreements and CARE plans, including appeals." (*Ibid.*) Likely the respondent also has the right to reject the appointment of counsel in favor of self-representation.⁹
- "Determine if the petition includes all of the following information, or order the county to submit a report within 14 court days that addresses all the following:" (§ 5977, subd. (a)(3)(A)(iii).)

⁹ For a discussion of potential limits on the right of respondent to self-representation, see section III(E)(1), *supra*.

- 1) Whether the respondent meets, or is likely to meet, the criteria for the CARE process. (§ 5977, subd. (a)(3)(A)(iii)(I).) The need for this finding is unclear since presumably it is part of the determination of the prima facie basis for relief.
 - 2) “The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.” (§ 5977, subd. (a)(3)(A)(iii)(II).)
 - 3) “Conclusions and recommendations about the respondent’s ability to voluntarily engage in services.” (§ 5977, subd. (a)(3)(A)(iii)(III).)
- Order the director of the county behavioral health agency (or designee) to give notice of the initial hearing to “the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.” (§ 5977, subd. (a)(3)(A)(iv).)

2. Petitioner is a person other than the director of the county behavioral health agency

If the petitioner is one of the persons listed in section 5974 other than the director of the county behavioral health agency (or designee), “the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, and file a written report with the court within 14 *court* days and provide notice to the respondent and petitioner that a report has been ordered.” (§ 5977, subd. (a)(3)(B), italics added.) Although not required by the statute, the most logical appointment would be of the county behavioral health agency.

Contents of report

The report is to include:

- A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process. It is not clear why the court needs this information since it has previously determined that the petition states a prima facie basis for relief.
- The outcome of efforts made to have the respondent voluntarily engage in services during the 14-day report period.

- Conclusions and recommendations about the respondent’s ability to voluntarily engage in services.

Extension of time to report

If requested by the county agency doing the report, and if the court finds the county agency is “making progress to engage the respondent,” the court may extend the report period up to 30 additional days “to work with, engage, and enroll the individual in voluntary treatment and services.” The county agency is to give notice to the petitioner and respondent that the extension has been granted. (§ 5977, subd. (a)(4).)

It is to the court’s advantage that the parties be given an adequate opportunity to work out a voluntary plan. If the parties reach a CARE agreement, it avoids the need for further contested proceedings. If it is shown that respondent is willing and capable of engaging in voluntary treatment, the court may dismiss the petition and terminate all further court proceedings on the matter. (§ 5977, subd. (a)(5)(A).)

Action by court on receipt of report

Within five days of the receipt of the report by the court, the court must take one of the following actions:¹⁰

- “If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.” (§ 5977, subd. (a)(5)(A).)
- “If the court determines that county’s report does not support the petition’s prima facie showing that the respondent is a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with individuals who do not meet CARE criteria, but who are in need of services and supports.” (§ 5977, subd. (a)(5)(B).) Since the petition will likely be dismissed without prejudice, the section also does not prevent the county from filing a new petition based on a change in circumstances
- If the county’s report does support the prima facie showing, “and engagement with the county was not effective,” the court must take the following action: (§ 5977, subd. (a)(5)(C).)

¹⁰ The action required by section 5977, subdivision (a)(5), only applies when the director of the county behavioral health agency (or designee) is not the petitioner. There is no corresponding requirement of action when the petitioner is the director of the county behavioral health agency (or designee).

- Set a hearing on the initial appearance on the petition with 14 *court* days. (§ 5977, subd. (a)(5)(C)(i).)
- Appoint counsel for the respondent. The attorney will come from a qualified legal services project, or the public defender if there is no legal services project to take these appointments. “Unless replaced by respondent’s own counsel, appointed counsel shall represent the respondent in any proceeding under this part, and shall represent the individual, as needed, in matters related to CARE agreements and CARE plans.”¹¹ (§ 5977, subd. (a)(5)(C)(ii).) Likely the respondent also has the right to reject the appointment of counsel in favor of self-representation.¹²
- “Order the county to provide notice of the hearing to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.” (§ 5977, subd. (a)(5)(C)(iii).)

VI. INITIAL APPEARANCE ON THE PETITION

Section 5977, subdivision (b), governs the actions taken by the court at the initial hearing on the petition for CARE services.

A. Appearances and appointments

The petitioner is required to be present. If the petitioner is not present, the matter may be dismissed. (§ 5977, subd. (b)(2).) The dismissal of the petition in the absence of the petitioner is discretionary to accommodate any problems related to the commencement of the proceedings. If the petitioner fails to appear, the court should inquire as to the reason and whether a short continuance may correct the problem.

The respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent’s absence if the court makes a finding on the record that conducting the hearing without the participation or presence of the respondent would be in the respondent’s best interest. (§ 5977, subd. (b)(3).)

¹¹ Unlike counsel appointed under section 5977, subdivision (a)(3)(A)(ii), where the director of the behavioral health agency is the petitioner, appointment of counsel under section 5977, subdivision (a)(5)(C)(ii), where the director is not the petitioner, does not include the duty to represent the respondent on appeal. It is unclear whether this difference is a drafting oversight.

¹² For a discussion of potential limits on the right of respondent to self-representation, see section III(E)(1), *supra*.

The court must permit the respondent to substitute their own counsel. (§ 5977, subd. (b)(1).) Likely the respondent also has the right to reject the appointment of counsel in favor of self-representation.¹³

A representative from the county behavioral health agency must be present. (§ 5977, subd. (b)(4).)

A supporter may be appointed. (§ 5977, subd. (b)(5).) For a full discussion of the role of the supporter, see discussion in section XIII, *infra*.

If the respondent self-identifies that they are enrolled in a federally recognized Indian tribe or otherwise receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court must be allowed to be present, subject to the consent of the respondent. The tribal representative is entitled to notice from the county of the initial appearance. (§ 5977, subd. (b)(6).)

B. Substitution of the director of the county behavioral health agency

If the initial petitioner is any person other than the director of the county behavioral health agency (or designee), the court, at the initial appearance on the petition, must relieve the initial petitioner and substitute in the director or their designee. (§ 5977, subd. (b)(7).) “[I]f the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but *at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner.*” (§ 5971, subd. (m), italics added.) Similarly, section 5977, subdivision (b)(7)(A), provides: At the initial appearance on the petition, “[i]f the petitioner is a person described in Section 5974 other than the director of a county behavioral health agency, or their designee, *the court shall issue an order relieving the petitioner and appointing the director of the county behavioral health agency or their designee as the substitute petitioner.*” (Italics added.)

C. Rights of initial petitioner

Although the initial petitioner will no longer hold the status as a party to the proceedings after the initial appearance on the petition, the court may grant certain rights to allow and encourage continued engagement in the proceedings.

If the initial petitioner is a person listed in section 5974, subdivisions (a) or (b) [a person with whom the respondent resides, or is an adult spouse, parent, sibling, child, grandparent, or other individual who stands in loco parentis to the respondent], the court may reserve or assign the following rights: (§ 5977, subd. (b)(7)(B).)

¹³ For a discussion of potential limits on the right of respondent to self-representation, see section III(E)(1), *supra*.

- The right to participate in the hearing on the merits of the petition. The extent of the participation is not defined by the statute. Presumably any participation in the proceedings will be within the discretion of the court to assure an orderly court process. Likely participation would at least include the right to be heard on issues related to the eligibility for CARE services. (§ 5977, subd. (b)(7)(B)(i).)
- The right to notice as required in the discretion of the court.
- “The court may, additionally, allow for participation and engagement in the respondent’s CARE proceedings if the respondent consents.” (§ 5977, subd. (b)(7)(B)(iii).) It appears the intention of the Legislature that the initial petitioner has the right, with or without the consent of the respondent, to participate in the hearing related to the application for CARE services, but the consent of the respondent is required if the initial petitioner is to participate in implementation of CARE services once eligibility as been determined.
- The initial petitioner may file a new petition if the current petition is dismissed and there is a change in circumstances. (§ 5977, subd. (c)(7)(B)(iv).)

If the initial petitioner is not the director of the county behavioral health services and is not a person listed in section 5974, subdivisions (a) or (b), the court may not grant any ongoing rights to participate in the CARE proceedings, other than to make a statement at the hearing on the merits of the petition. (§ 5977, subd. (c)(7)(C).)

VII. HEARING ON THE MERITS OF THE PETITION

The court is to set a hearing on the merits of the petition within 10 calendar days of the initial appearance on the petition. (§ 5977, subd. (c)(8)(A).) Presumably, if the initial appearance on the petition has been continued by the court to complete its required tasks, the 10 days will run from the conclusion of the initial appearance as continued.

A. Burden of proof

The burden of proof and which party bears it is ambiguous. Section 5977, subdivision (c)(8)(A), provides that at the hearing on the merits “the court shall determine by clear and convincing evidence if the respondent *meets* the CARE criteria in Section 5972.” (Italics added.) Similarly, in section 5977, subdivision (c)(2), provides: “If, at the hearing on the merits of the petition, the court finds that the *petitioner has shown* by clear and convincing evidence that the respondent *meets* the CARE criteria in Section 5972, the court shall order the county behavioral health agency” to engage in specified conduct. (Italics added.) The statute suggests pursuant to these statements that the petitioner has the burden of proof. However, section 5977, subdivision

(c)(1), provides: “If, at the hearing on the merits of the petition, the court finds, by clear and convincing evidence, that the respondent *does not meet* the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, on the record, that the initial petitioner’s filing was not in good faith.” (Italics added.) Under the second statement of the burden, the statute suggests the respondent has the burden of proof. Until the issue is more fully resolved by the Legislature or the courts, the interpretation that most favors the respondent is that the petitioner bears the burden of proving, by clear and convincing evidence, that the respondent meets the qualifications of the CARE Act.

B. Evidence submitted on the merits of the petition

In determining whether the respondent qualifies under the CARE Act, “the court shall consider all evidence properly before it, including the report from the county required pursuant to paragraph (3) of subdivision (a) [of section 5977] and any additional evidence presented by the parties, including the petition submitted by the petitioner who is relieved.” (§ 5977, subd. (b)(8)(A).) Based on other provisions of the Act, the court also is to consider:

- Statements or other evidence offered by persons listed in section 5974, subdivisions (a) or (b) [a person with whom the respondent resides, or is a spouse, parent, sibling, child, grandparent, or other individual who stands in loco parentis to the respondent], if participation is authorized by the court under section 5977, subdivision (b)(7)(B)(i).
- Statements of the initial petitioner. (§ 5977, subd. (c)(7)(C).)

C. Concurrent hearings

Section 5977, subdivision (b)(8)(B), provides: “The hearing on the merits of the petition may be conducted concurrently with the initial appearance on the petition upon stipulation of the petitioner and respondent and agreement by the court.” The authorization of concurrent hearings is to facilitate the establishment of CARE services where there is no substantial dispute over the respondent’s eligibility. If the parties and the court agree, the entire process can be completed in one hearing without the need to have separate hearings for the initial appearance and on the merits of the petition.

D. Findings on the merits of the petition

Respondent meets criteria

If at the hearing on the merits the court finds by clear and convincing evidence that the respondent does meet the criteria for CARE services, “the court shall order the county behavioral health agency to work with the respondent, the respondent’s counsel, and the supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement.” The court is also to set a case management hearing within 14

calendar days. (§ 5977, subd. (c)(2).) “If the respondent is enrolled in a federally recognized Indian tribe, the respondent shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.” (§ 5977, subd. (c)(3).)

Respondent does not meet criteria

If at the hearing on the merits the court finds “by clear and convincing evidence, that the respondent does not meet the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, on the record, that the initial petitioner’s filing was not in good faith.” (§ 5977, subd. (c)(1).) Presumably the petition is to be dismissed *with prejudice* if the court finds it was not filed in good faith.

As noted previously, likely the statement of the burden of proof in section 5977, subdivision (c)(1), is a drafting error because it places the burden on the *respondent* to show they are not eligible for services. Likely it is the intent of the Legislature that the petition be dismissed if the *petitioner* fails to show by clear and convincing evidence that the respondent is eligible for services.

There is no material distinction between dismissal with or without prejudice if the reason for dismissal is a failure to prove respondent meets CARE criteria. A dismissal with prejudice simply means the petition may not be refiled based on the same circumstances. Nothing precludes the filing of a new petition based on a change of circumstances.

VIII. CASE MANAGEMENT AND PLAN REVIEW HEARINGS

Section 5977.1, subdivision (a)(1), specifies that a case management hearing is to be held so that the court may “hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.¹⁴” Although the statute specifies that “evidence” is to be presented, likely the matter may proceed informally with offers of proof and comment by counsel and the parties.

A. Agreement reached or likely to be reached

If the court finds that the parties have entered into a CARE agreement, or such an agreement is likely to be reached, the court must: A) approve the agreement or make its own modifications and approve the agreement as modified; and B) set a progress hearing for 60 days. (§ 5977.1, subd. (a)(2).)

¹⁴ The Act distinguishes between a CARE “agreement” and a CARE “plan.” A CARE “agreement” “means a voluntary settlement entered into by the parties,” and “includes the same elements as a CARE plan.” (§ 5971, subd. (a).) The CARE “plan” is ordered by the court and contains the elements as specified in section 5982. (§ 5971, subd. (b).) Although arrived at by different means, the CARE “agreement” and “plan” are functionally equivalent.

B. Agreement not reached and not likely to be reached

If the court finds that the parties have not entered into a CARE agreement and are not likely to enter into a CARE agreement, the court must order a clinical evaluation.

1. Ordering of clinical evaluation

The court must order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation must address, at a minimum, the following: (§ 5977.1, subd. (b).)

- A clinical diagnosis of the respondent.
- Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.
- Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.
- An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

The Act does not address the circumstances under which the respondent refuses to participate in the clinical evaluation. Presumably the court could proceed without the evaluation and rely on any existing documentation or medical records. The court might also order an evaluation pursuant to sections 5200, *et seq.*

2. Clinical evaluation review hearing

The court must set a clinical evaluation hearing within 21 days of the case management hearing. (§ 5977.1, subd. (c)(1).) “The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent’s counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.” (*Ibid.*)

Conducting the clinical evaluation review hearing

“At the clinical evaluation review hearing, the court shall review the evaluation and any other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.” (§ 5977.1, subd. (c)(2).)

Although the statute appears to limit the evidence to that which is strictly admissible under the Evidence Code, likely by stipulation of the parties and agreement of the court, the parties and the court may also consider offers of proof and argument.

Orders after hearing

At the conclusion of the hearing, the court must make one of the following orders: (§ 5977.1, subd. (c)(3).)

(A) *Respondent meets criteria.* If the court finds by clear and convincing evidence, after review of the evaluation and other evidence, that the respondent meets the CARE criteria, the court must order the county behavioral health agency, the respondent, and the respondent’s counsel and supporter to jointly develop a CARE plan within 14 days. A CARE plan is “an individualized, appropriate range of community-based services and supports, as set forth in this part, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate, pursuant to Section 5982.” (§ 5971, subd (b); for a full review of the contents of the CARE plan, see discussion in section IX(B), *infra*.)

If the respondent is a self-identified native American eligible for federal health services 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.” (§ 5977.1, subd. (c)(4).)

The court must also set a “CARE plan review hearing” to consider approval of the plan no later than 14 days from the date the parties are directed to develop the plan. An extension may be granted by the court for good cause shown and with notice to any opposing party. (§ 5977.1, subd. (c)(6).)

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

IX. CARE PLAN REVIEW HEARING

The parties, including the respondent, present their proposed CARE plans to the court at the plan review hearing. (§ 5977.1, subd. (d)(1).) “After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan.” (§ 5977.1, subd. (d)(2).) While the court is to *consider* the plans as offered by the parties, it is the court that makes the final decision on the level of services. The court is free to accept or reject all or a portion of the plans offered by the parties, or order additional services not included in the suggested plans.

“If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.” (§ 5977.1, subd. (d)(5).)

If for any reason there has been insufficient time to prepare a CARE plan, the court may grant a continuance of up to 14 days unless there is good cause for a longer extension. (§ 5977.1, subd. (d)(6).)

A. Order for medication

“A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent’s failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.”¹⁵ (§ 5977.1, subd. (d)(3).) The order must be limited to what is medically necessary for “stabilization;” medication for “maintenance” is not authorized. (§ 5982, subd. (a)(2).)

The Act defines “stabilization medications” as “medications included in the CARE plan that primarily consist of antipsychotic medications, to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long-acting injections if clinically indicated. Stabilization medications shall not be forcibly administered.” (§ 5971, subd. (p).)

¹⁵ While the failure to take prescribed medication may not, itself, be used to terminate respondent from the CARE program, the conduct caused by the lack of medication may constitute sufficient grounds for termination. See discussion of accountability in section XIV, *infra*.

The court should carefully consider the efficacy of an order for medication, even when the respondent qualifies for such an order. The order is unenforceable. The taking of medication ultimately is voluntary by the respondent. Ordered medications may not be forcibly administered, and violation of a medication order may not serve as a basis for any form of sanctions, including termination from the CARE program. While an “order” may assist service providers in encouraging a respondent to take prescribed medications, the court may be just as effective by offering strong words of encouragement at a review hearing or adjusting other conditions of the plan. Furthermore, “ordering” the respondent to take medications may be counterproductive to the goal of achieving voluntary compliance. An informal strategy may be preferable to making a hollow order which the respondent soon learns has no teeth behind it.

B. Components of the CARE plan

The components of the CARE plan are specified in section 5982. The plan may include *only* the following elements:

- Behavioral health services funded as specified. (§ 5982, subd. (a)(1).)
- Medically necessary stabilization medications. (§ 5982, subd. (a)(2).)
- Housing resources funded as specified. (§ 5982, subd. (a)(3).)
- Social services funded as specified. (§ 5982, subd. (a)(4).)
- Services provided under section 17000, et seq. (County aid and relief to indigents). (§ 5982, subd. (a)(5).)

“All CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes and regulations, contractual provisions, and policy guidance governing initial and ongoing program eligibility. In addition to the resources funded through programs listed in subdivision (a), the State Department of Health Care Services may identify other adjacent covered Medi-Cal services, including, but not limited to, enhanced care management and available community supports, which may be suggested, although not ordered, by the court, subject to all applicable federal and state statutes, regulations, contractual provisions, and policy guidance.” (§ 5982, subd. (d).)

Voluntary services by the county

Section 5982 “does not prevent a county or other local government entity from recommending their own services that are their own responsibility not listed in subdivision (a) or (c). Any such recommendation is not required by this section and shall be made at the request of the county

for the purposes of Section 6 of Article XIII B, and Sections 6 and 36 of Article XIII of the California Constitution.” (§ 5982, subd. (e).)

C. Term of CARE program

The initial CARE program is not to exceed one year. The timeline commences with the order approving the CARE plan at the plan review hearing. (§ 5977.1, subd. (e).) Under specified circumstances the CARE program can be extended for up to one additional year. (See discussion of the one-year status hearing in section XI, *infra*.)

D. Services by other agencies

“If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.” (§ 5977.1, subd. (d)(4).)

Presumably the reason for granting the court the authority to add other government entities as a party is to avoid the need to commence a separate legal action to acquire services for the respondent.

X. STATUS REVIEW HEARINGS

Section 5977.2, subdivision (a)(1), requires the court to hold a status review hearing at intervals of not greater than 60 days. At least five days prior to the scheduled hearing, the county behavioral health agency is to file with the court and serve the respondent, respondent’s counsel and supporter with a report, which is to include:

- Progress the respondent has made on the CARE plan.
- What services and supports in the CARE plan were provided, and what services and supports were not provided.
- Any issues the respondent expressed or exhibited in adhering to the CARE plan.
- Recommendations for changes to the services and supports to make the CARE plan more successful.

The respondent is permitted to respond to the report submitted by the county, and to offer their own information and recommendations. (§ 5977.2, subd. (a)(2).) “Subject to applicable law, intermittent lapses or setbacks described in this section of the report shall not impact access to services, treatment, or housing.” (§ 5977.2, subd. (a)(3).)

Although not expressly stated in the statute, presumably the court has the authority to adjust the CARE plan as necessary to meet the respondent's circumstances. Consistent with the flexible nature of the CARE plan is the authority of the behavioral health agency, the respondent, or the court on its own motion to set a hearing at any time to address a change of circumstances. (§ 5977.2, subd. (b).)

XI. ONE-YEAR STATUS HEARING; GRADUATION

During the 11th month of the program timeline, section 5977.3, subdivision (a)(1), requires the court to hold a one-year status hearing. At least five days prior to the hearing, the county behavioral health agency is required to file with the court and serve the respondent, respondent's counsel and supporter with a report, which includes the following:

- Progress the respondent has made on the CARE plan including a final assessment of the respondent's stability.
- What services and supports in the CARE plan were provided, and what services and supports were not provided, over the life of the program.
- Any issues the respondent expressed or exhibited in adhering to the CARE plan.
- Recommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide.

A. Evidentiary hearing

"At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. Respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence as to whether the respondent agrees with the report." (§ 5977.3, subd. (a)(2).) Although the statute specifies the hearing will be "evidentiary," with the agreement of the parties and the court, the hearing likely may proceed on offers of proof and argument of counsel. Likely it is the intent of the statute to prevent the court from making final disposition orders without giving the parties an opportunity to be heard.

B. Orders by the court

The respondent may request either to be graduated from or to remain in the program. (§ 5977.3, subd. (a)(2).) In response to the respondent's choice, the court is to enter the following orders:

1. Respondent elects graduation; graduation hearing

If the respondent elects graduation, “the court shall order the county behavioral health agency and the respondent to work jointly on a graduation plan. The court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the voluntary graduation plan and recite the terms on the record. The graduation plan shall not place additional requirements on local government entities and is not enforceable by the court, except that the graduation plan may, at respondent’s election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.” (§ 5977.3, subd. (a)(3)(A).)

A “psychiatric advance directive” is “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.” (§ 5971, subd. (n).)

Although not required by the Act, if the CARE plan has come to the end of the one-year term, but the respondent does not meet the requirements for graduation, the court should consider either a voluntary or involuntary extension of the program, discussed in section XI(B), *infra*.

2. Respondent elects to stay in CARE

If the respondent elects to remain in the program, they “may request any amount of time, up to and including one additional year.” (§ 5977.3, subd. (a)(3)(B).) The court may permit the extension if the court finds both of the following:

- The respondent did not successfully complete the CARE plan.
- The respondent would benefit from continuation of the CARE plan.

Whether it grants or denies the respondent’s request, the court is to enter its order on the record and state its reasons. (§ 5977.3, subd. (a)(3)(C).)

The extension may be made only once for up to one additional year. (§ 5977.3, subd. (c).)

3. Involuntary retention in the CARE program

The respondent may be involuntarily retained in the CARE program only if the court finds by clear and convincing evidence that all the following factors apply: (§ 5977.3, subd. (b).)

- The respondent did not successfully complete the CARE process.
- All services and supports required through the CARE process were provided to the respondent.
- The respondent would benefit from continuation in the CARE process.
- The respondent currently meets the requirements in section 5972, the basic eligibility requirements for CARE services.

The extension may be only once, for up to one year. (§ 5977.3, subd. (c).)

4. Completion of period of voluntary or involuntary extension

Respondent remains unstable

Section 5977.3 does not address what action, if any, the court may take when the respondent comes to the end of the CARE program, the respondent remains unstable, but the court is unable to make the findings necessary for voluntary or involuntary extension of the CARE plan authorized by section 5977.3, subdivisions (a)(3)(B) and (b). If the respondent has not stabilized and otherwise appears to qualify for such services, the court may consider referral of the respondent for LPS proceedings. (See sections 5979, subd. (a)(2) and (3), discussed in section XIV(A), *infra*.)

Respondent has stabilized and is engaged in voluntary treatment

If after the completion of either the voluntary or involuntary extension of the CARE program the respondent has stabilized and is voluntarily participating in treatment, likely the court would have the discretion to hold a termination/graduation hearing where a voluntary plan is adopted similar to the graduation plan required by section 5977.3, subdivision (a)(3)(A). The components of the hearing might include:

- The court's review the voluntary plan, with the recitation of the terms on the record.

- The plan must not place additional requirements on local government entities and is not enforceable by the court, except that the plan may, at respondent’s election, include a psychiatric advance directive, which will have the force of law.
- Upon completion of the hearing, the respondent will be officially released from the program.

XII. GRADUATION HEARING

If the respondent elects graduation, “the court shall order the county behavioral health agency and the respondent to work jointly on a graduation plan. The court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the voluntary graduation plan and recite the terms on the record. The graduation plan shall not place additional requirements on local government entities and is not enforceable by the court, except that the graduation plan may, at respondent’s election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.” (§ 5977.3, subd. (a)(3)(A).)

The court should consider holding a similar hearing if the respondent successfully completes any period of extension, whether the extension was at the request of the respondent or was involuntary.

XIII. ROLE OF SUPPORTER FOR RESPONDENT

Sections 5981 and 5981.5 detail the role and duties of the person designated the “supporter” for the respondent during the CARE proceedings.

A. Training of the supporter

“Subject to appropriation, the department, in consultation with disability rights groups, county behavioral health and aging agencies, individuals with lived expertise, families, racial justice experts, and other appropriate stakeholders, shall provide optional training and technical resources for volunteer supporters on the CARE process, community services and supports, supported decisionmaking, people with behavioral health conditions, trauma-informed care, family psychoeducation, and psychiatric advance directives. The department may consult with other state and national public and nonprofit agencies and organizations and the Judicial Council to align supported decisionmaking training with best practices for persons with mental illnesses, intellectual and developmental disabilities, other disabilities, and older adults. The department may enter into a technical assistance and training agreement for this purpose, pursuant to Section 5984.” (§ 5980, subd. (a).) Engagement between the State Department of Health Care Services and the Judicial Council would permit participation by experienced bench officers in the development of a responsive and effective training curriculum for support persons.

B. Duties and responsibilities of the supporter

The supporter is to perform the following functions: (§ 5980, subd. (b).)

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

The supporter also is to observe the following conduct: (§ 5981, subd. (b).)

- Support the will and preferences of the respondent to the best of their ability and to the extent reasonably possible.
- Respect the values, beliefs, and preferences of the respondent.
- Act honestly, diligently, and in good faith.
- Avoid, to the greatest extent possible, and disclose to the court, the respondent, and the respondent's counsel, minimize, and manage, conflicts of interest. A court may remove a supporter because of any conflict of interest with the respondent and shall remove the supporter if the conflict cannot be managed in such a way to avoid any possible harm to the respondent.

In addition to the foregoing obligations, "a supporter shall be bound by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. This section does not limit a supporter's civil or criminal liability for prohibited conduct against the respondent, including liability for fraud, abuse, neglect, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9), including, but not limited to, Sections 15656 and 15657." (§ 5981, subd. (d).)

“Unless explicitly authorized by the respondent with capacity to make that authorization, a supporter shall not do either of the following: (1) Make decisions for, or on behalf of, the respondent, except when necessary to prevent imminent bodily harm or injury. (2) Sign documents on behalf of the respondent.” (§ 5981, subd. (c).)

The Act does not specify the procedure for the removal of the supporter. Presumably the supporter and parties would be entitled to notice of the allegations justifying removal and an opportunity to be heard at a hearing.

Source of referrals for supporters

The CARE Act does not specify the source of referrals for persons willing and qualified to perform support services. Presumably lists of such persons will be developed by the State Department of Health Care Services and/or the county behavioral health department.

C. The right of the respondent to a supporter

“Notwithstanding any other provision of this part, the respondent may have a supporter present in any meeting, judicial proceeding, status hearing, or communication related to any of the following: (1) An evaluation. (2) Development of a CARE agreement or CARE plan. (3) Establishing a psychiatric advance directive. (4) Development of a graduation plan.” (§ 5981, subd. (a).)

“The supporter shall not be subpoenaed or called to testify against the respondent in any proceeding relating to this part, and the supporter’s presence at any meeting, proceeding, or communication shall not waive confidentiality or any privilege.” (§ 5981, subd. (e).)

XIV. ACCOUNTABILITY/ TERMINATION FROM PROGRAM

Section 5979 addresses circumstances where either the respondent or the county does not observe the terms of the CARE plan.

A. Termination of respondent from the CARE program

“If, at any time during the proceedings, the court determines by clear and convincing evidence that the respondent is not participating in the CARE process, after the respondent receives notice, or is not adhering to their CARE plan, after the respondent receives notice, the court may terminate the respondent’s participation in the CARE process.” (§ 5979, subd. (a)(1).) Presumably the court must hold a hearing to determine whether removal from the CARE program is justified, giving the parties an adequate opportunity to present evidence and be heard.

In addition to the CARE process, to ensure respondent’s safety, the court may refer the respondent for proceedings under the Lanterman-Petris-Short (LPS) Act, commencing with

section 5200 – a court ordered evaluation to determine whether the respondent is gravely disabled. If such action is taken, the court must notify the county behavioral health agency and the office of the public conservator and guardian. (§ 5979, subd. (a)(2).) The formalized process under sections 5200, *et seq.*, may be unnecessary. If the respondent has become unstable and is no longer participating in the CARE program, the behavioral health department could simply initiate the LPS process with a referral of the respondent for evaluation under section 5150.

“If the respondent was timely provided with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including reasons for that failure, shall be a fact considered by the court in a subsequent hearing under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)), provided that the hearing occurs within six months of the termination of the CARE plan and shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.” (§ 5979, subd. (a)(3).)

The court has only limited authority to act against the respondent for failing to comply with the CARE plan. The court may not impose any penalty outside of section 5979 for violation of a CARE order, including contempt or failure to appear. (§ 5979, subd. (a)(4).) Furthermore, the failure of the respondent to observe a medication order “shall not result in any penalty, including under . . . section [5979].” (§ 5979, subd. (a)(5).) The statute expressly prohibits the court from imposing any sanction on the respondent, including termination from the CARE program, solely and expressly because of the failure to observe any medication order. However, section 5979 does not prohibit the court from actively addressing the conduct of the respondent caused by the failure to take medically necessary medication. Nothing in the legislation suggests the court is powerless to deal with conduct which endangers the respondent, those attending the respondent, and other participants in the CARE program. Absent extraordinary circumstances, termination should not occur until after the respondent has received notice of their offending conduct and has had an opportunity to comply. (See § 5979, subd. (a)(1).)

B. The county’s failure to comply with a CARE order

“If, at any time during the CARE process, the court finds that the county or other local government entity is not complying with court orders, the court shall report that finding to the presiding judge of the superior court or their designee.” (§ 5979, subd. (b)(1).) The statute provides a process where “the court,” presumably the judge handling the CARE proceedings, must report the failure of the county or any other government entity to observe the court’s orders to the presiding judge of the court. The presiding judge may handle the complaint or assign it to another designated judicial officer. Depending on the nature of the alleged violation, the presiding judge could designate the judge hearing the CARE proceedings – it may or may not be appropriate for the same judge to be the source of the complaint and be the person to rule on its merits.

Once a complaint is made, the presiding judge or designee must issue an order to the government entity to show cause why sanctions should not be imposed. The hearing must be set with at least 15 days' notice, including allowance for the time necessary to accomplish service of the order. (§ 5979, subd. (b)(2)(A).)

The hearing must be conducted on the record. If the court “finds, by clear and convincing evidence, that the local government entity has substantially failed to comply with this part, or with lawful orders issued by a court under this part, the presiding judge or their designee may issue an order imposing a fine under this section.” (§ 5979, subd. (b)(2)(B).)

Imposition of a fine

The fine may be up to \$1,000 per day, not to exceed \$25,000, for each violation as identified in the order imposing sanctions. (§ 5979, subd. (b)(2)(C).) The fines are to be deposited in the CARE Act Accountability Fund of the state treasury. (§ 5979, subd. (b)(2)(D)(i).) “All moneys in the fund shall be allocated and distributed to the local government entity that paid the fines, to be used by that entity to serve individuals who have schizophrenia spectrum or other psychotic disorders and who are experiencing, or are at risk of, homelessness, criminal justice involvement, hospitalization, or conservatorship.” (§ 5979, subd. (b)(2)(D)(ii).)

Appointment of a special master

“If, after notice and hearing as set forth in paragraph [(b)](2), the presiding judge or their designee finds, by clear and convincing evidence, that the local government entity is persistently noncompliant with this part, or with lawful orders issued by a court under this part, the presiding judge or their designee may appoint a special master to secure court-ordered care for the respondent at the local government entity’s cost. The presiding judge, or their designee, shall not make an order under this paragraph unless they have received five or more reports under paragraph (1) pertaining to the same local government entity within a one-year period.” (§ 5979, subd. (b)(3).) Presumably “persistently noncompliant” means at least five or more valid reports of noncompliance by the agency in a one-year period.

Mitigating circumstances

In determining whether to impose sanctions under section 5979, “the court shall consider whether there are any mitigating circumstances impairing the ability of the local government entity to fully comply with the requirements of this part, or with court orders issued under this part. The court may consider whether the local government entity is making a good faith effort to come into substantial compliance or is facing substantial undue hardships.” (§ 5979, subd. (b)(4).)

Right to appeal

Either the respondent or the county behavioral health agency may appeal an adverse decision of the court. (§ 5979, subd. (c).)

XV. MISCELLANEOUS PROVISIONS OF THE CARE ACT

A. Training

Section 5983, in part, provides for training and technical assistance. Section 5983, subdivision (c), provides: “The Judicial Council, in consultation with the department, other relevant state entities, and the County Behavioral Health Directors Association, shall provide training and technical assistance to judges to support the implementation of this part, including training regarding the CARE process, CARE agreement and plan services and supports, working with the supporter, supported decisionmaking, the supporter role, the family role, trauma-informed care, elimination of bias, best practices, and evidence-based models of care for people with severe behavioral health conditions.”

B. Annual report

Section 5985, subdivision (a), provides for an annual CARE Act report by the State Department of Health Care Services. In consultation with the Judicial Council, the department is to develop an annual reporting schedule for submission of CARE Act data. (§ 5985, subd. (d)(1).) Specified data is to be collected by the trial courts and forwarded to the Judicial Council. The data is to include: (§ 5985, subd. (d)(3).)

- The number of petitions submitted pursuant to Section 5975.
- The number of initial appearances on the petition set pursuant to section 5977, subdivision (a)(3).
- The total number of hearings held pursuant to the Act.

The annual report must also include “process measures to examine the scope of impact and monitor the performance of CARE Act model implementation.” (§ 5985, subd. (e).) (See the full listing of the data elements in section 5985 set forth in the CARE Act in Appendix II, *infra*.)

C. Waiver of liability

“A county, or an employee or agent of a county, shall not be held civilly or criminally liable for any action by a respondent in the CARE process, except when the act or omission of a county,

or the employee or agent of a county, constitutes gross negligence, recklessness, or willful misconduct. This section does not limit any immunity provided under any other law.” (§ 5987.)

APPENDIX I: TABLE OF CARE ACT DATES

The CARE Act requires the court to enter specified orders and hold specified hearings within the times indicated on the following table. All dates may be continued by the court with notice to the opposing party and for good cause shown.

NAME OF HEARING	TIME LIMIT	AUTHORITY
1. Filing of petition	None	§ 5970.5, <i>et seq.</i> ¹⁶
2. Review petition for prima facie basis	“Promptly” – no specific time stated	§ 5977(a)(1)
3(A)(1). If behavioral health is petitioner and prima facie basis shown, set initial appearance	14 court days from ruling on prima facie basis	§ 5977(a)(3)(A)(i)
3(A)(2). If behavioral health is petitioner, order report (if required)	Return report in 14 court days from ruling on prima facie basis	§ 5977(a)(3)(A)(iii)
3(B). If behavioral health is not petitioner, order report	Return report in 14 court days from ruling on prima facie basis	§ 5977(a)(3)(B)
Rule on report	5 calendar days	§ 5977(a)(5)
If prima facie basis shown, set initial appearance	14 court days	§ 5977(a)(5)(C)(i)
4. Hearing on the merits of the petition	10 calendar days of initial appearance	§ 5977(b)(8)(A)
5. Case management hearing	14 calendar days from hearing on the merits	§ 5977(c)(2)
6. Clinical evaluation (if required)	21 calendar days of case management hearing	§ 5977.1(c)(1)
7. Develop case plan (if required)	14 calendar days from case management hearing	§ 5977.1(c)(3)(A)
8. Plan review hearing (if required)	14 calendar days from date ordered to prepare plan	§ 5977.1(c)(6)
9. Initial progress hearing	No greater than 60 calendar days from case management hearing or plan review hearing, whichever is applicable.	§ 5977.1(a)(1)(B)

¹⁶ All statutory references on the table are to the Welfare and Institutions Code.

10. Subsequent progress hearings	Progress hearings set no less frequently than every 60 calendar days	§ 5977.2(a)(1)
11. One-year status hearing	11th month from the date the CARE plan was approved	§ 5977.3(a)(1)
12. Graduation plan hearing	12th month from the date the CARE plan was approved	§ 5977.3(a)(3)(A)
13. Extension of CARE plan	Up to one year from 12th month from the date the CARE plan was approved	§ 5977.3(c)

APPENDIX II: CARE ACT

Section 7 of SB 1338 provides the following:

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

PART 8. The Community Assistance, Recovery, and Empowerment Act

CHAPTER 1. General Provisions

5970.

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

5970.5.

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

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

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

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

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

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

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

5971.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2. Process

5972.

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

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

(b) The person is currently experiencing a severe mental illness, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. This section does not establish

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

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

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

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

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

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

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

5973.

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

(1) The county in which the respondent resides.

(2) The county where the respondent is found.

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

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

5974.

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

(a) A person with whom the respondent resides.

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

- (c) The director of a hospital, or their designee, in which the respondent is hospitalized, including hospitalization pursuant to Section 5150 or 5250.
- (d) The director of a public or charitable organization, agency, or home, or their designee, who has, within the previous 30 days, provided or who is currently providing behavioral health services to the respondent or in whose institution the respondent resides.
- (e) A licensed behavioral health professional, or their designee, who is, or has been within the previous 30 days, either supervising the treatment of, or treating the respondent for a mental illness.
- (f) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker, who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions and transportation pursuant to Section 5150, multiple attempts to engage the respondent in voluntary treatment, or other repeated efforts to aid the respondent in obtaining professional assistance.
- (g) The public guardian or public conservator, or their designee, of the county in which the respondent is present or reasonably believed to be present.
- (h) The director of a county behavioral health agency, or their designee, of the county in which the respondent resides or is found.
- (i) The director of county adult protective services, or their designee, of the county in which the respondent resides or is found.
- (j) The director of a California Indian health services program, California tribal behavioral health department, or their designee.
- (k) The judge of a tribal court that is located in California, or their designee.
- (l) The respondent.

5975.

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

- (a) The name of the respondent and, if known, the respondent's address.
- (b) The petitioner's relationship to the respondent.
- (c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972.
- (d) Either of the following:

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

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

5975.1.

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

5976.

The respondent shall:

- (a) Receive notice of the hearings.
- (b) Receive a copy of the court-ordered evaluation.
- (c) Be entitled to be represented by counsel at all stages of a proceeding commenced under this chapter, regardless of the ability to pay.
- (d) Be allowed to have a supporter, as described in Section 5982.
- (e) Be present at the hearing unless the respondent waives the right to be present.
- (f) Have the right to present evidence.
- (g) Have the right to call witnesses.
- (h) Have the right to cross-examine witnesses.
- (i) Have the right to appeal decisions, and to be informed of the right to appeal.

5976.5.

- (a) Notwithstanding any other law, and except as otherwise provided in this section, a hearing held under this part is presumptively closed to the public.
- (b) The respondent may demand that the hearing be public and be held in a place suitable for attendance by the public.
- (c) The respondent may request the presence of any family member or friend without waiving the right to keep the hearing closed to the rest of the public.
- (d) A request by any other party to the proceeding to make the hearing public may be granted if the judge conducting the hearing finds that the public interest in an open hearing clearly outweighs the respondent's interest in privacy.
- (e) All reports, evaluations, diagnoses, or other information related to the respondent's health shall be confidential.
- (f) Before commencing a hearing, the judge shall inform the respondent of their rights under this section.

5977.

- (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.
- (2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case without prejudice subject to consideration of Section 5975.1.
- (3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:
 - (A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:
 - (i) Set the matter for an initial appearance on the petition within 14 court days.
 - (ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these appointments, a public defender shall be appointed to represent the respondent. Unless replaced by respondent's own counsel, appointed counsel shall represent the respondent in any proceeding under this part, and shall represent the individual, as needed, in matters related to CARE agreements and CARE plans, including appeals.
 - (iii) Determine if the petition includes all of the following information, or order the county to submit a report within 14 court days that addresses all the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A supporter may be appointed.

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

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

petitioner and appointing the director of the county behavioral health agency or their designee as the substitute petitioner.

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

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

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

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

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

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

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

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

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

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

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

5977.1.

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

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

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

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

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

(1) A clinical diagnosis of the respondent.

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

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

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

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

(2) At the clinical evaluation review hearing, the court shall review the evaluation and any other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the

person who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

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

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

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

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

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

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

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

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

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not be forcibly administered and the respondent's failure to comply with a

medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

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

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

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

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

5977.2.

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

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

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

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

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

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

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

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

5977.3.

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

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

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

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

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

(2) At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. Respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence as to whether the respondent agrees with the report. The respondent may request either to be graduated from the program or to remain in the program.

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

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

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

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

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

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

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

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

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

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

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

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

5977.4.

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

(b) The hearings described in this chapter shall occur in person unless the court, in its discretion, allows a party or witness to appear remotely through the use of remote technology. The respondent shall have the right to be in person for all hearings.

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

5978.

(a) A court may refer an individual from assisted outpatient treatment, as well as from conservatorship proceedings pursuant Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 (LPS conservatorship) to CARE Act proceedings. If the individual is being referred

from assisted outpatient treatment, the county behavioral health director or their designee shall be the petitioner. If the individual is being referred from LPS conservatorship proceedings, the conservator shall be the petitioner pursuant to Section 5974.

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

CHAPTER 3. Accountability

5979.

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

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

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

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

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

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

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

(B) The presiding judge, or their designee, shall consider the matter on the record established at the hearing. If the presiding judge or their designee finds, by clear and convincing evidence,

that the local government entity has substantially failed to comply with this part, or with lawful orders issued by a court under this part, the presiding judge or their designee may issue an order imposing a fine under this section.

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

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

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

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

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

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

CHAPTER 4. Supporter and Counsel

5980.

(a) Subject to appropriation, the department, in consultation with disability rights groups, county behavioral health and aging agencies, individuals with lived expertise, families, racial justice experts, and other appropriate stakeholders, shall provide optional training and technical resources for volunteer supporters on the CARE process, community services and supports, supported decisionmaking, people with behavioral health conditions, trauma-informed care, family psychoeducation, and psychiatric advance directives. The department

may consult with other state and national public and nonprofit agencies and organizations and the Judicial Council to align supported decisionmaking training with best practices for persons with mental illnesses, intellectual and developmental disabilities, other disabilities, and older adults. The department may enter into a technical assistance and training agreement for this purpose, pursuant to Section 5984.

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

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

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

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

5981.

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

(1) An evaluation.

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

(3) Establishing a psychiatric advance directive.

(4) Development of a graduation plan.

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

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

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

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

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

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

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

(2) Sign documents on behalf of the respondent.

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

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

5981.5.

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

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

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

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

CHAPTER 5. CARE Plan

5982.

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

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

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

(3) Housing resources funded through the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code); California Housing Accelerator (Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code); the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code); the Homeless Housing, Assistance, and Prevention Program (Chapter 6 (commencing with Section 50216) of Part 1 of Division 31 of the Health and Safety Code); the Encampment Resolution Funding Program (Chapter 7 (commencing with Section 50250) of Part 1 of Division 31 of the Health and Safety Code); the Project Roomkey and Rehousing Program pursuant to Provision 22 of Item 5180-151-0001 of the Budget Act of 2021 (Ch. 21, Stats. 2021); the Community Care Expansion Program (Chapter 20 (commencing with Section 18999.97) of Part 6 of Division 9 of the Welfare and Institutions Code); the CalWORKs Housing Support Program (Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code); the CalWORKs Homeless Assistance pursuant to clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 11450 of Article 6 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code; the Housing and Disability Advocacy Program (Chapter 17 (commencing with Section 18999) of Part 6 of Division 9 of the Welfare and Institutions Code); the Home Safe Program (Chapter 14 (commencing with Section 15770) of Part 3 of Division 9 of the Welfare and Institutions Code); the Bringing Families Home Program (Article 6 (commencing with Section 16523) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Placement program for nonminor dependents (Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code); the Transitional Housing Program-Plus pursuant to subdivision (s) of Section 11400 and paragraph (2) of subdivision (a) of Section 11403.2 of Article 5 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 4 (commencing with Section 16522) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code; the Behavioral Health Continuum Infrastructure Program (Chapter 1 (commencing with Section 5960) of Part 7 of Division 5 of the Welfare and Institutions Code); the Behavioral Health Bridge Housing Program; HUD-Veterans Affairs Supportive Housing Program (Section 8(o)(19) of the United States Housing Act of 1937 [42 U.S.C. Section 1437f(o)(19)]); Supportive Services for Veteran Families (Section 604 of the Veterans' Mental Health and Other Care Improvements Act of 2008 [38 U.S.C. Sec. 2044]); HUD Continuum of Care program (Section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11302]); the Emergency Solutions Grant (Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. Secs. 11371-11378]); HUD Housing Choice Voucher program

(Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]); the Emergency Housing Vouchers (Section 3202 of the American Rescue Plan Act of 2021 [Public Law 117-2]; Section 8(o) of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f(o)]); HOME Investment Partnerships Program (Title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. Sec. 12721 et seq.]); the Community Development Block Grant Program (Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. Sec. 5301 et seq.]); housing supported by the Mental Health Services Act pursuant to Part 3 (commencing with Section 5800); community development block grants; and other state and federal housing resources.

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

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

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

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

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

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

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

(2) If a proceeding commences in a county where the respondent is found or is facing criminal or civil proceedings that is different than the county in which the respondent resides, the county in which the respondent is found or is facing criminal or civil proceedings shall not delay

proceedings under this part and is the responsible county behavioral health agency for providing or coordinating all components of the CARE agreement or CARE plan.

(3) The county in which the respondent resides, as defined in paragraph (1), shall be responsible for the costs of providing all CARE agreement or CARE plan behavioral health services, as defined in paragraph (1) of subdivision (a).

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

CHAPTER 6. Technical Assistance and Administration

5983.

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

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

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

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

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

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

5984.

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

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

5985.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The rates of adherence to medication.

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

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

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

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

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

reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

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

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

5986.

(a) An independent, research-based entity shall be retained by the department to develop, in consultation with county behavioral health agencies, county CARE courts, racial justice experts, and other appropriate stakeholders, including providers and CARE court participants, an independent evaluation of the effectiveness of the CARE Act. The independent evaluation shall employ statistical research methodology and include a logic model, hypotheses, comparative or quasi-experimental analyses, and conclusions regarding the extent to which the CARE Act model is associated, correlated, and causally related with the performance of the outcome measures included in the annual reports. The independent evaluation shall include results from a survey conducted of program participants. The independent evaluation shall highlight racial, ethnic, and other demographic disparities, and include causal inference or descriptive analyses regarding the impact of the CARE Act on disparity reduction efforts.

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

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

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

5987.

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