

How policy and history shaped California's CARE Courts

By Dan Jacobson

This article is intended to provide a historical perspective on the need for the CARE Act and to explain the state's CARE policies, primarily by way of described hearings, definitions and other aspects of the CARE Act. This article is not intended to be a recipe for handling a CARE case. There are too many nuanced hearings, definitions, etc., to prepare such a recipe in this space.

History

On Sept. 2, 1967, then-Governor Ronald Reagan signed the Lanterman-Petris-Short Act (LPS Act) into law. That law became operative on July 1, 1969 (Welfare and Institutions Code § 5000, Lexis Annotations, History). Unless otherwise noted, all statutory references are to the Welfare and Institutions Code. Assemblymembers Frank Lanterman and Nicholas Petris were concerned about the nonconsensual treatment of patients in California's state mental institutions, according to Dan Morain's May 30, 2023, Capitol Weekly article, "The complicated birth of the Lanterman-Petris-Short Act." Alan Short was a state senator who "was less interested in granting great

er rights to state hospital patients than in expanding legislation he had [previously] carried. . . to help local governments pay for certain mental health services," Morain wrote in his Oct. 24, 2024 article for the USC Annenberg Center for Health Journalism, "The Republican who emptied the asylums." Well after its passage, all three of the legislators after whom the LPS Act was named sharply criticized the law. Lanterman's comment is illustrative. He said that he wanted "the money saved by emptying state hospitals [to] pay for patients' needs in their communities." The asylums were emptied, but the money didn't follow the patients to their communities. *Id.* The LPS Act still exists (§§ 5000-5579.) It allows for time-limited nonconsensual treatment of mental disorders. *See e.g.*, Wel & Inst Code § 5150(a). Under strict circumstances, it also allows conservatorships to be created to protect severely mentally ill people. *See, e.g.*, § 5357(d).

Homelessness

"Correlation doesn't imply causation, but it does waggle its eyebrows suggestively and gesture furtively while mouthing 'look over there.'" — Randal P. Munroe, author and engineer.

Those of us with a few grey hairs and who came up in the 1960s and 1970s did not even know of the concepts of homelessness. We learned about that sad concept in the 1980s, when homeless people began to appear, and then their ranks grew exponentially. Recall that the LPS Act became operative in 1969, and as shown above, that Act emptied the state's mental institutions. Correlation.

While there are reasons for homelessness such as personal and societal economics, to quote Munroe, we have to "look over there"; we have to look at the release of the severely mentally ill to see if the LPS Act was a cause that created the effect of homelessness. A statistically rigid UCSF study conducted between October 2021 and November 2022 relates the LPS Act correlation to homelessness causation. In a 2023 study conducted by the UCSF Benioff Homelessness and Housing Initiative, coauthors Margot Kushel and Tiana Moore wrote that, "The majority (82%) [of homeless Californians] reported a period in their life where they experienced a serious mental health condition. More than one quarter (27%) had been hospitalized for a mental health condition." The findings appeared

See Page 4 — NOW

MCLE

How policy and history shaped California's CARE Courts

Continued from page 1

in the report "Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness," published by UCSF. So it is more than reasonable to say that a serious mental health condition causes homelessness.

Thus, the CARE Act's attack on mental illness is an attack on homelessness.

A new approach: The CARE process

Lanterman passed away in 1981, but the facts that frustrated him and his cohorts in life — particularly released mental patients not receiving care in the community — continued. Governor Newsom and the legislature decided that "[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." Umberg, SB-1338, § 1(c), Senate (2021-2022).

A couple of misconceptions

The CARE process is not a conservatorship. In fact, an individual who is under an LPS conservatorship "may [be referred] to CARE Act proceedings" (§ 5978(a)) thus lifting

the conservatorship and moving the ill person into the non-conservatorship CARE process. The CARE courts do not comprise a separate court system. Rather, the CARE Act provides a comprehensive, individualized and court-supervised pro-

gram utilized by the Superior Court to attack severe mental illness. See §§ 5971(f), 5979(b)(1). In the larger counties, which have specialized courts, the CARE Act is generally handled by the Probate Division.

The policies behind the CARE process

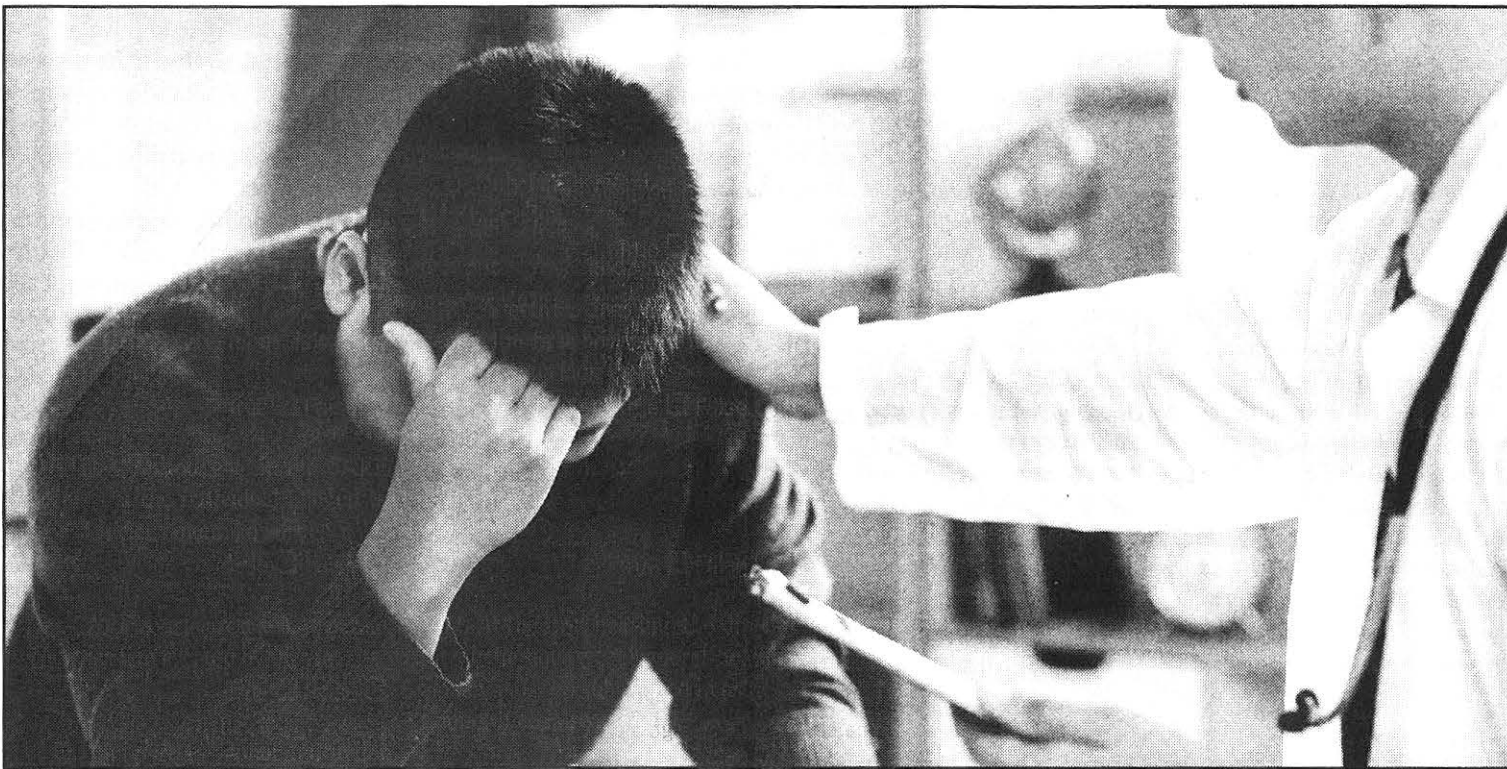
A careful reading of the 25-page CARE Act makes apparent that the Act's policies are meant to cure the severely mentally ill or at least to minimize their illness while fiercely

protecting the patients' rights and to utilize community mental health entities to work toward these wellness goals. See § 5801. That's a tall hill to climb but one that Lanterman, Petris and Short would say should be climbed.

The "CARE process"

"CARE process" means the court and related proceedings to implement the CARE Act." § 5971(c). An indispensable part of that process is the creation and implementation of a "CARE agreement" or a "CARE plan." A CARE plan is "an individualized, appropriate range of community-based services and supports, . . . which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate." A CARE agreement is the same thing as a CARE plan, except that such an agreement comes to fruition via a "voluntary settlement agreement entered into by the parties" (§ 5971(a)), whereas a CARE plan is decided upon by the court. § 5977.1(d)(2). In the case of a CARE plan the court, "[a]fter consideration of the plans proposed by the parties, . . . shall adopt the elements of a

See Page 6 — HOW



Shutterstock

How policy and history shaped California's CARE Courts

Continued from page 4

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."

The parties

Some definitions regarding those primarily involved with the CARE process are in order:

- The petitioner is "the entity who [initially] files the CARE Act petition with the court" (§ 5971(l)).
- The respondent is "the person who is subject to the petition for the CARE process" (§ 5971(o)).
- "County behavioral health agency" means the local director of mental health services... the local behavioral health director, or both as applicable" (§ 5971(e)).
- "Supporter" means an adult designated by the respondent who assists the person who is the subject of the petition, which assistance 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" § 5971(r)).

Section 5971(r) emphasizes that the CARE Act does not create a conservatorship ("A supporter shall not act independently").

A bit more of an expansive explanation of the roles of the parties helps to illustrate the policies of the CARE Act. There are many persons who can file a CARE Act petition and thus become the *original* petitioner. There is a long list of such persons at Section 5974. That list includes people close to the respondent, such as "[a] person with whom the respondent resides" (Section 5974(a)), and "[a] spouse, par-

ent, sibling, child, or grandparent [of the] respondent" (§ 5974(b)). Under specified strict conditions, relevant institution-related persons can also be a petitioner — for example, a first responder (§ 5974(f)) and "[t]he director of a public or charitable organization" (§ 5974(d)).

In an apparent attempt to protect respondents who ought not be respondents, the criteria for being a respondent are long and medically detailed. The criteria are outlined in § 5972, and include items such as, "The person is currently experiencing a serious mental disorder . . . 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." The definition of a "serious mental disorder" from Section 5600.3(b)(2) is incorporated into Section 5972(b). According to the statute:

"Serious mental disorder" means 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." (Section 5600.3(b)(2))

The importance of filing an appropriate petition

The petitioner must file either an affidavit from a "licensed behavior-

al health professional" with details enumerated at Section 5975(b)(1), or provide evidence of events described at Section 5600.3(b)(2). Judicial Council form CARE-102 should be used if the petitioner is a licensed behavioral health professional. Judicial Council form CARE-100 should be used by any other petitioner. Judicial Council form CARE-101 is the affidavit form to be completed by a licensed behavioral health professional and included with the initial petition filing.

That the initial petition papers properly allege the correct diagnostic issues in the manner prescribed by law is very important. That is because, before the initial hearing, "The court shall promptly review the petition [upon its filing] to determine if the petitioner has made a *prima facie* showing that the respondent is, or may be, a person [with the severe mental conditions referenced above]." § 5977(a)(1). If the petition papers do not make such a *prima facie* showing, the court may dismiss the case without prejudice. § 5977(a)(2). Recall that this judicial review is prior to the first hearing, so that judge does not have the benefit of the parties' oral input.

Abraham Lincoln is said to have noted that "A lawyer who represents him [or her] self, has a fool for a client." For those who cannot afford a lawyer to work on the entire case, this may be a situation where a clearly defined limited representation should be used. This is because, in most cases, the original petitioner will be substituted out, and because the other participants should want to strive for the same thing as the original petitioner.

How policy and history shaped California's CARE Courts

Continued from page 6

Substitution of original petitioner

"The director of a county behavioral health agency, of the county in which the respondent resides or is found" can also be an initial petitioner. If he or she is not the initial petitioner, then the court must substitute said director into the case, in place of the initial

Dan Jacobson is a practicing attorney in Tustin; a law professor-emeritus; a retired Governor of the California Insurance Guarantee Association (CIGA), having been appointed to that position by Congressman John Garamendi, when Congressman Garamendi was California's Insurance Commissioner; and, a recently retired member of California's Board of Accountancy, having been appointed to that position by Assembly-Speaker Anthony Rendon. He can be reached at 714-505-4872 (land-line) and dlj@jacobsonlawyers.com.



petitioner, at the first hearing on the CARE matter. Section 5972(b)(7)(A). (Note that if the original petitioner is an individual living with the respondent or a close family member as described in § 5974(b), then the original petitioner continues to have rights enumerated in the subsections under Section 5977(b)(6)(B).) Stepping back from the trees to view the forest, notice the strong state policy to involve the respondent's community in his or her care. See Umberg, SB-1338, Section 1(c), Senate (2021-2022).

Right to counsel

The respondent has the right to counsel at all stages of the CARE process. In fact, that right must be enforced "regardless of the ability to pay" (Section 5976(c)). The court must attempt to "[a]ppoint a qualified legal service project [see Business & Professions Code Section 6213-6214.5] to represent the respondent." If no such service agrees to such appointment, then the court must appoint a public defender to represent the respondent. (Section 5976(f)(3)(A)(ii)). Any images from the Jack Nicholson movie "One Flew Over the Cuckoo's Nest" should fade with the knowledge that the CARE respondent will have counsel regardless of the respondent's ability to pay for such.

Available programs and insurance

There is a plethora of mental health programs listed under Section 5982

from which the court and the parties can choose to develop a CARE agreement or plan. However, a cautionary note is set forth in Section 5982(d): "All CARE plan services and supports ordered by the court are subject to available funding." SB-1338 provides little in the way of funding. See Section 5979. The good news is that these Section 5982 programs are funded. Further, SB-1338 utilizes insurance.

Senate Bill 1338 added Health and Safety Code Section 1374.723. That statute requires the following (the lower-case letters and numerals correspond to the appropriate Section 1374.723 subsection):

(a) Health care plans post Aug. 1, 2023 that cover "hospital, medical, or surgical expenses shall cover the cost of developing a[] CARE evaluation" (see Section 5977.1) and "the provision of all health care services for an enrollee when required or recommended for the enrollee pursuant to a CARE agreement or a CARE plan . . . regardless of whether the service is provided by an in-network or out-of-network provider[.]" except as specified in subdivision (g).

(b)(1) "A health care service plan shall not require prior authorization for services, other than prescription drugs, provided pursuant to a CARE agreement or CARE plan" (See subdivision (g) for Medi-Cal exceptions to Health and Safety Code Section 1374.723.)

Native Americans

Note that there are a few special rules that apply to Native Americans. These rules follow the CARE Act's policy of involving the respondents community in the respondent's care. See, for example, Section 5977(b)(6) and 5974(j).

Effectiveness

The CARE Act has only recently been operational throughout the state. "The CARE Act was implemented in two cohorts. Cohort I began on October 1, 2023, and included seven counties: Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne, and the City and County of San Francisco. Los Angeles County is in Cohort II but elected to implement early, on December 1, 2023. The remaining Cohort II counties were required to implement on or before December 1, 2024." See the CARE-ACT and Sections 5970.5(a) and (b).

According to available judicial council data, "869 petitions filed from Oct. 1, 2023, through Oct. 31, 2024. During that same time, courts ordered more than 175 care agreements and plans, and 516 petitions were still being actively engaged."

Conclusion

Use of the CARE Act should bring relief to Californians with severe mental illness while respecting their rights. Lanterman, Petris, and Short wanted severely mentally ill

individuals to be free of confinement and to be treated. The CARE

Act should afford these legislators a measure of posthumous peace.