

## CARE Act

# Community Assistance, Recovery, and Empowerment Act

## Senate Bill 35 Amendments

[Senate Bill \(SB\) 1338](#) (Umberg, Chapter 319, Statutes of 2022) established the Community Assistance, Recovery, and Empowerment (CARE) Act in [Welfare and Institutions \(W&I\) Code Section 5970-5987](#),

which provides community-based behavioral health services and supports through a civil court process for individuals who are experiencing a serious mental disorder and who meet other eligibility requirements. The CARE Act allows specified individuals to petition the court to engage respondents in a broad range of treatment services and supports through a CARE agreement or CARE plan.

[SB 35](#) (Umberg, Chapter 283, Statutes of 2023) amended provisions of the CARE Act to provide clarification for the CARE process and make technical changes to allow successful implementation. A summary of the substantive changes is bulleted in the sections below.

## General Provisions ([link](#))

### Implementation

**Extensions and implementation deadline.** Clarifies that each county may only be granted one extension by the Department of Health Care Services (DHCS) to implement the process; in all instances, implementation shall occur by December 1, 2025. (W&I Code 5970.5)



## Definitions

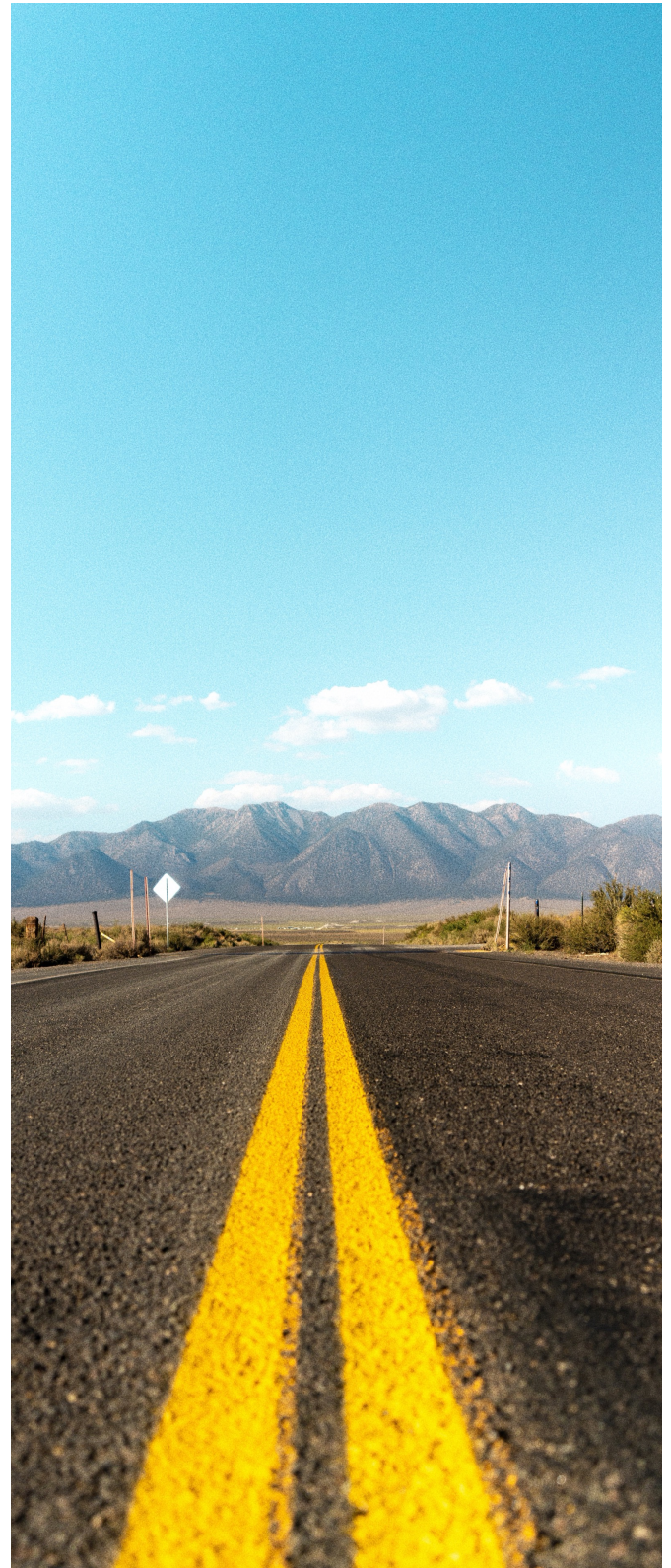
### **Adds a definition for “legal proceeding.”**

For use in statute’s provisions related to when information, records, and evidence disclosed in CARE proceedings may or may not be used in other “legal proceedings.” Legal proceedings are defined to include administrative, civil, or criminal proceedings such as juvenile court and family court matters. Lanterman-Petris-Short (LPS) Act proceedings, proceedings from which respondent was referred to CARE process (if applicable), and disciplinary proceedings related to an attorney’s action in the CARE process are exempt from the definition of legal proceedings. (W&I Code 5971)

**Adds a cross reference to the Probate Code requirements for a “Psychiatric Advance Directive” (PAD).** (Probate Code (Division 4.7, commencing with section 4600) (W&I Code 5971)

**Adds language to the definition of “Counsel.”** Definition of “Counsel” defined as follows: “Representation of a respondent in these matters does not alter counsel’s obligations under the State Bar Act and Rules of Professional Conduct, including subdivision (e) of Section 6068 of the Business and Professions Code and rule 1.6 of the Rules of Professional conduct.” (W&I Code 5971)

**Clarification of the definition of “Parties.”** For clarification, adds any local governmental entity added to the CARE proceedings by the court pursuant to paragraph (4) of subdivision (d) of Section 5977.1. (W&I Code 5971)



## > Process ([link](#))

### CARE Act Proceedings

**Judicial officers.** Allows for commissioners and other subordinate judicial officers to conduct CARE proceedings. (W&I Code 5975.2)

**Filing fees.** Waives fees for filing CARE Act petitions and precludes a public officer from charging fees for filing or serving papers or performing any duty under the CARE Act. (W&I Code 5975.3)

**Right to an interpreter.** Adds respondent's right to an interpreter. (W&I Code 5976)

**Petitioner clarifications and specifications.** (W&I Code 5971, 5977, 5974)

- For clarification, adds the terms "original" petitioner, to distinguish the party that filed the petition from the "successor" petitioner (i.e., the county behavioral health (BH) agency or designee).
- Clarifies that a public guardian or public conservator must be of the county in which the respondent resides or is found in order to file a petition.
- Clarifies that to be eligible to file a petition, the director of a California Indian health services program or a tribal behavioral health department must currently be providing, or within the previous 30 days have provided, BH services to the respondent.
- Clarifies that for a tribal court judge to file a petition, the respondent must have appeared in the court within the previous 30 days.
- Clarifies that if a case is referred from misdemeanor proceedings (incompetent to stand trial), the petitioner shall be the county BH agency or their designee. (W&I Code 5978)

**Eligibility criteria language.** Modifies language of one of the eligibility criteria from a person currently "experiencing a severe mental illness" to "experiencing a serious mental disorder." (W&I Code 5972)

**Additional time to enter into CARE agreement.** Requires the court, upon finding at a case management hearing that the parties have entered, or are likely to enter, a CARE agreement, to either (A) approve or modify and approve the terms of the CARE agreement and set a progress hearing for 60 days or (B) continue the hearing by 14 days, upon stipulation of the parties, in order to allow additional time to enter into a CARE agreement. (W&I Code 5977.1)

**Communication between CARE Act court and the juvenile court.** Requires Judicial Council to create a rule for communication between the CARE Act court and the juvenile court. (W&I Code 5977.4)



## ➤ Process ([link](#))

### Disclosure of Health Information

**Prohibition on BH agency turning over actual patient records.** Prohibits a county BH agency from submitting to the court, except by court order, original or photocopied records underlying the information in a report, evaluation, or other document. The respondent, their counsel, and their supporter (with respondent's consent) shall be provided with an unredacted copy of any filed report or document. (W&I Code 5977.4)

**Requirements for BH to include and share information to support recommendations.** Requires county BH agencies to include in any report or other document filed with the court the information, including protected health information (PHI), necessary to support the document's conclusions and recommendations. (W&I Code 5977.4)

**Requirement for health care providers or covered entities who filed or supported a petition to provide the BH agency relevant information.** Requires a health care provider or covered entity that filed a CARE Act petition or executed an affidavit included with a CARE Act petition to provide to the county BH agency any information pertaining to a respondent that is relevant to an investigation, evaluation, or other report or hearing, or to the provision, coordination or management of services and supports. This includes PHI and mental health records (excluding psychotherapy notes). (W&I Code 5977.4)

**Ability of health care providers or covered entities that did not file or support a petition to share information with the BH agency.** Allows a health care provider or covered entity that did not file the CARE Act petition or submit an affidavit in support of a petition to disclose to a county BH agency any information, including PHI and mental health records (excluding psychotherapy notes), pertaining to a respondent that is relevant to the BH agency's provision, coordination, or management of services and

supports. This includes the BH agency's preparation of any required investigations, evaluations, or reports. (W&I Code 5977.4)

**Process by which a BH agency can apply for court-ordered information.** Provides a process for a county BH agency to apply for a court order compelling a health care provider or covered entity to provide to the BH agency, the court, or both, any information pertaining to a respondent that is relevant to an investigation, evaluation, or other report or hearing, or to the provision, coordination or management of services and supports. This includes PHI and mental health records (excluding psychotherapy notes). (W&I Code 5977.4)

**Civil or criminal liability for sharing information.** Specifies that a health care provider or covered entity shall not be held civilly or criminally liable for any disclosure authorized or required by these provisions. (W&I Code 5977.4)

**Notification of disclosure.** The county BH agency shall notify the respondent of a disclosure under these provisions by mail at the respondent's last known address, if any. All information shared under these provisions shall also be disclosed to the respondent, their counsel, and their supporter (with respondent's consent). A copy of the notification shall be included with the next notice of hearing served upon the respondent, if any. (W&I Code 5977.4)

**Information not subject to Public Records Act.** Specifies that further disclosure or redisclosure is not authorized except as expressly provided, and that information disclosed to a county BH agency by a health care provider is confidential and is not subject to disclosure or inspection under the Public Records Act. (W&I Code 5977.4)

## Confidentiality

**Sealing of records.** Adds a provision allowing respondent to petition the court for an order sealing the court records, including health information, and sets a presumption in favor of sealing the records. (W&I Code 5976.5)

**Confidentiality of court records.** Specifies that any written report submitted to the court by the county in furtherance of the hearing on the merits shall be confidential and not subject to disclosure under the Public Records Act. Also provides that these reports are inadmissible in subsequent legal proceedings except upon motion of the respondent in that subsequent legal proceeding, with certain exceptions (e.g., LPS proceedings). (W&I Code 5977)

**Making records admissible in subsequent legal proceedings.** Provides that photographs, records, transcripts, or other records or testimony of a CARE proceeding are not admissible in subsequent legal proceedings except upon motion by respondent, county BH agency, or the public guardian/conservator and ordered by a court in that subsequent legal proceeding. (W&I Code 5976.5)

### Counsel

**Counsel working in the capacity of a public defender.** Expands appointment of a public defender to include "other counsel working in that capacity." (W&I Code 5977)

**Penalties for filing a petition to gain advantage over a respondent.** Specifies that an attorney found to have filed a petition or assisted in the filing of a petition with knowledge that the filing was made to gain advantage over the respondent in another legal proceeding may be subject to discipline by the State Bar. (W&I Code 5975.1)

### Supporter

**Removes process of court appointment of supporters.** Removes the court's authority to appoint a supporter as an action that might occur at the initial appearance. The court's only explicit involvement with supporters now is the authority to remove them if a conflict. (W&I Code 5981)



## Referral of Defendant Found Incompetent Before Trial or After Conviction

**For a defendant found ineligible for diversion,** specifies that a hearing to determine eligibility for CARE shall be held within 14 court days after the date on which the petition for the referral is filed, while maintaining the requirement that if the hearing is delayed, a defendant in custody shall be released pending the hearing. (Penal Code 1370.01)