THE CARE ACT: A SYSTEM OF COERCION MASQUERADING AS ONE OF COMPASSION

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INTRODUCTION

Against the bleak backdrop of a cold November afternoon in San Francisco, Erica Stone faces a heart-wrenching dilemma. Her twenty-eight-year-old daughter, Monica, has been battling schizophrenia-induced psychosis since she was sixteen. Homeless and living just north of Market Street, Monica adamantly rejects her mother's offers of psychiatric hospitalization, as she has done on many past occasions. Gripped with anxiety over her daughter's safety, Monica's refusal to seek treatment weighs heavily on her mind.

In years past, Erica would have been forced to return home after leaving Monica food and a sleeping bag, heart heavy with her daughter's continued refusal to accept treatment, yet without any available recourse. However, a recent development in California's mental health legislation has reshaped this narrative. As of December 1, 2023, the Community Assistance, Recovery, and Empowerment ("CARE") Act grants Erica the ability to petition Monica into court-ordered treatment.[1] Now fully implemented across all fifty-eight California counties, the Act establishes a network of civil CARE Courts that can order those suffering from schizophrenia and related psychotic disorders into treatment programs at the community level.[2]

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1. Community Assistance, Recovery, and Empowerment (CARE) Act, ch. 319, 2022 Cal. Legis. Serv. 1 (West 2024) (codified as amended at CAL. WELF. & INST. CODE §§ 5970–5987 (West 2024)).

2. Mary Kekatos, *California's CARE Court Program to Tackle Mental Illness Starts Next Month. What You Need to Know*, ABC NEWS (Sept. 25, 2023, 11:10 AM), https://abcnews.go.com/Health/californias-care-court-program-tackle-mental-illness-starts/story?id=103461370 [https://perma.cc/5DTX-8VTP].

Once Erica submits a petition on Monica's behalf, affirming her eligibility for the CARE program as an individual with untreated schizophrenia, the petition undergoes evaluation by a CARE Court.[3] For Monica to qualify for assistance through the CARE Act, the court must find that Monica is unlikely to survive safely in the community without supervision or that she is a threat to herself or others without support.[4] If the court finds either of these to be true, the Act empowers the court to create a "Care Plan" for Monica that lasts up to twelve months, with the possibility to extend the plan for an additional year.[5] This Plan may include provisions necessitating Monica's relocation to emergency housing, mandatory participation in behavioral health treatment, and court-ordered stabilization medications.[6]

Created with the goal of connecting Californians suffering with schizophrenia and other related psychotic mental illnesses with treatment "before they end up cycling through prison, emergency rooms, or homeless encampments," the CARE Act promises to advance upstream diversion from more restrictive conservatorships or incarceration.[7] However, if Monica fails to comply with her CARE program, she may be referred to conservatorship proceedings with a new factual presumption that no suitable alternatives to conservatorship are available.[8]

This Note explores the implications of the CARE Act on California's existing mental health landscape, while also pointing out certain deficiencies in the Act as it exists today. Part I of this Note explores the inner workings of the CARE Court framework, as well as the grounds for challenging a law as "vague" under the Due Process Clause of the Fourteenth Amendment. Part II argues that the CARE Act's current eligibility criteria are unconstitutionally vague and are thus likely to result in arbitrary and discriminatory court enforcement. Part III goes on to propose possible amendments to the CARE Court framework that aim to protect against these potentially speculative and arbitrary judicial determinations. Part IV

3. *Id.*

4. Manuela Tobias & Jocelyn Wiener, *California Lawmakers Approved CARE Court. What Comes Next?*, CALMATTERS (Sept. 14, 2022), https://calmatters.org/housing/2022/09/california-lawmakers-approved-care-court-what-comes-next [https://perma.cc/Q2RN-P5Y9].

5. *Id.*

6. Jocelyn Wiener & Manuela Tobias, *CARE Court: Can California Counties Make It Work?*, CALMATTERS (July 14, 2022), https://calmatters.org/health/2022/07/care-court-california [https://perma.cc/9ZPG-FSBY].

7. *Governor Newsom Statement on Introduction of CARE Court Legislation*, GOVERNOR GAVIN NEWSOM (Apr. 7, 2022), https://www.gov.ca.gov/2022/04/07/governor-newsom-statement-on-introduction-of-care-court-legislation [https://perma.cc/YQ3H-REB6].

8. CAL. WELF. & INST. CODE § 5979(a)(3) (West 2024) ("[T]he fact that the respondent failed to successfully complete their CARE plan . . . shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.").

acknowledges the inherent limitations of these proposed amendments within the broader context of systemic change while underscoring the short-term necessity of these amendments in defending individuals' due process rights.

I. BACKGROUND

A. MENTAL HEALTH LAW IN CALIFORNIA: A BRIEF OVERVIEW

California has two existing laws that permit involuntary mental health treatment.[9] The Lanterman-Petris-Short ("LPS") Act, operational since July 1, 1969, allows for the involuntary hospitalization of individuals who present an immediate danger to themselves, to others, or who are deemed "gravely disabled" due to a mental disorder, for a duration of up to 72 hours.[10] According to section 5008 of the Act, an individual is considered gravely disabled if they are "unable to provide for their basic personal needs for food, clothing, [or] shelter . . . ."[11] The initial 72-hour hold, commonly known as a "5150 hold," can be extended for statutorily-defined periods if the circumstances justifying the initial hold persist.[12]

Following the initial 72-hour hold, if someone is still considered a danger or gravely disabled, section 5250 permits an additional involuntary hold for up to 14 days.[13] During a 5250 hold, the individual is continually assessed by psychiatric staff and if, at any point, they are determined to no longer pose a danger or be gravely disabled, they must be released.[14] A 5350 hold, also known as a temporary LPS conservatorship, is initiated at the end of a 14-day hold, provided that the individual remains gravely disabled despite the initial 17 days of involuntary psychiatric treatment.[15] The purpose of a temporary LPS conservatorship is to provide the gravely disabled individual with supervision, individualized treatment, and placement in a

9. *Id.* §§ 5000–5579; *Id.* §§ 5345–5349.5.

10. *Id.* § 5150(a) ("When a person, as a result of a mental health disorder, is a danger to others, or to themselves, or gravely disabled, a peace officer . . . may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention . . . .").

11. *Id.* § 5008(h)(1)(A).

12. Sections 5250 and 5350 of the Lanterman-Petris-Short ("LPS") Act provide the specific requirements and statutory findings necessary for extending an individual's involuntary hold.

13. WELF. & INST. § 5250 ("[H]e or she may be certified for not more than 14 days of intensive treatment related to the mental health disorder . . . .").

14. *See Patients' Rights Advocacy Program: What to Expect on a 14 Day Hold*, RCDMH (Nov. 11, 2013), https://www.rcdmh.org/Portals/0/PDF/Patients%20Rights/What%20to%20expect%20on%20a%2014-day%20hold-English.pdf [https://perma.cc/9C8W-XVXL] (explaining that an individual's doctor should release them prior to the end of the hold if "[they] no longer meet the reasons (danger to self, danger to others, gravely disabled)").

15. WELF. & INST. § 5352.1(a).

psychiatric facility.[16] A temporary LPS conservatorship cannot be initiated by the public at large.[17] Only the Public Guardian of the individual county, considered to be a neutral third party, is authorized to request an LPS conservatorship.[18] This provision was included in the LPS Act in an effort to prevent subjective and punitive commitments, which were quite common prior to the Act's enactment.[19]

As an alternative to an LPS conservatorship, the Assisted Outpatient Treatment ("AOT") Demonstration Project Act, also known as Laura's Law, allows for court-ordered outpatient treatment of individuals with severe mental illness.[20] To qualify for the AOT program, an individual must have a serious mental illness and a recent history of incarceration, psychiatric hospitalizations, or documented instances of violent behavior, either directed toward oneself or others.[21]

The tragic deaths of Laura Wilcox, Pearlie Mae Feldman, and Mike Markle served as the impetus for the passage of Laura's Law, named in Wilcox's honor.[22] All three victims were fatally shot in Nevada County, California, by Scott Thorpe, a patient at an outpatient mental health clinic who had been receiving treatment for paranoia and agoraphobia. Dissatisfied with the care he had been receiving, Thorpe opened fire at the clinic on the morning of January 10, 2001, before driving to a local restaurant, where he shot and killed Mike Markle. In the months leading up to the attack, Thorpe's behavior had become increasingly erratic, and his family described him as experiencing a significant mental decline.[23] Despite clear warning signs, Thorpe consistently resisted his family's efforts to have him hospitalized.[24] Thorpe's violent rampage underscored the urgent need for mental health

16. *See* Henry L. Fuller, Comment, *Civil Commitment of the Mentally Ill in California: 1969 Style*, 10 SANTA CLARA LAW REV. 74, 77–78 (1969) (explaining that the intent of these holds is to "improve patients' treatment" and "to encourage patient treatment and reintegration in his own community").

17. WELF. & INST. § 5352.5.

18. *Id.* § 5354.5 ("The public guardian shall serve as conservator of any person found by a court under this chapter to be gravely disabled, if the court recommends the conservatorship after a conservatorship investigation . . . .").

19. *See LPS Act - Involuntary Psychiatric Treatment*, HUMBOLT CNTY., CAL., https://humboldtgov.org/3278/LPS-Act—-Involuntary-Psychiatric-Treatm [https://perma.cc/S86L-HMNY] ("The LPS Act was enacted in 1967 and sought to 'end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders'. The LPS Act resulted in many individuals being released from state hospitals to live in the community.").

20. WELF. & INST. § 5346(a) ("In any county or group of counties where services are available . . . , a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment . . . .").

21. Sigrid Bathen, *For the Mentally Ill, A Life-and-Death Debate over Laura's Law*, CAP. WKLY. (Apr. 6, 2021), https://capitolweekly.net/for-the-mentally-ill-a-life-and-death-debate-over-lauras-law [https://perma.cc/DXJ7-R464].

22. *Id.*

23. *Id.*

24. *Id.*

legislation that would allow concerned individuals–especially those living with mentally ill family members–to voice concerns about an individual's condition. In response, Laura's Law established a process that empowers certain members of the public to request an investigation into someone's eligibility for the AOT program.[25] Those authorized to submit a request include individuals who live with the subject of the request, licensed mental health providers treating the individual, and direct family members, among a short list of others.[26] However, as with the LPS Act, only the county's behavioral health director or their designee has the authority to file a formal petition for court-ordered treatment on someone's behalf.[27]

B. THE CARE COURT FRAMEWORK: HOW IT WORKS

The CARE Act adds to this existing framework by introducing a novel program that empowers family members, first responders, and other concerned parties to file petitions on behalf of individuals with schizophrenia or other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders ("DSM").[28] The CARE Court framework is not for everyone struggling with mental illness and is specifically designed for individuals with schizophrenia or a related psychotic disorder who meet additional, specific criteria.[29] To be eligible, the individual's mental disorder must be primarily psychiatric in nature; thus, section 5972(b) of the Act specifies that individuals with "physical health conditions such as traumatic brain injury, autism, [and] dementia" that may present with psychotic symptoms are ineligible.[30]

For individuals like Monica, the CARE Court process commences when an authorized party, like her mother, files a CARE petition in a California superior court on her behalf.[31] When filling out the petition, Erica must include specific details in accordance with the stipulations outlined in section 5975 of the Act.[32] Once she files the petition, the court begins the

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25. CAL. WELF. & INST. § 5346(b)(2).

26. The other individuals allowed to file a request include the director of a public or private mental health agency who is treating the individual, a peace officer assigned to supervise the individual, and a judge of a superior court evaluating the individual's case. *Id.* § 5346(b)(2)(C)–(G).

27. *Id.* § 5346(b)(1) ("A petition for an order authorizing assisted outpatient treatment may be filed by the county behavioral health director, or the director's designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present.").

28. *Id.* § 5972(b).

29. *CARE Court FAQ: A New Framework for Community Assistance, Recovery, and Empowerment*, CALHHS (June 2022), [hereinafter CARE FAQ] https://www.chhs.ca.gov/wp-content/uploads/2022/03/CARECourt_FAQ.pdf [https://perma.cc/27Q9-SMXJ].

30. WELF. & INST. § 5972(b).

31. CARE FAQ, *supra* note 29.

32. WELF. & INST. § 5975. A CARE Court petition must include the name of the respondent, the petitioner's relationship to the respondent, facts that support the petitioner's assertion that the respondent is eligible for CARE Court, as well as a few other pieces of information. *Id.* § 5975 (a)–(c).

process of determining whether Monica qualifies for CARE proceedings.[33]

To qualify, she must be at least eighteen years old, not currently stabilized in ongoing voluntary treatment, and experiencing a severe mental illness with a diagnosis of schizophrenia spectrum or other psychotic disorder.[34] Further, the court must find that Monica is "likely to benefit from participation in a CARE plan" and that her participation in the CARE process is the least restrictive means of ensuring her stabilization and recovery.[35] Notably, the court must also find that she is "unlikely to survive safely in the community without supervision" and that her condition is "substantially deteriorating" or that she needs services to prevent "a relapse or deterioration that would be likely to result in grave disability or serious harm" to herself or others.[36]

Evidence supporting Monica's initial eligibility for the CARE process may take two forms. First, it can consist of documented instances showing that Monica has been detained for a minimum of 2 intensive treatments under section 5250 of the LPS Act, the most recent occurring within 60 days of the petition.[37] Alternatively, it can take the form of an affidavit from a licensed behavioral health professional who has examined Monica within the same timeframe, certifying that she meets, or there is reason to believe that she meets, the diagnostic criteria mentioned above.[38]

It is important to highlight that the law includes a provision allowing the behavioral health professional to supply this affidavit without directly examining Monica.[39] Under section 5975(d)(1) of the CARE Act, if, within 60 days of the petition's filing, the health professional has "made multiple attempts to examine" Monica but has been unsuccessful in eliciting her cooperation, the professional can still submit the affidavit in support of Monica's eligibility.[40] The California Psychological Association ("CPA") submitted a complaint regarding this provision while the CARE Act was still under legislative consideration, stating that their national code of ethics

33. *Id.* § 5972.
34. *Id.* § 5972(a)–(c).
35. *Id.* § 5972(e)–(f).
36. *Id.* § 5972(d)(1)–(2).
37. *Id.* § 5975(d)(2) (stating that "[e]vidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250)" can serve as sufficient evidence in support of the petitioner's assertion).
38. *Id.* § 5975(d)(1) (explaining that in the alternative to § 5972(d)(2), evidence supporting the petitioner's assertion can come in the form of "[a]n 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").
39. *Id.*
40. *Id.*

"expressly prohibits any assessment without an examination of the individual" and that the code "directly requires them to limit their conclusions in instances when examination" is not feasible.[41] However, California's legislature chose to retain this language in the final version of the CARE Act. Peers Envisioning and Engaging in Recovery Services ("PEERS"), a diverse coalition of people with mental illness, contends that this provision was included to make it easier to compel "unwilling participants to participate in the program" by "allowing a petition to be filed even if the proposed participant refuse[s] to be examined" by a mental health professional.[42]

If, after reviewing the petition, the court determines that there is sufficient prima facie evidence that Monica "is" or "may be" eligible for CARE Court, it shall order the county to investigate and submit a written report within fourteen days providing conclusions and recommendations about Monica's eligibility, as well as issuing notice to Monica that a report has been ordered.[43] If the court determines that the report supports Monica's CARE eligibility, it will then set an initial appearance on the petition, appoint a public defender to represent Monica, and order the county agency to provide notice to Monica of the commencement of CARE proceedings.[44] At the initial appearance on the petition, Monica may waive personal appearance and instead appear through counsel.[45] However, if Monica does not waive personal appearance and fails to attend the hearing, the Act states that the court may continue the hearing without Monica if it finds that "conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest."[46]

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41. Exhibits in Support of Petitioner's Request for Judicial Notice at 216RJN-0216, Disability Rts. Cal. v. Newsom (Cal. Jan. 26, 2023).

42. ASSEMB. COMM. ON JUDICIARY, ASSEMBLY BILL POLICY COMMITTEE ANALYSIS, at 30 (Cal. 2022), https://trackbill.com/s3/bills/CA/2021/SB/1338/analyses/assembly-judiciary.pdf [https://perma.cc/53LY-VCDU] ("The bill provides multiple opportunities for courts and petitioners to compel unwilling individuals to participate in CARE Courts, including by allowing a petition to be filed even if the proposed participant refused to be examined by a licensed behavioral health professional, or did not appear at the initial hearing.").

43. WELF. & INST. § 5977(B). The written report must contain (1) a determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process, (2) a statement about the outcome of efforts made to voluntarily engage the respondent within the fourteen day period, (3) conclusions and recommendations about the respondent's capacity to engage in services, and (4) information necessary to support recommendations provided in the report. *Id.* § 5977(a)(3)(B)(i)–(iv).

44. *Id.* § 5977(a)(5)(C).

45. *Id.* § 5977(b)(3).

46. *Id.* ("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.").

During the subsequent hearing on the merits of the petition, the court must determine, through clear and convincing evidence, whether Monica meets the CARE criteria.[47] In reaching this decision, the court thoroughly reviews both the initial petition and the county report.[48] If, on careful examination of these documents, the court concludes that Monica satisfies the Act's various eligibility criteria, it will issue an order for the county behavioral health agency to begin working with Monica and her appointed counsel.[49] The goal of this collaboration is to encourage Monica to accept behavioral health treatment and enter into a CARE agreement.[50]

While consistently framed as a voluntary process, if the court finds at the subsequent case management hearing that Monica has "not entered into a CARE agreement" and is "not likely to enter into a CARE agreement," the court will order a licensed behavioral health professional to conduct a clinical evaluation of Monica.[51] After reviewing this clinical evaluation, if the court finds that Monica still meets all necessary criteria for the CARE process, the court shall order Monica, her counsel, and the county behavioral health agency to develop a CARE plan within fourteen days, regardless of whether Monica voluntarily agrees to the development of the CARE plan.[52]

The CARE plan, which can include various methods of behavioral health treatment and orders for stabilization medication, may also require Monica to live in a shelter or emergency housing, depending on availability.[53] This plan can last from twelve to twenty-four months, with progress regularly monitored.[54] Together, Monica faces "as many as five hearings within the first two months, followed by at least six status review hearings within the following year."[55] What happens if Monica fails to show up to some of these hearings?

The Act contains certain accountability measures aimed at ensuring that

47. WELF. & INST. § 5977(b)(7)(A).
48. *Id.*
49. *Id.* § 5977(c)(2).
50. *Id.*
51. *Id.* § 5977.1(b)–(c)(1) ("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 . . . 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.").
52. *Id.* § 5977.1(c)(3)(A).
53. CARE FAQ, *supra* note 29 ("The framework provides individuals with . . . short-term stabilization medications, wellness and recovery supports, and connection to social services and housing.").
54. WELF. & INST. § 5977.3(a).
55. Petition for Writ of Mandate and Supporting Memorandum of Points and Authorities at 26, Disability Rts. Cal. v. Newsom, (Cal. Jan. 46, 2023) (No. S278330) [hereinafter Petition for Writ of Mandate] (citing SB-1338 §§ 5977.1–5977.3, 2022 Leg., Reg. Sess. (Cal. 2022)).

individuals adhere to the conditions outlined in their CARE plan.[56] If, at any time during the CARE proceedings, the court determines by clear and convincing evidence that Monica is not participating in the CARE process, the court may terminate her participation in the CARE program and refer her for a potential conservatorship under the LPS Act.[57] Provided the LPS hearing occurs within six months of Monica's termination from CARE Court, her failure to complete the CARE plan establishes a negative factual presumption that she "needs additional intervention beyond the supports and services provided by the CARE plan."[58] Such a presumption increases the likelihood that Monica will be involuntarily committed under the LPS Act.

C. A "VOID-FOR-VAGUENESS" CHALLENGE UNDER THE FOURTEENTH AMENDMENT

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law . . . ."[59] At its core, the Due Process Clause is firmly rooted in the principle that individuals must be granted clear and unequivocal notice of prohibited conduct and the potential consequences associated with such conduct *prior* to any deprivation of liberty.[60]

The "void-for-vagueness" doctrine, stemming directly from the due process protections enshrined in the Fifth and Fourteenth Amendments, empowers individuals to challenge the constitutionality of a statute for infringing on their due process rights.[61] A successful void-for-vagueness challenge hinges on demonstrating that a statute is impermissibly vague, and thus, unconstitutional.[62] The Supreme Court has identified two distinct grounds on which a statute may be deemed void as a result of vagueness.[63]

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56. *See* WELF. & INST. § 5979.

57. WELF. & INST. § 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 . . . the court may terminate the respondent's participation in the CARE process.").

58. *Id.* § 5979(a)(3) ("[T]he 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 . . . and shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.").

59. U.S. CONST. amend. XIV, § 1.

60. Nathan S. Chapman & Kenji Yoshino, *The Fourteenth Amendment Due Process Clause*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/701 [https://perma.cc/578R-CWTN].

61. *See* Musser v. Utah, 333 U.S. 95, 97 (1948) (explaining that a criminal statute lacking sufficient definiteness "may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused").

62. Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.").

63. *Id.*

First, a law is unconstitutionally vague if it fails to define the prohibited conduct with sufficient clarity such that an individual of ordinary intelligence could understand what is permissible and what is not.[64] Moreover, to satisfy the requirements of the vagueness doctrine, laws must also provide explicit standards for those who apply them.[65] Consequently, a law may also be unconstitutionally vague if it fosters arbitrary and discriminatory enforcement by "delegat[ing] basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis."[66]

Not all ambiguities in the law rise to the level of unconstitutional vagueness. The Supreme Court has consistently emphasized the rigorous criteria for deeming a law void on vagueness grounds.[67] For a law to withstand constitutional scrutiny, the doctrine necessitates only a reasonable degree of certainty in statutory language.[68] Absolute precision is not necessary, and the Court has upheld statutory language in instances where the law provided nothing more than an "ascertainable standard" for evaluating prohibited conduct.[69]

II. ARGUMENT

A. THE CARE ACT'S ELIGIBILITY CRITERIA ARE UNCONSTITUTIONALLY VAGUE

The CARE Act raises due process considerations because the Act's involuntary treatment scheme burdens fundamental rights to privacy, liberty, and autonomy. Unlike the LPS Act, which only allows for the imposition of involuntary treatment based on a finding that a person with serious mental illness is *currently* "gravely disabled" or a danger to themselves or others, the CARE Act introduces a paradigm shift by empowering judges to order individuals into involuntary treatment if individuals are deemed "likely" to meet either of these criteria in the future.[70] Further, to be eligible for the CARE Court process, a judge must find either that the respondent is "*unlikely* to survive safely in the community without supervision" and that their "condition is substantially deteriorating" or that the respondent is in need of

64. *Id.* ("First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.").

65. *Id.* ("Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.").

66. *Id.* at 108–09 (emphasis added).

67. Johnson v. United States, 576 U.S. 591, 629 (2015) ("[T]he threshold for declaring a law void for vagueness is high.").

68. *Id.*

69. *Id.*

70. CAL. WELF. & INST. CODE §§ 5008(h), 5150, 5250, 5972(d)(1)–(2) (West 2024).

services to prevent a relapse that "would be *likely* to result in grave disability or serious harm" to the individual or others.[71] This expansion of judicial discretion poses serious due process concerns.

To withstand a void-for-vagueness challenge under the Due Process Clause of the Fourteenth Amendment, a statute must define the relevant conduct "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[72] The Supreme Court has made clear that while the void-for-vagueness doctrine emphasizes the importance of providing citizens with actual notice, its more important aspect is the requirement that the legislature establishes "minimal guidelines" to govern the judgment of police and judicial officers.[73]

In *Kolender v. Lawson*, Edward Lawson challenged California Penal Code section 647(e), a criminal statute requiring individuals found loitering or wandering the streets to furnish "credible and reliable" identification to a peace officer on request.[74] Lawson disputed the constitutionality of the statute after being detained on multiple occasions over a two-year period for failing to provide sufficient identification.[75] As originally drafted, the statute provided no standard for determining what an individual had to do to satisfy this requirement. During oral arguments, when asked how individuals not carrying standard identification could satisfy the statute's requirements, the appellants stated that depending on the officer, a mere recitation of an individual's name and address could suffice.[76] The statute's lack of guiding principles thus entrusted lawmaking "to the moment-to-moment judgment of the policeman on his beat."[77] As such, the Court held that section 647(e) was unconstitutionally vague because it encouraged arbitrary enforcement by failing to clarify what could constitute "credible and reliable" identification.[78]

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71. *Id.* § 5972(d)(1)–(2) (emphasis added).

72. Kolender v. Lawson, 461 U.S. 352, 358 (1983).

73. *Id.* at 357–58 ("Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.").

74. *Id.* at 353.

75. *Id.* at 354 ("Appellee Edward Lawson was detained or arrested on approximately 15 occasions between March, 1975, and January, 1977 . . . .").

76. *Id.* at 360 ("In giving examples of how suspects would satisfy the requirement, appellants explained that a jogger, who was not carrying identification, could, depending on the particular officer, be required to answer a series of questions concerning the route that he followed to arrive at the place where the officers detained him, or could satisfy the identification requirement simply by reciting his name and address.").

77. *Id.* (quoting Gregory v. City of Chicago, 394 U.S. 111, 120 (1969) (Black, J., concurring)).

78. *Id.* at 361.

In *Coates v. Cincinnati*, a student and four labor picketers faced convictions for violating section 901-L6 of the Cincinnati Code of Ordinances, which made it a criminal offense for three or more people to assemble on a public street or sidewalk in such a way that would "annoy any police officer or other person who should happen to pass by."[79] The appellants challenged the constitutionality of the ordinance on due process grounds, arguing that its language was so vague that an ordinary individual would inevitably have to guess as to its meaning.[80] The Court held that the statute was unconstitutionally vague, not because it required individuals to conform their behavior to some imprecise but normatively comprehensible standard, but because it lacked *any* discernible standard at all.[81] Because something that annoys one individual may not annoy another, the statute offered no objective criterion to guide officers in their arrests.[82] Even though the word "annoying" is widely used and well understood, the inherent subjectivity involved in assessing conduct as either annoying or not annoying meant that even an individual of ordinary intelligence, familiar with the statute, would still be left to speculate as to its specific meaning.[83]

In contrast, in *Cameron v. Johnson*, the Court considered the constitutionality of a Mississippi Anti-Picketing Law that made it a criminal offense to picket in such a manner "as to obstruct or unreasonably interfere with free ingress or egress to and from any . . . county . . . courthouses . . . ."[84] In challenging the statute's language, appellants focused on the statute's use of the word "unreasonably," arguing that the term was ambiguous and failed to clearly delineate the boundary between lawful and unlawful obstruction.[85] The Supreme Court disagreed, stating that when juxtaposed with the terms "obstruct" and "interfere" within the broader context of the statute, it was clear that the anti-picketing regulation only meant to prohibit picketing so disruptive that it substantially impeded normal ingress and egress from surrounding buildings.[86] Thus, the Court held that the statute "clearly and precisely delineates its reach in words of common understanding," and was thus not impermissibly vague.[87] This case highlights that a certain degree of statutory ambiguity can be tolerated when the overall context and purpose of

79. Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971).
80. *Id.* at 612.
81. *Id.* at 614 ("Thus, the ordinance is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.").
82. *Id.*
83. *Id.*
84. Cameron v. Johnson, 390 U.S. 611, 616 (1968).
85. *Id.*
86. *Id.*
87. *Id.*

the statute make clear what conduct is prohibited.

Here, the CARE Act's vague criteria for determining eligibility fail to provide prospective CARE respondents with clear guidance on the specific behaviors that could subject them to CARE proceedings. How is someone of ordinary intelligence supposed to know what specific behaviors will make them "unlikely to survive safely in the community without supervision" or the kind of actions that would make them "in need of services and supports" to prevent relapse or deterioration?[88]

Like the statute in *Kolender*, which offered no standard for evaluating what constituted "credible and reliable" identification, the CARE Act provides no guidelines to help people like Monica ascertain whether their conduct is sufficient to qualify them for CARE Court proceedings.[89] This utter lack of guiding criteria creates the same irredeemable weakness as the statutes in *Kolender* and *Coates*: the risk of arbitrary and discriminatory enforcement.

Without objective standards, a judge's determination of an individual's eligibility under the CARE Act becomes one of inherent speculation and subjectivity. What may constitute sufficient grounds for an eligibility determination to one judge may not suffice for another. Such a subjective approach risks exposing individuals to inconsistent and arbitrary judgments and opens the door to decisions tainted by judicial bias. While there is always some element of subjective interpretation involved in decisions regarding the likelihood of future conduct, the risk of wrongful and unfounded decisions substantially increases when judges do not have defined criteria to guide their decisions.[90] The CARE Act's lack of parameters to cabin judicial authority in making eligibility determinations bestows judges with far too much discretion, enabling them to pull people into the CARE Court framework based on their personal and idiosyncratic beliefs about each respondent. Such ambiguity is unacceptable and renders the CARE Act unconstitutionally vague under the void-for-vagueness doctrine.

B. PROJECTED IMPACT OF THE CARE ACT IF LEFT UNCHANGED

1. Rampant Potential for Judicial Bias

The broad discretion afforded to California judges under the CARE Act's current eligibility criteria raise serious questions about the ability of judicial officers to make accurate determinations regarding an individual's

88. CAL. WELF. & INST. CODE § 5972(d)(1)–(2) (West 2024).

89. Kolender v. Lawson, 461 U.S. 352, 353 (1983).

90. *See id.* at 358 ("Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.' ") (alteration in original) (quoting Smith v. Goguen, 415 U.S. 566, 575 (1974)).

mental health and the likelihood of deterioration and relapse. Will judges make accurate decisions, or will they wrongfully deprive individuals of their liberty based on arbitrary judgments about future behavior?

Past cases involving judicial speculation about the likelihood of an individual's future relapse or deterioration under the LPS Act do not inspire confidence in the ability of judges to make decisions that do not result in unwarranted deprivations of personal liberty.[91] For instance, in the case of *Conservatorship of Murphy*, despite testimony from medical witnesses that an individual was no longer gravely disabled, the trial judge extended the individual's conservatorship solely based on the belief that the individual would return to alcoholism if released.[92] The trial judge stated that, in his opinion:

> if [the individual] were to be left to his own devices, he would very shortly be back in the realm of those who are greatly disabled because of the intoxication problem and the ingestion of alcohol. It may sound like rampant paternalism, but in my view, that is a characteristic which is currently present in part of his make-up . . . .[93]

The appellate court reversed, citing the impropriety of the trial judge's reasoning.[94] This case highlights the risk associated with judges allowing their preconceptions about individuals with mental illness and substance abuse issues to improperly influence their assessment of the likelihood of relapse.

In an article written by Dr. Robert T. M. Phillips, published in the American Medical Association's Journal of Ethics, Dr. Phillips explains that because it is impossible for anyone to predict future dangerousness with absolute certainty, such assessments are more accurately described as "the identification of factors associated with potential dangerous behavior."[95] He goes on to say that making an individualized assessment of the risk of future dangerousness "requires the acquisition of considerable data from which conclusions may be drawn."[96]

Given section 5975(d)(1), the provision that allows behavioral

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91. *See, e.g.*, Conservatorship of Benvenuto, 226 Cal. Rptr. 33, 35 (Ct. App. 1986) (a case in which the appellate court overturned the trial court's decision to renew an individual's conservatorship because the trial judge based his ruling on nothing more than a speculation that if the patient transitioned to living with his mother as proposed, he would "cease taking his medication" and "would be likely to regress and become gravely disabled" again).

92. Conservatorship of Murphy, 184 Cal. Rptr. 363, 364 (Ct. App. 1982).

93. *Id.*

94. *Id.* at 365.

95. Robert T. M. Phillips, *Predicting the Risk of Future Dangerousness*, 14 VIRTUAL MENTOR, 472, 474 (2012), https://journalofethics.ama-assn.org/article/predicting-risk-future-dangerousness/2012-06 [https://perma.cc/6B7D-M7DV].

96. *Id.*

specialists to certify an individual's eligibility for CARE Court without a direct examination, Dr. Phillips's emphatic assertions about the need for ample supporting evidence when making judgments about the risk of a patient's future dangerousness are even more concerning. Unlike the medical audience of Dr. Phillips's paper, California judges have not undergone years of medical training to help inform their understanding of mental illness and patient risk. And yet, given section 5975(d)(1), judges under the Act will often be asked to make these initial determinations with very little evidence to guide their decisions.[97]

2. Disproportionate Impact on Communities of Color

The potential for arbitrary determinations in CARE Court eligibility decisions is further exacerbated by the deep racial disparities present in homelessness rates and mental health diagnoses. Black Californians experience homelessness at a far higher rate than the state's overall population, accounting for approximately forty percent of California's unhoused population despite representing only about six percent of the total state population.[98]

These shocking disparities are also present in comparative rates of certain mental health diagnoses between racial groups. A comprehensive 2014 review of empirical literature on mental health diagnoses revealed a troubling trend: Black individuals are three to four times more likely to receive a diagnosis of a psychotic disorder than white individuals, even when presenting with identical symptoms.[99] This trend carries over to schizophrenia diagnoses, with a metanalysis of over fifty independent studies showing that Black individuals are more than twice as likely to be diagnosed with schizophrenia than white individuals.[100]

Of equal concern is the discrepancy in treatment offered to Black individuals. When compared with the general population, Black individuals are *less* likely to be offered evidence-based medication or psychotherapy but are *more* likely to be subjected to involuntary psychiatric hospitalization.[101]

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97. *See* CAL. WELF. & INST. CODE § 5975(d)(1) (West 2024) ("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").

98. Kate Cimini, *Black People Disproportionately Homeless in California*, CALMATTERS (Feb. 27, 2021), https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california [https://perma.cc/KK8H-GKLK].

99. Robert C. Schwartz & David M. Blankenship, *Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature*, 4 WORLD J. PSYCHIATRY 133, 135 (2014).

100. Charles M. Olbert, Arundati Nagendra & Benjamin Buck, *Meta-Analysis of Black vs. White Racial Disparity in Schizophrenia Diagnosis in the United States: Do Structured Assessments Attenuate Racial Disparities?*, 127 J. ABNORMAL PSYCH. 104, 104 (2018).

101. AM. PSYCHIATRIC ASS'N, DIV. OF DIVERSITY & HEALTH EQUITY, MENTAL HEALTH

As an illustration, in San Francisco, despite constituting only six percent of the total population, Black individuals accounted for over a quarter of all 5150 holds between 2018 and 2021.[102]

These figures, when combined with the vast discretion afforded to CARE Court judges in making eligibility determinations, paint a concerning picture. Studies investigating the connection between implicit bias and racial stereotypes have consistently found that people are more likely to associate Black individuals, particularly Black men, with conceptions of hostility and aggression.[103] Such implicit bias among judges may lead to the exaggeration of the potential dangerousness of Black respondents, resulting in more Black individuals being pulled into CARE Court's involuntary treatment framework, even when there is no objective basis for such an assessment.

In the context of the CARE Act, in which eligibility determinations hinge on whether an individual is merely "likely" to meet specific criteria in the future, the influence of implicit bias is particularly concerning. The CARE Act's vague criteria provide ample room for racial biases to seep into judicial determinations regarding an individual's future conduct. As astutely highlighted by Soma Snakeoil, the Executive Director of the Sidewalk Project, a mobile harm reduction program offering direct services to Skid Row residents, the CARE Act "will inevitably lead to further criminalization and incarceration of our most vulnerable."[104]

3. An Increase in the Coerced Treatment of the Mentally Ill

These concerns are further complicated and exacerbated by the CARE Act's accountability measures, which create the potential for more involuntary and coerced treatment. When an individual fails to abide by the terms of their CARE plan, the Act allows a judge to determine "at any time during the proceedings" that the individual is not participating in the CARE process, which enables the court to order an involuntary evaluation of the individual under section 5200 of LPS Act.[105] During the ensuing LPS

DISPARITIES: AFRICAN AMERICANS 3 (2017), https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-African-Americans.pdf [https://perma.cc/Q26C-ZU7B]; Timothy Shea, Samuel Dotson, Griffin Tyree, Lucy Ogbu-Nwobodo, Stuart Beck & Derri Shtasel, *Racial and Ethnic Inequities in Inpatient Psychiatric Civil Commitment*, 73 PSYCHIATRIC SERVS. 1322, 1322 (2022).

102. S.F. HOUS. CONSERVATORSHIP WORKING GRP., MEETING, 12–14 (2021) https://www.sfdph.org/dph/files/housingconserv/Housing_Conservatorhip_Meeting_12_revised.pdf [https://perma.cc/2T8X-372B].

103. Justin D. Levinson, G. Ben Cohen & Koichi Hioki, *Deadly 'Toxins': A National Empirical Study of Racial Bias and Future Dangerousness Determinations*, 56 GA. L. REV. 225, 261 (2021).

104. Alex Norcia, *Advocates Condemn California's New Forced-Treatment Law*, FILTER (Sept. 16, 2022), https://filtermag.org/care-act-forced-treatment [https://perma.cc/9UVH-XHQ9].

105. CAL. WELF. & INST. CODE § 5979(a)(1) (West 2024) ("If, at any time during the proceedings, the court determines . . . that the respondent is not participating in the CARE process . . . the court may terminate the respondent's participation in the CARE process.").

hearing, the individual's noncompliance creates a negative factual presumption that no suitable alternatives to conservatorship are available, substantially increasing the likelihood that the person will be involuntarily committed under the LPS Act.[106]

Failure to appear for CARE hearings can serve as a sufficient basis for a judge to deem an individual as noncompliant.[107] This is problematic for several reasons, namely because it is unclear whether individual counties will be able to successfully ensure that individuals attend CARE hearings once a petition has been initiated against them. As of 2020, over a third of those eligible for outpatient treatment under Laura's Law cannot be located.[108]

These numbers are bound to be even higher for CARE Court participants given the Act's target population. Approximately 57% to 98% of individuals with schizophrenia suffer from anosognosia, a neurological condition that renders them unable to recognize their disability.[109] This lack of insight into the realities of their condition contributes significantly to treatment non-adherence among patients with schizophrenia, as many do not believe they are ill.[110] A systematic review of forty-six studies involving adult patients with schizophrenia receiving voluntary care found that 56% were non-adherent to their psychotropic medication regimen, surpassing those with bipolar disorder and major depressive disorder—two conditions associated with high rates of medication non-adherence.[111]

Statistically, many CARE participants are likely to suffer from anosognosia, which in turn means that many of them will be skeptical of their need for treatment.[112] Given that individuals subject to CARE

106. *Id.* § 5979(a)(3) ("[T]he fact that the respondent failed to successfully complete their CARE plan . . . shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.").

107. Carl Wu, *Out of Sight, Out of Mind: Removing Unhoused People by Proxy of Mental Illness*, 26 U. PA. J.L. & SOC. CHANGE 333, 356–57 (2023) ("[U]nder the CARE Act, noncompliance with a plan includes not showing up, which could place [individuals] defending against civil commitment without notice.").

108. CAL. DEP'T HEALTH CARE SERVS., LAURA'S LAW: ASSISTED OUTPATIENT TREATMENT DEMONSTRATION PROJECT ACT OF 2002 at 13 (2022), https://www.dhcs.ca.gov/formsandpubs/Documents/Lauras-Law-AOT-Report-2021.pdf [https://perma.cc/RT63-MANK].

109. Douglas S. Lehrer & Jennifer Lorenz, *Anosognosia in Schizophrenia: Hidden in Plain Sight*, 11 INNOVATIONS CLINICAL NEUROSCIENCE 10, 11 (2014) ("Poor insight is a core attribute of schizophrenia that is highly prevalent, occurring in 57 to 98 percent of patients with schizophrenia.").

110. *Id.*

111. Agumasie Semahegn, Kwasi Torpey, Adom Manu, Nega Assefa, Gezahegn Tesfaye & Augustine Ankomah, *Psychotropic Medication Non-Adherence and Its Associated Factors Among Patients with Major Psychiatric Disorders: A Systematic Review and Meta-Analysis*, 9 SYSTEMATIC REVS. 1, 4 (2020) ("From nine studies with 2643 participants, the medication non-adherence among schizophrenia patients was 56% . . . .").

112. *See* Lehrer & Lorenz, *supra* note 109, at 10 ("Poor insight is a core attribute of schizophrenia,

proceedings face as many as five hearings within the first two months after the petition, and at least six status review hearings within the following year, the interplay between anosognosia and the low threshold for a finding of noncompliance threatens to create a perfect storm whereby many more individuals will be directed to conservatorship proceedings.[113] Given the studies about implicit racial bias and the overrepresentation of Black individuals among the state's unhoused population, this burden is likely to fall even harder on Black Californians.

While some argue that the inability of those with schizophrenia to recognize their illness legitimizes the use of forced treatment, psychiatrists caution against using anosognosia as a blanket justification for coercion, especially since it is not a symptom that manifests uniformly or universally in all patients.[114] There is also no consensus within the medical community regarding the efficacy of involuntary treatment.[115] Research comparing patient outcomes for adults with acute psychiatric diagnoses admitted involuntarily versus voluntarily indicates that the length of stay and the risk of readmission are, at best, equal or even greater for involuntary patients.[116] The same study also found that patients admitted involuntarily exhibited higher rates of suicidal ideation and lower levels of social functioning.[117]

Concerns regarding the Act's potential to compel more people into involuntary treatment are further amplified by the broad range of individuals authorized to initiate a CARE petition. The Act confers an extensive array of

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occurring in 57 to 98 percent of patients. Insight is an important outcome predictor, associated with treatment adherence, relapse frequency, symptom remission, psychosocial functioning, vocational attainment, and risk of violence toward self or others.").

113. *See* Petition for Writ of Mandate, *supra* note 55, at 26 (explaining that respondents face "as many as five hearings within the first two months, followed by at least six status review hearings within the following year"); Lehrer & Lorenz, *supra* note 109 ("Poor insight is a cardinal symptom of schizophrenia that, while not universally and uniformly expressed in all patients, is among the most common of its manifestations.").

114. *See* Nicolas Badre, Shawn S. Barnes, David Lehman & Sandra Steingard, *Coercion and the Critical Psychiatrist*, *in* CRITICAL PSYCHIATRY: CONTROVERSIES AND CLINICAL IMPLICATIONS 155, 168 (Sandra Steingard ed., 2019).

115. MARVIN S. SWARTZ, STEVEN K. HOGE, DEBRA A. PINALS, EUGENE LEE, LI-WEN LEE, MARDOCHE SIDOR, TIFFANI BELL, ELIZABETH FORD & R. SCOTT JOHNSON, AM. PSYCHIATRIC ASS'N, RESOURCE DOCUMENT ON INVOLUNTARY OUTPATIENT COMMITMENT AND RELATED PROGRAMS OF ASSISTED OUTPATIENT TREATMENT 2 (2015), https://www.psychiatry.org/getattachment/685f787b-f08f-4b2c-ac4b-35821d50e4fd/Resource-Document-2015-involuntary-outpatient-commitment.pdf [https://perma.cc/7TYZ-JEG7] ("Although important studies of involuntary outpatient commitment have been conducted within the past decade, there is no broad consensus about its effectiveness across jurisdictions.").

116. Joanne E. Plahouras, Shobha Mehta, Daniel Z. Buchman, George Foussias, Zafiris J. Daskalakis & Daniel M. Blumberger, *Experiences with Legally Mandated Treatment in Patients with Schizophrenia: A Systematic Review of Qualitative Studies*, 63 EUROPEAN PSYCHIATRY 1, 2 (2020) ("Data regarding the effectiveness of legally mandated treatment is mixed . . . Length of stay, risk of readmission and involuntary readmission were at least equal or greater for involuntary individuals.").

117. *Id.*

people, including roommates, family members, and first responders, with the power to file a CARE petition.[118] This wide delegation of authority distinguishes the CARE Act from legislation like Laura's Law, which confines petition-filing authority to the county's mental health director or their designee.[119]

While this expanded delegation of authority is not inherently negative, it raises concerns. Given that the CARE Act replaces the requirement that an individual be currently dangerous with a mere likelihood of future danger, those without medical training will be able to arbitrarily target individuals based solely on their perceived status as mentally ill. This shift raises questions about the potential misuse of the referral process, particularly in cases in which interpersonal conflicts between potential CARE participants and their family members or roommates exist.[120] The result could be the vindictive use of the referral process to expose individuals grappling with schizophrenia to a series of disruptive and unwarranted legal proceedings.[121] The County Behavioral Health Association has forecasted that allowing petitions from such a wide range of untrained individuals "could easily overwhelm courts . . . with inappropriate referrals."[122]

The potential increase in the number of individuals receiving mental health services and in the number hospitalized under an LPS conservatorship represents a looming challenge for California's already overburdened mental health system.[123] There is currently a dire shortage of housing and wrap-around services to adequately treat California's mentally ill population.[124] While the 2022–2023 budget includes $1.5 billion to support Behavioral Health Bridge Housing ("BHBH"), which will fund clinically enhanced housing that will be available to CARE participants, the CARE Act offers no new funding to fortify the mental health services needed for the Act's

118. CAL. WELF. & INST. CODE § 5974 (a)–(1) (West 2024).

119. *Id.* § 5346(b)(3).

120. Olivia Ensign & John Ralphing, *Human Rights Watch's Opposition to CARE Court*, HUM. RTS. WATCH (Mar. 24, 2022, 6:00 PM), https://www.hrw.org/news/2022/03/24/human-rights-watchs-opposition-care-court [https://perma.cc/ZG2H-RV8L] (explaining that interpersonal conflicts between family members could result in abusive parents and siblings using the referral process to subject their relatives to court hearings and potential coerced treatment, housing, and medication).

121. *Id.*

122. Petition for Writ of Mandate, *supra* note 55, at 30 (citation omitted).

123. *See* S.B. 1338, CAL. ASSEMB. COMM. ON HEALTH, BILL ANALYSIS, at 22 (Cal. 2022), https://billtexts.s3.amazonaws.com/ca/ca-analysishttps-leginfo-legislature-ca-gov-faces-billAnalysisClient-xhtml-bill-id-202120220SB1338-ca-analysis-352314.pdf [https://perma.cc/VD56-UTW3] ("The COVID-19 pandemic exacerbated mental illness rates in California, and the state continues to face a shortage of facilities, services, and workers to appropriately care for its mentally ill population."). Additionally, since 1995, the number of inpatient psychiatric beds in California has been decreasing, despite population growth and increased rates of mental illness. *Id.*

124. *Id.* ("Despite the high rates of mental illness among individuals experiencing homelessness, there is a dire shortage of supportive housing and wrap-around services to adequately treat mental illness within this population.").

successful implementation.[125] The lack of dedicated funding for CARE Plan services is particularly concerning given a recent report indicating that unless proactive measures are taken, by 2028, California will have 41% fewer psychiatrists and 11% fewer psychologists, therapists, and social workers than will likely be needed.[126]

C. OVERVIEW OF THE RECENT LEGAL LANDSCAPE

On January 26, 2023, Disability Rights California ("DRC"), in collaboration with the Western Center on Law & Poverty and The Public Interest Law Project, filed an original petition for writ of mandate to the California Supreme Court challenging the CARE Act.[127] The crux of DRC's claim rested on the contention that the CARE Act violates the guarantees of equal protection and due process enshrined in the California Constitution.[128] The state swiftly responded with a preliminary opposition on February 10, 2023, prompting DRC to counter with a preliminary reply on February 21, 2023.[129] Notably, over twenty-five groups, including the American Civil Liberties Union ("ACLU"), the National Homelessness Law Center ("NHLC"), Centro Legal de la Raza, and Human Rights Watch, submitted amicus letters in support of DRC's petition.[130]

On April 19, 2023, the California Supreme Court rejected the request for intervention in a concise one-sentence order, devoid of any commentary or indication of dissent.[131] Leading up to this decision, the Newsom administration sought an additional order asserting that the advocacy groups had demonstrated "no basis" for their requested intervention.[132] However, the court refrained from issuing such an order, granting the advocacy groups the freedom to pursue their case anew in lower courts.[133]

While this decision allows for continued legal challenges, it could serve as a potential roadblock, as lower courts are likely to align with the California

125. CARE FAQ, *supra* note 29.

126. JANET COFFMAN, TIMOTHY BATES, IGOR GEYN & JOANNE SPETZ, HEALTHFORCE CTR. AT UCSF, CALIFORNIA'S CURRENT AND FUTURE BEHAVIORAL HEALTH WORKFORCE 6 (201818), https://healthforce.ucsf.edu/publications/california%E2%80%99s-current-and-future-behavioral-health-workforce [https://perma.cc/YCQ5-4QZZ].

127. *DRC v. Newsom*, DISABILITY RTS. CAL. (Mar. 3, 2023), https://www.disabilityrightsca.org/cases/drc-v-newsom [https://perma.cc/6MMT-3X2J].

128. Bob Egelko, *California Supreme Court Rejects Challenge to Newsom's CARE Court Plan to Address Mental Illness*, S.F. CHRON. (Apr. 20, 2023, 2:33 PM.), https://www.sfchronicle.com/politics/article/supreme-court-care-court-17907396.php [https://web.archive.org/web/20240817085556/https://www.sfchronicle.com/politics/article/supreme-court-care-court-17907396.php].

129. DISABILITY RTS. CAL., *supra* note 127.

130. *Id.*

131. Egelko, *supra* note 128.

132. *Id.*

133. *Id.*

Supreme Court's stance.[134] Andy Imparato, the executive director of DRC, noted that he and his colleagues will consider filing legal challenges in trial courts on a case-by-case basis on behalf of individuals in the CARE Court program.[135] Commenting on DRC's evolving legal strategy, Imparato remarked, "[w]e will look at opportunities to stop bad things from happening and can definitely go back to the courts at that point."[136]

Considering the limited success of DRC's recent legal challenge, engaging the legislative process seems the next most promising avenue for effecting change to the currently existing CARE Court framework. In the short term, there are several crucial amendments that can be made to the CARE Act to better protect the due process rights of CARE participants while also decreasing the risk of discriminatory enforcement against people of color.

D. A PATH FORWARD

In light of growing concerns about California's future ability to meet expanding demands for mental healthcare, as well as the other critiques of forced mental health treatment raised in this Note, it is unclear whether the CARE Court framework, as opposed to increased investment in voluntary mental health services, is the right way to provide care to California's severely mentally ill population.[137] Nevertheless, in the short term, adopting the following amendments to the CARE Act serves as an immediate and practical avenue to uphold and safeguard the rights of prospective CARE Court participants. While the ultimate objective of future mental health legislation should be to transform California's mental health landscape by prioritizing autonomy and self-determination for individuals, the current situation requires advocating for incremental changes within the constraints of the existing framework. This approach is not only a realistic response to the urgent needs of the moment but also serves to protect the approximately 7,000 to 12,000 individuals expected to meet CARE Court criteria in the

134. Hannah Wiley, *California Supreme Court Rejects Lawsuit Challenging Newsom's Plan to Treat Mental Illness*, SAN DIEGO UNION-TRIBUNE (Apr. 23, 2023, 1:08 AM), https://www.sandiegounion tribune.com/2023/04/22/california-supreme-court-rejects-lawsuit-challenging-newsoms-plan-to-treat-mental-illness [https://web.archive.org/web/20241004203917/https://www.sandiegouniontribune.com/2023/04/22/california-supreme-court-rejects-lawsuit-challenging-newsoms-plan-to-treat-mental-illness].

135. *Id.*

136. *Id.*

137. *See* S.B. 1338, *supra* note 123 ("The COVID-19 pandemic exacerbated mental illness rates in California, and the state continues to face a shortage of facilities, services, and workers to appropriately care for its mentally ill population."); SWARTZ ET AL., *supra* note 115 ("Although important studies of involuntary outpatient commitment have been conducted within the past decade, there is no broad consensus about its effectiveness across jurisdictions.") (citation omitted).

upcoming year.[138]

1. Specific Eligibility Criteria and Delineated Procedures

A pivotal step in rectifying the pervasive due process concerns within the CARE Court framework is the addition of specific, well-defined standards for judges to consider when evaluating an individual's eligibility under the CARE Act. Currently, the CARE Act does not set meaningful standards to cabin judicial discretion, nor does it delineate any procedure for those decisions. To ameliorate the CARE Act's pressing due process issues, it is imperative that section 5972(d) be amended to include a standardized procedure for judicial officers to follow when forecasting an individual's potential for relapse, deterioration, and future dangerous behavior.[139]

First, the determination of whether a prospective CARE Court participant is "unlikely to survive safely in the community without supervision" could be rendered more objective by incorporating specific factors for judges to consider, such as documented instances of violent behavior, recent instances of suicidal ideation, and the frequency of psychiatric hospitalizations within a defined time frame.[140] For example, under Laura's Law, as one of the prerequisites for court-authorized outpatient treatment, a judge must find that the subject of the petition has "a history of lack of compliance with treatment."[141] This criterion can be substantiated by either of the following: (1) at least two instances within the last thirty-six months in which the person's mental illness was a substantial factor leading to hospitalization, or (2) documentation that within the prior forty-eight months, the person's mental illness resulted in one or more acts of serious and violent behavior, threats, or attempts to cause serious physical harm to themselves or others.[142] This nuanced approach not only offers a concrete framework for assessing noncompliance but also sets specific benchmarks that judges can reference. By delineating measurable criteria such as the frequency and severity of past instances, this method ensures a more objective and transparent evaluation. Moreover, such an approach helps standardize the eligibility assessment process so that individuals receive consistent results across judges and jurisdictions.

Similarly, the requirement that a respondent's condition is "substantially deteriorating" could benefit from the addition of specific

138. Nicole Nixon & Chris Nichols, *Newsom Signs CARE Court Bill, Paving Way for Court-Ordered Treatment Plans*, CAPRADIO (Sept. 14, 2022), https://www.capradio.org/articles/2022/09/14/as-care-court-faces-key-vote-counties-say-newsoms-proposal-adds-burden-to-overtaxed-behavioral-health-departments [https://perma.cc/87GQ-ZAGU].

139. CAL. WELF. & INST. CODE § 5972(d)(1)–(2) (West 2024).

140. *Id.* § 5972(d)(1)–(2).

141. *Id.* § 5346(a)(4).

142. *Id.* § 5346(a)(4)(A)–(B).

indicators to guide judicial decision-making.[143] For example, requiring that a finding of substantial deterioration be based on factors like an increase in the severity and frequency of an individual's delusions, an escalation in self-harming behaviors, and a decline in hygiene and self-care, offers a more comprehensive and objective framework for judges. By relying on observable and documented evidence, the potential for arbitrary decisions is minimized, and eligibility determinations become more transparent and consistent within the CARE Court framework.

Additionally, the inherent subjectivity of the eligibility requirement that an individual be in need of services to prevent a relapse that would likely result "in grave disability or serious harm" to oneself or others could be mitigated by outlining certain factors for judges to consider.[144] This could encompass the individual's documented history of past relapses, the severity and consequences of those relapses, and an assessment of the effectiveness of prior interventions. Requiring judges to assess the likelihood of a relapse based on concrete evidence would help ensure that individuals are not subject to CARE Court involvement based solely on the judge's discretion but rather on a thorough and evidence-based evaluation of the potential risks associated with their condition.

Crucially, the CARE Act should include a provision that explicitly bars judges from making a positive eligibility determination when some or all of the specified factors are not present. This prohibition would serve as a safeguard against hasty and speculative judgments, ensuring that the decisions of judges are based on evidence rather than speculation. The establishment of these guiding criteria would promote a shift toward a more evidence-based approach to decision-making within the CARE Court framework. This transition to a more objective framework would not only strengthen the due process protections embedded in the CARE Act but also foster increased transparency for individuals within the community about the behaviors that could subject them to CARE Court proceedings.

2. Increased Oversight and Evidentiary Support by Mental Health Professionals

Another crucial adjustment that must be made pertains to the level of oversight and input afforded to mental health professionals under the CARE Act. Currently, the Act relies heavily on judicial discretion. To address this, the Act should be amended to necessitate that a neutral mental health professional evaluates each potential CARE participant's eligibility for the

143. *Id.*§ 5346(a)(3)(A).
144. *Id.* § 5972(d)(2).

CARE program at the time of the initial petition.

Relatedly, it is essential to revise section 5975(d)(1) of the CARE Act, which currently allows behavioral health professionals to offer an affidavit in support of an individual's initial CARE Court eligibility without first assessing the individual.[145] This provision should be removed and replaced with a requirement that every affidavit be based on a recent and thorough assessment of the individual in question. Furthermore, the acceptable timeframe for the behavioral health specialist to have completed this evaluation prior to the petition should be shortened from sixty to thirty days.

These changes serve a dual purpose: they help ensure that any recommendation regarding a patient's condition is based on evidence, while also providing judges with a more robust support structure when making determinations about an individual's behavior. Necessitating that every petition be furnished with a recent clinical evaluation by a mental health professional would ensure that judges have at least some evidence to guide their initial eligibility determinations. Together, these adjustments prioritize due process protections, enhance the quality and fairness of judicial decisions, and introduce a more healthcare-oriented approach to the CARE Act.

3. Removal of Punishments for Noncompliance

Third, it is essential that the California Legislature remove the CARE Act's punishments for noncompliance. The current accountability measures, as outlined in section 5979 of the CARE Act, are not in harmony with established mental health practices and run counter to the Act's purported goal of facilitating recovery and rehabilitation of the mentally ill, as they disincentivize individuals from seeking care by instilling fear of the potential for conservatorship if found noncompliant.[146]

Laura's Law explicitly states that "[f]ailure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment."[147] This approach acknowledges the complexities of mental health treatment by allowing some leeway for noncompliance without immediate recourse to involuntary commitment. However, the CARE Act departs from this understanding by stipulating that noncompliance "shall create a presumption" in favor of conservatorship.[148] This inversion of the

145. *Id.* § 5975(d)(1) ("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").

146. *Id.* § 5979.

147. *Id.* § 5346(f) ("Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.").

148. *Id.* § 5979(a)(3).

presumption places a high burden on CARE participants, leaving them vulnerable to the threat of conservatorship for very minor infractions.

This punitive stance not only contradicts the principles of compassionate mental healthcare touted by the CARE Act's creators but also overlooks the specific challenges in treating the CARE Act's target population—individuals coping with severe schizophrenia, many of whom are unhoused.[149] Unhoused individuals face substantial hurdles to meaningfully participating in court proceedings and accessing healthcare services.[150] These obstacles include a lack of reliable transportation, the absence of a consistent mailing address, and limited access to a cell phone.[151] Additionally, the prevalence of anosognosia among individuals with schizophrenia is a significant factor that may further decrease the likelihood that CARE participants will voluntarily adhere to their treatment plans.[152]

Eliminating punishments for noncompliance can ensure that the CARE Act better aligns with principles of therapeutic and compassionate care, reducing the barriers for potential CARE participants to seek help. This change would ensure that individuals are not unfairly penalized for struggles related to their condition, while also encouraging a more understanding approach to treating California's severely mentally ill population. By removing the fear of these unnecessarily punitive measures, the CARE Act can foster an environment that is more conducive to genuine engagement with mental health services.

4. Providing CARE Court Participants with Supportive Permanent Housing

Lastly, it is crucial to amend the CARE Act to directly address the critical issue of housing for CARE participants. Presently, the CARE Act falls short of guaranteeing access to housing services for CARE participants, leaving it as a mere possibility rather than a certainty. The state only affirms that "[t]he court *may* issue orders necessary to support the respondent in accessing housing," not that it *will* provide each respondent with housing.[153] Additionally, section 5977.1 of the Act designates housing as an example of a potential service and support that could be incorporated into a CARE plan,

149. *See* CARE FAQ, *supra* note 29 ("Supporting a self-determined path to recovery and self-sufficiency is core to CARE Court . . . .").

150. Mark Saldua, *Addressing Social Determinants of Health Among Individuals Experiencing Homelessness*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN.: SAMHS BLOG (Nov. 15, 2023), https://www.samhsa.gov/blog/addressing-social-determinants-health-among-individuals-experiencing-homelessness [https://perma.cc/LBK4-AY7Z].

151. *Id.*

152. *See* Lehrer & Lorenz, *supra* note 109, at 10 ("Poor insight is a core attribute of schizophrenia, occurring in 57 to 98 percent of patients.").

153. CARE FAQ, *supra* note 29 (emphasis added).

rather than establishing housing as a fundamental requirement.[154]

Even though CARE Court participants will receive priority for available BHBH services, there is no guarantee that the $1.5 billion allocated to the BHBH program will be sufficient to meet demand.[155] California already faces a severe housing shortage, and the funding for the BHBH program is meant to be dispersed among numerous counties over several years, extending until June 30, 2027.[156] As of October 2023, fifty-eight Behavioral Health Agencies in California are eligible to apply for BHBH program funding.[157]

It is also essential to acknowledge that the Bridge Housing provided by the BHBH program is temporary, not permanent.[158] Bridge Housing settings are designed for temporary placements, with the aim of transitioning individuals with significant behavioral health needs from unsheltered homelessness to a stable living environment.[159] The spectrum of Bridge Housing includes both short- and mid-term residential settings, with short-term defined as a period less than ninety days and mid-term spanning a duration between ninety days and two years.[160] While these settings lay the groundwork for subsequent permanent housing, they lack the enduring stability that permanent housing provides.

In addition to the temporary nature of Bridge Housing, County Behavioral Health Agencies are actively encouraged to explore innovative models for supplying housing.[161] This involves leveraging existing real estate that can be leased or swiftly converted to establish new BHBH program settings.[162] Such innovative approaches include the conversion of navigation centers, hotels, decommissioned skilled nursing facilities ("SNFs"), schools, and office buildings into temporary shelters.[163]

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154. CAL. WELF. & INST. CODE § 5977.1(d)(4) (West 2024) ("I[f the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity . . . ").

155. *About the Behavioral Health Bridge Housing (BHBH) Program*, BEHAV. HEALTH BRIDGE HOUS., https://bridgehousing.buildingcalhhs.com [https://perma.cc/K7CM-85JU] ("The BHBH Program will be implemented in alignment with the Community Assistance, Recovery, and Empowerment (CARE) Program, which prioritizes BHBH Program resources for CARE participants.").

156. Ilana Rub, Section Chief, Dep't of Health Care Servs., Behavioral Health Bridge Housing (BHBH) Presentation (Oct. 2023), https://www.courts.ca.gov/documents/CJAC-20231011-MH-Materials.pdf [https://perma.cc/G94V-BCSH].

157. *Id.*

158. *Id.*

159. GABRIEL PETEK, LEGIS. ANALYST'S OFF., THE 2023-24 BUDGET: ANALYSIS OF THE GOVERNOR'S MAJOR BEHAVIORAL HEALTH PROPOSALS 1 (2023), https://www.lao.ca.gov/reports/2023/4689/Major-Behavorial-Health-Proposals-021623.pdf [https://perma.cc/9U5B-3NGN].

160. Rub, *supra* note 156.

161. *Id.*

162. *Id.*

163. *Id.*

Given the challenges that California's housing crisis presents, the BHBH program's emphasis on repurposing existing real estate highlights a pragmatic and resourceful strategy. However, one key concern is that repurposed spaces may lack the tailored features and infrastructure necessary to support the rehabilitation of CARE participants. Unlike purpose-built facilities that might offer specialized amenities and services, converted spaces may not be equipped to meet the specific therapeutic, privacy, and safety needs of CARE participants. Furthermore, the diversity in permissible settings and the flexibility in the conversion process could lead to inherent variation in the housing placements offered to CARE participants. Not all repurposed spaces may offer the same level of accessibility, security, or compatibility with the terms of an individual's CARE plan. The inherent variations in these settings may inadvertently create disparities in the quality of care and support that CARE participants receive.

In summary, the CARE Act's current approach to housing is suboptimal. Collectively, the CARE Act's provisions seem to position housing as a secondary, rather than a primary, element of rehabilitation, and the BHBH program provides only a fragmented patchwork of temporary housing. Without addressing this gap, the CARE Act risks jeopardizing its commitment of providing comprehensive care and support to individuals grappling with severe schizophrenia and related psychotic disorders.

A strategic realignment of the CARE Act is imperative, one that emphasizes housing as a primary element of rehabilitation rather than a secondary consideration. To effect this fundamental shift in the CARE Act, the legislature can draw inspiration from the Housing First Model, an evidence-based approach that prioritizes immediate and permanent housing as the primary intervention for individuals experiencing homelessness, including those grappling with severe mental illness.[164] The Housing First model has proven to be particularly effective at breaking the chronic cycle of homelessness, especially for individuals with psychiatric disabilities.[165] Further, the Housing First model has demonstrated success in reducing the overall costs associated with homelessness, including emergency room

164. Under California Welfare and Institutions Code section 8255, "Housing First" is defined as "the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible." CAL. WELF. & INST. CODE § 8255 (West 2024).

165. *See* Leyla Gulcur, Ana Stefancic, Marybeth Shinn, Sam Tsemberis & Sean N. Fischer, *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 J. CMTY. & APPLIED SOC. PSYCH. 171, 171 (2003) (explaining that patients who were randomly assigned to a Housing First program "spent significantly less time homeless and in psychiatric hospitals" than patients who were not connected with immediate supportive housing).

visits, law enforcement interactions, and other public services.[166] By embracing the principles of the Housing First model, the CARE Act can overcome its current limitations and truly meet the needs of CARE participants.

E. THE NEED FOR PRAGMATISM

These amendments, while undoubtedly a significant step in reforming the CARE Act, should be viewed pragmatically. They do not represent a panacea that will instantly remedy the intricate challenges that plague California's mental health system, nor do they eradicate the CARE Act's use of involuntary treatment. Instead, they represent a realistic and balanced approach that acknowledges the critical role of forced treatment in dire situations while simultaneously upholding and safeguarding the due process rights of potential CARE participants.

CONCLUSION

The need to provide care and support to the thousands of unhoused Californians grappling with severe mental illness is an unquestionable necessity. However, the current involuntary and court-centered framework with vague enforcement standards and severe noncompliance penalties is not the answer. It is imperative that changes be made now to ensure California does not veer down the wrong path. In the quest for a more equitable, compassionate, and effective system, change is not just desirable; it is an urgent necessity. The trajectory of California's approach to caring for severely mentally ill individuals must shift toward a more patient-centered, evidence-based, and supportive model.

166. NIHLC, THE EVIDENCE IS CLEAR: HOUSING FIRST WORKS 4 https://nlihc.org/sites/default/files/Housing-First-Evidence.pdf [https://perma.cc/25VE-NJNX] (explaining that a study tracking the public service use of unhoused New York City residents with mental health diagnoses found that supportive housing was associated with a $12,146 annual net reduction in costs per person for health, corrections, and shelter use).