

Introduced by Senator Umberg

December 2, 2024

An act to amend Section 5977 of the Welfare and Institutions Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as introduced, Umberg. Community Assistance, Recovery, and Empowerment (CARE) Court Program.

Existing law, the Community Assistance, Recovery, and Empowerment (CARE) Act, authorizes specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services, to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria. Existing law authorizes a specified individual to commence the CARE process, known as the original petitioner. Existing law authorizes the court to dismiss a case without prejudice when the court finds that a petitioner has not made a prima facie showing that they qualify for the CARE process. Existing law requires the court to take prescribed actions if it finds that a prima facie showing has been made, including, but not limited to, setting the matter for an initial appearance on the petition.

This bill would allow the court to conduct the initial appearance on the petition at the same time as the prima facie determination if specified requirements are met.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5977 of the Welfare and Institutions
2 Code, as amended by Section 5 of Chapter 640 of the Statutes of
3 2024, is amended to read:

4 5977. (a) (1) The court shall promptly review the petition to
5 determine if the petitioner has made a prima facie showing that
6 the respondent is, or may be, a person described in Section 5972.

7 (2) If the court finds that the petitioner has not made a prima
8 facie showing that the respondent is, or may be, a person described
9 in Section 5972, the court may dismiss the case and, if the court
10 does so, it shall order that the dismissal is without prejudice, unless
11 Section 5975.1 applies. Nothing other than Section 5975.1 prevents
12 a petitioner whose petition was dismissed without prejudice from
13 refiling the petition with amended information.

14 (3) If the court finds that the petitioner has made a prima facie
15 showing that the respondent is, or may be, a person described in
16 Section 5972, the court shall do one of the following:

17 (A) If the petitioner is the director of a county behavioral health
18 agency, or their designee, the court shall do the following:

19 (i) Set the matter for an initial appearance on the petition within
20 14 court days.

21 (ii) Appoint a qualified legal services project, as defined in
22 Sections 6213 to 6214.5, inclusive, of the Business and Professions
23 Code, to represent the respondent. If no legal services project has
24 agreed to accept these appointments, a public defender or other
25 counsel working in that capacity shall be appointed to represent
26 the respondent.

27 (iii) Determine whether the petition includes all of the following
28 information and, if it does not, order the county behavioral health
29 agency to submit a written report with the court within 14 court
30 days that includes all of the following:

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

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

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

5 (iv) Order the county behavioral health agency to provide notice
6 to the respondent, the appointed counsel, and the county behavioral
7 health agency in the county where the respondent resides, if
8 different from the county where the CARE process has
9 commenced.

10 (v) *If the requirements of this subparagraph and of subdivision*
11 *(b) are satisfied at the time of the prima facie determination, the*
12 *court may conduct the initial appearance concurrently with the*
13 *prima facie determination.*

14 (B) If the petitioner is a person other than the director of a
15 county behavioral health agency, or their designee, the court shall
16 order a county agency, or their designee, as determined by the
17 court, to investigate, as necessary, file a written report with the
18 court as soon as practicable, but within 30 court days, and provide
19 notice to the respondent and petitioner that a report has been
20 ordered. Parties shall complete the investigation with appropriate
21 urgency. The written report shall include all of the following:

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

24 (ii) The outcome of efforts made to voluntarily engage the
25 respondent during the report period.

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

28 (iv) The information, including protected health information,
29 necessary to support the determinations, conclusions, and
30 recommendations in the report.

31 (4) If, upon a request by the county agency ordered to investigate
32 and file a report under subparagraph (B) of paragraph (3), the court
33 finds that the county agency is making progress to engage the
34 respondent, the court may, in its discretion, grant the county agency
35 no more than 30 additional days to continue to work with, engage,
36 and enroll the individual in voluntary treatment and services. The
37 county agency shall provide notice to the respondent and petitioner
38 that an extension for filing a report has been granted.

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

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

(B) If the court determines, based on the county agency's report, that the evidence does not support a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

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

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

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

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

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

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

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

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the

1 attendance of the respondent have failed, the court may conduct
2 the hearing in the respondent's absence if the court makes a finding
3 in open court that conducting the hearing without the participation
4 or presence of the respondent would be in the respondent's best
5 interest.

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

8 (5) If the respondent asserts that they are enrolled in a federally
9 recognized Indian tribe or are receiving services from an Indian
10 health care provider, a tribal court, or a tribal organization, a
11 representative from the program, the tribe, or the tribal court shall
12 be allowed to be present, subject to the consent of the respondent.
13 The tribal representative shall be entitled to notice by the county
14 of the initial appearance.

15 (6) (A) If the petitioner is a person other than the director of a
16 county behavioral health agency, or their designee, the court shall
17 issue an order relieving the original petitioner and appointing the
18 director of the county behavioral health agency or their designee
19 as the successor petitioner.

20 (B) If the original petitioner is described in subdivision (a) or
21 (b) of Section 5974, all of the following apply:

22 (i) The original petitioner shall have the right to be present and
23 make a statement at the initial hearing on the merits of the petition
24 held pursuant to paragraph (7).

25 (ii) (I) Until July 1, 2025, the court may, in its discretion, assign
26 ongoing rights of notice to the original petitioner.

27 (II) Commencing July 1, 2025, unless the court determines,
28 either upon its own motion or upon the motion of the respondent,
29 at any point in the proceedings, that it likely would be detrimental
30 to the treatment or well-being of the respondent, the court shall
31 provide ongoing notice of proceedings to the original petitioner
32 throughout the CARE proceedings, including notice of when a
33 continuance is granted or when a case is dismissed. If a continuance
34 is granted, the notice shall provide a general reason for the
35 continuance, including the absence of the respondent or one of the
36 grounds pursuant to Rule 3.1332 of the California Rules of Court.
37 If a case is dismissed, the notice shall specify the statutory basis
38 for the dismissal. A notice pursuant to this clause shall not disclose
39 any patient information that is protected under the federal Health
40 Insurance Portability and Accountability Act of 1996 (Public Law

1 104-191), the Confidentiality of Medical Information Act (Part
2 2.6 (commencing with Section 56) of Division 1 of the Civil Code),
3 or this act, without the respondent's consent.

4 (iii) To the extent that the respondent consents, the court may
5 allow the original petitioner to participate in the respondent's
6 CARE proceedings.

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

10 (C) If the original petitioner is not described in subdivision (a)
11 or (b) of Section 5974, the court shall not assign ongoing rights to
12 the original petitioner, other than the right to be present and make
13 a statement at the hearing on the merits of the petition held pursuant
14 to paragraph (7).

15 (7) (A) The court shall set a hearing on the merits of the petition
16 within 10 days, at which time the court shall determine whether,
17 by clear and convincing evidence, the respondent meets the CARE
18 criteria in Section 5972. In making this determination, the court
19 shall consider all evidence properly before it, including any report
20 from the county behavioral health agency ordered pursuant to
21 paragraph (3) of subdivision (a) and any additional admissible
22 evidence presented by the parties, including the petition submitted
23 and any statement given by the original petitioner. A licensed
24 behavioral health professional may testify as an expert concerning
25 whether the respondent meets the CARE criteria in Section 5972
26 provided that the court finds that the professional has special
27 knowledge, skill, experience, training, or education sufficient to
28 qualify as an expert under Section 720 of the Evidence Code.

29 (B) The hearing on the merits of the petition may be conducted
30 concurrently with the initial appearance upon stipulation of the
31 successor petitioner and the respondent, subject to the approval
32 by the court.

33 (c) (1) If, at the hearing on the merits of the petition, the court
34 finds there is not clear and convincing evidence that the respondent
35 meets the CARE criteria in Section 5972, the court shall dismiss
36 the case without prejudice, unless the court makes a finding, in
37 open court, that the original petitioner's filing was not in good
38 faith, in which case the dismissal shall be with prejudice.

39 (2) If, at the hearing on the merits of the petition, the court finds
40 by clear and convincing evidence that the respondent meets the

1 CARE criteria in Section 5972, the court shall order the county
2 behavioral health agency to work with the respondent, the
3 respondent's counsel, and the supporter to engage the respondent
4 in behavioral health treatment and attempt to enter into a CARE
5 agreement. The court shall set a case management hearing within
6 14 days.

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

10 (d) The following shall apply to any written report submitted
11 by a county behavioral health agency to the court pursuant to this
12 section:

13 (1) The report is confidential and not subject to disclosure or
14 inspection under the California Public Records Act (Division 10
15 (commencing with Section 7920.000) of Title 1 of the Government
16 Code).

17 (2) The report is inadmissible in any subsequent legal
18 proceeding, except upon motion of the respondent in that
19 subsequent legal proceeding.

20 (3) The report shall be confidential pursuant to subdivision (e)
21 of Section 5976.5.

22 (4) This subdivision shall not affect the applicability of
23 paragraph (2) of subdivision (c) of Section 5977.1, make admissible
24 any evidence that is not otherwise admissible, or permit a witness
25 to base an opinion on any matter that is not a proper basis for such
26 an opinion. The admission or exclusion of evidence shall be
27 pursuant to the rules of evidence established by the Evidence Code,
28 including, but not limited to, Section 352 of the Evidence Code,
29 and by judicial decision.

30 SEC. 2. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the California Constitution and shall
33 go into immediate effect. The facts constituting the necessity are:

34 The CARE Act took effect in October 2023, and therefore
35 important changes to the act must take effect immediately to ensure
36 the CARE Act's success in providing timely assistance to
37 respondents.