The Intersection Between California's Care Act and the Courts:

The Future of Justice for People with Behavioral Health Needs

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INTRODUCTION

California's court system finds itself at the heart of a mental health and substance use crisis gripping our state. In our criminal justice system, almost one third of California's jail population has a mental health disorder. In our civil courts, nearly 100,000 filings are filed yearly related to mental health conservatorship and 5250 crisis holds.[1] Faced with this challenge, policymakers and Court leaders have developed programs that divert people from criminal and civil justice systems. Unfortunately, often each of these fixes are enacted locally with little thought and collaboration with existing court structures, leading to inefficient and ineffective use of resources statewide.

In 2023 the Care Act became California law. The Act creates a new pathway to deliver mental health and substance use disorder services through a civil court treatment program that connects a person struggling with untreated mental illness with a court ordered Care Plan and Care Team including Public Defender and Supporters.

All of California's courts draw on the same set of community resources for services, so any new approach (including the Care Act) needs to be examined in the context of who it serves and what resources it will bring (or take) from other places. At the same time, efforts to expand access to insurance and services for those who are justice involved are increasing. Taken together, California faces an inflection point and an opportunity to build a more just, fiscally sustainable, and responsive system.

BACKGROUND

Alternative courts have been created throughout the state to provide treatment pathways for individuals involved in our court systems who have behavioral health conditions. This has led to a complex matrix of services and systems routed through the 58 county superior courts across numerous calendars and related specialty courts. This challenge is compounded by a behavioral

[1] 2024 Court Statistics Report, (2024) retried from https://www.courts.ca.gov/documents/2024-Court-Statistics-Report.pdf

health system facing a serious workforce shortage, and new demands on court-related professions like judges, public defenders, district attorneys, probation, and public guardian staff.

Courts can offer pathways to services, but equally important is the need for system level thinking and coordination, and along with the ability, time, and competency to truly engage people.

CALIFORNIA'S NEW APPROACH: THE CARE ACT

The CARE Act civil court process is designed to ensure that people with serious mental health needs receive necessary treatment, social services, and housing. The CARE Act mandate is two-fold: counties must provide service engagement for people with a Care Act petition, and people that are eligible based on the Act criteria must participate in a comprehensive plan for their care. The main components of the CARE Act are shown in the process map in Figure 1. This map outlines the major components of the CARE Act:

1. Identification and Engagement: Pathways into the CARE Act can come from criminal and civil courts, as well as referrals from the community and county behavioral health personnel. As the CARE Act implementation evolves, it will be important to track its capacity for criminal court diversion. Additionally, the Act has the potential to increase engagement for people who don't engage in other civil courts like Assisted Outpatient Treatment. This initial phase requires a declaration of mental health to confirm that the person requires care before proceedings begin.

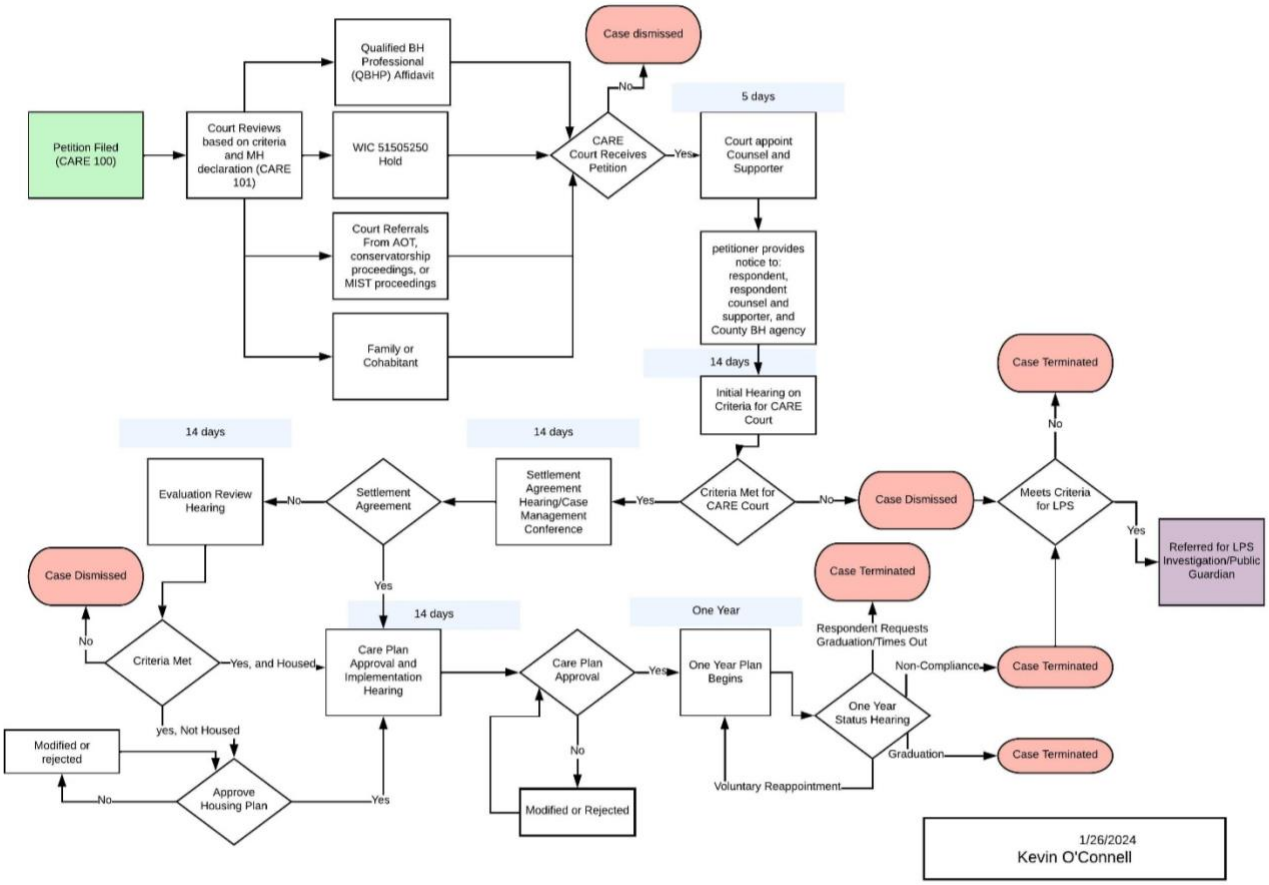

Figure 1: CARE Act Process Map

2. Initial court screenings and reviews focus on whether the petition, on its face, could meet eligibility for the CARE Act. This initial review helps ensure resources are used for people that would most benefit, as well as start the process of notifying behavioral health teams to begin engaging with the client. The initial court hearing happens within 5 days of the court's initial review. In the hearing, the respondent is granted a Public Defender and Supporter to aid in their defense and knowledge of events. This also starts the county behavioral health agency's engagement to stabilize and progress the individual to an agreement to engagement in services. 14 days later (19 days since the petition filing), the court rules on whether the person meets criteria for the CARE Act, which includes age, diagnosis, and level of functioning.
3. If a behavioral health agency is successful at engaging the person, a CARE Agreement might be in place that outlines the steps the respondent is going to take to move toward

stability. A CARE Agreement is the basis for a CARE Plan, which includes detailed treatment, medication, and housing elements. If a respondent is voluntarily willing to begin treatment, there may be a settlement agreement that would move the client from a court ordered CARE Plan to something without court oversight. If the client is still unwilling to enter treatment voluntarily, a CARE Plan would be court ordered outlining specific treatment, monitoring, and reassessment.

CARE Plans last 1-2 years with the goal of a client stabilizing and engaging in treatment. Clients can "graduate", extend, or be terminated from the program.

Clients who are terminated for not engaging in treatment could be referred to conservatorship, so it will be important to monitor how and if clients who have been terminated find other pathways to treatment or end up in more restrictive levels of care.

A FRAMEWORK FOR THINKING ABOUT CRIMINAL AND CIVIL COURTS

As the CARE Act is implemented in California, it is important to understand its place in the civil and criminal court systems. Figure Figure 2: Court Framework2 below shows a framework for placing various civil and criminal courts on a continuum of public safety risk and level of disability. The typical client in this framework is going through a court process but is also connected to treatment services and housing resources in a continuum of care. The number and variety of court calendars and systems means, taken together, not every county will have, need, or use these pathways, but this framework is designed to help counties evaluate the suitability and resources across a continuum, not just a specific court calendar. The goal is for local systems to develop a framework that best utilizes these courts and ensures that resources and laws align to the intent of these courts.

- The level of disability looks at whether a person can care for themself or is likely to recover from the behavioral health need. Someone with a low level of disability might need temporary stabilization or support in a moment of crisis but is expected to recover with time and treatment.

- The level of public safety risk points to both their risk of violence as well as their risk of recidivism (or return to the justice system). This is an important difference and (for the purpose of this framework) we are speaking of the risk of future justice involvement.

Developing a structured decision-making approach can assist court teams in developing the court programs that target specific needs or approaches, so that petitions and referrals to these courts are properly staffed, with treatment and housing resources backing them. Another differentiation is criminal related courts that are offered before case disposition as opposed to after someone has been sentenced (disposition). Although criminal courts are related to matters of criminal conduct, the criminal charges can also be the basis for civil court referrals.

Figure 2: Court Framework

LOW AND MODERATE PUBLIC SAFEY RISK AND LEVEL OF DISABILITY

This grouping of courts focuses on people with lower levels of projected public safety risk and with lower levels of disability, who are likely treatable. The pathways to these courts and their resources should focus on the least restrictive practices and supporting recovery and connections.

ASSISTED OUTPATIENT TREATMENT (AOT)- Aims to provide a legal framework for court-ordered treatment for individuals who have a history of not complying with voluntary mental health treatment and pose a risk to themselves or others. This option emphasizes voluntary participation in treatment, when possible, but it allows for involuntary treatment when necessary to protect the individual and the community. (Civil)

5150/5250 CRISIS HOLD- A 72 hour and 14-day involuntary commitment to a hospital or mental health facility that can be placed on a person. These are used when someone is deemed a danger to themselves or others, and/or gravely disabled due to a mental health condition, requiring inpatient hospitalization. At this level there is some short-term public safety risk. (Civil)

CARE ACT- A civil court ordered treatment program that connects a person struggling with untreated mental illness with a court ordered Care Plan and care team including Public Defender and a Supporters. It encompasses not only mental health treatment but also housing supports and other social services, with the aim of facilitating long-term stability and recovery. (Civil)

LPS CONSERVATORSHIP- A legal process where a court appoints a Conservator to manage the affairs of an adult with severe mental illness who is deemed incapable of caring for themselves or making informed decisions. Generally, individuals on conservatorship are in longer term locked settings for treatment. This type of conservatorship is specifically for individuals who are gravely disabled due to mental disorders. (Civil)

MENTAL HEALTH DIVERSION- Defendants with mental health disorders undergo mental health treatment as an alternative to traditional criminal prosecution. Eligible defendants can have their charges dismissed and records sealed upon successful completion of the program, which includes compliance with a court-approved treatment plan. This court can be utilized for felonies or

misdemeanors and can serve people with mild-moderate mental health needs, as well as those with more serious mental health conditions. (Criminal Case-Pretrial)

MISDEMEANOR INCOMPETENCY TO STAND TRIAL- Defendants unable to participate in their own defense when pending trial for misdemeanors may be found "Incompetent to Stand Trial", at which point proceedings are suspended and a person may be granted diversion or referred to other civil courts such as Assisted Outpatient Treatment or the CARE Act process.

ELEVATED DISABILITY AND PUBLIC SAFETY RISK

This designation is for people with elevated levels of public safety risk, as well as grave disability and often acuity.

FELONY INCOMPETENCY TO STAND TRIAL - Defendants unable to participate in their own defense when pending trial for felonies may be found "Incompetent to Stand Trial", after an evaluation of competency. If this finding results in a placement for "restoration to competency" which includes treatment, medication, and counseling. The goal is to return the person to the court process so that their case can proceed. Re-evaluations, as well as early access to medication programs have been effective in reducing the number of people going to state hospitals.

FELONY INCOMPETENCY TO STAND TRIAL DIVERSION- For people at-risk of incompetency, or found incompetent, petitions can be offered to divert someone to services, housing, and treatment as an alternative to restoration. This program focuses on people that would meet specific diagnostic criteria who have been charged with a felony.

MENTAL HEALTH COURT- This collaborative court is designed to handle cases involving clients with serious mental health needs through probation supervision, drug testing, treatment services, and immediate sanctions and interventions. Most mental health courts operate as post-plea courts, but some do operate pre-adjudication, where a client's conviction is then expunged if they are successful. (Criminal)

DRUG OR ADDICTION COURT- This post-plea collaborative court is for people who are convicted of crimes where substance use, or addiction played a role in the commission of their crime. These courts are designed for people who a have substance use disorder and a relatively high risk of recidivism. These courts maintain accountability through drug testing and probation supervision. (Criminal)

MURPHY'S CONSERVATORSHIP- For people that have committed a violent crime, been found incompetent to stand trial, and also unrestorable to competency, a Murphy's conservatorship can result in a locked placement or time in jail. (Criminal and Civil)

AN INVENTORY OF CRIMINAL AND CIVIL COURTS

The courts and court processes noted are not usually discussed holistically, mainly because they are administered by a combination of agencies and courts, including the Department of Health Care Services, Judicial Council, and Department of State Hospitals, as well as 58 Superior Courts.

Accessing a range of sources and inventories shows the count of counties with courts offerings various civil and criminal courts. County utilization of certain civil and criminal courts and process varies, but Table 1 shows the volume associated with specific court processes related to behavioral health.

All California Superior Courts in California offer these proceedings, but how and when counties use these can be diverse as how they are used on a per capita basis. Even basic counts and utilization should be monitored as new courts are added, since many of the people in these courts could be eligible for multiple different courts, often involved in many of them either concurrently, or over several years.

The key focus becomes understanding how to ensure that these courts are used as designed and not unintentionally pushing people into more restrictive placements. Without attention to level of care requirements, these programs can ultimately make the courts less effective and clients less able to engage in care.

Table 1: Table of Courts related to Behavioral Health Needs

Court	21-22	22-23
LPS Conservatorship Filings (Civil)	29,809	33,080
Felony IST Commitments (Criminal)	5,690	4,865

Statewide, there are 60 people per 100,000 with a conservatorship filing, and 21 per 100,000 adults who have been committed to state hospitals. These numbers vary widely around the state (Figure 3), reinforcing that there is no single California framework of how civil and criminal courts can work together. When examined across counties, there is a strong positive relationship between county rates of conservatorship and incompetency to stand trial, pointing to the need to understand why counties have such varying rates of use of these courts.

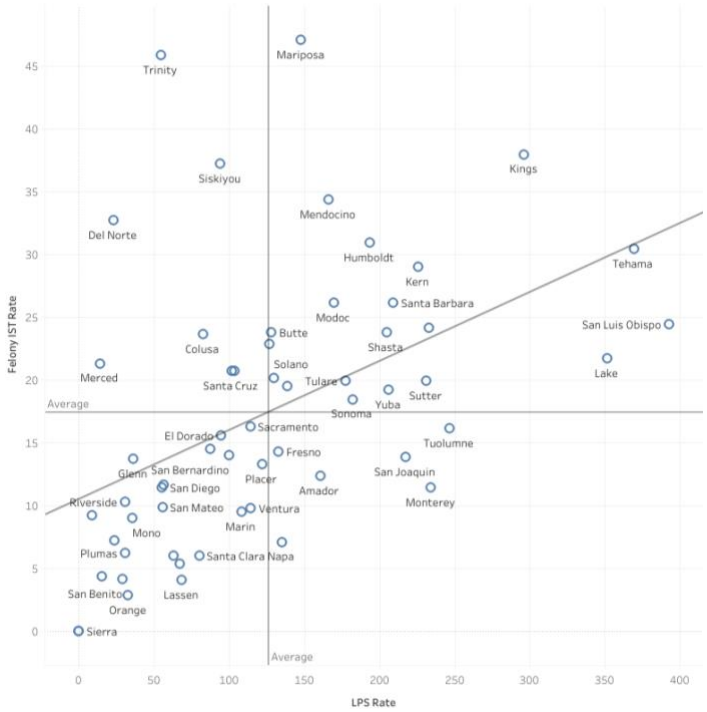

Figure 3: Rates of LPS Conservatorships and Incompetency to Stand Trial

Figure 1 shows the range of individual counties with active collaborative courts or optional civil courts like AOT and CARE court. These courts are linked to local resources and usage. So, as the state expands the types of courts available, it's important to understand utilization as much as the presence of collaborative court or civil court. The table also shows that the most available courts are collaborative courts such as Drug and Mental Health Court. This list also undercounts some of the specific combination's counties use, highlighting the importance of tracking utilization.

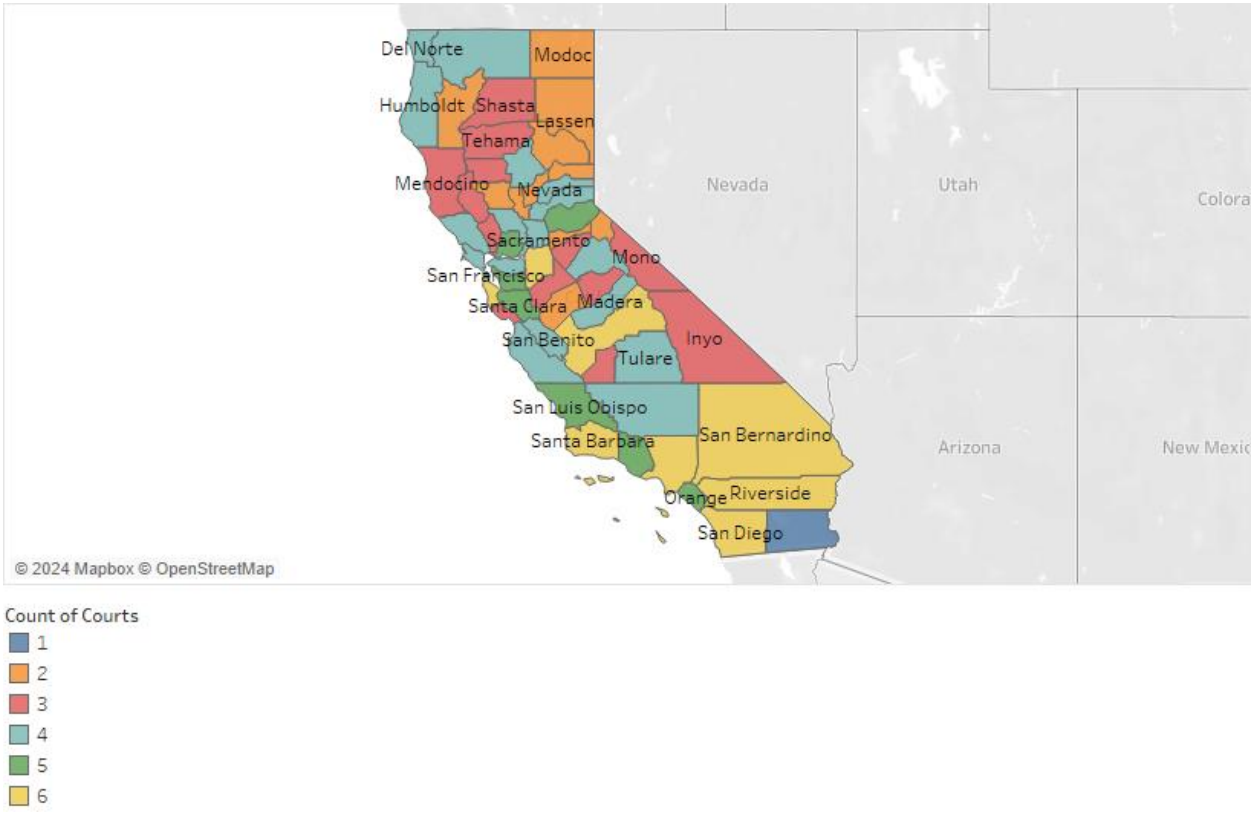

Figure 1: Number of selected Behavioral Health focused Courts

To interact with available county level court data, go to the visualization linked below.[2] From here you can explore county offerings, as well as relative rates of LPS conservatorships and incompetency findings.

[2] https://public.tableau.com/app/profile/oconnellresearch/viz/CaliforniaCivilandCriminalCourts/CaliforniaCourts

Count of Courts

Court Type	Courts	
Civil Court	Assisted Outpatient Treatment	31
	CARE Act	7
Criminal Courts	Adult Co-occurring Disorder	5
	Adult Drug	47
	Adult Mental Health/Wellness	40
	Adult Reentry	12
	DSH Diversion Pilot	28
	Dui/Dwi	13
	IST Commitments	58
	MH Diversion	41
	Veterans Treatment	35

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CONCLUSION

California's court systems continue to utilize innovative approaches to address their intersection with the state's behavioral health crisis. The state's most recent approach, the CARE Act, has the potential to redirect people away from involuntary treatment.

The CARE Act's new paradigm provides support, treatment and accountability for people who were previously unengaged in treatment and possibly homeless. This new approach will provide policymakers and leaders important lessons about the effectiveness of courts at engaging people through this type of court process. Although the CARE Act is a civil court process, many of the petitions will come from people with criminal justice involvement.

Wide ranges in conservatorship filings and competency placements across the state will mean CARE Act implementation and impacts will vary amongst counties. Combined with an ongoing lack of coordination among California's various criminal and civil court systems, assessing the effectiveness of the CARE Act will require examining the Act's impact on California's entire court system.