March 18, 2022

Mark Ghaly, M.D.
Secretary, California Health & Human Services Agency
1215 O Street
Sacramento, CA 95814

Re: Input on the Community Assistance, Recovery, & Empowerment Court Proposal

Dear Dr. Ghaly:

On behalf of the below organizations, we are writing to offer input to the Community Assistance, Recovery, and Empowerment (CARE) Court proposal. Signatories are dedicated to evidence-based solutions to ending homelessness, treating behavioral health disorders, and promoting the dignity and rights of those with disabilities.

We agree with Governor Newsom and you that homelessness is a crisis that calls for statewide solutions, and that compassion should move all jurisdictions to repair systems that have long failed people experiencing homelessness, particularly people living with disabilities. We appreciate your effort to hold these systems accountable and look forward to collaborating with you to do so. We also agree with your approach to create a team focused on the needs of people living with significant disabilities and homelessness.

Rather than pursuing a new court system, we recommend pursuing your goals through the following approaches:

- Using the existing court system to hold local governments accountable for providing a range of behavioral health treatment to all who need and want treatment;
- Holding the State accountable for ensuring counties have sufficient resources to offer a true right to voluntary behavioral health treatment;
- Offering sufficient funding to engage people experiencing homelessness using evidence-based approaches; and
- Investing in housing to better meet the scale of the need.

Concerns with Court-Ordered Treatment Under the CARE Courts Proposal

> *The CARE Courts proposal places the burden for treatment not just on local systems, but on the individual to comply with a court-directed treatment plan.*

Though we understand the intent of the proposal is not to force anyone to take medication, it promotes informal coercion through a court process and risk to the individual of conservatorship or incarceration should that individual struggle to comply with a court-ordered care plan.[1] Trauma of homelessness, which can lead to or exacerbate disabilities, causes fear, isolation, and disempowerment.[2] In particular, it can impact an individual's ability to trust others, particularly if the individual has undergone past negative experiences with health care, social services, or law enforcement systems.[3] In many cases, people's attempts at treatment have been traumatic. As a survivor of chronic homelessness has said, someone experiencing homelessness labeled "services resistant" or "non-compliant" reflects a system failure, rather than an individual failure. Compelling *an individual* who has experienced trauma and systems failures through a legal process with implied threats of referral to conservatorship or incarceration, instead of compelling *the system* to truly reform, is an ineffectual response to anyone labeled "non-compliant."

> *Studies show treatment ordered under threat is less effective than voluntary treatment.*

For much of its history, homeless responses relied heavily on a services model that denied housing or treatment to people labeled "non-compliant;" these models resulted in poor outcomes.[4] And law enforcement has long used "service resistance" or "non-compliance" to justify enforcement against unhoused Californians. This coercive model has established asymmetrical relationships between people working in these systems and the individual, and has further traumatized people who are already distrustful of the healthcare, social services, and justice systems. A CARE Court would further an asymmetrical relationship, particularly with the judiciary overseeing treatment.

Voluntary services and treatment are key to allowing stabilization, as evidence-based interventions begin with client collaboration. ***Consumers receiving voluntary services paired***

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[1] Florian Hotzy and Matthias Jaeger, "Clinical Relevance of Informal Coercion in Psychiatric Treatment-A Systematic Review," *Front Psychiatry* 7:197 (2016).

[2] Substance Abuse & Mental Health Services Administration, *Current Statistics on the Prevalence & Characteristics of People Experiencing Homelessness in the United States* (Jul. 2011).

[3] Urban Institute, Five Charts That Explain the Homelessness-Jail Cycle–and How to Break It (Sep. 16, 2020), Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It | Urban Institute.

[4] Randomized controlled studies show that coerced outpatient care is not more effective than voluntary outpatient care. See, e.g., S.R. Kisely, L.A. Campbell, N.J. Preston, "Compulsory community and involuntary outpatient treatment for people with severe mental disorders," *The Cochrane Library* (2005). See also a recent review of the research: J. Rugkåsa, J. Dawson, T. Burns, "What is the state of the evidence?," *Soc Psychiatry Psychiatr Epidemiol* 49 (2014) 1861-71. https://doi.org/10.1007/s00127-014-0839-7.

with assertive engagement are more likely to participate in services,[5] to receive treatment,[6] and to be satisfied with their services,[7] than people in programs that require participation or "compliance" with a program.[8]

> *Court-ordered treatment for people experiencing homelessness is inconsistent with the evidence-based Housing First model, which is the legal standard for state-funded homelessness programs under California law.[9]*

Housing First, a model the Governor has endorsed, is an evidence-based recovery-oriented model that acknowledges that people experiencing homelessness must have a safe, permanent home before they can engage in and access quality health care. As Housing First is the only evidence-based model for solving homelessness, California law requires all programs addressing homelessness to orient toward a Housing First approach.[10] Housing First, which originated as a response to people experiencing homelessness with severe behavioral health disorders, adheres to the following core components that are inconsistent with the CARE Court proposal:

- Service providers outreach to and engage consumers frequently and persistently in the community and a consumer's refusal of assistance today means providers will attempt again tomorrow;
- People move directly into permanent housing (housing without limits on length of stay), without having to access shelter or treatment first;
- Staff actively and assertively engage tenants in supportive services, but tenants are not required to participate in services as a condition of receiving housing; and
- Staff engage in harm reduction principles that reduce risky behaviors, including behaviors related to substance use.[11]

Housing First service models are, by design, trauma informed, and so we recommend adhering to this model in any proposal to reform our systems' response.

> *The proposal would disproportionately impact Black, Indigenous, and LGBTQ populations, who are vastly overrepresented among people who are unhoused.*

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[5]Martha Burt and Jacquelyn Anderson, "AB2034 Program Experiences in Housing Homeless People with Serious Mental Illness," *Corporation for Supportive Housing* (2005); Steven Barrow, G. Soto, and P. Cordova, "Final Report on the Evaluation of the Closer to Home Initiative," *Corporation for Supportive Housing* (2004).

[6]Angela Aidala, William McAllister, Maiko Yomogida, and Virginia Shubert, "Frequent Users of System Enhancement 'FUSE' Initiative," *Columbia Univ. Mailman School of Pub. Health* (2014); Daniel Gubits, Marybeth Shinn, Michelle Wood, Stephen Bell, et. al., "Family Options Study: 3-Year Impacts of Housing & Services Interventions for Homeless Families," *prepared for U.S. Dept. of Housing & Urban Dev. Office of Policy Dev. & Research* (Oct. 2016).

[7]Stephen W. Mayberg, "California's Supportive Housing Initiative Act (SHIA) Program Evaluation Report: Fiscal Year 2002-2003, Report to the State Legislature," *California Dept, Mental Health* (Nov. 2003).

[8] Substance Abuse & Mental Health Services Administration, *Evaluating Your Program: Permanent Supportive Housing* (2010).

[9] California Welfare & Institutions Code Section 8255, *et. seq*.

[10] California Welfare & Institutions Code Section 8255, *et. seq*.

[11] Carol Pearson, Gretchen Locke, Larry Buron, Ann Elizabeth Montgomery, and Walter McDonald, "The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness." *U.S. Dept. of Housing & Urban Dev., Office of Pol'y Dev. & Research* (Sep. 2007); Sam Tsemberis and Ana Stefancic, *Pathways Housing First Fidelity Scale* (2012).

These populations are also overrepresented in our justice system, many having negative encounters with law enforcement. As a recent report by the Los Angeles Homeless Services Authority (LAHSA) notes, "Institutional and structural racism impacts Black people experiencing homelessness on a daily, life-long basis, from renting an apartment, to seeking employment, to the trauma of living in an anti-Black society."[12] This proposal could exacerbate these inequities.

We Propose Addressing Failures of ***Our Systems*

First, we must address our housing gaps to address treatment needs.

From research over the last 40 years, we know both what causes people to fall into homelessness, and what works to solve homelessness. The root cause of homelessness is the lack of safe, stable housing affordable to people in deep poverty, including those living on fixed incomes, like SSI.[13] Though Governor Newsom and the Legislature have passed significant new resources for housing and services, California continues to experience significant gaps in funding for housing. Data demonstrate treatment is ineffective while someone is still homeless, even if that person is accessing a shelter, "bridge housing," or other interim intervention that is not permanent housing.[14] In this way, housing *is* health care. Studies of "treatment first" programs show they are less effective compared to Housing First.[15] The CARE Court proposal seems to compel participation in treatment before the individual is living in permanent, stable housing. And nothing in the proposal points to how people experiencing homelessness will access housing they need to stabilize.

Second, we recommend adapting the team-based approach in the CARE Court proposal to create multidisciplinary teams.

Multidisciplinary teams consistent with, for example, the Assertive Community Treatment model,[16] that includes intensive engagement services for people experiencing homelessness and

[12] Los Angeles Homeless Services Authority, *Report and Recommendations of the Ad Hoc Committee on Black People Experiencing Homelessness* (Dec. 2018), https://www.lahsa.org/documents?id=2823-report-and-recommendations-of-the-ad-hoc-committee-on-black-people-experiencing-homelessness.

[13] The rise in homelessness since the 1980's is attributable to increasing costs of housing and stagnant incomes. Today, a person living with a disability would have to pay for housing a low of 76% of SSI income for housing in Visalia to a high of 306% SSI income in San Francisco. https://www.tacinc.org/resources/priced-out.

[14] People continue to suffer deteriorating health and increase their days inpatient when still homeless, even if offered quality care coordination or treatment. *See, i.e.*, Karen Linkins, *Frequent Users of Health Services Initiative*; Jack Tsai, "A Multi-Site Comparison of Supported Housing for Chronically Homeless Adults: 'Housing First' Versus 'Residential Treatment First,'" *Psychol. Serv.*.

[15] Jack Tsai, Alvin Mares, and Robert Rosenheck, "A Multi-Site Comparison of Supported Housing for Chronically Homeless Adults: 'Housing First' Versus 'Residential Treatment First,'" *Psychol. Serv.* 7(4) (2010) 219-232 (*observing no clinical advantage for study participants who received residential treatment for substance use and much higher costs than participants who received housing first, followed by outpatient services*).

[16] Substance Abuse & Mental Health Services Administration, Assertive Community Treatment Evidence-Based Practices Kit (2008), Assertive Community Treatment (ACT) Evidence-Based Practices (EBP) KIT | SAMHSA Publications and Digital Products.

behavioral health disorders, are evidence-based models of care for people with the most serious disorders. We recommend sufficiently funding evidence-based engagement services for people with disabilities experiencing homelessness for as long as the individual needs the services. Service providers who specialize in working with people experiencing homelessness promote a sense of safety by forming trusting, long-term relationships with their clients through repeated contact, even when their clients refuse services repeatedly. Once a client engages, a service provider or team promotes trust through frequent contact and collaboration with clients, while meeting them where they are (a street, a vehicle, a shelter, a hospital, at jail discharge, etc.). Providers assertively engage clients to want to participate in treatment through meaningful connection through a provider-to-client ratio of 1:10 for people with significant disabilities who need support to remain in the community.[17] Our local, state, and federal resources have long underfunded these services, and mainstream programs like the Mental Health Services Act and Medi-Cal do not fund this engagement, even under CalAIM.

> *Third, as part of a multidisciplinary "care team," we recommend enhancing funding for clinical team members offering treatment.*

In California, not everyone who currently needs and wants treatment can receive treatment on demand. The Governor has proposed additional resources for behavioral health treatment and workforce capacity; we support this investment, as well as additional resources to truly fulfill treatment as a right. Compelling treatment does not necessarily lead to the right level of services or for treatment providers to materialize. In fact, CARE Courts would divert local resources intended for behavioral health treatment to pay for an expensive new court system, public defenders, and "supporters." Because judges (reviewing and ordering care), public defenders (apparently intended to defend participants' civil rights), and supporters do not have expertise in behavioral health care, it would also fund panels of experts to advise the Courts. We instead recommend focusing resources on adopting a person-centered, trauma-informed approach that employs teams with expertise offering voluntary treatment, which will fulfill the intent of the proposal without the inherent coercion.

Questions

We additionally have questions about the proposal we are hoping you can answer or consider when adding details:

- Who can refer people to a CARE Court? Is there yet an exhaustive list? Does everyone referred to CARE Court receive a court-ordered treatment plan?
- Will an intake process exist and what criteria will you include for accepting people into the CARE Court?
- How will people experiencing homelessness be brought before the Court? In other words, how do you plan to identify people experiencing homelessness and bring them to the Court?

[17] Sam Tsemberis. *Pathways Housing First Fidelity Scale*.

- The Governor stated that funding for the treatment, the planning, the public defenders, and the new court system would come from existing funding the State passed last year to respond to homelessness. As you know, the Legislature and Governor appropriated that funding to specific programs intended to provide housing, services, interim interventions, and behavioral health care. On a webinar, you indicated money for the Courts would come from existing local resources for behavioral health treatment. Neither the $12 billion passed in FY 2022-23 nor MHSA can be used to create a new court system, pay public defenders or supporters, or fund panels of expert advisors to ensure compliance with treatment without disrupting current processes for allocating those funds. How will already appropriated funds pay for both the administrative and the programmatic costs of new CARE Courts?
- The proposal seems to call on local communities to provide shelter beds to people experiencing homelessness while they are undergoing treatment. It also refers to provision of housing. Does the proposal envision people accessing shelters/interim interventions, or housing? If housing, how will people receive housing in communities where people wait 9-12 months for a permanent place to live?
- Will people first have to prove compliance to receive housing? Does "graduating" result in housing referral? Will people go through a coordinated entry system process for accessing referrals to housing?

We Want to Work with You

While we agree with many of the goals you have articulated, we disagree with a coercive court process and with court-ordered care plans. Evidence-based approaches, funded at the scale required to respond to the needs of people with serious behavioral health conditions experiencing homelessness, will allow the State to achieve the broader objectives articulated in the CARE Court proposal and take us many steps closer to solving this humanitarian crisis.

We appreciate you and the Governor's interest in addressing the state's homelessness crisis and your openness to hear from advocates. We are available to meet with you to discuss further. Please contact Sharon Rapport at sharon.rapport@csh.org to schedule a meeting with the below signatories.

Sincerely,

Celina Alvarez
Housing Works

Kevin Baker
American Civil Liberties Union Action CA

(signatures continued on next page)

Mari Castaldi
Housing California

Cynthia Castillo
Western Center on Law & Poverty

Lili Graham
Disability Rights California

Jennifer Hark Dietz
People Assisting the Homeless (PATH)

Stephanie Klasky-Gamer
LA Family Housing

Sharon Rapport
Corporation for Supportive Housing

Samantha Wood
National Alliance to End Homelessness