Proposed SCPS motion concerning SB 1338
Draft 2022-05-12

Whereas,

SB 1338, if properly constructed, has the potential to provide a remarkably effective array of services to many people living with serious mental illnesses; and

Whereas,

There is an increased incidence of Schizophrenia spectrum disorder diagnoses in Black, Indigenous, and People of Color (BIPOC) related to historical narratives that racialized issues surrounding post-slavery behavior control, assertions of civil rights, and substance use; and

Whereas,

The method with the most evidence-base for improved outcomes *and* that is the most humane and supportive is assertive community treatment within a housing-first framework; and

Whereas,

The Lanterman-Petris-Short Act establishes criteria for determining whether an individual meets criteria for involuntary treatment; and

Whereas,

We are deeply troubled by the bill's inadequate clarity regarding key aspects of its proposed new processes; and

Whereas,

This shortcoming, if not corrected, could result in:

1. Misdirected or ineffective expenditures of mental health resources that are not supported by the current psychiatric practice evidence-base,
2. Conflicts between new legal requirements in the bill and existing professional clinical responsibilities and liability exposure,
3. Assessment and diagnoses that are already biased will be further biased by newly established legal implications, unfamiliar types of law enforcement encounters related to gathering evidence for police-initiated petitions, and judicial decisions regarding re-incarceration or locked placement that could disproportionately harm BIPOC, homeless populations, and other disenfranchised groups,

4. Absence of metrics to track and measure CARE program effectiveness, and
5. Unanswered questions regarding the relationship of the CARE process to involuntary treatment under LPS regulations; and

Whereas,

To correct these shortcomings, amendments to SB 1338 must address four areas:

1. The precise definitions and/or criteria for multiple terms in the bill that have no clear foundation in current regulation. These include:

    1. Criteria for "schizophrenia spectrum or other psychotic disorder" (§ 5972(b));
    2. Criteria for "Not clinically stabilized in on-going treatment with the county behavioral health agency" (§ 5972(c));
    3. Criteria for "lacks medical decision-making capacity" (§ 5972(d));
    4. Definition of "Qualified behavioral health professional" (§ 5975(g)(1));
    5. Criteria for "graduation" from CARE Court (§ 5977(h)(1));
    6. Criteria for "reappointment" to CARE Court (§ 5977(h)(1));
    7. Criteria and process for finding that a person is "not participating in CARE proceedings" or "failing to comply with the CARE plan" (§ 5979(a));
    8. Criteria and process for terminating a participant from CARE Court 5979(a));
    9. Criteria and process for finding that a county is not complying with court orders (§ 5979(b)); and
    10. Criteria and process for finding that a county is "persistently noncompliant" (§ 5979(b)).
    11. Definition of "stabilization medications."
    12. Criteria for judicial rather than medical determination of "Medically necessary services."

2. The integral nature of housing and fidelity to effective mental health treatment in assertive community treatment models.

    1. Establish the right to housing for respondents participating in CARE court proceedings.
    2. Require assertive community treatment with high fidelity to researched models by county agencies.

3. The development of key metrics and a tracking system that could inform estimations of the effectiveness and potential bias in application, including "graduation rates, "failure rates," conservator application and granting rates, re-incarceration rates, quality of services and housing for enrollees and "graduates," and other factors as may be proposed, reported in aggregate and also separately by race, socioeconomic status, carceral status, and County.

1. Establish a CARE Court Oversight Committee (CCOC) consisting for mental health stakeholders and tasked with development of key metrics and monitoring requirements regarding program expenditures, effectiveness, social justice, and equity.
2. Requirement for CCOC to develop release reports of program metrics data to the legislature at six months intervals, with suggestions for program modifications based upon the findings.

4. The relationship of the court procedures to LPS involuntary detention and/or treatment, specifically clarifying issues raised by 5979(a) (see below), including whether failure to comply with the CARE program meets criteria for a finding of grave disability that justifies involuntary detention and/or conservatorship pursuant to WIC 5150, 5250, 5270, and 5350.

> 5979. (a) If, at any time during the proceedings, the court determines by a preponderance of evidence that the respondent is not participating in CARE proceedings, after the respondent receives notice, or is failing to comply with their CARE plan, the court may terminate the respondent's participation in the CARE program. The court may utilize existing legal authority pursuant to Article 4 (commencing with Section 5200) of Chapter 2 of Part 1, to ensure the respondent's safety. The subsequent proceedings may use the CARE proceedings as a factual presumption that no suitable community alternatives are available to treat the individual.

Therefore, be it resolved that:

1. SCPS take a **Support if Amended Position on SB 1338**, and

2. SCPS advise CSAP to request amended language from the authors that addresses the deficient clarity in the four areas noted in a manner that corrects its potential adverse effects upon mental health treatment equity and social justice