July 21, 2022

Honorable Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Suite 5650
Sacramento, CA 95814

RE: SB 1338 (UMBERG) as amended June 30, 2022 - OPPOSE

Dear Assemblymember Holden:

The organizations sending this letter advance and protect the civil rights of Californians living with disabilities, experiencing houselessness, and involved in the criminal legal system. Respectfully, we **oppose SB 1338**. The framework this bill seeks to establish is unacceptable for a number of

reasons, **including major fiscal concerns which can be found on page 8.**

The CARE Court framework that SB 1338 seeks to establish is unacceptable for a number of reasons:

- It perpetuates institutional racism through a system of coerced treatment and worsens health disparities, directly harming Black, Indigenous and People of Color;
- It denies a person's right to choose and have autonomy over personal healthcare decisions;
- It does not guarantee housing provided with fidelity to principles that prioritize voluntary services, an approach that is backed by evidence; and
- Community evidence-based practices and scientific studies show that adequately-resourced intensive voluntary outpatient treatment is more effective than court-ordered treatment.

Because CARE Court will harm Californians with disabilities, we strongly oppose this bill. Instead, we would welcome a proposal developed with input from the people CARE Court seeks to help. We believe a community-based approach would be far more likely to succeed. This approach would expand resources for permanent affordable housing with voluntary supports and increase early access to voluntary, community-based treatment based on principles of trauma-informed care and the complete removal of law enforcement and the courts from the process.

I. Background

The California Legislature has declared that, "[i]n the absence of a controversy, a court is normally not the proper forum in which to make health care decisions."[1] Yet, SB 1338 seeks to establish a new court system in which health care decisions will be made. Despite SB 1338's use of the terms "recovery" and "empowerment," CARE Court is a system of coerced, court-ordered treatment that strips people with mental health disabilities of their right to make their own decisions about their lives.

[1] Probate Code § 4650(c). "Return to Main Document"

CARE Court is antithetical to recovery principles, which are based on self-determination and self-direction.[2] The CARE Court proposal is based on stigma and stereotypes of people living with mental health disabilities and experiencing houselessness. CARE Court is not voluntary if it begins with court involvement – a petition filed against the person supposedly being helped – and conditions compliance for specific treatment under court orders.

While the organizations submitting this letter agree that State resources must be urgently allocated towards addressing houselessness and care for Californians living with mental health disabilities with intense requirements of support, CARE Court is the wrong framework. The right framework allows people with disabilities to retain autonomy over their own lives by providing them with meaningful and reliable access to affordable, accessible, integrated housing combined with voluntary services.

II. CARE Court will perpetuate institutional racism and worsen health disparities.

Due to a long and ongoing history of racial discrimination in housing, banking, employment, policing, land use, and healthcare systems, Black people experience houselessness at a vastly disproportionate level compared to the overall population of the state. In 2020, California established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States.[3] AB 3121 directed the Reparations Task Force to study the institution of slavery and its lingering negative effects on living Black Americans. On June 1, 2022, the Task Force issued its initial findings.[4] The Reparations Report details the pervasive effects of racial discrimination in these systems resulting in serious harm to the health and welfare of Black Californians.[5]

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[2] Substance Abuse and Mental Health Services Administration, *SAMHSA's Working Definition of Recovery* (https://store.samhsa.gov/sites/default/files/d7/priv/pep12-recdef.pdf). "Return to Main Document"

[3] AB 3121 (S. Weber) Chapter 319, Statutes of 2020. "Return to Main Document"

[4] State of California's Department of Justice – Office of the Attorney General, *California Task Force to Study and Develop Reparation Proposals for African Americans: Interim Report* (AB 3121), dated June 2022 (2022 - AB3121 Full Interim Report (ca.gov)), *Chapter 11: An Unjust Legal System* at pp. 390-391. "Return to Main Document"

[5] Id., *Chapter 1: Introduction*, at 40-41. "Return to Main Document"

These racial disparities are reflected in California's acute houselessness problem, which places a particularly heavy burden on Black Californians. In Los Angeles County alone, Black people make up 8% of the population, but 34% of people experiencing houselessness.[6] Statewide statistics are even more dire: 6.5% of Californians identify as Black or African-American, but they account for nearly 40% of the state's unhoused population.[7]

Moreover, the Reparations Report recounts the history of racial discrimination enacted against Black people in the health care system over centuries, including the weaponizing of a mental health diagnosis to force sterilization and treatment.[8] Research demonstrates that Black, Indigenous, and People of Color (BIPOC) and immigrant racial minorities are more likely to be diagnosed, and misdiagnosed, with psychotic disorders than white Americans because of clinicians' prejudice and misinterpretation of patient behaviors.[9, 10,11] In California, rates of those living with mental health disabilities requiring intense support vary considerably by racial and ethnic groups, with American Indian and Alaska Native and Black Californians experiencing the highest rates of diagnosis for serious mental health disabilities.[12] For unhoused LGBTQIA+ people of color, the intersecting identities can result in even more significant mental health struggles and intensified discrimination.[13]

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[6] Steve Lopez, *Column: Black people make up 8% of L.A. population and 34% of its homeless. That's unacceptable.*, Los Angeles Times, June 13, 2020 (https://www.latimes.com/california/story/2020-06-13/column-african-americans-make-up-8-of-l-a-population-and-34-of-homeless-count-heres-why). "Return to Main Document"

[7] Kate Cimini, *Black people disproportionately homeless in California*, Cal Matters, October 5, 2019 (updated February 27, 2021) (https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california/). "Return to Main Document"

[8] *See* fn. 4, *Chapter 12: Mental and Physical Harm and Neglect* at 406-436. "Return to Main Document"

[9] Robert C. Schwartz, Ph.D., *et al*., *Racial disparities in psychotic disorder diagnosis: A review of empirical literature*, World Journal of Psychiatry 2014: 4:4, 133-140. "Return to Main Document"

[10] *See* fn. 4, *Chapter 12: Mental and Physical Harm and Neglect* at 422-423, fn. 408 ("White mental health staff at federally-funded clinics and hospitals often diagnosed Black patients with schizophrenic, when they should have been diagnosed with depression.") "Return to Main Document"

[11] California Health Care Foundation, *Health Disparities by Race and Ethnicity in California: Pattern of Inequity* (October 2021) at 33 (https://www.chcf.org/wp-content/uploads/2021/10/DisparitiesAlmanacRaceEthnicity2021.pdf). "Return to Main Document"

[12] *Id.* "Return to Main Document"

[13] Brodie Fraser et al., *LGBTIQ+ Homelessness: A Review of the Literature*, National Institutes of Health: National Library of Medicine, National Center for Biotechnology Information, July 26, 2019 (LGBTIQ+ Homelessness: A Review of the Literature - PMC (nih.gov)). "Return to Main Document"

The civil legal system can play a role in ameliorating discriminatory effects in health care, housing and government services but has historically been used to subjugate Black people.[14] The negative impact of the civil legal system on Black Californians continues today.[15]

Here, the consequences for being found "non-compliant" with a CARE plan or not attending court hearings are serious: a possible referral to Lanterman-Petris-Short Act (conservatorship) proceedings with a presumption the person needs additional intervention beyond the supports and services provided by the CARE plan. This presumption makes it more likely that a person will ultimately be placed on a conservatorship – a legal determination that deprives a person of the right to choose where to reside, to make medical decisions, to vote, to decide social and sexual contacts and relationships, and other fundamental rights. By targeting unhoused people with diagnoses of schizophrenia and other psychotic disorders, CARE Court will only repeat California's racially discriminatory history.

Instead, California should use the resources earmarked for CARE Court to invest in systems that will eliminate racial disparities in the healthcare, housing and other contributing systems to address houselessness. The first step would be to create and fund truly voluntary services, starting with housing, outside of the pressure of a court process. A fully funded system would permit a person to choose their services without fear of adverse legal consequences if they are found to be "non-compliant" with treatment.

III. Ending houselessness for all Californians living with mental health disabilities requires guaranteed housing provided with fidelity to principles that prioritize voluntary services.

Evidence shows that involuntary, coercive treatment is harmful.[16,17] Instead of allocating vast sums of money towards intimidating and likely

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[14] *See* fn. 4, *Chapter 11: An Unjust Legal System* at pp. 390-391. "Return to Main Document"

[15] *Id.* "Return to Main Document"

[16] Joseph P. Morrissey, Ph.D., *et al*., *Outpatient Commitment and Its Alternatives: Questions Yet to Be Answered*, Psychiatric Services 2014:812 at 814 (2014). "Return to Main Document"

[17] S.P. Sashidharan, Ph.D., *et al.*, *Reducing Coercion in Mental Healthcare*, Epidemiology and Psychiatric Sciences 2019: 28, 605-612 (All forms of coercive practices are inconsistent with human rights-based mental healthcare); Daniel Werb, Ph.D., *et al.*, *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, International Journal of Drug Policy 2016: 28, 1-9 (Because evidence, on the whole, does not suggest improved outcomes related to compulsory drug treatment approaches and some studies suggest potential harms, non-compulsory treatment modalities should be prioritized by policymakers seeking to reduce drug-related harms). "Return to Main Document"

unsuccessful court-ordered treatment that does not guarantee housing, the state should expend its resources on a proven solution to houselessness for people living with mental health disabilities: guaranteed housing with voluntary services.

Given that housing reduces both utilization of emergency services and contacts with the criminal legal system, a team of UC Irvine researchers concluded that it is "fiscally irresponsible, as well as inhumane" not to provide permanent housing for Californians experiencing houselessness.[18]

To effectuate guaranteed housing, California should invest in low-barrier, deeply affordable (15% of area median income or less), accessible, integrated housing for people experiencing houselessness. This housing should be made available with access to voluntary, trauma-informed, culturally-responsive, evidence-based services such as Assertive Community Treatment, Intensive Case Management, Peer Support, and substance use disorder services that follow the Harm Reduction approach. In addition, an intersectional approach to BIPOC and LGBTQIA+ houselessness would usher inclusive policies that can be used to develop "well-informed, culturally sensitive support programs."[19,20,21]

Existing law requires Housing First in programs addressing houselessness.[22,23] California has recognized that it is crucial to use housing as a tool rather than a reward for recovery, and to provide or connect unhoused people to permanent housing as quickly as possible.

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[18] David A. Snow and Rachel E. Goldberg, *Homelessness in Orange County: The Costs to Our Community* (June 2017) at 43 (https://www.unitedwayoc.org/wp-content/uploads/2017/08/united-way-cost-study-homelessness-2017-report.pdf). "Return to Main Document"

[19] *LGBTQ Equity and Housing Fact Sheet: Research is Increasingly clear that Stable, Affordable Housing is a Critical Driver of Positive Outcomes in Many Areas of Life, But Such Housing is Much Less Assured for the LGBTQ Community*, Opportunity Starts at Home (LGBTQ Equity and Housing Fact Sheet - Opportunity Starts at Home (opportunityhome.org)). "Return to Main Document"

[20] Brodie Fraser et al., *LGBTIQ+ Homelessness: A Review of the Literature*, National Institutes of Health: National Library of Medicine, National Center for Biotechnology Information, July 26, 2019 (LGBTIQ+ Homelessness: A Review of the Literature - PMC (nih.gov)). "Return to Main Document"

[21] Iore m. dickey, Ph.D. et al., *Mental health considerations with transgender and gender nonconforming clients*, University of California San Francisco: Transgender Care, dated May 28, 2016 (Mental health considerations with transgender and gender nonconforming clients | Gender Affirming Health Program (ucsf.edu)). "Return to Main Document"

[22] Welf. & Inst. Code § 8255, et seq. "Return to Main Document"

[23] Welf. & Inst. Code § 8256(a). SB 1338's stated plan to give CARE Court participants priority for the "Behavioral Health Bridge Housing" proposed in the Governor's Budget violates the State's commitment to Housing First as codified here. CARE Court is *not* a Housing First program because it will likely require participants to comply with a program or services as a condition of tenancy. "Return to Main Document"

Housing First principles, as an evidence-based model, require offering services as needed and requested on a voluntary basis, and not making housing contingent on participation in services.[24]

Evidence shows that housing provided with fidelity to Housing First principles leads to the types of positive outcomes for unhoused people that the state is misguidedly proposing to attain via CARE Court. For example, a recent UCSF randomized controlled study of unhoused high utilizers of public systems in Santa Clara County found that permanent supportive housing (which incorporates Housing First principles) combined with intensive case management, significantly reduced psychiatric emergency room visits and increased the rate of scheduled outpatient mental health visits compared to the control group.[25] In addition, Housing First programs that closely adhere to the evidence-based model result in positive housing and substance use outcomes for chronically houseless people with substance use disorders.[26]

As the Health and Human Services Agency recognizes, "finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent or a vehicle."[27] On this premise, a person should be offered housing before they can reasonably be expected to engage in intensive mental health services.

V. Evidence shows that adequately-resourced intensive voluntary outpatient treatment is more effective than court-ordered treatment.

In 2000, when the State was first considering adopting Assisted Outpatient Treatment (AOT), the California Senate Committee on Rules commissioned the RAND Institute to develop a report on involuntary outpatient treatment, with a primary objective to identify and synthesize empirical evidence on the effectiveness of involuntary outpatient treatment

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[24] Welf. & Inst. Code § 8255(d)(1). "Return to Main Document"

[25] Maria C. Raven, M.D., M.P.H., M.Sc., *et al*., *A Randomized Trial of Permanent Supportive Housing for Chronically Homeless Persons with High Use of Publicly Funded Services*, Health Services Research 2020;55 (Suppl. 2): 797 at 803. "Return to Main Document"

[26] Clare Davidson, M.S.W., *et al*., *Association of Housing First Implementation and Key Outcomes Among.0124 Homeless Persons with Problematic Substance Use*, Psychiatric Services 2014; 65:1318 at 1323. "Return to Main Document"

[27] California Health and Human Services Agency, *CARE Court: A New Framework for Community Assistance, Recovery, and Empowerment* (https://www.chhs.ca.gov/wp-content/uploads/2022/03/CARE-Court-Framework_web.pdf) (accessed April 10, 2022). "Return to Main Document"

and its alternatives.[28] The findings of the RAND report remain relevant today. Then and now, no studies exist to prove that a court order for outpatient treatment *in and of itself* has any independent effect on client outcomes.[29]

In comparison, the RAND study provided strong evidence of the effectiveness of voluntary Assertive Community Treatment (ACT), a multidisciplinary, community-based intervention that combines the delivery of clinical treatment with intensive case management.[30] The report's authors concluded that there is clear evidence that, when implemented with fidelity to evidence-based models, community-based mental health interventions like ACT can produce good outcomes for people living with mental health disabilities with intense requirements of support.[31] Rather than funneling money into a new court system, the State's resources would be better utilized to expand and strengthen the availability of ACT and other intensive evidence-based treatment modalities throughout California.[32] In addition, the State should incentivize communities to implement community-defined evidence practices specifically developed to meet the needs of California's diverse populations.[33]

VI. Fiscal Considerations

For the Appropriations Committee's consideration, we believe CARE Court will be a costly mistake, diverting resources from people who need housing and services. CARE Court is forced treatment, which has a history of

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[28] M. Susan Ridgely, *et al.*, *The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States*, RAND Health and RAND Institute for Civil Justice, 2001 (https://www.rand.org/pubs/monograph_reports/MR1340.html). "Return to Main Document"

[29] *Id*. at xvi. "Return to Main Document"

[30] *Id*. at 29. The primary difference between California's Full Service Partnerships (FSP) and ACT is that there is no evidence-based model that FSPs must follow. There is significant variation in FSP delivery across counties. Some counties have ACT programs as part of their FSP offerings. When offered as part of an FSP, ACT generally provides a more engaged level of service than the standard FSP. "Return to Main Document"

[31] *Id*. at 32. "Return to Main Document"

[32] The recent behavioral health needs assessment published by DHCS found that ACT is not yet available with fidelity on the scale necessary to support optimal care for people who could benefit from the level of engagement that it offers. State of California, Department of Health Care Services, *Assessing the Continuum of Care for Behavioral Health Services in California: Data, Stakeholder Perspectives, and Implications* (January 10, 2022) at 60 (https://www.dhcs.ca.gov/Documents/Assessing-the-Continuum-of-Care-for-BH-Services-in-California.pdf) "Return to Main Document"

[33] California Pan-Ethnic Health Network, *Concept Paper: Policy Options for Community-Defined Evidence Practices* (April 14, 2021) (https://cpehn.org/publications/concept-paper-policy-options-for-community-defined-evidence-practices-cdeps/). "Return to Main Document"

creating more harm than good. This court is likely to cost in excess of hundreds of millions of dollars, if not more. Part of this may be one-time funding, but to the extent the court system needs to augment and train a workforce for the new responsibilities under CARE Court, we can estimate at least tens of millions of dollars in ongoing costs. This financial impact will also likely not fully capture the harm that will affect someone who is brought into court and who faces additional barriers to finding housing and services.

The recently enacted AB 178, a budget trailer bill with $39.5 in court funding contingent on enactment of policy changes, appears to fall far short. Recent amendments to SB 1338 add legal services attorneys to the mix, with funding by the Judicial Council. Public defenders are to serve as a backup. It is unclear how the bill contemplates deploying this mix of services but the costs will still be great. A better use of these significant funds will be to invest in a robust housing framework for this target population and provide services, the ultimate solution to homelessness.

The bill targets bringing 7,000 to 12,000 people with severe mental illness into court but it is unclear how they will be found, how they will get to court, and how much will be spent on care teams of providers through county behavioral health departments. Services will require extensive staffing. Ongoing costs could be at least in the hundreds of millions of dollars statewide. Current funding for mental health services, already insufficient to meet needs, will likely be diverted to pay for CARE Court, risking services for others, including children and youth. In addition, much of CARE Court will not be reimbursable through Medi-Cal.

Although a care plan is supposed to include a housing plan, it does not appear that housing itself is actually required to be available or accessible. The bill cites an array of housing programs from which housing *may* be provided but only cites to existing programs which have very limited availability. The bill does not address the primary issue and need for unhoused people, which is obtaining available, affordable housing. The bill just ignores that the California has a critical shortage of deeply affordable housing, especially for this bill's target population, and instead shifts the State's problems onto the Respondents of CARE Court. Without housing first, there is a high likelihood of failure even if a robust menu of services is provided. Effective treatment takes time, housing stability and anticipates setbacks on the road to recovery. The high risk of failure, which would not be the fault of the individual, makes it likely the state will incur significant but indeterminate costs on conservatorships, state hospitals, and any people or systems CARE Court touches.

VII. Conclusion

CARE Court is not the appropriate tool for providing a path to wellness for Californians living with mental health disabilities who face houselessness, incarceration, hospitalization, conservatorship, and premature death. Instead, California should invest in community evidence-based practices that are proven to work and that will actually empower people living with mental health disabilities on their paths to recovery and allow them to retain full autonomy over their lives without the intrusion of a court.

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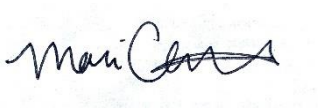

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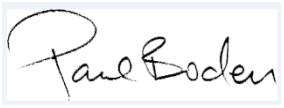

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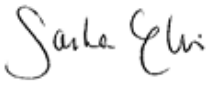

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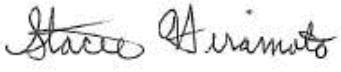

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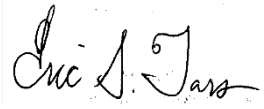

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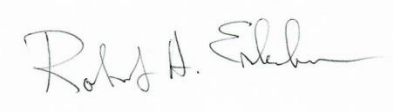

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