

February 10, 2023

Chief Justice Patricia Guerrero and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Curiae Letter in Support of Petition for Writ of Mandate of
Disability Rights California v. Gavin Newsom, No: S278330.

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the Rules of Court, the Alliance for Children's Rights (Alliance) writes to ask the Court to accept Petitioner's writ in *Disability Rights California v. Gavin Newsom* and issue an order to show cause or alternative writ. The case raises crucial issues of treatment interference and racial disproportionality, posing a threat to patient care and medical decision-making. In particular, amicus writes to inform the Court about the distinct negative impacts of the CARE Court on Transition Age Youth. These impacts constitute a matter of great public importance and pose challenges of general importance to the trial courts and the profession.

The Interests of Amicus

For three decades, the Alliance for Children's Rights has worked to protect the rights of impoverished, abused, and neglected children and youth in Los Angeles County. By providing free legal services, advocacy, and programs that create pathways to jobs and education, the Alliance levels the playing field and ensures that children who have experienced foster care are able to fulfill their potential. The Alliance's Transition Age Youth Services program provides legal and other supports to remove barriers to independence for youth aged 16-24 currently or formerly in the care of the child welfare system. The Alliance's Healthcare Program protects access to vital medical resources and care for children in foster care and young adults transitioning from foster care to independence.

The CARE Court Model Is Inappropriate—and Dangerous—for TAY

Transition Age Youth (TAY) are still achieving developmental milestones during a period of growth marked by identity exploration, instability, self-focus, feelings of being "in-between," and optimism for the future. Research shows that their brain

development is still occurring until the age of 25. By defining CARE Court eligibility to include all adults, beginning at age 18, the CARE Act risks entrapping emerging adults for whom a diagnosis of schizophrenia spectrum disorder may be premature.

There are over 23,000 unaccompanied homeless youth under the age of 25 in California, and that number does not include youth who couch surf, double-up, or otherwise experience homelessness but would not show up in a street count.¹ This population is disproportionately Black and LGBTQ+. They have experienced significant trauma, due to any combination of childhood homelessness, experience in the foster care or juvenile justice systems, poverty, and abuse at home or on the streets.² They are accustomed to having their trauma histories used against them under the guise of best interests by (at best) well-meaning and (at worst) risk-averse systems.

Because unhoused TAY are disproportionately Black—a result of the racial disparities in California’s economic, foster care, and criminal legal systems, among others³—and because schizophrenia spectrum disorder is likely to be misdiagnosed or over-diagnosed among people of color, TAY who begin experiencing symptoms consistent with schizophrenia spectrum disorder are at risk of receiving an inappropriate diagnosis, particularly when such a diagnosis can open up the opportunity of CARE Court.⁴

¹ California Youth Homelessness Dashboard, <https://experience.arcgis.com/experience/7227e954a08a4d2cb990949aa029275d/page/Youth-Homelessness-Dashboard/>. Unaccompanied youth are defined as youth who are experiencing homelessness and are not with a parent or guardian.

² See Morton, Dworsky, & Samuels, *Missed Opportunities: Youth Homelessness in America: National Estimates*, Chapin Hall at the University of Chicago (2017), available at <https://voicesofyouthcount.org/brief/national-estimates-of-youth-homelessness/>.

³ Taking foster care as an example, Black, Latino, and Native American children are all overrepresented in California’s foster care system, and children of color are less likely than white children to reunify with their parents or exit foster care to permanency via adoption or legal guardianship. See Puzanchera & Taylor, *Disproportionality Rates for Children of Color in Foster Care Dashboard*, Juvenile and Family Court Judges (2020), http://www.ncj.org/AFCARS/Disproportionality_Dashboard.aspx; Tilbury & Thoburn, *Using Racial Disproportionality and Disparity Indicators to Measure Child Welfare Outcomes*, Children and Youth Services Review 31 (2009), pp. 1101-1106.

⁴This raises a related concern: because CARE Act explicitly excludes “secondary” psychoses (i.e., psychoses secondary to decompensated major depression; autism spectrum disorder; bipolar disorder; etc.), despite potentially indistinguishable clinical symptoms and consequent morbidity, it has the effect of creating a class system or hierarchy of psychotic disorders, which may compound the stigma and potential further traumatization for TAY.

The existing community-based mental health system is designed to appropriately serve this population. Yet, the mere option of the CARE Court threatens to erode trust between TAY and the community-based service providers on which they rely. The population of possible CARE Court petitioners is so broad (including those who could only speculate on the nature of an individual's observed symptoms) and the CARE Court eligibility parameters are so imprecise (requiring only a likelihood that an individual might deteriorate and pose a future threat to self or others) that a youth with severe trauma and early symptoms of a primary psychotic disorder would separate themselves from essential services to avoid losing their liberty to CARE Court. The solution to this problem is not escalating to involuntary services, but ensuring that the community-based service continuum engages in evidence-based and trust-fostering practices to ensure early engagement and intervention.

The CARE Act Fails to Address Issues of Concurrent Jurisdiction Involving TAY in Foster Care

As described above, there is tremendous overlap between homelessness and past or current system involvement. For the past decade, California has endeavored to address this link through the Extended Foster Care program, which allows foster youth ages 18 to 21 to remain in foster care to receive additional services and financial support as they navigate the transition to independence. These young adult foster youth (called "nonminor dependents") also remain under the jurisdiction of the juvenile division of the superior court. As with all foster youth, the juvenile court routinely orders the county child welfare agency to provide or facilitate services, including housing and mental health services, to nonminor dependents in extended foster care.

The CARE Act does not account for the likely scenario that a 19-year-old nonminor dependent may become a respondent in a CARE Court matter, nor that the CARE Court's orders could interfere with concurrent juvenile court orders. The rules and procedures for accessing records, appointment of counsel, and notice are not complementary. It is entirely possible that a youth could fall under the CARE Court's jurisdiction, while still participating in extended foster care, without either court knowing about the other. This raises significant questions of efficiency (as the juvenile court and child welfare agency can more expertly connect young adults with voluntary services) and coordination for the judicial branch.

* * *

The overbreadth of the CARE Court will have significant detrimental impacts on TAY, especially TAY in foster care who already engage in voluntary treatment supported by their case plan. Further oversurveillance and referral will inevitably compound the stigma and potential further traumatization for TAY.

To settle these matters of great importance to both the public and the judiciary, the Court should accept Petitioner's writ and issue an alternative writ.

Sincerely,



Sabrina Forte, Esq.
Director of Policy and Impact Litigation
Alliance for Children's Rights

Dr. Kimberly Idoko, Esq.
Healthcare Program Director
Alliance for Children's Rights

Document received by the CA Supreme Court.