

**Incompetent to Stand Trial Solutions Working Group  
Work Group 3: Initial County Competency Evaluations  
Friday, September 24, 2021 – 2PM to 4PM  
Discussion Highlights**

**1. Welcome and Introductions**

Karen Linkins welcomed all attendees and announced she will be co-facilitating the meeting with John Freeman. She thanked everyone again for their dedication to this process and this population. She reminded the group that a range of solutions are needed and of the urgency of the work, noting the fact that there are currently 1700 people in jail awaiting treatment who have been referred. She said she was looking forward to discussing the ideas people came up with for their homework assignment and thanked those who submitted their ideas early.

Karen Linkins reviewed the meeting agenda. She asked members of the working group to introduce themselves and invited non-members in attendance to introduce themselves in the chat with their affiliation and county. Prior to introductions, she reviewed the goal of the group, which is “to reduce the number of individuals found incompetent to stand trial by strengthening the quality of the initial competency evaluation.” All members were present except Neil Gowensmith and Jonathan Raven. The members in attendance were:

- Co-Chair Charles Scott, Chief of Forensic Psychiatry at UC Davis and Consultant to DSH
- Co-Chair Katherine Warburton, Forensic Psychiatrist and DSH Medical Director
- Deanna Adams, Judicial Council of California
- Katherine Clark, Department of Finance
- Matthew Greco, Deputy DA of San Diego County
- Stephen Manley, Superior Court Judge of Santa Clara County (joined late)
- Dawn Percy, Deputy Director for Department of Developmental Services

- Stephanie Regular, Assistant Public Defender for Contra Costa County, representing statewide association (joined late)
- Todd Shirmer, Psychologist and Division Director for forensic and criminal justice behavioral health programs for Marin County, representing the county's Behavioral Health Directors Association
- Marni Sager, Manager at DDS in the State Operated Facilities Division
- Francine Byrne, Principal Manager of the Criminal Justice Services Office at the Judicial Council of California
- Ira Packer, Forensic Psychologist, UMass Medical School Psychiatry Department, Consultant to State of California
- Danny Offer, NAMI California (joined late)
- Farrah McDaid Ting, Senior Legislative Representative for the California State Association of Counties

## **2. Goals of this Working Group**

She reminded group members that they are one of three groups and while there is overlap between them, their specific group's focus is on initial competency evaluations. She emphasized that their purpose is to discuss solutions, not provide oversight. She also welcomed solutions from non-members in attendance in the chat. She asked that the Zoom chat not be used by workgroup members to communicate so their contributions can be heard out loud.

## **3. Recap of Last Meeting's Highlights and Discussion of Strategy**

### **Presentation: Dr. Ira Packer and Dr. Charles Scott**

Karen Linkins laid out that they will first recap highlights from last meeting then they will discuss ideas for solutions. Dr. Scott and Dr. Packer provided recaps of their presentations from the last meeting. Dr. Ira Packer reviewed key points:

- National literature shows widespread problems with reports including insufficient understanding of legal standards, confusing mental illness with incompetence, over reliance on self-reporting and a lack of attention to malingering and minimization, lack of consideration of effects of substance use, and a disconnect between the competence opinion and the data. He noted that lack of overall training is not always the primary issue.

- National standards developed and adopted by at minimum 19 states as CST evaluation certification programs. 5 elements of certification standards, though only a few states have all 5:
  - In depth education classes/trainings (more than the few day intensive that many states have)
  - Required exam
  - Written report samples
  - Supervision/mentoring from a senior in the field
  - Quality assurance process to review reports and give feedback when necessary

Dr. Charles Scott reviewed key points:

- Study conducted that reviewed the quality CST reports of people found incompetent to stand trial in the state of California
- Researchers found that these reports lacked thoroughness, lacked DSM diagnoses (over 50%), and failed to link mental health disorders with competency deficits (over 80%). Some lacked an opinion on competency entirely.
- They also found that structured assessments were barely being utilized
- Overall, quality of reports was “extremely poor”
- The study issued the following recommendations to improve the quality of reports:
  - Increased training
  - Increased thoroughness of reports
  - Stricter adherence to professional standards and guidelines
  - Increased use of scientific methods (structured assessments)

Karen Linkins thanked Dr. Packer and Dr. Scott for their summaries. She reminded the group that today’s discussion should focus on short-term solutions to be implemented by April 1, 2022 and medium-term solutions to be implemented by January 10th, 2023. Deanna Adams, Francine Byrnes, and Judge Manley sent in their suggestions ahead of time, so Karen Linkins began the discussion with them. She requested that the group be crisp in their suggestions, making sure to include mention of what problem their proposed solutions aim to solve and how outcomes would be measured.

- Deanna Adams noted that the slide on the screen showed Judge Manley’s words but that her suggestions were quite similar. She suggested a separate line item in the Trial Court Budget to pay for evaluators, as that money currently comes from the general budget. Courts do not

have sufficient budgets to keep up with the increasing demand for evaluations and as a result, do not employ a sufficient number of evaluators and turn to evaluators who produce lower quality reports.

- Judge Manley agreed with everything she said. Francine Byrne added that the Judicial Council is putting forward a budget change proposal related to this. Judge Manley added that this is a critical issue for judges throughout the state and the low rates of pay offered to evaluators results in the courts not being able to attract or retain good ones, which lengthens the period of time people are waiting in jail. This problem is particularly bad in counties with high costs of living. Todd Schirmer said he supported this idea and suggested a spending floor for evaluations of around \$1000, perhaps with regional variations. He said calculations show the total cost of this would be around \$10-15 million. Dr. Warburton said increases in funding would have to go hand in hand with an accountable QA process.
- Deanna Adams asked if she could voice a suggestion that she had not previously submitted, to which Karen Linkins said she could. Deanna Adams suggested that technology could be leveraged to conduct evaluations remotely so that evaluators with higher levels of expertise could be found.
  - Matthew Greco said that they have done this in San Diego during COVID with their full time evaluation staff who provides high quality reports. He noted that this practice does pose some challenges but is financially feasible (less than \$1 million for technology). He suggested that overtime be offered to DSH evaluators to be a resource as they are the current standard for the state, and this could be done very quickly.
- Deanna Adams said that due to the shortage of evaluators, courts sometimes wait up to a month or longer for evaluations to be completed. Judge Manley wrote a recommendation on this, as he has been frustrated for a long time by the amount of time people are waiting in jail while the courts search for evaluators and field requests for continuances from attorneys. He suggested that there should be a court-mandated maximum time frame for evaluations to be completed.
  - Todd Schirmer added that the current evaluation process is first an alienist evaluation and then a Con Rep placement evaluation. He suggested these things be consolidated, which would take a statutory adjustment.
  - Dr. Charles Scott agreed with Judge Manley's suggestion and noted that timely access to police reports is often an issue in evaluations. He suggested the adoption of a strategy that many counties use of an administrator who gets the competency referral package that contains all necessary reports and legal documents.
- Judge Manley suggested that the statutory language that says that the court "may consider diversion" should be changed to "shall consider diversion," as the word "may" allows for too much discretion. He agreed with a suggestion proposed in a different meeting that alienist

reports should include an opinion on if someone is suitable for diversion. He noted that this would take increased training and standards.

- Francine Byrne said that her team did research a few years ago that revealed huge variation in how much courts are paying for evaluations (between \$350 and \$2000). She suggested a program be formed through the Judicial Council that could consolidate funding and serve as a technical assistance resource as well as being involved in recruitment and outreach for increasing the number of evaluators, potentially working with Forensic Psychiatry and Psychology residency programs. Karen Linkins proposed recording the last piece as a separate suggestion.
  - Charles Scott said that if residents were conducting evaluations, requirements may have to be written to make sure they are compliant with court panel minimum requirements.

Karen Linkins asked that members who did not submit suggestions prior to the meeting now share their ideas.

- Todd Schirmer agreed with Katherine Warburton that if funding for evaluations is to be increased, quality must be increased as well. As a short-term solution, he suggested the formation of a checklist based on AAPL guidelines that courts could put in their contracts with alienists. He suggested that DSH establish a QA oversight system for alienists across the state as well as stopgap training for the hundreds of alienists statewide. Karen Linkins asked about outcome measurements for these suggestions. He replied that for the checklist, compliance with the checklist could be measured which would indicate if evaluation quality is improving.
- Francine Byrne asked if this group will be at all addressing misdemeanor ISTs but said she knows that may be a different case.
- Matthew Greco suggested that a short-term solution to the lack of DSM diagnosis inclusion in reports could be a resource page, maybe on the DSH website, that would have educational tools for evaluators, such as how to conduct an evaluation and write a report. There could also be one for Sheriffs around IMO information. He suggested a video tutorial approach for these pages. He pivoted topics and warned against diverting or releasing anyone classified as an 1170H case (certain types of crimes), as it would motivate malingering to evade consequences. He said this would bring more people into the system who would require evaluations.
  - Charles Scott agreed with the video tutorial idea and suggested combining this with Todd Schirmer's checklist idea to quickly raise the quality of evaluations.
- Karen Linkins read suggestions submitted by Douglass Dunn, a member of the public in attendance. He suggested that all \$75 million and special DSH funding for 2021 and 2022 go to training and paying for quality alienist evaluations. He also suggested that statewide

standards and time frames be established and if they are not met, the person cannot be admitted to a state hospital.

- Farrah McDaid-Ting shared suggestions submitted by Michelle Cabrera from CBHDA. She agreed with the previous suggestion to increase pay for evaluators and said they submitted several further ideas on this topic, such as creating a regional pay schedule, increasing qualification standards, and more. In terms of oversight, she suggested DSH contract with evaluators, provide oversight, and maintain a certification and training program. She noted that this is already in place for certain populations so DSH is most equipped to fill this role. She expressed concern that if oversight is provided by the counties rather than the state, disagreements may arise between DSH and counties over whether or not someone is incompetent.
- Todd Schirmer suggested that seeing as criminal defendants are disproportionately people of color, the group needs to be thinking of strategies to diversify the alienist work force in terms of both race and language capacity.
  - Katherine Warburton emphasized the language piece, noting that a significant percentage of individuals being found incompetent were found incompetent because of a language barrier, as certain things get misconstrued through interpreters and differing cultural systems are not adequately considered (she used the example of hearing voices). DSH has been trying to work on this.
  - Stephanie Regular said that her clients of color are disproportionately labeled as malingering or having antisocial personality disorder. It takes multiple cycles through the system before they get a proper diagnosis. She agreed with the need to increase the diversity of alienists, and added that this is also a need for doctors in state hospitals.
- Stephanie Regular said she was struggling with the limited scope of the homework assignment on actionable solutions. She agreed with everyone who has suggested increasing pay for evaluations. She said that if state standards were established, she believes many court appointed doctors would qualify but that does not speak to the quality of their work, and producing quality work takes paying more, so standards alone are insufficient. She also suggested that legislation be created that requires alienists to make a recommendation on diversion, which she predicted would be a challenge for already overwhelmed counties. She said another current issue is that multiple agencies are competing for the same doctors and the defense is paying more and wanting diversion recommendations, quality doctors who recommend diversion are pulled away from the panel. In addition to a recommendation on diversion, she said there should be legislation requiring alienists to make a recommendation on the likelihood of competency restoration. As of now, most courts only accept opinions on restoration likelihood from the state hospitals, which increases the waitlist.

- Charles Scott returned to the discussion on biases against defendants of color in the criminal justice system and in competence evaluations. He said the literature backs up Stephanie Regular's points about this, and that could be included in the education materials.
  - Ira Packer adds that literature shows that sometimes Black defendants are more likely than white defendants to be considered schizophrenic. He said that relevant training and qualification on this is important.
- Ira Packer agreed with Judge Manley's previous suggestion about defaulting to restoration in the community, with hospitals only being used when someone's level of need is too great for the community to manage. He said it is easier for evaluators to not find evidence that hospitals are necessary than to find evidence that someone will be safe in the community. He suggested adopting a practice done in some other states where mandating a diversion recommendation is part of an evaluator's report, legally releasing evaluators from liability for a bad outcome.
- Todd Schirmer agreed with Stephanie Regular's suggestion for allowing or requiring recommendations on the likelihood of restoration, as he has seen the problem she described many times.
- Katherine Warburton said that on occasion they see cases where someone may be delirious because of a medical condition, which is not properly taken into account, as those people need immediate attention from medical professionals.

As there were no remaining suggestions from the group, Karen Linkins asked Ira Packer and Charles Scott if they had solutions to propose.

- Ira Packer said versions of all these suggestions are present in other jurisdictions. He cautioned that the group has to figure out what the consequence or process is when people are not doing good work. Massachusetts places evaluators in remediation in this case and are removed entirely from the evaluator list if they do not improve.
- Charles Scott asked if there is a known number of how many evaluators there currently are in the state, as it is necessary to establish a baseline before planning next steps. He requested that the 58 California counties be asked to provide a list. He also agreed with Dr. Packer's point and said remediation is an important step because it is unwise to lose someone who could improve.
- Stephanie Regular provided insight into the state of evaluators in Contra Costa County, noting that it is hard to maintain their panel. The doctors who do the best work are turning cases away because they do not have the capacity to handle the load. She said she thinks her county is doing better than most in the state. She is worried that a protocol that removes

doctors from panels would leave some counties without doctors. She said the only way to implement this suggestion is with more funding to retain more doctors.

- Matthew Greco agreed and said sometimes his county's forensic evaluation unit disqualifies themselves and it is difficult to find any alternative. He agreed that the state should commit to spending \$1000 per evaluation and the first short-term solution must be to throw money at the problem before other solutions can be implemented.
- Ira Packer said there is literature on the use of video conferencing for evaluations in other states. He recommended research by Western State Hospital in Washington, who use state hospital evaluators rather than county ones and have done this for years pre-COVID. He also recommended looking into the practice of triaging off the waitlist in some other states and provided a successful example from Colorado. Karen Linkins asked if there is published criteria that Colorado uses to determine priority for hospital admission, to which Ira Packer answered that she can get it directly from Dr. Gowensmith and Dr. Murray but that it is quite straightforward, essentially asking if the person is in need of acute hospitalization.

Karen Linkins reviewed the ideas proposed in the previous week's work group meeting for short and medium-term solutions, which overlapped significantly with the ideas just presented. She asked the group for any reactions or thoughts about the list.

- Katherine Warburton said that it seems like implementing only one or two of them alone would not result in change and a larger overhaul is required. She noted that there had been a lot of discussion in the two other working groups about involuntary medication and wondered if this group wanted to discuss addressing IMOs in reports. She noted that in some counties, courts will not issue IMOs in response to reports from psychologists, only psychiatrists.
  - Farrah McDaid-Ting agreed with Katherine Warburton. She noted that most suggested solutions, even paying alienists more, are not easy to do. She emphasized that oversight, certification, and QA are all necessary as medium and long-term goals. She mentioned that counties must be aligned in priorities to accomplish this.
- Karen Linkins agreed that alignment is a critical component. She noted that suggestions from all three work groups are needed to establish concrete implementation strategies.
- Katherine Clark raised that the working group should look to the timeline of the Spring budget process for short and medium-term suggestions that require additional resources.
- Karen Linkins thanked everyone who put forward concrete suggestions and said they will return to this list.

#### **4. Call for Public Comment**



Karen Linkins opened the floor to public comment through either raising hands in Zoom, commenting in the chat, or emailing:

- Douglas Dunn said his suggestion of spending \$75 million in a singular way may be outlandish, but we was pointing to the need to talk about short and long-term funding. He said he believes there is an initial \$75 million for suggestions from these work groups then \$175 million for each year going forward. He agreed with comments made by Stephanie Regular in relation to funding, who is also in Contra Costa County. He emphasized that they will not be able to meet expectations without funding.
- Mark Gale expressed that if his son had gone through this process (waiting for an evaluation and then months for a hospital bed) and then was part of the 25% of ISTs declared competent by DSH upon finally entering a hospital after over a year of trauma, he would be infuriated. He emphasized the need for trainings and QA for alienists, and consequences for alienists who produce poor work.
- Stephanie Regular replied to Mark Gale and said that her and fellow Public Defenders disagree with DSH's statistic of 25% competency and believe that data represents people who are probably competent rather than actually competent, which DSH has said in court. She expressed that Public Defenders and Defense Attorneys continue to meet with clients regularly after incompetence is declared and have to continuously tell them there is no hospital bed for them, contrary to the belief that PDs are ignoring clients post-evaluations. When they believe competency has been restored, PDs return to the court with this information. She also noted that if people on the waitlist were competent, they would have pled and been released. She pivoted and asked if they are going to continue to exclusively focus on alienist reports, as it is restrictive on their ability to come up with creative solutions. She repeated that the issue driving poor quality of reports is a lack of funding.
  - Karen Linkins said the three work groups were formed to zoom in on three particular problems in the system, which is the reason for the laser focus. She said that of course the overall goal is to connect all the dots.

## **5. Meeting Wrap Up and Next Steps**

Karen Linkins thanked the group again for their comments and described that the homework assignment for next week is to dig deeper into which ideas that have been raised should be prioritized and would be most impactful in the short and medium-term. She also asked members to engage in budgetary considerations and thoughts around outcome measurement as they do this thinking. She said that they will delve farther into implementation and operational questions. At the next meeting, week they will also start to talk about longer term solutions to be implemented by January 10, 2024 or 2025. She said they will send out an email with the homework assignment and list of solutions that have been suggested so far. She

encouraged the group to think creatively about solutions and connection to other pieces of the system, per Stephanie Regular's suggestion.

Katherine Warburton disagreed with Stephanie Regular's claim that the 25% competency statistic is inaccurate. She pointed out that it has been upheld by a judge and have continued to find the same percentage through Telehealth reevaluations. Karen Linkins thanked her for the clarification.

The next group meeting will be October 15th from 2-4pm. Karen Linkins reminded the group that the minutes and agenda will be posted on the website as well as the homework assignment.

Matthew Greco clarified that the email with the homework assignment will include the list of proposed solutions, to which Karen Linkins answered yes. She thanked everyone for their presence and participation.

## Appendix 1: Chat Transcript

From John Freeman to Everyone:

Welcome! Please enter name and affiliation/county here.

From Jennifer Brya to Hosts and panelists:

Jennifer Brya, Desert Vista Consulting

From Tyler Rinde to Everyone:

Tyler Rinde, Senior Policy Advocate, County Behavioral Health Directors Association

From Lindsay Schachinger to Hosts and panelists:

Lindsay Schachinger - NAMI and family member

From Debra Buckles to Everyone:

Debra Buckles, Stanislaus County Public Guardian

From Douglas Dunn to Everyone:

Douglas Dunn, Contra Costa Mental Health Commissioner and parent of a loved one who has been IST elsewhere.

From Alejandro Barajas to Hosts and panelists:

Alejandro Barajas, San Mateo County Deputy Public Guardian - Hi everyone!

From Jonathan Raven to Everyone:

having audio issues

From Michelle Cabrera to Everyone:

Michelle Cabrera, CBHDA

From Joshua Gauger to Everyone:

Josh Gauger, CSAC

From Michelle Cabrera to Everyone:

Thank you, Francine. Can you share how much funding is being requested?

From Lindsay Schachinger to Hosts and panelists:

Another outcome would be people spend less time in jail waiting for evaluations

From Douglas Dunn to Everyone:

Suggested strategy Solutions: 1. All \$75M in special 2021-2022 DSH funding for training & paying for proper Alienist evaluations. 2. Set statewide evaluation standards and timeframes that must met. If the evaluation does not meet these evaluation standards and time frames, do not admit this person to a state hospital.,

From Lindsay Schachinger to Hosts and panelists:

A PD recently told me that CONREP “always” recommends SH placement. Is there a problem there?

From Douglas Dunn to Everyone:

My suggestions above are both short-term and medium-term solutions.

From Mark Gale to Everyone:

Accountability can start with alienists who have not been providing quality work MUST take additional training and if they don't they should be removed from the list. Second, DSH should have a list of problem alienists and if their reports don't improve- especially after additional training-they should be removed from the list.

From Alejandro Barajas to Hosts and panelists:

yes, most of those affected are from communities of color or disproportionate communities.

From Michelle Cabrera to Everyone:

To this point on misdiagnosis, the literature actually points to a trend of clinicians inappropriately diagnosing Black patients with schizophrenia at rates several times higher: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4274585/>

From Michelle Cabrera to Everyone:

We also suggested that the focus initially should be on quality improvement, training/TA to work with alienists and still keep quality control going. Workforce challenges are real.

From Michelle Cabrera to Everyone:

The public can't see who's speaking. The screen is pinned on Francine, FYI.

From Michelle Cabrera to Everyone:

Thank you

From John Freeman to Everyone:

Apologies! Thanks for flagging.

From Alejandro Barajas to Hosts and panelists:

what is the criteria evaluators have to meet?

From Douglas Dunn to Everyone:

Have a comment to make.

From Michelle Cabrera to Everyone:

It would be great if we could get any demographic data on individuals who are felony IST that can be shared to help shape/inform our recommendations as they relate to equity. Aggregate Race/Ethnicity, language, gender, age, etc.

From Michelle Cabrera to Everyone:

If that could be shared prior to the next workgroup, it would help