

**Incompetent to Stand Trial Solutions Working Group
Tuesday, October 12, 2021 – 3:00 PM to 5:00 PM
Discussion Highlights**

1. Welcome

Stephanie Clendenin, Director of the California (CA) Department of State Hospitals (DSH), welcomed all members. She reviewed the agenda and said this meeting will be an opportunity for all members to get up to speed on the progress of each working group.

Stephanie Clendenin asked members who were present to introduce themselves. All members were present except Jessica Cruz, who is the Exec. Director of NAMI-CA. Members in attendance were:

- Stephanie Welch, Deputy Secretary of Behavioral Health at the CA Health and Human Services Agency
- Nancy Bargmann, Director at CA Department of Developmental Services
- Adam Dorsey, Program Budget Manager at CA Department of Finance
- Brenda Grealish, Executive Officer for the Council on Criminal Justice and Behavioral Health of the Department of Corrections and Rehabilitation
- Tyler Sadwith, Assistant Deputy Director of Behavioral Health at CA Department of Health Care Services
- Brandon Barnes, Sutter County Sheriff
- John Keene, Chief Probation Officer of San Mateo County and President-Elect of Chief Probation Officers of CA
- Stephanie Regular, Assistant Public Defender of Contra Costa County and Co-Chair of the Mental Health Committee of the CA Public Defender Association
- Veronica Kelley, Director of San Bernardino County Dept. of Behavioral Health and Board President of the CA Behavioral Health Directors Association

- Farrah McDaid-Ting, Senior Legislative Representative at the Administration of Justice of California State Association of Counties
- Scarlet Hughes, Exec. Director, CA Association of Public Administrators, Public Guardians, and Public Conservators
- Pamila Lew, Senior Attorney at Disability Rights CA
- Francine Byrne, Judicial Council of CA
- Jonathan Raven, Chief Deputy District Attorney for Yolo County

Stephanie Clendenin reviewed group rules and goals, emphasizing that the statute calls the group to propose actionable solutions, not to function as an oversight body. They are tasked with submitting recommendations to CHHS and the Dept of Finance by November 30, 2021. She reminded the group to raise their hands on Zoom to speak rather than using the chat function. The general chat is available for public comment. She reviewed the timelines for solutions and their varying focuses: short-term to be implemented by April 1, 2022, medium-term by January 10, 2023, and long-term by January 10, 2024 or 2025.

2. Working Groups — Overview of Working Group Status to Date and Discussion of Recommendations

Karen Linkins of Desert Vista Consulting (DVC) introduced herself and her DVC colleagues as facilitators. She said the three working groups have each met twice and each have one meeting remaining. She said today’s meeting will review the highlights that have come out of those meetings with a focus on short and medium-term solutions. She reminded the group of the goals and focus of the three working groups and displayed slides with the names of their chairs and members. These three groups are:

- Working Group 1: Early Access to Treatment and Stabilization for Individuals Found Incompetent to Stand Trial (IST) on Felony Charges
- Working Group 2: Diversion and Community-Based Restoration for Felony ISTs
- Working Group 3: Initial County Competency Evaluations

These groups consist of stakeholders (including members of the public who have attended meetings) from 21 counties and a wide variety of associations and agencies. She voiced excitement about the diversity and level of representation. She provided more detail on what these groups have already accomplished:

- In total, close to 100 solutions have been proposed across working groups, focusing primarily on the short and medium-term

- Most proposed solutions focus on policy change, operations change, technical assistance/training, treatment capacity, among other categories
- Working Groups 1 and 2 have focused on variability in involuntary medication order (IMO) utilization and barriers to diversion eligibility and diversion itself, many of which are happening on the local level
- Working Group 1 short-term solution examples:
 - Provide technical assistance to Sheriffs Departments on IMO use
 - Expand use of technology/telehealth for IMOs and other treatment determinations
 - Expand use of long acting injectables in jails

Dr. Katherine Warburton, DSH Medical Director, and co-chair of all three IST Solutions Working Groups, added that DSH is already doing some of these things and able to currently expand them.

Dr. Mulkerin, Chief Medical Officer, County of San Luis Obispo, Sheriff's Office added that DSH has been very helpful in her county with implementing these.

- Working Group 1 medium-term solution examples:
 - Prioritize CBR and diversion by allowing diverted people to retain waitlist place and improving communications between DSH and local courts to prevent premature removal from diversion placements
 - Establish timeline requirements for evaluations to reduce wait times
 - Conduct Mental Health and Substance Use Disorders screening at time of booking and determine treatment course
 - Ensure Public Defenders and District Attorneys daily presence to review cases to determine which cases will be dismissed and for those who will likely not be, determine conditions for release into treatment pre-trial
 - Leverage California Advancing and Innovating Medi-Cal (CalAIM) opportunities
 - Provide counties funding for peer support programs
 - Establish path for post-discharge IMO use

Dr. Warburton noted that DSH has begun work on the first solution

- Working Group 2 short-term solution examples:

- Presumptive Eligibility: assume diversion eligibility and build exemptions that must be met to prove someone is not eligible. Looking at a variety of partner agencies for this process as well as psychiatric advanced directives and housing support. Courts would be required to consider diversion before commitment. Evaluators required to submit opinion on diversion.
- Enhance Data Sharing & Collaborations: standardize sharing of waitlists to counties, partnership between state and counties to triage waitlist, improve communications between jails and county behavioral health, provide technical assistance (TA) to counties
- Pursue conservatorships as possible alternatives under Penal Code 1370

Dr. Warburton added that data shows diversion is the most effective tool to disrupt criminalization cycle

Stephanie Welch said these solutions are aimed to focus on the existing waitlist and DSH is ready to partner with counties to address local barriers to diversion

- Working Group 2 medium-term solution examples:
 - Leverage CalAIM opportunities
 - Amend Penal Code 1370 to allow more people (in addition to judges) to recommend re-evaluation
 - Adjust 1001.36 from “unreasonable risk” to “clear and present risk” and allow the judge to authorize diversion over prosecutor’s objection
 - Require re-evaluation with attention to diversion for defendants held beyond statutory time
 - Potentially expand role of probation in diversion
 - Provide expedited licensing to build treatment facilities
 - Establish civil commitment for those who need IMOs

Karen Linkins pointed out overlap between Group 1 and Group 2

Dr. Warburton pointed out that some of these things have been done successfully in Los Angeles’ model

Karen Linkins reviewed the common problems with court alienist reports found by a UC Davis study for DSH that was presented in Group 3’s meetings. These problems include a lack of diagnoses and a general insufficiency of information and thorough process.

- Working Group 3 short-term solutions:
 - Provide in-depth training for alienists

- Triage the existing waitlist (using criteria, such as those developed in Colorado)
- Address IMO issues in reports
- Explore possibility of tele-evaluations
- Review current evaluators (solicit lists from counties)
- Explore potential of Penal Code 1370 re-evaluations

Dr. Warburton emphasized the need for training and quality assurance processes to go hand in hand. She mentioned the need for IMO and diversion eligibility evaluations to be included in initial evaluations.

Dr. Charles Scott, Working Group 3 Co-Chair and Chief, Division of Psychiatry and the Law, Forensic Psychiatry Training Director, and Professor at University of California Davis, Sacramento Medical Center, added that the need for additional funding was a major theme in conversations.

- Group 3 medium-term solutions:
 - Establish funding pool (with oversight) to increase quality of reports
 - Provide legislative clarity that psychologists can recommend IMOs
 - Change statute to say that the court “shall” consider diversion rather than “may”
 - Require alienists to include opinion on probability of restoration
 - Set mandatory time frames for report process
 - Identify administrator to assemble legal docs
 - Identify demographics and cultural/linguistic competency of evaluators and train on bias
 - Treat 1170 (h) felonies like misdemeanors and divert these cases where possible

Karen Linkins addressed questions from the chat and working groups:

- Someone asked in the chat about the barriers to adopting expanded IMO use. Dr. Warburton said they have heard from the counties that some feel they do not have qualified evaluators so IMO evaluations do not happen (clarification around psychologist abilities may help with this) and there is confusion around how to implement IMOs and in what settings they are possible (mostly not knowing they can be used in jails). DSH can help with these issues.

- Pamela Lew said that while she understands the urgency present, she is concerned that some proposed solutions are not positioned to break the criminalization cycle. She emphasized the need to consider the long term relationships of individuals with the mental health system and discussed IMOs having the potential to lead to distrust.
- Veronica Kelley pointed out that the LPS proposed solution from Group 2 would not solve this problem and would only accelerate another. She emphasized the need for TA around IMOs for Sheriffs departments.
- Karen Linkins said that the solutions presented are not necessarily final.
- Farrah McDaid Ting agreed with Veronica Kelley about conservatorships not being a feasible solution and the need for TA. She said there are workforce shortage and funding issues around proper IMO implementation in jails. She seconded Dr. Warburton's point about quality assurance for alienists and said the state should provide that oversight and play a role in licensing.
- Jonathan Raven clarified that judges already can grant diversion without the agreement of prosecuting attorneys. He clarified also that 1170 felonies refer to prisons not jails. He said that his county has a robust diversion program and is making progress the Sheriffs Dept. using IMOs but seconded the mention of staffing issues.
- Karen Linkins said they will discuss the workforce issues further in following meetings.
- John Keene said probation is in support of diversion but their role must be clearly defined. He has run diversion programs and seen conflict between the probation officers' job to enforce court orders and the goals of clinicians. He said a state led discussion around avoiding that conflict would be important.
- Karen Linkins agreed that further planning around implementation in regards to cross-sector collaboration is needed.

Karen Linkins said she would take further questions later in the meeting and reminded everyone that minutes from all meetings are posted on the website. She said that group members have been assigned the task of identifying the resources, metrics, and statutory changes needed for implementing the suggested solutions. She said the next meeting will include discussion of long-term solutions and root causes, including housing and implementation/collaboration challenges.

3. Behavioral Health Initiatives on the Horizon to Support Community Care Alternatives (California Health and Human Services (CHHS) and Department of Health Care Services (DHCS))

Stephanie Welch opened the presentation by noting that the housing needs of this population are complex because services must be provided alongside housing support. She said facilities, such as enriched board and cares, are often needed instead of supports like rent subsidies. She noted that this presentation discusses changes on the horizon but the focus of the group remains on the current wait list. The more urgent questions to that goal are around why providers refuse IST placements, among others. She said that building community alternatives to institutional settings is a priority. Two initiatives already underway are:

- Expanding wrap around support through CalAIM opportunities
- Budget opportunities for local alternatives

Stephanie Welch encouraged members to think about how these opportunities tie into suggested solutions. She introduced Tyler Sadwith, Assistant Director of Behavioral Health for DHCS, and Marlies Perez, Chief for DHCS, and turned it over to Tyler Sadwith to present. Presentation highlights:

- Tyler Sadwith reviewed that CalAIM is a multi-year initiative by DHCS to improve quality of life and outcomes for the MediCal population through system reform.
- CalAIM leverages MediCal to try to address homelessness, BH access, complex medical conditions, and health needs of justice involved populations.
- DHCS is pursuing two federal waivers:
 - Section 1115 demonstration: Submitted to CMS in June 2021 requesting federal approvals and funding to implement initiatives (services for justice involved populations, etc)
 - Section 1915(b) waiver: Used by DHCS for a long time but they are now looking to consolidate several programs into it under CalAIM (MediCal managed care, dental, etc) which is under review by CMS
- At present, DHCS uses federal opioid response grant money to support counties to expand access to medicine (including medication assisted treatment) in jails and drug courts as well as to support CDCR in expanding access to addiction medication
- DHCS has generally supported counties to better address the needs of people with behavioral conditions in jails and in re-entering communities
- DHCS is requesting federal Medicaid authority to cover services to justice involved populations for the 90 days prior to release, which is consistent with the Support Act so they hope the request is approved by January 1, 2022 to be implemented in 2023.
- Services would be targeted for those with highest physical and BH needs to improve outcomes and reduce ER visits and hospitalizations.

- State statute authorizes pre-release or in reach services for the 90 day period and requires jails and prisons to facilitate those services and cooperate with and support the initiative. DHCS is requesting federal funds to support this.
- DHCS is proposing a benefits project and programmatic approach to community re-entry for people who meet specific health criteria and are MediCal eligible (which 90% of incarcerated people are).
- 90 day proposal includes services such as care management and coordination, clinical consultation, and post-release support with medication and equipment.
- Collaboration is essential in this process.
- State prisons and some jails have a standard process for pre-release applications and state statute requires staff to assist in MediCal applications and DHCA will offer TA around this.
- In January, DHCS will issue guidance on criteria for service access for all stakeholders to have a clearer understanding.
- Over the course of the 5 year waiver, DHCS will update DMCODS policy.
- In July 2022 they will issue additional guidance on policies such as documentation requirements and implement their No Wrong Door approaches expand entry points to services in collaboration with counties.
- DHCS is reforming payment methods for how BH services are paid in MediCal
- Stakeholders have identified that current policy for accessing specialty services for both adults and children is outdated which makes resource access difficult and results in disallowances of claims, so changes and clarification are needed.
- They are asking CMS to cover contingency management and traditional healing services to meet specific needs
- Whole Person Care and Health Homes Program pilots are ending and being implemented as statewide programs through Enhanced Care Management (MediCal-managed care benefit) and Community Supports (MediCal managed plans are encouraged but not required to provide these) for high-needs, high-cost MediCal patients. Metrics have shown improvements in health outcomes from these programs.
- 14 approved services in the category of Community Supports that plans can opt to deliver
- While these will be statewide programs, supports (and contracts) will be community based

Stephanie Welch thanked him and said she was excited about the potential for transformation in terms of disrupting the cycle before an individual ends up in jail. She acknowledged the need for human infrastructure and a diversity of culturally competent care in this process. She introduced Marlies Perez to present about community care alternatives. Presentation highlights:

- CA is making large investment (\$3B this year) in infrastructure for vulnerable pops.
- DHCS is working closely with Dept. of Social Services.
- Combined stakeholder meetings, joint planning grant, county engagement strategy are being used in planning process.
- CA is investing \$12B over the next two year in housing/homelessness, which is not connected to this grant.
- The BHCIP grant aims to create BH infrastructure, which will align with DHCS' other BH efforts.
- In November, DHCS will publish an analysis of the current BH service landscape including a review of their BH needs assessment.
- BHCIP passed in FY 2021-22 State budget with an allocated \$2.2B.
- BHCIP amends Welfare and Institutions code and gives grants to counties, tribal entities, non-profit and for-profit entities to build or expand BH infrastructure (not services).
- Funding will be distributed in rounds and different entities will be eligible for each round.
- Stakeholder listening sessions will happen throughout process.
- Grants can fund a wide array of BH facility types.
- Legal requirements govern funding eligibility and how funds can be used, including requiring data reports and a MediCal requirement.
- Rounds spanning July 2021 to December 2022 are:
 - Mobile Crisis \$150M, Planning Grants \$8M, Launch Ready \$585M, Children and Youth \$460M, Addressing Gaps #1 \$462M, Addressing Gaps #2 \$460M
- CDSS is launching a different program called Community Care Expansion (CCE) to fund infrastructure of care facilities for SSI recipients, including with BH conditions and/or experiencing/at risk of homelessness.

- While BHCIP is broader in terms of what facilities it will fund, both programs fund adult and senior care facilities, CCE includes people with BH needs, and similar requirements for using funding exist.
- She encouraged people to consider both these funding pools in their proposals.
- The BHCIP Round 2 Planning Grant recipients will receive extensive TA and up to \$100K per grant.
- More information can be found at the BHCIP Home at ca.gov and comments can be submitted to BHCIP@dhcs.ca.gov

Stephanie Welch thanked her and asked people to think big about the needs of their particular counties in regards to early treatment, and specifically counties who have engaged in sequential intercept mapping. Karen Linkins facilitated questions from working group members:

- Pamela Lew voiced that there was discussion in her work group around jails wanting to send people elsewhere for acute care but ran into the barrier of facilities refusing placements. She asked if some fix to this will be worked into the programs. Stephanie Welch responded that she will have to look into it and ask providers why placements are being refused and what types of incentives would be effective.
- Veronica Kelley said she is thankful for the grant money being set aside. She asked that if applicants serving a felony IST population will have any priority in the rounds process. Marlies Perez replied that they are looking at how to incentivize state priorities (including justice involved pops.) via different mechanisms but specific priority groups for rounds have not been sent. She emphasized that \$3B is far from enough money to meet the state's BH needs.
- Karen Linkins read a question from the chat asking if CalAIM will address when people lose MediCal coverage temporarily when they move between counties. Tyler Sadwith said DHCS recognizes this is a problem that they want to hone in on, particularly for people re-entering communities. They have recently issued guidance to try to reduce these barriers.

Stephanie Welch said an upcoming work group meeting on October 22nd will be dedicated to discussing both short and long-term community care alternatives and housing supports. Karen Linkins said the details will be posted in the chat.

- Brandon Barnes asked if counties are expected to fund the staffing of treatment facilities after the initial infrastructure grants. Marlies Perez replied that DHCS will work with counties to identify stable funding sources, which will be taken into account as grants are distributed. Brandon Barnes clarified if this meant that funding will have to come from counties, to which she replied yes.

4. Public Comment: 15 mins

Stephanie Clendenin invited public comment. She reminded everyone that they can raise their hand to speak, type comments in the chat, or email their comment.

- Douglas Dunn of Contra Costa County said that until funding is secured, people will continue to languish in jail. He said he will tell this to his elected representatives.
- Mark Gale asked if diversion is only referring to PC 1001.36 or is it also referring to older conceptions of diversion like deferring judgement. Stephanie Clendenin responds that their discussions focus on how the state funds county programs for people found IST on felony charges. Mark Gale replied that 1001.36 is inappropriate in some cases. He added that while building incentives and facilities, staffing shortages must be addressed and incentives must be build to draw people into the field.
- Stephanie Clendenin read a comment from the chat by Kate Brandis who shared a link and contact information for an infrastructure tool for county evaluation workflows.
- Stephanie Clendenin read a comment by Martin Fox who asked the group to look at the effect of the Lanterman-Petris-Short Act and 1991 realignment legislation before setting goals and budgets.
- Michelle Cabrera said that many changes are happening in the BH arena at once and asked if other partners (law enforcement, courts) will also experience large shifts. Stephanie Clendenin said they will bring that question to partners and set aside time on the next agenda.

5. Meeting Wrap Up and Next Steps

Stephanie Clendenin thanked all members for their patience and said the slides and minutes will be posted online. The three working groups will all have their last meetings in the remaining weeks of October and the next all group meetings will be November 5th and 19th, working toward the report to be submitted at the end of the month. She reminded members that all meetings are open to the public and subject to Bagley-Keene.

Karen Linkins thanked all members for their participation and encouraged the members of the public in attendance to join the final working group meetings. Stephanie Clendenin also thanked everyone in attendance for their time and ideas.

Appendix 1: Chat Transcript

From Hughes, Scarlet to Hosts and panelists:

Can someone please post these slides in the chat. Thank you.

From John Freeman - Desert Vista Consulting to Everyone:

We will share a link to the slides.

From John Freeman - Desert Vista Consulting to Everyone:

Thank you to those posting questions in the Q&A. To the extent time allows, we will address these questions with the work group. We are using the Q&A field for technical support questions and will have time for public comment toward the end of the meeting.

From John Freeman - Desert Vista Consulting to Everyone:

The slides from today are available at: <https://www.chhs.ca.gov/wp-content/uploads/2021/10/IST-Solutions-WorkGroup-Meeting-3-October-12-2021.pdf>

From John Freeman - Desert Vista Consulting to Everyone:

Working Group 1: Early Access to Treatment and Stabilization for Individuals Found IST on Felony Charges | 10/26/2021 – 1:00 – 3:00 p.m.

Working Group 2: Diversion and Community-Based Restoration for Felony ISTs | 10/22/2021 – 1:00 – 3:00 p.m.

Working Group 3: Initial County Competency Evaluations | 10/15/2021 – 2:00 – 4:00 p.m.

From Kate Brandis to Everyone:

Hi all, we have an infrastructure tool that could be used in county/DSH evaluation workflow, and wanted to share a link: <https://youtu.be/o-Mq7WpOCJI> Please let me know how I can help. Kate Brandis, kbrandis@securevideo.com (910) 274-6171. Thanks!

From Martin Fox to Everyone:

Please examine the effect of the Lanterman-Petris-Short Act and the 1991 Realignment legislation, before setting goals and budgets. You cannot know where you are going before understanding where you came from.

From John Freeman - Desert Vista Consulting to Everyone:

Just to reiterate, here are working group meetings:

Working Group 1: Early Access to Treatment and Stabilization for Individuals Found IST on Felony Charges | 10/26/2021 – 1:00 – 3:00 p.m.

Working Group 2: Diversion and Community-Based Restoration for Felony ISTs | 10/22/2021 – 1:00 – 3:00 p.m.

Working Group 3: Initial County Competency Evaluations | 10/15/2021 – 2:00 – 4:00 p.m.

From John Freeman - Desert Vista Consulting to Everyone:
And all information is available on the IST Work group site:
<https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/>