



Incompetent to Stand Trial Solutions Workgroup
Tuesday, November 5, 2021 – 10:00 AM to 12:00 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 updated on the progress of each working group.

Stephanie Clendenin asked members who were present to introduce themselves. All members were present except Nancy Bargmann, Adam Dorsey, and Farrah McDaid-Ting. Members in attendance were:

- Stephanie Welch, Deputy Secretary of Behavioral Health at the CA Health and Human Services Agency (CalHHS)
- Monica Campos (attending on behalf of for Brenda Grealish, Executive Officer for the Council on Criminal Justice and Behavioral Health of the Department of Corrections and Rehabilitation)
- Feather Gaither, Consulting Psychologist for the Department of Health Care Services (attending on behalf of Tyler Sadwith, Assistant Deputy Director of Behavioral Health at CA Dept. of Health Care Services)
- 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
- Scarlet Hughes, Exec. Director, CA Association of Public Administrators, Public Guardians, and Public Conservators
- Jessica Cruz, CEO of NAMI CA
- Pamila Lew, Senior Attorney at Disability Rights CA
- Francine Byrne, Judicial Council of CA

- Jonathan Raven, Chief Deputy District Attorney for Yolo County
- Brandon Barnes, Sutter County Sheriff

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 for short, medium, and long-term solutions to CalHHS and the Department 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.

2. Recap of the Incompetent to Stand Trial (IST) Solutions Workgroup Process

Stephanie Clendenin reviewed the work group progress up to this point. She recapped the purposes of the three working groups, which focused on early treatment and stabilization, diversion and community-based restoration, and initial county competency evaluations. These three groups produced actionable recommendations and looked at the statutory and budgetary requirements for implementation. They also considered what metrics could be used to measure success.

Stephanie Clendenin recapped that short-term solutions are focused on the individuals (1700) currently on the waitlist for DSH treatment. These solutions include jail-based competency treatment programs (JBCT), community-based restoration programs, and diversion, identifying those already restored, and reducing the number of new referrals. She said the medium-term solutions focus on providing timely access to treatment and increasing available treatment alternatives. Long-term solutions are focused on breaking the cycle of criminalization and reducing the number of people found IST on felony charges through expanding the BH service landscape in part through new CalAIM programs.

Stephanie Clendenin introduced Karen Linkins the facilitator from Desert Vista Consulting to join in discussing preparation for the report. Stephanie Clendenin indicated that the draft recommendations would be shared in this meeting and the Work Group members will then be asked to compile feedback for homework. Recommendations will be finalized in the meeting on November 19th, which will be submitted along with the rest of the report by November 30th. She said they would like to include a set of guiding principles along with the recommendations that contextualize the group's thinking. The statute guidance that provided initial framing included reducing the number of felony IST defendants, reducing lengths of stay for felony ISTs, providing earlier access to treatment, providing increased access to diversion, and expanding the number of treatment options, particularly in communities. The statute also emphasized the need to match the correct services to the acuity of need. She presented a slide on additional guiding principles that have emerged through group discussion. These include jail being the wrong setting for this population, family member engagement being critical, multi-sector collaboration being critical for the success of any solution, and clarity around the objectives for each solution timeline. She and Karen Linkins asked the group if anything was missing from this list and if it felt accurately framed.

- Pamila Lew asked that an addition be made about ensuring that the short-term recommendations do not conflict with the medium and long-term goals. She gave the example of investment in JBCTs being contradictory to the end goal.
- Stephanie Clendenin responded to Pamila Lew and said that there are over 1700 people on the waitlist that cannot wait for medium and long-term goals to be achieved, so balance is needed when looking at how the short, medium, and long-term goals interact.
- Veronica Kelley asked that the principle of jail being the wrong setting be adjusted to say jail settings should be appropriate and limited, as JBCTs are a part of the conversation.
- Brandon Barnes agreed with Veronica Kelley and said they need the ability to provide mental health services in jails for those with criminal charges and mental health needs. He also said that there should be a long-term goal of building more mental health treatment facilities to correspond with the principle of jail being the wrong setting.
- Feather Gaither asked if there is a particular model that the group is looking to of mental health treatment in a somewhat restrictive setting. Stephanie Clendenin said there have been a number of recommendations from the group including creating a new licensing category for intensive community based treatment (CBT).

Stephanie Clendenin and Karen Linkins took comments from the public on this section about principles:

- Brian Bloom said that in Alameda County (where he was formerly a public defender), there is an alternative system called the Civil Commitment System that entails conservatorships. He said the vast majority of people on the IST waitlist meet the definition of gravely disabled and should be treated through the LPS Civil Commitment System unless they are charged with a violent crime. He said this could meet the short-term goal of waitlist reduction and the long-term goal of moving away from jail settings. He said that Senate Bill 317 for misdemeanor IST diversion is a step in this direction and suggested it be expanded to include all non-serious felony charges as well.
- Mark Gale agreed with Brian Bloom's suggestions. He said that in LA they have an IMD treatment center with 50 beds where his son went instead of prison. This setting does not require an LPS conservatorship and can be followed by a step down facility. He talked about a program in NY from the Greenberger Center that has a model based on bail. It is secure but not locked and does not require conservatorship. The power of bail lets them recall someone if they leave. He offered to provide the contact information of the director.

Stephanie Clendenin requested that public comments focus on the guiding principles, as the solutions discussion will come next and those comments should be held until the end. Public comment continued:

- Teresa Pasquini emphasized the guiding principle on engagement with family members being critical and said she is grateful for NAMI CA's involvement in this process. She said that people with lived experience are the experts and their voices need to be authentically listened to, as they have ideas and solutions to provide.

- Douglas Dunn said that ongoing funding is needed to implement solutions.

Stephanie Clendenin thanked the group members and members of the public for their input on principles.

3. Review and Discussion of Preliminary Solutions for the Final IST Solutions Workgroup Report

Stephanie Clendenin opened the discussion on organizing suggested solutions. She said the work of this group combined with the three working groups has generated well over 100 solutions. There were some solutions that came up in multiple work groups. The team writing the report has been looking at all proposed solutions and thinking about how to distill and synthesize them, analyzing what is truly actionable and how the recommendations can be grouped together. The working list is available on the group website. They will be presented as a single list broken down by short, medium, and long-term, rather than also being broken down by working group. Solutions are also arranged by theme. DSH will be supporting the review of the document for accuracy as soon as possible, as well as uploading all recommendations received via homework and other submissions. She asked if anyone had any questions about this process of synthesizing the work, to which nobody responded. She reviewed more details of the document:

- It is around 16 pages with about 35 recommendations.
- Strategies are sorted by short, medium, and long-term. Short-term solutions focus on moving people off the waitlist into treatment and identifying people on the waitlist who have already been restored.
- Strategies are given a type designation (funding, policy, etc).
- Potential impact of strategies is included as well as any other relevant considerations.
- Karen Linkins said this format will influence the report structure with the goal of it being digestible.
- Pamila Lew asked what form the homework assignment of feedback from work group members should take and if they should edit the document directly. Karen Linkins said feedback will be accepted in any form and Stephanie Clendenin said they will provide further guidance following this meeting.
- Stephanie Welch encouraged the group to provide overall impressions (is anything missing? Is it representative of the meetings?) as well as specific focused feedback. She said she feels like it accurately reflects the conversations she witnessed in working groups and thinks it shows how the solutions build on each other well through looking at everything as elements of a large scale, multi-year approach.
- Stephanie Clendenin reviewed short-term strategies:

- Overarching goals of short-term strategies include increasing access to medications in jails, improving coordination between partners, providing training and technical assistance (TA) around best practices to criminal justice partners, identifying people through reassessment who have stabilized and can be transferred to other programs, providing TA to diversion and CBR programs, and providing training and TA for evaluators to improve the quality of reports.
- Strategy category of prioritizing CBR and diversion before statutory changes can be made.
- Strategy category of prioritizing and incentivizing diversion with funding.
- Strategy category of including and prioritizing justice involved populations in state homelessness efforts.
- Strategy category of augmenting funding in DSH diversion contracts with counties to support housing costs.
- Strategy category of including BH and criminal justice partners in planning process for infrastructure expansion (housing and BH continuum of care) to reduce homelessness in justice involved population with SMI.
- Stephanie Clendenin reviewed medium-term strategies:
 - Overarching goals include implementing statutory changes to pursue broader goals of reducing number of ISTs, providing timely access to treatment, and increasing treatment alternatives.
 - Strategy category of statutorily prioritizing outpatient treatment and diversion. She said that many statutory changes were suggested and they included them without prioritizing some over others.
 - Strategy category of providing increased opportunities/funding for community treatment models (Assisted outpatient treatment (AOT), Forensic Assertive Community Treatment (FACT), Full-service partnerships (FSP), etc).
 - Strategy category of establishing forensic AOT commitment with a variety of services (housing, involuntary medications (IMOs), etc).
 - Strategy category of developing statewide pool of evaluators and increasing the number of qualified evaluators.
 - Strategy category of improving statutory process leading to IST or competence finding, including state standards and maximum time frames.
 - Strategy category of revising items evaluators must consider, such as diversion and IMOs.
 - Strategy category of improving IMO statutory process.

- Strategy category of developing stabilization inpatient capacity prior to diversion placement.
 - Strategy category of expanding funding for supports for diversion and CBR to increase utilization, including peer support and TA, among other supports.
 - Strategy category of exploring alternate contract models for JBCTs and CBR.
 - Strategy category of expediting assessment and treatment upon booking, such as conducting universal screenings and need assessments and considering looping in families.
 - Strategy category of establishing requirements and/or providing incentives to support increased CBT and housing for justice involved pop. with SMI.
 - Strategy category of providing expedited licensing for inpatient facilities and housing.
 - Strategy category of revising CONREP's role and/or criteria to increase diversion placements.
- Stephanie Clendenin reviewed long-term strategies:
 - Overarching goals include breaking the cycle of criminalization, reducing number of people found IST, and providing bridge funding until broader behavioral health initiatives are fully implemented.
 - Strategy category of partnering with CA Interagency Council on Homelessness.
 - Strategy category of supporting relevant aspects of CalAIM implementation.
 - Strategy category of developing QA process with oversight of court appointed evaluators and their reports.
 - Strategy category of increasing alternatives to arrest through pre-booking diversion.
 - Strategy category of increasing treatment and housing options in the community for justice involved pop. with SMI.
 - Strategy category of developing new licensing category for enriched CBT.
 - Strategy category of supporting development of data sharing initiatives and improving overall information sharing.
 - Strategy category of developing and expanding a culturally and linguistically competent workforce.

Stephanie Clendenin reiterated that group members for homework should read through the document and look for anything that is missing and anything that is misrepresented. They should also assess organizational structure and look at if everything is in the correct

category. She opened the discussion to feedback from the group. Karen Linkins called on group members to share:

- Veronica Kelley said there should be more content on the role of SUD. She said counties are very familiar with this issue and the language of psychiatric medication could include MAT for people using opioids.
- Stephanie Regular asked if the homework assignment is an opportunity to address issues and ideas that were not included in the working group topics. She specifically named the issue of populations like 1026 individuals and other populations that are in state hospitals that should be stepped down or conserved but are stuck in the system. Stephanie Clendenin said that yes, this could be sent in along with the homework.
- Brandon Barnes said that he appreciated the ideas on alternate sentencing and step down facilities, but those facilities are not available in many smaller counties and rural areas. He said the long-term goals should include making more of those facilities available.
- Christy Mulkerin said that from her position of being in charge of a jail health care system she sees that the short-term solutions are going to immediately help jails take care of the people who are there waiting for treatment. She said that in her jail they have a 5 bed JBCT and still have 23 people waiting for a state hospital bed. They are considering expanding the JBCT to 10 beds. She said she knows that NAMI is opposed to JBCTs in favor of hospital settings. She expressed concern that forgoing short-term solutions to work on the long-term ones will hinder the ability of jails to treat the people who are there.
- Pamila Lew said she sympathizes with Christy Mulkerin but in her experience in LA County she has seen the success of diversion to CBR rather than state hospitals, and CBR is drastically different than JBCTs. She expressed concern that funding JBCTs in the short-term will dis-incentivize establishing CBR as the structure that is built gets relied upon and alternatives are de-prioritized. She said that for this reason, CBR and diversion should be funded instead.
- Jessica Cruz said she sent a letter on this topic to the whole work group. She said that NAMI opposes expansion of JBCTs under the care standard of “do no harm.” She said there does need to be short-term solutions for the waitlist but agreed with Pamila that short-term actions become the standard. She said this process is an opportunity to think about doing things differently, which should include non-violent individuals being restored in communities rather than jails.
- Stephanie Clendenin said that Jessica Cruz’s letter as well as any other materials people have submitted will all be posted on the website for the public in the next couple of days.
- Jessica Cruz said that the NAMI website will be posting their survey results of families on their website if people want to see what their position developed from.
- Chris Edens said that the ODR program Pamila Lew referred to is wonderful and just expanded by 100 beds making a total of 515. However, she said placement into the program starts in the jail with building trust and medication stabilization, though LA’s jail

does not have a JBCT. She encouraged the group to consider what it takes to facilitate these placements.

- Stephanie Welch agreed with Chris Edens and said that the recommendations do not suggest expanding JBCTs. She underscored the crisis at hand and the need to do things differently for a period in order to get out of the crisis. She said this is a human rights crisis and that solutions can be put into place for the next 6 months to a year that would then be abandoned in favor of more long-term solutions. She said providing support to public safety partners is a part of this.
- Jonathan Raven said that he is coming from the DA perspective and is also a NAMI member and congratulated them on the letter. He said that Yolo County is ahead of the curve on everything except in the jails, though they are building plans for a JBCT, which he is not sure is the answer and believes people should be restored in communities. However, they need the ability to stabilize people in jails first so that they can be treated in communities.
- Chris Edens replied to Jonathan Raven that her team has been working with the county around the JBCT and has flexibility in terms of how to design it to best fit the county's needs.
- Stephanie Regular said that the reason that they need to stabilize people in jails is because there is currently nowhere else to stabilize them. She said that all money put into JBCTs is money that does not go to building treatment alternatives. She disagreed that JBCTs are short-term solutions as Contra Costa County has been trying to build one for years and that time could have been spent on other solutions.
- Chris Edens said that the funding they support in LA County is only for community-based restoration and diversion and part of what makes the program effective is that the process starts in jail because that's where the clients are. She supported starting there and transitioning toward the community over time.
- Michelle Cabrera encouraged a triage level of care approach in both the short, medium, and long-term solutions. She said some of the population will do well in community-based restoration and better tools and supports are needed to facilitate that, and some of the population will need to be restored in state hospitals. She said the potential role of JBCTs in triage decision making should be considered, for example as a placement for people who community partners are not able to handle but who do not need the high level of care provided by a state hospital. She emphasized that JBCTs are stop gaps and should not be the new norm. She also raised the need for better discharge planning with DSH and County Behavioral Health (BH) as BH is not getting all the necessary information, even when it is sent to counties generally. She said that LA's ODR model is unique in ways but is also not unlike what many counties are doing and many of the group's recommendations are deconstructing the ODR to replicate across different types of counties, particularly with a prioritized referral system for diversion and CBR.

Karen Linkins asked if there were any remaining comments from the group, which there were not.

4. Call for Public Comment

Stephanie Clendenin invited public comment on anything on the agenda. She reminded everyone that they can raise their hand to speak, type comments in the chat, or email their comment. Karen Linkins called on members of the public:

- Mark Gale thanked Jessica Cruz and NAMI CA for the letter they wrote on JBCTs and said he would like to read it once it is available because he agrees with the sentiments. He said that a reimagining of the state hospital system is necessary and jail does not make people better. He said that they have not looked at out of the box things like changing the nature of state hospitals if they build capacity to be less factory-like and instead be places where people could be sent for determinant sentencing if they are not eligible for diversion. Instead of being sent to prisons, people could serve their whole sentences at state hospitals and then referred to step down services in the community. He said this is a very long-term solution. He said he wrote an article about reimagining the DSH system recently.
- Carla McNamara said she has a son with schizophrenia in jail and has seen that the laws around involuntary treatment qualifications need to be changed. She said that nothing is done in the beginning so the recovery time for people in the system is much longer, if at all. She said some east coast states do a better job of this by letting families be involved in determining the need for involuntary treatment. She agreed with Mark Gale that the system needs changing.
- Martin Fox said that the group needs to examine how they got to the point of having 1700 people on the waitlist in the first place. He said they need to look at what has worked and failed historically. He said that historically, law enforcement agencies could recruit the help of state hospitals in dealing with individuals. He asked the group to look at the effect of the Lanterman-Petris-Short Act and 1991 realignment legislation which created more than 50 different mental health systems in the state, which guaranteed disaster. He said the state auditor could have addressed this during COVID but she did not and legislators need to deal with it in a singular state-wide effort.
- Douglas Dunn said he understands the need for JBCTs in the short term but agrees with Stephanie Regular that this cannot be the default option. He said this is the only justice involved population for which state funding is not guaranteed and all the proposed solutions are in competition with each other. He emphasized the need for guaranteed ongoing funding.
- LD Louis said the criminalization cycle will continue unless LPS conservatorship, civil commitment, board and care, and IMD capacities are rapidly expanded. She said she knows there is pushback to putting more weight on the conservatorship and civil commitment systems but this population needs long term supportive housing and

treatment, longer than 6 months or a year. She said without this long term treatment and investment, people will keep coming back to jails and the backlog will continue.

- Brian Bloom said that restoration to competency refers to restoration to the point of competency where someone can be persecuted through a trial. He encouraged the group to consider that while in some cases the states goal of prosecution is paramount, in most IST cases it is not. Instead, long term treatment should be the goal to end the cycle of criminalization. He said the idea of restoration to competency should not be the guiding principle and instead the civil system should be used in non-violent cases.
- Linda Mimms emphasized that they are talking about brain illnesses, not behavioral issues. Brain diseases require immediate treatment before they progress and the state and country as a whole does not think of this akin to other illnesses but should. She asked the group to think about these illnesses and about the impacts of turning people away from care differently. She said that the restoration to competency idea is short-term and a waste of money. She said she is speaking as a family member of someone who has been in this system.
- Teresa Pasquini said that she has worked with patients and partners at the local and national scales for 15+ years and has a long history in the state MH system and has not seen anything as bad as the IST DSH system which was traumatic for her family. She said the group conversations do not address the extent of pain caused to families. She said that accountability, transparency, and an end to discrimination are needed in care and housing. She said that the system requires violence or homelessness of some of the population in order for them to get treatment. She called for a reimagining of the system and said she recently was part of writing a paper that she will share with the group.

5. Meeting Wrap Up and Next Steps

Stephanie Clendenin thanked all contributors for their comments. She said that the final meeting will take place on November 19th from 11am to 1pm. She reminded the group of the homework assignment to submit feedback and said they will send out guidance on how to do so. She said that all meeting materials and submitted materials will be posted online. She thanked all participants on behalf of DSH for their commitment to finding solutions for this population. She said that the next step is to turn these recommendations into actions, some by April 1, and conversations with partners on quick implementation will begin soon. She reminded members that all meetings are open to the public and subject to Bagley-Keene.

Karen Linkins said a worksheet will be sent out to record feedback as part of the homework assignment. She reminded everyone to call out gaps as a part of this feedback.

Appendix 1: Chat Transcript

From Cory Salzillo to Everyone:
Sheriff Barnes is trying to log in

From Stanicia Boatner to Everyone:
Farrah is out sick.

From Denise Howder to Hosts and panelists:
If he continues to have a problem I can send him a new link ...

From Welch, Stephanie to Stanicia Boatner and all panelists:
I'm worried about her ... is she feeling better?

From Denise Howder to Hosts and panelists:
I've sent Sheriff Barnes a new link ...

From John Freeman - DVC to Everyone:
We have opened the chat to allow comment here on the topics being considered.

From John Freeman - DVC to Everyone:
<https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/>

From Lindsay Schachinger to Hosts and panelists:
How many people of the 1700 are charged with misdemeanors or non-violent and non-serious felonies?

From Christine Ciccotti to Hosts and panelists:
https://www.chhs.ca.gov/wp-content/uploads/2021/11/IST_Solutions_Matrix_Report_Presentation_11.5.2021.pdf

From John Freeman - DVC to Everyone:
https://www.chhs.ca.gov/wp-content/uploads/2021/11/IST_Solutions_Matrix_Report_Presentation_11.5.2021.pdf

From Denise Howder to Hosts and panelists:
https://www.chhs.ca.gov/wp-content/uploads/2021/11/IST_Solutions_Matrix_Report_Presentation_11.5.2021.pdf

From Christy Mulkerin to Everyone:
How will disagreements within the workgroups be reconciled within this document?

From Christy Mulkerin to Everyone:
Thank you Jessica and Pamila for clarifying. Great points.

From Teresa Pasquini to Hosts and panelists:
Thank you Jonathan!

From Teresa Pasquini to Hosts and panelists:
Thank you Stephanie!!

From Carla McNamara to Hosts and panelists:
A big problem I have experienced is not getting the help needed for my son when he first went in to a psychotic break. He is now in jail and has been since May with no resolution. The laws need to change so people like my son can receive involuntary treatment.

From Douglas Dunn to Everyone:
I have a public comment.

Appendix 2: Q&A Transcript

Douglas Dunn : The Contra Costa Mental Health Commission recently passed a motion that JBCT NOT be a solution to Contra Costa's state hospital waitlist issues. The Commission definitely wants community based treatment, both locked and unlocked facilities w/in the county.

Mark Gale : Can the public make comments on this subject?

Mark Gale : I will need help being unmuted

Douglas Dunn : Am I unmuted? Willing to make a quick public comment.

Mark Gale : I have no way to unmute myself

Lindsay Schachinger : I can't access chat. What % of the 1700 are sentenced with misdemeanors or non-violent or non-serious felonies?

Lindsay Schachinger : Why can't I get to chat?

Douglas Dunn : Ongoing funding will be KEY.

Douglas Dunn : I have a comment,.