



Incompetent to Stand Trial Solutions Working Group
Work Group 1: Early Access to Treatment and Stabilization for Individuals
Found IST on Felony Charges
Tuesday, October 26, 2021 – 1PM to 3PM
Discussion Highlights

1. Welcome and Introductions

Karen Linkins welcomed all attendees. Her video froze so Dr. Katherine Warburton introduced herself and welcomed attendees. She thanked the group for their dedication to this process and this population. Katherine Warburton reviewed the meeting agenda and the work group goal, which is to identify short-term solutions to provide early access to treatment and stabilization in jail or via JBCTs in order to maximize re-evaluation, diversion, or other community-based treatment opportunities and reduce lengths of stays. Her fellow co-chair, Melanie Scott, introduced herself.

Katherine Warburton reminded the group that they are tasked with providing actionable recommendations with discussion of their associated costs, necessary statutory changes, and data tracking metrics. She asked group members to introduce themselves. All members were present except Karen Larsen, Stephen Manley, Cory Salzillo, and Jonathan Raven. The members in attendance were:

- Co-chair Katherine Warburton, Forensic Psychiatrist and DSH Medical Director
- Co-chair Melanie Scott, Assistant Chief Psychologist at DSH
- Deanna Adams, Senior Analyst at Judicial Council of California
- Kirsten Barlow, NAMI California
- Francine Byrne, Principal Manager in Criminal Justice Services at the Judicial Council of California
- Elise Deveccio-Cavagnaro, Consulting Psychologist at the MediCal Behavioral Health Division of the Department of Health Care Services
- Brenda Grealish, Executive Officer at the Council on Criminal Justice and Behavioral Health
- Paige Hoffman, Staff Services Analyst at the Council on Criminal Justice and Behavioral Health
- Kristopher Kent, Attorney for the Department of State Hospitals

- Farrah McDaid Ting, Senior Legislative Representative for the California State Association of Counties
- Christy Mulkerin, Chief Medical Officer for the San Luis Obispo County Sheriff's Office
- Kim Pederson, Senior Attorney at Disability Rights California
- Dawn Percy, Deputy Director for Department of Developmental Services
- Stephanie Regular, Assistant Public Defender for Contra Costa County, representing statewide association
- Marni Sager, Manager at the Department of Developmental Services State Operated Facilities Division
- Brandon Barnes, Sutter County Sheriff, representing California State Sheriff's Association

2. Recap Goals of this Working Group

Karen Linkins asked group members to identify overlap with the two other working groups where it comes up in their discussion of ideas. She reminded the group to remain solution oriented as the November deadline for the report is fast approaching. She stated that their purpose is not to provide oversight but to be generative. She asked members to be brief and raise their hand on Zoom to speak. She asked that the Zoom Q+A feature not be used by workgroup members unless they need assistance with technical issues, but noted the chat is available for both working group members and members of the public in attendance to ask questions and share ideas. She also noted that questions and ideas can also be submitted via email.

Karen Linkins reviewed the three solution timelines: short-term solutions are to be implemented by April 1, 2022, medium-term by January 10, 2023, and long-term by January 10, 2024 or 2025.

3. Recap of Last Meeting's Highlights and Short-Term Strategies

Karen Linkins provided an overview of highlights from the last two meetings:

- She reviewed the number of short and medium term solutions that have been generated by each working group and expressed satisfaction with the level of output.
- Solution categories that stand out in relation to this group include administrative and operations changes, expanded treatment capacity, TA and training, and statutory changes.
- DSH and UC Davis data show varied IMO utilization across state, high diversion eligibility for people on the waitlist (nearly half), and high barriers to diversion in counties. High variation in all steps of processes related to the IST population exists between counties.

- The DSH survey of counties around barriers to successful diversion found that the primary obstacle statewide was levels of psychiatric instability that were too high for diversion into community programs. The second and third most identified barriers were insufficient suitable housing in county programs and confusion around county programs' ability to use IMO's, respectively. There is high disagreement among stakeholders about what qualifies a person to be eligible or ineligible for diversion.

4. Discussion of Medium- to Long-Term Strategies

Karen Linkins displayed a list of the medium-term solutions that this group has come up with so far and asked the group if they had any comments on them. Group discussion followed:

- Jonathan Raven commented on a suggestion to have a District Attorney and Public Defender present daily to review cases and determine next steps. He said that DAs do not have access to do this without a release of information and the public defender typically hasn't been assigned at that point or does not want this information shared with the DA. He approved of the idea but expressed that he did not know how it could be implemented.
- Christy Mulkerin commented on a suggestion about leveraging CalAIM opportunities. She said that in at least in her county, the reentry services aspect of CalAIM won't be implemented until 2023 and that timing should be kept in mind because maybe this is a long-term rather than medium-term solution.
- Elise Deveccio said about CalAIM timing that MediCal managed care plans must submit proposals for enhanced care management for the reentry population by July 1. The model will be implemented on January 1, 2023. She explained that through this program, care plans can contract with providers to meet healthcare needs of this population.
- Kim Pederson said she is also thinking about CalAIM timing, particularly mandatory pre-release MediCal enrollment not taking effect until 2023. She asked if bridging the time until then will be incorporated into solutions, such as funding for counties to get people enrolled pre-release and set up with services.
- Kirsten Barlow said that it is important for NAMI that family members are able to be reached out to at the time of booking, as they can provide information on medication and treatment history. She suggested that DSH could work with the public safety committee to formulate best practices around this for jails and state hospitals.
- Brenda Grealish said that she thought the CalAIM solution did fit under medium-term and asked if she was missing information. Karen Linkins replied that while it is supposed to take effect in January there may be some variation across counties and plans. Brenda Grealish asked Elise Deveccio if the Jan 1 date meant programs had to go live then, to which she answered yes. Christy Mulkerin said that she heard from her county that there was flexibility in that date but she will follow up with her health plan for clarification.

- Brenda Grealish said that there is some enhanced care management (not for jail populatoin) that will go live in 2022 and asked if people who are diverted will have access to this.
- Kim Pederson said her comment was focusing on making sure there is a method to get people enrolled in MediCal pre-release before 2023 when it is made mandatory.
- John Freeman read a comment from Douglas Dunn agreeing with Kirsten Barlow's suggestion on family involvement.
- Elise Devecchio said that counties can work to implement pre-release enrollment in advance of the deadline. Kim Pederson said some counties already do and supports would be useful for counties that do not.
- Kim Pederson said that while the suggestion on using peers focuses on this specific context, she believes peers should be used across the spectrum of care, which Brenda Grealish suggested in another working group.
- Kirsten Barlow said that the issues present (variation in IMO utilization and high diversion eligibility) show that jail is the wrong setting. She said these issues should be addressed in the short or medium term to avoid jail time at all. Karen Linkins said this is to some extent addressed in the short term solutions and will be incorporated more into the medium-term list.

Karen Linkins opened the discussion about long-term strategies and asked the group to laser in on short and medium-term solutions. She presented a slide with initial suggestions and asked the group for their reactions and additional ideas.

- Kirsten Barlow expressed support for Judge Manley's suggestion of finding a location other than jail for treatment to take place, as the data show that most of these people have not been accessing services in the last six months and also are eligible for diversion but do not have anywhere to be diverted to. She emphasized the need for psychiatric stabilization before further criminalization.
- Brenda Grealish said about the triage center suggestion that it works as one possible model of Judge Manley's idea. There is a new example of this in Sacramento (Wellspace FQHC) and police officers can bring people there instead of jail. They offer MH and SUD services and do community outreach, wellness checks, and resource connections. They are seeking CalAIM ECM funding.
- Kirsten Barlow said that CalAIM ECM is not the only funding path for this type of program, as MHSA full-service partnerships could also function in this role and already do. Full service partnerships (FSPs) also help with finding and funding housing. MHSA appears sustainable and is available now, compared to CalAIM which is not yet available.
- Christy Mulkerin said she supports community efforts to avoid arrests and also sees diversion programs as a long-term solution to avoid jail time for many people, as arrests will continue. She requested that more about diversion programs be added to the list.

- Kirsten Barlow asked what sorts of facilities or sites in counties the governor's administration has in mind to be included in their infrastructure package for this population. Stephanie Welch said Working Group 2 has discussed this and the state is in the process of defining priorities, which includes supporting CalAIM including the SMI/SED/IMD exclusion waiver, which supports step down services and will help with moving people into diversion. The state has identified priority populations, which includes people experiencing homelessness, justice involved populations, and at-risk young people. They have also identified the need for increased SUD treatment as a priority. They want to prioritize community wellness infrastructure (drop-in centers, etc.), which falls into the DHCS \$2.2B, while the \$800M pool is focused on expanding appropriate community placements for the SSI population at risk of homelessness. She said that in the last diversion work group meeting they discussed board and cares as a strong community option. The local process of requesting some of these funds is about to launch and she encouraged everyone to be active in this planning process in their counties to address root causes.
- Kim Pederson said that DRC would rather the state invest in placements besides IMDs such as social rehabilitation facilities that provide a more comprehensive set of services including fostering independence. These are 16 beds or less and can be billed to MediCal. She said she is curious about what facilities will be included in the community care expansion as social rehabilitation facilities are a good option here as well.
- Christy Mulkerin said that long-acting injectable medications decreases the likelihood of deterioration resulting from someone goes off their medication, as they only need to be used once a month. However, these are expensive and jails often cannot afford them. She suggested a large-scale effort of trying to bring the cost of these medications down. These would need to be started pre-release and fits into CalAIM in that sense.
- Kirsten Barlow asked if lessons could be taken from standing up short term residential youth treatment programs when looking at what is needed for facilities for the adult IST population in terms of the amount of staff training needed, medication access, etc. She also suggested asking board and cares what supports they need in order to take on more of this population in terms of resources or policy changes.
- Stephanie Welch said that enriched residential care programs (ERCs) in LA County are used to encourage step downs from IMDs. She said there are licensing classifications at DDS that are underused and they are open to incorporating lessons from the short-term therapeutic treatment program (STRTP) piece and expanding them to adults, particularly the felony IST and justice involved populations.
- Kim Pederson said that she sees the adult STRTP equivalent in the welfare and institutions code in the section on long term residential programs. She said she thinks social rehabilitation facilities are a better choice than board and cares and are more similar to STRTPs. They are also time limited and people can be transitioned to lower intensity services from there.

- Katherine Warburton said that until there is a full scale multi-tiered diversion systems from triage centers to IST diversion placements, people with psychotic disorders will still interact with the criminal justice system.
- Elise Devecchio said that her department is planning to submit the 1115 SMI/SED waiver by July 2022 with the goal to build out a continuum of care to ensure people can access community care in the least-restrictive settings. She said the BH continuum infrastructure program will build new capacity throughout the state through grants to secure real estate assets to expand continuums of care.
- Melanie Scott said she sees potential in BHCIP and the amount of focus on community stabilization.
- Brenda Grealish said that the SMI/SED demonstration has a 30 day average length of stay which is why an expanded continuum for lower levels of care are needed. She said there are concerns with cost on smaller, <16 bed facilities.
- Stephanie Regular said that investments in mobile crisis teams also require finding or building somewhere those teams can take the people they pick up, which connects to the suggestion for a sobering center or similar. She also said that a lot of diversion funding is going toward treatment rather than housing and if the state is not building this housing, counties must be further incentivized to do so. She mentioned that a statutory change may be needed to change DDS licensing classifications because people with intellectual and developmental disabilities are getting caught in DHS and then have difficulty accessing DDS services. A change is needed to make it easier for Special Education records to be accessed and not destroyed and for these individuals to be re-classified.
- Francine Byrne said a community supervision program should be considered for people who may pose a public safety risk to expand the number of people who are able to be diverted. SLO county has a version of this program.
- Jonathan Raven said that he liked the suggestion of mobile crisis response teams to avoid law enforcement involvement. He said establishing a 24 hour triage center or similar would be financially difficult for smaller counties. He said he likes the idea of long lasting injectables but agreed with cost concerns. He asked if it is possible to secure MediCal waivers for long lasting injectables. Katherine Warburton replied that jails are supposed to be able to access the common formulary, which DHS is looking into and would allow counties to access lowered prices. Christy Mulkerins said this would be a huge resource for jails and while jails can request MediCal reimbursement for some things, they are entirely county funded and many medications are cost prohibitive. CalAIM would greatly help with long lasting injectable costs through the 30 day pre-release medication coverage provided.
- Brenda Grealish asked if the state can negotiate long acting injectable (LAI) costs for counties for people in long-term jail stays. She said one of CCGBH's recommendations is modeled off of AB 2083's memorandums of understanding which provides a network for all entities engaged with a specific population to engage in information sharing. She suggested that this model already exists and can be built specifically for the IST

population, which includes cross-education to increase collaboration. She said collaborative comprehensive case plans should be an aspect of this model.

- Kirsten Barlow asked for NAMI's long-term solution suggestion to be recorded of methodology for law enforcement and state hospitals to proactively seek treatment history of people at the time of arrest. This would not be a HIPPA issue if families were given the opportunity to share information voluntarily and this does not require additional information sharing structures to be put into place. She said that NAMI surveyed their members to inform their involvement in these workgroups. She read a story submitted by a parent in response to this survey about how their son had a disastrous state hospital experience due to a lack of coordinating medication history. After release, their son was arrested and determined IST then picked up more charges while in jail and was sent to a different state hospital that was a better fit and they partnered with the family, but it was far away from where they were located. Kirsten Barlow said this story represents the helplessness that many families feel when they cannot share relevant information.
- Christy Mulkerin said they struggle locally with information sharing and many people upon entering jail are paranoid and do not want their families to be contacted. She suggested that TA could be created for counties on information sharing laws. She said there is a portal on their Sheriff's website for families to communicate and these families receive responses from the county. She responded to a statute change suggestion from Stephanie Regular and asked if anyone else had specific statutory suggestions such as necessitating medication orders and diversion evaluations. Stephanie Regular responded that this has come up in other working groups and ideas have been raised such as mandatory diversion evaluations. She said CONREP should be required to do more in regards to recommending diversion or have their role changes. She said that it cannot be required to give everyone an IMO because of due process rights. She mentioned that someone in the chat said that SB 317 is a seat change for ISTs and she said that should be extended to the felony IST population as the state is devoting a high number of resources to competency restoration but not to maintain it post-release. She addressed another comment in the chat and said that her county's AOT model works well and she would like to see more emphasis on these placements, potentially in partnership with diversion, as AOT is more outreach oriented and person-centered than diversion programs, which are more court driven.
- Kim Pederson said that AOT is successful due to the high level of engagement required by the statute. She said a court order through AOT is not necessary if counties are already performing that level of engagement. She advocated expanding high engagement voluntary treatment in counties.
- Katherine Warburton said that New York state's AOT law has successfully reduced criminal justice contact but California's law has many more barriers. She suggested looking closer at NY's AOT for best practices.

Karen Linkins thanked everyone for their contributions to this discussion. She said the next steps will be to align strategies and look at how they fit together to break the cycle. She encouraged people to submit any additional ideas via email.

5. Call for Public Comment

Karen Linkins opened the floor to public comment and said comments can be made by people raising hands on Zoom, through the chat, or through email.

- Martin Fox asked the group to examine the MH history leading up to this point, particularly the 1991 realignment legislation and the Lanterman-Petris-Short Act that led to a splintering of the system. He said that memorandums of understanding work to counteract this and bring us closer to the old system. He said that as a formal military prosecutor and civil litigator, he urges the state to look at systems other than the article three only approach that exaggerates notions of civil rights to the exclusion of community duties.
- Douglas Dunn read a prepared statement emphasizing the need for more sustained BH funding than is planned for. He said that Contra Costa county's mental health commission voted recently to exclude JBCTs in pursuit of further CBT. He said this requires Contra Costa to secure its fair share of the \$2.2B pool to cover service and workforce expansion. They have been unable to secure diversion through the courts for people who have committed some violent felonies and that funds are needed to get these cases into locked mental health facilities rather than jails or prisons. He said he is sending this statement he just read to his local state legislators and to this group.
- Jonathan Raven encouraged Douglas Dunn to reach out to his District Attorney.

6. Meeting Wrap Up and Next Steps

Karen Linkins reminded the group that all meeting materials and minutes are posted on the website. She said that the next and final meetings for the large group will be November 5 and November 19. The conversation at those meetings will primarily be focused on synthesizing suggested solutions. She thanked everyone for their contributions and work.

Katherine Warburton said that in the ten years she has been in her role, she has not seen a process as successfully collaborative as this one. Melanie Scott said that she agreed and hopes this type of meeting process can continue.

Appendix 1: Chat Transcript

From John Freeman - DVC to Everyone:

Welcome! Today's slides and agenda are available at:

<https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/#october-15-2021-working-group-3>

Materials for all of the working groups and the overall work group are available at:

<https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/>

To share comments or to be added to the IST Workgroup email distribution list, please contact ISTSolutionsWorkgroup@dsh.ca.gov.

Please use Q&A for technical issues only. For discussion items, please use the chat and we will address topics raised by participants as time allows. Public comment will be available at the end of the meeting.

From Bob Britton to Everyone:

Can a link to the PowerPoint slides be made available to us, the public? Thanks.

From Lindsay Schachinger to Hosts and panelists:

There's a pdf online.

From John Freeman - DVC to Everyone:

Apologies for the incorrect slide link. Please see: <https://www.chhs.ca.gov/wp-content/uploads/2021/10/IST-Solutions-Working-Group1-Slides-October-26-2021.pdf>

From Douglas Dunn to Everyone:

Can the family perspective as enumerated by Kirsten Barlow of NAMI CA be included? I get the distinct feeling it is being disregarded by the large Workgroup as well as this particular workgroup.

From Douglas Dunn to Everyone:

For the Long-Term Solutions, how about the family documented mental history of the loved one's mental health and often co-occurring substance used disorder challenges?

From Bob Britton to Hosts and panelists:

(for John Freeman) The webinar setting seems to block me from copying and pasting the link John posted for the slides. Please send the link to me here - bb26779@gmail.com - Thank you! Bob Britton

From John Freeman - DVC to Everyone:

Sorry for that, Bob. Just emailed you the link.

From Douglas Dunn to Everyone:

In Contra Costa county, FSP /ACT staff would need MHSA funded Forensic Assertive Community (FACT) training in order effectively work with this population, esp. the Forensic Incompetent to Stand Trial persons.

From Linda Mimms to Hosts and panelists:

Strengthen AOT programs and use best practices with evidence based data across our state. AOT programs currently vary in how they are implemented in each county—San Diego County's program is ineffective. These programs under Laura's Law are supposed to catch our sickest and divert them away from the justice system and can be a great tool in our communities—saving money and saving lives.

From Douglas Dunn to Everyone:

History is showing near total exclusion of IMD facilities has been and is continuing to be absolutely disastrous for persons with extremely severe mental health and often co-occurring substance use disorder issues.

From Stephanie Welch to Hosts and panelists:

Good points Kirsten

From Douglas Dunn to Everyone:

Another related issue is varying levels of anosognosia, i.e., a person's neurological lack of awareness they live with major mental health and often co-occurring substance use disorder issues.

From Kirsten Barlow NAMI-CA to Hosts and panelists:

Is there a possibility you could share email addresses for the panelists/members of the committee in the event we would like to contact one another on outside issues?

From Stephanie Welch to Hosts and panelists:

Good point Brenda

From Douglas Dunn to Everyone:

The problem is, these competitive building/refurbishing funds (\$2.2B) don't have to be built and operational until 6/20/2027 at the latest while the Long-Term solutions MUST be implemented by 01/2025 at the very latest. This really puts county Behavioral Health Departments in a tremendous financial treatment and services bind.

From Brenda Grealish to Hosts and panelists:

Collaborative Comprehensive Case Plans :-)

From John Freeman - DVC to Hosts and panelists:

Thanks, Brenda -- made the edit

From Brenda Grealish to Hosts and panelists:

Recommend exploring Psychiatric Advance Directives address to this info sharing issue.

From William Oglesby to Everyone:

SB 317 speaks to that

From William Oglesby to Everyone:

As well as AB 133 Sec 344

From William Oglesby to Everyone:

Required IMOs, though, are limited to DTO, DTS and charges involving property and others

From William Oglesby to Everyone:

Absolutely agree

From William Oglesby to Everyone:

Unfortunately, AOTs (Laura's Law) is not funded

From John Freeman - DVC to Everyone:

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<https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/>

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From Douglas Dunn to Everyone:

Can I respond in person to Mr. Jonathan