



# What Data Reveal about Administering Capacity Assessments

OCTOBER 2020

DEPARTMENT OF JUSTICE  
**ElderJustice**  
INITIATIVE



# ELDER JUSTICE INITIATIVE

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The mission is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

The Initiative does so by—

Promoting justice for older adults.

Helping older victims and their families.

Enhancing state and local efforts through training and resources.

Supporting research to improve elder abuse policy and practice.

# ELDERJUSTICE.GOV

**You're fighting elder abuse on the front lines. We've got your back.**

The mission of the Elder Justice Initiative is to support and coordinate the Department's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target our Nation's seniors.



## Outreach Materials

Get involved, get safe community presentations, pamphlets, and materials on all types of elder abuse.



## Prosecutor Video Series

Training videos geared toward successful prosecution of elder abuse cases.



## Elder Abuse Research

References to articles, books, and government reports on all types of elder abuse and financial exploitation topics.



## Elder Abuse Statutes

State statutes relevant to elder abuse cases.



## MDT Guide & Toolkit

Start or grow a local elder abuse case review multidisciplinary team with this research- and resource-rich toolkit.



## Financial Exploitation & Reporting

Learn about financial scams and find the right reporting agency.



## Webinars

Webinars targeted to elder abuse professionals and those interested in elder abuse topics



# Speakers

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Sara H. Qualls, Ph.D., ABPP  
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Professor of Psychology  
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# Empirical findings about capacity assessments: Finding from Mecklenburg County (Charlotte) NC

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Elder Justice Initiative  
October 8, 2020

# THREE STUDIES

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- Who undergoes a civil capacity examination? What are the judicial outcomes of these cases?
- What predicts an incompetency adjudication?
- How many wards get restored? What predicts restoration?

First, some background.....

# WHAT IS A CAPACITY EVALUATION (CE)?

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- Assist court with incompetency and/or guardianship
- Ultimate adjudication by trier of fact (TOF)
- Procedures, policies, and criteria statutorily defined
- Similar, yet different than clinically-based referral



# NC INCOMPETENCY STATUTE

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Incompetent adult means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy.....NC 35A-1101 (7)

- Once adjudicated, one of the following is assigned:
  - Guardian of the Person
  - Guardian of the Estate
  - General Guardian (more common)

# THE STANDARDS USED IN NC

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Incompetency is “clear, cogent, and convincing”

Restoration is “preponderance”

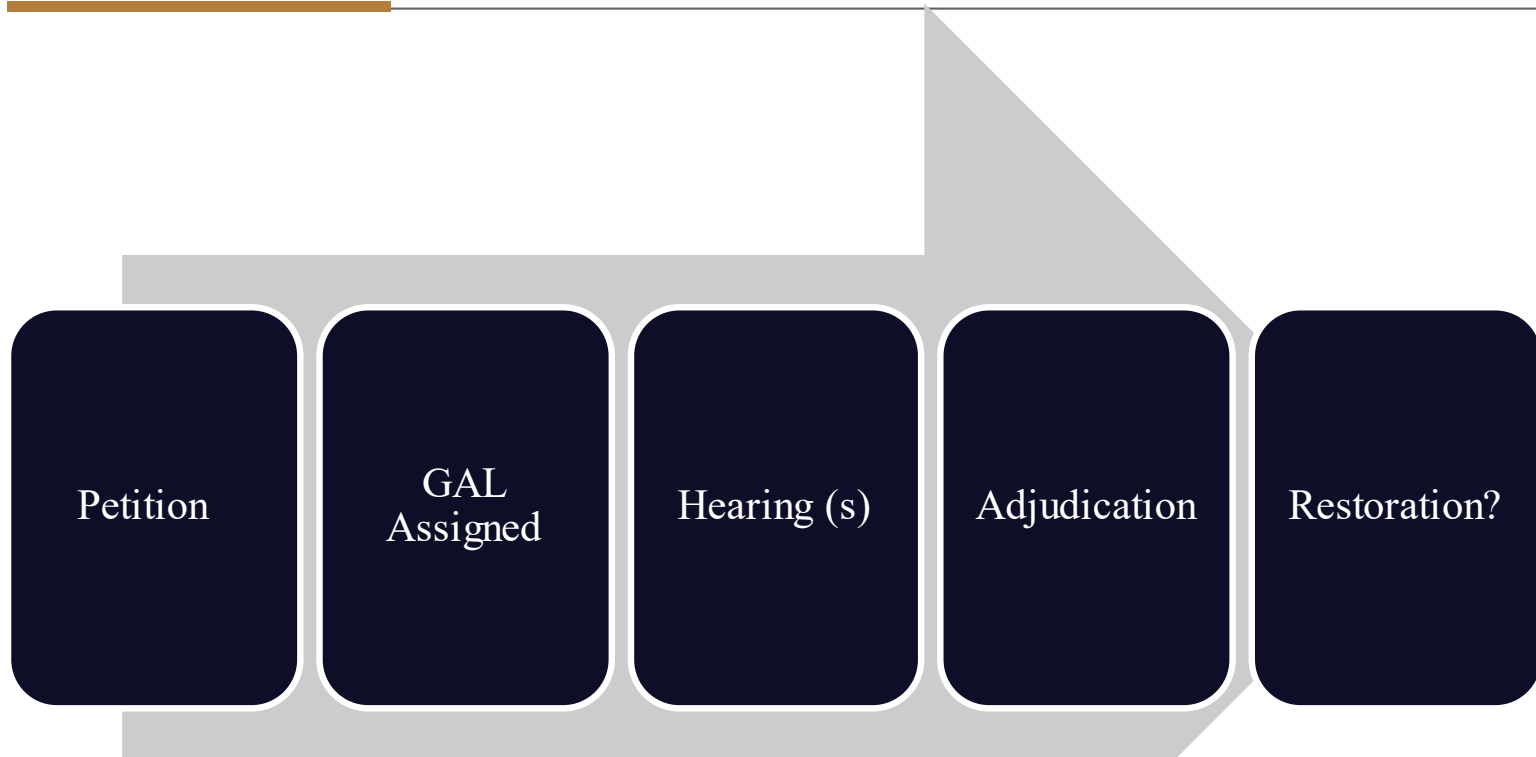
# COMPETENCY IS A LOW BAR

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"WHAT'S THE MINIMAL LEVEL OF COMPETENCE  
AROUND HERE?"

# TYPICAL STEPS IN AN INCOMPETENCY ADJUDICATION



Respondent may retain own counsel, request jury trial, appeal

CEs may be done after hearing or restoration

# BACKGROUND INFORMATION

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- Cases were court-ordered in Mecklenburg County from 2002 to 2018
- CE in NC is termed a Multidisciplinary Evaluation (MDE), but is performed by psychologists
- Demographic and clinical data from report to court
- Study 1 and 3 used reports from 8 licensed psychologists; Study 2 used reports from only my cases
- Court adjudications publicly available from courthouse

# WHO UNDERGOES A CE?

## Respondents (N=346) Findings

Primary Dx	%
Develop Disability	17
Neuro	31
Psych	32
Neuro & Psych	19
No dx/Missing	2

- Types of case
  - 85% Incompetency
  - 15% Restoration
- Outcome
  - Of CEs for Incompetency, 81% found incompetent
  - Of CEs for Restoration, 35% restored
- TOF agreement with psychologist
  - 88% Incompetency
  - 73% Restoration

# SELECT ISSUES BY TYPE OF RESPONDENT

	<b>Psych</b>	<b>Develop Disability</b>	<b>Neuro</b>
Diagnoses	Schizophrenia and bipolar	ID or autism	Dementia
Co-morbidities	Substance use common	Varies	Psychiatric and medical issues
Prognosis	Generally poor	Poor	Poor
Family conflict	More common	Less common	More common
Financial issues	Less common	Less common	More common
Restored	Unlikely	Unlikely	Unlikely

# WHAT PREDICTS AN INCOMPETENCY ADJUDICATION?

QUICKEL & DEMAKIS, 2013, *LAW AND HUMAN BEHAVIOR*

Law and Human Behavior

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0147-7307/12/\$12.00 DOI: 10.1037/lhb0000009

## The Independent Living Scales in Civil Competency Evaluations: Initial Findings and Prediction of Competency Adjudication

Emalee J. W. Quickel and George J. Demakis  
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We address a gap in the literature on civil competency by examining characteristics of those who undergo civil competency evaluations and how well Managing Money and Health and Safety subscales of the Independent Living Scales (ILS) predict legal competency adjudications. We were also interested whether these subscales are more accurate in making such predictions than the Mini-Mental State Examination and Trail-Making Test, Parts A and B, well-known measures of neuropsychological functioning. Actual legal competency decisions were obtained from public court records on 71 individuals with either mental retardation/borderline intellectual functioning (MR/BIF) or psychiatric, neurological, or combined psychiatric or neurological diagnoses. We found that those with neurological diagnoses performed significantly better on the Trail-Making Test, Part A, than the MR/BIF and combined neurological and psychiatric groups, and they demonstrated trends in the same direction for other measures. Both ILS subscales performed better than the cognitive measures, in terms of both hit rate and predictive value, in predicting ultimate judicial decision-making about competency. These findings are particularly relevant for clinicians who must decide what measures to include in an assessment battery in civil competency evaluations.

*Keywords:* Independent Living Scales, ILS, civil competency, competency evaluations

Many individuals undergo competency hearings every year in the United States to determine whether they have the capacity to manage their own affairs and/or live independently. Components of competency may include, for instance, the capacity to make medical and financial decisions independently, to drive safely, and to perform activities of daily living without assistance. These evaluations typically include a documentation of medical diagno-

daily living, such as the Barthel Activity of Daily Living Index (Mahoney & Barthel, 1965). Others, such as the Hopemont Capacity Assessment Interview (HCAI), are designed to assess capacity based on how well an individual responds to hypothetical vignettes (Edelstein, 2000). Others rely heavily on actual task performance, such as the Financial Capacity Instrument designed by Marson, Herbert, and Solomon (2012). The Independent Living Scales (ILS; Loeb, 1996)



# METHODS AND PARTICIPANTS

## Methods

- Archival study of all CEs completed between 2004-2011 ( $N = 73$ )
- Compared test findings to court decisions
- Evaluated demographics and core battery
  - Cognitive tests (e.g., MMSE)
  - Independent Living Scales (Managing Money & Health/Safety)

## Respondent Types

Diagnosis	%
Develop Disability	20
Neuro	30
Psych	25
Neuro & Psych	25

# SELECT FINDINGS

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- Similar group demographics, but Neuro older
- Psyc > all groups on cognitive measures and ILS
- ILS slightly out-performs cognitive measures in predicting legal decisions

# WHAT PREDICTS RESTORATION?

(UNDER REVIEW)

## Methods ( $N = 53$ )

- Examined all restoration cases from 2002 to 2018
- Compared test findings to court decisions
- Evaluated demographics and cognitive battery
  - Cognitive tests
  - Independent Living Scales

## Disposition

- Restored = 35%
- Non-Restored = 57%
- Missing = 13%

# SELECT FINDINGS

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- Variety of wards seek restoration
- Women and higher educated more likely to get restored, but no other differences including dx
- No difference between restored and non-restored in cognitive and functional abilities
- Little research on this topic

# CAVEATS

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- One county in one state
- Though 8 psychologists contributed, 81% of examinations done by two clinicians (Study 1 & 3)
- Limited cognitive and functional testing
- Additional family, social, legal, and contextual variables would be ideal

# IMPORTANT CONSIDERATIONS FOR CEs

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- Know state statutes and case law
- Include tests that “map onto” statute
- Consider cognitive, psychological, medical, social, and interpersonal context
- Examine family conflict, dynamics, and influences
- Be sensitive to cultural, SES, religious, etc. differences

# RECOMMENDED RESOURCES

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- American Bar Association/American Psychological Association Assessment of Capacity in Older Adults Project Working Group (2008). *Assessment of older adults with diminished capacity: A handbook for psychologists*.
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# Working Out Logistics in an Integrated Care Model between APS and Capacity Evaluation Provider

Sara Honn Qualls, Ph.D., ABPP  
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## CONTEXT: ACROSS THE COUNTRY, APS STRUGGLES TO IDENTIFY AND ENGAGE EVALUATORS

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- What logistics problems are inherent in this type of practice?
- What strategies and solutions can be used to address them?

# CONTEXT: UCCS AGING CENTER

- Mental health services and training clinic
- Has provided neuropsychological evaluations and psychotherapy to community for 20 years
- Increased volume of referrals for capacity-evaluations
- Partners with local safety net and public organizations to address community needs
  - APS
  - FQHC
  - PACE program
  - Non-profit hospice
  - Senior services organizations
  - Long term care



# EXPANDED GERIATRIC MENTAL HEALTH SERVICES PROJECT

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## Goals:

- Identify the scope of the need by trying to saturate it
- Identify the process variables that shape success
- Build sustainability plan

Funded by Next50 Initiative, a large Colorado-based foundation

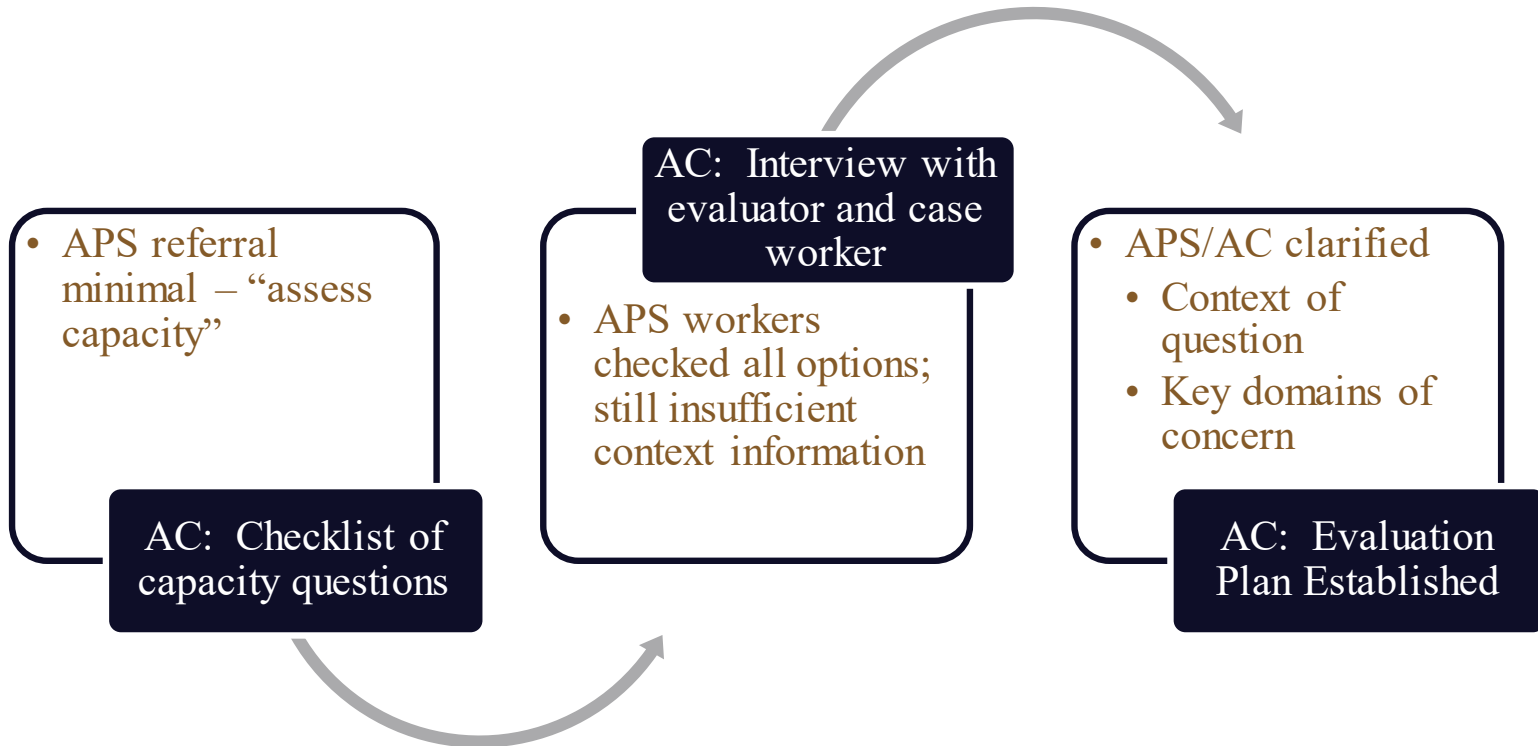
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# Logistics Challenges

What are the barriers to expanding capacity assessments in a mental health clinic?

# LOGISTICS CHALLENGE 1

## REFERRAL PROCESS

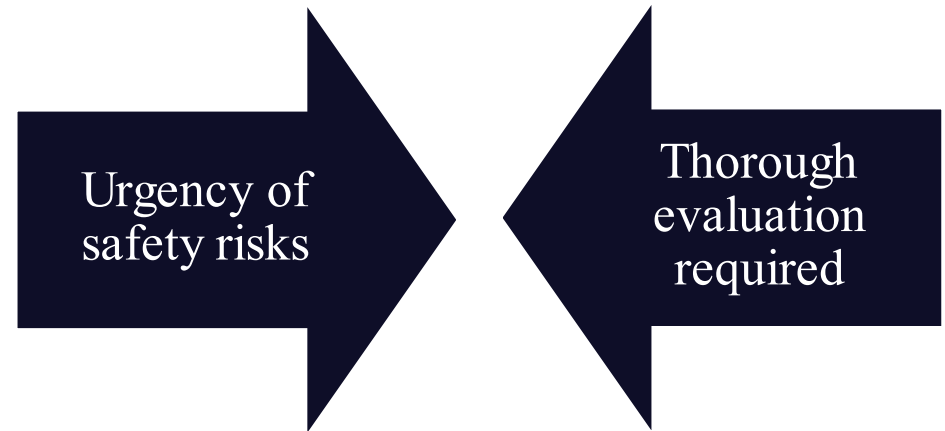


# LOGISTICS CHALLENGE 2

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## RECORDS MANAGEMENT

- Time Urgency – safety issues are often obvious with dire consequences of delay in evaluations
- Challenges in obtaining background information and medical records
  - Absent
  - Contact information only – records collection required
- Person and/or collateral may be uncooperative or incapable



# LOGISTICS CHALLENGE 3

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## ADAPTING PRACTICE CHALLENGE

- Substantial fluctuation in referral rate across months
- Frequent cancellation or postponement
- Arrival without support person, lunch, transportation plan
- Inability to tolerate assessment in single session but low likelihood of return for completion
- Lobby activity patterns
  - Client behavior challenges
  - Accompanying staff added volume

# LOGISTICS CHALLENGE 4

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## PAYMENT

- Legal and compliance issues
  - When does capacity question require health evaluation that can legitimately be billed to Medicare?
  - How provide reduced fee services without being in Medicare non-compliance with the rest of the practice?
- Exceeding the APS budget
  - APS has static budget over many years despite escalating client volume
  - Low fee established for grant period but, how would that prepare for sustainability?
- Time estimates were based on existing providers' patterns BUT standards of practice now require more comprehensive evaluation



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# Strategies for Success

# UNDERSTAND ORGANIZATIONAL CONTEXTS

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- Budgets of both organizations for evaluations
- APS
  - attorney requirements for guardianship petitions
  - Staff turnover rates – shape need for ongoing cross-training of evaluation process
  - Processes for sending referrals – centralized or distributed
- Evaluator Procedures
  - Current standards of practice for evaluation
  - Evaluation processes
  - Referral, scheduling and records request procedures
- Probate judge preferences and procedures related to legal capacity cases (reporting and testimony)

# INVEST IN CROSS-TRAINING

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- AC staff attended APS staff meetings
  - Asked for help identifying the “rubs” – what was and wasn’t working
  - Worked together on referral process
  - Established relationship/rapport
    - Key to communication on tough cases
    - Fostered trust
    - Worked out preferences for arranging initial referral calls
    - Addressed difficult outcomes on cases where person still meets standard for having capacity but is struggling in ways that will take time from APS staff
  - Provided education on procedures for evaluating capacity

# ESTABLISH POINT PERSONS IN EACH AGENCY FOR EACH “RUB”

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- Establish specific person to address urgent and/or recurring difficulties
  - Scheduling, cancellations, postponements
  - Clarifying referral question
  - Obtaining records
  - Obtaining consent to evaluate
  - Providing feedback on findings

# IMPROVE EFFICIENCY OF EVALUATION PROCESS

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- Establish decisional algorithm for the scope of testing required for types of referrals
- Automate test scoring programs
- Build templates for report structures

# ADDRESS EVALUATION LOCATION DILEMMA: IN SITU VS OFFICE

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- In situ evaluation
  - offers option for direct observation of living environment, performance of ADLs or IADLs in personal environment, safety risk assessment
  - Data may be available from APS or other agency case managers
- In situ evaluation is challenging
  - Time/effort to go to person
  - Standardized setting which is assumed for many tests
  - Practical challenges – space, seating, lighting, privacy
- Clinic-based evaluations
  - Meet conditions for standardized administration of tests
  - Must be adapted to accommodate this clientele – waiting areas, presence of support persons, cleaning support when clients are incontinent or ill

# ALTER FRONT OFFICE PROTOCOLS

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- Conduct in-depth screening of referrals to ensure appropriateness before scheduling – more time and often collaterals are needed
- At time of scheduling:
  - ▶ Require a support person to attend
    - Identify transportation challenges that could interfere with attendance
    - Establish emergency contact prior to arrival on site in case of need to call for emergency assistance
    - Obtain permission to initiate records requests immediately
- Schedule in ways that accommodate high no-show rate
- Day before appointment reminder call about specific preparation for the day (length of time, need to provide snacks, need for support person, clarification about emergency procedures)

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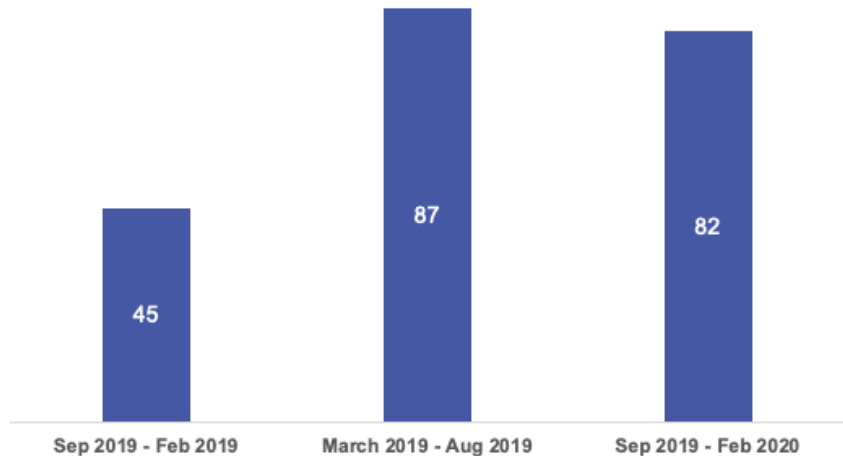
# Outcomes



# SERVICES DELIVERED

- Range of 8-20 per month
  - Far fewer than estimated need with considerable fluctuation
  - Many partners' estimates included cases that would actually come through APS
  - Actual referrals that come and complete evaluation are lower than those in which APS staff see the need
- Time investment much greater per case than anticipated

The Number of Unique Referrals Across the Entire Grant Period



# STRATEGIES PRODUCED INCREASED KNOWLEDGE

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- Capacity Evaluations
- Meaning of report
- Process - how to work with partner agency

# REFERRAL PROVIDERS' KNOWLEDGE OF CAPACITY EVALUATIONS INCREASED AFTER WORKING WITH THE AGING CENTER

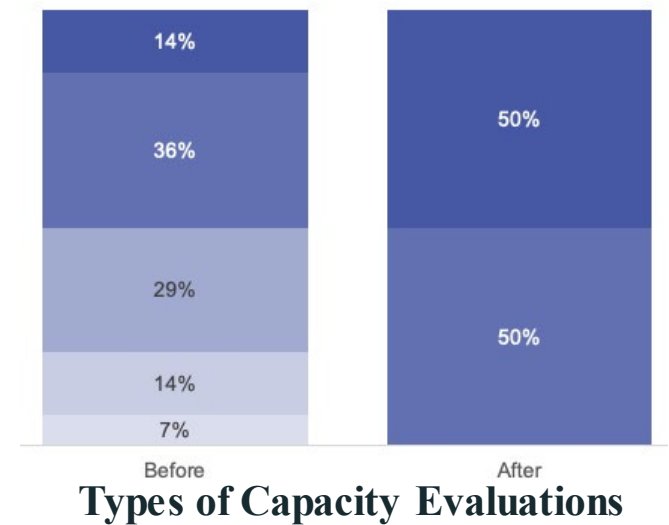
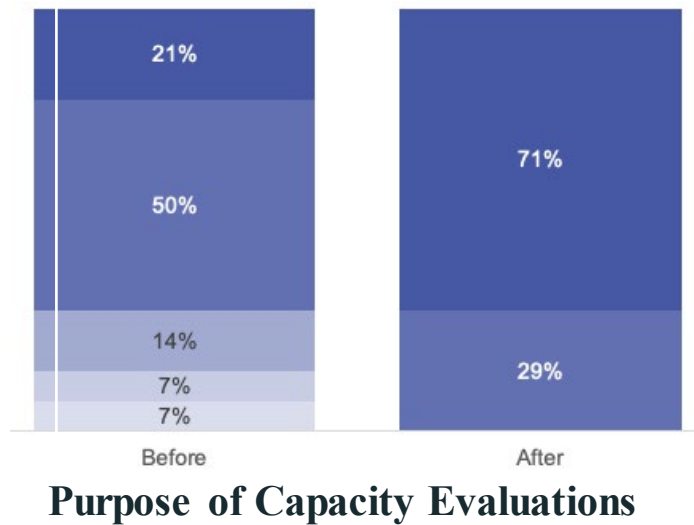
A lot of knowledge

Some knowledge

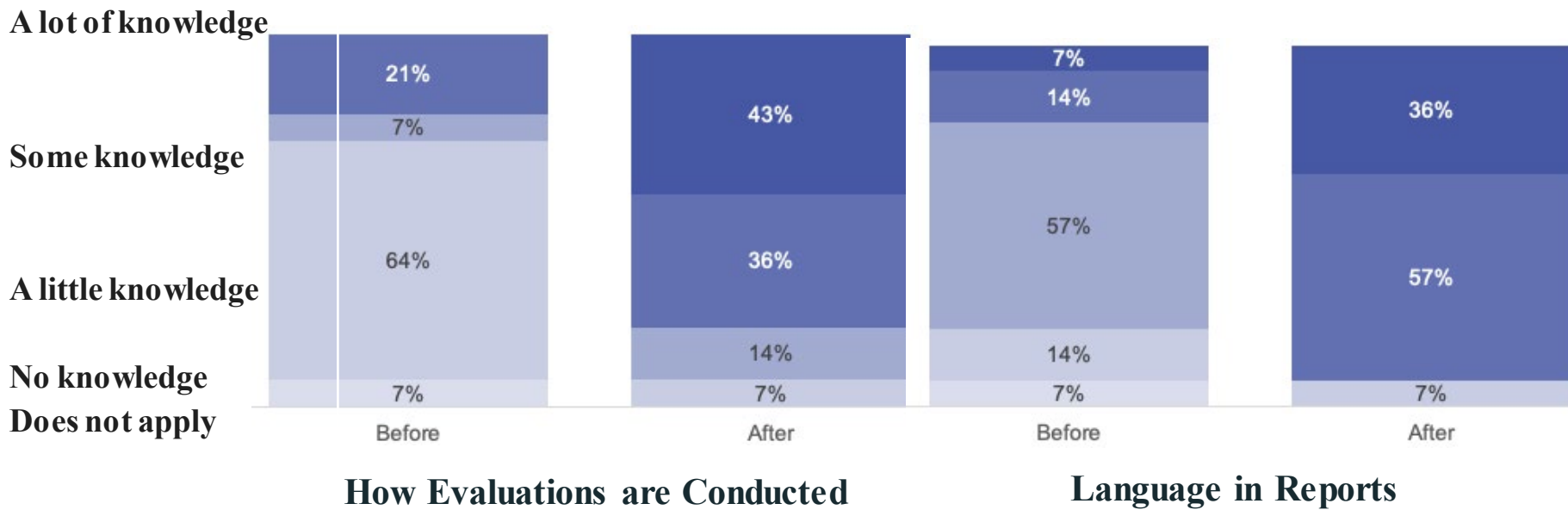
A little knowledge

No knowledge

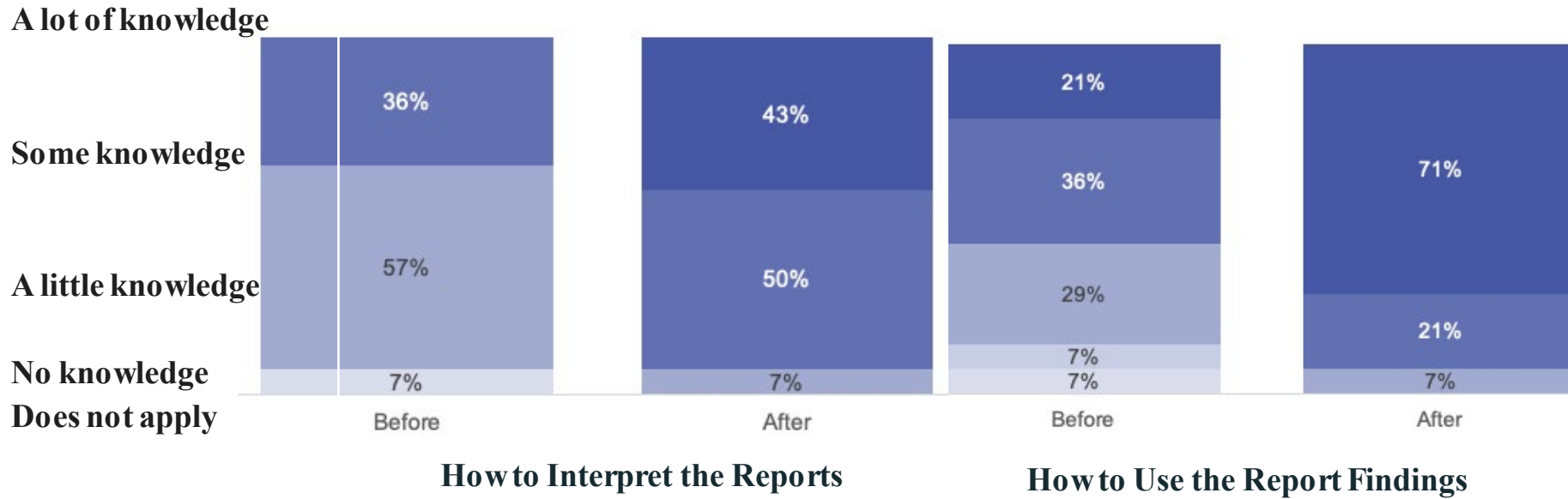
Does not apply



# REFERRAL PROVIDERS' KNOWLEDGE OF AGING CENTER'S PROCESS INCREASED AFTER WORKING WITH THE AGING CENTER



# REFERRAL PROVIDERS' KNOWLEDGE OF HOW TO USE AND INTERPRET CAPACITY EVALUATION REPORTS INCREASED



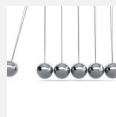
## CONCLUSIONS



Effective partnership requires far more than referral



Building an evaluation workforce is a substantial challenge rarely addressed in formal training settings



Policy solutions to payment issues are needed urgently

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# Q&A

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DEPARTMENT OF JUSTICE

# ElderJustice INITIATIVE

Thank You

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