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**Report to  
The Vermont Legislature**

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**Second Report  
on the status of the Department of Disabilities, Aging and Independent Living's  
progress toward implementation of Act No. 158 of 2014**

**In Accordance with 2014 Acts and Resolves No. 158, Sec. 13(c): An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury.**

**Submitted to: Representative Maxine Jo Grad, Chair,  
House Committee on Judiciary**

**Senator Dick Sears, Chair,  
Senate Committee on Judiciary**

**Representative Ann Pugh, Chair,  
House Committee on Human Services**

**Senator Claire Ayer, Chair,  
Senate Committee on Health and Welfare**

**CC: Hal Cohen, Secretary, Agency of Human Services**

**Submitted by: Susan Wehry, M.D., Commissioner  
Department of Disabilities, Aging and Independent Living**

**Prepared by: Bard Hill, Director  
Policy, Planning and Analysis**

**Report Date: February 1, 2015**



**AGENCY OF HUMAN SERVICES**

**Department of Disabilities, Aging and Independent Living**

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## I. Executive Summary

This report is submitted pursuant to 2014 Acts and Resolves No. 158, Sec. 13(c):

“(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare on the status of the Department’s progress toward implementation of this act. The status reports shall include updates on the Department’s progress in evaluating best practices for treatment of persons with traumatic brain injuries who are unable to conform their behavior to the requirements of the law, and in identifying appropriate programs and services to provide treatment to enable those persons to be fully reintegrated into the community consistent with public safety. The status reports shall also include updates on the Department’s progress on the design of the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.”

<http://www.leg.state.vt.us/docs/2014/Acts/ACT158.pdf>

Act 158 required two initial reports, one from the Court Administrator and one from the Department of State’s Attorneys and Sheriffs, both of which would inform the work of DAIL. These reports were responsive to the legislative directive. However, due to current limitations in evaluations, data collection, and data reporting, the reports are unable to provide predictive information regarding the specific numbers of people with traumatic brain injury who might be served under a proposed program.

Act 158 authorized \$50,000 to research and design a program that meets the intended purposes of the Act. DAIL distributed a request for proposals (RFP) based on this funding, resulting in a contract with Flint Springs Associates in November 2014. DAIL created a workgroup to guide the contractor’s work. This workgroup includes staff from DAIL and the Department of Mental Health.

DAIL will proceed to work with Flint Springs Associates and the workgroup to research and design a program that meets the intended purposes of the Act. Planned future activities and timeline are presented in the conclusions of this report.

## II. Introduction

The mission of the Department of Disabilities, Aging and Independent Living is to make Vermont the best state in which to grow old or to live with a disability ~ with dignity, respect and independence. We strive to support quality, access, flexibility and choice in all of our programs. DAIL's strategic plan aligns to the Agency of Human Services priority goals that support individuals and families by 1) decreasing the lasting impacts of poverty and creating pathways out of poverty, 2) promoting health, wellbeing, and safety, 3) enhancing program effectiveness, accountability for outcomes, and workforce development and engagement, and 4) ensuring all Vermonters have access to high quality health care.

This report is submitted pursuant to 2014 Acts and Resolves No. 158, Sec. 13(c):

“Sec. 13. REPORTS

...

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare on the status of the Department's progress toward implementation of this act. The status reports shall include updates on the Department's progress in evaluating best practices for treatment of persons with traumatic brain injuries who are unable to conform their behavior to the requirements of the law, and in identifying appropriate programs and services to provide treatment to enable those persons to be fully reintegrated into the community consistent with public safety. The status reports shall also include updates on the Department's progress on the design of the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.”

<http://www.leg.state.vt.us/docs/2014/Acts/ACT158.pdf>

This is consistent with DAIL's current roles in serving people with traumatic brain injuries and in serving people with developmental disabilities who are diverted from the criminal justice system.

### Current Services for People with Traumatic Brain Injury

DAIL currently manages a program that serves people with Traumatic Brain Injury. Approximately 75 people receive services each month through this program, with an annual budget of nearly \$5 million. The primary focus is

rehabilitation following moderate to severe brain injury, helping people transition from hospitals and facilities to community-based settings. Services are intended to support individuals to achieve their optimum independence and help them return to work. Some people receive specialized long term support services.

<http://www.ddas.vermont.gov/ddas-programs/tbi/programs-tbi-default-page>

### Developmental Disabilities: Commissioner Custody

Current statute (13 V.S.A. § 4801) provides a vehicle by which people with intellectual disabilities may be found not responsible for their conduct and diverted from the criminal justice system due to their disabilities. Under related statute (18 V.S.A. Chapter 206) such people may be committed to the custody of the DAIL Commissioner for custody, care, and habilitation for an indefinite or a limited period. As defined in statute, a "person in need of custody, care, and habilitation" is a person with an intellectual disability who presents a danger of harm to others and for whom appropriate custody, care, and habilitation can be provided by the Commissioner in a designated program.

<http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=18&Chapter=206>

This bears some similarity to the apparent intent of the new legislative language regarding people with traumatic brain injuries.

### **III. Court Administrator's Report**

Act 158 required the Court Administrator to submit a report to the Legislature:

“Sec. 13. REPORTS

...

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary the House Committee on Human Services, and the Senate Committee on Health and Welfare on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to stand trial. The report shall include a breakdown indicating how many orders were based on mental illness, developmental disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.”

DAIL received this report on September 11, 2014. The report cited the work produced by the Department of State’s Attorneys and Sheriffs in a separate report. Highlights:

The Report to the Legislature from the Department of State’s Attorneys and Sheriffs contains the detailed findings based on the review of the sanity/competency evaluations in 242 files in Chittenden and Franklin counties. With respect to the specific categories of diagnoses requested by the Legislature for this report, a summary of the data reveals the following:

Diagnosis	# of Cases Chittenden	# of Cases Franklin	# of Cases Total	% of the 242 Cases Reviewed
Mental Illness	152	25	177	73%
Developmental Disability based on Mental Retardation or Intellectual Disability	42	13	55	22%
Traumatic Brain Injury	9*	0	9	3.7%

*\*Of the 9 cases where there was a diagnosis, 7 cases involved the same individual.*

The breakdown in terms of the competency/sanity findings between mental illness, developmental disability and traumatic brain injury, is as follows:

Diagnosis	Not Competent and/or Not Sane
Mental Illness - only	60
Developmental Disability - only	8
TBI – Only	0
Mental Illness and Developmental Disability	8
Mental Illness and TBI	2
Other	5*

*\*In four cases, the data provided by the Department of State’s Attorneys and Sheriffs do not indicate the reason for the finding that the defendant was not competent or not sane, or both.*

It is interesting to note that while there were 9 cases altogether involving a TBI diagnosis, there was a finding that defendant was not competent in only 2 of those cases. In the other seven cases, the defendant was determined to be competent and sane. As noted above, seven of the nine cases involved the same defendant. One

could speculate that that was the same defendant who was also found competent and sane, but it would take a closer look at the data to confirm that conclusion. In both cases where the defendant was determined to have TBI, the defendants were also diagnosed with a mental illness.

While it would be unwise to extrapolate too much from a review of 242 cases from two counties which represent only one third of the total number of filings in the State, it is clear that the diagnosis of TBI as a result of a competency/sanity evaluation pursuant to 13 V.S.A. § 4823 is a relatively rare occurrence. One possible explanation is that competency and sanity evaluations are only ordered after the charge is brought and the defendant is arraigned. If the TBI condition is known to the State's Attorney at the time he/she decides to bring charges, he/she may opt to follow an alternative route such as pursuing a commitment to DAIL through the civil process rather than bringing a charge when there is a significant likelihood that the charge will eventually be dismissed based on a finding that the defendant is not competent to stand trial. With mental illness or a developmental disability, the condition may be known at the time of charging, but a finding of incompetency is less of a foregone conclusion. The issue will be the degree of impairment as a result of the diagnosis.

*(COURT ADMINISTRATOR'S REPORT –ACT 158 LEGISLATIVE REPORT – SEPTEMBER 2014)*

The report submitted by the Court Administrator was responsive to the legislative directive. However, due to current limitations in evaluations, data collection, and data reporting, the report is unable to provide predictive information regarding the specific numbers of people with traumatic brain injury who might be served under a proposed program.

#### **IV. Department of State's Attorneys and Sheriffs Report**

Act 158 required the Department of State's Attorneys and Sheriffs to submit a report to the Legislature:

“Sec. 13. REPORTS

...

(b)(1) On or before September 1, 2014, the Department of Sheriffs and State's Attorneys *[sic]* shall report to the House and Senate Committees on Judiciary regarding the charging practices of State's Attorneys for persons with traumatic brain injury.

(2) The report shall describe the number of cases from July 1, 2011 through June 30, 2013, broken down by the type of criminal charge, in which a person with traumatic brain injury was:

(A) charged with a criminal offense, including the disposition of the offense;

(B) charged with a criminal offense and the charges were dismissed because the person was suffering from a traumatic brain injury; and

(C) arrested for, or otherwise believed to be responsible for, a crime and criminal charges were not brought because the person was suffering from a traumatic brain injury.

(3) A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.”

DAIL received this report on August 29, 2014. Highlights:

1. Chittenden- 248 cases

Of the 34,848 criminal cases filed in Vermont between July 1, 2011 and June 30, 2013, 8,950 (26%) were filed in Chittenden County. We examined 248 cases where the prosecutor, defense attorney or the court ordered a competency or sanity evaluation. Of those 248 cases, 39 (15.7%) could not be located. Of the remaining 209 cases, the business analyst collected data regarding the diagnoses, competency results and sanity findings. These results are reported below. Nearly every evaluation contained multiple diagnoses, and the sum totals and percentages below account for each diagnosis in each case.

CHITTENDEN COUNTY MENTAL HEALTH EVALUATION DIAGNOSES

Mental Illness	152 cases 72.72%
Substance Abuse	108 cases 51.67%
Traumatic Brain Injury	9 cases 4.31%
Intellectual Disability	23 cases 11%
Mild Mental Retardation	19 cases 9.09%
Personality Disorder	71 cases 33.97%
Not competent to stand trial	50 cases 23.92%
Insane at the time of the offense	50 cases 23.92%

2. Franklin- 41 cases

Of the 34,848 criminal cases filed in Vermont between July 1, 2011 and June 30, 2013, 2,622 (8%) were filed in Franklin County. We examined 41 cases where the prosecutor, defense attorney or the court ordered a competency or sanity evaluation. Of those 41 cases, 8 (19.5%) could not be located. Of the remaining 33 cases, the business analyst collected data regarding the diagnoses, competency results and sanity findings. These results are reported below.

## FRANKLIN COUNTY MENTAL HEALTH EVALUATION DIAGNOSES

Mental Illness	25 cases 75.6%
Substance Abuse	14 cases 42.4%
Traumatic Brain Injury	0 0%
Intellectual Disability	7 cases 21.2%
Mild Mental Retardation	6 cases 18.2%
Personality Disorder	7 cases 21.2%
Not competent to stand trial	14 cases 42.4%
Insane at the time of the offense	12 cases 36.3%

Of the TBI cases, one individual accounted for seven separate dockets. Those seven dockets include various charges for domestic assault, retail theft less than \$900, disorderly conduct and violation of conditions of release. The other two individuals diagnosed with TBI accounted for the remaining two dockets. One individual faced a retail theft (less than \$900) misdemeanor charge and the other faced a misdemeanor simple assault charge. Of the total number of TBI cases, six resulted in a dismissal and three resulted in either a plea of guilty or as an adjudication of guilty. One individual's evaluation resulted in a finding of both incompetency to stand trial and in a finding of insanity at the time of the alleged offense. Only one TBI case contained no co-occurring diagnosis. The remaining eight involved co-occurring diagnoses for both substance abuse and mental illness. Given the small number of cases with a TBI diagnosis, there is not enough data to extrapolate to predict with any degree of accuracy the potential number of TBI cases in the State.

*(State's Attorneys and Sheriffs TBI Legislative Report September 2014)*

The report submitted by the Department of State's Attorneys and Sheriffs was responsive to the legislative directive. However, due to current limitations in evaluations, data collection, and data reporting, the report is unable to provide predictive information regarding the specific numbers of people with traumatic brain injury who might be served under a proposed program.

### **V. Contracted Activities**

Act 158 authorized \$50,000 in funding for DAIL to research and design a program that meets the intended purposes of the Act:

#### **“Sec. 15. APPROPRIATION**

The amount of \$50,000.00 is appropriated in fiscal year 2014 from the Global Commitment Fund to the Department of Disabilities, Aging, and Independent Living to research and design a program that satisfies this act's requirement that

the Department treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial. To the maximum extent possible, the Department shall design the program to be integrated into the Department's existing framework of services.”

DAIL distributed a request for proposals ('RFP') for a contractor to perform this work on August 12, 2014. Proposals were received in September 2014, leading to the execution of a contract with Flint Springs Associates on November 15, 2014. The staff now working under this Contract are:

- Joy Livingston, PhD, Senior Partner, Flint Springs Associates
- Donna Reback, MSW, LICSW, Senior Partner, Flint Springs Associates
- Trevor Squirrel, MS, Executive Director, Brain Injury Association of Vermont

DAIL also created a workgroup to guide the contractor's work. This workgroup includes staff from DAIL and the Department of Mental Health. DAIL is actively working with Flint Springs Associates and the workgroup to research and design a program that meets the intended purposes of the Act. This includes the following activities:

### **1. Review of Best Practices**

The Contractor will identify best practices for treatment of the target population (persons with TBI who are unable to keep their behavior within the requirements of the law) that enables them to be fully reintegrated in the community consistent with public safety. This review will be guided by Vermont's interest in implementing best practices. Because few models relevant to the target population currently exist, the review will seek to identify best practices utilized for the target population as well as other populations whose competence may be similarly impaired due to intellectual and/or psychiatric disabilities.

### **2. Develop Practice Recommendations for Effective Treatment Practices**

Using the findings of the review of best practices, the Contractor will develop practice recommendations for review by the State workgroup. The Contractor will convene and facilitate a meeting to review and refine the practice recommendations with the State workgroup. The Contractor will incorporate the recommended practices into a draft Checklist of Best Treatment Practices. The Checklist is intended to guide the Contractor's review of programs and services in Vermont and will include evidence of best practices in these programs and services.

### **3. Review of Programs and Services in Vermont**

The Contractor will implement a review of programs and services in Vermont through a combination of activities: review of written program policies and practices; site visits to existing programs; interviews with key informants; reviews of relevant

reports; review of relevant legislation and policies; examination of available, relevant cost information; and review and assessment of the quality, accessibility and accuracy of tracking, processing and outcome data regarding the target population. The Contractor will prepare a written summary of the findings of the review of Vermont programs and services, representing a Contract deliverable. The summary will describe the degree to which current services and programs meet the elements on the Checklist, identify programs that have the capacity and willingness to implement best practices, and describe significant challenges to be addressed by individual providers and the State as a whole.

#### **4. Recommendations for Implementing Effective Programs and Services**

The Contractor will meet with the State workgroup to review the written summary of findings and to produce final recommendations for implementation of programs and services. Recommendations will address:

- Assessment procedures for the presence and severity of traumatic brain injury
- Admission criteria including inclusionary and exclusionary criteria, within the parameters established by statute
- Approaches that achieve the restoration of individual competency
- Assessment of individual functioning and recovery/rehabilitation including risk to public safety
- Discharge criteria, within the parameters established by statute
- Provider standards or qualifications
- Program development or procurement
- Approaches for individuals who refuse to actively participate in rehabilitation
- Staff competence: recommendations to build knowledge, skill and competence among staff within the criminal justice and provider system to address the needs of the target population, including steps and resources needed
- Recommendations to create an information system that accurately tracks needs and outcomes for the target population, including steps and resources needed

#### **5. Cost Estimates**

The Contractor will develop cost estimates for recommended programs and services. The Contractor will produce a written summary of estimated costs associated with implementing recommended programs and services, including documentation of assumptions and data used to arrive at the cost estimates.

#### **6. Draft Report**

The Contractor will prepare a draft summary report describing the activities, deliberations, findings, and recommendations under the Contract. The draft report will include an executive summary that describes key highlights, findings, and/or recommendations. The Contractor will facilitate a meeting with the State workgroup to produce final recommendations and a final report.

## 7. Final Report

The Contractor will prepare a final report that incorporates feedback from the State workgroup. The final report will respond to statutory requirements and will be suitable for use in requesting legislative approval and funding for implementation of a program.

## VI. Conclusions and Next Steps

DAIL is actively responding to Act 158. Due to limitations in evaluations, data collection, and data reporting, the reports from the Court Administrator and the Department of State's Attorneys and Sheriffs were unable to provide predictive information regarding the numbers of people with traumatic brain injury that might be diverted from the criminal justice system. DAIL will continue to work with the Contractor to research and design a program that meets the intended purposes of the Act.

Anticipated future timeline and activities:

<b>Date</b>	<b>Activity/deliverable</b>
February 1, 2015	Contractor completes a review of best practices. Contractor prepares a written description/checklist of best practices and submits this to DAIL.
March 1, 2015	Contractor completes a review of existing Vermont programs and services. Contractor prepares a written summary of review findings and submits this to DAIL.
March 10, 2015	Contractor prepares draft report of program and service recommendations, including cost estimates, and submits this to DAIL.
April 1, 2015	Contractor prepares a final report including program and service design recommendations and cost estimates, and submits this to DAIL.
April 30, 2015	DAIL submits a program recommendation/plan and cost estimates to the Senate and House Committees on Judiciary and on Appropriations with the level of support for implementation and priority consistent with the Administration's goals.