

VERMONT LEGAL AID, INC.

DISABILITY LAW PROJECT

7 COURT STREET - P.O. Box 606
MONTPELIER, VERMONT 05601
(802) 223-6377 (VOICE AND TTY)
FAX (802) 223-7281
(800) 789-4195

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

January 29, 2014

Hon. William J. Lippert, Chair, House Committee on Judiciary
Statehouse
115 State Street
Montpelier, VT 05633

H.555 - An Act Relating to the Commitment of a Criminal Defendant who is Incompetent to Stand Trial Because of a Traumatic Brain Injury

Dear Chair Lippert and Members of the Committee:

The Disability Law Project of Vermont Legal Aid, Inc. represents people with intellectual, developmental and physical disabilities, including individuals with traumatic brain injury (“TBI”), in a broad range of legal matters.

We submit the following concerns and suggestions for the Committee’s consideration about the legislation as it is currently written:

- We encourage careful consideration of the definition of “traumatic brain injury” as it may be incorporated into existing or new statutory schemes;
- We support the proposition that a defendant in a criminal case may be diagnosed as having TBI, and that as a result of such diagnosis, may be deemed incompetent to stand trial;
- To the extent there may be civil commitment for people with TBI who have been found incompetent and determined to be “dangerous,” we submit that the commitment and review process give the individual similar due process rights as currently afforded individuals with intellectual disabilities and mental illness, including:
 - The right to free, appointed counsel;
 - The right to an evidentiary hearing subject to the Vermont Rules of Evidence and Rules of Civil Procedure in which the state bears the burden of proof;
 - Annual judicial reviews initiated by the state to evaluate the need for ongoing commitment;
- If Vermont Legal Aid, Inc. Disability Law Project were to be the court appointed counsel in annual judicial reviews of individuals committed under this provision -- as it currently

is for individuals with developmental disabilities committed pursuant to “Act 248” -- it would anticipate requiring additional funding to provide such representation;

- Any commitment ordered pursuant to this process must serve a meaningful purpose, with the goal of helping the individual safely reintegrate into society, through the provision of appropriate services, supports and treatment. However, the Disability Law Project believes that such services, supports and treatment do not currently exist sufficiently to serve people with TBI who may be committed.

In closing, the Vermont Legal Aid, Inc. Disability Law Project wishes to extend its appreciation for the opportunity to be heard on these exceedingly important issues, and looks forward to providing additional testimony in the future, as may be necessary.

Respectfully submitted,

Laura A. Gans,
Staff Attorney, Vermont Legal Aid, Inc. Disability Law Project
(802) 223-6377, ext. 328
lgans@vtlegalaid.org

This testimony to be provided on January 30, 2014 by Laura A. Gans, Staff Attorney, Vermont Legal Aid, Inc. Disability Law Project, Montpelier, Vermont.