

House Judiciary
Testimony on H.555
January 17, 2014
DAIL Commissioner Susan Wehry, M.D.

H. 555 proposes to commit to the custody of the Commissioner of the Department of Mental Health individuals with a traumatic brain injury who have been found incompetent to stand trial.

The bill is problematic in many ways and DAIL submits the following for your consideration:

- The designation *traumatic brain injury* is too broad to be meaningful
 - It applies to a wide range of conditions resulting from high school football concussions to snowboarding and motor vehicle accidents to IEDs in Iraq.
 - The cognitive impairment resulting from it can range from mild to severe
 - The areas of cognitive ability impacted can vary widely
 - The simple fact of having a history of a traumatic brain injury does not necessarily imply that it accounts for present-day behavior; accounts for the finding of incompetence to stand trial; or, indicates a need for custody of any kind
- In general, competency (or capacity to do something of any kind – like stand trial) is a point-in-time determination and can vary. This is often the basis for commitment of persons with serious mental illness for involuntary treatment- to restore competency to stand trial. Once competency is restored, a person may stand trial. H.555 seems to propose an indefinite period of commitment solely for public safety: this is not the role of the Department of Mental Health (DMH) or of the Department of Disabilities, Aging and Independent Living (DAIL).
- The standard for determining whether a person is competent to stand trial is narrowly defined in forensic psychiatry and the bar is low. Whether to be held accountable for an action by virtue of a mental illness, mental defect or traumatic brain injury may be raised as a defense but it is an entirely different determination. H. 555 appears to blur that distinction.
- A finding of incompetence to stand trial for a particular alleged crime does not necessarily imply a need for custody against future potential crimes nor does it imply dangerousness to self or others. From a civil liberties standpoint, involuntary custody would not be acceptable in the absence of any indication of imminent danger to self or others.
- An outcome of H.555 might be a significant increase in appeals and the need for ongoing and potentially burdensome review; it might also lead to an increase in referrals for cognitive rehabilitation. At present, there is limited capacity in either Department to absorb additional individuals in need of treatment or rehabilitation and services are limited to those with significant functional impairment related to a moderate or severe traumatic brain injury. Moreover, the intensity of intervention needed to even potentially restore competency is costly and lengthy and current models of care are based on voluntary participation.