

Report to Vermont Legislature

Act 158 (2014)

Submitted to:

Sen. Jane Kitchel, Chair, Senate Committee Appropriations
Sen. Dick Sears, Chair, Senate Committee on Judiciary
Rep. Mitzi Johnson, Chair, House Committee on Appropriations
Rep. Maxine Grad, Chair, House Committee on Judiciary

Submitted by:

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Department of Disabilities Aging and Independent Living

April 29, 2015

1. Executive Summary:

This document represents the response of the Department of Disabilities, Aging and Independent Living to the Vermont legislature pursuant to Act No. 158 of 2014. Under the Act, the Department was directed to:

1. Evaluate best/evidence-based practices for habilitation of persons with significant traumatic brain injuries who are unable to conform their behavior to the requirements of the law and who pose an ongoing risk to public safety.
2. Design services based on best/evidenced based practices that would enable persons who are found incompetent to stand trial or not guilty by reason of insanity because of a traumatic brain injury (TBI) and who pose an ongoing risk to public safety to be fully reintegrated into the community consistent with public safety.
3. Provide a cost estimate for delivery of such services based on best available data in the state of Vermont.

The Act authorized funding for independent researchers to identify best practices, recommend appropriate programs and services, and estimate costs.

The researchers were unable to identify any best practices with respect to the target population or desired outcomes. A promising practice from Canada known as Community Adult Mentoring and Support Program (CAMS) has not been specifically applied to this population and may merit further study in the future when staffing resources are available. CAMS is not dissimilar to the COSA model which has been successfully utilized in Vermont for adjudicated sex offenders.

As reportedly previously by the Department of State's Attorneys & Sheriffs (September 2014) and Office of Court Administrator (September 2014) pursuant to this Act, data regarding the numbers of Vermonters to be served is sparse. What data is available suggests the numbers of people to be served are likely to be very low and that people involved in criminal justice system are extremely likely to have multiple co-occurring conditions including traumatic brain injuries, substance abuse, mental health conditions, and socioeconomic challenges.

Based on the absence of any identified best practices, estimated low numbers of people and compelling evidence of multiple co-occurring conditions, **the Department recommends** that the legislature:

1. **Forgo creation of a separate program** for habilitation of persons with significant traumatic brain injuries who are unable to conform their behavior to the requirements of the law and who pose an ongoing risk to public safety.
2. In its stead, **endorse the creation of an interdisciplinary, interdepartmental team to further review** the needs of people who are found incompetent to stand trial or not guilty by reason of insanity because of a significant traumatic brain injury and who are found to pose an ongoing risk to public safety. The team would be chaired by AHS.
3. **Charge the team with reporting to the legislature by April 30, 2016** regarding the activities of the team including numbers of people referred, numbers of people served within existing programs, costs of those services, outcomes achieved, and any recommendations for further implementation of the Act.

2. Statutory basis:

In 2014, the Vermont legislature passed Act No. 158, an act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury. The statute directed the Department of Disabilities, Aging, and Independent Living to:

“...evaluate 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.”

This evaluation, supported by researchers whose activities were funded by Act 158, was intended to lead to a plan to serve such people with traumatic brain injury:”

“On or before April 30, 2015, the Department of Disabilities, Aging, and Independent Living shall request approval and funding from the Senate and House Committees on Judiciary and on Appropriations for the Department’s plan to implement this act. The Department shall commence implementation of the plan, including requesting that it be included under the Global Commitment Waiver by the Centers for Medicare and Medicaid Services, if the plan is approved by a majority vote of the Senate and House Committees on Judiciary and funded by a majority vote of the Senate and House Committees on Appropriations.”

3. Independent research report:

In response to this legislation, DAİL contracted with Flint Springs Associates (FSA) and the Brain Injury Association of Vermont (BIA-VT) to produce an independent research report. The report was to estimate the numbers of people to be served, to recommend appropriate programs and services with the intent of restoring individual competency and/or reducing individual risk to public safety. The researchers were also charged with producing cost estimates based on the estimated numbers of people to be served and the estimated costs of recommended programs and services. The research report was unable to fully meet these objectives due to the absence of data and the absence of best practices, as described below.

Findings:

1. Vermont does not collect or maintain good data regarding the number of persons with brain injuries who are engaged in criminal behavior, including individuals who are found incompetent to stand trial or not guilty by reason of insanity because of a traumatic brain injury (TBI). The limited data that does exist suggests that the numbers of individuals found incompetent to stand trial or not guilty by reason of insanity due to TBI, is likely to be small.
2. No model exists to address community safety and community reintegration for persons found incompetent to stand trial or not guilty by reason of insanity due to a TBI.
3. Current practices in other states focus on screening for and identifying TBI among convicted offenders, not including people found incompetent to stand trial or not guilty by reason of insanity. Vermont does not currently screen or identify TBI among persons in the Vermont corrections system.

4. National TBI experts felt that restoring competence to stand trial would require some degree of cognitive rehabilitation. The experts believe that if a person experiences a TBI more than two years prior to being found incompetent, the probability of restoring competence to stand trial is low. (Note that the national experts were not familiar with Vermont's legal standard of competence, and did not have specific experience in attempting to restore legal competence.)
5. Interventions should be tailored to individual strengths and needs. Interventions should be based on information gained through neuropsychological evaluations, criminogenic risk and needs assessment, medical history, medication history, co-morbidity issues, pre-morbid history, and other psychosocial information.

Conclusions:

The initial expectation was that best practices exist, and could be identified, for addressing reintegration and community safety for persons who present a danger of harm to others and found incompetent to stand trial or not guilty by reason of insanity due to a TBI. However, the research found that no best practices exist. As a result, the research did not lead to clear recommendations regarding best practices or programs and services.

The researchers recommended that an expanded study group of stakeholders be convened to refine a 'consensus' strategy. An expanded study group would address issues identified through the research to develop responses for persons with TBI who have been found incompetent to stand trial or not guilty by reason of insanity. The researchers made a number of specific recommendations for this study group to consider.

Because the researchers could not adequately define the numbers of people to be served or any best practices to be implemented, cost estimates are only gross approximations, based on comparisons to other public safety populations served in Vermont.

4. Basis for DAIL's Recommendations

Consistent with previous reports submitted to the legislature by the Department of State's Attorneys & Sheriffs (September 2014) and Office of Court Administrator (September 2014) pursuant to this Act, the researchers and the Department believe that the numbers of people to be served are likely to be very low. The available evidence suggests that these people are extremely likely to have multiple co-occurring conditions including traumatic brain injuries, substance abuse, mental health conditions, and socioeconomic challenges.

Because the researchers could not define the numbers of people to be served, the best practices to be used, the programs and services to be implemented, or cost estimates for providing such services, DAIL is unable to present a detailed plan for the implementation of the Act.

Based on the **estimated low numbers** of people and **compelling evidence of multiple co-occurring conditions**, the Department recommends that the legislature:

1. **Endorse the creation of an interdisciplinary, interdepartmental team** to review the needs of people who are found incompetent to stand trial or not guilty by reason of insanity because of a traumatic brain injury. The team would be **chaired by the Agency of Human Services Central Office**. Proposed membership should include:
 - a. The TBI rehabilitation program administrator in the Department of Disabilities, Aging and Independent Living
 - b. A representative from the Department of Mental Health
 - c. A neurorehabilitation expert from the field
 - d. A representative from the Department of Health Alcohol and Drug Abuse Programs
 - e. A representative from the Department of Vermont Health Access
 - f. A representative from the Department of Corrections
 - g. A representative from the Community Justice Center network
 - h. A person with a Traumatic Brain Injury
 - i. A representative from the Vermont Court system, representing the Criminal Division
 - j. A representative from the Department of State's Attorneys & Sheriffs, representing State's Attorneys
2. **Charge the team with reporting to the legislature by April 30, 2016** regarding the activities of the team including numbers of people referred, numbers of people served within existing programs, number of people, if any, on waiting list for services, costs of those services, outcomes achieved, and any recommendations for further implementation of the Act.
3. **Charge the team with identifying potential private or public funding** to explore implementing a **Community Adult Mentoring and Support (CAMS) Program** for persons with a traumatic brain injury who have committed a serious offense and who have been found incompetent to stand trial or not guilty by reason of insanity because of a traumatic brain injury and who continue to pose a risk to public safety.

4. **The Department does not recommend creating a new program.** If a new program were to be created, the total annual estimated cost, based on researchers' findings, is approximately **\$785,000** for up to five individuals. This includes:
 - a. Staffing: If a new program were created, DAIL would need 0.5FTE to administer the program at a cost of \$35,000 per year.
 - b. Assessments: Vermont judicial procedure currently provides for evaluations of competency, regardless of disability type. Existing competency tools do not assess risk to public safety or habilitation needs, including restoration of competence. Additional evaluations would be necessary for people with evidence of traumatic brain injury to further elucidate what interventions might be needed. This is described in the attached research report, pages 9 and 17-18. The costs of these assessments are estimated at \$5,000 per person; for five people the costs would be \$25,000.
 - c. Individualized service plans: The costs of providing individualized services are estimated at \$150,000 per person per year. At five people per year, this would represent \$750,000 (GF and/or federal funds) per year. The total annual cost estimate assumes some turnover and fewer than 365 service days for 5 individuals.