Office of Court Administrator
Patricia Gabel, Esq., State Court Administrator

ACT 158 Report
September 2014

Act 158 requires the Court Administrator to report to the House and Senate Committees on Judiciary, the House Committee on Human Services and the Senate Committee on Health and Welfare as follows:

> **Sec. 13. REPORTS**
>
> 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.

Staff from our Research and Information Services team, the Office of State's Attorneys and Sheriffs, the Department of Mental Health and the Department of Disabilities, Aging and Independent Living met several times to discuss the best possible method for fulfilling the reporting requirement for this act. Given that the data gathering

for this reporting would have to be a largely manual process, and that the timetable established by the Act required the production of a report by September 1, we agreed to focus our efforts on collecting data from the Chittenden and Franklin County criminal court docket. During the relevant period for this study (FY12 and FY13), criminal filings in Chittenden and Franklin counties combined represent one third (33.1%) of the criminal filings statewide.

The Court provided information from VTADS, our case management system, that identified the cases where the court ordered competency and/or sanity evaluations. A business analyst for the State's Attorneys and Sheriffs then utilized this information to examine each case flagged for a competency and/or sanity evaluation and recorded the diagnoses, findings and outcomes from the court ordered evaluation. The data from the State's Attorneys and Sheriffs does not indicate whether any of the defendants in the study were referred to the Department of Disabilities, Aging and Independent Living so we are unable to provide that information.

Diagnosis:

The Report to the Legislature from the State's Attorney and Sheriffs Association 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[1] or Intellectual Disability[2]	42	13	55	22%
Traumatic Brain Injury	9[3]	0	9	3.7%

Findings Regarding Competency and Sanity

Of the 242 cases reviewed, there was a finding that the Defendant was either not competent to stand trial or not sane at the time that the offense was committed or both in 83 cases or 34% of the cases reviewed. While there is a significant degree of overlap between the competency and sanity findings (i.e. there is a finding of both insanity and incompetency in the same case), the overlap is not complete.

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

[1] Mental retardation is clearly a diagnosis that is subsumed within the statutory definition of developmental disability. See 18 V.S.A. §8722(2)(A)

[2] Pursuant to Act 96, §2B, the term "Intellectual disability" replaces the term "mentally retardation" wherever that term appear in statute. See 1 V.S.A. §146.

[3] Of the 9 cases where there was a diagnosis, 7 cases involved the same individual.

Diagnosis	Not Competent and/or Not Sane
Mental Illness - only	60
Developmental Disability - only	8
TBI – Only	0
Mental Illness and Dev. Disability	8
Mental Illness and TBI	2
Other	5[4]

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. Given the mental illness diagnosis, they could legally have been committed to the custody of either the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822 or the Commissioner of Disabilities, Aging and Independent Living pursuant to 13 V.S.A. § 4823.

Conclusions

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

[4] In four cases, the data provided by the State's Attorneys does not indicate the reason for the finding that the defendant was not competent or not sane or both. See lines 3, 4 and 36 in the Franklin data and line 114 in the Chittenden data. In one case the diagnosis does not support a finding of incompetency. See line 18 from Chittenden data.

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.

In a modern case management system, it would not be difficult to determine the number of cases where the defendant was committed either to the Commissioner of Disability, Aging and Independent Living or the Commissioner of Mental Health. Also an electronic document management system would have allowed a review of the files electronically without having to pull each file out of a file cabinet. The State's Attorneys report notes that they were unable to find a certain number of files. There are all kinds of reasons why the paper file for the cases the business analyst wanted to look at were not in the file cabinet. If the file had been electronic, it would not have mattered as judges and court personnel can be working on a file that is still accessible electronically in such a modern system.