

**Department of State's Attorneys & Sheriffs
Bram Kranichfeld, Executive Director**

**TRAUMATIC BRAIN INJURIES AND CRIMINAL PROSECUTION
August 29, 2014**

This report is made pursuant to Section 13(b) of Act 158 of 2014 which required the Department of State's Attorneys and Sheriffs to report to House and Senate Judiciary Committees regarding cases involving persons with traumatic brain injury (TBI). Specifically, the Act requested data on the number of criminal cases involving defendants with TBI in fiscal years 2012 and 2013, the disposition of the offenses, and data on cases where individuals were believed to be responsible for a crime but charges were not filed because the person was suffering from TBI.

A. Summary

From July 1, 2011-June 30, 2013, psychiatric evaluators performed an estimated 289 competency and sanity evaluations ordered in criminal cases from both Chittenden and Franklin counties. Of these evaluations, 16.9% (49 cases) could not be located. Of the remaining 240 cases, the State's Attorneys reviewed the competency and/or sanity evaluations and outcomes. Focusing on the total number of traumatic brain injury (TBI) cases only, nine (9) dockets, all from Chittenden, reflected a diagnosis of TBI. Those nine cases reflect 3.75% of the total number of cases analyzed for this study. Of those nine dockets, one individual accounted for seven (7) cases. Of all cases analyzed (240 cases), 73.75% included a diagnosis of

mental illness, 12.5% included a diagnosis of intellectual disability, 10.4% included a diagnosis of mild mental retardation and 32.5% included a diagnosis of personality disorder. Of the same 240 cases analyzed, 26.7% resulted in a finding of incompetence to stand trial and 25.8% resulted in a finding of insanity at the time of the alleged offense.

B. Methodology

The Department of State's Attorneys and Sheriffs collaborated with the Court Administrators Office, the Department of Mental Health, and the Department of Disabilities, Aging and Independent Living to identify the best method for collecting this data, given time and resource limitations. The agencies explored several options, but realized that a manual review of each relevant case file would be necessary to meet the requirements of this study. Given the limited time and resources available to complete the study, the agencies agreed to limit the scope to two counties: Chittenden and Franklin. Chittenden County was chosen because it has the busiest criminal court in Vermont. Franklin was chosen as a useful point of comparison and may be more representative of the rest of the State. Out of the 17,184 criminal cases filed in Chittenden and Franklin Counties from July 1, 2011 to June 30, 2013, the court management system (VTADS) identified 248 cases in Chittenden County and 41 cases in Franklin County that reflected case flags for competency or sanity evaluations, for a grand total of 289. Of the 289 cases, 49 case files could not be located for use in this study. This study is thus limited to 240 cases from the Chittenden and Franklin County criminal dockets.

The Court Administrator's Office provided information on the number of cases where either the prosecution, defense or the court sought competency or sanity evaluations. A business analyst for the Department of State's Attorneys and Sheriffs then utilized the information received to manually review every case where VTADS flagged a case for a competency or sanity evaluation and recorded the diagnoses, findings and outcomes of each case.

Data collection and recording required approximately 40 personnel hours from this business analyst. The Court Administrator provided the data at a very minimal time investment. Data collected includes information (per docket) on diagnoses, competency and sanity depending on the nature of the evaluation sought.

C. Data Set

Given the time and resource restrictions for this study, data was collected only from Chittenden and Franklin Counties. Chittenden County is densely populated, provides more services, and carries a heavier case load than any other county in the State. Chittenden County also offers a variety of alternative criminal justice programs that were not accounted for in this study. Franklin County carries a smaller docket, and a small number of individuals accounted for a large portion of the evaluations ordered.

Some State's Attorneys handle civil mental health proceedings as well as criminal cases involving mental health evaluations. The State's Attorneys currently have no means of tracking civil mental health cases but hope to when a new case

management system is implemented. This data does not include cases where law enforcement did not refer charges for prosecution, cases where the State's Attorneys declined prosecution, cases referred to pre-charge programs, or cases where there were no criminal charges brought.

D. Findings

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	71 cases

Disorder	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%

Most cases involving a diagnosis include co-occurring diagnoses. A full report is available and attached as Appendix II to this report.

3. TBI cases

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.

4. Mental Illness

Out of the 241 cases reviewed, 177 cases reflect a diagnosis of mental illness. Of the cases where a diagnosis of mental illness existed, 52 cases (29.4%) resulted in

findings of incompetency and 54 cases (30.5%) resulted in a finding of insanity at the time of the alleged offense.

5. Co-Occurrences

In one hundred and eighty-one cases the defendant presented with co-occurring diagnoses. 66.3 % percent of cases included a co-occurring substance abuse diagnosis, 11.6 % included a co-occurring diagnosis of an intellectual disability, 13.3% reflected a diagnosis of mild mental retardation, and 42.5% reflected a diagnosis of personality disorder.

E. Qualifications and Suggestions

This study provides limited data on the mental health cases filed in court in Vermont. The cases used in this study include only those arraigned in Chittenden or Franklin counties. The data set includes only criminal cases filed in court where a party sought a competency or sanity evaluation.

1. Limitations on Data Collection

The Court Administrator's Office is only able to gather data where the county courts enter into VTADS case flags for competency or sanity evaluations. In investigating which courts to visit in order to manually review the case files, it came to light that at least one court had never entered a case flag for a competency evaluation, therefore making that county unavailable for this study. Additionally,

there may cases where an evaluation was requested but a flag was not entered into VTADS.

The State's Attorneys' database is unable to produce data reports regarding competency or sanity evaluations. It is also unable to produce data reports on cases in which the State's Attorney declined to file criminal charges because the person was suffering from TBI. All of the cases reviewed for this study involve criminal filings, because the best source of potential TBI cases were those cases flagged by the courts as involving competency or sanity evaluations. Thus, this study does not include any cases that were resolved prior to the filing of criminal charges. In addition, not all cases and evaluations listed in the court data could be located, and not every evaluation reviewed included a diagnosis.

2. Proposed measures for improvement

Identifying and evaluating TBI cases can be better accomplished by appropriating sufficient resources for a statewide study coupled with providing guidance to facilitate changing business practices to begin tracking this data for future studies. Look-back studies like this are difficult to extrapolate data from and to make predictions based on the findings because there is no guarantee that cases were flagged appropriately during the time period examined.

First, because the historical data regarding TBI is largely uncategorized, data collection requires manual review of physical case files. The best methodology available presently was the one used in this study. Even limiting the scope of the

review to two counties, completing the data collection required 40 hours of labor. In order to complete a statewide study using the available methodology, additional time or resources will be necessary than were available for this study.

Second, the agencies involved should investigate whether it is feasible to amend their business practices in order to track TBI cases going forward. Guidance from the Legislature regarding the necessary data would help stakeholders develop business practices to ensure a more comprehensive data set can be provided in future reports.

APPENDIX I

State's Attorneys and Sheriffs TBI Legislative Report September 2014

Criminal Cases - CHITTENDEN

FY2011 -
FY2013

	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personality Disorder	Incompetent	Insanity
1	1	1				1		
2								
3		1			1			
4	1	1						
5	1			1				
6	1	1	1					
7	1							
8				1				
9	1				1	1		
10	1						NC	I
11	1				1	1	NC	
12	1	1	1					
13				1	1		NC	I
14	1							
15	1							
16	1			1				
17	1			1				
18		1				1	NC	
19	1	1						
20	1						NC	I
21		1				1		
22	1	1		1				
23								
24			1					
25	1	1					NC	
26	1						NC	
27		1				1		
28								
29	1						NC	
30	1						NC	I
31	1							
32		1				1		
33								
34	1					1		
35								
36	1							
37		1				1		
38								

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incomplete	Insanity
39	1	1						
40	1	1	1				NC	I
41	1							
42	1						NC	I
43	1						NC	I
44	1	1						
45	1							
46	1							
47								
48	1					1		
49	1					1	NC	I
50								
51	1	1						
52	1						NC	
53								
54								
55		1		1				
56	1	1						
57	1							
58	1							I
59		1				1		
60		1				1		
61								
62								
63	1						NC	
64								
65		1				1		
66	1	1						
67		1				1		
68		1				1		
69								
70								
71								
72								
73		1				1		
74								
75								
76	1	1						
77	1	1						I
78								
79	1						NC	I
80	1	1						
81	1						NC	I
82								
83		1				1		
84								

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incomplete	Insanity
85								
86	1						NC	I
87	1	1						
88								
89						1		
90	1					1	NC	I
91								
92	1	1					NC	I
93	1	1	1					
94								
95								
96								
97	1						NC	I
98		1				1		
99								
100								
101								
102	1							
103	1	1						
104								
105	1							I
106		1				1		
107								
108								
109		1				1		
110	1	1				1		
111	1						NC	I
112	1	1						
113	1	1						
114							NC	I
115	1						NC	I
116				1	1			
117		1				1		
118								
119								
120	1	1					NV	I
121	1							
122	1						NC	I
123	1						NC	
124	1	1				1		
125	1	1						
126								
127		1			1			
128		1				1		
129	1							
130	1						NC	I

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incompet ent	Insanity
131		1			1			
132	1							
133								
134		1		1			NC	
135								
136	1							
137		1				1		
138								
139								
140	1	1				1		
141	1	1				1		
142								
143		1				1		
144								
145								
146	1							
147	1							I
148	1						MH COURT	
149	1							
150	1					1		
151		1				1		
152	1						NC	I
153	1							
154	1							
155		1				1		
156								
157	1	1				1		
158	1	1				1		
159	1	1						
160	1	1						
161	1	1						
162	1							I
163	1					1		I
164								
165	1	1						
166	1		1				NC	I
167		1				1		
168				1			NC	
169	1						NC	I
170	1			1	1		NC	I
171	1							
172				1		1	MC	I
173								
174	1							
175	1	1				1		
176	1						NC	I

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incomplete	Insanity
177		1				1		
178								
179	1						NC	I
180	1	1						
181		1				1		
182								
183	1					1		
184		1				1		
185								
186		1				1		
187								
188	1	1						
189								
190		1			1		NC	I
191	1				1	1		
192	1							
193	1					1	NC	
194	1				1	1		
195	1			1	1			
196		1				1		
197								
198	1					1		
199	1	1						
200	1	1		1				
201								
202								
203	1	1					NC	I
204	1				1			I
205	1	1						
206								
207		1			1			
208	1	1						
209								
210	1	1	1					
211	1	1				1		
212	1					1		I
213	1						NC	I
214	1	1	1					
215		1				1		
216								
217	1							
218	1	1						
219								
220								
221				1	1			
222								

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incomplete	Insanity
223	1					1		
224	1	1					NC	I
225		1				1		
226								
227								
228								
229	1	1					NC	I
230	1					1	NC	I
231								
232	1	1					NC	I
233	1			1				
234								
235	1							
236								
237		1				1		
238								
239		1				1		
240								
241	1						NC	I
242								
243	1							
244								
245		1				1		
246								
247		1			1			
248	1	1		1				
249	1	1				1		C
250								
251	1	1	1					
252	1							
253	1	1						
254	1	1						
255	1						NC	I
256	1							
257								
258								
259		1				1		
260								
261								
262								
263								
264	1	1						
265				1				
266	1	1						
267								

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	Mental Illness	Substance Abuse	TBI	Intellectual Disability	Mild Mental Retardation	Personalit y Disorder	Incomplete	Insanity
268		1			1			
269	1	1				1		
270	1	1		1				
271	1							
272	1					1		
273		1		1		1		
274		1		1				
275								
276	1					1		
277								
278								
279								
280				1	1			
281		1				1		C
282								
283	1			1				
284	1	1						
285								
286	1							
287		1				1		
288								
289								
290	1						NC	I
291	1	1				1		I
292	1				1	1		
293	1	1				1		
294	1						NC	
295	1						NC	I
296	1	1				1		
297								
298	1					1		I
TOTAL	152	108	9	23	19	71		

APPENDIX II

Criminal Cases FRANKLIN FY2011 - FY2013

	mental illness	substance abuse	TBI	INTELLECTUAL DIS	mental retardation	personality disorder	COMP	INSANE
1	1			1	1		NC	
2								
3							NC	
4							NC	
5		1					C	
6	1						NC	
7							C	
8								
9								
10					1		NC	
11	1					1	C	
12							C	
13	1			1	1		C	
14	1	1					C	
15	1			1	1		NC	
16	1						NC	I
17	1	1					C	I
18	1	1					C	I
19								
20	1	1					C	I
21	1	1					C	I
22	1	1					C	I
23	1	1					C	I
24	1			1			C	
25	1				1		NC	
26		1				1	C	
27	1					1	C	
28	1						C	I
29	1	1		1		1	NC	
30	1						NC	
31				1		1	NC	I
32	1	1					C	I
33	1						NC	I
34	1				1		NC	
35							C	
36							NC	
37								
38								
39	1	1					C	POSS I
40	1	1		1			NC	
41	1					1	C	
42		1				1	C	
TOTAL	25	14	0	7	6	7		

