

House Judiciary
Follow-up Testimony on H. 555
DAIL Commissioner Susan Wehry, M.D.
February 18, 2014

- H. 555 seeks to address public safety concerns related to individuals with traumatic brain injury who have been charged with a crime and found incompetent to stand trial.
- At the outset, we wish to make clear that most individuals with traumatic brain injury live independent and productive lives; this bill would appear to apply to a small subset of individuals who are not only deemed incompetent to stand trial but who are perceived as dangerous.
- In previous testimony, DAIL alerted the Committee to the aspects of the bill that are problematic and the Committee requested that we research how other states are addressing this issue.
- Both Dr. Batra, Medical Director for the Department of Mental Health and the Director of DAIL's TBI program, Andre Courcelle, have done extensive research. Dr. Batra will provide details but to summarize we have learned to date:
 - Other states find the issue no less complex and are also struggling to address it
 - Options are limited
 - It is not uncommon for individuals with traumatic brain injuries who are found incompetent to stand trial to find themselves indefinitely committed to mental hospitals, both with and without forensic or specialized rehabilitation units.
- Although we appreciate the bill may not actually contemplate hospitalization we remain concerned that courts may be inclined to hospitalize anyone who is deemed to meet a broad definition of dangerousness (e.g., from sexual assault to repeated trespass).
- We have considered what might be needed to provide long-term treatment and rehabilitation in a community-based setting that would also address dangerousness. The closest comparable program might be the Act 248 model. Act 248 commits individuals with intellectual disabilities who are deemed both incompetent to stand trial and dangerous to the care and custody of the Commissioner of DAIL.
 - There are currently 34 individuals under Act 248 custody. The average cost of serving an individual in custody is about \$100K. There are over 225 individuals with developmental disabilities being served who are seen as public safety risks. Total cost >\$25M.
- This new population being proposed for custody or commitment needs further study to determine what level of habilitation, clinical support and supervision would be needed, the cost of this approach and then a sustainable source of funding identified.

Reference: http://www.cdc.gov/traumaticbraininjury/pdf/Prisoner_Crim_Justice_Prof-a.pdf