



**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE
(AN DLÍ COIRIÚIL)**

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2013

Mental Health (Criminal Law) Review Board
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1. CHAIRPERSON'S FOREWORD

I am pleased as Chairperson of the Mental Health (Criminal Law) Review Board to present the Board's 2013 Annual Report. The report reflects the activities of the Board during the year and is the seventh Annual Report of the Board.

On behalf of my colleagues Ms. Nora McGarry and Dr. Michael Mulcahy I would first like to extend a warm welcome to Dr. Elizabeth Walsh, Forensic Psychiatrist, who was appointed as a member of the Board by the Minister for Justice and Equality Mr. Alan Shatter T.D. in January 2013. The Board continues to sit as a panel of three when reviewing the detention of patients, with one psychiatrist being present at all review hearings.

Regarding the number of hearings held by the Board in 2013, this number decreased slightly by comparison with 2012. During 2013, the Board reviewed the detention of 73 patients, holding a total of 159 review hearings. By comparison in 2012, the Board reviewed the detention of 76 patients, with 164 review hearings having been held by the Board. These hearings included the approval of five applications for conditional discharge compared with seven in 2012.

In addition to reviews into the detention of patients, the Board held a number of hearings to consider applications from patients who, having been conditionally discharged, wished to have one or more of their conditions varied or removed. Conditionally discharged patients can, at any time following discharge, make an

application to the Board to have one or more conditions varied or removed, as can the Clinical Director of the Central Mental Hospital. The Board received two such applications in 2013. These applications can involve the convening of a number of hearings to facilitate agreement, where possible, between the applicant and the treating team before the Board makes a final decision. Conditionally discharged patients may also apply to the Board for an unconditional discharge at any time after the expiration of 12 months from the granting of a conditional discharge.

During 2013, the Board progressed to holding 17th and 18th reviews into the detention of some patients. The Board also made an order for the return of a prisoner to prison, having formed the view that the treatment the prisoner was receiving in the Central Mental Hospital could be provided in prison.

I would like to take this opportunity to acknowledge the work undertaken by the multi-disciplinary teams in the Central Mental Hospital in preparing detailed psychiatric reports on each patient prior to their review hearing. The Board is mindful that this work is time consuming for all involved and is appreciative of that on-going work on behalf of the Board. The Board is also aware that, on the day of review hearings, the normal routine of patients and staff at the hospital is disrupted. In that regard, I express the Board's appreciation for the assistance and co-operation of the consultant psychiatrists, the nursing, social services and administrative staff of the hospital. I would also like to extend the Board's gratitude to Professor Harry Kennedy, Clinical Director of the Central Mental Hospital, for his courtesy and assistance during the year.

I compliment the work of members of the Board's Legal Representative Panel, who continue to ably and conscientiously represent patients. The Board is aware that many legal representatives assist patients in ways which far exceed their remit, for which the Board expresses its gratitude.

Finally I thank the staff of the Board Mr. Greg Heylin, Chief Executive Officer, Ms. Catherine Hayes, Secretary, and Ms. Ann Casey for their work throughout the year.

Mr. Justice Brian McCracken
Chairperson

March 2014

2. FUNCTION OF MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

The Mental Health (Criminal Law) Review Board is responsible for reviewing the detention of patients detained in designated centres under the Criminal Law (Insanity) Act 2006, as amended. Patients are detained under the Act having been found by a court unfit to stand trial or having been found not guilty of an offence by reason of insanity. Under the 2006 Act, as amended, the Board has the power to order the continued detention of these patients in a designated centre or their conditional, or unconditional discharge, having regard to the welfare of the patient and the public interest. The detention of prisoners, including military prisoners, who have been transferred to a designated centre suffering from a mental disorder, also comes within the remit of the Board for review. The Board can order their continued detention in a designated centre or their return to prison. The Board is statutorily independent in the exercise of its function. The Central Mental Hospital is currently the only designated centre under the 2006 Act.

3. REVIEWS BY THE BOARD

At any one time there are up to 80 patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006, as amended. This number fluctuates because, apart from the longer-detained patients, patients transfer into the hospital from prison, either voluntarily or involuntarily, for care or treatment which is not available in prison. However the detention of some of these patients may not be reviewed by the Board as they may transfer back to prison prior to having a review hearing, which is usually scheduled four or five months after a patient is admitted to the hospital. The Board must review the detention of each patient at intervals of not greater than six months. Outside the regularly scheduled hearings, a review

can be triggered at the behest of the Board or at the request of a patient. The Minister for Justice and Equality and the Clinical Director of the Central Mental Hospital can also, in certain circumstances, request the Board to conduct a review hearing.

The Board reviewed the detention of 73 patients in 2013, holding a total of 159 reviews hearings. This represents a 3% decrease in the number of reviews held in 2012 which was 164. Of the 73 patients, 74% had been diagnosed as suffering from schizophrenia, 15% were suffering from schizoaffective disorder and 11% were diagnosed with other disorders. This compares with 2012 when the detention of 76 patients was reviewed, with 78% having been diagnosed as suffering from schizophrenia, 14% were suffering from schizoaffective disorder and 8% with other disorders. It should be noted that it is primarily the same core group of patients that is reviewed by the Board each year. (Appendices A and B refer).

For the first time in 2013, the Board conducted 17th and 18th reviews into the detention of some patients. Of the 159 hearings, 14 were a 17th review and one was an 18th review. A total of 26% of hearings were at 16th to 18th review stage. Similarly, 26% of hearings were at 1st to 5th review stage, compared with 24% in 2012. Of these, 12 reviews or 8% were a 1st review, compared with 2012 where there were 11 such reviews or 7% of the total. (Appendix C refers).

As in previous years, the majority of reviews were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, as amended, having been found not guilty of an offence by reason of insanity.

During 2013, 106 hearings, which is 67% of the total number of hearings, were into the detention of patients committed under Section 5(2). In 2012, 105 hearings or 64% of the total were in this category. In 2013, 20% of hearings were reviews of the detention of patients committed under Section 15(2) of the Act, being prisoners transferred involuntarily to the Central Mental Hospital for care or treatment which could not be provided in prison. This group also accounted for 20% of hearings in 2012. (Appendix D refers).

4. ORDERS FOR DISCHARGE

The Board approved the conditional discharge of five patients in 2013, as compared with seven in 2012. The average duration of detention for discharged patients was over 14 years. The two shortest durations averaged over 3 years and the two longest averaged over 26 years. As can be seen from the range of years these patients were detained, the length of time a patient is detained in the hospital is neither a necessary nor a sufficient ground, in itself, for granting a conditional discharge. (Appendix F refers).

The Board made no order for unconditional discharge during 2013. Two conditionally discharged patients requested a hearing by the Board, with a view to making a formal application for an unconditional discharge. However having regard to the time requirement specified in Section 13A(8) of the Act, neither patient was entitled to make an application for an unconditional discharge and their request for a hearing was refused by the Board.

5. ORDERS FOR TRANSFER BACK TO PRISON

The Board made one order under Section 17 of the 2006 Act for the transfer of a prisoner back to prison, having formed the view that the care and treatment the prisoner was receiving in the Central Mental Hospital could be provided in prison. It should be noted that, in addition to the Board's power under Section 17, the Clinical Director has the power under Section 18 to direct the transfer of prisoners back to prison, which power is regularly exercised by the Clinical Director of the Central Mental Hospital.

6. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Board is required under Section 12(1)(c) of the 2006 Act to assign a legal representative to each patient whose detention is the subject of review, unless the patient proposes to engage legal representation at their own expense. Under the Mental Health (Criminal Law) Legal Aid Scheme 2006 a panel of legal representatives was established. Patients may if they wish decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage their own non-panel solicitor. The Board endeavours, for continuity for patients, to assign the same solicitor to represent a patient for subsequent review hearings.

In 2013 there were 26 solicitors on the Legal Representatives Panel. One member of the panel resigned during the year due to other work commitments and another, having informed the Board of the winding up of his practice, was removed from the panel. In 2013 the average number of cases assigned to solicitors on the panel was 6. The top quartile of solicitors on the panel was assigned an average of 11

cases each in 2013. In 2012 this number was 12. The second and third quartiles combined were assigned an average of 6 cases in 2013, the same number as in 2012^{*}. The bottom quartile was assigned an average of one case each in 2013, as compared with two in 2012. (Appendix E refers).

7. LEGAL PROCEEDINGS

As reported in 2012, Judicial Review Proceedings were on-going at the end of the year in the case of ***ET (a person of unsound mind) v The Mental Health (Criminal Law) Review Board, The Health Service Executive and the Attorney General (Notice Parties)***. These proceedings were struck out in the High Court in July 2013, on application by the Plaintiff, the Board having ordered the Plaintiff's conditional discharge to suitable accommodation organised by the Health Service Executive in June.

No further proceedings were brought against the Board in 2013, nor are there any proceedings outstanding at the end of 2013.

8. MEETINGS/VISITS

In July, the Chairman and Dr. Mulcahy attended the 2013 Conference of the Faculty of Forensic Psychiatry of the Royal Australian and New Zealand College of Psychiatrists in Darwin, Australia. The conference theme was "Forensic Psychiatry-Exploring New Territory" and was aimed at psychiatrists, forensic mental health practitioners and members of the legal profession. The Board

^{*} The average number of cases assigned to the second and third quartiles combined has been miscalculated for previous Annual Reports. This figure should have been 6 in 2012, 6 in 2011, 6 in 2010, 5 in 2009, 4 in 2008 and 3 in 2007.

members were particularly interested to learn first-hand of the Australian experience with Compulsory Community Treatment Orders. There is no provision in Irish mental health legislation for such orders. However the Conditional Discharge Orders made by the Board under the Criminal Law (Insanity) Act 2006 Act, as amended, have similar features. The Chairman and Dr. Mulcahy made a joint presentation to the conference on the function, powers and working of the Review Board since its establishment in 2006. The Chairman and Dr. Mulcahy paid their own travel costs and the Board paid the registration fee for the conference.

In October, Mr. Heylin and Ms. Hayes attended an afternoon seminar in Dublin organised by the Irish Mental Health Lawyers Association on “Updates on the Mental Health Act 2001, Developments in Case Law and Forthcoming Capacity Legislation”. The seminar discussed recent developments in mental health law, examining successful and unsuccessful superior court applications in the mental health area and considered where mental health law in Ireland may be heading.

In November, the Board met with representatives of the Central Mental Hospital’s Carers Group. The Carers Group is a voluntary group of relatives, mostly parents, and carers of patients at the hospital. The Group sought to discuss a variety of issues with the Board ranging from what, if any, role the Board saw itself playing in the recovery of patients, the expected length of stay of patients at the hospital and the differences between the Review Board process and Mental Health Tribunals process under the Mental Health Act, 2001. In that regard, the Board sought to clarify the function of the Board and the limitations of the powers of the Board. The

Board was particularly interested to hear the views of the Group and, through the Group, to get an insight into what the views of patients are of the Board. The Group indicated that, as far as they are aware, most patients in the hospital have a positive view of the Board, as they feel the Board gives them hope.

The Board had previously met many members of the Group on an individual basis when they attend review hearings of their family members. In that respect, the Board is continually impressed by family members of patients who faithfully attend review hearings to provide support for patients in what are often very difficult and tragic circumstances for families.

9. APPOINTMENT OF LEGAL ADVISERS TO THE BOARD

In April 2013 the Board, following public service procurement procedures, issued a request for tenders for the provision of legal services, following which McDowell Purcell Solicitors were appointed as new legal advisers to the Board.

10. EXPENDITURE

In 2013 the Board's total expenditure amounted to €382,964. €97,975 was expended on pay, €86,422 on the provision of free legal aid and €198,567 on other expenses.

Note:

The Criminal Law (Insanity) Act 2006

The Criminal Law (Insanity) Act 2010

Procedures of the Mental Health (Criminal Law) Review Board, and

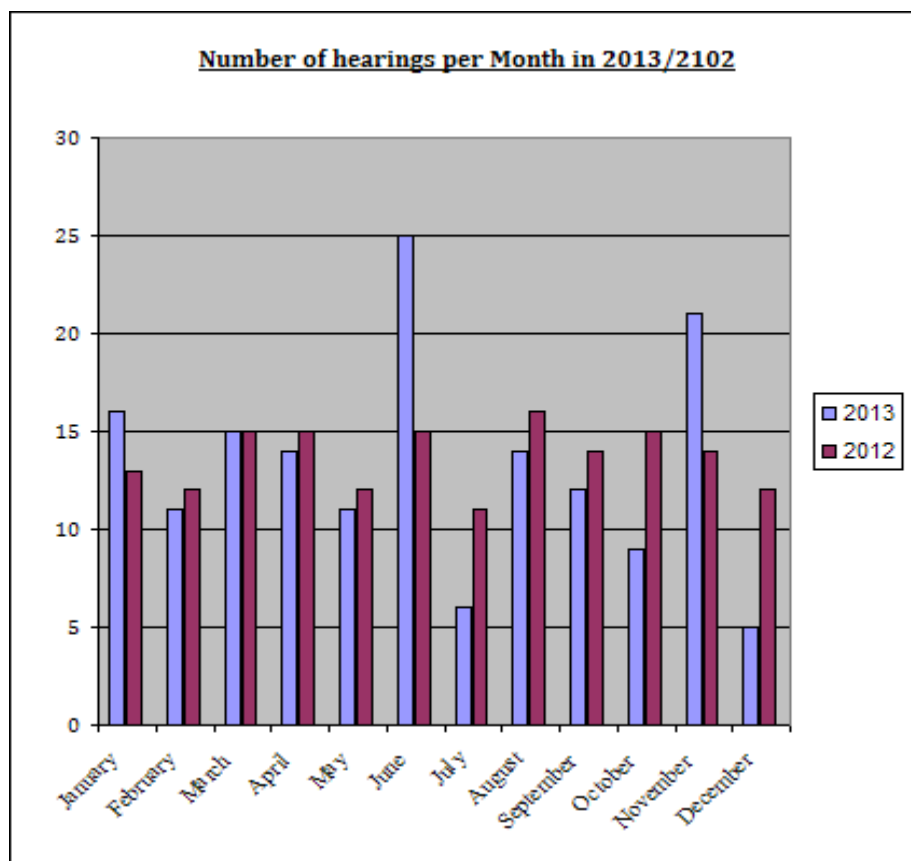
Terms and Conditions of the Mental Health (Criminal Law) Legal Aid Scheme 2006

are available on the Board's website (www.mhclrb.ie)

Appendix A

Number of Hearings per Month 2013/2012

Month	No. of Hearings 2013	% of 2013 Total	No. of Hearings 2012	% of 2012 Total
January	16	10%	13	8%
February	11	7%	12	7%
March	15	9%	15	9%
April	14	9%	15	9%
May	11	7%	12	7%
June	25	16%	15	9%
July	6	4%	11	7%
August	14	9%	16	10%
September	12	7%	14	9%
October	9	6%	15	9%
November	21	13%	14	9%
December	5	3%	12	7%
Total	159	100%	164	100%



Number of Patients Reviewed per Diagnosis in 2013/2012

Diagnosis	No. of patients reviewed 2013	% of 2013 Total	No. of patients reviewed 2012	% of 2012 Total
Schizophrenia	54	74%	59	78%
Schizo-Affective Disorder	11	15%	11	14%
Other Disorders	8	11%	6	8%
Total	73	100%	76	100%

Other Disorders include:

Bi-Polar Affective Disorder

Paranoid Personality Disorder

Intellectual Disability

Delusional Disorder

Recurrent Severe Depressive Disorder with Psychotic Features

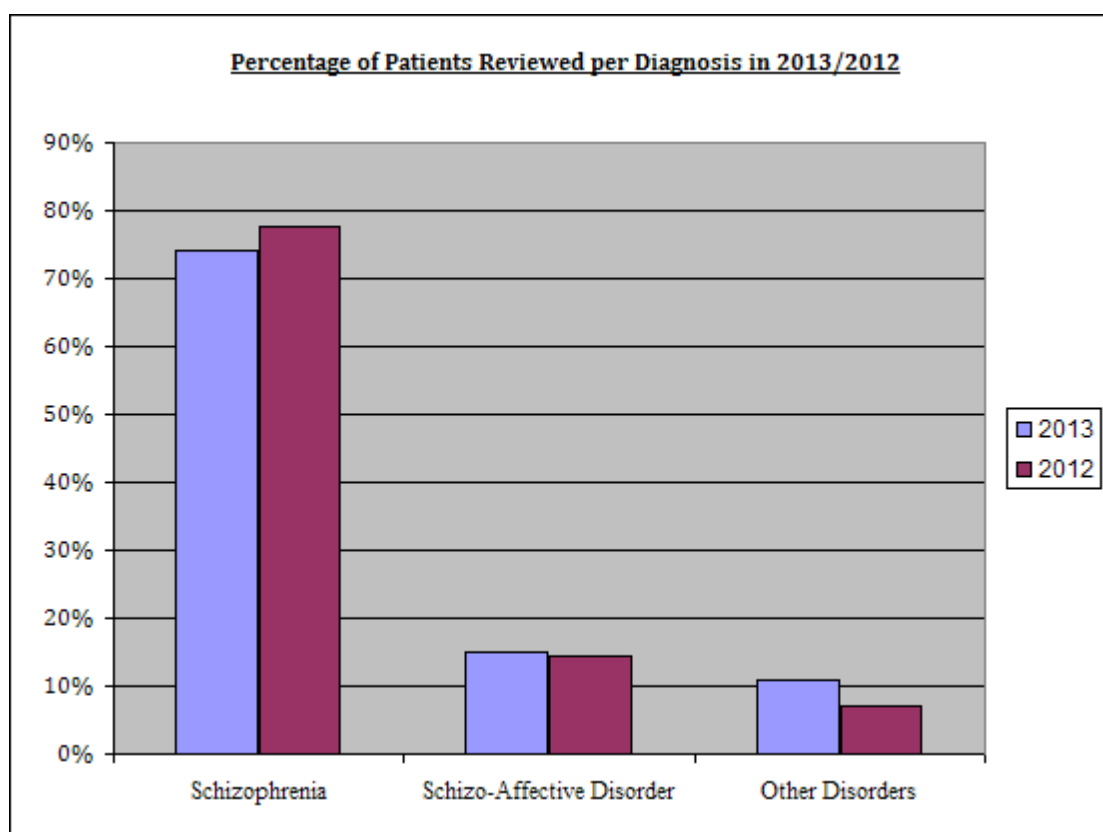
Psychotic Disorder

Recurrent Depressive Disorder

Psychotic Depression

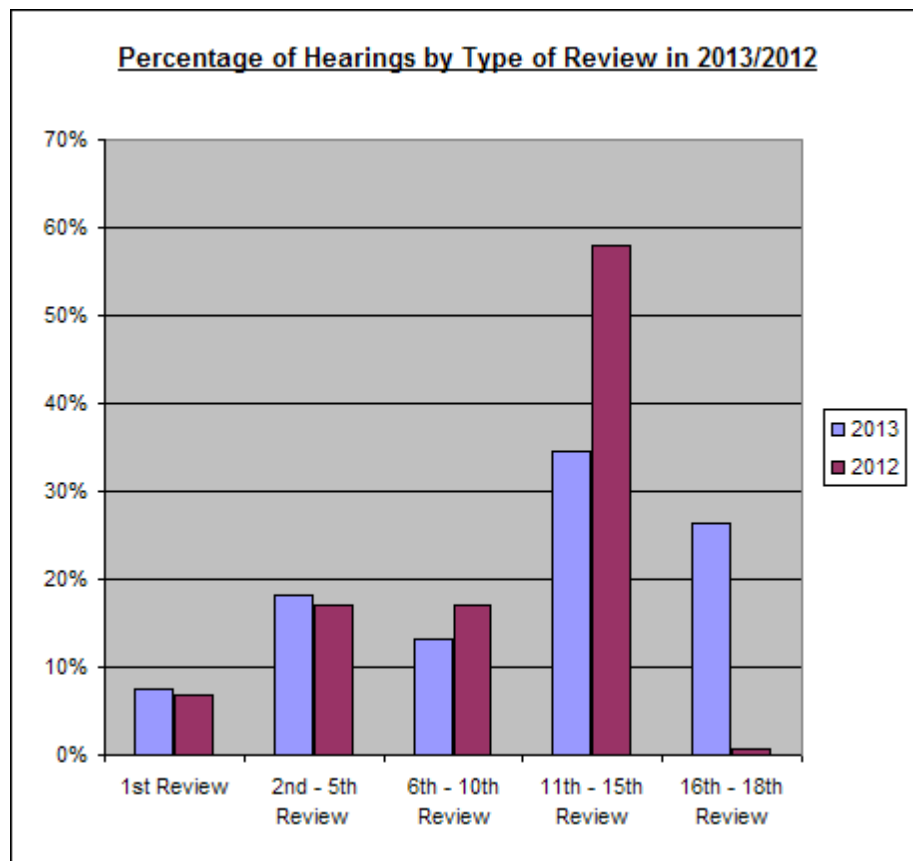
Depression with Psychotic Symptoms

Organic Brain Disorder Secondary to Substance Use



Number of Hearings by Type of Review in 2013/2012

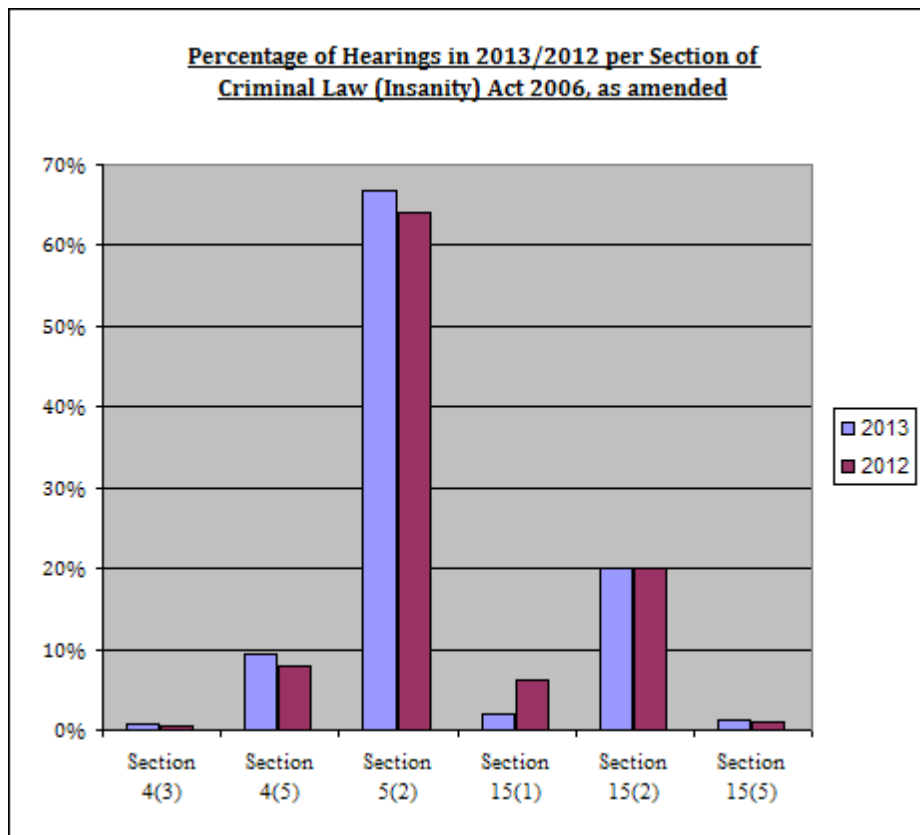
Type of Review	No. of Reviews 2013	% of 2013 Total	No. of Reviews 2012	% of 2012 Total
1st Review	12	8%	11	7%
2nd - 5th Review	29	18%	28	17%
6th - 10th Review	21	13%	28	17%
11th - 15th Review	55	35%	96	58%
16th - 18th Review	42	26%	1	1%
Total	159	100%	164	100%



**Number of Hearings in 2013/2012 per Section of the
Criminal Law (Insanity) Act 2006, as amended**

Section of 2006 Act	No. of Hearings 2013	% of 2013 Total	No. of Hearings 2012	% of 2012 Total
Section 4(3)	1	1%	1	1%
Section 4(5)	15	9%	14	8%
Section 5(2)	106	67%	105	64%
Section 15(1)	3	2%	10	6%
Section 15(2)	32	20%	33	20%
Section 15(5)	2	1%	1	1%
Total	159	100%	164	100%

Section 4(3) Unfit to Plead, District Court
Section 4(5) Unfit to Plead, other Court
Section 5(2) Not guilty by reason of insanity
Section 15(1) Voluntary transfer from Prison
Section 15(2) Involuntary transfer from Prison
Section 15(5) Continuation of voluntary transfer from Prison after refusal of care or treatment



Appendix E

Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel in 2013/2012

Year	No. of Legal Representatives on Panel	Average no. of cases assigned	Average no. of cases assigned Top Quartile	Average no. of cases assigned 2nd & 3rd Quartiles	Average no. of cases assigned Bottom Quartile
2013	26*	6	11	6	1
2012	26	6	12	6	2

* for part of the year

**Number of Patients Conditionally
Discharged in 2013/2012**

Month of Conditional Discharge Order	No. of Patients 2013	No. of Patients 2012
May	1	
June	1	1
July	3	1
August		2
October		2
November		1
Total	5	7