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## Mental Health (Criminal Law) Review Board Annual Report 2012

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**An Bord Athbhreithnithe Meabhair-Shláinte  
(An Dlí Coiriúil)**

**MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD**

**Annual Report 2012**

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## **1. CHAIRPERSON'S FOREWORD**

The Mental Health (Criminal Law) Review Board was established on 27 September 2006 under the Criminal Law (Insanity) Act 2006, as amended. The primary function of the Board is to review the detention of patients detained under the Act in a designated centre. Currently the only designated centre is the Central Mental Hospital. This is the sixth Annual Report of the Review Board and it relates to the Board's activities during 2012.

In 2012, there was a decrease of 10% in the number of reviews of detention held by the Board, which is, of course, dependant on the number of patients detained under the Act. A total of 164 review hearings took place compared with 182 in 2011. This decrease was due in part to a reduction in the number of patients whose detention came within the remit of the Board for review, from 84 in 2011 to 76 in 2012 and because a small number of patients were granted conditional discharge during 2012. Once conditionally discharged, although they are still covered by the Act, these patients do not come before the Board for regular six monthly review hearings as they are no longer detained in a designated centre. Conditionally discharged patients can, however, apply to the Board to have conditions varied or removed, as can the Clinical Director. A conditionally discharged patient can also make an application for an unconditional discharge 12 months after the date of their conditional discharge. In 2012, the Board held three hearings to consider applications for unconditional discharge from patients who had been conditionally discharged in 2011.

For the first time in 2012, the Board held 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> reviews into the detention of some patients. For the first time also in 2012 the Board made an order for the transfer of a prisoner back to prison, having formed the view that the treatment the prisoner was receiving in the Central Mental Hospital could be provided in prison.

On behalf of my colleagues Ms. Nora McGarry and Dr. Michael Mulcahy, I would like to take this opportunity to express the gratitude of the Board to Professor Harry Kennedy and to the Consultant Forensic Psychiatrists, the nursing, social services and administrative staff of the Central Mental Hospital for their co-operation and assistance during the year and for the provision of facilities at the Hospital for the holding of review hearings. I would like also to compliment the work of the legal representatives who represent patients coming before the Board for review. Because of their illness, many patients are unable to speak for themselves and their legal representatives assist them in ways which far exceeds their remit, which is much appreciated by the Board.

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

**Mr. Justice Brian McCracken**  
**Chairperson**

**April 2013**

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

Section 11 of the Criminal Law (Insanity) Act 2006 established the Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil)), which came into being on 27 September 2006. The Review Board is responsible for reviewing the detention of patients in designated centres (currently the only designated centre is the Central Mental Hospital) who have been referred there arising from a decision by the courts that they are unfit to stand trial or have been found not guilty of an offence by reason of insanity. The Board also reviews the detention of prisoners, including military prisoners, who have been transferred to a designated centre suffering from a mental disorder. The 2006 Act was amended by the Criminal Law (Insanity) Act 2010 which was enacted in February 2011 and this gave the Board the power to discharge patients, subject to enforceable conditions. The Review Board is statutorily independent in the exercise of its function.

## **3. REVIEWS BY THE BOARD**

The number of patients detained at any one time in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006, as amended, is approximately 80. This number fluctuates as patients are transferred from prison for care and treatment and are then returned to prison. Also since the commencement of the 2010 Act, patients conditionally discharged no longer come under the remit of the Board for review of their detention as they are not detained in the Central Mental Hospital.

The Board must review the detention of each patient at intervals of not greater than six months. Therefore, long-term patients usually have two review hearings per year. Some patients may have more reviews as, outside the regularly scheduled reviews,

reviews can be triggered (i) at the behest of the Board; (ii) at the request of a patient; (iii) at the request of the Clinical Director; or (iv) the Minister for Justice and Equality can direct the Board to hold a review into the detention of a prisoner who is involuntarily in the Hospital. All reviews take place at the Central Mental Hospital.

During 2012, the Board reviewed the detention of 76 patients, holding a total of 164 reviews hearings. This represents a 10% decrease in the number of reviews held in 2011 which was 182. A total of 78% of the patients reviewed in 2012 had been diagnosed as suffering from schizophrenia, 14% were suffering from schizoaffective disorder and 8% were diagnosed with other disorders. This compares with 2011, when the detention of 84 patients was reviewed, with 72% having been diagnosed as suffering from schizophrenia, 14% were suffering from schizoaffective disorder and 14% from 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 2012, the Board conducted 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> reviews into the detention of some patients. Of the 164 hearings, 27 were 14<sup>th</sup> reviews, 8 were 15<sup>th</sup> and one was a 16<sup>th</sup> review, being 16%, 5% and 1% respectively of the overall total number of hearings. 7% of hearings in 2012 were at 1<sup>st</sup> review stage, compared with 8% in 2011. (Appendix C refers).

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. In 2012, 105 hearings, which is 64% of the total number of hearings, were into the detention of patients committed under Section

5(2). In 2011, 121 hearings or 66% of the total were in this category. In 2012, 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 and treatment which could not be provided in prison. This group accounted for 17% of hearings in 2011. (Appendix D refers).

#### **4. ORDERS FOR DISCHARGE**

In 2012, the Board approved the conditional discharge of a further seven patients, the same number as 2011. The Board ordered the conditional discharge of one patient in June, one in July, two in August, two in October and one in November. Of the patients conditionally discharged, one had been detained in the Central Mental Hospital for 14 years, four for an average of just over 6 years, one for 3 years and one for 6 weeks. It should be noted that 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 received four applications for unconditional discharge in 2012 from patients who had been conditionally discharged in 2011, 12 months having elapsed from the date of their conditional discharge. Of the four applications received, the Board granted two unconditional discharges, refused one and one application was withdrawn on the morning the Board was scheduled to hear the application. (Appendix G refers).

#### **5. ORDERS FOR TRANSFER BACK TO PRISON**

Under Section 17 of the 2006 Act the Review Board has the power to order the transfer of a prisoner from a designated centre back to prison. Prior to finalising the order, the

Board is obliged to consult with the Minister for Justice and Equality to seek a direction as to which prison the Board should order the prisoner's return. The Board, for the first time in 2012, exercised this power and ordered the return of a prisoner from the Central Mental Hospital to prison, having formed the view that the prisoner could be afforded the appropriate treatment in prison. In addition to the Board's power under Section 17, the Clinical Director of a designated centre has the power under Section 18 to direct the transfer of a prisoner 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**

Section 12(1)(c) of the 2006 Act, as amended, requires the Board 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. To this end, the Board put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006, under which a panel of legal representatives was established. Patients may decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage their own non-panel solicitor. For continuity, having regard to the fact that patients are suffering from a mental disorder, the Board endeavours to assign the same solicitor to a patient for subsequent review hearings.

In 2012 there were 26 solicitors on the Legal Representatives Panel. The average number of cases assigned to solicitors in 2012 was six, as compared with seven in 2011. The top quartile of solicitors on the panel was assigned an average of 12 cases each in 2012. In 2011 this number was 14. The second and third quartiles combined were assigned an average of 11 cases each in 2012 as compared with 12 in 2011. The

bottom quartile was assigned an average of two cases each in 2012 compared with three in 2011. (Appendix E refers).

## **7. LEGAL PROCEEDINGS**

Judicial Review Proceedings were issued in one case against the Board in 2012 as follows:

***ET (a person of unsound mind) v The Mental Health (Criminal Law) Review Board  
The Health Service Executive and the Attorney General (Notice Parties)***

Later, the Clinical Director of the Central Mental Hospital was joined with the Board as a respondent in the proceedings, which were still on-going at the end of 2012.

## **8. MEETINGS/VISITS**

In February 2012 the Board visited new hostel accommodation for patients from the Central Mental Hospital who are either granted temporary release under Section 14 of the Act or are conditionally discharged by the Board. The Board viewed the accommodation and met with the service providers and Hospital staff who briefed the Board on the arrangements for patients who were about to take up residence in the hostel.

In March, the Board visited a training centre which provides rehabilitative training and occupational services for persons with mental health difficulties. The Board met with staff and service users, viewed the workshops and heard about the work of the centre. The Board found the visit most informative and felt that it gave the Board a greater insight into the training and support offered to patients from the Central Mental Hospital who attend the centre as part of their rehabilitative process.

In July, the Board visited Mountjoy Prison and met with Governor Whelan and staff members. As the Board reviews the detention of a number of prisoners each year who have been transferred to the Central Mental Hospital, the Board was particularly interested in visiting the special high support unit at the prison which provides care for mentally disordered and vulnerable prisoners. The unit is a dedicated area in the prison where prisoners who may be at risk of harm to themselves or others can be cared for and monitored safely. The care prisoners receive in the unit from specially trained prison staff and from the Central Mental Hospital's psychiatric in-reach service at the prison can obviate the necessity for the transfer of some prisoners to the Hospital.

In all three visits the Board was impressed by the care and professionalism of the staff.

In June, Dr. Mulcahy attended a one-day course organised by the National Forensic Mental Health Service entitled "The interface of Psychiatry and the Criminal Justice System 2012". The course was concerned with the problems encountered in the early stages of interaction between the mental health services and law officers and it aimed to provide model solutions and procedures based on recent experience.

## **9. EXPENDITURE**

The total expenditure of the Board in 2012 amounted to €378,248. €100,707 was expended on pay, €91,752 on the provision of free legal aid and €185,789 on other expenses.

## **10. SUBMISSIONS BY THE BOARD**

### **Review of the Criminal Law (Insanity) Act 2006, as amended**

As reported in last year's report, the Board was in the process of preparing a submission for a review by the Department of Justice and Equality of the operation of the Criminal Law (Insanity) Act 2006, as amended by the Criminal Law (Insanity) Act 2010. The Board forwarded its submission to the Department in early 2012 on matters of priority to the Board and issues in the Act which affect the functioning of the Board.

### **Interdepartmental Group to examine the issue of people with mental illness or a mental disorder coming into contact with the Criminal Justice System**

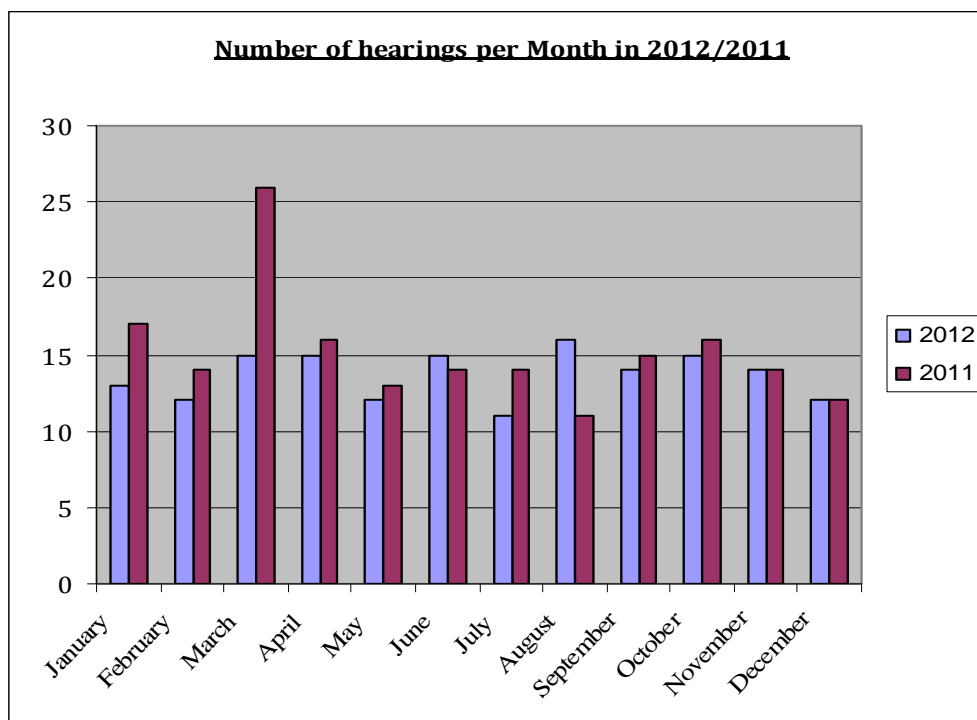
In March, the Interdepartmental Group which was set up to examine issues of people with mental illness or a mental disorder coming into contact with the criminal justice system issued a request for submissions. The Board forwarded a submission to the Group in April. The Board, in preparing its submission, had regard to the fact that the Group was considering how best to deliver mental health services to persons properly in the criminal justice system, to facilitate their return in due course to the community and to ensure necessary treatment continues after release. The Group is jointly chaired by the Departments of Justice and Equality and Health. It also includes representatives from relevant services including the H.S.E., the National Forensic Health Service, the Garda Síochána and the Irish Prison Service.

**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](http://www.mhclrb.ie))**

**Number of Hearings per Month in 2012/2011**

Month	No. of Hearings 2012	% of 2012 Total	No. of Hearings 2011	% of 2011 Total
January	13	8%	17	9%
February	12	7%	14	8%
March	15	9%	26	14%
April	15	9%	16	9%
May	12	7%	13	7%
June	15	9%	14	8%
July	11	7%	14	8%
August	16	10%	11	6%
September	14	9%	15	8%
October	15	9%	16	9%
November	14	9%	14	8%
December	12	7%	12	6%
<b>Total</b>	<b>164</b>	<b>100%</b>	<b>182</b>	<b>100%</b>



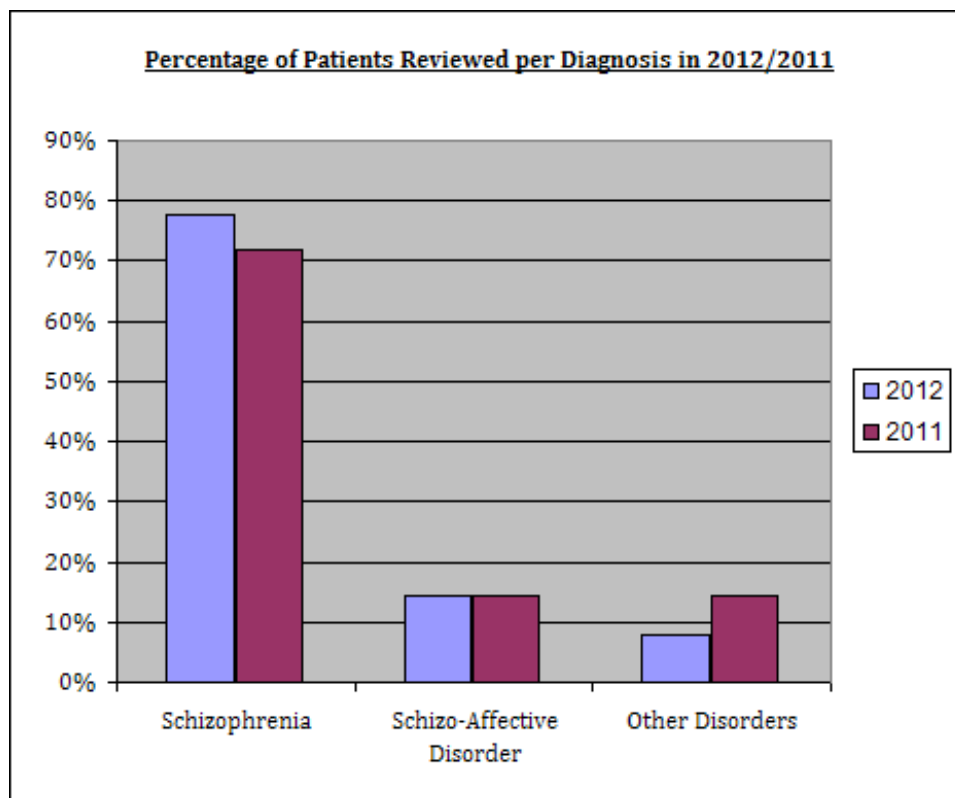
## Appendix B

### Number of Patients Reviewed per Diagnosis in 2012/2011

Diagnosis	No. of patients reviewed 2012	% of 2012 Total	No. of patients reviewed 2011	% of 2011 Total
<b>Schizophrenia</b>	59	78%	60	72%
<b>Schizo-Affective Disorder</b>	11	14%	12	14%
<b>Other Disorders</b>	6	8%	12	14%
<b>Total</b>	<b>76</b>	<b>100%</b>	<b>84</b>	<b>100%</b>

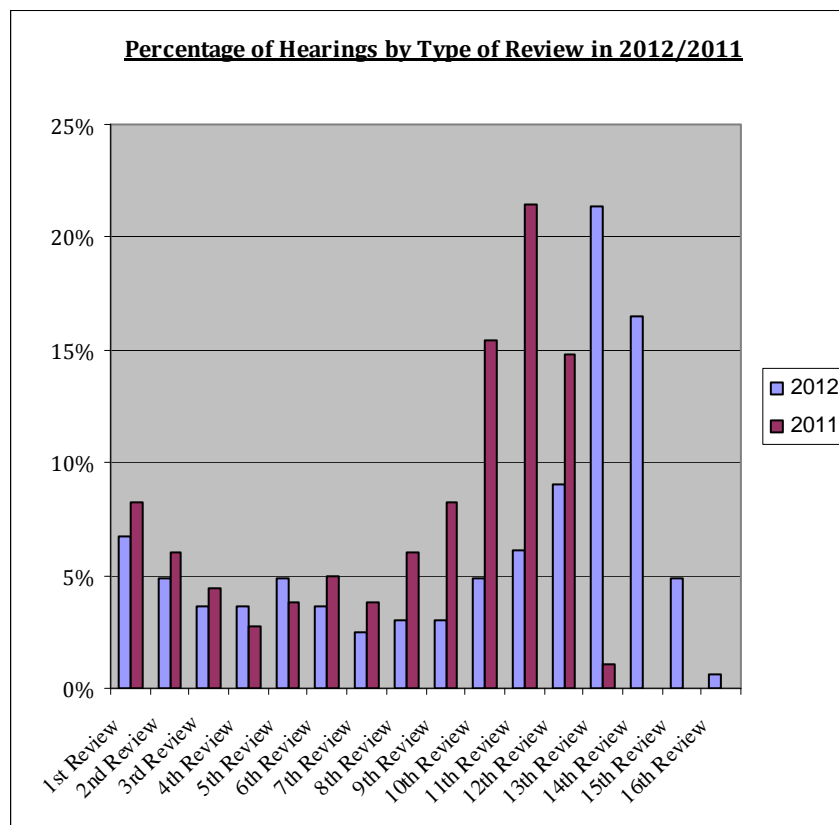
**Other Disorders include:**

Bi-Polar Affective Disorder  
 Antisocial Personality Disorder  
 Paranoid Personality Disorder  
 Intellectual Disability  
 Delusional Disorder  
 Persistent Delusional Disorder  
 Recurrent Severe Depressive Disorder with Psychotic Features  
 Psychotic Disorder



**Number of Hearings by Type of Review in 2012/2011**

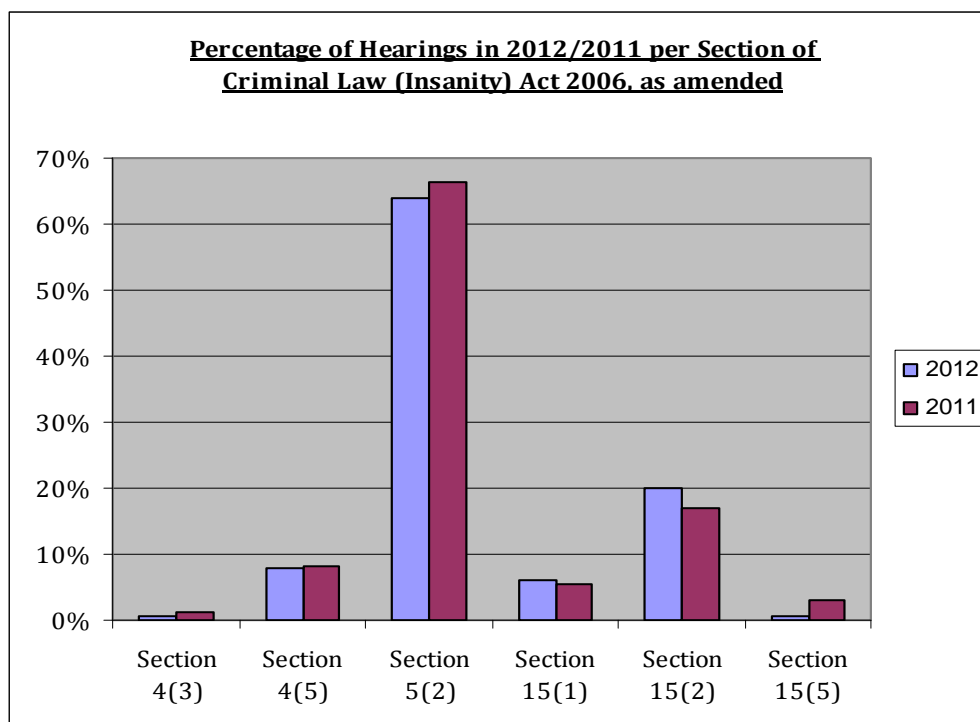
Type of Review	No. of Reviews 2012	% of 2012 Total	No. of Reviews 2011	% of 2011 Total
1st Review	11	7%	15	8%
2nd Review	8	5%	10	6%
3rd Review	6	4%	8	4%
4th Review	6	4%	5	3%
5th Review	8	5%	7	4%
6th Review	6	4%	9	5%
7th Review	4	2%	7	4%
8th Review	5	3%	10	6%
9th Review	5	3%	15	8%
10th Review	8	5%	28	15%
11th Review	10	6%	39	21%
12th Review	16	9%	27	15%
13th Review	35	21%	2	1%
14th Review	27	16%		
15th Review	8	5%		
16th Review	1	1%		
<b>Total</b>	<b>164</b>	<b>100%</b>	<b>182</b>	<b>100%</b>



**Number of Hearings in 2012/2011 per Section of Criminal Law (Insanity) Act 2006, as amended**

<b>Section of 2006 Act</b>	<b>No. of Hearings 2012</b>	<b>% of 2012 Total</b>	<b>No. of Hearings 2011</b>	<b>% of 2011 Total</b>
<b>Section 4(3)</b>	1	1%	2	1%
<b>Section 4(5)</b>	14	8%	15	8%
<b>Section 5(2)</b>	105	64%	121	66%
<b>Section 15(1)</b>	10	6%	10	5%
<b>Section 15(2)</b>	33	20%	31	17%
<b>Section 15(5)</b>	1	1%	3	3%
<b>Total</b>	<b>164</b>	<b>100%</b>	<b>182</b>	<b>100%</b>

- 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 2012/2011

<b>Year</b>	<b>No. of Legal Representatives on Panel</b>	<b>Average no. of cases assigned</b>	<b>Average no. of cases assigned Top Quartile</b>	<b>Average no. of cases assigned 2nd &amp; 3rd Quartiles</b>	<b>Average no. of cases assigned Bottom Quartile</b>
<b>2012</b>	26	6	12	11	2
<b>2011</b>	26	7	14	12	3

## Appendix F

### Number of Patients Conditionally Discharged in 2012/2011

<b>Month of Conditional Discharge Order</b>	<b>No. of Patients 2012</b>	<b>No. of Patients 2011</b>
<b>March</b>		2
<b>May</b>		3
<b>June</b>	1	1
<b>July</b>	1	1
<b>August</b>	2	
<b>October</b>	2	
<b>November</b>	1	
<b>Total</b>	<b>7</b>	<b>7</b>

## Appendix G

### **Number of Applications for Unconditional Discharge in 2012**

<b>No. of applications received</b>	<b>No. Granted</b>	<b>No. Refused</b>	<b>No. Withdrawn</b>
<b>4</b>	<b>2</b>	<b>1</b>	<b>1</b>