



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

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2021

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 Review Board's 2021 Annual Report, which provides an overview of the Board's activities during 2021. This is the 15th Annual Report of the Review Board.

During 2021, as the COVID-19 public health restrictions remained in place the Review Board continued to conduct review hearings via tele-conferencing. However, in August following advice from the Infection Control Committee in the Central Mental Hospital, the Board resumed in-person hearings in the hospital. Arrangements were put in place for social distancing during review hearings which have worked well, with hearings being held in the concert hall at the hospital.

In 2021 there was a slight decrease in the number of review hearings held, by comparison with the previous year. The Board held 196 reviews compared with 203 in 2020, reviewing the detention of 87 patients. Of the 87 patients whose detention was reviewed, six were granted a conditional discharge. The same number of patients were granted a conditional discharge in 2020, out of a total of 90 who had their detention reviewed that year.

In June, the Clinical Director of the Central Mental Hospital informed the Board that he had recalled one conditionally-discharged patient to the hospital on the grounds that he had a reasonable belief the patient was in material breach of their Conditional Discharge Order.

Also in 2021, the Board progressed to holding 36th and 37th reviews into the detention of some patients.

Four applications for unconditional discharge were received in 2021. There was also one outstanding application from the previous year. Of the four applications received, one unconditional discharge was granted by the Board. The consideration of two applications was postponed, at the request of the applicants and the hearing of the fourth application was commenced and adjourned for further consideration in 2022. The hearing of the application which had been outstanding from the previous year was adjourned indefinitely, following the Board's consideration of the application on two occasions in 2021.

On behalf of my colleagues, I thank the Executive Clinical Director of the Central Mental Hospital Professor Harry Kennedy and the Clinical Director Dr. Brenda Wright for their assistance during the year. I also thank the multi-disciplinary teams in the hospital for their work in the preparation of psychiatric reports for patients prior to their review hearings. The Board is mindful that this work can be time consuming for all involved. The Board is appreciative of the assistance and co-operation of the consultant psychiatrists, nursing, therapists, social services and administrative staff of the hospital. I would also like to take this opportunity to wish the staff and patients in the Central Mental Hospital well with the imminent move of the hospital to its new location in Portrane.

Once again, I would like to compliment the work of members of the Board's Legal Representatives Panel who continue to ably and conscientiously represent patients

coming before the Board for review of their detention and for their co-operation with the arrangements for the return to in-person hearings in the hospital.

Finally, I wish to extend the Board's thanks to Ms. Paula Connolly, the former CEO of the Board who retired in early 2021 and welcome Ms. Aisling Brennan who joined the Board as CEO in April. I would also like to extend the Board's thanks to Ms. Catherine Hayes and Ms. Ann Casey for their excellent and efficient service to the Board during the year.

Iarfhlaith O'Neill
Chairperson

31 March 2022

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

The Mental Health (Criminal Law) Review Board (An Bord Athbheithnithe Meabhair-Shláinte (An Dlí Coiriúil) was established on 27 September 2006 under Section 11 of the Criminal Law (Insanity) Act 2006. The Board is statutorily independent in the exercise of its functions.

The Board is responsible for reviewing the detention of patients who have been referred to designated centres arising from a decision by the courts that they are unfit to stand trial or having been found not guilty of an offence by reason of insanity. Under the 2006 Act, as amended by the Criminal Law (Insanity) Act 2010, the Board has the power to order the continued detention of patients or to order either their conditional, or unconditional discharge. When coming to its decision, the Board must have regard to the welfare and safety of the patient and to the public interest.

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 Board can order their continued detention in a designated centre or their return to prison.

The Central Mental Hospital, Dundrum is a designated centre under the Act and one Unit at the new National Forensic Health Service campus in Portrane is also designated under the Act. This Unit was designated to facilitate the temporary transfer of a small number of patients as additional accommodation was required due to the COVID-19 pandemic. The patients were accommodated for a number of months in the new Unit and have since transferred back to the Central Mental Hospital.

3. **REVIEWS BY THE BOARD**

As provided by the 2006 Act, the Board must review the detention of each patient at intervals of not greater than six months. Long-term patients usually have two review hearings per year but some may have more because, outside of the regularly scheduled hearings, a review can be held on the initiative of the Board or at the request of a patient or the Clinical Director of the Central Mental Hospital. The Minister for Justice can direct the Board to hold a review into the detention of a prisoner who is involuntarily admitted to the hospital.

At any one time, there are usually between 80 to 90 patients detained in the Central Mental Hospital under the 2006 Act. This number fluctuates because, apart from the longer-detained patients, patients are transferred from prison, either by consent or involuntarily, for care or treatment which is not available to them in prison. However, some of these patients may not come before the Board for review of their detention in the hospital as the Clinical Director, having consulted with the Minister for Justice, may transfer prisoners back to prison at any time.

The detention of 87 patients was reviewed by the Board in 2021, representing a slight decrease in the number of patients whose detention was reviewed compared with 2020 when the detention of 90 patients was reviewed. Of the 87 patients, 10 or 11% were female and 77 or 89% were male. The Board held a total of 196 review hearings compared with 203 the previous year, representing a decrease of just over 3% in the number of review hearings. Of the 87 patient, 62% had been diagnosed as suffering from schizophrenia, 22% were suffering from schizoaffective disorder and 16% were diagnosed with other disorders. This compares with 2020 when 66% of patients were

diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 17% from other disorders. It should be noted that it is primarily the same core group of patients reviewed by the Board each year. (Appendices A and B refer).

The Board, for the first time in 2021 conducted 36th and 37th reviews into the detention of some patients. Of the 196 review hearings, five were a 36th review and two were a 37th review. A total of 4% of the hearings were at 36th to 37th review stage. 18% of hearings were at 1st to 5th review stage, compared with 21% in 2020. Of these, seven reviews or 4% were a 1st review, compared with 2020 when there were eight such reviews, which is also 4% of the total that year. (Appendix C refers).

As in previous years, the majority of review hearings were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, having been found not guilty of an offence by reason of insanity. In 2021, 147 hearings, which is 75% of the total, were into the detention of patients committed under Section 5(2). The number in this category in 2020 was 161 which is 79% of the total number of hearings that year. Again in 2021 the second largest number of review hearings was of patients detained 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 accounted for 12% of review hearings in 2021 compared with 9% in 2020. Patients detained under Section 4(5) accounted for 9% of review hearings in 2021 compared with 8% the previous year. (Appendix D refers).

4. **MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME**

The Review Board is required by 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. Having regard to this, the Board put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006, under which a panel of legal representatives was established and the legal fees for representation before the Review Board is provided for. Patients may if they wish decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage a non-panel solicitor at their own expense. The Board endeavours, for continuity for patients, having regard to the fact that they are suffering from a mental disorder, to assign the same solicitor to represent a patient at subsequent review hearings.

At the beginning of 2021 there were 25 solicitors on the Legal Representatives Panel. During the year, one solicitor resigned and one solicitor was added to the Panel.

The average number of cases assigned to solicitors on the Panel in 2021 was 8. The top quartile of solicitors was assigned an average of 14 cases each, compared with 15 the previous year. The second and third quartiles combined were assigned an average of 9 cases each, the same as in 2020. The bottom quartile was assigned an average of one case each in 2021, the same number as the previous year. (Appendix E refers).

5. **ORDERS FOR DISCHARGE**

The Board approved the conditional discharge of six patients from the Central Mental Hospital in 2021. The average duration of detention in the hospital for the

conditionally discharged patients was 8 years. The two shortest durations averaged just over 6 years and the two longest averaged 10.5 years. 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).

One patient was recalled from conditional discharge during 2021, the Clinical Director of the Central Mental Hospital having formed the opinion that the patient was in material breach of their conditional discharge order.

The Board received four applications for unconditional discharge in 2021 from patients who had been conditionally discharged for 12 months or more and there was one outstanding application from the previous year. Of these, the Board granted one unconditional discharge. The hearing of two applications were postponed at the request of the applicants and the hearing of the fourth application was adjourned, to be resumed in 2022. The hearing of the outstanding application from the previous year was also adjourned indefinitely.

6. **OFFENCES OR ALLEGED OFFENCES**

The type of offences, or alleged offences, which patients detained in the Central Mental Hospital in 2021 were charged with, or convicted of, included murder, attempted murder, manslaughter and assault causing serious bodily harm. Of the 87 patients whose detention was reviewed by the Board, 39 had been charged with, or convicted of murder. The majority of the victims of this offence, or alleged offence, were a family member of the patient. A total of 8 patients were charged with, or convicted of, attempted murder/manslaughter/death by dangerous driving. 25 patients were

charged with, or convicted of assault causing harm/serious bodily harm and 3 with arson. Other offences include sexual assault, threat to kill, harassment, false imprisonment, aggravated burglary and attempted kidnap of a child, trespass and possession of a knife with intent to cause harm, theft of a car and causing damage by dangerous driving and possession of knives and intimidation. (Appendix G refers).

7. **FINANCE INFORMATION**

The Review Board is funded from Subhead A.13 of the Vote of the Office of the Minister for Justice. The Review Board adheres to the Public Spending Code. In 2021, the Review Board received a budget allocation of €439,000. This was an increase of 52% from the previous year's allocation to cater for the expected increase in the Review Board's expenditure which will arise when the Central Mental Hospital moves to its new location in Portrane, with an increase in bed capacity. However as the Central Mental Hospital's move did not take place in 2021 the Board's expenditure did not increase, as anticipated. Total expenditure from Subhead A.13 in 2021 was €289,000.

The main expenditure items are set out beneath:

Free Legal Aid	€99,000
Board members' fees	*€99,000
Chairperson's fee	€70,875
Legal advice	€13,192

*Includes fees for December 2020 which were paid in January 2021. Does not include fees for December 2021 which are paid in January 2022.

8. **PROTECTED DISCLOSURE**

The Review Board has adopted the Protected Disclosure Policy of the Department of Justice as its policy on protected disclosures in the workplace. In line with reporting

requirements, it is confirmed that there were no protected disclosure reports received in 2021.

9. **DATA PROTECTION**

The Review Board has adopted the data protection policy of the Department of Justice. Because of its size it is not deemed feasible for the Board to appoint its own Data Protection Officer (DPO). The Department's DPO has been appointed as DPO for the Board.

10. **PUBLIC SECTOR EQUALITY AND HUMAN RIGHTS DUTY**

The Review Board is committed to ensuring it fulfils its responsibilities under Section 42 of the Irish Human Rights and Equality Commission Act 2014 which places a positive obligation on public bodies to have regard, in the performance of their functions, to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of staff and persons to whom services are provided. The Review Board was mindful of this duty in the performance of its functions in 2021.

11. **GOVERNANCE AND INTERNAL CONTROLS**

Structure and Membership of the Review Board

The Mental Health (Criminal Law) Review Board is a quasi-judicial body, rather than a governance board, which reviews the detention of patients detained in designated centres under the Criminal Law (Insanity) Act 2006. The Board consists of a Chairperson and any number of ordinary members as the Minister for Justice, having consulted with the Minister for Health, may require. The current Chairperson is a retired High Court Judge and there are three ordinary members, two of whom are

consultant psychiatrists and one is a counsellor psychotherapist. All Board members are appointed by the Minister for a period of five years, as provided by the 2006 Act. Membership of the Board in 2021 and the date of appointment of members is set out beneath:

Member	Appointed
Mr. Justice Iarfhlaith O'Neill	September 2014 Re-appointed September 2019
Dr. Katherine Brown Consultant Psychiatrist	May 2017
Ms. Nora McGarry Counsellor Psychotherapist	September 2011 Re-appointed September 2016 Re-appointed September 2021
Dr. Elizabeth Walsh Consultant Psychiatrist	January 2013 Re-appointed January 2018

Gender Balance

The appointment of members of the Review Board is a matter for the Minister of Justice and the Board has no input into appointments. As of 31 December 2021, the Review Board had one male (25%) and three (75%) female members.

Attendance at Hearings and Fees

The Review Board rarely convene, other than for hearings in the Central Mental Hospital. When reviewing the detention of patients, the Board sits in a panel of three, with the Chairperson and at least one consultant psychiatrist always on the panel.

Ordinary members are paid a fee of €250 per review hearing attended. The same fee is paid for attendance at hearings in connection with applications for unconditional discharge and applications to amend or vary conditions of discharge. In 2021 all Board members attended those hearings which they were scheduled to attend. Dr. Brown

attended 114 hearings, Ms. McGarry attended 200 hearings and Dr. Walsh attended 86 hearings.

The Chairperson chairs all review hearings and hearings to consider applications for unconditional discharge and applications to amend conditions. The Chairperson also advises and guides the CEO in the management of the business of the Board and in managing any legal cases to which the Board is a party. The Chairperson is paid an annual fee of €70,875.

Employees

The Chief Executive Officer of the Review Board, Ms. Aisling Brennan, is an Assistant Principal Officer in the Department of Justice who devotes a portion of her time to the duties of CEO of the Board. The CEO is responsible for the day-to-day management and administration of the business and resources of the Board. The CEO is not paid a separate salary for her work with the Review Board.

The Review Board is supported by a Higher Executive Officer and a Clerical Officer, seconded from the Department of Justice. The staff of the Review Board are civil servants and are paid the appropriate civil service pay rates for their grade.

The processing of the payment of Board members' fees is provided by the Payroll Shared Services Centre of the Department of Public Expenditure and Reform. The processing of other payments is provided by the Financial Shared Services Centre of the Department of Justice.

Oversight and Internal Controls

An Oversight Agreement for 2020-2022 was reached with the Department of Justice and signed on behalf of the Review Board by the CEO. The Agreement remains in place until the end of 2022 with a provision for a review approximately every 12 months and update, if necessary. In the Oversight Agreement it was agreed that, because of the narrow legislative functions of the Chairperson, the statutory independence of the Board and its very small size, the CEO, rather than the Chairperson, will furnish the required Comprehensive Report to the Minister in accordance with the *2016 Code of Practice for the Governance of State Bodies*. Regarding compliance with the *Code of Practice*, the 'Comply or Explain' provision of the *Code* has been applied by the Department to the Review Board.

In regard to internal controls and risk management, because of the Review Board's size, it is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee. Instead, alternative arrangements are in place to allow the Board have access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance. An assessment of the principal risks of the Review Board is carried out by the CEO and risks identified are notified and incorporated into the risk register maintained by the Department. The principal risk identified is that review hearings are not completed within the statutory time. Mitigating measures taken are ensuring that reviews are completed in accordance with the law.

The Review Board's founding legislation does not require the production of Financial Statements. The Board, through the CEO, liaises with the Financial Shared Services Centre of the Department of Justice which reports on the Board's income and

expenditure in the Department's monthly management reports. The monthly reports are kept under review by the CEO and procedures are in place to ensure that expenditure is authorised in accordance with the Department's guidelines.

Having regard to the size of the Review Board and the statutory basis for its remit which does not change unless legislation is amended, it is not deemed necessary for the Board to prepare a strategic plan. However, the Review Board publishes relevant statistics with regard to its output in its Annual Report which is submitted to the Department and is published on the Board's website.

The Review Board adheres to public service procurement policies and guidelines. Where necessary, any procurement competition conducted by the Review Board is done in consultation with the Procurement Unit of the Department of Justice and the Office of Government Procurement.

Note:

The following are available on the Board's website www.mhclrb.ie

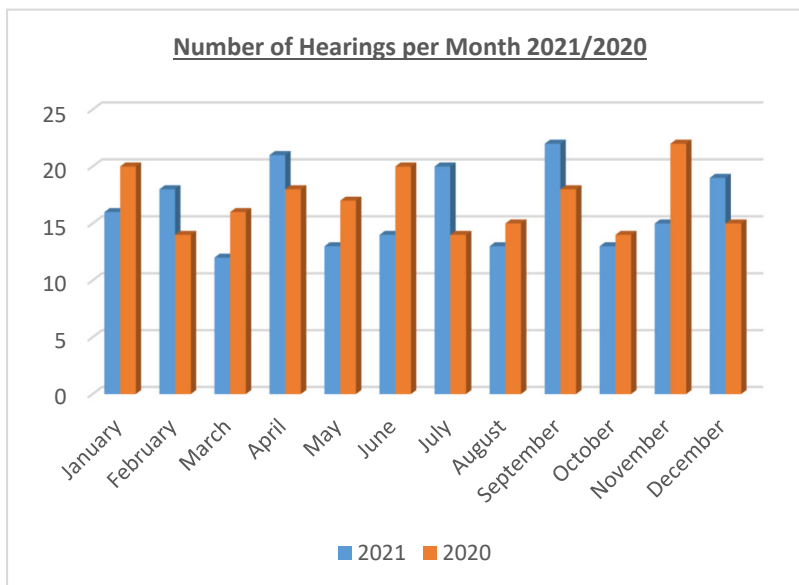
An administrative consolidation of the Criminal Law (Insanity) Act 2006, prepared by the Law Reform Commission; ([www.lawreform.ie/ fileupload/revisedacts/withannotations/en_act_2006_0011.pdf](http://www.lawreform.ie/fileupload/revisedacts/withannotations/en_act_2006_0011.pdf))

Procedures of the Mental Health (Criminal Law) Review Board
<https://www.mhclrb.ie/wp-content/uploads/2020/06/Procedures-MHRB.pdf>

Terms and Conditions of the Mental Health (Criminal Law) Legal Aid Scheme 2006
<https://www.mhclrb.ie/wp-content/uploads/2020/06/Terms-Conditions-of-MHCLRB.pdf>

Number of Hearings per Month 2021/2020

Month	No. of Hearings 2021	% of 2021 Total	No. of Hearings 2020	% of 2020 Total
January	16	8%	20	10%
February	18	9%	14	7%
March	12	6%	16	8%
April	21	11%	18	9%
May	13	7%	17	8%
June	14	7%	20	10%
July	20	10%	14	7%
August	13	7%	15	7%
September	22	11%	18	9%
October	13	7%	14	7%
November	15	8%	22	11%
December	19	9%	15	7%
Total	196	100%	203	100%

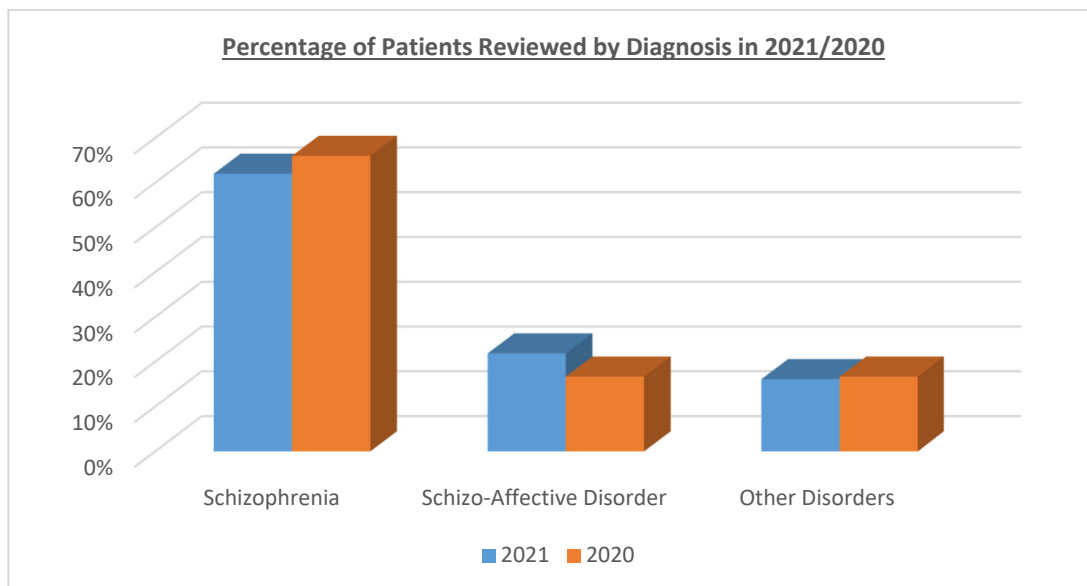


Number of Patients Reviewed per Diagnosis in 2021/2020

Diagnosis	No. of patients reviewed 2021	% of 2021 Total	No. of patients reviewed 2020	% of 2020 Total
Schizophrenia	54	62%	60	66%
Schizo-Affective Disorder	19	22%	15	17%
Other Disorders	14	16%	15	17%
Total	87	100%	90	100%

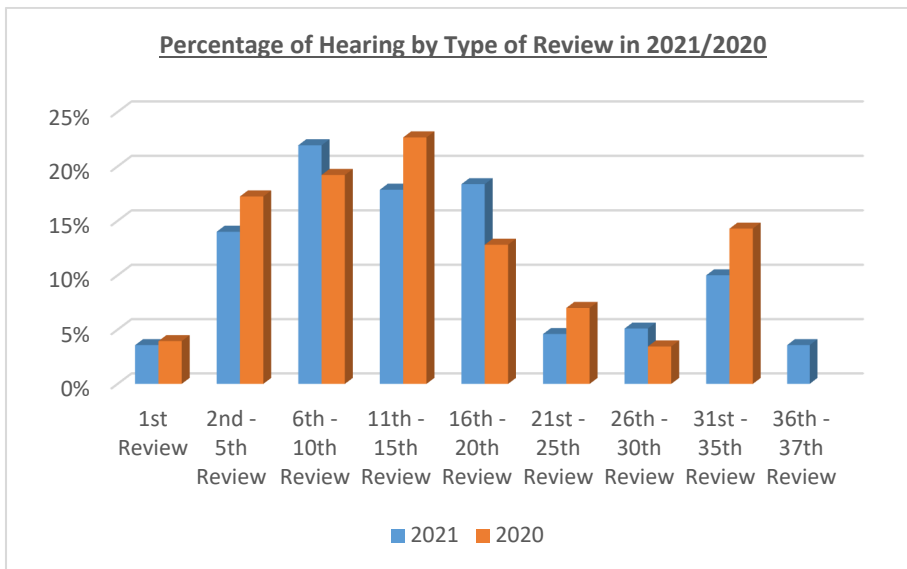
Other Disorders include:

- Bi-Polar Affective Disorder
- Psychotic Depression
- Autistic Spectrum Disorder
- Asperger's Syndrome
- Affective Psychosis
- Organic Psychosis
- Recurrent Severe Depressive Disorder with Psychotic Features
- Psychotic Episode / Acute Psychotic Episode
- Depressive Disorder
- Drug Induced Psychosis
- Emotionally Unstable Personality Disorder



Number of Hearings by Type of Review in 2021/2020

Type of Review	No. of Reviews 2021	% of 2021 Total	No. of Reviews 2020	% of 2020 Total
1st Review	7	4%	8	4%
2nd - 5th Review	28	14%	35	17%
6th - 10th Review	43	22%	39	19%
11th - 15th Review	35	18%	46	23%
16th - 20th Review	36	18%	26	13%
21st - 25th Review	9	5%	13	7%
26th - 30th Review	10	5%	7	3%
31st - 35th Review	21	10%	29	14%
36th - 37th Review	7	4%		
Total	196	100%	203	100%

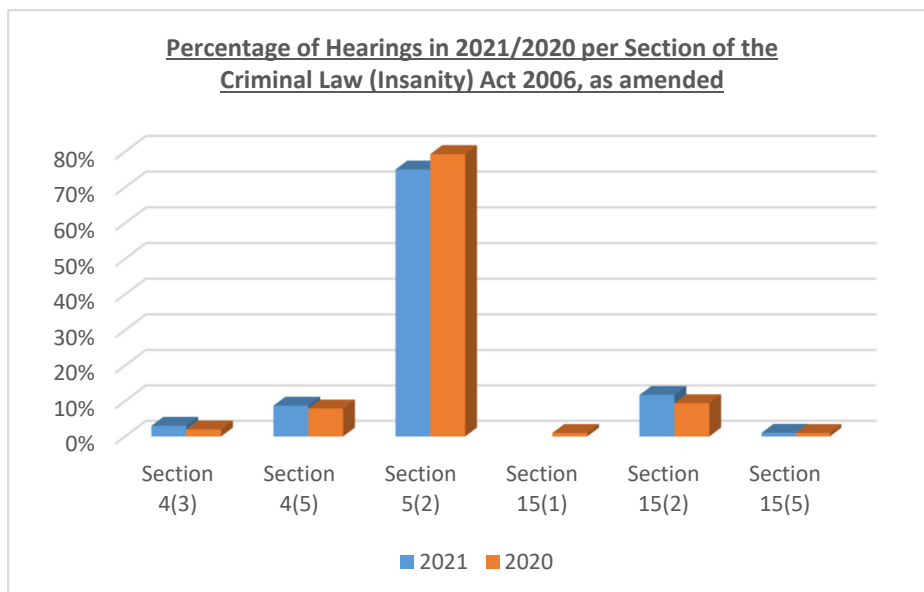


Number of Hearings in 2021/2020 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2021	% of 2021 Total	No. of Hearings 2020	% of 2020 Total
Section 4(3)	7	3%	4	2%
Section 4(5)	17	9%	16	8%
Section 5(2)	147	75%	161	79%
Section 15(1)			1	1%
Section 15(2)	23	12%	19	9%
Section 15(5)	2	1%	2	1%
Total	196	100%	203	100%

Note: One patient is detained under Section 5(2) and Section 15(1).
That patient's detention is counted under Section 5(2) only.

- 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)



**Average Number of Cases Assigned to Legal
Representatives on Legal Aid Panel in 2021/2020**

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
2021	25*	8	14	9	1
2020	25	8	15	9	1

* At the end of 2021 there were 25 Panel members. During the year one additional member was appointed and one resigned.

**Number of Patients Conditionally
Discharged in 2021/2020**

Month of Conditional Discharge Order	No. of Patients 2021	No. of Patients 2020
February	1	1
March	1	
May	1	
June		2
September	2	
November	1	2
December		1
Total	6	6

**Offences or Alleged Offences of patients whose
detention was reviewed in 2021**

Type of Offence or Alleged offence	No. of patients charged with, or convicted of, offence	
Murder of which victim was family member of which victim was known to patient of which victim was stranger	39	20 9 10
Attempted Murder / Manslaughter/Death caused by dangerous driving of which victim was family member/known to patient of which victim was stranger	8	4 4
Assault causing harm/serious bodily harm of which victim was family member of which victim was known to patient of which victim was stranger	25	4 5 16
Arson	3	
Other	12	
Total	87	

Note

- 1) Patients convicted of, or charged with more than one offence / alleged offence, have been categorised according to the most serious offence / alleged offence.
- 2) In a minority of instances there was more than one victim of the offence with which a patient was charged, or convicted.
- 3) The category "**Other**" includes sexual assault, threat to kill, harassment, false imprisonment, aggravated burglary and attempted kidnap of a child, trespass and possession of a knife with intent to cause harm, theft of a car and causing damage by dangerous driving and possession of knives and intimidation.