



**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE
(AN DLÍ COIRIÚIL)
MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD**

Annual Report 2020

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

I am pleased once again to present the Annual Report of the Mental Health (Criminal Law) Review Board. This is the 14th Annual Report of the Review Board, which sets out the activities of the Board during 2020.

In 2020, the Review Board was presented with the difficulty of conducting its business having regard to the COVID-19 pandemic, with all of the challenges that this brought. In March the Minister for Justice gave consent for the Review Board to amend its procedures to allow for hearings to be conducted via tele-conferencing. This provided a means by which review hearings could continue, enabling patients and their legal representatives to be heard, while adhering to the national guidelines for the prevention of the spread of the pandemic. The Review Board was also designated by the Minister under Sections 29 and 31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, to provide that meetings and hearings of the Board could be conducted remotely.

During 2020, there was a slight increase in the number of review hearings held by the Board. The Board conducted 203 review hearings into the detention of patients detained in the Central Mental Hospital compared with 198 the previous year. The number of patients whose detention was reviewed by the Board was 90 compared with 91 in 2019. Of the 90 patients, six were granted a conditional discharge. By comparison in 2019, five conditional discharges were approved by the Board.

Also in 2020, the Board progressed to holding 33rd, 34th and 35th reviews into the detention of some patients.

The Board received four applications for unconditional discharge in 2020 and there were two outstanding applications from the previous year. Three unconditional discharges were granted by the Board, one application was refused, one hearing was adjourned for further consideration in 2021 and one applicant withdrew his application.

On 6th September 2020 the Board participated in the 5th Annual Justice and Equality Agency Roundtable which was hosted by the Minister for Justice.

I would like to take this opportunity to 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 am aware that the COVID-19 pandemic presented challenges for the hospital in keeping patients and staff as safe as possible, while endeavouring to continue with the normal life of the hospital. I would like to acknowledge the assistance and co-operation of the management and staff in the Central Mental Hospital with arrangements to facilitate the continuation of the work of the Board by remote means during this time. I thank the multi-disciplinary teams for their work in preparing psychiatric reports prior to review hearings. The Board is mindful that this work is time consuming for all involved. The Board is appreciative of the continued 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 in 2021 with the planned move of the National Forensic Mental Health Service to its new location in Portrane.

I also thank the members of the Board's Legal Representatives Panel who continue to ably and conscientiously represent patients at their review hearings and for their co-operation in the conduct of review hearings by remote means during 2020.

I thank the staff of the Board Ms. Paula Connolly, Chief Executive Officer, Ms. Catherine Hayes and Ms. Ann Casey for their excellent service to the Board during the year.

Finally, I would like to mention our esteemed former colleague, Dr. Michael Mulcahy, who sadly passed away on the 1st of January 2021. Dr. Mulcahy was a valued member of the Review Board for many years since its establishment in 2006 until his retirement in 2017. He was highly respected for his professionalism coupled with a warm empathy that was appreciated by all.

Iarfhlaith O'Neill
Chairperson

March 2021

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 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, having regard to the welfare 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 Board is statutorily independent in the exercise of its functions.

The Central Mental Hospital, Dundrum, is currently a designated centre under the 2006 Act. In April 2020, one Unit on the new National Forensic Health Service campus in Portrane was also designated under the Act due to the necessity to provide additional accommodation due to the COVID-19 pandemic.

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 Act, as amended, usually varies from between 80 to 90 patients. 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 the detention of some of these patients in the Central Mental Hospital may not be reviewed by the Board as they may be transferred back to prison by the Clinical Director prior to having a review hearing.

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. Outside the regularly scheduled hearings, the Board can, on its own initiative, review the detention of a patient as it considers appropriate. A review may also be requested by a patient or by the Clinical Director of the Central Mental Hospital. The Minister for Justice can also direct the Board to hold a review into the detention of a prisoner who is involuntarily in the hospital.

During 2020, a total of 90 patients had their detention reviewed by the Board. Of those 90 patients, 10 or 11% were female and 80 or 89% were male. A total of 203 review hearings were held compared with 198 the previous year which is a 2½% increase in the number of review hearings. Of the 90 patients, 66% had been diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 17% were diagnosed with other disorders. This compares with 2019 when 91 patients had their detention reviewed, with 66% having been diagnosed as suffering from schizophrenia, 19% were suffering from schizoaffective disorder and 15% were diagnosed with other disorders. It should be noted that primarily the same core group of patients are reviewed by the Board each year. (Appendices A and B refer).

For the first time, the Board conducted 33rd, 34th and 35th reviews into the detention of some patients in 2020. Of the 203 review hearings, nine were a 33rd review, four were a 34th review and one was a 35th review. A total of 14% of the hearings were at 31st to 35th review stage. 21% of hearings were at 1st to 5th review stage, compared with 25% in 2019. Of these, eight reviews or 4% were a 1st review, compared with 2019 when there were 10 such reviews, which is 5% of the total. (Appendix C refers).

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 2020, 161 hearings, which is 79% of the total, were into the detention of patients committed under Section 5(2). The number in this category in 2019 was 150 which is 76% of the total number of hearings that year. Again in 2020 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 9% of review hearings in 2020 compared with 11% in 2019. (Appendix D refers).

4. 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 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. For continuity for patients, having regard to the fact that they are suffering from a mental disorder, the Board endeavours to assign the same solicitor to represent a patient at subsequent review hearings.

Section 3.6 of the Terms and Conditions of the Review Board's Legal Aid Scheme stipulates that the Legal Representatives Panel will be formally reviewed by the Board every three years. Having regard to this, a review of the Panel of Legal Representatives began in July 2020, the previous review having been completed in 2017. The review was commenced by enquiring of Panel members if they wished to remain on the Panel. Since the previous review, the number of members fluctuated from 27 at the beginning of 2017 to 24 at the end of 2019. By the end of 2020 there were 25 Panel members. The number of patients requiring legal representation during that period also fluctuated from 83 in 2017, 89 in 2018 to 91 in 2019. Based on an analysis of the number of patients and the workload of legal representatives, the Board decided that additional members are not currently required, but is keeping this under review.

At the beginning of 2020 there were 24 solicitors on the Legal Representatives Panel. During the year one solicitor was added to the Panel at the request of a patient who wished to be represented at his review hearing by the solicitor who represented him in criminal proceedings, bringing the total at the end of the 2020 to 25.

The average number of cases assigned to solicitors on the Panel in 2020 was eight. The top quartile of solicitors was assigned an average of 15 cases each, compared with 13 in 2019. The second and third quartiles combined were assigned an average of nine

cases, compared with seven the previous year. The bottom quartile was assigned an average of one case each in 2020 and 2019. (Appendix E refers)

5. **ORDERS FOR DISCHARGE**

During the reporting period, the Board approved the conditional discharge of six patients from the Central Mental Hospital, compared with five in 2019. The average duration of detention in the hospital for the conditionally discharged patients was seven years. The two shortest durations averaged four years and the two longest averaged 10 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).

Four applications for unconditional discharge were received in 2020 from patients who had been conditionally discharged for 12 months or more. There was also two outstanding applications from the previous year. The Board granted three unconditional discharges in 2020 and one application was refused. One application was withdrawn by the applicant and the hearing of another application was adjourned, to be resumed in 2021.

6. **MOST SERIOUS OFFENCE OR ALLEGED OFFENCE**

The offences, or alleged offences, which patients detained in the Central Mental Hospital in 2020 were charged with, or convicted of, included murder, attempted murder, manslaughter, assault causing serious bodily harm and arson. Of the 90 patients whose detention was reviewed, 41 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 nine patients were charged with, or convicted of, attempted murder/manslaughter/death by dangerous driving. 24 patients were charged with, or convicted of, assault causing harm/serious bodily harm and four with arson. Other offences include sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, trespass and possession of a knife with the intention to cause harm, possession of knives and intimidation, and threat to set a Garda station alight. (Appendix G refers).

7. LEGAL PROCEEDINGS

As reported last year, an application for leave to appeal the decision of the Court of Appeal was granted by the Supreme Court in October 2019 (*MC v. Clinical Director, Central Mental Hospital and Mental Health (Criminal Law) Review Board (Notice Party)*). The appeal was heard by the Supreme Court in March 2020 and the unanimous judgement of the Court was delivered by Ms. Justice Baker on 4 June 2020. From the Review Board's perspective, this judgement provided clarification of Section 13A of the Criminal Law (Insanity) Act 2006, as amended. The Court said that Section 13A imposes a mandatory obligation on the Clinical Director to put arrangements in place for the conditional discharge of a patient, even if the Clinical Director disagrees with the Board's decision to conditionally discharge. The decision as to whether conditions are to be imposed and the nature of those conditions is expressly a matter for the Review Board (*Supreme Court reference S:AP:IE2019:000136*).

8. **FINANCE INFORMATION**

The Review Board was funded from Subhead B.10 of the Vote of the Office of the Minister for Justice. In 2020, the Review Board received a budget allocation of €288,000. The Board's total expenditure was €304,000. The Board received sanction from the Department's Financial Management Unit for the increased expenditure in 2020. The Review Board adheres to the Public Spending Code. The main expenditure items are as follows:

Board members' fees	*€103,500
Free Legal Aid	€101,645
Chairperson's fee	**€53,156
Legal costs	€39,734

*Includes fees for December 2019 which were paid in January 2020. Does not include fees for December 2020 which are paid in January 2021.

**The Chairman is paid an annual fee of €70,875 in quarterly instalments. The last payment in December 2020 was paid in January 2021

9. **PROCUREMENT**

Tenders for Interpretation Services at Review Hearings

Five, once-off, e-mail tenders were issued by the Review Board in 2020 for the provision of interpretation services for patients at review hearings.

10. **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 2020.

11. 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.

12. 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 2020.

13. GOVERNANCE AND INTERNAL CONTROLS

Membership and Structure of the Review Board

The Mental Health (Criminal Law) Review Board is a quasi-judicial body which reviews the detention of patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006. The Review Board is not a governance board. 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. As provided by the 2006 Act, Board members are appointed by the Minister for a period

of five years. Membership of the Board in 2020 and the date of appointment of members is set out beneath:

Member	Appointed
Mr. Justice Iarfhlaith O'Neill, Chairperson	September 2014 Re-appointed September 2019
Dr. Katherine Brown, Consultant Psychiatrist	May 2017
Ms. Nora McGarry, Counsellor Psychotherapist	September 2011 Re-appointed September 2016
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 Department of Justice and the Board has no input into appointments. As of 31 December 2020, the Review Board had one male (25%) and three (75%) female members.

Attendance at Hearings and Fees

The Review Board usually convenes only for hearings and for pre-hearing discussions. 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 2020 all Board members attended hearings which they were scheduled to attend. Dr. Brown attended 99 hearings, Ms. McGarry attended 209 hearings and Dr. Walsh attended 110 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 Board, Ms. Paula Connolly, 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. Other payments are processed by the Financial Shared Services Centre of the Department of Justice.

Oversight and Internal Controls

In accordance with the *2016 Code of Practice for the Governance of State Bodies*, 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 force until the end of 2022 with a provision for a review approximately every 12 months and update, if necessary. The '*Comply or Explain*' provision of the *Code of Practice* has been applied by the Department to the Review Board. In the Agreement, it is agreed that the CEO will furnish the required Comprehensive Report to the Minister, in conjunction with the Board's Annual Report.

Regarding internal controls and risk management, the CEO carries out an assessment of the principal risks of the Board on an annual basis and risks identified are included in the Board's Risk Register. Some of the principal risks identified are review hearings not being completed within the statutory time limit and poorly-argued defence of any litigation taken against the Board. Mitigating measures taken are ensuring that reviews are completed in accordance with the law, maintaining tracking of cases and providing appropriate briefing to the Board's legal advisors for the defence of any litigation.

It is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee because of its size. Instead, alternative arrangements have been put in place to allow the Board to have access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance.

The Review Board is not required to produce Financial Statements by its founding legislation. The CEO of the Board 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.

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

Regarding procurement, the Board ensures competitive tendering as standard in its procurement processes. Tendering conducted by the Review Board is done in consultation with the Procurement Unit of the Department of Justice and the Board adheres to public service procurement policies and guidelines.

Note:

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

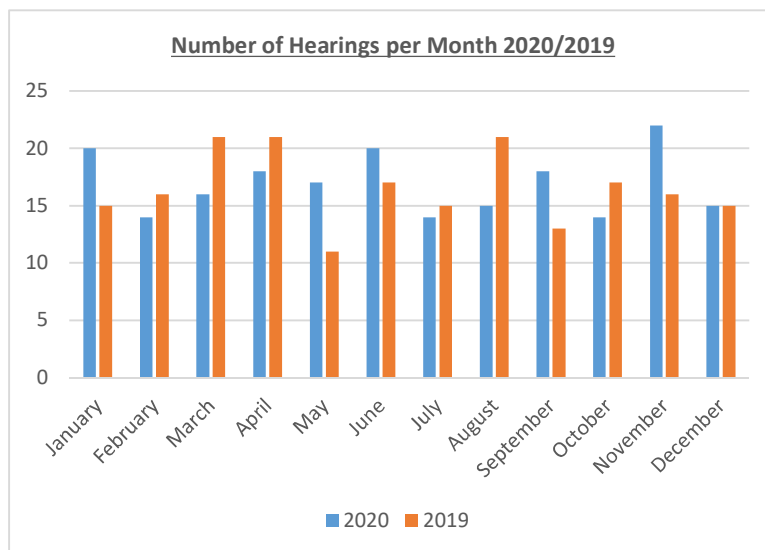
An administrative consolidation of the Criminal Law (Insanity) Act 2006, prepared by the Law Reform Commission; ([www.lawreform.ie/ fileupload/revisedacts/withannotations/en_act_2006_0011.pdf](http://www.lawreform.ie/fileupload/revisedacts/withannotations/en_act_2006_0011.pdf))

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

The 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 2020/2019

Month	No. of Hearings 2020	% of 2020 Total	No. of Hearings 2019	% of 2019 Total
January	20	10%	15	7%
February	14	7%	16	8%
March	16	8%	21	11%
April	18	9%	21	11%
May	17	8%	11	6%
June	20	10%	17	9%
July	14	7%	15	7%
August	15	7%	21	11%
September	18	9%	13	6%
October	14	7%	17	9%
November	22	11%	16	8%
December	15	7%	15	7%
Total	203	100%	198	100%

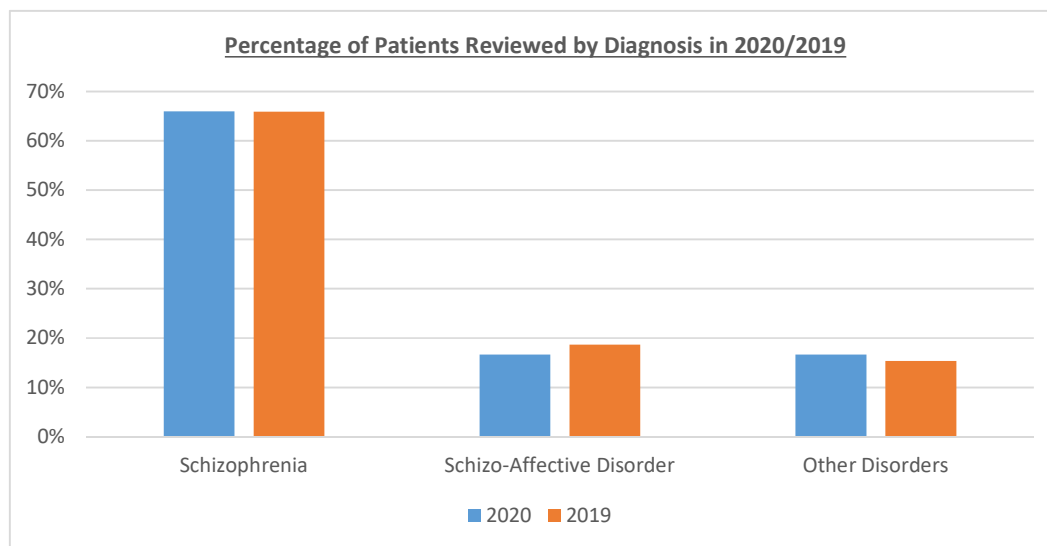


Number of Patients Reviewed per Diagnosis in 2020/2019

Diagnosis	No. of patients reviewed 2020	% of 2020 Total	No. of patients reviewed 2019	% of 2019 Total
Schizophrenia	60	66%	60	66%
Schizo-Affective Disorder	15	17%	17	19%
Other Disorders	15	17%	14	15%
Total	90	100%	91	100%

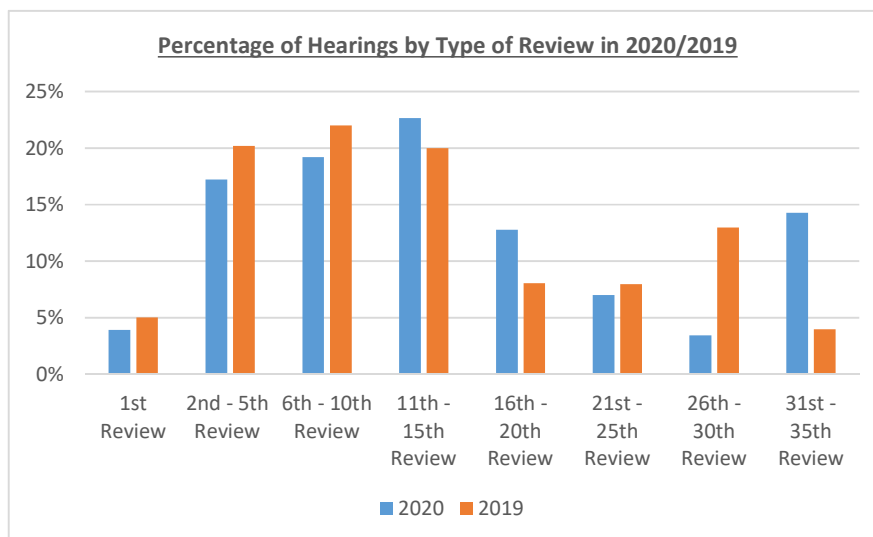
Other Disorders include:

- 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



Number of Hearings by Type of Review in 2020/2019

Type of Review	No. of Reviews 2020	% of 2020 Total	No. of Reviews 2019	% of 2019 Total
1st Review	8	4%	10	5%
2nd - 5th Review	35	17%	40	20%
6th - 10th Review	39	19%	43	22%
11th - 15th Review	46	23%	40	20%
16th - 20th Review	26	13%	16	8%
21st - 25th Review	13	7%	15	8%
26th - 30th Review	7	3%	25	13%
31st - 35th Review	29	14%	9	4%
Total	203	100%	198	100%

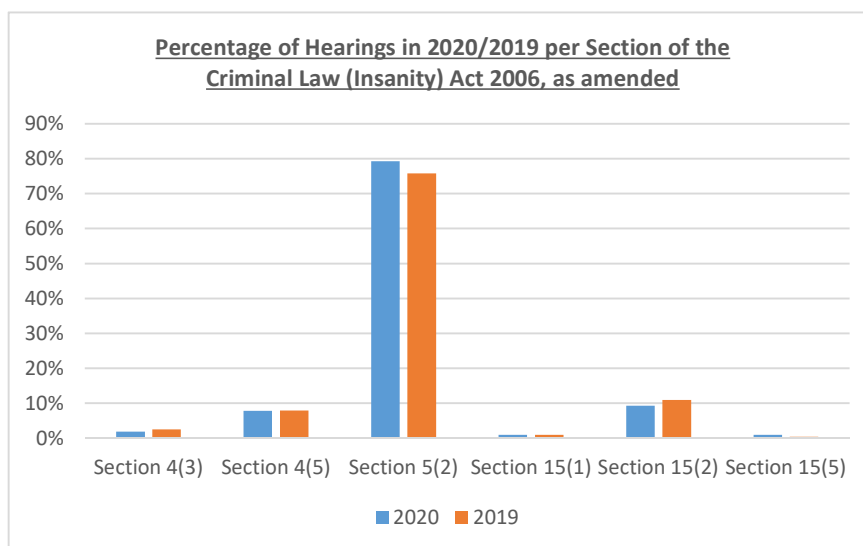


Number of Hearings in 2020/2019 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2020	% of 2020 Total	No. of Hearings 2019	% of 2019 Total
Section 4(3)	4	2%	5	3%
Section 4(5)	16	8%	17	8%
Section 5(2)	161	79%	150	76%
Section 15(1)	1	1%	2	1%
Section 15(2)	19	9%	23	11%
Section 15(5)	2	1%	1	1%
Total	203	100%	198	100%

Note: One patient is detained under Section 5(2) and Section 15(1). The detention of that patient 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 2020/2019**

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
2020	25**	8	15	9	1
2019	27*	7	13	7	1

**At the end of 2020 there are 25 Panel members. During the year one additional member was appointed.

* At the end of 2019 there were 24 Panel members. During the year one additional member was appointed and three resigned. The members who resigned are included in the figures as they were assigned cases during the year.

**Number of Patients Conditionally
Discharged in 2020/2019**

Month of Conditional Discharge Order	No. of Patients 2020	No. of Patients 2019
February	1	
March		1
April		1
June	2	2
November	2	1
December	1	
Total	6	5

**Most Serious Offence or Alleged Offence of patients whose
detention was reviewed in 2020**

Type of Offence or Alleged offence	No. of patients charged with, or convicted of, offence	
Murder	41	
of which victim was family member		22
of which victim was known to patient		9
of which victim was stranger		10
Attempted Murder / Manslaughter/Death caused by dangerous driving	9	
of which victim was family member/known to patient		5
of which victim was stranger		4
Assault causing harm/serious bodily harm	24	
of which victim was family member		5
of which victim was known to patient		4
of which victim was stranger		15
Arson	4	
Other	12	
Total	90	

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, attempted abduction of a child, trespass and possession of a knife with intent to cause harm, possession of knives and intimidation, threat to set a Garda station alight.