S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 10, 2010

Introduced by M. of A. ORTIZ, MILLMAN, GIBSON, ROBINSON -- Multi-Sponsored by -- M. of A. BOYLAND, CAHILL, JOHN, McENENY, SKARTADOS, TITONE -- read once and referred to the Committee on Children and Families

AN ACT to amend the mental hygiene law and the executive law, in relation to providing legal assistance to youth ordered by the court into the custody of the office of children and family services and placed or committed to a state operated juvenile detention center

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 47.01 of the mental hygiene law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(a) There shall be a mental hygiene legal service of the state in each judicial department. The service shall provide legal assistance to patients or residents of a facility as defined in section 1.03 of this chapter, or any other place or facility which is required to have an operating certificate pursuant to article sixteen or thirty-one of this chapter, and to persons alleged to be in need of care and treatment in such facilities or places, and to persons entitled to such legal assistance as provided by article ten of this chapter. THE SERVICES SHALL ALSO PROVIDE LEGAL ASSISTANCE TO YOUTH ORDERED BY THE COURT INTO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND PLACED OR COMMITTED TO A STATE OPERATED JUVENILE DETENTION CENTER. The head of such service in each judicial department and such assistants and such staff as may be necessary shall be appointed and may be removed by the presiding justice of the appellate division of the judicial department. Appointments and transfers to the service shall comply with the provisions of the civil service law. Standards for qualifications of the personnel in the service shall be established by the presiding justice of the appellate division of the judicial department. The presiding justice of the appellate division of the judicial department shall promulgate such rules or regulations as may be necessary to effectuate the purposes of this article.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. Section 47.03 of the mental hygiene law, as added by chapter 789 of the laws of 1985, subdivision (c) as amended by chapter 408 of the laws of 1999, subdivisions (d) and (e) as amended and subdivision (f) as added by chapter 7 of the laws of 2007, is amended to read as follows:

S 47.03 Functions, powers and duties of the service.

The mental hygiene legal service in each judicial department of the state shall perform the following duties:

(a) To study and review the admission and retention of all patients or residents which shall include a review of the willingness of the patient or resident to remain in his or her status and the determination of the facility director as to suitability of such status, as provided for by this chapter;

(b) To inform patients or residents and, in proper cases, others interested in such persons' welfare of procedures for admission and retention and of the patients' or residents' right to have judicial hearing and review, to be represented by legal counsel, and to seek independent medical opinion;

(c) To provide legal services and assistance to patients or residents and their families related to the admission, retention, and care and treatment of such persons, to provide legal services and assistance to subjects of a petition or patients subject to section 9.60 of this chapter, and to inform patients or residents, their families and, in proper cases, others interested in the patients' or residents' welfare of the availability of other legal resources which may be of assistance in matters not directly related to the admission, retention, and care and treatment of such patients or residents;

(d) TO PROVIDE LEGAL SERVICES AND ASSISTANCE TO YOUTH RESIDING IN JUVENILE DETENTION CENTERS AND THEIR FAMILIES RELATED TO THE RETENTION, CARE AND TREATMENT OF SUCH PERSONS, AND TO INFORM YOUTH AND THEIR FAMILIES AND IN PROPER CASES, OTHERS INTERESTED IN THE YOUTHS' WELFARE, OF THE AVAILABILITY OF OTHER LEGAL RESOURCES WHICH MAY BE OF ASSISTANCE IN MATTERS NOT DIRECTLY RELATED TO THE RETENTION, CARE AND TREATMENT OF SUCH YOUTH;

(E) To be granted access at any and all times to any facility or place or part thereof described in subdivision (a) of section 47.01 of this article, and to all books, records and data pertaining to any such facility or place deemed necessary for carrying out its functions, powers and duties. The mental hygiene legal service may require from the officers or employees of such facility or place any information deemed necessary for the purpose of carrying out the service's functions, powers and duties. Information, books, records or data which are confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the service. Provided, however, whenever federal regulations restrict, or as a condition of federal aid require that a facility restrict the release of information contained in the clinical record of a patient or client, or restrict disclosure of the identity of a patient or access to that patient, to a greater extent than is allowed under this section, the provisions of such federal law or federal regulation shall be controlling;

[(e)] (F) To initiate and take any legal action deemed necessary to safeguard the right of any patient [or], resident OR YOUTH to protection from abuse or mistreatment, which may include investigation into any such allegations of abuse or mistreatment of any such patient or resident; and

[(f)] (G) To provide legal services and assistance in accordance with article ten of this chapter.

S 3. The executive law is amended by adding a new section 508-a to read as follows:

S 508-A. LEGAL SERVICES AND ASSISTANCE TO YOUTH. IN ADDITION TO ANY LAW GUARDIAN, COURT APPOINTED COUNSEL OR PRIVATE COUNSEL A YOUTH MAY HAVE, THE MENTAL HYGIENE LEGAL SERVICE IN EACH JUDICIAL DEPARTMENT OF THE STATE, ESTABLISHED PURSUANT TO ARTICLE FORTY-SEVEN OF THE MENTAL HYGIENE LAW, SHALL PROVIDE LEGAL SERVICES AND ASSISTANCE TO YOUTH AND THEIR FAMILY RELATING TO THE RETENTION, CARE AND TREATMENT OF SUCH YOUTH WHEN SUCH YOUTH IS ORDERED BY THE COURT INTO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND PLACED OR COMMITTED TO A STATE OPERATED JUVENILE DETENTION CENTER.

S 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to subdivision (c) of section 47.03 of the mental hygiene law made by section two of this act shall not affect the expiration and reversion of such subdivision. Further provided, effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.