

3074

2011-2012 Regular Sessions

I N S E N A T E

February 8, 2011

Introduced by Sens. HUNTLEY, DIAZ, MONTGOMERY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

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:

1 Section 1. Subdivision (a) of section 47.01 of the mental hygiene law,
2 as amended by chapter 7 of the laws of 2007, is amended to read as
3 follows:
4 (a) There shall be a mental hygiene legal service of the state in each
5 judicial department. The service shall provide legal assistance to
6 patients or residents of a facility as defined in section 1.03 of this
7 chapter, or any other place or facility which is required to have an
8 operating certificate pursuant to article sixteen or thirty-one of this
9 chapter, and to persons alleged to be in need of care and treatment in
10 such facilities or places, and to persons entitled to such legal assist-
11 ance as provided by article ten of this chapter. THE SERVICES SHALL
12 ALSO PROVIDE LEGAL ASSISTANCE TO YOUTH ORDERED BY THE COURT INTO THE
13 CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND PLACED OR
14 COMMITTED TO A STATE OPERATED JUVENILE DETENTION CENTER. The head of
15 such service in each judicial department and such assistants and such
16 staff as may be necessary shall be appointed and may be removed by the
17 presiding justice of the appellate division of the judicial department.
18 Appointments and transfers to the service shall comply with the
19 provisions of the civil service law. Standards for qualifications of the
20 personnel in the service shall be established by the presiding justice
21 of the appellate division of the judicial department. The presiding
22 justice of the appellate division of the judicial department shall

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

LBD03965-02-1

1 promulgate such rules or regulations as may be necessary to effectuate
2 the purposes of this article.

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

7 S 47.03 Functions, powers and duties of the service.

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

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

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

20 (c) To provide legal services and assistance to patients or residents
21 and their families related to the admission, retention, and care and
22 treatment of such persons, to provide legal services and assistance to
23 subjects of a petition or patients subject to section 9.60 of this chap-
24 ter, and to inform patients or residents, their families and, in proper
25 cases, others interested in the patients' or residents' welfare of the
26 availability of other legal resources which may be of assistance in
27 matters not directly related to the admission, retention, and care and
28 treatment of such patients or residents;

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

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

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

1 such allegations of abuse or mistreatment of any such patient or resi-
2 dent; and

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

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

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

16 S 4. This act shall take effect on the ninetieth day after it shall
17 have become a law; provided, however, that the amendments to subdivision
18 (c) of section 47.03 of the mental hygiene law made by section two of
19 this act shall not affect the expiration and reversion of such subdivi-
20 sion and shall be deemed to expire therewith. Further provided, effec-
21 tive immediately, the addition, amendment and/or repeal of any rule or
22 regulation necessary for the implementation of this act on its effective
23 date are authorized and directed to be made and completed on or before
24 such effective date.