

STATE OF NEW YORK

2541

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. BARRON, BICHOTTE HERMELYN, HYNDMAN, TAYLOR, COLTON, J. RIVERA, EPSTEIN, JEAN-PIERRE, WILLIAMS, GLICK -- Multi-Sponsored by -- M. of A. COOK, DAVILA, DE LA ROSA, GOTTFRIED, MONTES-ANO, O'DONNELL, SIMON, STECK, WALKER -- 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:

1 Section 1. Subdivision (a) of section 47.01 of the mental hygiene law,
2 as amended by chapter 658 of the laws of 2019, 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, patients or residents of residential healthcare facilities
8 licensed and operating pursuant to article twenty-eight of the public
9 health law who have been admitted directly from a facility as defined in
10 section 1.03 of this chapter and who have a serious mental illness as
11 defined in section 1.03 of this chapter and are receiving services
12 related to such illness, or any other place or facility which is
13 required to have an operating certificate pursuant to article sixteen or
14 thirty-one of this chapter, and to persons alleged to be in need of care
15 and treatment in such facilities or places, and to persons entitled to
16 such legal assistance as provided by article ten of this chapter. The
17 service shall also provide legal assistance to youth offered by the
18 court into the custody of the office of children and family services and
19 placed or committed to a state operated juvenile detention center. The
20 head of such service in each judicial department and such assistants and

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

LBD00294-01-1

1 such staff as may be necessary shall be appointed and may be removed by
2 the presiding justice of the appellate division of the judicial depart-
3 ment. Appointments and transfers to the service shall comply with the
4 provisions of the civil service law. Standards for qualifications of the
5 personnel in the service shall be established by the presiding justice
6 of the appellate division of the judicial department. The presiding
7 justice of the appellate division of the judicial department shall
8 promulgate such rules or regulations as may be necessary to effectuate
9 the purposes of this article.

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

14 § 47.03 Functions, powers and duties of the service.

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

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

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

27 (c) To provide legal services and assistance to patients or residents
28 and their families related to the admission, retention, and care and
29 treatment of such persons, to provide legal services and assistance to
30 subjects of a petition or patients subject to section 9.60 of this chap-
31 ter, and to inform patients or residents, their families and, in proper
32 cases, others interested in the patients' or residents' welfare of the
33 availability of other legal resources which may be of assistance in
34 matters not directly related to the admission, retention, and care and
35 treatment of such patients or residents;

36 (d) To provide legal services and assistance to youth residing in
37 juvenile detention centers and their families related to the retention,
38 care and treatment of such persons, and to inform youth and their fami-
39 lies and in proper cases, others interested in the youths' welfare, of
40 the availability of other legal resources which may be of assistance in
41 matters not directly related to the retention, care and treatment of
42 such youth;

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

1 or access to that patient, to a greater extent than is allowed under
2 this section, the provisions of such federal law or federal regulation
3 shall be controlling;

4 [~~(e)~~] (f) To initiate and take any legal action deemed necessary to
5 safeguard the right of any patient [~~(e)~~], resident or youth to protection
6 from abuse or mistreatment, which may include investigation into any
7 such allegations of abuse or mistreatment of any such patient or resi-
8 dent; and

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

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

13 § 508-a. Legal services and assistance to youth. In addition to any
14 law guardian, court appointed counsel or private counsel a youth may
15 have, the mental hygiene legal service in each judicial department of
16 the state, established pursuant to article forty-seven of the mental
17 hygiene law, shall provide legal services and assistance to youth and
18 their family relating to the retention, care and treatment of such youth
19 when such youth is ordered by the court into the custody of the office
20 of children and family services and placed or committed to a state oper-
21 ated juvenile detention center.

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