**LOUISIANA**

**MENTAL HEALTH**

**ADVOCACY**

**SERVICE &**

**CHILD ADVOCACY**

**PROGRAM**

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ANNUAL REPORT

**July 1, 2017 to June 30, 2018**

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*Submitted by:*

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**MISSION**

The mission of Louisiana’s Mental Health Advocacy Service (MHAS), as mandated by state law, is to provide legal counsel to adults in behavioral health facilities:

The service shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this Chapter, including but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge. LSA-R.S. 28:64 (A).[[1]](#footnote-1)

The mandate extends to minors, as set out in Title XIV of the Children’s Code:

1. MHAS shall provide legal counsel to all patients who request such service and who are admitted for treatment pursuant to this Title, including but not limited to voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.
2. MHAS shall provide legal counsel, as availability is determined by its executive director, to minors admitted for mental health or substance abuse treatment pursuant to the dispositional alternatives as provided in the other Titles of this Code, including but not limited to Titles VI and VIII. Children’s Code Article 1405.

Finally, MHAS provides legal counsel to children in abuse and neglect cases:

1. The Child Advocacy Program, referred to hereafter in this Article as the “program”, is hereby established within the Mental Health Advocacy Service authorized pursuant to R.S. 28:64.
2. The program shall provide qualified legal counsel to children in child abuse and neglect cases, subject to availability as determined by the director of the program, in those jurisdictions designated by the Louisiana Supreme Court and pursuant to Children’s Code Article 560. Children’s Code Article 1405.1

The agency goal is to ensure that our clients’ voices are heard and that they receive every right and remedy afforded them under law.

To this end, MHAS provides quality legal counsel and representation to its clients, addresses systemic issues that affect the rights of more than one client and require a remedy, acts as a clearinghouse for information relative to the rights of adults and children with behavioral health diagnoses and children in need of care, provides training to various individuals/agencies, and serves on various boards and commissions in the community.

**ACTIVITIES INVOLVING PERSONS WITH MENTAL HEALTH AND/OR SUBSTANCE USE ISSUES**

The Mental Health Advocacy Service provides legal representation in virtually every civil commitment proceeding in Louisiana. MHAS provides legal representation during the initial stages of confinement of persons with behavioral health issues as well as after the commitment has occurred in order to comply with a federal court order and state law. Staff attorneys negotiate and settle many of these matters before trial, saving court and professional time, and direct many clients to alternatives less restrictive than full-time institutionalization. Every patient entering a behavioral health treatment facility in Louisiana is to be given notice of his or her rights, including the right to contact an attorney with MHAS.

Despite the behavioral health law’s strong preference for voluntary treatment, inevitably some persons are held against their will. This amounts to a deprivation of liberty which requires compliance with due process safeguards. Attorneys for the patient may request probable cause hearings or file writs of habeas corpus to challenge involuntary confinement. A full civil commitment hearing is required for longer term treatment. MHAS attorneys are trained to seek less restrictive alternatives than inpatient hospitalization, which could mean outpatient treatment, a community residential facility, or a shorter time period of involuntary confinement.

MHAS has additional responsibilities. MHAS attorneys are appointed to represent persons found incompetent to proceed in the foreseeable future at the point in the proceedings where they must be either civilly committed or released. In interdiction proceedings, staff attorneys help seek less restrictive alternatives to full interdiction. Staff attorneys assist the patients at administrative hearings involving changes in medication and treatment. They also represent children in delinquency proceedings when the child’s competency is at issue, and children in state’s custody when the child is at risk of placement in a behavioral health treatment facility. At times, MHAS attorneys address issues involving a change in a policy or law affecting more than one person, *i.e.*, a “systems” issue.

MHAS provided training for almost 600 people this fiscal year. The training usually focused on the rights of persons with mental illness. Staff also contributes to the community by serving on a variety of boards and committees and monitoring national websites, organizations and courts to insure they have the latest information on mental illness, treatment, medications and resources.

**BEHAVIORAL HEALTH LITIGATION INVOLVING ADULTS**

The Mental Health Advocacy Service litigated almost 3,300 behavioral health cases this fiscal year (7/1/17 – 6/30/18).

***Civil commitment hearings***

Staff attorneys handled 2,224 civil commitment hearings, 40% of which were settled before the matter went to trial. Early settlement saves time in court for professionals and is often therapeutically preferable. In 53% of the cases the patient was discharged, diverted to a less restrictive setting or committed short term.

***Civil Commitment Review Hearings***

Patients involuntarily confined have their cases reviewed periodically. Staff attorneys handled 82 of these hearings this year.

***Probable Cause and Habeas Corpus Proceedings***

There were 70 probable cause and *habeas corpus* proceedings utilized by MHAS attorneys this year.

***Medication and Treatment Reviews/Other Cases***

MHAS participated in 40 medication/treatment administrative review hearings during this fiscal year. In 6 of the 31 medication review hearings, different medications were ordered. In 3 of the 9 forced treatment hearings, “No Treatment” was negotiated. MHAS represented the defendants in 5 interdiction hearings and handled many ‘miscellaneous’ cases.

**BEHAVIORAL HEALTH CASES INVOLVING CHILDREN**

Every juvenile admitted to a behavioral health treatment facility must be informed of his rights, including information about MHAS, and this information must be posted in any location where patients are confined and treated*.* A hospitalized minor has a right to request representation by MHAS[[2]](#footnote-2), and MHAS is appointed to represent the minor in civil commitment proceedings unless the minor chooses his own attorney.[[3]](#footnote-3) MHAS must be appointed (if available) when mental incapacity to proceed is raised[[4]](#footnote-4), and when there has been a plea of insanity.[[5]](#footnote-5)

When a dispositional or post-dispositional hearing may result in the behavioral health institutionalization of a child in the custody of the state, the child is entitled to representation by a Mental Health Advocacy Service attorney (if available).[[6]](#footnote-6) In fact, commitment to a treatment facility in any CINC, FINS or delinquency proceedings cannot occur without representation of the child by an attorney appointed from MHAS (unless unavailable).[[7]](#footnote-7)

Juvenile court proceedings require specialized knowledge. MHAS attorneys are trained in behavioral health law, juvenile law and procedure, special education law, disability law, and the laws governing the responsibilities of service providers. They visit the institutions where placements are made, as well as other less restrictive settings. They become familiar with psychiatric expert testimony, and the services offered by various providers. MHAS attorneys also represent emotionally disturbed juveniles to keep them in school with appropriate services, and attend Interagency Service Coordination conferences for juveniles at risk of losing their placements. When a child from one parish is hospitalized in another area of the state, the MHAS attorneys from both areas coordinate their efforts to make sure the youth is visited and appropriate court proceedings are requested. The agency learns of the hospitalization either because MHAS already represents the child or because MHAS receives a Physician’s Certificate for a Minor (PCM) for every child “voluntarily” admitted by a parent, tutor or caretaker into any behavioral health treatment facility in the state.

MHAS attorneys litigated over 701 juvenile behavioral health cases this year. Of these, 192 involved cases in which the children were diverted from institutionalization.

The budget for Mental Health Advocacy efforts for Fiscal Year 2018 was $ 2,030,622.

**CHILD ADVOCACY PROGRAM**

Louisiana has taken giant steps in reforming the system of providing legal representation in abuse and neglect proceedings. Acting upon recommendations by the Task Force on Legal Representation in Child Protection Proceedings,[[8]](#footnote-8)  and after the success of a two-year pilot study begun on August 15, 2005 in Iberia, St. Mary and Calcasieu[[9]](#footnote-9) Parishes, the Louisiana Legislature placed responsibility for statewide representation of abused and neglected children with the Child Advocacy Program (CAP) of MHAS,[[10]](#footnote-10) Statewide representation of parents was placed with the Louisiana Indigent Defender Board.[[11]](#footnote-11) The new system was to be implemented over 5 years, but funding issues made it necessary to implement the entire system after only year two. Responsibility for finishing the statewide implementation was placed with Legal Services Corporations. On July 1, 2010, three years into the new program, CAP assumed full responsibility for all CINC cases in its assigned parishes.[[12]](#footnote-12)

CAP employs full-time attorneys with no outside practice. The attorneys are trained to take a holistic approach to the representation of children. That is, what happens in court is only one part of what is happening in that child’s life. The child could be facing difficulties obtaining an appropriate education or getting appropriate services. The behavioral health expertise of the staff is particularly helpful because many of the children have behavioral health needs. Staff attorneys receive extensive training on these and other issues that occur outside of the courtroom. CAP attorneys were representing over 2,500 children in abuse and neglect proceedings as of June 30, 2018. The attorneys handled over 13,000 hearings this year.

One measure of the attorneys’ involvement in the lives of the children is the number of related meetings/hearings attended by attorneys outside of the courtroom. Primary among these meetings are the family team meetings and conferences. However, attorneys also attend permanency planning staffings, IEPs (individualized education plan), ISC (interagency service coordination) meetings and quarterly residential treatment team meetings. CAP attorneys participated in almost 1900 related meetings this year.

Many of the children enter foster care in one jurisdiction but are placed in another jurisdiction. CAP’s network of offices located across the state make it possible to maintain continuous contact with a child; CAP staff where the child is placed stay in contact with the child. Working relationships among staff in different offices are fostered by statewide staff meetings. There is constant telephone and email communication between offices for case consultations, sharing information, and coordinating efforts.

Ongoing training for attorneys is emphasized. In addition to complying with the Louisiana Supreme Court training requirements for attorneys representing Children in Need of Care, trainers from inside and outside the agency have provided training at staff meetings. Staff attorneys regularly attend local and state work related conferences. Several staff attorneys were able to attend national conferences on representing children.

The budget for the Child Advocacy Program in Fiscal Year 2018 was $1,705,425. After midyear reductions, it was $ 1,597,437.

**MHAS Performance Indicators Comparison**

**Years 2016-17 and 2017-18**

|  |  |  |
| --- | --- | --- |
| **Performance Indicator Name** | **2016-17** | **2017-18** |
| Percentage Of Commitment Cases Where Patient Is Discharged Or Diverted To Less Restrictive Setting Or Committed Short Term | 50% | 53% |
| Percentage Of Commitment Cases Resulting In Conversion To Voluntary Status | 4% | 3% |
| Percentage Of Commitment Cases Settled Before Trial | 41% | 40% |
| Percentage Of Adult And Juvenile Patients In Behavioral health Facilities With Trained Legal Representation | 100% | 100% |
| Number Of Civil Commitment Hearings | 1004\* | 2232 |
| Number Of Open Mental Health Cases | 1235 | 1265 |
| Number Of Juvenile Mental Health Hearings | 784 | 701 |
| Probable Cause Hearings/Habeas Corpus/1411 Hearings | 85 | 72 |
| Number Of Periodic Review Hearings/Lockharts | 28 | 86 |
| Number Of "Systems" Issues Positively Impacted By "Systems Changes" | 3 | 4 |
| Estimated Number Of Mentally Disabled People Positively Impacted By "Systems Changes" Each Year | 700 | 354 |
| Number Of Persons Trained By MHAS On The Rights Of Persons With Mental Disabilities | 712 | 595 |
| Number Of Interdiction Cases Litigated | 2 | 5 |
| Percentage Of Interdiction Proceedings In Which Interdiction Is Denied Or Limited Interdiction Is The Result | 0% | 60% |
| Number Of Medication/Treatment Review Hearings | 10\* | 40 |
| Percentage Of Medication/Treatment Review Hearings Which Resulted In A Change In Medication | 0% | 22% |
| Number Of Medication/Treatment Review Hearings Which Result In Change In Medication | 0 | 9 |
| Number Of Interdictions In Which Interdiction Is Denied Or Limited Interdiction Is The Result | 0 | 3 |
| Number Of Times A Juvenile Whose Competency Has Been Raised In Proceedings Is Diverted From Institutionalization | 82 | 81 |
| Percentage Of Juvenile Competency Proceedings In Which The Juvenile Is Diverted From Institutionalization | 62% | 61% |
| Number Of Times A Juvenile With An Emotional Disturbance Is Diverted From Institutionalization At A Dispositional Hearing | 130 | 111 |

**CAP Performance Indicators Comparison**

**Years 2016-17 and 2017-18**

|  |  |  |
| --- | --- | --- |
| **Performance Indicator Name** | **2016-17** | **2017-18** |
| Number Of Children (Open Files) Represented By Trained Attorneys In Abuse And Neglect Proceedings | 2312 | 2524 |
| Percentage Of Cap Clients Who Receive Legal Representation By Specialized Attorneys Trained In Locating Safe, Community Based Resources For Children | 100% | 100% |
| Number Of Court Hearings Attended On Behalf Of Children In Abuse And Neglect Proceedings | 8046\* | 13052 |
| Number Of Related Meetings/Hearings Attended On Behalf Of Children In Abuse And Neglect Proceedings | 676\* | 1892 |

\* ***In 2016-2017, the agency began the transition to a new data-collection system. Problems transferring data and implementing the system resulted in the loss of data in this category. The number given for this performance indicator is not an accurate indicator of the agency’s performance in this area.***

1. In 1981, a federal district court found that patients have a constitutional right to legal counsel in commitment proceedings in Louisiana and permanently enjoined the state to fund MHAS. Brad G. et al. v. David C. Treen, 81-1094F(3) (EDLA 1081). [↑](#footnote-ref-1)
2. Ch.C. Art. 1425. [↑](#footnote-ref-2)
3. Ch.C. Art. 1442*.* [↑](#footnote-ref-3)
4. Ch.C. Art. 832. [↑](#footnote-ref-4)
5. Ch.C. Art. 869. [↑](#footnote-ref-5)
6. *See, e.g.*, Ch.C. Art. 607C. [↑](#footnote-ref-6)
7. Ch.C. Arts. 683(E), 781(D) and 809(C). [↑](#footnote-ref-7)
8. Established by HCR No. 44 of the 2003 Regular session of the Louisiana Legislature, with continuing resolutions up until HCR No.66 of the 2013 Regular session of the Louisiana Legislature. [↑](#footnote-ref-8)
9. Calcasieu Parishes pilot was conducted from 2006-2007 only. [↑](#footnote-ref-9)
10. Act 271 of the 2006 regular session of the Louisiana Legislature. [↑](#footnote-ref-10)
11. Act 95 of the 2007 regular session of the Louisiana Legislature. [↑](#footnote-ref-11)
12. The Child Advocacy Program (CAP) is established as a program of the Louisiana Mental Health Advocacy Service. The CAP program represents all the children in Children in Need of Care (CINC) proceedings in Caddo Parish Juvenile Court; the 14th Judicial District (Calcasieu Parish); East Baton Rouge Juvenile Court; the 16th Judicial District (St. Mary, St Martin and Iberia parishes); the 21st Judicial District (Livingston, Tangipahoa and St. Helena parishes) including Denham Springs City Court; the 22nd Judicial District (Washington and St. Tammany parishes), including Bogalusa City Court but not Slidell City Court; the 25th Judicial District (Plaquemines Parish) the 38th Judicial District (Cameron Parish) and Orleans Parish Juvenile Court. [↑](#footnote-ref-12)