

An Introduction to Mental Hygiene Legal Service



Presentation for
Patient Advocates Program

New York Statewide Senior Action Council

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Third Judicial Department
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Mental Hygiene Legal Service

- Established by Legislature in 1964;
- The creation of the Service was the centerpiece of efforts to reform commitment procedures for persons alleged to be mentally ill and in need of inpatient care and treatment in New York State;
- Originally named the Mental Health Information Service (MHIS);
- In 1986, the name of the Service changed to Mental Hygiene Legal Service (MHLS) and functions of the agency were more clearly defined.

Mental Hygiene Legal Service

- Timeline of Advocacy Services
- Created in 1964 as MHIS and authorized to advocate for people in facilities licensed or operated by Office of Mental Health (OMH);
- In 1972, jurisdiction expanded to assist people in developmental centers operated by the Office for People with Developmental Disabilities (OMRDD – now Office for People with Developmental Disabilities - OPWDD);
- Name change in 1986.
- *Later statutory amendments permitted MHLS to appear in guardianship proceedings; assisted outpatient treatment proceedings; counsel for criminal defendants found not responsible by reason of mental disease or defect, among other duties.*


MHLS Advocacy

- Enabling statute codified at article 47 of the Mental Hygiene Law;
- MHLS is placed in the judicial branch of government;
- MHLS is an agency of the Appellate Divisions of State Supreme Court;
- Operating as an agency of the Appellate Divisions enables MHLS to be independent of OMH and OPWDD;
- Because MHLS is housed within the Appellate Divisions there are four MHLS departments with specific geographic coverage.
- Render services to people in hospitals, schools, skilled nursing facilities, correctional facilities, community residences and private homes in some cases.

MHLS Departments

- First Department
 - [Appellate Division - First Judicial Department \(nycourts.gov\)](https://www.nycourts.gov)
- Second Department
 - [Appellate Division - Second Judicial Department \(nycourts.gov\)](https://www.nycourts.gov)
- Third Department
 - [AD3 Mental Hygiene Legal Service \(MHLS\) \(nycourts.gov\)](https://www.nycourts.gov)
- Fourth Department
 - [Mental Hygiene Legal Service | @NYAppDiv4 \(nycourts.gov\)](https://www.nycourts.gov)

MHLS Third Department Web Page



State of New York
Supreme Court, Appellate
Division
Third Judicial Department

Hon. Elizabeth A. Garry
Presiding Justice

Robert D. Mayberger
Clerk of the Court

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The Mental Hygiene Legal Service (MHLS) provides legal services, advice and assistance to persons receiving care or alleged to be in need of care at inpatient and community-based facilities for individuals with mental disabilities and certain patients or residents of residential health care facilities. Created in 1964 and organized under Mental Hygiene Law article 47, MHLS represents such persons in judicial and administrative proceedings concerning admission, retention, transfer, treatment and guardianship. In addition to handling judicial proceedings, MHLS provides advice and representation regarding standards of care and other matters affecting the civil liberties of persons receiving care at facilities for individuals with mental disabilities.

MHLS can also be assigned as counsel or court evaluator in Mental Hygiene Law article 81 guardianship proceedings, and as counsel for respondents in proceedings commenced under the Sex Offender Management and Treatment Act (Mental Hygiene Law article 10).

MHLS for the Third Judicial Department has field offices in Albany, Binghamton, Elmira, Kingston, Ogdensburg, Oneonta, Plattsburgh and Tupper Lake.

COURT INFORMATION	COURT INFORMATION	CALENDARS	OFFICES AND AGENCIES
Justices of the Court	Senior Staff	Schedule of Court Terms	Assigned Counsel
Overview of the Appellate Division	Careers with the Court	Session/Day Calendars	Attorney Admissions
News & Events	Links of Interest	Term Calendar	Attorneys for Children (AFC)
History of the Appellate Division	FILING	DECISIONS	Attorney Grievance Committee (AGC)
Americans with Disabilities Act (ADA)	E-Filing/NYSCEF	Decisions	Civil Appeals Settlement Program (CASP)
Electronic Devices Policy & Media Requests	Digital Submissions	Search Decisions	Clerk's Office
Forms	CONTACT	Search Motions	Motion Department
Rules of Practice	Contact the Court		Mental Hygiene Article 81 Examiner
	Directions to the Court		Mental Hygiene Legal Service (MHLS)

Functions, Powers and Duties

- MHLS provides direct legal services, advice and assistance to persons receiving care and treatment, *or* those alleged to be in need of care and treatment, from facilities licensed by OMH and OPWDD in matters related to retention, care and treatment.

**These functions are mandated – people within our agency jurisdiction are entitled to MHLS services regardless of ability to pay.*

Functions, Powers and Duties

- L. 2019, c. 658
- Expanded MHLS jurisdiction to patients or residents of residential healthcare facilities licensed and operating pursuant to article twenty-eight of the public health law (skilled nursing facilities), who have been admitted directly from a mental hygiene facility and who have a serious mental illness and are receiving services related to such illness.

Functions, Powers and Duties

- MHLS also has various mandated oversight responsibilities, including monitoring abuse and neglect in OMH and OPWDD facilities.

Abuse and Mistreatment

- OMH
- "...the vulnerable persons' central register [Justice Center for the Protection of People with Special Needs] shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the hospital, school, or institution of every complaint of patient abuse or neglect and shall inform the board and the mental hygiene legal service of the results of his investigation."

MHL § 7.21

Abuse and Mistreatment



- OPWDD
- The vulnerable persons' central register shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the state operations office of every complaint of patient abuse or mistreatment and shall inform the board and the mental hygiene legal service of the results of his or her investigation.
- MHL § 13.21

General Responsibilities

- Review admission, retention and legal status;
- Inform patients/other interested parties of rights;
- Provide legal services to patients related to admission, retention, care and treatment, transfer, medication over objection and advise of other legal resources;
- Initiate and participate in legal advocacy and actions as necessary;
- Provide information to the public, including treatment providers, families and the courts.

Access to Information and Facilities

- MHLS has access at any and all times to OMH/OPDD facilities and to our clients;
- Records must be readily available to MHLS and this includes clinical records or hospital records or policies;
- MHLS access is a product of legislative authorization and is required by law to enable the Service to perform its mandated functions without delay.

MHLS cases

- Over 100,000 admissions each year to psychiatric hospitals licensed or operated by OMH each year so substantial MHLS resources are devoted to reviewing all admissions and advising patients of their status and rights;
- Appear in civil commitment hearings and hearings where it is alleged that a person is incapacitated and in need of involuntary care and treatment.

MHLS cases

- MHLS is embedded in health care system for patient/residents who lack capacity to make their own health care decisions;
- Each year, for example, MHLS appears in hundreds of administrative proceedings conducted by Surrogate Decision Making Committees for people in OMH and OPWDD facilities who require informed consent for treatment.

MHLS cases

- MHLS receives notice and may object to a decision by a legally authorized surrogate to withhold or withdraw life sustaining treatment from people who have developmental disabilities and lack capacity to make their own health care decisions.
- Surrogate's Court Procedure Act 1750-b

MHLS cases

- MHLS appears as counsel or court evaluator in guardianship proceedings conducted under article 81 of the Mental Hygiene Law.
- MHLS appears as counsel or guardian ad litem in guardianship proceedings conducted under article 17-A of the Surrogate's Court Procedure Act.

MHLS cases

- MHLS represents respondents in several other categories of cases including:
- Assisted Outpatient Treatment (MHL 9.60 – Kendra’s Law); and
- Respondents found not responsible by reason of mental disease or defect who are committed to the custody of OMH or OPWDD under Criminal Procedure Law 330.20;
- MHLS also provides legal services and assistance to criminal defendants found to lack capacity to assist in their own defense (Criminal Procedure Law article 730).

MHLS cases

- MHLS assists children and adults.
- Children may be admitted to psychiatric hospitals, residential treatment facilities, or residential schools;
- The OMH & OPWDD service delivery systems are extremely stressed due to lack of resources, workforce recruitment and retention issues, and increasingly MHLS is advocating to establish eligibility for services especially for children and young adults.

Contact information

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