

ASSEMBLY, No. 2668

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Transfers Division of Mental Health Advocacy to DHS; re-titles director as Mental Health Advocate; provides diversion for mental health treatment for persons subject to prosecution in municipal court; appropriates \$15,000,000.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning mental health advocacy, amending various
2 parts of the statutory law, supplementing Title 52 of the Revised
3 Statutes, and making an appropriation.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 29 of P.L.2005, c.155 (C.52:27EE-29) is amended to
9 read as follows:

10 29. **【Division】** Office of Mental Health Advocacy; established.

11 a. There is hereby established in the **【Office of the Public**
12 **Defender a】** Division of Mental Health and Addiction Services, in
13 the Department of Human Services, an Office of Mental Health
14 Advocacy to be under the supervision of the **【Director of the**
15 Division of**】** Mental Health **【Advocacy】** Advocate.

16 b. The **【division】** office is hereby designated as the State's
17 mental health protection and advocacy agency. The **【division】**
18 office shall have all the powers necessary to carry out its
19 responsibilities as required to qualify for federal funding as the
20 State protection and advocacy agency.

21 (cf: P.L.2010, c.34, s.25)

22
23 2. Section 30 of P.L.2005, c.155 (C.52:27EE-30) is amended to
24 read as follows:

25 30. **【Division】** Office of Mental Health Advocacy; objective;
26 duties.

27 a. The **【Division】** Office of Mental Health Advocacy shall
28 promote, advocate, and ensure the adequacy of screening services to
29 identify persons with mental illness, the care made available and
30 received by those persons, and the quality of life experienced **【,】** by
31 those persons **【with mental illness】**, including patients, residents,
32 and clients within the mental health facilities and programs
33 operated, funded, or licensed by the State. In determining what
34 elements are essential to ensure adequate screening, care, and
35 quality of life, the **【division】** office shall consider the unique
36 medical, social, and economic needs and problems of persons
37 screened for or with mental illness as citizens and community
38 members, and when applicable, as patients, residents, and clients of
39 facilities and **【as citizens and community members】** programs.

40 b. The **【director】** Mental Health Advocate shall establish and
41 implement procedures to elicit, receive, process, respond, and
42 resolve complaints from patients, their families, other interested
43 citizens, public officials, and government agencies
44 concerning conditions in the State's mental health facilities.

45 (cf: P.L.2005, c.155, s.30)

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. Section 31 of P.L.2005, c.155 (C.52:27EE-31) is amended to
2 read as follows:

3 31. **【Division】** Office of Mental Health Advocacy; class actions.

4 The **【Director of the Division of】** Mental Health **【Advocacy】**
5 Advocate may represent, with the approval of the **【Public**
6 **Defender】** Director of the Division of Mental Health and Addiction
7 Services, the interests of indigent mental hospital admittees in such
8 disputes and litigation as will, in the discretion of the **【Public**
9 **Defender】** director, best advance the interests of indigent mental
10 hospital admittees as a class on an issue of general application to
11 them, and may act as representative of indigent mental hospital
12 admittees with any principal department or other instrumentality of
13 State, county or local government.

14 (cf: P.L.2010, c.34, s.26)

15

16 4. Section 32 of P.L.2005, c.155 (C.52:27EE-32) is amended to
17 read as follows:

18 32. **【Division】** Office of Mental Health Advocacy; legal
19 representation; medical consultation.

20 The **【Division】** Office of Mental Health Advocacy may provide
21 such legal representation and medical consultation as the **【director】**
22 Mental Health Advocate deems appropriate for any indigent mental
23 hospital admittee in any proceeding concerning the admittee's
24 admission to, and retention in, or release from confinement in such
25 a hospital, institution or facility.

26 (cf: P.L.2005, c.155, s.32)

27

28 5. (New section) Office of Mental Health Advocacy; screening
29 and diversion program concerning municipal court prosecutions.

30 a. The Office of Mental Health Advocacy, under the direction
31 of the Director of the Division of Mental Health and Addiction
32 Services, and in consultation with and as agreed to by the
33 Administrative Office of the Courts, shall make mental health
34 screeners, case managers, or other appropriately trained staff,
35 whether employees or otherwise retained by the office as provided
36 by sections 35 and 36 of P.L.2005, c.155 (C.52:27EE-35 and
37 C.52:27EE-36), available, throughout the State, to conduct mental
38 health screenings on persons charged or arrested for a violation or
39 offense that is subject to prosecution in municipal court. The
40 mental health screening provided in this section may be conducted
41 on any person charged or arrested, notwithstanding the financial
42 eligibility requirements for determining a person's eligibility for
43 office services pursuant to section 33 of P.L.2005,
44 c.155 (C.52:27EE-33).

45 b. Any time following a charge or arrest, and up to the time of
46 trial, a prosecutor, judge, or other party may recommend, before
47 commencing a trial, that the person charged or arrested undergo

1 mental health screening. Whenever a person is screened and a
2 mental illness identified, the mental health screener, case manager,
3 or other trained staff shall present recommendations to the
4 prosecutor for referring the person for a program of residential
5 treatment at a facility, or a program of nonresidential treatment with
6 a provider, that is licensed and approved by the Division of Mental
7 Health and Addiction Services. If the prosecutor accepts the
8 recommendation for mental health treatment, and the person agrees
9 to the treatment, the judge may postpone all further proceedings
10 against the person and refer the person for treatment. As provided
11 in any accompanying court order concerning the referral for mental
12 health treatment, if the person violates the terms of the treatment, a
13 prosecution for the violation or offense associated with the person's
14 charge or arrest may be reactivated.

15

16 6. Section 33 of P.L.2005, c.155 (C.52:27EE-33) is amended to
17 read as follows:

18 33. **【Division】** Office of Mental Health Advocacy; eligibility for
19 services.

20 Eligibility for mental health advocacy services shall be
21 determined on the basis of the need of the client. Need shall be
22 measured according to the financial ability of the client to engage
23 and compensate competent private counsel and to provide all other
24 necessary expenses of representation. Such ability shall be
25 recognized to be a variable depending on the nature, extent and
26 liquidity of assets and on the disposable net income of the client as
27 compared with the nature of the case, the effort and skill required to
28 gather pertinent information, render advice, conduct trial or render
29 other legal services, and probable expenses to be incurred. In the
30 event that a determination of eligibility cannot be made before the
31 time when the first services are to be rendered, or if an initial
32 determination is found to be erroneous, the **【division】** office shall
33 undertake the same provisionally, and if it is determined
34 subsequently that the client is ineligible, the **【division】** office shall
35 so inform the client, and the client shall thereupon, with the
36 approval of the court, be obliged to engage his **【or her】** own
37 counsel and to reimburse the **【division】** office for the cost of the
38 services rendered to that time.

39 (cf: P.L.2005, c.155, s.33)

40

41 7. Section 34 of P.L.2005, c.155 (C.52:27EE-34) is amended to
42 read as follows:

43 34. **【Division】** Office of Mental Health Advocacy; financial
44 status of client; investigation.

45 The **【Division】** Office of Mental Health Advocacy shall make
46 such investigation of the financial status of each mental health
47 client as the circumstances warrant. The **【division】** office, pursuant

1 to rules and regulations promulgated by the **【Office of the Public**
2 **Defender】** Division of Mental Health and Addiction Services for
3 this purpose, may obtain information from any public record, office
4 of the State or of any subdivision or agency thereof on request and
5 without payment of the fees ordinarily required by law.

6 (cf: P.L.2010, c.34, s.27)

7
8 8. Section 35 of P.L.2005, c.155 (C.52:27EE-35) is amended to
9 read as follows:

10 35. **【Division】** Office of Mental Health Advocacy; staff.

11 a. The **【Director of the Division of】** Mental Health
12 **【Advocacy】** Advocate may employ, with the approval of the
13 **【Public Defender】** Director of the Division of Mental Health and
14 Addiction Services, such assistants on a full-time basis as are
15 necessary to protect the rights of persons with mental illness. When
16 exceptional circumstances arise, the **【director】** Mental Health
17 Advocate may retain, with the approval of the **【Public Defender】**
18 director, on a temporary basis such other expert assistants as are
19 necessary pursuant to a reasonable fee schedule established in
20 advance by the **【Public Defender】** director.

21 b. Cases shall be assigned to staff attorneys or attorneys hired
22 by case on a basis calculated to provide competent representation in
23 light of the nature of the case, the services to be performed, the
24 experience of the particular attorney and other relevant factors.

25 c. Employees of the Division of Mental Health Advocacy in
26 the **【Department】** Office of the Public **【Advocate】** Defender who
27 are client services representatives or patient advocates for the
28 mentally ill providing patient advocacy services in State or county
29 facilities that provide inpatient care, supervision and treatment for
30 persons with mental illness, including psychiatric facilities, and the
31 functions of such employees, are hereby transferred to the Office of
32 **【the Public Defender】** Mental Health Advocacy in the Division of
33 Mental Health and Addiction Services to be employees thereof. The
34 **【Public Defender】** director of the division through the **【Division】**
35 Office of Mental Health Advocacy shall employ such persons and
36 continue such functions in the manner the **【Public Defender】**
37 division director and the **【director of the division】** Mental Health
38 Advocate shall deem appropriate and necessary. These employees
39 shall report to the Mental Health Advocate and the division director
40 **【and the Public Defender】**.

41 (cf: P.L.2010, c.34, s.28)

42
43 9. Section 36 of P.L.2005, c.155 (C.52:27EE-36) is amended to
44 read as follows:

45 36. **【Division】** Office of Mental Health Advocacy; status
46 of staff.

1 Independent contractors or other individuals, agencies, or entities
2 not established in or employed by the Office of **the Public**
3 **Defender** Mental Health Advocacy retained to provide protection
4 and advocacy services to indigent mental hospital admittees, or
5 designated to provide mental health protection and advocacy
6 services, are not public entities or public employees for purposes of
7 the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.
8 (cf: P.L.2010, c.34, s.29)
9

10 10. Section 37 of P.L.2005, c.155 (C.52:27EE-37) is amended
11 to read as follows:

12 37. **Division** Office of Mental Health Advocacy; transfer of
13 functions.

14 a. Until the effective date of P.L. , c. (C.)
15 (pending before the Legislature as this bill):

16 (1) All functions, powers, and duties which had been vested in
17 the Division of Mental Health Advocacy in the Department of the
18 Public Advocate are hereby transferred to and assumed by the
19 Division of Mental Health Advocacy in the Office of the Public
20 Defender.

21 (2) Whenever, in any law, rule, regulation, order, reorganization
22 plan, contract, document, judicial or administrative proceeding, or
23 otherwise, reference is made to the Division of Mental Health
24 Advocacy in the Department of the Public Advocate, the same shall
25 mean and refer to the Division of Mental Health Advocacy in the
26 Office of the Public Defender.

27 b. On and after the effective date of P.L. , c. (C.)
28 (pending before the Legislature as this bill):

29 (1) All functions, powers, and duties which had been vested in
30 the Division of Mental Health Advocacy in the Office of the Public
31 Defender are hereby transferred to and assumed by the Office of
32 Mental Health Advocacy in the Division of Mental Health and
33 Addiction Services within the Department of Human Services.

34 (2) Whenever, in any law, rule, regulation, order, reorganization
35 plan, contract, document, judicial or administrative proceeding, or
36 otherwise, reference is made to the Division of Mental Health
37 Advocacy in the Office of the Public Defender, the same shall mean
38 and refer to the Office of Mental Health Advocacy in the Division
39 of Mental Health and Addiction Services within the Department of
40 Human Services.

41 (cf: P.L.2010, c.34, s.30)
42

43 11. Section 3 of P.L.2009, c.161 (C.30:4-3.25) is amended to
44 read as follows:

45 3. The department shall notify the **Division** Office of Mental
46 Health Advocacy in the **Office of the Public Defender** Division of
47 Mental Health and Addiction Services within the Department of

1 Human Services within 24 hours after an unexpected death occurs
2 at a State psychiatric hospital and shall promptly notify the
3 **【Division】** Office of Mental Health Advocacy of any death of
4 which the department has knowledge that occurs within seven days
5 after a patient was discharged from a State psychiatric hospital.
6 (cf: P.L.2010, c.34, s.7)

7
8 12. Section 37 of P.L.1994, c.58 (C.52:27E-75) is amended to
9 read as follows:

10 37. Any agency designated by the Governor to serve as the
11 State's protection and advocacy agency for the mentally ill and for
12 the developmentally disabled shall have the same access to client
13 records and files, to agency records and to the premises of State or
14 private institutions as the **【Division】** Office of Mental Health
15 Advocacy in the **【Office of the Public Defender】** Division of
16 Mental Health and Addiction Services. The intent of this section is
17 that any private protection and advocacy agency designated by the
18 Governor have all of the powers necessary to carry out its
19 responsibilities as required to qualify for federal funding as the
20 protection and advocacy agency.
21 (cf: P.L.2010, c.34, s.19)

22
23 13. There is appropriated from the General Fund \$15,000,000
24 for the purposes of implementing the mental health screening
25 program for persons charged or arrested for a violation or offense
26 that is subject to prosecution in municipal court established under
27 section 5 of this act.

28
29 14. This act shall take effect on the first day of the seventh
30 month next following enactment, except the Public Defender,
31 Director of the Division of Mental Health and Addiction Services,
32 Director of the Division of Mental Health Advocacy being re-titled
33 the Mental Health Advocate, and the Director of the Administrative
34 Office of the Courts may take any anticipatory administrative action
35 in advance of the effective date as shall be necessary to implement
36 the provisions of this act.

37
38
39 STATEMENT

40
41 This bill, concerning mental health advocacy, would transfer the
42 Division of Mental Health Advocacy from the Office of the Public
43 Defender to the Division of Mental Health and Addiction Services,
44 within the Department of Human Services, and re-title the
45 transferred division as the Office of Mental Health Advocacy. The
46 director of the former division would be re-titled the Mental Health
47 Advocate.

1 The organization, functions, and duties of the Office of Mental
2 Health Advocacy would generally remain the same. The bill would
3 add a general function for mental health screening to complement
4 the office's existing general functions of advocating for care and
5 quality of life for persons with mental illness.

6 Additionally, applying the office's new screening function, the
7 bill would establish a mental health screening program for persons
8 charged or arrested for a violation or offense that is subject to
9 prosecution in municipal court. The office, under the direction of
10 the Division of Mental Health and Addiction Services, and in
11 consultation with the Administrative Office of the Courts, would
12 make mental health screeners, case managers, or other appropriately
13 trained staff available, throughout the State, to conduct the mental
14 health screenings. A screening could be conducted on any person
15 charged or arrested, notwithstanding the current law's financial
16 eligibility requirements for determining a person's eligibility for
17 mental health services set forth in section 33 of P.L.2005,
18 c.155 (C.52:27EE-33).

19 Any time following a charge or arrest, and up to the time of trial,
20 a prosecutor, judge, or other party could recommend, before
21 commencing a trial, that the person charged or arrested undergo a
22 mental health screening. Whenever a person was screened and a
23 mental illness identified, the mental health screener, case manager,
24 or other trained staff would present recommendations to the
25 prosecutor for referring the person for a program of residential
26 treatment at a facility, or a program of nonresidential treatment with
27 a provider, that is licensed and approved by the Division of Mental
28 Health and Addiction Services. If the prosecutor accepted the
29 recommendation for mental health treatment, and the person agreed
30 to the treatment, the judge could postpone all further proceedings
31 against the person and refer the person for treatment. If the person
32 thereafter violated the terms of the treatment, a prosecution for the
33 violation or offense associated with the person's charge or arrest
34 could be reactivated.

35 In order to implement the new mental health screening program
36 concerning municipal court prosecutions, the bill would appropriate
37 \$15,000,000 from the State's General Fund.