

LOUISIANA
MENTAL HEALTH
ADVOCACY
SERVICE &
CHILD ADVOCACY
PROGRAM

ANNUAL REPORT
July 1, 2020 to June 30, 2021



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. La. Rev. Stat. § 28:64(A).¹

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

- A. 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.
- B. MHAS shall provide legal counsel, as availability is determined by its executive director, to minors admitted for behavioral 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:

- A. 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 La. Rev. Stat. §28:64.
- B. 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, commissions, and workgroups in the community.

The public health emergency due to Covid-19 did not prevent MHAS from fulfilling its mission. Hearings, client visits, meetings, and trainings were held by videoconference. Each office arranged for the safe delivery and reception of mail, court notices and service of process. Client files were accessed through the agency's online case management system.

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 1981).

ACTIVITIES INVOLVING PERSONS WITH MENTAL ILLNESS AND/OR SUBSTANCE ABUSE 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 1450 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. To that end, several staff attorneys were able to attend a national conference on rights protection and advocacy.

The Mental Health Advocacy Service litigated 2,927 behavioral health cases this fiscal year (7/1/20 – 6/30/21).

BEHAVIORAL HEALTH LITIGATION INVOLVING ADULTS

Civil commitment hearings

Staff attorneys handled 2172 civil commitment hearings, 43% of which were settled before the matter went to trial. Early settlement saves time in court for professionals and is often therapeutically preferable. In 54% of the cases the patient was discharged, diverted to a less restrictive setting or committed short term. All 24 requests for post commitment conditional discharges were granted.

Probable Cause and Habeas Corpus Proceedings

There were 43 adult probable cause proceedings initiated by MHAS attorneys this year. Eighty-one percent or 35 of the clients were released prior to the hearing. Of the 8 remaining clients, 2 converted to voluntary status, 4 were continued to be confined, and 2 were released by the court.

Medical Treatment Review Cases

MHAS participated in 14 forced medical treatment hearings during this fiscal year. In 3 of those hearings, either “No Treatment” or a “Different Treatment” was ordered. In the final case, no treatment was negotiated prior to the hearing. MHAS also represented the defendants in many ‘miscellaneous’ cases, including 25 Involuntary Outpatient Treatment (IOT) hearings.

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 MHAS², and MHAS is appointed to represent the minor in civil commitment proceedings unless the minor chooses his own attorney.³ MHAS must be appointed (if available) when mental incapacity to proceed is raised⁴, and when there has been a plea of insanity.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 In fact, commitment to a mental institution in any CINC, FINS or Delinquency proceedings cannot occur without representation of the child by an attorney appointed from MHAS (unless unavailable).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

² Ch.C. Art. 1425.

³ Ch.C. Art. 1442.

⁴ Ch.C. Art. 832.

⁵ Ch.C. Art. 869.

⁶ See, e.g., Ch.C. Art. 607C.

⁷ Ch.C. Arts. 683(E), 781(D) and 809(C).

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 571 juvenile behavioral health cases this year. In 194 of these cases when institutionalization was a possible outcome, 130 children were successfully diverted from the more restrictive placement.

The budget for Mental Health Advocacy efforts for Fiscal Year 2021 was \$2,036,798 after a legislative cut of \$193,500.

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 and after the success of a two-year pilot study begun on August 15, 2005 in Iberia, St. Mary and Calcasieu⁹ Parishes, the Louisiana Legislature placed responsibility for statewide representation of abused and neglected children with the Child Advocacy Program (CAP) of MHAS.¹⁰ Statewide representation of parents was placed with the Louisiana Indigent Defender Board.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 Last fiscal year, at the request of the Legal Services Corporations and the Louisiana Supreme Court, CAP assumed responsibility for all new CINC cases in the 20th Judicial District Court (East Feliciana and West Feliciana parishes), the 18th Judicial District Court (West Baton Rouge, Pointe Coupee and Iberville parishes), and Slidell City Court.

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 3,077 children in abuse and neglect proceedings from July 1, 2020 to June 30, 2021. The attorneys handled 11,921 hearings this year and recorded 1,798 visits with clients prior to their hearings. Due to the Covid-19 pandemic, many clients had to be visited via electronic methods, rather than in person. Customarily, meetings between the attorneys and their clients happen in person, with the attorney visiting their client in a setting that is comfortable to the child, such as the foster home or at school. Finally, CAP provided training for 1450 people this fiscal year.

⁸Established 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.

⁹ Calcasieu Parishes pilot was conducted from 2006-2007 only.

¹⁰ Act 271 of the 2006 regular session of the Louisiana Legislature.

¹¹ Act 95 of the 2007 regular session of the Louisiana Legislature.

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 (1st JDC); the Calcasieu Parish Family and Juvenile Court (14th JDC); the 16th Judicial District (St. Mary, St Martin and Iberia parishes) including Morgan City and New Iberia City Courts; the 18th Judicial District (Iberville, Pointe Coupee and West Baton Rouge parishes); East Baton Rouge Juvenile Court (19th JDC); the 20th Judicial District (East Feliciana and West Feliciana parishes); the 21st Judicial District (Livingston, Tangipahoa and St. Helena parishes) including Denham Springs and Hammond City Courts; the 22nd Judicial District (Washington and St. Tammany parishes), including Bogalusa and Slidell City Courts; the 25th Judicial District (Plaquemines Parish) the 38th Judicial District (Cameron Parish) and Orleans Parish Juvenile Court (41st JDC).

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 1635 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 among 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. Currently, eleven MHAS attorneys have obtained their Child Welfare Law Specialist Certification from the NACC.

As seen in the preceding paragraphs, advocacy happens from the bottom up, i.e., in the courtroom, classroom, etc. Effective advocacy also happens from the top down, through state and national efforts. MHAS attorneys continue to be very active at the state level of child welfare by helping to design and provide training to the child welfare community; by the writing of new laws and policies or the clarifying of old ones; by updating model pleadings for statewide use; and by reworking the judicial bench book and bench cards available to all Louisiana CINC Judges. This work is being accomplished through the attorneys participation in the work of the Louisiana Law Institute's Children's Code Committee; the Pelican Center for Children and Families' Executive Board, Training and Education Committee and Disproportionality and Disparate Outcome Committee; the Children's Justice Act Task Force; the CIP/Children's Advocacy Resource Effort (CARE) Committee and the CQI/PQI data workgroup; the LSBA's Legal Services for Persons with Disabilities and the Children's Law Committees. More recently, MHAS became an agency member of the National Association of Counsel for Children and several MHAS attorneys have achieved and maintained CWLS status through the NACC. Additionally, one supervisor was chosen as the Louisiana NACC State Coordinator to serve as the liaison between NACC and the practitioners, courts, organizations, and law schools in Louisiana. Another attorney is a member of the Family Justice Initiative, a national collaborative of parents' attorneys, children's attorneys, researchers, educators and advocates working together to identify the necessary system attributes, in-court and out-of-court advocacy and attorney supports are necessary to ensure high-quality legal representation when child welfare courts make life-changing decisions about their families.

The budget for the Child Advocacy Program in Fiscal Year 2021 was \$2,489,420 after a legislative cut of \$236,500.

In Fiscal Year 2020, MHAS became eligible for Title IV-E reimbursements from the federal government through a "pass-through" contract with the Department of Children and Family Services (DCFS). The amount of the reimbursement is dependent upon the number and placement of clients represented by CAP attorneys. Invoices, submitted quarterly through DCFS, are subject to reviews and audits, as requested.

The total reimbursement for FY20, which was received as revenue in FY21, was \$484,515.53. The total reimbursement for FY21 was \$504,519.08



MHAS Performance Indicators Comparison
Years 2019-20 and 2020-21

Performance Indicator Name	2019-20	2020-21
Percentage of Commitment Cases Where Patient Is Discharged or Diverted To Less Restrictive Setting Or Committed Short Term	52%	54%
Percentage Of Commitment Cases Resulting in Conversion To Voluntary Status	4%	2%
Percentage Of Commitment Cases Settled Before Trial	43%	43%
Percentage Of Adult and Juvenile Patients In Behavioral health Facilities With Trained Legal Representation	100%	100%
Number Of Civil Commitment Hearings	1,784	2,172
Number Of Open MH Cases on last day of Fiscal Year (A-1,010; J-130)	1140	951
Number Of Juvenile Hearings	636	571
Probable Cause Hearings/Habeas Corpus/1411 Hearings	63	45
Number Of "Systems" Issues Positively Impacted By MHAS	6	5
Estimated number of clients positively impacted by "systems" changes each year	5,460	20,190
Number Of Persons Trained By MHAS On The Rights Of Persons With Mental Disabilities	273	1,450
Number of referrals and responses by MHAS to the public regarding inquiries relative to behavioral health law and issues.	445	385
Number of Treatment Review Hearings	9	15
Percentage of Treatment Review Hearings Which Resulted in no treatment ordered or a different treatment ordered	22%	27%
Number Treatment Review Hearings Which Result in no treatment ordered or a different treatment ordered	2	4
Number Of Times A Juvenile Whose Competency Has Been Raised In Proceedings Is Diverted From Institutionalization	In 44 of 88	In 37 of 76
Percentage Of Juvenile Competency Proceedings In Which The Juvenile Is Diverted From Institutionalization	50%	49%
Number Of Times A Juvenile With An Emotional Disturbance Is Diverted From Institutionalization At A Dispositional Hearing	In 146 of 172	In 93 of 118
Percentage of juveniles with an emotional disturbance diverted from institutionalization at a dispositional hearing.	84.9	79%

CAP Performance Indicators Comparison
Years 2019-20 and 2020-21

Performance Indicator Name	2019-20	2020-21
Number of Children (Open Files) Represented by Trained Attorneys in Abuse and Neglect Proceedings	1,810	1725
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	12,257	11,921
Number of Related Meetings/Hearings Attended on Behalf of Children in Abuse and Neglect Proceedings	2,032	1,625
Total number of files opened/children represented by trained attorneys in abuse and neglect proceedings during the fiscal year.	3,300	3,077