S T A T E O F N E W Y O R K

5154

2015-2016 Regular Sessions

I N S E N A T E

May 5, 2015

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the civil practice law and rules, in relation to guardianship duties and visitation claims

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. subdivision (a) of section 81.20 of the mental hygiene law is amended by adding a new paragraph 8 to read as follows:

8. A GUARDIAN SHALL INFORM THE RELATIVES, INCLUDING BUT NOT LIMITED TO THE CHILDREN, OF AN ELDER OR DEPENDENT INCAPACITATED ADULT WHENEVER THEY ARE ADMITTED TO A MEDICAL FACILITY FOR ACUTE CARE FOR A PERIOD OF THREE DAYS OR MORE OR IN THE EVENT OF DEATH. IN THE CASE OF DEATH, THE GUARDIAN SHALL INFORM THE RELATIVES OF ANY FUNERAL ARRANGEMENTS AND THE LOCATION OF THE INCAPACITATED PERSON'S FINAL RESTING PLACE.

S 2. The article heading of article 12 of the civil practice law and rules, as amended by chapter 115 of the laws of 1981, is amended to read as follows:

INFANTS, INCOMPETENTS [AND], CONSERVATEES AND THE ELDERLY

S 3. The civil practice law and rules is amended by adding a new section 1212 to read as follows:

S 1212. ELDERLY VISITATION CLAIMS. (A) PETITION TO THE SUPREME COURT. A PETITION MAY BE BROUGHT FOR A VISITATION ORDER TO ENJOIN A RESPONDENT FROM KEEPING A PROPOSED VISITEE IN ISOLATION FROM CONTACT WITH THE PETITIONER.

(B) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

1. "ELDER" SHALL HAVE THE SAME MEANING AS PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FOURTEEN OF THE ELDER LAW.

2. "DEPENDENT ADULT" SHALL MEAN ANY PERSON BETWEEN THE AGES OF EIGHTEEN AND SIXTY WHO RESIDES IN THIS STATE AND WHO HAS PHYSICAL OR MENTAL

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

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LIMITATIONS THAT RESTRICT HIS OR HER ABILITY TO CARRY OUT NORMAL ACTIVITIES OR TO PROTECT HIS OR HER RIGHTS, INCLUDING, BUT NOT LIMITED TO, PERSONS WHO HAVE PHYSICAL OR DEVELOPMENTAL DISABILITIES, OR WHOSE PHYSICAL OR MENTAL ABILITIES HAVE DIMINISHED BECAUSE OF AGE.

3. "ISOLATION" SHALL MEAN:

(I) ACTS INTENTIONALLY COMMITTED FOR THE PURPOSE OF PREVENTING, AND THAT DO SERVE TO PREVENT, AN ELDER OR DEPENDENT ADULT FROM RECEIVING HIS OR HER MAIL OR TELEPHONE CALLS.

(II) TELLING A CALLER OR PROSPECTIVE VISITOR THAT AN ELDER OR DEPENDENT ADULT IS NOT PRESENT, OR DOES NOT WISH TO TALK WITH THE CALLER, OR DOES NOT WISH TO MEET WITH THE VISITOR WHERE THE STATEMENT IS FALSE, IS CONTRARY TO THE EXPRESS WISHES OF THE ELDER OR THE DEPENDENT ADULT, WHETHER HE OR SHE IS COMPETENT OR NOT, AND IS MADE FOR THE PURPOSE OF PREVENTING THE ELDER OR DEPENDENT ADULT FROM HAVING CONTACT WITH FAMILY, FRIENDS, OR CONCERNED PERSONS.

(III) PHYSICAL RESTRAINT OF AN ELDER OR DEPENDENT ADULT, FOR THE PURPOSE OF PREVENTING THE ELDER OR DEPENDENT ADULT FROM MEETING WITH VISITORS.

4."PETITIONER" SHALL MEAN A PERSON WHO IS A RELATIVE IN THE FIRST DEGREE OF THE PROPOSED VISITEE.

5. "PROPOSED VISITEE" SHALL MEAN THE ELDER OR DEPENDENT ADULT, WHO IS UNDER THE CARE OR CUSTODY OF THE RESPONDENT, TO BE PROTECTED BY THE VISITATION ORDER AND, IF THE COURT GRANTS THE PETITION, THE PROTECTED PERSON.

6. "RESPONDENT" SHALL MEAN THE PERSON WHO IS ALLEGED TO BE ISOLATING THE PROPOSED VISITEE, AND IF THE PETITION IS GRANTED, THE RESTRAINED PERSON.

7. "VISITATION" SHALL MEAN ANY IN-PERSON MEETING BETWEEN A PROPOSED VISITEE AND THE PETITIONER.

8. "VISITATION ORDER" SHALL MEAN AN ORDER ENJOINING A PARTY FROM KEEPING THE PROPOSED VISITEE IN ISOLATION FROM CONTACT WITH THE PETITIONER THAT IS ISSUED BY A COURT AFTER NOTICE AND HEARING.

(C) ORDER. 1. AN ORDER MAY BE ISSUED UNDER THIS SECTION TO RESTRAIN THE RESPONDENT FOR THE PURPOSE OF PREVENTING A RECURRENCE OF ISOLATION IF THE PETITIONER HAS SHOWN BY A PREPONDERANCE OF THE EVIDENCE, TO THE SATISFACTION OF THE COURT, REASONABLE PROOF OF A PAST ACT OR ACTS OF ISOLATION OF THE PROPOSED VISITEE FROM CONTACT WITH THE PETITIONER, AND UPON A SHOWING THAT THE PROPOSED VISITEE DESIRES CONTACT WITH THE PETITIONER OR THAT VISITATION IS IN THE BEST INTERESTS OF THE PROPOSED VISITEE.

2. THE ORDER MAY SPECIFY THE FREQUENCY, TIME, PLACE, AND LOCATION OF VISITATION.

3. IN DECIDING WHETHER VISITATION WITH THE PETITIONER IS IN THE BEST INTEREST OF THE PROPOSED VISITEE THE COURT MAY CONSIDER WHETHER THE BEST INTEREST OF THE PROPOSED VISITEE REQUIRES THAT ANY VISITATION BY THE PETITIONER BE LIMITED TO SITUATIONS IN WHICH A THIRD PERSON, SPECIFIED BY THE COURT, IS PRESENT, OR WHETHER VISITATION SHALL BE SUSPENDED OR DENIED. THE PETITIONER, PROPOSED VISITEE, OR RESPONDENT MAY SUBMIT TO THE COURT THE NAME OF A PERSON WHO MAY BE SUITABLE TO BE PRESENT DURING VISITATION.

4. IN DECIDING WHETHER VISITATION WITH THE PETITIONER IS IN THE BEST INTEREST OF THE PROPOSED VISITEE, THE COURT SHALL CONSIDER ANY PRIOR PROTECTIVE ORDERS ISSUED AGAINST THE PETITIONER.

5. THE COURT SHALL NOT ISSUE AN ORDER UNLESS THE PROPOSED VISITEE HAS EXPRESSED A DESIRE FOR VISITATION. THE COURT MAY APPOINT A COURT INVES-

TIGATOR TO DETERMINE WHETHER THE PROPOSED VISITEE HAS EXPRESSED A DESIRE FOR VISITATION.

6. THE COURT SHALL ISSUE AN ORDER ONLY AFTER NOTICE AND A HEARING UNDER THIS SECTION, AND THE COURT SHALL NOT ISSUE AN EX PARTE ORDER UNDER THIS SECTION.

7. IN THE DISCRETION OF THE COURT, AN ORDER ISSUED AFTER NOTICE AND A HEARING UNDER THIS SECTION MAY HAVE A DURATION OF NOT MORE THAN FIVE YEARS, SUBJECT TO TERMINATION OR MODIFICATION BY FURTHER ORDER OF THE COURT EITHER ON WRITTEN STIPULATION FILED WITH THE COURT OR ON THE MOTION OF A PARTY. THESE ORDERS MAY BE RENEWED, UPON THE REQUEST OF A PARTY, EITHER FOR FIVE YEARS OR PERMANENTLY, WITHOUT A SHOWING OF ANY FURTHER ISOLATION SINCE THE ISSUANCE OF THE ORIGINAL ORDER, SUBJECT TO TERMINATION OR MODIFICATION BY FURTHER ORDER OF THE COURT EITHER ON WRITTEN STIPULATION FILED WITH THE COURT OR ON THE MOTION OF A PARTY. THE REQUEST FOR RENEWAL MAY BE BROUGHT AT ANY TIME WITHIN THE THREE MONTHS BEFORE THE EXPIRATION OF THE ORDERS. THE FAILURE TO STATE THE EXPIRATION DATE ON THE FACE OF THE FORM CREATES AN ORDER WITH A DURATION OF THREE YEARS FROM THE DATE OF ISSUANCE.

(D) REPRESENTATION/APPEARANCE. THE COURT MAY REQUIRE THE PROPOSED VISITEE, OR THE PROPOSED VISITEE'S ATTORNEY TO APPEAR AT THE HEARING. IF THE PROPOSED VISITEE DOES NOT HAVE AN ATTORNEY, THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT THE PROPOSED VISITEE'S INTERESTS.

(E) THE COURT SHALL SCHEDULE AN EVIDENTIARY HEARING WITHIN SIXTY DAYS FROM THE DATE THAT THE PETITION IS FILED. THE COURT MAY GRANT A CONTINUANCE OF THE HEARING FOR GOOD CAUSE.

(F) THE RESPONDENT AND THE PROPOSED VISITEE SHALL EACH BE PERSONALLY SERVED WITH A COPY OF THE PETITION FOR VISITATION ORDER AND NOTICE OF THE HEARING AT LAST TWENTY-ONE DAYS BEFORE THE HEARING DATE.

(G) THE NOTICE OF THE HEARING SHALL NOTIFY THE PROPOSED VISITEE AND THE RESPONDENT THAT FOLLOWING THE HEARING, THE COURT MAY MAKE ORDERS NOT TO EXCEED FIVE YEARS FROM THE HEARING DATE. THE NOTICE OF THE HEARING SHALL ALSO NOTIFY THE PROPOSED VISITEE WHETHER THE COURT REQUIRES THAT THE PROPOSED VISITEE APPEAR AT THE HEARING, AND HOW TO REQUEST THAT COUNSEL BE APPOINTED IF THE PROPOSED VISITEE IS UNABLE TO RETAIN COUNSEL.

(H) THE RESPONDENT MAY FILE AND SERVE A RESPONSE THAT EXPLAINS OR DENIES THE ALLEGED ISOLATION AT LEAST TEN DAYS BEFORE THE HEARING DATE.

(I) THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING PARTY IN ANY ACTION BROUGHT UNDER THIS SECTION COURT COSTS AND ATTORNEY'S FEES, IF ANY. IN NO EVENT, SHALL THE PROPOSED VISITEE BY REQUIRED TO PAY THE COURT COSTS OR ATTORNEY'S FEES OF EITHER THE PREVAILING OR NON-PREVAILING PARTY.

S 4. This act shall take effect immediately.