STATE OF NEW YORK

4835

2019-2020 Regular Sessions

IN SENATE

March 27, 2019

Introduced by Sen. CARLUCCI -- 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, in relation to disclosure of the records of court proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions (b) and (d) of section 81.14 of the mental hygiene law, as added by chapter 698 of the laws of 1992, are amended to read as follows:

(b) [~~The court shall not enter an order sealing the court records in a proceeding under this article, either in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interest of the public, the orderly and sound administration of justice, the nature of the proceedings, and the privacy of the person alleged to be incapacitated. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.~~] **Court records in a proceeding under this article shall not be perused, examined, disclosed, taken or copied by any other person than a party, the attorney or counsel of a party, the guardian, the court evaluator or the court examiner except by order of the court.** Court records shall include all documents and records of any nature filed with the clerk in connection with the proceeding. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders under the civil practice law and rules.

(d) At the time of the commencement of the hearing, the court shall inform the allegedly incapacitated person of his or her right to request for good cause [~~that the court records be sealed and~~] that a person, persons, or the general public be excluded from the hearing.

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

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§ 2. Applicability. The obligation of a county clerk to limit access to the records of proceedings occurring prior to the effective date of this act shall only be limited to the extent that a county clerk can readily identify the records of proceedings to which this act applies. A court may also seal or limit access to the records of proceedings held prior to the effective date of this act, provided, however, that such action shall not abridge the court's authority to further restrict access for good cause shown pursuant to any other law, regulation or rule.

§ 3. This act shall take effect immediately and shall apply to any and all past, present and future proceedings held pursuant to article 81 of the mental hygiene law on and after the effective date of this act.