

# STATE OF NEW YORK

3461

2015-2016 Regular Sessions

## IN ASSEMBLY

January 23, 2015

Introduced by M. of A. MAGNARELLI -- read once and referred to the  
Committee on Judiciary

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 Assem-  
bly, do enact as follows:

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

3 8. a guardian shall inform the relatives, including but not limited to  
4 the children, of an elder or dependent incapacitated adult whenever they  
5 are admitted to a medical facility for acute care for a period of three  
6 days or more or in the event of death. In the case of death, the guardi-  
7 an shall inform the relatives of any funeral arrangements and the  
8 location of the incapacitated person's final resting place.

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

12 INFANTS, INCOMPETENTS [AND], CONSERVATEES  
13 AND THE ELDERLY

14 § 3. The civil practice law and rules is amended by adding a new section  
15 1212 to read as follows:

16 § 1212. Elderly visitation claims. (a) Petition to the supreme court.  
17 A petition may be brought for a visitation order to enjoin a respondent  
18 from keeping a proposed visitee in isolation from contact with the peti-  
19 tioner.

20 (b) Definitions. For the purposes of this section:

21 1. "Elder" shall have the same meaning as paragraph (b) of subdivision  
22 one of section two hundred fourteen of the elder law.

23 2. "Dependent adult" shall mean any person between the ages of eigh-  
24 teen and sixty who resides in this state and who has physical or mental  
25 limitations that restrict his or her ability to carry out normal activ-

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

LBD07225-01-5

1 ities or to protect his or her rights, including, but not limited to,  
2 persons who have physical or developmental disabilities, or whose phys-  
3 ical or mental abilities have diminished because of age.

4 3. "Isolation" shall mean:

5 (i) acts intentionally committed for the purpose of preventing, and  
6 that do serve to prevent, an elder or dependent adult from receiving his  
7 or her mail or telephone calls.

8 (ii) telling a caller or prospective visitor that an elder or depend-  
9 ent adult is not present, or does not wish to talk with the caller, or  
10 does not wish to meet with the visitor where the statement is false, is  
11 contrary to the express wishes of the elder or the dependent adult,  
12 whether he or she is competent or not, and is made for the purpose of  
13 preventing the elder or dependent adult from having contact with family,  
14 friends, or concerned persons.

15 (iii) physical restraint of an elder or dependent adult, for the  
16 purpose of preventing the elder or dependent adult from meeting with  
17 visitors.

18 4. "Petitioner" shall mean a person who is a relative in the first  
19 degree of the proposed visitee.

20 5. "Proposed visitee" shall mean the elder or dependent adult, who is  
21 under the care or custody of the respondent, to be protected by the  
22 visitation order and, if the court grants the petition, the protected  
23 person.

24 6. "Respondent" shall mean the person who is alleged to be isolating  
25 the proposed visitee, and if the petition is granted, the restrained  
26 person.

27 7. "Visitation" shall mean any in-person meeting between a proposed  
28 visitee and the petitioner.

29 8. "Visitation order" shall mean an order enjoining a party from keep-  
30 ing the proposed visitee in isolation from contact with the petitioner  
31 that is issued by a court after notice and hearing.

32 (c) Order. 1. An order may be issued under this section to restrain  
33 the respondent for the purpose of preventing a recurrence of isolation  
34 if the petitioner has shown by a preponderance of the evidence, to the  
35 satisfaction of the court, reasonable proof of a past act or acts of  
36 isolation of the proposed visitee from contact with the petitioner, and  
37 upon a showing that the proposed visitee desires contact with the peti-  
38 tioner or that visitation is in the best interests of the proposed visi-  
39 tee.

40 2. The order may specify the frequency, time, place, and location of  
41 visitation.

42 3. In deciding whether visitation with the petitioner is in the best  
43 interest of the proposed visitee the court may consider whether the best  
44 interest of the proposed visitee requires that any visitation by the  
45 petitioner be limited to situations in which a third person, specified  
46 by the court, is present, or whether visitation shall be suspended or  
47 denied. The petitioner, proposed visitee, or respondent may submit to  
48 the court the name of a person who may be suitable to be present during  
49 visitation.

50 4. In deciding whether visitation with the petitioner is in the best  
51 interest of the proposed visitee, the court shall consider any prior  
52 protective orders issued against the petitioner.

53 5. The court shall not issue an order unless the proposed visitee has  
54 expressed a desire for visitation. The court may appoint a court inves-  
55 tigator to determine whether the proposed visitee has expressed a desire  
56 for visitation.

1 6. The court shall issue an order only after notice and a hearing  
2 under this section, and the court shall not issue an ex parte order  
3 under this section.

4 7. In the discretion of the court, an order issued after notice and a  
5 hearing under this section may have a duration of not more than five  
6 years, subject to termination or modification by further order of the  
7 court either on written stipulation filed with the court or on the  
8 motion of a party. These orders may be renewed, upon the request of a  
9 party, either for five years or permanently, without a showing of any  
10 further isolation since the issuance of the original order, subject to  
11 termination or modification by further order of the court either on  
12 written stipulation filed with the court or on the motion of a party.  
13 The request for renewal may be brought at any time within the three  
14 months before the expiration of the orders. The failure to state the  
15 expiration date on the face of the form creates an order with a duration  
16 of three years from the date of issuance.

17 (d) Representation/appearance. The court may require the proposed  
18 visitee, or the proposed visitee's attorney to appear at the hearing. If  
19 the proposed visitee does not have an attorney, the court shall appoint  
20 an attorney to represent the proposed visitee's interests.

21 (e) The court shall schedule an evidentiary hearing within sixty days  
22 from the date that the petition is filed. The court may grant a contin-  
23 uance of the hearing for good cause.

24 (f) The respondent and the proposed visitee shall each be personally  
25 served with a copy of the petition for visitation order and notice of  
26 the hearing at last twenty-one days before the hearing date.

27 (g) The notice of the hearing shall notify the proposed visitee and  
28 the respondent that following the hearing, the court may make orders not  
29 to exceed five years from the hearing date. The notice of the hearing  
30 shall also notify the proposed visitee whether the court requires that  
31 the proposed visitee appear at the hearing, and how to request that  
32 counsel be appointed if the proposed visitee is unable to retain coun-  
33 sel.

34 (h) The respondent may file and serve a response that explains or  
35 denies the alleged isolation at least ten days before the hearing date.

36 (i) The court may, in its discretion, award the prevailing party in  
37 any action brought under this section court costs and attorney's fees,  
38 if any. In no event, shall the proposed visitee be required to pay the  
39 court costs or attorney's fees of either the prevailing or non-prevail-  
40 ing party.

41 § 4. This act shall take effect immediately.