

7587

I N S E N A T E

June 5, 2012

Introduced by Sen. McDONALD -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, the correction law and the mental hygiene law, in relation to the appointment of guardians

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

1 Section 1. Subdivision 2 of section 845-b of the executive law, as
2 amended by chapter 769 of the laws of 2005, is amended to read as
3 follows:

4 2. Where a provider is authorized or required to request a check of
5 criminal history information by an authorized agency pursuant to section
6 16.33, [or] 31.35 OR 81.19 of the mental hygiene law or article twenty-
7 eight-E of the public health law, such provider shall proceed pursuant
8 to the provisions of this section and in a manner consistent with the
9 provisions of article twenty-three-A of the correction law, subdivisions
10 fifteen and sixteen of section two hundred ninety-six of this chapter
11 and all other applicable laws.

12 S 2. Subparagraph (iii) of paragraph b of subdivision 2 of section
13 168-b of the correction law, as amended by chapter 595 of the laws of
14 2008 and as further amended by section 104 of part A of chapter 62 of
15 the laws of 2011, is amended to read as follows:

16 (iii) a court, to enable the court to promptly comply with the
17 provisions of paragraph (a-1) of subdivision one of section two hundred
18 forty of the domestic relations law, [and] subdivision (e) of section
19 six hundred fifty-one of the family court act, AND SUBDIVISION (G) OF
20 SECTION 81.19 OF THE MENTAL HYGIENE LAW.

21 S 3. Section 81.19 of the mental hygiene law is amended by adding a
22 new subdivision (g) to read as follows:

23 (G) 1. IN MAKING AN APPOINTMENT OR CONSIDERING A REVOCATION OF AN
24 APPOINTMENT UNDER THIS ARTICLE, THE COURT ALSO MAY OBTAIN AND CONSIDER,
25 AND MAY AUTHORIZE A COURT EVALUATOR TO REVIEW THE SAME AND REPORT TO THE
26 COURT CONCERNING, ANY OF THE FOLLOWING INFORMATION REGARDING THE GUARDI-

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

LBD15240-01-2

1 AN OR PROPOSED GUARDIAN AND ANY PERSON EIGHTEEN YEARS OR OLDER RESIDING
2 IN THE GUARDIAN OR PROPOSED GUARDIAN'S HOUSEHOLD:

3 (I) A CRIMINAL HISTORY RECORD CHECK OF SUCH PERSON OR PERSONS; AND IN
4 FURTHERANCE THEREOF, THE COURT SHALL HAVE THE POWER TO MAKE AND ENFORCE
5 SUCH ORDERS AS THE COURT SHALL DEEM NECESSARY TO OBTAIN RECORDS OF ANY
6 SUCH PERSON'S CRIMINAL HISTORY, INCLUDING BUT NOT LIMITED TO: (1)
7 DIRECTING SUCH PERSON TO BE FINGERPRINTED; (2) DIRECTING THAT THE DIVI-
8 SION OF CRIMINAL JUSTICE SERVICES PROMPTLY SHALL PROVIDE TO THE COURT A
9 CRIMINAL HISTORY RECORD, IF ANY, WITH RESPECT TO SUCH PERSON PURSUANT TO
10 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW, OR A STATEMENT
11 THAT SUCH PERSON HAS NO CRIMINAL RECORD; AND (3) PROVIDING FOR THE
12 SUBMISSION OF SUCH PERSON'S FINGERPRINTS BY THE DIVISION OF CRIMINAL
13 JUSTICE SERVICES TO THE FEDERAL BUREAU OF INVESTIGATION FOR PURPOSES OF
14 A NATIONWIDE CRIMINAL HISTORY RECORD CHECK PURSUANT TO AND CONSISTENT
15 WITH PUBLIC LAW 92-544 TO DETERMINE IF SUCH PERSON HAS A CRIMINAL HISTO-
16 RY IN ANY STATE OR FEDERAL JURISDICTION;

17 (II) REPORTS FOR SUCH PERSON OR PERSONS FROM THE SEX OFFENDER REGISTRY
18 ESTABLISHED AND MAINTAINED PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-B
19 OF THE CORRECTION LAW;

20 (II) INDICATED REPORTS FOR SUCH PERSON OR PERSONS FROM THE STATEWIDE
21 CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT ESTABLISHED AND MAIN-
22 TAINED PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL
23 SERVICES LAW, UPON A FINDING BY THE COURT, PURSUANT TO PARAGRAPH E OF
24 SUBDIVISION FOUR OF SUCH SECTION, THAT SUCH INFORMATION IS NECESSARY FOR
25 THE COURT TO DETERMINE WHETHER TO MAKE OR CONTINUE AN APPOINTMENT PURSU-
26 ANT TO THIS ARTICLE;

27 (IV) REPORTS FOR SUCH PERSON OR PERSON FROM THE STATEWIDE COMPUTERIZED
28 REGISTRY OF ORDERS OF PROTECTION ESTABLISHED AND MAINTAINED PURSUANT TO
29 SECTION TWO HUNDRED TWENTY-ONE-A OF THE EXECUTIVE LAW; AND

30 (V) RELATED DECISIONS IN COURT PROCEEDINGS INITIATED PURSUANT TO ARTI-
31 CLE TEN OF THE FAMILY COURT ACT AND RELATED WARRANTS ISSUED UNDER THE
32 FAMILY COURT ACT.

33 2. UPON CONSIDERATION OF RECORDS AND REPORTS SPECIFIED IN PARAGRAPH
34 ONE OF THIS SUBDIVISION, OR THE COURT EVALUATOR'S REPORT THEREON, AND
35 AFTER NOTIFYING COUNSEL INVOLVED IN THE PROCEEDING, OR IN THE EVENT OF A
36 SELF-REPRESENTED PARTY NOTIFYING SUCH PARTY, THE COURT MAY APPOINT,
37 REFUSE TO APPOINT OR REVOKE THE APPOINTMENT OF ANY PERSON AS GUARDIAN
38 PURSUANT TO THIS ARTICLE.

39 S 4. This act shall take effect immediately.