

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

10608--A

I N A S S E M B L Y

June 7, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein, Dinowitz, Lavine, Simotas, Zebrowski) -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend 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. Subparagraph (iii) of paragraph b of subdivision 2 of
2 section 168-b of the correction law, as amended by chapter 595 of the
3 laws of 2008 and as further amended by section 104 of part A of chapter
4 62 of the laws of 2011, is amended to read as follows:
5 (iii) a court, to enable the court to promptly comply with the
6 provisions of paragraph (a-1) of subdivision one of section two hundred
7 forty of the domestic relations law, [and] subdivision (e) of section
8 six hundred fifty-one of the family court act, AND SUBDIVISION (G) OF
9 SECTION 81.19 OF THE MENTAL HYGIENE LAW.
10 S 2. Section 81.19 of the mental hygiene law is amended by adding a
11 new subdivision (g) to read as follows:
12 (G) 1. IN MAKING AN APPOINTMENT OR CONSIDERING A REVOCATION OF AN
13 APPOINTMENT UNDER THIS ARTICLE, THE COURT ALSO MAY OBTAIN AND CONSIDER,
14 AND MAY AUTHORIZE A COURT EVALUATOR TO REVIEW THE SAME AND REPORT TO THE
15 COURT CONCERNING, ANY OF THE FOLLOWING INFORMATION REGARDING THE GUARDI-
16 AN OR PROPOSED GUARDIAN, AND, IF THE INCAPACITATED PERSON RESIDES OR
17 WILL RESIDE WITH SUCH GUARDIAN OR PROPOSED GUARDIAN, ANY PERSON EIGHTEEN
18 YEARS OR OLDER RESIDING IN THE GUARDIAN OR PROPOSED GUARDIAN'S HOUSE-
19 HOLD:
20 (I) A CRIMINAL HISTORY RECORD CHECK OF SUCH PERSON OR PERSONS; AND IN
21 FURTHERANCE THEREOF, THE COURT SHALL BE AUTHORIZED TO: (1) OBTAIN A SET
22 OF SUCH PERSON'S FINGERPRINTS; (2) DIRECT THAT THE DIVISION OF CRIMINAL
23 JUSTICE SERVICES PROMPTLY PROVIDE TO THE COURT A CRIMINAL HISTORY
24 RECORD, IF ANY, WITH RESPECT TO SUCH PERSON OR A STATEMENT THAT SUCH

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

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1 PERSON HAS NO CRIMINAL RECORD; AND (3) DIRECT THE SUBMISSION OF SUCH
2 PERSON'S FINGERPRINTS BY THE DIVISION OF CRIMINAL JUSTICE SERVICES TO
3 THE FEDERAL BUREAU OF INVESTIGATION FOR PURPOSES OF A NATIONWIDE CRIMI-
4 NAL HISTORY RECORD CHECK PURSUANT TO AND CONSISTENT WITH PUBLIC LAW
5 92-544 TO DETERMINE IF SUCH PERSON HAS A CRIMINAL HISTORY IN ANY STATE
6 OR FEDERAL JURISDICTION;

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

10 (III) INDICATED REPORTS FOR SUCH PERSON OR PERSONS FROM THE STATEWIDE
11 CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT ESTABLISHED AND MAIN-
12 TAINED PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL
13 SERVICES LAW, UPON A FINDING BY THE COURT, PURSUANT TO PARAGRAPH E OF
14 SUBDIVISION FOUR OF SUCH SECTION, THAT SUCH INFORMATION IS NECESSARY FOR
15 THE COURT TO DETERMINE WHETHER TO MAKE OR CONTINUE AN APPOINTMENT PURSU-
16 ANT TO THIS ARTICLE;

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

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

23 2. THE COURT SHALL OBTAIN AND CONSIDER RECORDS AND REPORTS SPECIFIED
24 IN PARAGRAPH ONE OF THIS SUBDIVISION BETWEEN THE TIME THE JUDGE EXECUTES
25 THE ORDER TO SHOW CAUSE AND THE HEARING DATE OF THE ORDER TO SHOW CAUSE
26 IF A GUARDIAN OR GUARDIANS ARE PROPOSED IN THE PETITION OR, AS SOON AS A
27 GUARDIAN OR GUARDIANS ARE PROPOSED BY A PARTY TO THE PROCEEDING OR NOMI-
28 NATED BY THE PERSON ALLEGED TO BE INCAPACITATED, DURING A PROCEEDING
29 UNDER THIS ARTICLE.

30 3. UPON CONSIDERATION OF ALL FACTORS BEARING ON THE BEST INTERESTS OF
31 THE INCAPACITATED PERSON INCLUDING CONSIDERATION OF ALL RELEVANT FACTORS
32 IN SECTION SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW, THE RECORDS
33 AND REPORTS SPECIFIED IN PARAGRAPH ONE OF THIS SUBDIVISION, AND THE
34 COURT EVALUATOR'S REPORT THEREON, AND AFTER NOTIFYING COUNSEL INVOLVED
35 IN THE PROCEEDING, OR IN THE EVENT OF A SELF-REPRESENTED PARTY NOTIFYING
36 SUCH PARTY, THE COURT MAY APPOINT, REFUSE TO APPOINT OR REVOKE THE
37 APPOINTMENT OF ANY PERSON AS GUARDIAN PURSUANT TO THIS ARTICLE.

38 4. WHERE THE COURT REQUESTS A CRIMINAL HISTORY RECORD FOR A PERSON
39 PURSUANT TO THIS SECTION, THE COURT SHALL PROVIDE THE SUBJECT OF THE
40 REQUEST WITH A COPY OF HIS OR HER CRIMINAL HISTORY RECORD, IF ANY, A
41 REASONABLE TIME BEFORE CONSIDERATION OF SUCH RECORD UNDER THIS SUBDIVI-
42 SION AND INFORM SUCH PERSON OF HIS OR HER RIGHT TO SEEK CORRECTION OF
43 ANY INCORRECT INFORMATION CONTAINED IN SUCH RECORD PURSUANT TO REGU-
44 LATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE
45 SERVICES.

46 S 3. This act shall take effect on the one hundred eightieth day after
47 it shall have become a law.