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

7587--B

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subparagraph (iii) of paragraph b of subdivision 2 of section 168-b of the correction law, as amended by chapter 595 of the laws of 2008 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

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

S 2. Section 81.19 of the mental hygiene law is amended by adding a new subdivision (g) to read as follows:

(G) 1. IN MAKING AN APPOINTMENT OR CONSIDERING A REVOCATION OF AN APPOINTMENT UNDER THIS ARTICLE, THE COURT ALSO MAY OBTAIN AND CONSIDER, AND MAY AUTHORIZE A COURT EVALUATOR TO REVIEW THE SAME AND REPORT TO THE COURT CONCERNING, ANY OF THE FOLLOWING INFORMATION REGARDING THE GUARDIAN OR PROPOSED GUARDIAN, AND, IF THE INCAPACITATED PERSON RESIDES OR WILL RESIDE WITH SUCH GUARDIAN OR PROPOSED GUARDIAN, ANY PERSON EIGHTEEN YEARS OR OLDER RESIDING IN THE GUARDIAN OR PROPOSED GUARDIAN'S HOUSEHOLD:

(I) A CRIMINAL HISTORY RECORD CHECK OF SUCH PERSON OR PERSONS; AND IN FURTHERANCE THEREOF, THE COURT SHALL BE AUTHORIZED TO: (1) OBTAIN A SET OF SUCH PERSON'S FINGERPRINTS; (2) DIRECT THAT THE DIVISION OF CRIMINAL JUSTICE SERVICES PROMPTLY PROVIDE TO THE COURT A CRIMINAL HISTORY 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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PERSON HAS NO CRIMINAL RECORD; AND (3) DIRECT THE SUBMISSION OF SUCH PERSON'S FINGERPRINTS BY THE DIVISION OF CRIMINAL JUSTICE SERVICES TO THE FEDERAL BUREAU OF INVESTIGATION FOR PURPOSES OF A NATIONWIDE CRIMINAL HISTORY RECORD CHECK PURSUANT TO AND CONSISTENT WITH PUBLIC LAW 92-544 TO DETERMINE IF SUCH PERSON HAS A CRIMINAL HISTORY IN ANY STATE OR FEDERAL JURISDICTION;

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

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

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

(V) RELATED DECISIONS IN COURT PROCEEDINGS INITIATED PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT AND RELATED WARRANTS ISSUED UNDER THE FAMILY COURT ACT.

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

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

4. WHERE THE COURT REQUESTS A CRIMINAL HISTORY RECORD FOR A PERSON PURSUANT TO THIS SECTION, THE COURT SHALL PROVIDE THE SUBJECT OF THE REQUEST WITH A COPY OF HIS OR HER CRIMINAL HISTORY RECORD, IF ANY, A REASONABLE TIME BEFORE CONSIDERATION OF SUCH RECORD UNDER THIS SUBDIVISION AND INFORM SUCH PERSON OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH RECORD PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

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