

4060--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. WRIGHT, TITUS, ROBINSON -- Multi-Sponsored by --
M. of A. AUBRY, PERRY, RIVERA, SWEENEY, TITONE -- read once and
referred to the Committee on Children and Families -- recommitted to
the Committee on Children and Families in accordance with Assembly
Rule 3, sec. 2 -- reported and referred to the Committee on Codes --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

AN ACT to amend the family court act and the domestic relations law, in
relation to the appointment of law guardians for certain children who
are freed for adoption

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 249 of the family court act, as
2 amended by section 1 of chapter 3 of the laws of 2012, is amended to
3 read as follows:
4 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
5 this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE THE
6 ADOPTION IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN
7 SUBDIVISION NINE OF SECTION ONE HUNDRED TWELVE OF THE DOMESTIC RELATIONS
8 LAW, or where a revocation of an adoption consent is opposed under
9 section one hundred fifteen-b of the domestic relations law or in any
10 proceeding under section three hundred fifty-eight-a, three hundred
11 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
12 of the social services law or when a minor is sought to be placed in
13 protective custody under section one hundred fifty-eight of this act or
14 in any proceeding where a minor is detained under or governed by the
15 interstate compact for juveniles established pursuant to section five
16 hundred one-e of the executive law, the family court shall appoint an
17 attorney to represent a minor who is the subject of the proceeding or
18 who is sought to be placed in protective custody, if independent legal
19 representation is not available to such minor. In any proceeding to

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

LBD00788-02-4

1 extend or continue the placement of a juvenile delinquent or person in
2 need of supervision pursuant to section seven hundred fifty-six or 353.3
3 of this act or any proceeding to extend or continue a commitment to the
4 custody of the commissioner of mental health or the commissioner of
5 people with developmental disabilities pursuant to section 322.2 of this
6 act, the court shall not permit the respondent to waive the right to be
7 represented by counsel chosen by the respondent, respondent's parent, or
8 other person legally responsible for the respondent's care, or by
9 assigned counsel. In any proceeding under article ten-B of this act, the
10 family court shall appoint an attorney to represent a youth, under the
11 age of twenty-one, who is the subject of the proceeding, if independent
12 legal representation is not available to such youth. In any other
13 proceeding in which the court has jurisdiction, the court may appoint an
14 attorney to represent the child, when, in the opinion of the family
15 court judge, such representation will serve the purposes of this act, if
16 independent legal counsel is not available to the child. The family
17 court on its own motion may make such appointment.

18 S 2. Subdivision (a) of section 249 of the family court act, as sepa-
19 rately amended by chapter 41 of the laws of 2010 and chapter 3 of the
20 laws of 2012, is amended to read as follows:

21 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
22 this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE THE
23 ADOPTION IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN
24 SUBDIVISION NINE OF SECTION ONE HUNDRED TWELVE OF THE DOMESTIC RELATIONS
25 LAW, or where a revocation of an adoption consent is opposed under
26 section one hundred fifteen-b of the domestic relations law or in any
27 proceeding under section three hundred fifty-eight-a, three hundred
28 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
29 of the social services law or when a minor is sought to be placed in
30 protective custody under section one hundred fifty-eight of this act,
31 the family court shall appoint an attorney to represent a minor who is
32 the subject of the proceeding or who is sought to be placed in protec-
33 tive custody, if independent legal representation is not available to
34 such minor. In any proceeding to extend or continue the placement of a
35 juvenile delinquent or person in need of supervision pursuant to section
36 seven hundred fifty-six or 353.3 of this act or any proceeding to extend
37 or continue a commitment to the custody of the commissioner of mental
38 health or the commissioner of mental retardation and developmental disa-
39 bilities pursuant to section 322.2 of this act, the court shall not
40 permit the respondent to waive the right to be represented by counsel
41 chosen by the respondent, respondent's parent, or other person legally
42 responsible for the respondent's care, or by assigned counsel. In any
43 proceeding under article ten-B of this act, the family court shall
44 appoint an attorney to represent a youth, under the age of twenty-one,
45 who is the subject of the proceeding, if independent legal represen-
46 tation is not available to such youth. In any other proceeding in which
47 the court has jurisdiction, the court may appoint an attorney to repre-
48 sent the child, when, in the opinion of the family court judge, such
49 representation will serve the purposes of this act, if independent legal
50 counsel is not available to the child. The family court on its own
51 motion may make such appointment.

52 S 3. Section 112 of the domestic relations law is amended by adding a
53 new subdivision 9 to read as follows:

54 9. UPON THE FILING OF PETITION TO ADOPT FROM AN AUTHORIZED AGENCY WITH
55 RESPECT TO A CHILD FOR WHOM AN ATTORNEY HAD BEEN APPOINTED BY THE FAMILY
56 COURT IN A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT,

1 OR PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A OR THREE HUNDRED
2 EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, THE APPOINTMENT OF AN ATTORNEY
3 FOR THE CHILD SHALL CONTINUE WITHOUT FURTHER ORDER OR APPOINTMENT,
4 UNLESS ANOTHER APPOINTMENT OF AN ATTORNEY FOR THE CHILD HAS BEEN MADE BY
5 THE COURT. THE ATTORNEY FOR THE CHILD SHALL BE NOTIFIED WITHIN TEN DAYS
6 OF THE FILING OF AN ADOPTION PETITION AND WHETHER THE ATTORNEY'S REPRESENTATION OF THE CHILD WILL CONTINUE AT THE ADOPTION. THE ATTORNEY FOR
7 THE CHILD MAY BE RELIEVED OF HIS OR HER REPRESENTATION UPON APPLICATION
8 TO THE COURT FOR TERMINATION OF APPOINTMENT. UPON APPROVAL OF SUCH
9 APPLICATION, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER ATTORNEY FOR
10 THE CHILD.
11

12 S 4. This act shall take effect April 1, 2015; provided that the
13 amendments to subdivision (a) of section 249 of the family court act
14 made by section one of this act shall be subject to the expiration and
15 reversion of such subdivision pursuant to section 8 of chapter 29 of the
16 laws of 2011, as amended, when upon such date the provisions of section
17 two of this act shall take effect.