

**ASSEMBLY, No. 6120**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED JANUARY 9, 2020

**Sponsored by:**  
**Assemblyman RAJ MUKHERJI**  
**District 33 (Hudson)**

**SYNOPSIS**

Revises law concerning standby guardianship for minor child or ward.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning standby guardianship and amending various  
2 parts of the statutory law.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. N.J.S.3B:12-39 is amended to read as follows:

8 3B:12-39. Delegation of parent's or guardian's powers regarding  
9 child's or ward's care, custody or property; limitations.

10 a. **[A]** (1) A parent, other than where legal and physical  
11 custody of **[a]** the parent's minor child has been awarded to another  
12 by a court of competent jurisdiction, may with the consent of the  
13 other parent, **[if the latter is living and not an incapacitated person]**  
14 unless the other parent is deceased, incapacitated, or unavailable, or  
15 (2) a guardian of the person of a minor or an incapacitated  
16 person**[,]** may:

17 by a properly executed power of attorney, **[may]** delegate to  
18 another person**[,]** for a period not exceeding six months,**[]** any of his  
19 powers regarding care, custody, or property of the minor child or  
20 ward, except his power to consent to **[marriage or]** the adoption of  
21 a minor child or the marriage or adoption of a ward.

22 b. A delegation made under this section shall expire one year  
23 from the effective date of the properly executed power of attorney,  
24 provided however that the parent or guardian shall be permitted to  
25 renew the delegation for additional one-year periods using the same  
26 process as applies to the original delegation.

27 c. A delegation made under this section may become effective  
28 upon proper execution of the power of attorney or upon another  
29 triggering event specified in a properly executed power of attorney.

30 d. A parent or guardian may revoke a delegation made under  
31 this section by notifying the attorney-in-fact named in the power of  
32 attorney orally, in writing, or by any other act evidencing a specific  
33 intent to revoke the power of attorney.

34 e. A parent or guardian may delegate under this section only  
35 such powers as he possesses.

36 f. A delegation made under this section shall not deprive the  
37 parent or guardian of his existing powers regarding care, custody, or  
38 property of the minor child or ward, but the parent or guardian shall  
39 exercise such powers, insofar as he is able, concurrently with the  
40 attorney-in-fact named in the power of attorney.

41 g. Nothing in this section shall be construed to involuntarily  
42 deprive any parent of parental rights.

43 h. As used in this section:

44 "Attending physician" means the physician who has primary  
45 responsibility for the treatment and care for the parent or legal

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 guardian making the delegation. When more than one physician  
2 shares this responsibility, or when a physician is acting on the  
3 primary physician's behalf, any such physician may act as the  
4 attending physician pursuant to this section. When no physician  
5 has this responsibility, a physician who is familiar with the parent's  
6 or legal guardian's medical condition may act as the attending  
7 physician.

8 "Attorney-in-fact" means the person to whom a parent or  
9 guardian delegates powers under a properly executed power of  
10 attorney pursuant to this section.

11 "Consent" means written consent of the non-delegating parent or  
12 the non-delegating legal guardian as evidenced by that person's  
13 signature on the power of attorney, in the presence of two  
14 witnesses.

15 "Criminal proceeding" means any incarceration on criminal  
16 charges or a criminal sentence that separates a custodial parent or  
17 legal custodian from a minor child or ward.

18 "Debilitated" means the parent or legal guardian has a chronic  
19 and substantial inability, as a result of a physically debilitating  
20 illness, disease, or injury, to care for the parent's or legal guardian's  
21 minor child or ward.

22 "Immigration administrative action" means any immigration  
23 proceeding, enforcement action, detention, removal, or deportation  
24 that separates a custodial parent or legal guardian from a minor  
25 child or ward.

26 "Incapacitated" means the parent or legal guardian has a chronic  
27 and substantial inability, as a result of mental or physical  
28 impairment, to understand the nature and consequences of decisions  
29 concerning the care of the parent's or guardian's minor child or  
30 ward, and a consequent inability to make these decisions.

31 "Military service" means duty by any person in the active  
32 military service of the United States or the active military service of  
33 the State, including in the National Guard or State Guard, that  
34 separates a custodial parent or legal guardian from a minor child or  
35 ward.

36 "Minor child" means a child under the age of eighteen years but  
37 excludes a child residing in a placement funded or approved by the  
38 Division of Child Protection and Permanency in the Department of  
39 Children and Families pursuant to either a voluntary placement  
40 agreement or court order.

41 "Triggering event" means an event stated in the delegation that  
42 empowers the attorney-in-fact to assume the duties of the office.  
43 Triggering events include, but are not limited to: (1) the execution  
44 of a power of attorney pursuant to this section; (2) the parent's or  
45 legal guardian's attending physician concludes that the parent or  
46 legal guardian is "incapacitated" as defined in this section; (3) the  
47 parent's or legal guardian's attending physician concludes that the  
48 parent or legal guardian is "debilitated" as defined in this section;

(4) the parent or legal guardian is subject to “immigration administrative action” as defined in this section; (5) the parent or legal guardian is subject to “criminal proceedings” as defined in this section; (6) the parent or legal guardian is in “military service” as defined in this section; or (7) the death of the parent or legal guardian.

“Unavailable” means: (a) a parent who has not been involved in raising or financially supporting the child for two years or a third of the life of the child, whichever is less, immediately preceding the delegation made pursuant to this section; (b) a parent who has abandoned the child; (c) a parent whose identity or whereabouts are unknown to the custodial parent; or (d) a parent who cannot be reached after diligent efforts.

“Ward” means an individual for whom a guardian is appointed.

i. A delegation may, but need not, be in the following form:

POWER OF ATTORNEY AND DELEGATION OF AUTHORITY  
BY PARENT OR GUARDIAN CONCERNING MINOR  
CHILD(REN) OR WARD(S) PURSUANT TO N.J.S. 3B:12-39

This power of attorney is made between (name(s), of parent(s) or guardian(s)), residing at (address(es) of parent(s) or guardian(s)) and reachable at (telephone number(s) of parent(s) or guardian(s)) and (name of alternative caregiver), referred to here as “attorney-in-fact,” residing at (home address of alternative caregiver) and reachable at (telephone number of alternative caregiver).

If only one parent is signing, please check off reason(s):

\_\_\_\_ Other parent is deceased.

\_\_\_\_ By order of a court of competent jurisdiction, the other parent does not retain legal and physical custody of child(ren).

\_\_\_\_ Other parent is mentally or physically unable to give consent.

\_\_\_\_ Other parent abandoned child(ren).

\_\_\_\_ Other parent has not been involved in raising or financially supporting child(ren) for two years or a third of the life of the child(ren), whichever is less, immediately preceding the date of the latest signature below.

\_\_\_\_ Identity or whereabouts of the other parent are unknown to me.

\_\_\_\_ Despite diligent efforts described below, I was unable to reach other parent.

1 Diligent efforts included:  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 Other: \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 I/we appoint said attorney-in-fact, pursuant to N.J.S.3B:12-39, and  
16 delegate to said attorney-in-fact the following powers, all of which  
17 I/we possess, concerning the care, custody, and/or property of  
18 my/our child/ward, (name of child/ward), born on \_\_\_\_\_ day of  
19 \_\_\_\_\_, 20\_\_\_\_\_ (add other children's or wards' names and birthdates  
20 as appropriate)  
21 \_\_\_\_\_  
22 Care-Giving. The attorney-in-fact shall have temporary care-  
23 giving authority for the child(ren)/ward(s), until such time as the  
24 child(ren)/ward(s) is/are returned to our/my physical custody, or  
25 his/her/their custody status is altered by a federal, state, or local  
26 agency; or changed by a court of law.  
27 \_\_\_\_\_  
28 Well-Being. The attorney-in-fact shall have the power to  
29 provide for the physical and mental well-being of the  
30 child(ren)/ward(s), including but not limited to providing food and  
31 shelter.  
32 \_\_\_\_\_  
33 Education. The attorney-in-fact shall have the authority to enroll  
34 the child(ren)/ward(s) in the appropriate educational institutions;  
35 obtain access to his/her/their school records; authorize his/her/their  
36 participation in school activities; and make any and all decisions  
37 related to his/her/their education, including, but not limited to, those  
38 related to special education.  
39 \_\_\_\_\_  
40 Health Care. The attorney-in-fact shall have the authority, to the  
41 same extent that a parent/guardian would have the authority, to  
42 make medical, dental, and mental health decisions; to sign  
43 documents, waivers and releases required by a hospital or  
44 physician; to access medical, dental, or mental health records  
45 concerning the child(ren)/ward(s); to authorize his/her/their  
46 admission to or discharge from any hospital or medical care facility;  
47 to consult with any provider of health care; to consent to the  
48 provision, withholding, modification or withdrawal of any health

1 care procedure; and to make other decisions related to the health  
2 care needs of the child(ren)/ward(s).

3  
4 Travel. The attorney-in-fact shall have the authority to make  
5 travel arrangements on behalf of the child(ren)/ward(s) for  
6 destinations both inside and outside of the United States by air  
7 and/or ground transportation; to accompany the child(ren)/ward(s)  
8 on any such trips; and to make any and all related arrangements on  
9 behalf of the child(ren)/ward(s), including but not limited to hotel  
10 accommodations.

11  
12 Financial Interests. The attorney-in-fact may handle any and  
13 all financial affairs and any and all personal and legal matters  
14 concerning the child(ren)/ward(s).

15  
16 All Other Powers. The attorney-in-fact shall have the authority  
17 to handle and engage in any and all other matters relating to the  
18 care, custody, and property of the child or ward which are permitted  
19 pursuant to applicable State law.

20  
21 By this delegation, I/we provide that the attorney-in-fact's authority  
22 shall take effect upon the following "triggering event" (check one  
23 that applies):

24  
25 The execution of this document on the latest date below; or

26  
27 My attending physician concludes that I am mentally  
28 incapacitated, and thus unable to care for my child(ren)/ward(s); or

29  
30 My attending physician concludes that I am physically  
31 debilitated, and thus unable to care for my child(ren)/ward(s); or

32  
33 I am detained in immigration detention, removed, or deported;  
34 or

35  
36 I am incarcerated based on criminal charges or conviction; or

37  
38 I am deployed in military service; or

39  
40 Upon my death.

41  
42 In the event that the person designated above is unable or unwilling  
43 to act as attorney-in-fact to my child(ren)/ward(s), I hereby name  
44 (name, address and telephone number of alternate attorney-in-fact),  
45 as alternate attorney-in-fact of my child(ren)/ward(s).

46  
47 I/we understand that this delegation will expire one year from the  
48 execution of this document on the latest date below, and that the

1 authority of the attorney-in-fact, if any, will cease, unless by that  
2 date (i) I renew this delegation, by the same process applicable to  
3 the original delegation, or (ii) a court of competent jurisdiction  
4 appoints a custodian, guardian, or standby guardian for the minor  
5 child or ward.

6  
7 I/we hereby authorize that the attorney-in-fact as set forth above  
8 shall be provided with a copy of my/our attending physician's  
9 statement(s), if applicable.

10  
11 In the event that a triggering event occurs and a power of attorney is  
12 activated pursuant to this statement, I declare that it is my intention  
13 to retain full parental rights to the extent consistent with my  
14 condition and circumstances and, further, that I retain the authority  
15 to revoke the power of attorney consistent with my rights herein at  
16 any time.

17  
18 Parent's/Guardian's Signature:

19  
20 Date:

21  
22  
23 Other Parent's/Guardian's Signature:

24  
25 Date:

26  
27  
28 Witness' Signature:

29  
30 Address:

31  
32 Date:

33  
34  
35 Witness' Signature:

36  
37 Address:

38  
39 Date:

40  
41 (cf: P.L.2005, c.304, s.27)

42  
43 2. Section 2 of P.L.1995, c.76 (C.3B:12-68) is amended to read  
44 as follows:

45 2. The Legislature finds and declares that there is an imperative  
46 need to create an expeditious manner of establishing a guardianship  
47 known as a standby guardianship, in order to enable a custodial  
48 parent, legal guardian, or legal custodian **【**suffering from a

1 progressive chronic condition or a fatal illness】 who cannot  
2 currently, or who anticipates being unable to, provide adequate care  
3 to a minor child or ward, to make plans for the permanent future  
4 care or the interim care of a minor child or ward without  
5 terminating parental or legal rights. The Legislature further finds  
6 that current law does not adequately address the needs of custodial  
7 parents, legal guardians, or legal custodians who are 【suffering  
8 from a progressive chronic condition or a fatal illness】 facing  
9 separation from their minor children or wards because of illness,  
10 immigration administrative action, criminal proceedings, military  
11 service, or other reasons, and who desire to make plans for the  
12 future care of their children or wards without terminating parental  
13 or legal rights.

14 (cf: P.L.1995, c.76, s.2)

15  
16 3. Section 3 of P.L.1995, c.76 (C.3B:12-69) is amended to read  
17 as follows:

18 3. As used in P.L.1995, c.76 (C.3B:12-67 et seq.):

19 "Appointed standby guardian" means a person appointed  
20 pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the  
21 duties of guardian over the person and, when applicable, the  
22 property of a minor child or ward upon 【the death or a  
23 determination of incapacity or debilitation, and with the consent, of  
24 the parent or legal custodian】 a "triggering event" as defined in this  
25 section.

26 "Attending physician" means the physician who has primary  
27 responsibility for the treatment and care for the petitioning parent,  
28 legal guardian, or legal custodian. When more than one physician  
29 shares this responsibility, or when a physician is acting on the  
30 primary physician's behalf, any such physician may act as the  
31 attending physician pursuant to this act. When no physician has  
32 this responsibility, a physician who is familiar with the petitioner's  
33 medical condition may act as the attending physician pursuant to  
34 P.L.1995, c.76 (C.3B:12-67 et seq.).

35 【"Consent" means written consent signed by the parent or legal  
36 custodian in the presence of two witnesses who shall also sign the  
37 document. The written consent shall constitute the terms for the  
38 commencement of the duties of the standby guardian.】

39 "Criminal proceeding" means any incarceration on criminal  
40 charges or a criminal sentence that separates a custodial parent,  
41 legal guardian, or legal custodian from a minor child or ward.

42 【"Debilitation"】 "Debilitated" means the parent, legal guardian,  
43 or legal custodian has a chronic and substantial inability, as a result  
44 of a physically debilitating illness, disease, or injury, to care for  
45 【one's】 the parent's, legal guardian's, or legal custodian's minor  
46 child or ward.



1       **["Designated standby guardian"** means a person designated  
2 pursuant to section 8 of P.L.1995, c.76 (C.3B:12-74) to assume  
3 temporarily the duties of guardianship over the person and, when  
4 applicable, the property of a minor child upon the death or a  
5 determination of incapacity or debilitation, and with the consent, of  
6 the parent or legal custodian.

7       "Designation" means a written document voluntarily executed by  
8 the designator pursuant to P.L.1995, c.76.

9       "Designator" means a competent parent or legal custodian of a  
10 minor child who makes a designation pursuant to P.L.1995, c.76.

11       "Determination of debilitation" means a written determination  
12 made by the attending physician which contains the physician's  
13 opinion to a reasonable degree of medical certainty regarding the  
14 nature, cause, extent, and probable duration of the parent's or legal  
15 custodian's debilitation.

16       "Determination of incapacity" means a written determination  
17 made by the attending physician which contains the physician's  
18 opinion to a reasonable degree of medical certainty regarding the  
19 nature, cause, extent, and probable duration of the parent's or legal  
20 custodian's incapacity.】

21       "Immigration administrative action" means any immigration  
22 proceeding, enforcement action, detention, removal, or deportation  
23 that separates a custodial parent, legal guardian, or legal custodian  
24 from a minor child or ward.

25       **["Incapacity"]** **["Incapacitated"]** means the parent, legal guardian,  
26 or legal custodian has a chronic and substantial inability, as a result  
27 of mental or **【organic】** physical impairment, to understand the  
28 nature and consequences of decisions concerning the care of  
29 **【one's】** the parent's, legal guardian's, or legal custodian's minor  
30 child or ward, and a consequent inability to make these decisions.

31       "Military service" means duty by any person in the active  
32 military service of the United States or the active military service of  
33 the State, including in the National Guard or State Guard, that  
34 separates a custodial parent, legal guardian, or legal custodian from  
35 a minor child or ward.

36       "Minor child" means a child under the age of eighteen years but  
37 excludes a child residing in a placement funded or approved by the  
38 Division of Child Protection and Permanency in the Department of  
39 Children and Families pursuant to either a voluntary placement  
40 agreement or court order.

41       "Triggering event" means an event stated in the **【designation,】**  
42 petition or decree **【which】** that empowers the standby guardian to  
43 assume the duties of the office**【, which event may be the death,**  
44 incapacity or debilitation, with the consent, of the custodial parent  
45 or legal custodian, whichever occurs first**】.** Triggering events  
46 include, but are not limited to: (1) the appointment of a standby  
47 guardian by a court of competent jurisdiction; (2) the parent's, legal

1 guardian's, or legal custodian's attending physician concludes that  
 2 the parent, legal guardian, or legal custodian is "incapacitated" as  
 3 defined in this section; (3) the parent's, legal guardian's, or legal  
 4 custodian's attending physician concludes that the parent, legal  
 5 guardian, or legal custodian is "debilitated" as defined in this  
 6 section; (4) the parent, legal guardian, or legal custodian is subject  
 7 to "immigration administrative action" as defined in this section;  
 8 (5) the parent, legal guardian, or legal custodian is subject to  
 9 "criminal proceedings" as defined in this section; (6) the parent,  
 10 legal guardian or legal custodian is in "military service" as defined  
 11 in this section; or (7) the death of the parent, legal guardian, or legal  
 12 custodian.

13 "Ward" means an individual for whom a guardian is appointed.  
 14 (cf: P.L.2012, c.16, s.12)

15  
 16 4. Section 6 of P.L.1995, c.76 (C.3B:12-72) is amended to read  
 17 as follows:

18 6. a. Upon petition of **the** a parent, legal guardian, legal  
 19 custodian, or **designated standby guardian** attorney-in-fact  
 20 appointed pursuant to N.J.S.3B:12-39, the court may appoint a  
 21 standby guardian of a minor child or ward. The court may also  
 22 appoint an alternate standby guardian, if identified by the petitioner,  
 23 to act if the appointed standby guardian dies, becomes  
 24 incapacitated, or otherwise refuses or is unable to assume the duties  
 25 of the standby guardian after the **death, incapacity or debilitation**  
 26 **of the parent or legal custodian of the minor child** triggering event  
 27 stated in the petition.

28 b. A petition for the judicial appointment of a standby guardian  
 29 of a minor child or ward shall state:

30 (1) which triggering event or events shall cause the authority of  
 31 the appointed standby guardian to become effective;

32 (2) **that there is a significant risk that the parent or legal**  
 33 **custodian will die, become incapacitated, or become debilitated as a**  
 34 **result of a progressive chronic condition or a fatal illness; however,**  
 35 **a petitioner shall not be required to submit medical documentation**  
 36 **of the parent's or legal custodian's terminal status by his attending**  
 37 **physician; and**

38 (3) **the name**, **and address**, **and qualifications** of the  
 39 proposed standby guardian; and

40 (3) the qualifications of the proposed standby guardian.

41 c. A parent, legal guardian, or legal custodian petitioning the  
 42 court pursuant to this section shall not be required to appear in court  
 43 if unable to appear, except upon motion of the court or by any party  
 44 and for good cause shown.

45 d. The court shall appoint the standby guardian if the court  
 46 finds that **there is a significant risk that the parent or legal**  
 47 **custodian will die, become incapacitated, or become debilitated as a**

1 result of a progressive chronic condition or a fatal illness,] the  
 2 proposed standby guardian is fit and willing to assume the duties of  
 3 that role, and that the interests of the minor child or ward would be  
 4 promoted by the appointment of the standby guardian.

5 e. The decree appointing the standby guardian shall specify the  
 6 triggering event which shall activate the authority of the standby  
 7 guardian.

8 f. Upon petition for the appointment of a standby guardian by a  
 9 person as specified in subsection a. of this section, notice shall be  
 10 served on the minor child's parent **[or],** legal guardian, legal  
 11 custodian, or the **[designated standby guardian]** attorney-in-fact  
 12 appointed pursuant to N.J.S.3B:12-39, as appropriate, within 30  
 13 days of the filing. **[The]** During the time that the petition is  
 14 pending, the court shall give preference to maintaining custody with  
 15 **[either the parent or legal custodian, or the designated standby**  
 16 **guardian, during the time that the petition is pending]** whoever had  
 17 custody of the minor child or ward at the time the petition was filed.  
 18 Nothing in this section shall be construed to deprive any parent of  
 19 parental rights. If the petition alleges that after diligent search, the  
 20 parent, legal guardian, or legal custodian cannot be found, the  
 21 parent, legal guardian, or legal custodian shall be served by notice  
 22 delivered pursuant to New Jersey court rules. No notice is  
 23 necessary to a **[parent]** person who is deceased or to a parent whose  
 24 parental rights have been previously terminated by court order or  
 25 consent.

26 (cf: P.L.1995, c.76, s.6)

27  
 28 5. Section 7 of P.L.1995, c.76 (C.3B:12-73) is amended to read  
 29 as follows:

30 7. a. Upon the occurrence of a triggering event set forth in a  
 31 decree appointing a standby guardian, the standby guardian shall be  
 32 empowered to assume the duties of his office immediately.

33 b. **[If the triggering event is the incapacity or debilitation of the**  
 34 **parent or legal custodian, the attending physician shall provide a**  
 35 **copy of his determination to the appointed standby guardian if the**  
 36 **guardian's identity is known to the attending physician.]** (Deleted  
 37 by amendment, P.L. , c. ) (pending before the Legislature as  
 38 this bill)

39 c. Within **[60]** 90 days following the assumption of  
 40 guardianship duties, the appointed standby guardian shall petition  
 41 the court for confirmation. The confirmation petition shall include a  
 42 determination **[of incapacity or debilitation or a death certificate, as**  
 43 **appropriate]** that the triggering event has occurred.

44 d. The court shall confirm an appointed standby guardian named  
 45 in accordance with this act and otherwise qualified to serve as  
 46 guardian pursuant to N.J.S.3B:12-1 et seq. unless there is a judicial

1 determination of unfitness with regard to the appointed standby  
2 guardian.

3 e. A standby guardian appointed pursuant to section 6 of [this  
4 act] P.L.1995, c.76 (C.3B:12-72) may decline appointment at any  
5 time before the assumption of his duties by filing a written  
6 statement to that effect with the court, with notice to be provided to  
7 the petitioner and to the minor child or ward if the [latter] child or  
8 ward is 14 years of age or older.

9 f. Commencement of the duties of the standby guardian shall  
10 confer upon the appointed standby guardian shared authority with  
11 the custodial parent, legal guardian, or legal custodian of the minor  
12 child or ward, unless the petition states otherwise.

13 g. A parent, legal guardian, or legal custodian may revoke a  
14 standby guardianship by executing a written revocation, filing it  
15 with the court where the petition was filed, and promptly notifying  
16 the appointed standby guardian of the revocation. An unwritten  
17 revocation may be considered by the court if the revocation can be  
18 proved by clear and convincing evidence submitted to the court.

19 (cf: P.L.1995, c.76, s.7)

20  
21 6. Sections 8 through 12 of P.L.1995, c.76 (C.3B:12-74 through  
22 C.3B:12-78) are repealed.

23  
24 7. This act shall take effect on the 90<sup>th</sup> day following enactment.  
25  
26

## 27 STATEMENT

28  
29 The “New Jersey Standby Guardianship Act,” P.L.1995, c.76  
30 (C.3B:12-67 et seq.) allows parents and guardians to ask the court  
31 to appoint temporary guardians for their children without giving up  
32 parental rights. This bill would make a number of changes to the  
33 Standby Guardianship Act. The bill would also expand  
34 N.J.S.A.3B:12-39, which permits parents to delegate their parental  
35 powers through a power of attorney without involving the court.

### 36 STANDBY GUARDIANSHIP ACT: DEFINITIONS

37 The bill revises several definitions in the Standby Guardianship  
38 Act, P.L.1995, c.76 (C.3B:12-67 et seq.). Currently, an “appointed  
39 standby guardian” is defined as a person appointed by the court to  
40 assume the duties of guardian over the person and, when applicable,  
41 the property of a minor child, upon the death of, or a determination  
42 of incapacity or debilitation, and with the consent of, the parent or  
43 legal custodian. The bill removes the provision concerning “death  
44 or a determination of incapacity or debilitation” and replaces it with  
45 “a triggering event.”

46 In order to define what constitutes a “triggering event,” the bill  
47 adds several definitions. The term “criminal proceeding” is defined  
48 as any incarceration on criminal charges or a criminal sentence that

1 separates a custodial parent or legal custodian from a minor child or  
2 ward. The term “immigration administrative action” is defined as  
3 any immigration proceeding, enforcement action, detention,  
4 removal, or deportation that separates a custodial parent or legal  
5 custodian from a minor child or ward. The term “military service”  
6 is defined as duty by any person in the active military service of the  
7 United States or the active military service of the State, including in  
8 the National Guard or State Guard, that separates a custodial parent  
9 or legal guardian from a minor child or ward.

10 STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

11 In addition, the bill revises section 2 of P.L.1995, c.76 (C.3B:12-  
12 68), which sets out legislative findings and declarations for the  
13 Standby Guardianship Act. Currently, this section provides that the  
14 purpose of a standby guardianship is to enable a custodial parent or  
15 legal custodian “suffering from a progressive chronic condition or a  
16 fatal illness” to make plans for the child. Under the bill, this  
17 language would be deleted, and the stated purpose would be  
18 expanded to apply to a custodial parent or legal guardian “who  
19 cannot currently, or who anticipates being unable to, provide  
20 adequate care” to the child.

21 STANDBY GUARDIANSHIP ACT: PROCEDURE

22 The bill provides that, upon petition of a parent, legal guardian,  
23 legal custodian, or attorney-in-fact appointed pursuant to  
24 N.J.S.3B:12-39, the court may appoint a standby guardian of a  
25 minor child. The court may also appoint an alternate standby  
26 guardian. A petition for the judicial appointment of a standby  
27 guardian would be required to state: (1) which triggering event or  
28 events shall cause the authority of the appointed standby guardian  
29 to become effective; (2) the name and address of the proposed  
30 standby guardian; and (3) the qualifications of the proposed standby  
31 guardian. The court would appoint the standby guardian if the court  
32 finds that the proposed standby guardian is fit and willing to assume  
33 the duties of that role, and that the interests of the minor child or  
34 ward would be promoted by the appointment of the standby  
35 guardian.

36 The bill removes the requirement in current law that, if the  
37 triggering event is the incapacity or debilitation of the parent or  
38 legal custodian, the attending physician shall provide a copy of his  
39 determination to the appointed standby guardian if the guardian’s  
40 identity is known to the physician.

41 Under current law, within 60 days following the assumption of  
42 guardianship duties, the appointed standby guardian must petition  
43 the court for confirmation. The confirmation petition must include  
44 a determination of incapacity or debilitation or a death certificate,  
45 as appropriate. The bill changes the time period from 60 days to 90  
46 days following assumption of guardianship duties. In addition, the  
47 bill removes the requirement for a determination of incapacity or  
48 debilitation or a death certificate, and provides instead that the

1 petition must include a determination that the triggering event has  
2 occurred.

3 DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

4 N.J.S.3B:12-39 authorizes a parent or legal guardian, by a  
5 properly executed power of attorney, to delegate powers regarding  
6 care, custody, or property of his minor child or ward to another  
7 person. The court is not involved in this process. Under the current  
8 statute, the parent or guardian may delegate his powers with the  
9 consent of the other parent, or without such consent if the other  
10 parent is incapacitated. The bill expands the instances when a  
11 parent or guardian may delegate his powers and permits a parent to  
12 do so with the consent of the other parent, or without such consent,  
13 if the other parent is incapacitated or unavailable.

14 The bill defines the term “incapacitated” to mean a parent or  
15 legal guardian who has a chronic and substantial inability, as a  
16 result of mental or physical impairment, to understand the nature  
17 and consequences of decisions concerning the care of the parent or  
18 guardian’s minor child, and a consequent inability to make these  
19 decisions.

20 The bill establishes a definition of the term “unavailable” as  
21 applied to a parent or legal guardian. Under the bill, “unavailable”  
22 means: (a) a parent who has not been involved in raising or  
23 financially supporting the child for two years or a third of the life of  
24 the child, whichever is less, immediately preceding the delegation;  
25 (b) a parent who has abandoned the child; (c) a parent whose  
26 identity or whereabouts are unknown to the custodial parent; or (d)  
27 a parent who cannot be reached after diligent efforts.

28 The bill provides that a delegation of parental powers may  
29 become effective upon proper execution of the power of attorney or  
30 upon another “triggering event.” The bill defines a “triggering  
31 event” as an event stated in the delegation that empowers the  
32 attorney-in-fact to assume the duties of the office. Triggering  
33 events include, but are not limited to:

34 (1) the execution of a power of attorney pursuant to the bill; (2)  
35 the parent’s or legal guardian’s attending physician concludes that  
36 the parent or legal guardian is “incapacitated”; (3) the parent’s or  
37 legal guardian’s attending physician concludes that the parent or  
38 legal guardian is “debilitated”; (4) the parent or legal guardian is  
39 subject to “immigration administrative action”; (5) the parent or  
40 legal guardian is subject to “criminal proceedings”; (6) the parent or  
41 legal guardian is in “military service”; or (7) the death of the parent  
42 or legal guardian.

43 Current law allows the delegation of parental powers for a period  
44 of up to six months. Under the bill, the delegation would expire  
45 after one year, and could be renewed for additional one-year  
46 periods.

1 Under the bill, a parent or guardian may revoke a delegation by  
2 notifying the attorney-in-fact orally, in writing, or by any other act  
3 evidencing a specific intent to revoke the power of attorney.

4 The bill specifies that a delegation would not deprive the parent  
5 or guardian of his existing powers regarding care, custody, or  
6 property of the minor child or ward, but the parent or guardian  
7 would exercise such powers, insofar as he is able, concurrently with  
8 the attorney-in-fact named in the power of attorney.

9 The bill also specifies that it shall not be construed to  
10 involuntarily deprive any parent of parental rights.

11 SUGGESTED FORM

12 The bill sets out a suggested form for a power of attorney and  
13 delegation of authority. The form provides in pertinent part:  
14

15 By this delegation, I/we provide that the attorney-  
16 in-fact's authority shall take effect upon the  
17 following "triggering event" (check one that  
18 applies):

19 \_\_\_The execution of this document on the latest  
20 date below; or

21 \_\_\_My attending physician concludes that I am  
22 mentally incapacitated, and thus unable to care for  
23 my child(ren)/ward(s); or

24 \_\_\_My attending physician concludes that I am  
25 physically debilitated, and thus unable to care for  
26 my child(ren)/ward(s); or

27 \_\_\_I am detained in immigration detention,  
28 removed, or deported; or

29 \_\_\_I am incarcerated based on criminal charges or  
30 conviction; or

31 \_\_\_I am deployed in military service; or

32 \_\_\_Upon my death.