

ASSEMBLY, No. 3371

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

SYNOPSIS

Allows parents or legal custodians separated from their children because of immigration matters to appoint standby guardians.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/1/2021)

A3371 MUKHERJI, MCKNIGHT

2

1 AN ACT concerning standby guardianship and amending
2 P.L.1995,c.76.

3

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

6

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

9 2. The Legislature finds and declares that there is an imperative
10 need to create an expeditious manner of establishing a guardianship
11 known as a standby guardianship, in order to enable a custodial
12 parent or legal custodian suffering from a progressive chronic
13 condition, or a fatal illness, or upon an administrative separation to
14 make plans for the permanent future care or the interim care of a
15 child without terminating parental or legal rights. The Legislature
16 further finds that current law does not adequately address the needs
17 of custodial parents or legal custodians who are suffering from a
18 progressive chronic condition, or a fatal illness, or who are or will
19 be subject to an administrative separation and who desire to make
20 plans for the future care of their children without terminating
21 parental or legal rights.

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

23

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

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

27 "Administrative separation" means the separation of a parent or
28 legal custodian from the parent's or legal custodian's child as a
29 result of a federal immigration matter, including, but not limited to,
30 arrest, detention, incarceration, or removal, or the receipt of official
31 communication by federal, State, or local authorities responsible for
32 immigration enforcement that gives reasonable notice that the care
33 and supervision of the parent's or legal custodian's child will be
34 interrupted or cannot be provided as the result of the parent's or
35 legal custodian's impending arrest, detention, incarceration, or
36 removal.

37 "Appointed standby guardian" means a person appointed
38 pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the
39 duties of guardian over the person and, when applicable, the
40 property of a minor child upon the death or a determination of
41 incapacity **[or]**,debilitation, administrative separation, and with the
42 consent, of the parent or legal custodian.

43 "Attending physician" means the physician who has primary
44 responsibility for the treatment and care for the petitioning parent or
45 legal custodian. When more than one physician shares this

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 responsibility, or when a physician is acting on the primary
2 physician's behalf, any such physician may act as the attending
3 physician pursuant to this act. When no physician has this
4 responsibility, a physician who is familiar with the petitioner's
5 medical condition may act as the attending physician pursuant to
6 P.L.1995, c.76 (C.3B:12-67 et seq.).

7 "Consent" means written consent signed by the parent or legal
8 custodian in the presence of two witnesses who shall also sign the
9 document. The written consent shall constitute the terms for the
10 commencement of the duties of the standby guardian.

11 "Debilitation" means a chronic and substantial inability, as a
12 result of a physically debilitating illness, disease, or injury, to care
13 for one's minor child.

14 "Designated standby guardian" means a person designated
15 pursuant to section 8 of P.L.1995, c.76 (C.3B:12-74) to assume
16 temporarily the duties of guardianship over the person and, when
17 applicable, the property of a minor child upon the death or a
18 determination of incapacity **[or]**, debilitation, or administrative
19 separation, and with the consent, of the parent or legal custodian.

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

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

24 "Determination of administrative separation" means a written
25 determination by federal, State, or local authorities responsible for
26 immigration enforcement regarding the nature, cause, and extent of
27 a parent's or legal guardian's arrest, detention, incarceration, or
28 removal

29 "Determination of debilitation" means a written determination
30 made by the attending physician which contains the physician's
31 opinion to a reasonable degree of medical certainty regarding the
32 nature, cause, extent, and probable duration of the parent's or legal
33 custodian's debilitation.

34 "Determination of incapacity" means a written determination
35 made by the attending physician which contains the physician's
36 opinion to a reasonable degree of medical certainty regarding the
37 nature, cause, extent, and probable duration of the parent's or legal
38 custodian's incapacity.

39 "Incapacity" means a chronic and substantial inability, as a result
40 of mental or organic impairment, to understand the nature and
41 consequences of decisions concerning the care of one's minor child,
42 and a consequent inability to make these decisions.

43 "Minor child" means a child under the age of eighteen years but
44 excludes a child residing in a placement funded or approved by the
45 Division of Child Protection and Permanency in the Department of
46 Children and Families pursuant to either a voluntary placement
47 agreement or court order.

1 "Triggering event" means an event stated in the designation,
2 petition or decree which empowers the standby guardian to assume
3 the duties of the office, which event may be the death, incapacity
4 **[or]**, debilitation, or administrative separation, with the consent, of
5 the custodial parent or legal custodian, whichever occurs first.

6 (cf: P.L.2012, c.16, s.12)

7
8 3. Section 6 of P.L.1995, c.76 (C3B:12-72) is amended to read
9 as follow:

10 6. a. Upon petition of the parent, legal custodian or designated
11 standby guardian, the court may appoint a standby guardian of a
12 minor child. The court may also appoint an alternate standby
13 guardian, if identified by the petitioner, to act if the appointed
14 standby guardian dies, becomes incapacitated, or otherwise refuses
15 or is unable to assume the duties of the standby guardian after the
16 death, incapacity, or debilitation of the parent or legal custodian of
17 the minor child, or if the parent or legal custodian is subject to an
18 administrative separation.

19 b. A petition for the judicial appointment of a standby guardian
20 of a minor child shall state:

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

23 (2) that there is a significant risk that the parent or legal
24 custodian will die, become incapacitated, or become debilitated as a
25 result of a progressive chronic condition or a fatal illness, or that
26 the parent or legal custodian is or will be subject to an
27 administrative separation; however, a petitioner shall not be
28 required to submit medical documentation of the parent's or legal
29 custodian's terminal status by his attending physician, or submit
30 documentation of an impending administrative separation; and

31 (3) the name, address, and qualifications of the proposed
32 standby guardian.

33 c. A parent or legal custodian petitioning the court pursuant to
34 this section shall not be required to appear in court if unable to
35 appear, except upon motion of the court or by any party and for
36 good cause shown.

37 d. The court shall appoint the standby guardian if the court
38 finds that there is a significant risk that the parent or legal custodian
39 will die, become incapacitated, or become debilitated as a result of
40 a progressive chronic condition or a fatal illness, or that the parent
41 or legal custodian is or will be subject to an administrative
42 separation, and that the interests of the minor child would be
43 promoted by the appointment of the standby guardian.

44 e. The decree appointing the standby guardian shall specify the
45 triggering event which shall activate the authority of the standby
46 guardian.

47 f. Upon petition for the appointment of a standby guardian by a
48 person as specified in subsection a. of this section, notice shall be

1 served on the minor child's parent or legal custodian, or the
2 designated standby guardian, as appropriate, within 30 days of the
3 filing. The court shall give preference to maintaining custody with
4 either the parent or legal custodian, or the designated standby
5 guardian, during the time that the petition is pending. Nothing in
6 this section shall be construed to deprive any parent of parental
7 rights. If the petition alleges that after diligent search, the parent or
8 legal custodian cannot be found, the parent or legal custodian shall
9 be served by notice delivered pursuant to New Jersey court rules.
10 No notice is necessary to a parent who is deceased or whose
11 parental rights have been previously terminated by court order or
12 consent.

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

14

15 4. Section 7 of P.L.1995, c.76 (C.3B:12-73) is amended to read
16 as follows:

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

20 b. If the triggering event is the incapacity or debilitation of the
21 parent or legal custodian, the attending physician shall provide a
22 copy of his determination to the appointed standby guardian if the
23 guardian's identity is known to the attending physician. If the
24 triggering event is an administrative separation, the parent's or legal
25 custodian's attorney or legal representative shall provide a copy of a
26 determination of administrative separation to the appointed standby
27 guardian, if the guardian's identity is known to the parent's or legal
28 custodian's attorney.

29 c. Within 60 days following the assumption of guardianship
30 duties, the appointed standby guardian shall petition the court for
31 confirmation. The confirmation petition shall include a
32 determination of incapacity **[or]**, debilitation, administrative
33 separation, or a death certificate, as appropriate.

34 d. The court shall confirm an appointed standby guardian
35 named in accordance with this act and otherwise qualified to serve
36 as guardian pursuant to N.J.S.3B:12-1 et seq. unless there is a
37 judicial determination of unfitness with regard to the appointed
38 standby guardian.

39 e. A standby guardian appointed pursuant to section 6 of this
40 act may decline appointment at any time before the assumption of
41 his duties by filing a written statement to that effect with the court,
42 with notice to be provided to the petitioner and to the minor child if
43 the latter is 14 years of age or older.

44 f. Commencement of the duties of the standby guardian shall
45 confer upon the appointed standby guardian shared authority with
46 the custodial parent or legal custodian of the minor child, unless the
47 petition states otherwise.

1 g. A parent or legal custodian may revoke a standby
2 guardianship by executing a written revocation, filing it with the
3 court where the petition was filed, and promptly notifying the
4 appointed standby guardian of the revocation. An unwritten
5 revocation may be considered by the court if the revocation can be
6 proved by clear and convincing evidence submitted to the court.
7 (cf: P.L.1995, c.76, s.7)

8
9 5. Section 8 of P.L.1995, c.76 (C.3B:12-74) is amended to read
10 as follows:

11 8. a. When the consent of a parent or legal custodian for the
12 execution of a power of attorney delegating another person to
13 exercise the parent's or legal custodian's powers is not appropriate
14 or is unavailable pursuant to N.J.S.3B:12-39, the other parent or
15 legal custodian may execute a written statement to designate a
16 standby guardian, as follows:

17 (1) The parent or legal custodian may choose a standby guardian
18 by means of a written designation that names the standby guardian
19 in the event of the designator's death, incapacity **[or]**, debilitation,
20 or administrative separation. The written designation shall
21 reasonably identify the designator, the minor child and the standby
22 guardian.

23 (2) A written designation pursuant to this section shall be signed
24 by the designator in the presence of two witnesses who shall also
25 sign the designation. Another person may sign the written
26 designation on the parent's or legal custodian's behalf if the parent
27 or legal custodian is physically unable to do so, or the parent or
28 legal guardian has been arrested, detained, incarcerated, or removed
29 from the State as a result of an administrative separation, provided
30 the designation is signed at the express request of the parent or legal
31 custodian and in the presence of the parent or legal custodian and
32 two witnesses.

33 (3) The designation shall state the triggering event by which the
34 parent or legal custodian intends the designated standby
35 guardianship of the minor child to be activated.

36 (4) A parent or legal custodian may designate an alternate
37 standby guardian in the same document, and by the same manner, as
38 the designation of a standby guardian.

39 b. A designation may, but need not, be in the following form:

40 DESIGNATION OF STANDBY GUARDIAN

41 I, (name of parent or legal custodian) hereby name (name,
42 home address and telephone number of standby guardian) as
43 designated standby guardian of (name of child(ren)), my child(ren).

44 By this consent and designation, I am providing that the
45 designated standby guardian's authority shall take effect if and
46 when the following event or events occur: (choose as follows):

47 (1) my attending physician concludes that I am mentally
48 incapacitated, and thus unable to care for my child(ren); or

1 (2) my attending physician concludes that I am physically
2 debilitated, and thus unable to care for my child(ren), and I consent
3 in writing before two witnesses to the designated standby guardian's
4 authority taking effect; **【or】**

5 (3) upon my death; or

6 (4) upon my arrest, detention, incarceration, or removal from the
7 State as a result of an administrative separation.

8 In the event that the person designated above is unable or
9 unwilling to act as guardian to my child(ren), I hereby name (name,
10 address and telephone number of alternate designated standby
11 guardian), as alternate designated standby guardian of my
12 child(ren).

13 I understand that this designation will expire six months from the
14 date of this designation, and that the authority of the designated
15 standby guardian, if any, will cease, unless by that date either I or
16 the designated standby guardian petitions the court for appointment
17 as standby guardian pursuant to section 6 of P.L.1995, c.76
18 (C.3B:12-72).

19 I hereby authorize that the person designated standby guardian as
20 set forth above shall be provided with a copy of the attending
21 physician's statement.

22 In the event that I am incapacitated **【or】**, debilitated, or subject
23 to an administrative separation and a designated standby
24 guardianship is activated pursuant to this statement, I declare that it
25 is my intention to retain full parental rights to the extent consistent
26 with my condition and, further, that I retain the authority to revoke
27 the designated standby guardianship consistent with my rights
28 herein at any time.

29 Designator's Signature:

30 Witness' Signature:

31 Address:

32 Date:

33 Witness' Signature:

34 Address:

35 Date:

36 c. Nothing in this section shall be construed to involuntarily
37 deprive any parent of parental rights.

38 (cf: P.L.1995, c.76, s.8)

39

40 6. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill allows a parent or legal custodian who has been
46 separated from their child as a result of a federal immigration
47 matter to appoint a standby guardian.

1 Specifically, the bill amends P.L.1995, c.76 (C.3B:12-64 et seq.)
2 to allow the parent or legal custodian to petition the court for the
3 appointment of a standby guardian of a child or to allow the other
4 parent or legal guardian to designate in writing a standby guardian,
5 under specific circumstances, if the parent or custodian is subject to
6 an administrative separation.

7 Currently, a parent or legal custodian can petition the court for
8 the appointment of a standby guardian, and the court may appoint
9 the standby guardian, or another parent or custodian may designate
10 in writing a standby guardian, if the triggering event requiring the
11 appointment is death, incapacity, or debilitation and there is
12 significant risk that the parent or custodian will die, become
13 incapacitated, or become debilitated as a result of a progressive
14 chronic condition or a fatal illness.

15 As used in the bill, “administrative separation” means the
16 separation of a parent or legal custodian from the parent’s or legal
17 custodian’s child as a result of a federal immigration matter,
18 including, but not limited to, arrest, detention, incarceration, or
19 removal, or receipt of official communication by federal, State, or
20 local authorities responsible for immigration enforcement which
21 gives reasonable notice that the care and supervision of the parent’s
22 or legal custodian’s child will be interrupted or cannot be provided
23 as the result of the parent’s or custodian’s impending arrest,
24 detention, incarceration, or removal.

25 Under the provisions of the bill, the petition would state that the
26 triggering event, an impending administrative separation, occurred
27 to require the appointment of a standby guardian and that there is
28 significant risk that the parent or legal custodian will be the subject
29 of such separation. However, the parent or custodian would not be
30 required to submit documentation of an impending administrative
31 separation. If the court finds that that there is a significant risk that
32 the parent or legal guardian will be subject to an administrative
33 separation, a standby guardian would be appointed.

34 Current law does not recognize an administrative separation as a
35 triggering event for the appointment of a standby guardian and does
36 not allow a parent or legal custodian to petition the court for the
37 appointment of a standby guardian, and the court to appoint such a
38 guardian, if there is significant risk that the parent or legal
39 custodian will be the subject to an administrative separation.

40 As required under current law for standby guardians who are
41 appointed due to death, incapacity, or debilitation, the bill
42 stipulates that: if the triggering event that causes the appointment of
43 a standby guardian is an administrative separation, the parent’s or
44 legal custodian’s attorney or legal representative would provide a
45 copy of a determination of administrative separation to the
46 appointed standby guardian, if the guardian’s identity is known to
47 the parent’s or custodian’s attorney or legal representative; and the
48 appointed standby guardian is required to petition the court,

1 including a determination of administrative separation, within 60
2 days of assuming guardianship duties for confirmation of the
3 appointment.

4 As used in the bill, “determination of administrative separation”
5 means a written determination by federal, state, or local authorities
6 responsible for immigration enforcement regarding the nature,
7 cause, and extent of the parent’s or legal guardian’s arrest,
8 detention, incarceration, or removal.

9 As mandated by the current law for standby guardians who are
10 appointed due to death, incapacity, or debilitation, the bill also
11 stipulates that if the consent of a child’s parent or legal custodian
12 for the execution of a power of attorney delegating another person
13 to exercise the parent's or legal custodian's powers is not
14 appropriate or is unavailable pursuant to N.J.S.3B:12-39, the other
15 parent or legal custodian may execute a written statement to
16 designate a standby guardian in the event of the designator's
17 administrative separation.

18 The written designation would identify the designator, the minor
19 child, and the standby guardian. If the parent or legal custodian has
20 been arrested, detained, incarcerated, or removed from the State as a
21 result of an administrative separation, another person may sign the
22 written designation on the parent's or legal custodian's behalf.