

ASSEMBLY, No. 4640

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Revises law concerning standby guardianship for minor child or ward.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2021)

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, custodian's, or guardian's
9 powers regarding child's or ward's care, custody or property;
10 limitations.

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

17 (2) a custodian of a minor child who is not that child's parent
18 may, with the consent of a parent with whom the custodian shares
19 legal custody, unless that parent is deceased, incapacitated, or
20 unavailable, or

21 (3) a guardian of the person of a minor or an incapacitated
22 person[.] may:

23 by a properly executed power of attorney, [may] delegate to
24 another person[, for a period not exceeding six months,] any of his
25 powers regarding care, custody, or property of the minor child or
26 ward[, except his power to consent to marriage or adoption of a
27 minor ward].

28 b. A delegation made under this section shall expire one year
29 from the effective date of the properly executed power of attorney,
30 provided however that the parent, custodian, or guardian shall be
31 permitted to renew the delegation for additional one-year periods
32 using the same process as applies to the original delegation.

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

36 d. A parent, custodian, or guardian may revoke a delegation
37 made under this section by notifying the attorney-in-fact named in
38 the power of attorney orally, in writing, or by any other act
39 evidencing a specific intent to revoke the power of attorney.

40 e. A parent, custodian, or guardian may delegate under this
41 section only such powers as he possesses.

42 f. A delegation made under this section shall not deprive the
43 parent, custodian, or guardian of his existing powers regarding care,
44 custody, or property of the minor child or ward, but the parent,
45 custodian, or guardian shall exercise such powers, insofar as he is

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 able, concurrently with the attorney-in-fact named in the power of
2 attorney.

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

5 h. As used in this section:

6 “Attending physician” means the physician who has primary
7 responsibility for the treatment and care for the parent, custodian, or
8 guardian making the delegation. When more than one physician
9 shares this responsibility, or when a physician is acting on the
10 primary physician's behalf, any such physician may act as the
11 attending physician pursuant to this section. When no physician
12 has this responsibility, a physician who is familiar with the parent's,
13 custodian's, or legal guardian's medical condition may act as the
14 attending physician.

15 “Attorney-in-fact” means the person to whom a parent,
16 custodian, or guardian delegates powers under a properly executed
17 power of attorney pursuant to this section.

18 “Consent” means written consent of a non-delegating parent as
19 evidenced by that person's signature on the power of attorney, in
20 the presence of two witnesses.

21 “Criminal proceeding” means any incarceration on criminal
22 charges, including pending charges, or a criminal sentence that
23 separates a parent, custodian, or guardian from a minor child or
24 ward.

25 “Custodian” means a person, other than a parent, who has been
26 granted legal and physical custody of a minor child by a court of
27 competent jurisdiction.

28 “Debilitated” means the parent, custodian, or guardian has a
29 chronic and substantial inability, as a result of a physically
30 debilitating illness, disease, or injury, to care for the parent's,
31 custodian's, or guardian's minor child or ward.

32 “Guardian” means a person appointed by a court of competent
33 jurisdiction as a guardian of the person of a minor or an
34 incapacitated person, including but not limited to a kinship legal
35 guardian.

36 “Immigration administrative action” means any immigration
37 proceeding, enforcement action, detention, removal, or deportation
38 that separates a parent, custodian, or guardian from a minor child or
39 ward.

40 “Incapacitated” means the parent, custodian, or guardian has a
41 chronic and substantial inability, as a result of mental or physical
42 impairment, to understand the nature and consequences of decisions
43 concerning the care of the parent's, custodian's, or guardian's
44 minor child or ward, and a consequent inability to make these
45 decisions.

46 “Military service” means duty by any person in the active
47 military service of the United States or the active military service of
48 the State, including in the National Guard or State Guard, that

1 separates a parent, custodian, or guardian from a minor child or
2 ward.

3 "Minor child" means a child under the age of 18 years but
4 excludes a child residing in a placement funded or approved by the
5 Division of Child Protection and Permanency in the Department of
6 Children and Families pursuant to either a voluntary placement
7 agreement or court order.

8 "Parent" means the biological or adoptive parent of a minor
9 child.

10 "Triggering event" means an event stated in the delegation that
11 empowers the attorney-in-fact to assume the duties of the office.
12 Triggering events include, but are not limited to: (1) the execution
13 of a power of attorney pursuant to this section; (2) the parent's,
14 custodian's, or guardian's attending physician concludes that the
15 parent, custodian, or guardian is "incapacitated" as defined in this
16 section; (3) the parent's, custodian's, or guardian's attending
17 physician concludes that the parent, custodian, or guardian is
18 "debilitated" as defined in this section; (4) the parent, custodian, or
19 guardian is subject to "immigration administrative action" as
20 defined in this section; (5) the parent, custodian, or guardian is
21 subject to "criminal proceedings" as defined in this section; (6) the
22 parent, custodian, or guardian is in "military service" as defined in
23 this section; or (7) the death of the parent, custodian, or guardian.

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

30 "Ward" means an individual for whom a guardian is appointed.

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

32

33 POWER OF ATTORNEY AND DELEGATION OF AUTHORITY
34 BY PARENT, CUSTODIAN, OR GUARDIAN CONCERNING
35 MINOR CHILD(REN) OR WARD(S) PURSUANT TO N.J.S.

36 3B:12-39

37

38 This power of attorney is made between (name(s), of parent(s),
39 custodian(s), or guardian(s)), residing at (address(es) of parent(s),
40 custodian(s), or guardian(s)) and reachable at (telephone number(s)
41 of parent(s), custodian(s), or guardian(s)) and (name of alternative
42 caregiver), referred to here as "attorney-in-fact," residing at (home
43 address of alternative caregiver) and reachable at (telephone
44 number of alternative caregiver).

45

46 If a parent is signing, the other parent must generally also sign
47 below to show consent. Similarly, if a custodian who shares legal
48 custody with a parent is signing, the parent who shares legal

1 custody must generally also sign below to show consent. If such
2 parent does not sign below, please check off reason(s) to explain
3 why:

4

5 ____ Such parent is deceased.

6

7 ____ By order of a court of competent jurisdiction, such parent
8 retains neither legal nor physical custody of child(ren).

9

10 ____ Such parent is mentally or physically unable to give consent.

11

12 ____ Such parent has not been involved in raising or financially
13 supporting child(ren) for two years or a third of the life of the
14 child(ren), whichever is less, immediately preceding the date of the
15 latest signature below.

16

17 ____ Identity or whereabouts of such parent are unknown to me.

18

19 ____ Despite diligent efforts described below, I was unable to reach
20 such parent.

21

22 Diligent efforts included:

23

24 _____

25 _____

26 _____

27 _____

28 _____

29 _____

30

31 Other: _____

32 _____

33 _____

34 _____

35 _____

36

37 I/we appoint said attorney-in-fact, pursuant to N.J.S.3B:12-39, and
38 delegate to said attorney-in-fact the following powers, all of which
39 I/we possess, concerning the care, custody, and/or property of
40 my/our child/ward, (name of child/ward), born on _____ day of
41 _____, 20____ (add other children's or wards' names and birthdates
42 as appropriate)

43

44 Care-Giving. The attorney-in-fact shall have temporary care-
45 giving authority for the child(ren)/ward(s), until such time as the
46 child(ren)/ward(s) is/are returned to our/my physical custody, or
47 his/her/their custody status is altered by a federal, state, or local
48 agency; or changed by a court of law.

1
2 Well-Being. The attorney-in-fact shall have the power to
3 provide for the physical and mental well-being of the
4 child(ren)/ward(s), including but not limited to providing food and
5 shelter.

6
7 Education. The attorney-in-fact shall have the authority to enroll
8 the child(ren)/ward(s) in the appropriate educational institutions;
9 obtain access to his/her/their school records; authorize his/her/their
10 participation in school activities; and make any and all decisions
11 related to his/her/their education, including, but not limited to, those
12 related to special education.

13
14 Health Care. The attorney-in-fact shall have the authority, to the
15 same extent that a parent/custodian/guardian would have the
16 authority, to make medical, dental, and mental health decisions; to
17 sign documents, waivers and releases required by a hospital or
18 physician; to access medical, dental, or mental health records
19 concerning the child(ren)/ward(s); to authorize his/her/their
20 admission to or discharge from any hospital or medical care facility;
21 to consult with any provider of health care; to consent to the
22 provision, withholding, modification or withdrawal of any health
23 care procedure; and to make other decisions related to the health
24 care needs of the child(ren)/ward(s).

25
26 Travel. The attorney-in-fact shall have the authority to make
27 travel arrangements on behalf of the child(ren)/ward(s) for
28 destinations both inside and outside of the United States by air
29 and/or ground transportation; to accompany the child(ren)/ward(s)
30 on any such trips; and to make any and all related arrangements on
31 behalf of the child(ren)/ward(s), including but not limited to hotel
32 accommodations.

33
34 Financial Interests. The attorney-in-fact may handle any and
35 all financial affairs and any and all personal and legal matters
36 concerning the child(ren)/ward(s).

37
38 All Other Powers. The attorney-in-fact shall have the authority
39 to handle and engage in any and all other matters relating to the
40 care, custody, and property of the child or ward which are permitted
41 pursuant to applicable State law.

42
43 By this delegation, I/we provide that the attorney-in-fact's authority
44 shall take effect upon the following "triggering event" (check one
45 that applies):

1 The execution of this document on the latest date below; or
2
3 My attending physician concludes that I am mentally
4 incapacitated, and thus unable to care for my child(ren)/ward(s); or
5
6 My attending physician concludes that I am physically
7 debilitated, and thus unable to care for my child(ren)/ward(s); or
8
9 I am detained in immigration detention, removed, or deported;
10 or
11
12 I am incarcerated based on criminal charges, including pending
13 charges, or conviction; or
14
15 I am deployed in military service; or
16
17 Upon my death.
18
19 In the event that the person designated above is unable or unwilling
20 to act as attorney-in-fact to my child(ren)/ward(s), I hereby name
21 (name, address and telephone number of alternate attorney-in-fact),
22 as alternate attorney-in-fact of my child(ren)/ward(s).
23
24 I/we understand that this delegation will expire one year from the
25 execution of this document on the latest date below, and that the
26 authority of the attorney-in-fact, if any, will cease, unless by that
27 date (i) I renew this delegation, by the same process applicable to
28 the original delegation, or (ii) a court of competent jurisdiction
29 appoints a custodian, guardian, or standby guardian for the minor
30 child or ward.
31
32 I/we hereby authorize that the attorney-in-fact as set forth above
33 shall be provided with a copy of my/our attending physician's
34 statement(s), if applicable.
35
36 In the event that a triggering event occurs and a power of attorney is
37 activated pursuant to this statement, I declare that it is my intention
38 to retain full parental rights to the extent consistent with my
39 condition and circumstances and, further, that I retain the authority
40 to revoke the power of attorney consistent with my rights herein at
41 any time.
42
43 Parent's/Custodian's/Guardian's Signature:
44
45 Date:

1 Signature of other parent or of parent who shares legal custody with
2 a custodian who signed above:

3

4 Date:

5

6

7 Witness's Signature:

8

9 Address:

10

11 Date:

12

13

14 Witness's Signature:

15

16 Address:

17

18 Date:

19

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

21

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

24 2. The Legislature finds and declares that there is an imperative
25 need to create an expeditious manner of establishing a guardianship
26 known as a standby guardianship, in order to enable a **【custodial】**
27 parent **【or legal】**, custodian **【suffering from a progressive chronic**
28 **condition or a fatal illness】**, or guardian who cannot currently, or
29 who anticipates being unable to, provide adequate care to a minor
30 child or ward, to make plans for the permanent future care or the
31 interim care of a minor child or ward without terminating parental
32 or legal rights. The Legislature further finds that current law does
33 not adequately address the needs of **【custodial】** parents, custodians,
34 or **【legal custodians】** guardians who are **【suffering from a**
35 **progressive chronic condition or a fatal illness】** facing separation
36 from their minor children or wards because of illness, immigration
37 administrative action, criminal proceedings, military service, or
38 other reasons, and who desire to make plans for the future care of
39 their children or wards without terminating parental or legal rights.

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

41

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

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

45 "Appointed standby guardian" means a person appointed
46 pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the
47 duties of guardian over the person and, when applicable, the

1 property of a minor child or ward upon **【**the death or a
2 determination of incapacity or debilitation, and with the consent, of
3 the parent or legal custodian**】** a “triggering event” as defined in this
4 section.

5 "Attending physician" means the physician who has primary
6 responsibility for the treatment and care for the petitioning parent,
7 custodian, or **【**legal custodian**】** guardian. When more than one
8 physician shares this responsibility, or when a physician is acting
9 on the primary physician's behalf, any such physician may act as the
10 attending physician pursuant to this act. When no physician has
11 this responsibility, a physician who is familiar with the petitioner's
12 medical condition may act as the attending physician pursuant to
13 P.L.1995, c.76 (C.3B:12-67 et seq.).

14 **【**"Consent" means written consent signed by the parent or legal
15 custodian in the presence of two witnesses who shall also sign the
16 document. The written consent shall constitute the terms for the
17 commencement of the duties of the standby guardian.**】**

18 “Criminal proceeding” means any incarceration on criminal
19 charges, including pending charges, or a criminal sentence that
20 separates a parent, custodian, or guardian from a minor child or
21 ward.

22 “Custodian” means a person, other than a parent, who has been
23 granted legal and physical custody of a minor child by a court of
24 competent jurisdiction.

25 **【**"Debilitation" “Debilitated” means the parent, custodian, or
26 guardian has a chronic and substantial inability, as a result of a
27 physically debilitating illness, disease, or injury, to care for **【one's】**
28 the parent's, custodian's, or guardian's minor child or ward.

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

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

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

39 "Determination of debilitation" means a written determination
40 made by the attending physician which contains the physician's
41 opinion to a reasonable degree of medical certainty regarding the
42 nature, cause, extent, and probable duration of the parent's or legal
43 custodian's debilitation.

44 "Determination of incapacity" means a written determination
45 made by the attending physician which contains the physician's
46 opinion to a reasonable degree of medical certainty regarding the

1 nature, cause, extent, and probable duration of the parent's or legal
2 custodian's incapacity.】

3 “Guardian” means a person appointed by a court of competent
4 jurisdiction as a guardian of the person of a minor or an
5 incapacitated person, including but not limited to a kinship legal
6 guardian.

7 “Immigration administrative action” means any immigration
8 proceeding, enforcement action, detention, removal, or deportation
9 that separates a parent, custodian, or guardian from a minor child or
10 ward.

11 **【“Incapacity”】** “Incapacitated” means the parent, custodian, or
12 guardian has a chronic and substantial inability, as a result of
13 mental or 【organic】 physical impairment, to understand the nature
14 and consequences of decisions concerning the care of 【one's】 the
15 parent’s, custodian’s, or guardian’s minor child or ward, and a
16 consequent inability to make these decisions.

17 “Military service” means duty by any person in the active
18 military service of the United States or the active military service of
19 the State, including in the National Guard or State Guard, that
20 separates a parent, custodian, or guardian from a minor child or
21 ward.

22 “Minor child” means a child under the age of eighteen years but
23 excludes a child residing in a placement funded or approved by the
24 Division of Child Protection and Permanency in the Department of
25 Children and Families pursuant to either a voluntary placement
26 agreement or court order.

27 “Parent” means the biological or adoptive parent of a minor
28 child.

29 “Triggering event” means an event stated in the 【designation,】
30 petition or decree 【which】 that empowers the standby guardian to
31 assume the duties of the office【, which event may be the death,
32 incapacity or debilitation, with the consent, of the custodial parent
33 or legal custodian, whichever occurs first】. Triggering events
34 include, but are not limited to: (1) the appointment of a standby
35 guardian by a court of competent jurisdiction; (2) the parent’s,
36 custodian’s, or guardian’s attending physician concludes that the
37 parent, custodian, or guardian is “incapacitated” as defined in this
38 section; (3) the parent’s, custodian’s, or guardian’s attending
39 physician concludes that the parent, custodian, or guardian is
40 “debilitated” as defined in this section; (4) the parent, custodian, or
41 guardian is subject to “immigration administrative action” as
42 defined in this section; (5) the parent, custodian, or guardian is
43 subject to “criminal proceedings” as defined in this section; (6) the
44 the parent, custodian, or guardian is in “military service” as defined
45 in this section; or (7) the death of the parent, custodian, or guardian.

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

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

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

3 6. a. Upon petition of **the** a parent, custodian, guardian,
4 **legal custodian or designated standby guardian** or attorney-in-fact
5 appointed pursuant to N.J.S.3B:12-39, the court may appoint a
6 standby guardian of a minor child or ward. The court may also
7 appoint an alternate standby guardian, if identified by the petitioner,
8 to act if the appointed standby guardian dies, becomes
9 incapacitated, or otherwise refuses or is unable to assume the duties
10 of the standby guardian after the **death, incapacity or debilitation**
11 **of the parent or legal custodian of the minor child** triggering event
12 stated in the petition.

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

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

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

23 (3) **the name[,]** and **address[,]** and qualifications **of the**
24 **proposed standby guardian; and**

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

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

30 d. The court shall appoint the standby guardian if the court
31 finds that **there is a significant risk that the parent or legal**
32 **custodian will die, become incapacitated, or become debilitated as a**
33 **result of a progressive chronic condition or a fatal illness,** the
34 proposed standby guardian is fit and willing to assume the duties of
35 that role, and that the interests of the minor child or ward would be
36 promoted by the appointment of the standby guardian.

37 e. The decree appointing the standby guardian shall specify the
38 triggering event which shall activate the authority of the standby
39 guardian.

40 f. Upon petition for the appointment of a standby guardian by a
41 person as specified in subsection a. of this section, notice shall be
42 served on the minor child's parent **or legal**, custodian, guardian,
43 **or the designated standby guardian** attorney-in-fact appointed
44 pursuant to N.J.S.3B:12-39, as appropriate, within 30 days of the
45 filing. **The** During the time that the petition is pending, the court
46 shall give preference to maintaining custody with **either the parent**
47 **or legal custodian, or the designated standby guardian, during the**

1 time that the petition is pending】 whoever had custody of the minor
2 child or ward at the time the petition was filed. Nothing in this
3 section shall be construed to deprive any parent of parental rights. If
4 the petition alleges that after diligent search, the parent 【or legal】
5 custodian, or guardian cannot be found, the parent 【or legal】
6 custodian, or guardian shall be served by notice delivered pursuant
7 to New Jersey court rules. No notice is necessary to a 【parent】
8 person who is deceased or to a parent whose parental rights have
9 been previously terminated by court order or consent.

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

11
12 5. Section 7 of P.L.1995, c.76 (C.3B:12-73) is amended to read
13 as follows:

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

17 b. 【If the triggering event is the incapacity or debilitation of the
18 parent or legal custodian, the attending physician shall provide a
19 copy of his determination to the appointed standby guardian if the
20 guardian's identity is known to the attending physician.】 (Deleted
21 by amendment, P.L. , c.) (pending before the Legislature as
22 this bill)

23 c. Within 【60】 90 days following the assumption of
24 guardianship duties, the appointed standby guardian shall petition
25 the court for confirmation. The confirmation petition shall include a
26 determination 【of incapacity or debilitation or a death certificate, as
27 appropriate】 that the triggering event has occurred.

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

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

39 f. Commencement of the duties of the standby guardian shall
40 confer upon the appointed standby guardian shared authority with
41 the 【custodial】 parent, custodian, or 【legal custodian】 guardian of
42 the minor child or ward, unless the petition states otherwise.

43 g. A parent, custodian, or guardian 【or legal custodian】 may
44 revoke a standby guardianship by executing a written revocation,
45 filing it with the court where the petition was filed, and promptly
46 notifying the appointed standby guardian of the revocation. An
47 unwritten revocation may be considered by the court if the

1 revocation can be proved by clear and convincing evidence
2 submitted to the court.

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

4

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

7

8 7. This act shall take effect on the 90th day following
9 enactment.

10

11

12

STATEMENT

13

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

21

STANDBY GUARDIANSHIP ACT: DEFINITIONS

22

23 The bill revises several definitions in the Standby Guardianship
24 Act, P.L.1995, c.76 (C.3B:12-67 et seq.). Currently, an “appointed
25 standby guardian” is defined as a person appointed by the court to
26 assume the duties of guardian over the person and, when applicable,
27 the property of a minor child, upon the death of, or a determination
28 of incapacity or debilitation, and with the consent of, the parent or
29 legal custodian. The bill removes the provision concerning “death
30 or a determination of incapacity or debilitation” and replaces it with
31 “a triggering event.”

32

33 In order to define what constitutes a “triggering event,” the bill
34 adds several definitions. The term “criminal proceeding” is defined
35 as any incarceration on criminal charges, including pending
36 charges, or a criminal sentence that separates a parent, custodian, or
37 guardian from a minor child or ward. The term “immigration
38 administrative action” is defined as any immigration proceeding,
39 enforcement action, detention, removal, or deportation that
40 separates a parent, custodian, or guardian from a minor child or
41 ward. The term “military service” is defined as duty by any person
42 in the active military service of the United States or the active
43 military service of the State, including in the National Guard or
44 State Guard, that separates a parent, custodian, or guardian from a
45 minor child or ward.

46

STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

47

48 In addition, the bill revises section 2 of P.L.1995, c.76 (C.3B:12-
68), which sets out legislative findings and declarations for the
Standby Guardianship Act. Currently, this section provides that the
purpose of a standby guardianship is to enable a custodial parent or

1 legal custodian “suffering from a progressive chronic condition or a
2 fatal illness” to make plans for the child. Under the bill, this
3 language would be deleted, and the stated purpose would be
4 expanded to apply to a parent, custodian, or guardian “who cannot
5 currently, or who anticipates being unable to, provide adequate
6 care” to the child.

7 STANDBY GUARDIANSHIP ACT: PROCEDURE

8 The bill provides that, upon petition of a parent, custodian,
9 guardian, or attorney-in-fact appointed pursuant to N.J.S.3B:12-39,
10 the court may appoint a standby guardian of a minor child or ward.
11 The court may also appoint an alternate standby guardian. A
12 petition for the judicial appointment of a standby guardian would be
13 required to state: (1) which triggering event or events shall cause
14 the authority of the appointed standby guardian to become effective;
15 (2) the name and address of the proposed standby guardian; and (3)
16 the qualifications of the proposed standby guardian. The court
17 would appoint the standby guardian if the court finds that the
18 proposed standby guardian is fit and willing to assume the duties of
19 that role, and that the interests of the minor child or ward would be
20 promoted by the appointment of the standby guardian.

21 The bill removes the requirement in current law that, if the
22 triggering event is the incapacity or debilitation of the parent or
23 legal custodian, the attending physician shall provide a copy of his
24 determination to the appointed standby guardian if the guardian’s
25 identity is known to the physician.

26 Under current law, within 60 days following the assumption of
27 guardianship duties, the appointed standby guardian must petition
28 the court for confirmation. The confirmation petition must include
29 a determination of incapacity or debilitation or a death certificate,
30 as appropriate. The bill changes the time period from 60 days to 90
31 days following assumption of guardianship duties. In addition, the
32 bill removes the requirement for a determination of incapacity or
33 debilitation or a death certificate, and provides instead that the
34 petition must include a determination that the triggering event has
35 occurred.

36 DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

37 N.J.S.3B:12-39 authorizes a parent or legal guardian, by a
38 properly executed power of attorney, to delegate powers regarding
39 care, custody, or property of his minor child or ward to another
40 person. The court is not involved in this process. Under the current
41 statute, the parent or guardian may delegate his powers with the
42 consent of the other parent, or without such consent if the other
43 parent is incapacitated. The bill expands the instances when a
44 parent, custodian, or guardian may delegate his powers. When one
45 parent seeks to make a delegation, or when a custodian who shares
46 legal custody with a parent seeks to do so, the bill requires the
47 consent of the other parent or the consent of the parent who shares

1 legal custody with the custodian, unless such parent is incapacitated
2 or unavailable.

3 The bill defines the term “incapacitated” to mean a parent,
4 custodian, or guardian who has a chronic and substantial inability,
5 as a result of mental or physical impairment, to understand the
6 nature and consequences of decisions concerning the care of the
7 parent’s, custodian’s, or guardian’s minor child, and a consequent
8 inability to make these decisions.

9 The bill establishes a definition of the term “unavailable” as
10 applied to a parent. Under the bill, “unavailable” means: (a) a
11 parent who has not been involved in raising or financially
12 supporting the child for two years or a third of the life of the child,
13 whichever is less, immediately preceding the delegation; (b) a
14 parent whose identity or whereabouts are unknown to the delegating
15 parent; or (c) a parent who cannot be reached after diligent efforts.

16 The bill provides that a delegation of parental powers may
17 become effective upon proper execution of the power of attorney or
18 upon another “triggering event.” The bill defines a “triggering
19 event” as an event stated in the delegation that empowers the
20 attorney-in-fact to assume the duties of the office. Triggering
21 events include, but are not limited to:

22 (1) the execution of a power of attorney pursuant to the bill; (2)
23 the parent’s, custodian’s, or guardian’s attending physician
24 concludes that the parent, custodian, or guardian is “incapacitated”;
25 (3) the parent’s, custodian’s or guardian’s attending physician
26 concludes that the parent, custodian, or guardian is “debilitated”;
27 (4) the parent, custodian, or guardian is subject to “immigration
28 administrative action”; (5) the parent, custodian, or guardian is
29 subject to “criminal proceedings”; (6) the parent, custodian, or
30 guardian is in “military service”; or (7) the death of the parent,
31 custodian, or guardian.

32 Current law allows the delegation of parental powers for a period
33 of up to six months. Under the bill, the delegation would expire
34 after one year, and could be renewed for additional one-year
35 periods.

36 Under the bill, a parent, custodian, or guardian may revoke a
37 delegation by notifying the attorney-in-fact orally, in writing, or by
38 any other act evidencing a specific intent to revoke the power of
39 attorney.

40 The bill specifies that a delegation would not deprive the parent,
41 custodian, or guardian of his existing powers regarding care,
42 custody, or property of the minor child or ward, but the parent,
43 custodian, or guardian would exercise such powers, insofar as he is
44 able, concurrently with the attorney-in-fact named in the power of
45 attorney.

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

1 SUGGESTED FORM

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

4

5 By this delegation, I/we provide that the attorney-
6 in-fact's authority shall take effect upon the
7 following "triggering event" (check one that
8 applies):

9 ___The execution of this document on the latest
10 date below; or

11 ___My attending physician concludes that I am
12 mentally incapacitated, and thus unable to care for
13 my child(ren)/ward(s); or

14 ___My attending physician concludes that I am
15 physically debilitated, and thus unable to care for
16 my child(ren)/ward(s); or

17 ___I am detained in immigration detention,
18 removed, or deported; or

19 ___I am incarcerated based on criminal charges,
20 including pending charges, or conviction; or

21 ___I am deployed in military service; or

22 ___Upon my death.

23

24 Among other provisions, the suggested form provides:

25

26 In the event that a triggering event occurs and a
27 power of attorney is activated pursuant to this
28 statement, I declare that it is my intention to retain
29 full parental rights to the extent consistent with my
30 condition and circumstances and, further, that I retain
31 the authority to revoke the power of attorney
32 consistent with my rights herein at any time.