

P.L. 2021, CHAPTER 192, *approved August 5, 2021*

Assembly, No. 4640 (*First Reprint*)

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 'minor' ward's care, custody or  
10 property; limitations.

11 a. **[A]** <sup>1</sup>**[(1)]**<sup>1</sup> A parent, other than where sole or full legal  
12 and physical custody of **[a]** the parent's minor child has been  
13 awarded to another by a court of competent jurisdiction, <sup>1</sup>**[may]**<sup>1</sup>  
14 with the consent of the other parent, **[if the latter is living and not**  
15 **an incapacitated person]** <sup>1</sup>**[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)] unless the other parent is deceased, incapacitated, or  
22 unavailable, or a custodian of a minor child who is not that child's  
23 parent, with the consent of a parent with whom the custodian shares  
24 legal custody, unless that parent is deceased, incapacitated, or  
25 unavailable, or<sup>1</sup> a guardian of <sup>1</sup>**[the person of]**<sup>1</sup> a minor 'child' or  
26 <sup>1</sup>**[an incapacitated person]** a minor ward<sup>1</sup> **[,]** may:

27 by a properly executed power of attorney, **[may]** delegate to  
28 another person**[, for a period not exceeding six months,]** any of  
29 <sup>1</sup>**[his]** the parent's, custodian's, or guardian's<sup>1</sup> powers regarding  
30 care, custody, or property of the minor child or 'minor' ward**[,**  
31 except his power to consent to marriage or adoption of a minor  
32 ward**].**

33 b. A delegation made under this section shall<sup>1</sup>: (1)<sup>1</sup> expire one  
34 year from the effective date of the properly executed power of  
35 attorney, provided<sup>1</sup>, <sup>1</sup>however<sup>1</sup>, <sup>1</sup>that the parent, custodian, or  
36 guardian shall be permitted to renew the delegation for additional  
37 one-year periods using the same process as applies to the original  
38 delegation<sup>1</sup>**[.**

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AJU committee amendments adopted January 25, 2021.

1       c. A delegation made under this section], and may be extended  
2 for an additional six months in exigent circumstances ; and

3       (2)<sup>1</sup> may become effective upon proper execution of the power  
4 of attorney or upon another '[[triggering] activating'<sup>1</sup> event  
5 specified in a properly executed power of attorney.

6       '[d.] c.<sup>1</sup> A parent, custodian, or guardian may revoke a  
7 delegation made under this section by notifying the attorney-in-fact  
8 named in the power of attorney orally, in writing, or by any other  
9 act evidencing a specific intent to revoke the power of attorney.

10       '[e.] d.<sup>1</sup> A parent, custodian, or guardian may delegate under  
11 this section only such powers as '[[he] the parent, custodian, or  
12 guardian<sup>1</sup> possesses.

13       '[f.] e.<sup>1</sup> A delegation made under this section shall not  
14 deprive the parent, custodian, or guardian of '[[his] the parent's,  
15 custodian's, or guardian's<sup>1</sup> existing powers regarding care, custody,  
16 or property of the minor child or 'minor<sup>1</sup> ward, but the parent,  
17 custodian, or guardian shall exercise such powers, insofar as '[[he]  
18 the parent, custodian, or guardian<sup>1</sup> is able, concurrently with the  
19 attorney-in-fact named in the power of attorney. 'In the event of a  
20 disagreement between a parent, custodian, or guardian and the  
21 attorney-in-fact regarding the care, custody, or property of the  
22 minor child or minor ward, the decision of the parent, custodian, or  
23 guardian shall control.<sup>1</sup>

24       '[g.] f.<sup>1</sup> Nothing in this section shall be construed to  
25 involuntarily deprive any parent of parental rights.

26       '[h.] g.<sup>1</sup> As used in this section:

27       "Attending physician" means the physician who has primary  
28 responsibility for the treatment and care for the parent, custodian, or  
29 guardian making the delegation. When more than one physician  
30 shares this responsibility, or when a physician is acting on the  
31 primary physician's behalf, any such physician may act as the  
32 attending physician pursuant to this section. When no physician  
33 has this responsibility, a physician who is familiar with the parent's,  
34 custodian's, or legal guardian's medical condition may act as the  
35 attending physician.

36       "Attorney-in-fact" means the person to whom a parent,  
37 custodian, or guardian delegates powers under a properly executed  
38 power of attorney pursuant to this section.

39       "Consent" means written consent of a non-delegating parent as  
40 evidenced by that person's signature on the power of attorney, in  
41 the presence of two witnesses.

42       "Criminal proceeding" means any incarceration on criminal  
43 charges, including pending charges, or a criminal sentence that  
44 separates a parent, custodian, or guardian from a minor child or  
45 'minor<sup>1</sup> ward.

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

4       “Debilitated” means the parent, custodian, or guardian has a  
5 chronic and substantial inability, as a result of a physically  
6 debilitating illness, disease, or injury, to care for the parent’s,  
7 custodian’s, or guardian’s minor child or <sup>1</sup>minor<sup>1</sup> ward.

8       <sup>1</sup>“Exigent circumstances” means circumstances that render the  
9 parent, custodian, or guardian who makes a delegation unable to  
10 execute a renewal of the delegation for reasons including, but not  
11 limited to, that the parent, custodian, or guardian is debilitated or  
12 incapacitated, and that would cause imminent harm or threatened  
13 harm to the well-being of the parent’s, custodian’s, or guardian’s  
14 minor child or minor ward without such renewal.<sup>1</sup>

15       “Guardian” means a person <sup>1</sup>[appointed by a court of competent  
16 jurisdiction as a guardian of the person of a minor or an  
17 incapacitated person,] who has qualified as a guardian of the person  
18 of a minor pursuant to court appointment,<sup>1</sup> including<sup>1</sup>,<sup>1</sup> but not  
19 limited to<sup>1</sup>, <sup>1</sup>a kinship legal guardian <sup>1</sup>, but does not mean a person  
20 who is serving only as a guardian ad litem<sup>1</sup>.

21       “Immigration administrative action” means any immigration  
22 proceeding, enforcement action, detention, removal, or deportation  
23 that separates a parent, custodian, or guardian from a minor child or  
24 <sup>1</sup>minor<sup>1</sup> ward.

25       “Incapacitated” means the parent, custodian, or guardian <sup>1</sup>[has a  
26 chronic and substantial inability, as a result of mental or physical  
27 impairment, to understand the nature and consequences of decisions  
28 concerning the care of] is impaired by reason of mental illness,  
29 intellectual disability, physical illness or disability, chronic use of  
30 drugs, chronic alcoholism, or other cause, except minority, to the  
31 extent that the person lacks sufficient capacity to manage the affairs  
32 of and provide care for<sup>1</sup> the parent’s, custodian’s, or guardian’s  
33 minor child or <sup>1</sup>minor<sup>1</sup> ward, and a consequent inability to make  
34 these decisions.

35       “Military service” means duty by any person in the active  
36 military service of the United States or the active military service of  
37 the State, including in the National Guard or State Guard, that  
38 separates a parent, custodian, or guardian from a minor child or  
39 <sup>1</sup>minor<sup>1</sup> ward.

40       “Minor child” means a child under the age of 18 years but  
41 excludes a child residing in a placement funded or approved by the  
42 Division of Child Protection and Permanency in the Department of  
43 Children and Families pursuant to either a voluntary placement  
44 agreement or court order.

45       <sup>1</sup>“Minor ward” means a minor child for whom a guardian is  
46 appointed.<sup>1</sup>

1       “Parent” means the biological or adoptive parent of a minor  
 2 child.

3       <sup>1</sup>“[Triggering] “Activating” event” means an event stated in the  
 4 delegation that empowers the attorney-in-fact to assume the duties  
 5 of the office. <sup>1</sup>[Triggering] Activating” events include, but are not  
 6 limited to: <sup>1</sup>[(1)]<sup>1</sup> the execution of a power of attorney pursuant to  
 7 this section; <sup>1</sup>[(2)]<sup>1</sup> the parent’s, custodian’s, or guardian’s  
 8 attending physician concludes that the parent, custodian, or  
 9 guardian is <sup>1</sup>“incapacitated” as defined in this section]  
 10 incapacitated<sup>1</sup>; <sup>1</sup>[(3)]<sup>1</sup> the parent’s, custodian’s, or guardian’s  
 11 attending physician concludes that the parent, custodian, or  
 12 guardian is <sup>1</sup>“debilitated” as defined in this section] debilitated<sup>1</sup>;  
 13 <sup>1</sup>[(4)]<sup>1</sup> the parent, custodian, or guardian is subject to  
 14 <sup>1</sup>“immigration administrative action” as defined in this section]  
 15 immigration administrative action<sup>1</sup>; <sup>1</sup>[(5)]<sup>1</sup> the parent, custodian,  
 16 or guardian is subject to <sup>1</sup>“criminal proceedings” as defined in this  
 17 section] criminal proceedings<sup>1</sup>; <sup>1</sup>[(6)]<sup>1</sup> the parent, custodian, or  
 18 guardian is in <sup>1</sup>“military service” as defined in this section]  
 19 military service<sup>1</sup>; or <sup>1</sup>[(7)]<sup>1</sup> the death of the parent, custodian, or  
 20 guardian <sup>1</sup>in circumstances in which no testamentary guardianship  
 21 or other more permanent care arrangement has been made for the  
 22 minor child or minor ward, provided, however, that in no case shall  
 23 a power of attorney activated by the death of a parent, guardian, or  
 24 custodian extend beyond the year that the power of attorney is in  
 25 effect<sup>1</sup> .

26       “Unavailable” means: <sup>1</sup>[(a)]<sup>1</sup> a parent who has not been  
 27 involved in raising or financially supporting the child for two years  
 28 or a third of the life of the child, whichever is less, immediately  
 29 preceding the delegation made pursuant to this section; <sup>1</sup>[(b)]<sup>1</sup> a  
 30 parent whose identity or whereabouts are unknown; or <sup>1</sup>[(c)]<sup>1</sup> a  
 31 parent who cannot be reached after diligent efforts.

32       <sup>1</sup>“Ward” means an individual for whom a guardian is  
 33 appointed.]<sup>1</sup>

34       <sup>1</sup>[i.] h.<sup>1</sup> A delegation <sup>1</sup>made under this section<sup>1</sup> may, but need  
 35 not, be in the following form:

36  
 37 POWER OF ATTORNEY AND DELEGATION OF AUTHORITY  
 38 BY PARENT, CUSTODIAN, OR GUARDIAN CONCERNING  
 39 MINOR CHILD(REN) OR <sup>1</sup>MINOR<sup>1</sup> WARD(S) PURSUANT TO  
 40 N.J.S. 3B:12-39

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

1 address of alternative caregiver) and reachable at (telephone  
 2 number of alternative caregiver).

3  
 4 If a parent is signing, the other parent must generally also sign  
 5 below to show consent. Similarly, if a custodian who shares legal  
 6 custody with a parent is signing, the parent who shares legal  
 7 custody must generally also sign below to show consent. If such  
 8 parent does not sign below, please check off reason(s) to explain  
 9 why:

10 \_\_\_ Such parent is deceased.

11  
 12 \_\_\_ By order of a court of competent jurisdiction, such parent  
 13 retains neither legal nor physical custody of child(ren).

14  
 15 \_\_\_ Such parent is mentally or physically unable to give consent.

16  
 17 \_\_\_ Such parent has not been involved in raising or financially  
 18 supporting child(ren) for two years or a third of the life of the  
 19 child(ren), whichever is less, immediately preceding the date of the  
 20 latest signature below.

21  
 22 \_\_\_ Identity or whereabouts of such parent are unknown to me.

23  
 24 \_\_\_ Despite diligent efforts described below, I was unable to reach  
 25 such parent.

26  
 27 Diligent efforts included:  
 28  
 29 \_\_\_\_\_  
 30 \_\_\_\_\_  
 31 \_\_\_\_\_  
 32 \_\_\_\_\_  
 33 \_\_\_\_\_  
 34 \_\_\_\_\_

35  
 36 Other:  
 37 \_\_\_\_\_  
 38 \_\_\_\_\_  
 39 \_\_\_\_\_  
 40 \_\_\_\_\_

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

1 Care-Giving. The attorney-in-fact shall have temporary care-  
2 giving authority for the 'minor' child(ren)/ 'minor' ward(s), until  
3 such time as the 'minor' child(ren)/ 'minor' ward(s) is/are returned  
4 to '【our/my】 my/our' physical custody, or his/her/their custody  
5 status is altered by a federal, state, or local agency; or changed by a  
6 court of law.

7  
8 Well-Being. The attorney-in-fact shall have the power to  
9 provide for the physical and mental well-being of the 'minor'  
10 child(ren)/ 'minor' ward(s), including<sup>1,1</sup> but not limited to<sup>1,1</sup>  
11 providing food and shelter.

12  
13 Education. The attorney-in-fact shall have the authority to enroll  
14 the 'minor' child(ren)/ 'minor' ward(s) in the appropriate  
15 educational institutions; obtain access to his/her/their school  
16 records; authorize his/her/their participation in school activities; and  
17 make any and all decisions related to his/her/their education,  
18 including, but not limited to, those related to special education.

19  
20 Health Care. The attorney-in-fact shall have the authority, to the  
21 same extent that a parent/custodian/guardian would have the  
22 authority, to make medical, dental, and mental health decisions; to  
23 sign documents, waivers<sup>1,1</sup> and releases required by a hospital or  
24 physician; to access medical, dental, or mental health records  
25 concerning the 'minor' child(ren)/ 'minor' ward(s); to authorize  
26 '【his/her/their】 the minor child(ren)'/ minor ward(s)'<sup>1</sup> admission to  
27 or discharge from any hospital or medical care facility; to consult  
28 with any '【provider of】' health care 'provider'<sup>1</sup>; to consent to the  
29 provision, withholding, modification<sup>1,1</sup> or withdrawal of any health  
30 care procedure; and to make other decisions related to the health  
31 care needs of the 'minor' child(ren)/ 'minor' ward(s).

32  
33 Travel. The attorney-in-fact shall have the authority to make  
34 travel arrangements on behalf of the 'minor' child(ren)/ 'minor'  
35 ward(s) for destinations both inside and outside of the United States  
36 by air and/or ground transportation; to accompany the 'minor'  
37 child(ren)/'minor' ward(s) on any such trips; and to make any and  
38 all related arrangements on behalf of the 'minor' child(ren)/  
39 'minor' ward(s), including<sup>1,1</sup> but not limited to<sup>1,1</sup> hotel  
40 accommodations.

41  
42 Financial Interests. The attorney-in-fact may handle any and  
43 all financial affairs and any and all personal and legal matters  
44 concerning the 'minor' child(ren)/ 'minor' ward(s).

45  
46 All Other Powers. The attorney-in-fact shall have the authority  
47 to handle and engage in any and all other matters relating to the

1 care, custody, and property of the <sup>1</sup>【child or ward】 minor  
2 child(ren)/minor ward(s)<sup>1</sup> which are permitted pursuant to  
3 applicable State law.  
4

5 By this delegation, I/we provide that the attorney-in-fact's authority  
6 shall take effect upon the following <sup>1</sup>【“triggering event”】  
7 “activating event(s)” (check <sup>1</sup>【one that applies】 all that apply<sup>1</sup>):  
8

9 \_\_\_\_ The execution of this document on the latest date below; or  
10

11 \_\_\_\_ My attending physician concludes that I am <sup>1</sup>【mentally】<sup>1</sup>  
12 incapacitated, and thus unable to care for my <sup>1</sup>minor<sup>1</sup> child(ren)/  
13 <sup>1</sup>minor<sup>1</sup> ward(s); or  
14

15 \_\_\_\_ My attending physician concludes that I am physically  
16 debilitated, and thus unable to care for my <sup>1</sup>minor<sup>1</sup> child(ren)/  
17 <sup>1</sup>minor<sup>1</sup> ward(s); or  
18

19 \_\_\_\_ I am detained in immigration detention, removed, or deported;  
20 or  
21

22 \_\_\_\_ I am incarcerated based on criminal charges, including pending  
23 charges, or conviction; or  
24

25 \_\_\_\_ I am deployed in military service; or  
26

27 \_\_\_\_ Upon my death <sup>1</sup>, if I have made no more permanent care  
28 arrangements for my minor child or minor ward; or  
29

30 \_\_\_\_ Other (specify reason)<sup>1</sup> .  
31

32 In the event that the person designated above is unable or unwilling  
33 to act as attorney-in-fact to my <sup>1</sup>minor<sup>1</sup>child(ren)/ <sup>1</sup>minor<sup>1</sup> ward(s),  
34 I hereby name (name, address<sup>1</sup>, <sup>1</sup> and telephone number of alternate  
35 attorney-in-fact), as alternate attorney-in-fact of my <sup>1</sup>minor<sup>1</sup>  
36 child(ren)/ <sup>1</sup>minor<sup>1</sup> ward(s).  
37

38 I/we understand that this delegation will expire one year from the  
39 execution of this document on the latest date below, and that the  
40 authority of the attorney-in-fact, if any, will cease, unless by that  
41 date (i) I renew this delegation, by the same process applicable to  
42 the original delegation<sup>1</sup>【, or】<sup>1</sup> ;<sup>1</sup> (ii) a court of competent  
43 jurisdiction appoints a custodian, guardian, or standby guardian for  
44 the minor <sup>1</sup>【child or ward】 child(ren)/minor ward(s); or (iii) exigent  
45 circumstances make it impossible for me to renew this delegation,  
46 and I have not made alternative care arrangements for my minor  
47 child(ren)/minor ward(s)<sup>1</sup> .

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

4  
 5 In the event that <sup>1</sup>【a triggering】 an activating<sup>1</sup> event occurs and a  
 6 power of attorney is activated pursuant to this statement, I declare  
 7 that it is my intention to retain full parental rights to the extent  
 8 consistent with my condition and circumstances and, further, that I  
 9 retain the authority to revoke the power of attorney consistent with  
 10 my rights herein at any time.

11  
 12 Parent's/Custodian's/Guardian's Signature:

13  
 14 Date:

15  
 16 Signature of other parent or of parent who shares legal custody with  
 17 a custodian who signed above:

18  
 19 Date:

20  
 21  
 22 Witness's Signature:

23  
 24 Address:

25  
 26 Date:

27  
 28  
 29 Witness's Signature:

30  
 31 Address:

32  
 33 Date:

34  
 35 (cf: P.L.2005, c.304, s.27)

36  
 37 2. Section 2 of P.L.1995, c.76 (C.3B:12-68) is amended to read  
 38 as follows:

39 2. The Legislature finds and declares that there is an imperative  
 40 need to create an expeditious manner of establishing a guardianship  
 41 known as a standby guardianship, in order to enable a **【custodial】**  
 42 parent **【or legal】**, custodian **【suffering from a progressive chronic**  
 43 **condition or a fatal illness】**, or guardian who cannot currently, or  
 44 who anticipates being unable to, provide adequate care to a minor  
 45 child or <sup>1</sup>minor<sup>1</sup> ward, to make plans for the permanent future care  
 46 or the interim care of a minor child or <sup>1</sup>minor<sup>1</sup> ward without  
 47 terminating parental or legal rights. The Legislature further finds  
 48 that current law does not adequately address the needs of



1 **【custodial】** parents, custodians, or **【legal custodians】** guardians  
 2 who are **【suffering from a progressive chronic condition or a fatal**  
 3 **illness】** facing separation from their minor children or 'minor'  
 4 wards because of illness, immigration administrative action,  
 5 criminal proceedings, military service, or other reasons, and who  
 6 desire to make plans for the future care of their 'minor' children or  
 7 'minor' wards without terminating parental or legal rights.  
 8 (cf: P.L.1995, c.76, s.2)

9  
 10 3. Section 3 of P.L.1995, c.76 (C.3B:12-69) is amended to read  
 11 as follows:

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

13 "Appointed standby guardian" means a person appointed  
 14 pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the  
 15 duties of guardian over the person and, when applicable, the  
 16 property of a minor child or 'minor' ward upon **【the death or a**  
 17 **determination of incapacity or debilitation, and with the consent, of**  
 18 **the parent or legal custodian】** '[a "triggering event" as defined in  
 19 this section] an activating event'.

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

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

33 "Criminal proceeding" means any incarceration on criminal  
 34 charges, including pending charges, or a criminal sentence that  
 35 separates a parent, custodian, or guardian from a minor child or  
 36 'minor' ward.

37 "Custodian" means a person, other than a parent, who has been  
 38 granted legal and physical custody of a minor child by a court of  
 39 competent jurisdiction.

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

44 **【"Designated standby guardian" means a person designated**  
 45 **pursuant to section 8 of P.L.1995, c.76 (C.3B:12-74) to assume**  
 46 **temporarily the duties of guardianship over the person and, when**  
 47 **applicable, the property of a minor child upon the death or a**

1 determination of incapacity or debilitation, and with the consent, of  
2 the parent or legal custodian.

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

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

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

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

17 "Guardian" means a person <sup>1</sup>【appointed by a court of competent  
18 jurisdiction as a guardian of the person of a minor or an  
19 incapacitated person】 who has qualified as a guardian of the person  
20 of a minor pursuant to court appointment<sup>1</sup>, including<sup>1</sup>,<sup>1</sup> but not  
21 limited to<sup>1</sup>, <sup>1</sup> a kinship legal guardian <sup>1</sup>, but does not mean a person  
22 who is serving only as a guardian ad litem<sup>1</sup>.

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

27 **【"Incapacity"】** "Incapacitated" means the parent, custodian, or  
28 guardian <sup>1</sup>【has a chronic and substantial inability, as a result of  
29 mental or 【organic】 physical impairment, to understand the nature  
30 and consequences of decisions concerning the care of】 is impaired  
31 by reason of mental illness, intellectual disability, physical illness  
32 or disability, chronic use of drugs, chronic alcoholism, or other  
33 cause, except minority, to the extent that the person lacks sufficient  
34 capacity to manage the affairs of and provide care for<sup>1</sup> 【one's】 the  
35 parent's, custodian's, or guardian's minor child or <sup>1</sup>minor<sup>1</sup> ward<sup>1</sup>【,  
36 and a consequent inability to make these decisions】<sup>1</sup>.

37 "Military service" means duty by any person in the active  
38 military service of the United States or the active military service of  
39 the State, including in the National Guard or State Guard, that  
40 separates a parent, custodian, or guardian from a minor child or  
41 <sup>1</sup>minor<sup>1</sup> ward.

42 "Minor child" means a child under the age of <sup>1</sup>【eighteen】 18<sup>1</sup>  
43 years but excludes a child residing in a placement funded or  
44 approved by the Division of Child Protection and Permanency in  
45 the Department of Children and Families pursuant to either a  
46 voluntary placement agreement or court order.

1 <sup>1</sup>["Parent" means the biological or adoptive parent of a minor  
 2 child.] "Minor ward" means a minor for whom a guardian is  
 3 appointed.<sup>1</sup>

4 <sup>1</sup>["Triggering"] "Activating<sup>1</sup> event" means an event stated in the  
 5 【designation,】 petition or decree 【which】 that empowers the  
 6 standby guardian to assume the duties of the office【, which event  
 7 may be the death, incapacity or debilitation, with the consent, of the  
 8 custodial parent or legal custodian, whichever occurs first】.  
 9 <sup>1</sup>["Triggering"] Activating<sup>1</sup> events include, but are not limited to:  
 10 <sup>1</sup>【(1)】<sup>1</sup> the appointment of a standby guardian by a court of  
 11 competent jurisdiction; <sup>1</sup>【(2)】<sup>1</sup> the parent's, custodian's, or  
 12 guardian's attending physician concludes that the parent, custodian,  
 13 or guardian is <sup>1</sup>["incapacitated" as defined in this section】  
 14 incapacitated<sup>1</sup>; <sup>1</sup>【(3)】<sup>1</sup> the parent's, custodian's, or guardian's  
 15 attending physician concludes that the parent, custodian, or  
 16 guardian is <sup>1</sup>["debilitated" as defined in this section】 debilitated<sup>1</sup>;  
 17 <sup>1</sup>【(4)】<sup>1</sup> the parent, custodian, or guardian is subject to  
 18 <sup>1</sup>["immigration administrative action" as defined in this section】  
 19 immigration administrative action; <sup>1</sup>【(5)】<sup>1</sup> the parent, custodian, or  
 20 guardian is subject to <sup>1</sup>["criminal proceedings" as defined in this  
 21 section】 criminal proceedings<sup>1</sup>; <sup>1</sup>【(6) the】<sup>1</sup> the parent, custodian, or  
 22 guardian is in <sup>1</sup>["military service" as defined in this section】  
 23 military service<sup>1</sup>; or <sup>1</sup>【(7)】<sup>1</sup> the death of the parent, custodian, or  
 24 guardian <sup>1</sup>in circumstances in which no testamentary guardianship  
 25 or other more permanent care arrangement has been made for the  
 26 minor child or minor ward; provided, however, that in no case shall  
 27 a power of attorney triggered by the death of a parent, guardian, or  
 28 custodian extend beyond the year that the power of attorney is in  
 29 effect<sup>1</sup>.

30 <sup>1</sup>["Ward" means an individual for whom a guardian is  
 31 appointed.】<sup>1</sup>  
 32 (cf: P.L.2012, c.16, s.12)

33  
 34 4. Section 6 of P.L.1995, c.76 (C.3B:12-72) is amended to read  
 35 as follows:

36 6. a. Upon petition of 【the】 a parent, custodian, guardian,  
 37 【legal custodian or designated standby guardian】 or attorney-in-fact  
 38 appointed pursuant to N.J.S.3B:12-39, the court may appoint a  
 39 standby guardian of a minor child or <sup>1</sup>minor<sup>1</sup> ward. The court may  
 40 also appoint an alternate standby guardian, if identified by the  
 41 petitioner, to act if the appointed standby guardian dies, becomes  
 42 incapacitated, or otherwise refuses or is unable to assume the duties  
 43 of the standby guardian after the 【death, incapacity or debilitation  
 44 of the parent or legal custodian of the minor child】 <sup>1</sup>【triggering】  
 45 activating<sup>1</sup> event stated in the petition.

1 b. A petition for the judicial appointment of a standby guardian  
2 of a minor child or <sup>1</sup>minor<sup>1</sup> ward shall state:

3 (1) which <sup>1</sup>**triggering** activating<sup>1</sup> event or events shall cause  
4 the authority of the appointed standby guardian to become effective;

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

11 (3) **the name**, **and** **address**, **and qualifications** of the  
12 proposed standby guardian; and

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

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

18 d. The court shall appoint the standby guardian if the court  
19 finds that **there is a significant risk that the parent or legal**  
20 **custodian will die, become incapacitated, or become debilitated as a**  
21 **result of a progressive chronic condition or a fatal illness,** the  
22 proposed standby guardian is fit and willing to assume the duties of  
23 that role, and that the interests of the minor child or ward would be  
24 promoted by the appointment of the standby guardian.

25 e. The decree appointing the standby guardian shall specify the  
26 <sup>1</sup>**triggering** activating<sup>1</sup> event which shall activate the authority of  
27 the standby guardian.

28 f. Upon petition for the appointment of a standby guardian by a  
29 person as specified in subsection a. of this section, notice shall be  
30 served on the minor child's parent **or legal**, custodian, guardian,  
31 or **the designated standby guardian** attorney-in-fact appointed  
32 pursuant to N.J.S.3B:12-39, as appropriate, within 30 days of the  
33 filing. **The** During the time that the petition is pending, the court  
34 shall give preference to maintaining custody with **either the parent**  
35 **or legal custodian, or the designated standby guardian, during the**  
36 **time that the petition is pending** whoever had custody of the minor  
37 child or <sup>1</sup>minor<sup>1</sup> ward at the time the petition was filed. Nothing in  
38 this section shall be construed to deprive any parent of parental  
39 rights. If the petition alleges that after diligent search, the parent **or**  
40 **legal**, custodian, or guardian cannot be found, the parent **or**  
41 **legal**, custodian, or guardian shall be served by notice delivered  
42 pursuant to New Jersey court rules. No notice is necessary to a  
43 **parent** person who is deceased or to a parent whose parental  
44 rights have been previously terminated by court order or consent.

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

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

3        7. a. Upon the occurrence of '[a triggering] an activating'  
4 event set forth in a decree appointing a standby guardian, the  
5 standby guardian shall be 'immediately' empowered to assume  
6 '[the] guardianship' duties '[ of his office immediately]'.

7        b. [If the triggering event is the incapacity or debilitation of the  
8 parent or legal custodian, the attending physician shall provide a  
9 copy of his determination to the appointed standby guardian if the  
10 guardian's identity is known to the attending physician.] (Deleted  
11 by amendment, P.L.     , c.     ) (pending before the Legislature as  
12 this bill)

13        c. Within [60] 90 days following the assumption of  
14 guardianship duties, the appointed standby guardian shall petition  
15 the court for confirmation. The confirmation petition shall include a  
16 determination [of incapacity or debilitation or a death certificate, as  
17 appropriate] that the '[triggering] activating' event has occurred.

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

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

29        f. Commencement of the duties of the standby guardian shall  
30 confer upon the appointed standby guardian shared authority with  
31 the [custodial] parent, custodian, or [legal custodian] guardian of  
32 the minor child or 'minor' ward, unless the petition states  
33 otherwise.

34        g. A parent, custodian, or guardian [or legal custodian] may  
35 revoke a standby guardianship by executing a written revocation,  
36 filing it with the court where the petition was filed, and promptly  
37 notifying the appointed standby guardian of the revocation. An  
38 unwritten revocation may be considered by the court if the  
39 revocation can be proved by clear and convincing evidence  
40 submitted to the court.

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

42

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

45

46        7. This act shall take effect on the 90<sup>th</sup> day following  
47 enactment.

1 \_\_\_\_\_  
2  
3       Revises laws concerning delegation of parental or caregiver  
4 powers and standby guardianship for minor child or minor ward.