

[First Reprint]

ASSEMBLY, No. 4640

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

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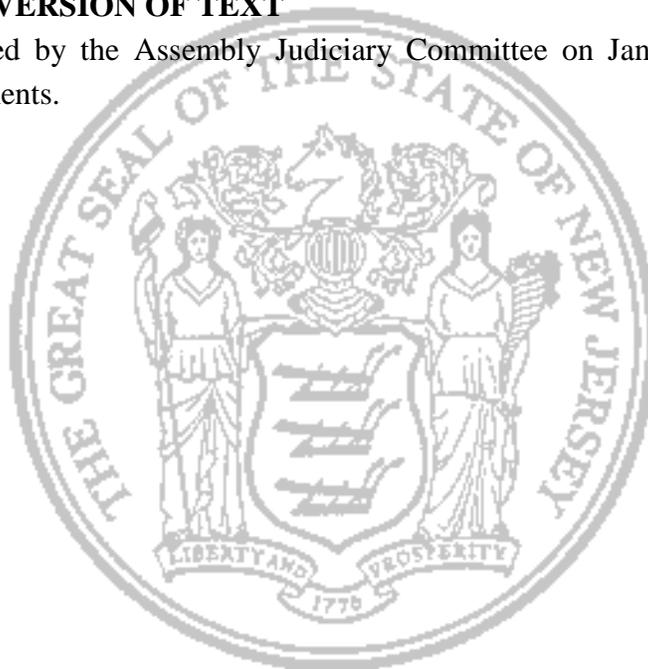
District 35 (Bergen and Passaic)

SYNOPSIS

Revises laws concerning delegation of parental or caregiver powers and standby guardianship for minor child or minor ward.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on January 25, 2021, with amendments.



(Sponsorship Updated As Of: 6/3/2021)

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 ¹minor ward's care, custody or
10 property; limitations.

11 a. **[A]** ¹**[(1)]** 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, ¹**[may]**
14 with the consent of the other parent, **[if the latter is living and not**
15 **an incapacitated person]** ¹**[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, or¹ a guardian of ¹**[the person of]** a minor ¹child or
26 ¹**[an incapacitated person]** a minor ward ¹**[,]** 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 ¹**[his]** the parent's, custodian's, or guardian's¹ powers regarding
30 care, custody, or property of the minor child or ¹minor ward**[,**
31 **except his power to consent to marriage or adoption of a minor**
32 **ward].**

33 b. A delegation made under this section shall¹: (1)¹ expire one
34 year from the effective date of the properly executed power of
35 attorney, provided¹, ¹however¹, 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 delegation¹**[.**

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

41 (2)¹ may become effective upon proper execution of the power
42 of attorney or upon another ¹**[triggering]** activating¹ event
43 specified in a properly executed power of attorney.

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:

¹Assembly AJU committee amendments adopted January 25, 2021.

1 ¹[d.] c.¹ A parent, custodian, or guardian may revoke a
2 delegation made under this section by notifying the attorney-in-fact
3 named in the power of attorney orally, in writing, or by any other
4 act evidencing a specific intent to revoke the power of attorney.

5 ¹[e.] d.¹ A parent, custodian, or guardian may delegate under
6 this section only such powers as ¹[he] the parent, custodian, or
7 guardian¹ possesses.

8 ¹[f.] e.¹ A delegation made under this section shall not
9 deprive the parent, custodian, or guardian of ¹[his] the parent's,
10 custodian's, or guardian's¹ existing powers regarding care, custody,
11 or property of the minor child or ¹minor¹ ward, but the parent,
12 custodian, or guardian shall exercise such powers, insofar as ¹[he]
13 the parent, custodian, or guardian¹ is able, concurrently with the
14 attorney-in-fact named in the power of attorney. ¹In the event of a
15 disagreement between a parent, custodian, or guardian and the
16 attorney-in-fact regarding the care, custody, or property of the
17 minor child or minor ward, the decision of the parent, custodian, or
18 guardian shall control.¹

19 ¹[g.] f.¹ Nothing in this section shall be construed to
20 involuntarily deprive any parent of parental rights.

21 ¹[h.] g.¹ As used in this section:

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

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

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

37 "Criminal proceeding" means any incarceration on criminal
38 charges, including pending charges, or a criminal sentence that
39 separates a parent, custodian, or guardian from a minor child or
40 ¹minor¹ ward.

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

44 "Debilitated" means the parent, custodian, or guardian has a
45 chronic and substantial inability, as a result of a physically
46 debilitating illness, disease, or injury, to care for the parent's,
47 custodian's, or guardian's minor child or ¹minor¹ ward.

1 ¹“Exigent circumstances” means circumstances that render the
2 parent, custodian, or guardian who makes a delegation unable to
3 execute a renewal of the delegation for reasons including, but not
4 limited to, that the parent, custodian, or guardian is debilitated or
5 incapacitated, and that would cause imminent harm or threatened
6 harm to the well-being of the parent’s, custodian’s, or guardian’s
7 minor child or minor ward without such renewal.¹

8 “Guardian” means a person ¹【appointed by a court of competent
9 jurisdiction as a guardian of the person of a minor or an
10 incapacitated person,】 who has qualified as a guardian of the person
11 of a minor pursuant to court appointment,¹ including^{1,1} but not
12 limited to^{1,1} a kinship legal guardian ¹, but does not mean a person
13 who is serving only as a guardian ad litem¹.

14 “Immigration administrative action” means any immigration
15 proceeding, enforcement action, detention, removal, or deportation
16 that separates a parent, custodian, or guardian from a minor child or
17 ¹minor¹ ward.

18 “Incapacitated” means the parent, custodian, or guardian ¹【has a
19 chronic and substantial inability, as a result of mental or physical
20 impairment, to understand the nature and consequences of decisions
21 concerning the care of】 is impaired by reason of mental illness,
22 intellectual disability, physical illness or disability, chronic use of
23 drugs, chronic alcoholism, or other cause, except minority, to the
24 extent that the person lacks sufficient capacity to manage the affairs
25 of and provide care for¹ the parent’s, custodian’s, or guardian’s
26 minor child or ¹minor¹ ward, and a consequent inability to make
27 these decisions.

28 “Military service” means duty by any person in the active
29 military service of the United States or the active military service of
30 the State, including in the National Guard or State Guard, that
31 separates a parent, custodian, or guardian from a minor child or
32 ¹minor¹ ward.

33 “Minor child” means a child under the age of 18 years but
34 excludes a child residing in a placement funded or approved by the
35 Division of Child Protection and Permanency in the Department of
36 Children and Families pursuant to either a voluntary placement
37 agreement or court order.

38 ¹“Minor ward” means a minor child for whom a guardian is
39 appointed.¹

40 “Parent” means the biological or adoptive parent of a minor
41 child.

42 ¹【“Triggering” “Activating¹ event” means an event stated in the
43 delegation that empowers the attorney-in-fact to assume the duties
44 of the office. ¹【Triggering】 Activating¹ events include, but are not
45 limited to: ¹【(1)】¹ the execution of a power of attorney pursuant to
46 this section; ¹【(2)】¹ the parent’s, custodian’s, or guardian’s
47 attending physician concludes that the parent, custodian, or

1 guardian is ¹["incapacitated" as defined in this section]
 2 incapacitated¹; ¹[(3)] the parent's, custodian's, or guardian's
 3 attending physician concludes that the parent, custodian, or
 4 guardian is ¹["debilitated" as defined in this section] debilitated¹;
 5 ¹[(4)] the parent, custodian, or guardian is subject to
 6 ¹["immigration administrative action" as defined in this section]
 7 immigration administrative action¹; ¹[(5)] the parent, custodian,
 8 or guardian is subject to ¹["criminal proceedings" as defined in this
 9 section] criminal proceedings¹; ¹[(6)] the parent, custodian, or
 10 guardian is in ¹["military service" as defined in this section]
 11 military service¹; or ¹[(7)] the death of the parent, custodian, or
 12 guardian ¹in circumstances in which no testamentary guardianship
 13 or other more permanent care arrangement has been made for the
 14 minor child or minor ward, provided, however, that in no case shall
 15 a power of attorney activated by the death of a parent, guardian, or
 16 custodian extend beyond the year that the power of attorney is in
 17 effect¹ .

18 "Unavailable" means: ¹[(a)] a parent who has not been
 19 involved in raising or financially supporting the child for two years
 20 or a third of the life of the child, whichever is less, immediately
 21 preceding the delegation made pursuant to this section; ¹[(b)] a
 22 parent whose identity or whereabouts are unknown; or ¹[(c)] a
 23 parent who cannot be reached after diligent efforts.

24 ¹["Ward" means an individual for whom a guardian is
 25 appointed.]¹

26 ¹[i.] h. ¹A delegation ¹made under this section¹ may, but need
 27 not, be in the following form:

28
 29 POWER OF ATTORNEY AND DELEGATION OF AUTHORITY
 30 BY PARENT, CUSTODIAN, OR GUARDIAN CONCERNING
 31 MINOR CHILD(REN) OR ¹MINOR¹ WARD(S) PURSUANT TO
 32 N.J.S. 3B:12-39

33
 34 This power of attorney is made between (name(s), of parent(s),
 35 custodian(s), or guardian(s)), residing at (address(es) of parent(s),
 36 custodian(s), or guardian(s)) and reachable at (telephone number(s)
 37 of parent(s), custodian(s), or guardian(s)) and (name of alternative
 38 caregiver), referred to here as "attorney-in-fact," residing at (home
 39 address of alternative caregiver) and reachable at (telephone
 40 number of alternative caregiver).

41
 42 If a parent is signing, the other parent must generally also sign
 43 below to show consent. Similarly, if a custodian who shares legal
 44 custody with a parent is signing, the parent who shares legal
 45 custody must generally also sign below to show consent. If such
 46 parent does not sign below, please check off reason(s) to explain
 47 why:

1 Such parent is deceased.
2
3 By order of a court of competent jurisdiction, such parent
4 retains neither legal nor physical custody of child(ren).
5
6 Such parent is mentally or physically unable to give consent.
7
8 Such parent has not been involved in raising or financially
9 supporting child(ren) for two years or a third of the life of the
10 child(ren), whichever is less, immediately preceding the date of the
11 latest signature below.
12
13 Identity or whereabouts of such parent are unknown to me.
14
15 Despite diligent efforts described below, I was unable to reach
16 such parent.
17
18 Diligent efforts included:
19
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26
27 Other: _____
28 _____
29 _____
30 _____
31 _____
32
33 I/we appoint said attorney-in-fact, pursuant to N.J.S.3B:12-39, and
34 delegate to said attorney-in-fact the following powers, all of which
35 I/we possess, concerning the care, custody, and/or property of
36 my/our 'minor' child/'minor' ward, (name of 'minor' child/'minor'
37 ward), born on _____ day of _____, 20____ (add other 'minor'
38 children's or 'minor' wards' names and birthdates as appropriate)
39
40 Care-Giving. The attorney-in-fact shall have temporary care-
41 giving authority for the 'minor' child(ren)/ 'minor' ward(s), until
42 such time as the 'minor' child(ren)/ 'minor' ward(s) is/are returned
43 to '【our/my】 my/our' physical custody, or his/her/their custody
44 status is altered by a federal, state, or local agency; or changed by a
45 court of law.
46
47 Well-Being. The attorney-in-fact shall have the power to
48 provide for the physical and mental well-being of the 'minor'

1 child(ren)/ 'minor' ward(s), including^{1,1} but not limited to^{1,1}
2 providing food and shelter.

3

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

10

11 Health Care. The attorney-in-fact shall have the authority, to the
12 same extent that a parent/custodian/guardian would have the
13 authority, to make medical, dental, and mental health decisions; to
14 sign documents, waivers^{1,1} and releases required by a hospital or
15 physician; to access medical, dental, or mental health records
16 concerning the 'minor' child(ren)/ 'minor' ward(s); to authorize
17 '[his/her/their] the minor child(ren)/ minor ward(s)'¹ admission to
18 or discharge from any hospital or medical care facility; to consult
19 with any '[provider of]' health care 'provider'¹; to consent to the
20 provision, withholding, modification^{1,1} or withdrawal of any health
21 care procedure; and to make other decisions related to the health
22 care needs of the 'minor' child(ren)/ 'minor' ward(s).

23

24 Travel. The attorney-in-fact shall have the authority to make
25 travel arrangements on behalf of the 'minor' child(ren)/ 'minor'
26 ward(s) for destinations both inside and outside of the United States
27 by air and/or ground transportation; to accompany the 'minor'
28 child(ren)/'minor' ward(s) on any such trips; and to make any and
29 all related arrangements on behalf of the 'minor' child(ren)/
30 'minor' ward(s), including^{1,1} but not limited to^{1,1} hotel
31 accommodations.

32

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

36

37 All Other Powers. The attorney-in-fact shall have the authority
38 to handle and engage in any and all other matters relating to the
39 care, custody, and property of the '[child or ward] minor
40 child(ren)/minor ward(s)¹ which are permitted pursuant to
41 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']
45 “activating event(s)” (check '[one that applies] all that apply¹):

46

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

1 My attending physician concludes that I am **['mentally']**
2 incapacitated, and thus unable to care for my **'minor'** child(ren)/
3 **'minor'** ward(s); or

4
5 My attending physician concludes that I am physically
6 debilitated, and thus unable to care for my **'minor'** child(ren)/
7 **'minor'** 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 ¹, if I have made no more permanent care
18 arrangements for my minor child or minor ward; or

19
20 Other (specify reason)¹.

21
22 In the event that the person designated above is unable or unwilling
23 to act as attorney-in-fact to my **'minor'** child(ren)/ **'minor'** ward(s).
24 I hereby name (name, address¹,¹ and telephone number of alternate
25 attorney-in-fact), as alternate attorney-in-fact of my **'minor'**
26 child(ren)/ **'minor'** ward(s).

27
28 I/we understand that this delegation will expire one year from the
29 execution of this document on the latest date below, and that the
30 authority of the attorney-in-fact, if any, will cease, unless by that
31 date (i) I renew this delegation, by the same process applicable to
32 the original delegation¹ [, or] ¹; (ii) a court of competent
33 jurisdiction appoints a custodian, guardian, or standby guardian for
34 the minor **['child or ward']** child(ren)/minor ward(s); or (iii) exigent
35 circumstances make it impossible for me to renew this delegation,
36 and I have not made alternative care arrangements for my minor
37 child(ren)/minor ward(s)¹.

38
39 I/we hereby authorize that the attorney-in-fact as set forth above
40 shall be provided with a copy of my/our attending physician's
41 statement(s), if applicable.

42
43 In the event that **['a triggering']** an activating¹ event occurs and a
44 power of attorney is activated pursuant to this statement, I declare
45 that it is my intention to retain full parental rights to the extent
46 consistent with my condition and circumstances and, further, that I

1 retain the authority to revoke the power of attorney consistent with
2 my rights herein at any time.

3

4 Parent's/Custodian's/Guardian's Signature:

5

6 Date:

7

8 Signature of other parent or of parent who shares legal custody with
9 a custodian who signed above:

10

11 Date:

12

13

14 Witness's Signature:

15

16 Address:

17

18 Date:

19

20

21 Witness's Signature:

22

23 Address:

24

25 Date:

26

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

28

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

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

1 'minor' wards without terminating parental or legal rights.
2 (cf: P.L.1995, c.76, s.2)

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

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

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

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

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

27 "Criminal proceeding" means any incarceration on criminal
28 charges, including pending charges, or a criminal sentence that
29 separates a parent, custodian, or guardian from a minor child or
30 'minor' ward.

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

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

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

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

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

1 "Determination of debilitation" means a written determination
2 made by the attending physician which contains the physician's
3 opinion to a reasonable degree of medical certainty regarding the
4 nature, cause, extent, and probable duration of the parent's or legal
5 custodian's debilitation.

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

11 "Guardian" means a person ¹[appointed by a court of competent
12 jurisdiction as a guardian of the person of a minor or an
13 incapacitated person] who has qualified as a guardian of the person
14 of a minor pursuant to court appointment¹, including^{1,1} but not
15 limited to^{1,1} a kinship legal guardian ¹, but does not mean a person
16 who is serving only as a guardian ad litem¹.

17 "Immigration administrative action" means any immigration
18 proceeding, enforcement action, detention, removal, or deportation
19 that separates a parent, custodian, or guardian from a minor child or
20 ward.

21 **["Incapacity"]** "Incapacitated" means the parent, custodian, or
22 guardian ¹[has a chronic and substantial inability, as a result of
23 mental or [organic] physical impairment, to understand the nature
24 and consequences of decisions concerning the care of] is impaired
25 by reason of mental illness, intellectual disability, physical illness
26 or disability, chronic use of drugs, chronic alcoholism, or other
27 cause, except minority, to the extent that the person lacks sufficient
28 capacity to manage the affairs of and provide care for¹ [one's] the
29 parent's, custodian's, or guardian's minor child or ¹minor¹ ward¹[,
30 and a consequent inability to make these decisions]¹.

31 "Military service" means duty by any person in the active
32 military service of the United States or the active military service of
33 the State, including in the National Guard or State Guard, that
34 separates a parent, custodian, or guardian from a minor child or
35 ¹minor¹ ward.

36 "Minor child" means a child under the age of ¹**[eighteen] 18¹**
37 years but excludes a child residing in a placement funded or
38 approved by the Division of Child Protection and Permanency in
39 the Department of Children and Families pursuant to either a
40 voluntary placement agreement or court order.

41 ¹**["Parent" means the biological or adoptive parent of a minor**
42 **child.]** "Minor ward" means a minor for whom a guardian is
43 appointed.¹

44 ¹**["Triggering"]** "Activating¹ event" means an event stated in the
45 [designation,] petition or decree [which] that empowers the
46 standby guardian to assume the duties of the office[, which event

1 may be the death, incapacity or debilitation, with the consent, of the
 2 custodial parent or legal custodian, whichever occurs first].
 3 1[Triggering] Activating¹ events include, but are not limited to:
 4 1[(1)]¹ the appointment of a standby guardian by a court of
 5 competent jurisdiction; 1[(2)]¹ the parent's, custodian's, or
 6 guardian's attending physician concludes that the parent, custodian,
 7 or guardian is 1["incapacitated" as defined in this section]
 8 incapacitated¹; 1[(3)]¹ the parent's, custodian's, or guardian's
 9 attending physician concludes that the parent, custodian, or
 10 guardian is 1["debilitated" as defined in this section] debilitated¹;
 11 1[(4)]¹ the parent, custodian, or guardian is subject to
 12 1["immigration administrative action" as defined in this section]
 13 immigration administrative action; 1[(5)]¹ the parent, custodian, or
 14 guardian is subject to 1["criminal proceedings" as defined in this
 15 section] criminal proceedings¹; 1[(6) the]¹ the parent, custodian, or
 16 guardian is in 1["military service" as defined in this section]
 17 military service¹; or 1[(7)]¹ the death of the parent, custodian, or
 18 guardian ¹in circumstances in which no testamentary guardianship
 19 or other more permanent care arrangement has been made for the
 20 minor child or minor ward; provided, however, that in no case shall
 21 a power of attorney triggered by the death of a parent, guardian, or
 22 custodian extend beyond the year that the power of attorney is in
 23 effect¹.

24 1["Ward" means an individual for whom a guardian is
 25 appointed.]¹

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

27

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

30 6. a. Upon petition of **[the]** a parent, custodian, guardian,
 31 **[legal custodian or designated standby guardian]** or attorney-in-fact
 32 appointed pursuant to N.J.S.3B:12-39, the court may appoint a
 33 standby guardian of a minor child or ¹minor¹ ward. The court may
 34 also appoint an alternate standby guardian, if identified by the
 35 petitioner, to act if the appointed standby guardian dies, becomes
 36 incapacitated, or otherwise refuses or is unable to assume the duties
 37 of the standby guardian after the **[death, incapacity or debilitation**
 38 **of the parent or legal custodian of the minor child]** **1[triggering]**
 39 **activating¹ event stated in the petition.**

40 b. A petition for the judicial appointment of a standby guardian
 41 of a minor child or ¹minor¹ ward shall state:

42 (1) which **1[triggering] activating¹** event or events shall cause
 43 the authority of the appointed standby guardian to become effective;

44 (2) **[that there is a significant risk that the parent or legal**
 45 **custodian will die, become incapacitated, or become debilitated as a**
 46 **result of a progressive chronic condition or a fatal illness; however,**

1 a petitioner shall not be required to submit medical documentation
2 of the parent's or legal custodian's terminal status by his attending
3 physician; and

4 (3) ~~the name, and address, and qualifications~~ of the
5 proposed standby guardian; and

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

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

11 d. The court shall appoint the standby guardian if the court
12 finds that ~~there is a significant risk that the parent or legal~~
13 ~~custodian will die, become incapacitated, or become debilitated as a~~
14 ~~result of a progressive chronic condition or a fatal illness,~~ the
15 proposed standby guardian is fit and willing to assume the duties of
16 that role, and that the interests of the minor child or ward would be
17 promoted by the appointment of the standby guardian.

18 e. The decree appointing the standby guardian shall specify the
19 ~~triggering~~ activating¹ event which shall activate the authority of
20 the standby guardian.

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

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

39

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

42 7. a. Upon the occurrence of ~~a triggering~~ an activating¹
43 event set forth in a decree appointing a standby guardian, the
44 standby guardian shall be immediately¹ empowered to assume
45 ~~the~~ guardianship¹ duties ~~of his office immediately~~¹.

46 b. ~~If the triggering event is the incapacity or debilitation of the~~
47 ~~parent or legal custodian, the attending physician shall provide a~~

1 copy of his determination to the appointed standby guardian if the
2 guardian's identity is known to the attending physician.】 (Deleted
3 by amendment, P.L. _____, c. _____) (pending before the Legislature as
4 this bill)

5 c. Within **【60】** 90 days following the assumption of
6 guardianship duties, the appointed standby guardian shall petition
7 the court for confirmation. The confirmation petition shall include a
8 determination **【of incapacity or debilitation or a death certificate, as**
9 **appropriate】** that the **‘【triggering】** activating¹ event has occurred.

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

15 e. A standby guardian appointed pursuant to section 6 of **【this**
16 **act】** P.L.1995, c.76 (C.3B:12-72) may decline appointment at any
17 time before the assumption of **‘【his】** standby guardianship¹ duties
18 by filing a written statement to that effect with the court, with
19 notice to be provided to the petitioner and to the minor child or
20 ‘minor¹ward if the **【latter】** child or ward is 14 years of age or older.

21 f. Commencement of the duties of the standby guardian shall
22 confer upon the appointed standby guardian shared authority with
23 the **【custodial】** parent, custodian, or **【legal custodian】** guardian of
24 the minor child or ‘minor¹ward, unless the petition states
25 otherwise.

26 g. A parent, custodian, or guardian **【or legal custodian】** may
27 revoke a standby guardianship by executing a written revocation,
28 filing it with the court where the petition was filed, and promptly
29 notifying the appointed standby guardian of the revocation. An
30 unwritten revocation may be considered by the court if the
31 revocation can be proved by clear and convincing evidence
32 submitted to the court.

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

34

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

37

38 7. This act shall take effect on the 90th day following
39 enactment.