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

11 a. **[A]** ¹**[(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]**¹
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]**¹ a minor ¹child¹ or
26 ¹**[an incapacitated person]** a minor ward¹ **[,] 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 ¹minor¹ 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, provided¹,¹ however¹,¹ 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**[.**

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

3 (2)¹ may become effective upon proper execution of the power
4 of attorney or upon another ¹["triggering"] activating¹ event
5 specified in a properly executed power of attorney.

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

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

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

26 ¹["h."] g.¹ 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 ¹minor¹ 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 ¹minor¹ ward.

8 ¹“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.¹

15 “Guardian” means a person ¹[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,¹ including^{1,1} but not
19 limited to^{1,1} a kinship legal guardian ¹, but does not mean a person
20 who is serving only as a guardian ad litem¹.

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 ¹minor¹ ward.

25 “Incapacitated” means the parent, custodian, or guardian ¹[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 for¹ the parent’s, custodian’s, or guardian’s
33 minor child or ¹minor¹ 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 ¹minor¹ 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 ¹“Minor ward” means a minor child for whom a guardian is
46 appointed.¹

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

3 ¹“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. ¹Triggering Activating events include, but are not
 6 limited to: ¹(1) the execution of a power of attorney pursuant to
 7 this section; ¹(2) the parent’s, custodian’s, or guardian’s
 8 attending physician concludes that the parent, custodian, or
 9 guardian is ¹“incapacitated” as defined in this section
 10 incapacitated¹; ¹(3) the parent’s, custodian’s, or guardian’s
 11 attending physician concludes that the parent, custodian, or
 12 guardian is ¹“debilitated” as defined in this section debilitated¹;
 13 ¹(4) the parent, custodian, or guardian is subject to
 14 ¹“immigration administrative action” as defined in this section
 15 immigration administrative action¹; ¹(5) the parent, custodian,
 16 or guardian is subject to ¹“criminal proceedings” as defined in this
 17 section criminal proceedings¹; ¹(6) the parent, custodian, or
 18 guardian is in ¹“military service” as defined in this section
 19 military service¹; or ¹(7) the death of the parent, custodian, or
 20 guardian ¹in 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 effect¹ .

26 “Unavailable” means: ¹(a) 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; ¹(b) a
 30 parent whose identity or whereabouts are unknown; or ¹(c) a
 31 parent who cannot be reached after diligent efforts.

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

34 ¹[i.] h.¹ A delegation ¹made under this section¹ 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 ¹MINOR¹ 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^{1,1} but not limited to^{1,1}
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^{1,1} 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)'¹ admission to
27 or discharge from any hospital or medical care facility; to consult
28 with any '[provider of]' health care 'provider'¹; to consent to the
29 provision, withholding, modification^{1,1} 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^{1,1} but not limited to^{1,1} 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 ¹【child or ward】 minor
2 child(ren)/minor ward(s)¹ 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 ¹【“triggering event”】
7 “activating event(s)” (check ¹【one that applies】 all that apply¹):

8
9 The execution of this document on the latest date below; or

10
11 My attending physician concludes that I am ¹【mentally】¹
12 incapacitated, and thus unable to care for my ¹minor¹ child(ren)/
13 ¹minor¹ ward(s); or

14
15 My attending physician concludes that I am physically
16 debilitated, and thus unable to care for my ¹minor¹ child(ren)/
17 ¹minor¹ 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 ¹, if I have made no more permanent care
28 arrangements for my minor child or minor ward; or

29
30 Other (specify reason)¹.

31
32 In the event that the person designated above is unable or unwilling
33 to act as attorney-in-fact to my ¹minor¹child(ren)/ ¹minor¹ ward(s),
34 I hereby name (name, address¹,¹ and telephone number of alternate
35 attorney-in-fact), as alternate attorney-in-fact of my ¹minor¹
36 child(ren)/ ¹minor¹ 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 delegation¹【, or】¹; ¹(ii) a court of competent
43 jurisdiction appoints a custodian, guardian, or standby guardian for
44 the minor ¹【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)¹.

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 ¹【a triggering】 an activating¹ 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 ¹minor¹ ward, to make plans for the permanent future care
46 or the interim care of a minor child or ¹minor¹ 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 ¹minor¹
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 ¹minor¹ children or
7 ¹minor¹ 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 ¹minor¹ ward upon **【the death or a**
17 **determination of incapacity or debilitation, and with the consent, of**
18 **the parent or legal custodian】 ¹[a "triggering event" as defined in**
19 **this section】 an activating event¹.**

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 ¹minor¹ 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 ¹minor¹ 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 ¹【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 appointment¹, including¹,¹ but not
21 limited to¹,¹ a kinship legal guardian ¹, but does not mean a person
22 who is serving only as a guardian ad litem¹.

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 ¹【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 for¹ 【one's】 the
35 parent's, custodian's, or guardian's minor child or ¹minor¹ ward¹【,
36 and a consequent inability to make these decisions】¹.

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 ¹minor¹ ward.

42 "Minor child" means a child under the age of ¹【eighteen】 18¹
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 ¹["Parent" means the biological or adoptive parent of a minor
2 child.] "Minor ward" means a minor for whom a guardian is
3 appointed.¹

4 ¹["Triggering] "Activating¹ 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 ¹["Triggering] Activating¹ events include, but are not limited to:
10 ¹[(1)]¹ the appointment of a standby guardian by a court of
11 competent jurisdiction; ¹[(2)]¹ the parent's, custodian's, or
12 guardian's attending physician concludes that the parent, custodian,
13 or guardian is ¹["incapacitated" as defined in this section]
14 incapacitated¹; ¹[(3)]¹ the parent's, custodian's, or guardian's
15 attending physician concludes that the parent, custodian, or
16 guardian is ¹["debilitated" as defined in this section] debilitated¹;
17 ¹[(4)]¹ the parent, custodian, or guardian is subject to
18 ¹["immigration administrative action" as defined in this section]
19 immigration administrative action; ¹[(5)]¹ the parent, custodian, or
20 guardian is subject to ¹["criminal proceedings" as defined in this
21 section] criminal proceedings¹; ¹[(6) the]¹ the parent, custodian, or
22 guardian is in ¹["military service" as defined in this section]
23 military service¹; or ¹[(7)]¹ the death of the parent, custodian, or
24 guardian ¹in 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 effect¹.

30 ¹["Ward" means an individual for whom a guardian is
31 appointed.]¹
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 ¹minor¹ 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] ¹[triggering]
45 activating¹ event stated in the petition.

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

3 (1) which ¹**【triggering】 activating**¹ 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 ¹**【triggering】 activating**¹ 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 ¹minor¹ 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 ¹**['a triggering] an activating'**
4 event set forth in a decree appointing a standby guardian, the
5 standby guardian shall be ¹**'immediately'** empowered to assume
6 ¹**['the] guardianship'** duties ¹**[' 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 ¹['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 ¹**['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 ¹**'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**
32 **of the minor child or ¹'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 90th day following
47 enactment.

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4

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

CHAPTER 192
(CORRECTED COPY)

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

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

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

Delegation of parent's, custodian's, or guardian's powers regarding child's or minor ward's care, custody or property; limitations.

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

a. A parent, other than where sole or full legal and physical custody of the parent's minor child has been awarded to another by a court of competent jurisdiction, with the consent of the other parent, unless the other parent is deceased, incapacitated, or unavailable, or a custodian of a minor child who is not that child's parent, with the consent of a parent with whom the custodian shares legal custody, unless that parent is deceased, incapacitated, or unavailable, or a guardian of a minor child or a minor ward may:

by a properly executed power of attorney, delegate to another person any of the parent's, custodian's, or guardian's powers regarding care, custody, or property of the minor child or minor ward.

b. A delegation made under this section shall: (1) expire one year from the effective date of the properly executed power of attorney, provided, however, that the parent, custodian, or guardian shall be permitted to renew the delegation for additional one-year periods using the same process as applies to the original delegation, and may be extended for an additional six months in exigent circumstances; and

(2) may become effective upon proper execution of the power of attorney or upon another activating event specified in a properly executed power of attorney.

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

d. A parent, custodian, or guardian may delegate under this section only such powers as the parent, custodian, or guardian possesses.

e. A delegation made under this section shall not deprive the parent, custodian, or guardian of the parent's, custodian's, or guardian's existing powers regarding care, custody, or property of the minor child or minor ward, but the parent, custodian, or guardian shall exercise such powers, insofar as the parent, custodian, or guardian is able, concurrently with the attorney-in-fact named in the power of attorney. In the event of a disagreement between a parent, custodian, or guardian and the attorney-in-fact regarding the care, custody, or property of the minor child or minor ward, the decision of the parent, custodian, or guardian shall control.

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

g. As used in this section:

"Activating event" means an event stated in the delegation that empowers the attorney-in-fact to assume the duties of the office. Activating events include, but are not limited to: the execution of a power of attorney pursuant to this section; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is incapacitated; the parent's, custodian's, or guardian's attending physician concludes that the

parent, custodian, or guardian is debilitated; the parent, custodian, or guardian is subject to immigration administrative action; the parent, custodian, or guardian is subject to criminal proceedings; the parent, custodian, or guardian is in military service; or the death of the parent, custodian, or guardian in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward, provided, however, that in no case shall a power of attorney activated by the death of a parent, guardian, or custodian extend beyond the year that the power of attorney is in effect.

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

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

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

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

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

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

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

“Guardian” means a person who has qualified as a guardian of the person of a minor pursuant to court appointment, including, but not limited to, a kinship legal guardian, but does not mean a person who is serving only as a guardian ad litem.

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

“Incapacitated” means the parent, custodian, or guardian is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic alcoholism, or other cause, except minority, to the extent that the person lacks sufficient capacity to manage the affairs of and provide care for the parent’s, custodian’s, or guardian’s minor child or minor ward, and a consequent inability to make these decisions.

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

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

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

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

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

h. A delegation made under this section may, but need not, be in the following form:

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

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

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

Such parent is deceased.

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

Such parent is mentally or physically unable to give consent.

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

Identity or whereabouts of such parent are unknown to me.

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

Diligent efforts included:

Other: _____

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

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

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

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

___Health Care. The attorney-in-fact shall have the authority, to the same extent that a parent/custodian/guardian would have the authority, to make medical, dental, and mental health decisions; to sign documents, waivers, and releases required by a hospital or physician; to access medical, dental, or mental health records concerning the minor child(ren)/minor ward(s); to authorize the minor child(ren)' / minor ward(s)' admission to or discharge from any hospital or medical care facility; to consult with any health care provider; to consent to the provision, withholding, modification, or withdrawal of any health care procedure; and to make other decisions related to the health care needs of the minor child(ren)/minor ward(s).

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

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

___All Other Powers. The attorney-in-fact shall have the authority to handle and engage in any and all other matters relating to the care, custody, and property of the minor child(ren)/minor ward(s) which are permitted pursuant to applicable State law.

By this delegation, I/we provide that the attorney-in-fact's authority shall take effect upon the following "activating event(s)" (check all that apply):

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

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

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

___ I am detained in immigration detention, removed, or deported; or

___ I am incarcerated based on criminal charges, including pending charges, or conviction; or

___ I am deployed in military service; or

___ Upon my death, if I have made no more permanent care arrangements for my minor child or minor ward; or

___ Other (specify reason).

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

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

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

In the event that an activating event occurs and a power of attorney is activated pursuant to this statement, I declare that it is my intention to retain full parental rights to the extent consistent with my condition and circumstances and, further, that I retain the authority to revoke the power of attorney consistent with my rights herein at any time.

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

Date:

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

Date:

Witness's Signature:

Address:

Date:

Witness's Signature:

Address:

Date:

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

C.3B:12-68 Findings, declarations.

2. The Legislature finds and declares that there is an imperative need to create an expeditious manner of establishing a guardianship known as a standby guardianship, in order to enable a parent, custodian, or guardian who cannot currently, or who anticipates being unable to, provide adequate care to a minor child or minor ward, to make plans for the permanent future care or the interim care of a minor child or minor ward without terminating parental or legal rights. The Legislature further finds that current law does not adequately address the needs of parents, custodians, or guardians who are facing separation from their minor children or minor wards because of illness, immigration administrative action, criminal proceedings, military service, or other reasons, and who desire to make plans for the future care of their minor children or minor wards without terminating parental or legal rights.

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

C.3B:12-69 Definitions.

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

"Activating event" means an event stated in the petition or decree that empowers the standby guardian to assume the duties of the office. Activating events include, but are not limited to: the appointment of a standby guardian by a court of competent jurisdiction; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is incapacitated; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is debilitated; the parent, custodian, or guardian is subject to immigration administrative action; the parent, custodian, or guardian is subject to criminal proceedings; the parent, custodian, or guardian is in military service; or the death of the parent, custodian, or guardian in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward; provided, however, that in no case shall a power of attorney triggered by the death of a parent, guardian, or custodian extend beyond the year that the power of attorney is in effect.

"Appointed standby guardian" means a person appointed pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the duties of guardian over the person and, when applicable, the property of a minor child or minor ward upon an activating event.

"Attending physician" means the physician who has primary responsibility for the treatment and care for the petitioning parent, custodian, or guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this act. When no physician has

this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to P.L.1995, c.76 (C.3B:12-67 et seq.).

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

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

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

“Guardian” means a person who has qualified as a guardian of the person of a minor pursuant to court appointment, including, but not limited to, a kinship legal guardian, but does not mean a person who is serving only as a guardian ad litem.

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

“Incapacitated” means the parent, custodian, or guardian is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic alcoholism, or other cause, except minority, to the extent that the person lacks sufficient capacity to manage the affairs of and provide care for the parent’s, custodian’s, or guardian’s minor child or minor ward.

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

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

“Minor ward” means a minor for whom a guardian is appointed.

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

C.3B:12-72 Appointment of standby guardian by court.

6. a. Upon petition of a parent, custodian, guardian, or attorney-in-fact appointed pursuant to N.J.S.3B:12-39, the court may appoint a standby guardian of a minor child or minor ward. The court may also appoint an alternate standby guardian, if identified by the petitioner, to act if the appointed standby guardian dies, becomes incapacitated, or otherwise refuses or is unable to assume the duties of the standby guardian after the activating event stated in the petition.

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

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

(2) the name and address of the proposed standby guardian; and

(3) the qualifications of the proposed standby guardian.

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

d. The court shall appoint the standby guardian if the court finds that the proposed standby guardian is fit and willing to assume the duties of that role, and that the interests of the minor child or ward would be promoted by the appointment of the standby guardian.

e. The decree appointing the standby guardian shall specify the activating event which shall activate the authority of the standby guardian.

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

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

C.3B:12-73 Immediate assumption of duties of appointed standby guardian; revocation in writing.

7. a. Upon the occurrence of an activating event set forth in a decree appointing a standby guardian, the standby guardian shall be immediately empowered to assume guardianship duties.

b. (Deleted by amendment, P.L.2021, c.192)

c. Within 90 days following the assumption of guardianship duties, the appointed standby guardian shall petition the court for confirmation. The confirmation petition shall include a determination that the activating event has occurred.

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

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

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

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

Repealer.

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

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

Approved August 5, 2021.

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.

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

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

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

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

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

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

By this delegation, I/we provide that the attorney-in-fact's authority shall take effect upon the following "triggering event" (check one 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 **【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 The bill revises several definitions in the Standby Guardianship
23 Act, P.L.1995, c.76 (C.3B:12-67 et seq.). Currently, an “appointed
24 standby guardian” is defined as a person appointed by the court to
25 assume the duties of guardian over the person and, when applicable,
26 the property of a minor child, upon the death of, or a determination
27 of incapacity or debilitation, and with the consent of, the parent or
28 legal custodian. The bill removes the provision concerning “death
29 or a determination of incapacity or debilitation” and replaces it with
30 “a triggering event.”

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

44 STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

45 In addition, the bill revises section 2 of P.L.1995, c.76 (C.3B:12-
46 68), which sets out legislative findings and declarations for the
47 Standby Guardianship Act. Currently, this section provides that the
48 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.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4640

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 25, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4640.

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

STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

The bill adds several definitions of events that may constitute an “activating event.” These events include a “criminal proceeding” (defined as any incarceration on criminal charges, including pending charges, or a criminal sentence that separates a parent, custodian, or guardian from a minor child or minor ward); an “immigration administrative action” (any immigration proceeding, enforcement action, detention, removal, or deportation that separates a parent, custodian, or guardian from a minor child or ward); and “military service” (duty by any person in the active military service of the United States or the active military service of the State, including in the National Guard or State Guard, that separates a parent, custodian, or guardian from a minor child or minor ward).

STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

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

STANDBY GUARDIANSHIP ACT: PROCEDURE

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

The bill as amended deletes the term “triggering event” in current law and replaces it with the term “activating event.” The bill also removes the requirement in current law for an attending physician to provide a copy of his determination concerning the incapacity or debilitation of the parent or legal custodian under certain circumstances.

Under current law, within 60 days following the assumption of guardianship duties, the appointed standby guardian must petition the court for confirmation. The confirmation petition must include a determination of incapacity or debilitation or a death certificate, as appropriate. The amended bill increases this time period from 60 days to 90 days. In addition, the bill removes the requirement that the appointed standby guardian must include a determination of incapacity or debilitation or a death certificate in the confirmation petition. Instead, under the bill as amended, the confirmation petition must include a determination that the activating event has occurred.

DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

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

The amended bill defines the term "incapacitated" to mean the parent, custodian, or guardian is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic alcoholism, or other cause, except minority, to the extent that the person lacks sufficient capacity to manage the affairs of and provide care for the parent's, custodian's, or guardian's minor child or minor ward, and a consequent inability to make these decisions.

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

The bill provides that a delegation of parental powers may become effective upon proper execution of the power of attorney or upon another "activating event." The bill defines an "activating event" as an event stated in the delegation that empowers the attorney-in-fact to assume the duties of the office. Activating events include, but are not limited to: the execution of a power of attorney pursuant to the bill; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is incapacitated; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is debilitated; the parent, custodian, or guardian is subject to immigration administrative action; the parent, custodian, or guardian is subject to criminal proceedings; the parent, custodian, or guardian is in military service; or the death of the parent, custodian, or guardian in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward. The bill specifies that in no

case shall a power of attorney activated by the death of a parent, guardian, or custodian extend beyond the year that the power of attorney is in effect.

Current law allows the delegation of parental powers for a period of up to six months. Under the bill as amended, the delegation would expire after one year, and could be renewed for additional one-year periods. The delegation of parental powers could also be extended for an additional six months in exigent circumstances, as defined in the amended bill.

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

The bill as amended specifies that a delegation would not deprive the parent, custodian, or guardian of the parent's, custodian's, or guardian's existing powers regarding care, custody, or property of the minor child or minor ward, but the parent, custodian, or guardian would exercise such powers, insofar as the parent, custodian, or guardian is able, concurrently with the attorney-in-fact named in the power of attorney.

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

SUGGESTED FORM

The bill as amended sets out a suggested form for a power of attorney and delegation of authority pursuant to N.J.S.3B:12-39. The form provides in pertinent part:

By this delegation, I/we provide that the attorney-in-fact's authority shall take effect upon the following "activating event" (check all that apply):
 The execution of this document on the latest date below; or
 My attending physician concludes that I am incapacitated, and thus unable to care for my minor child(ren)/minor ward(s); or
 My attending physician concludes that I am physically debilitated, and thus unable to care for my minor child(ren)/minor ward(s); or
 I am detained in immigration detention, removed, or deported; or
 I am incarcerated based on criminal charges, including pending charges, or conviction; or
 I am deployed in military service; or
 Upon my death, if I have made no more permanent care arrangements for my minor child or minor ward; or

___ Other (specify reason).

Among other provisions, the suggested form provides:

In the event that an activating event occurs and a power of attorney is activated pursuant to this statement, I declare that it is my intention to retain full parental rights to the extent consistent with my condition and circumstances and, further, that I retain the authority to revoke the power of attorney consistent with my rights herein.

COMMITTEE AMENDMENTS

The committee amendments:

- delete the definition of “ward” in the bill, and provide that standby guardianship under P.L.1995, c.76 (C.3B:12-67 et seq.) and a delegation of parental powers under N.J.S.3B:12-39, in addition to applying to a minor child, also apply to a minor ward (a minor child for whom a guardian is appointed);
- provide that a delegation of parental powers may be extended for an additional six months in exigent circumstances;
- add a definition of “exigent circumstances”;
- replace the term “triggering event” with “activating event”;
- provide that the death of the parent, custodian, or guardian constitutes an activating event if the death takes place in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward;
- replace certain language throughout the bill with gender neutral language; and
- make technical changes as to grammar, punctuation, and syntax.

SENATE, No. 2886

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS

Revises law concerning standby guardianship for minor child or ward.

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

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

8 3B:12-39. Delegation of parent's, 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 Well-Being. The attorney-in-fact shall have the power to
2 provide for the physical and mental well-being of the
3 child(ren)/ward(s), including but not limited to providing food and
4 shelter.

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

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

24
25 Travel. The attorney-in-fact shall have the authority to make
26 travel arrangements on behalf of the child(ren)/ward(s) for
27 destinations both inside and outside of the United States by air
28 and/or ground transportation; to accompany the child(ren)/ward(s)
29 on any such trips; and to make any and all related arrangements on
30 behalf of the child(ren)/ward(s), including but not limited to 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 child(ren)/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 which are permitted
40 pursuant to applicable State law.

41
42 By this delegation, I/we provide that the attorney-in-fact's authority
43 shall take effect upon the following "triggering event" (check one
44 that applies):

45
46 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 child(ren)/ward(s); or

3

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

6

7 I am detained in immigration detention, removed, or deported;
8 or

9

10 I am incarcerated based on criminal charges, including pending
11 charges, or conviction; or

12

13 I am deployed in military service; or

14

15 Upon my death.

16

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

21

22 I/we understand that this delegation will expire one year from the
23 execution of this document on the latest date below, and that the
24 authority of the attorney-in-fact, if any, will cease, unless by that
25 date (i) I renew this delegation, by the same process applicable to
26 the original delegation, or (ii) a court of competent jurisdiction
27 appoints a custodian, guardian, or standby guardian for the minor
28 child or ward.

29

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

33

34 In the event that a triggering event occurs and a power of attorney is
35 activated pursuant to this statement, I declare that it is my intention
36 to retain full parental rights to the extent consistent with my
37 condition and circumstances and, further, that I retain the authority
38 to revoke the power of attorney consistent with my rights herein at
39 any time.

40

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

42

43 Date:

44

45 Signature of other parent or of parent who shares legal custody with
46 a custodian who signed above:

47

48 Date:

1 Witness's Signature:

2

3 Address:

4

5 Date:

6

7

8 Witness's Signature:

9

10 Address:

11

12 Date:

13

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

15

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

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

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

35

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

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

39 "Appointed standby guardian" means a person appointed
40 pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72) to assume the
41 duties of guardian over the person and, when applicable, the
42 property of a minor child or ward upon **【the death or a**
43 **determination of incapacity or debilitation, and with the consent, of**
44 **the parent or legal custodian】** a "triggering event" as defined in this
45 section.

46 "Attending physician" means the physician who has primary
47 responsibility for the treatment and care for the petitioning parent,

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

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

12 "Criminal proceeding" means any incarceration on criminal
13 charges, including pending charges, or a criminal sentence that
14 separates a parent, custodian, or guardian from a minor child or
15 ward.

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

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

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

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

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

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

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

43 "Guardian" means a person appointed by a court of competent
44 jurisdiction as a guardian of the person of a minor or an
45 incapacitated person, including but not limited to a kinship legal
46 guardian.

1 “Immigration administrative action” means any immigration
2 proceeding, enforcement action, detention, removal, or deportation
3 that separates a parent, custodian, or guardian from a minor child or
4 ward.

5 **【"Incapacity"】** “Incapacitated” means the parent, custodian, or
6 guardian has a chronic and substantial inability, as a result of
7 mental or 【organic】 physical impairment, to understand the nature
8 and consequences of decisions concerning the care of 【one's】 the
9 parent’s, custodian’s, or guardian’s minor child or ward, and a
10 consequent inability to make these decisions.

11 “Military service” means duty by any person in the active
12 military service of the United States or the active military service of
13 the State, including in the National Guard or State Guard, that
14 separates a parent, custodian, or guardian from a minor child or
15 ward.

16 "Minor child" means a child under the age of eighteen years but
17 excludes a child residing in a placement funded or approved by the
18 Division of Child Protection and Permanency in the Department of
19 Children and Families pursuant to either a voluntary placement
20 agreement or court order.

21 “Parent” means the biological or adoptive parent of a minor
22 child.

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

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

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

42
43 4. Section 6 of P.L.1995, c.76 (C.3B:12-72) is amended to read
44 as follows:

45 6. a. Upon petition of **【the】** a parent, custodian, guardian,
46 **【legal custodian or designated standby guardian】** or attorney-in-fact
47 appointed pursuant to N.J.S.3B:12-39, the court may appoint a

1 standby guardian of a minor child or ward. The court may also
2 appoint an alternate standby guardian, if identified by the petitioner,
3 to act if the appointed standby guardian dies, becomes
4 incapacitated, or otherwise refuses or is unable to assume the duties
5 of the standby guardian after the **【death, incapacity or debilitation**
6 **of the parent or legal custodian of the minor child】** triggering event
7 stated in the petition.

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

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

12 (2) **【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; however,**
15 **a petitioner shall not be required to submit medical documentation**
16 **of the parent's or legal custodian's terminal status by his attending**
17 **physician; and**

18 **(3)】** the name**【,】** and address**【, and qualifications】** of the
19 proposed standby guardian; and

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

21 c. A parent, custodian, or **【legal custodian】** guardian
22 petitioning the court pursuant to this section shall not be required to
23 appear in court if unable to appear, except upon motion of the court
24 or by any party and for good cause shown.

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

32 e. The decree appointing the standby guardian shall specify the
33 triggering event which shall activate the authority of the standby
34 guardian.

35 f. Upon petition for the appointment of a standby guardian by a
36 person as specified in subsection a. of this section, notice shall be
37 served on the minor child's parent **【or legal】**, custodian, guardian,
38 or **【the designated standby guardian】** attorney-in-fact appointed
39 pursuant to N.J.S.3B:12-39, as appropriate, within 30 days of the
40 filing. **【The】** During the time that the petition is pending, the court
41 shall give preference to maintaining custody with **【either the parent**
42 **or legal custodian, or the designated standby guardian, during the**
43 **time that the petition is pending】** whoever had custody of the minor
44 child or ward at the time the petition was filed. Nothing in this
45 section shall be construed to deprive any parent of parental rights. If
46 the petition alleges that after diligent search, the parent **【or legal】**,
47 custodian, or guardian cannot be found, the parent **【or legal】**,

1 custodian, or guardian shall be served by notice delivered pursuant
2 to New Jersey court rules. No notice is necessary to a **parent**
3 person who is deceased or to a parent whose parental rights have
4 been previously terminated by court order or consent.
5 (cf: P.L.1995, c.76, s.6)

6
7 5. Section 7 of P.L.1995, c.76 (C.3B:12-73) is amended to read
8 as follows:

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

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

18 c. Within **【60】** 90 days following the assumption of
19 guardianship duties, the appointed standby guardian shall petition
20 the court for confirmation. The confirmation petition shall include a
21 determination **【of incapacity or debilitation or a death certificate, as**
22 **appropriate】** that the triggering event has occurred.

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

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

34 f. Commencement of the duties of the standby guardian shall
35 confer upon the appointed standby guardian shared authority with
36 the **【custodial】** parent, custodian, or 【legal custodian】 guardian of
37 the minor child or ward, unless the petition states otherwise.

38 g. A parent, custodian, or guardian **【or legal custodian】** may
39 revoke a standby guardianship by executing a written revocation,
40 filing it with the court where the petition was filed, and promptly
41 notifying the appointed standby guardian of the revocation. An
42 unwritten revocation may be considered by the court if the
43 revocation can be proved by clear and convincing evidence
44 submitted to the court.

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

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

3

4 7. This act shall take effect on the 90th day following
5 enactment.

6

7

8

STATEMENT

9

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

17 STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

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

40 STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

41 In addition, the bill revises section 2 of P.L.1995, c.76 (C.3B:12-
42 68), which sets out legislative findings and declarations for the
43 Standby Guardianship Act. Currently, this section provides that the
44 purpose of a standby guardianship is to enable a custodial parent or
45 legal custodian “suffering from a progressive chronic condition or a
46 fatal illness” to make plans for the child. Under the bill, this
47 language would be deleted, and the stated purpose would be
48 expanded to apply to a parent, custodian, or guardian “who cannot

1 currently, or who anticipates being unable to, provide adequate
2 care” to the child.

3 STANDBY GUARDIANSHIP ACT: PROCEDURE

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

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

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

32 DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

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

46 The bill defines the term “incapacitated” to mean a parent,
47 custodian, or guardian who has a chronic and substantial inability,
48 as a result of mental or physical impairment, to understand the

1 nature and consequences of decisions concerning the care of the
2 parent's, custodian's, or guardian's minor child, and a consequent
3 inability to make these decisions.

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

11 The bill provides that a delegation of parental powers may
12 become effective upon proper execution of the power of attorney or
13 upon another "triggering event." The bill defines a "triggering
14 event" as an event stated in the delegation that empowers the
15 attorney-in-fact to assume the duties of the office. Triggering
16 events include, but are not limited to:

17 (1) the execution of a power of attorney pursuant to the bill; (2)
18 the parent's, custodian's, or guardian's attending physician
19 concludes that the parent, custodian, or guardian is "incapacitated";
20 (3) the parent's, custodian's or guardian's attending physician
21 concludes that the parent, custodian, or guardian is "debilitated";
22 (4) the parent, custodian, or guardian is subject to "immigration
23 administrative action"; (5) the parent, custodian, or guardian is
24 subject to "criminal proceedings"; (6) the parent, custodian, or
25 guardian is in "military service"; or (7) the death of the parent,
26 custodian, or guardian.

27 Current law allows the delegation of parental powers for a period
28 of up to six months. Under the bill, the delegation would expire
29 after one year, and could be renewed for additional one-year
30 periods.

31 Under the bill, a parent, custodian, or guardian may revoke a
32 delegation by notifying the attorney-in-fact orally, in writing, or by
33 any other act evidencing a specific intent to revoke the power of
34 attorney.

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

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

43 SUGGESTED FORM

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

1 By this delegation, I/we provide that the attorney-
2 in-fact's authority shall take effect upon the
3 following "triggering event" (check one that
4 applies):
5 ___The execution of this document on the latest
6 date below; or
7 ___My attending physician concludes that I am
8 mentally incapacitated, and thus unable to care for
9 my child(ren)/ward(s); or
10 ___My attending physician concludes that I am
11 physically debilitated, and thus unable to care for
12 my child(ren)/ward(s); or
13 ___I am detained in immigration detention,
14 removed, or deported; or
15 ___I am incarcerated based on criminal charges,
16 including pending charges, or conviction; or
17 ___I am deployed in military service; or
18 ___Upon my death.

19
20 Among other provisions, the suggested form provides:

21
22 In the event that a triggering event occurs and a
23 power of attorney is activated pursuant to this
24 statement, I declare that it is my intention to retain
25 full parental rights to the extent consistent with my
26 condition and circumstances and, further, that I retain
27 the authority to revoke the power of attorney
28 consistent with my rights herein at any time.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2886

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2886.

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

STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

The bill adds the following definitions:

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

“Guardian” means a person appointed by a court of competent jurisdiction as a guardian of a minor child or an incapacitated person, including but not limited to a kinship legal guardian; and

“Ward” means a person for whom a guardian is appointed.

The bill further adds a number of definition in the context of what constitutes a “triggering event.” The term “criminal proceeding” is defined as any incarceration on criminal charges, including pending charges, or a criminal sentence that separates a parent, custodian, or

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

STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

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

STANDBY GUARDIANSHIP ACT: PROCEDURE

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

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

Under current law, within 60 days following the assumption of guardianship duties, the appointed standby guardian must petition the court for confirmation. The confirmation petition must include a determination of incapacity or debilitation or a death certificate, as appropriate. The bill changes the time period from 60 days to 90 days following assumption of guardianship duties. In addition, the bill removes the requirement for a determination of incapacity or

debilitation or a death certificate, and provides instead that the petition must include a determination that the triggering event has occurred.

DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

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

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

The bill establishes a definition of the term “unavailable” as applied to a parent. Under the bill, “unavailable” means: (1) a parent who has not been involved in raising or financially supporting the child for two years or a third of the life of the child, whichever is less, immediately preceding the delegation; (2) a parent whose identity or whereabouts are unknown to the delegating parent; or (3) a parent who cannot be reached after diligent efforts.

The bill provides that a delegation of parental powers may become effective upon proper execution of the power of attorney or upon another “triggering event.” Under the bill, a triggering event is an event stated in the delegation that empowers the attorney-in-fact to assume the duties of the office.

Triggering events may include, but are not limited to: (1) the execution of a power of attorney pursuant to the bill; (2) the parent’s, custodian’s, or guardian’s attending physician concludes that the parent, custodian, or guardian is incapacitated; (3) the parent’s, custodian’s or guardian’s attending physician concludes that the parent, custodian, or guardian is debilitated; (4) the parent, custodian, or guardian is subject to immigration administrative action; (5) the parent, custodian, or guardian is subject to criminal proceedings; (6) the parent, custodian, or guardian is in military service; or (7) the death of the parent, custodian, or guardian.

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

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

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

The bill also specifies that its provisions should not be construed to involuntarily deprive any parent of parental rights.

COMMITTEE AMENDMENTS

The committee amendments replace certain language throughout the bill with gender neutral language.

The committee amendments revise the definition of “ward” throughout the bill to replace the term “individual” with the term “person.”

The committee amendments remove a definition of “parent” that would have unintentionally excluded certain legal parents of minor children from the provisions of the bill.

The committee amendments make technical changes as to grammar, punctuation, and syntax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2886

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 11, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2886 (1R), with committee amendments.

As amended, this bill makes a number of changes to the “New Jersey Standby Guardianship Act,” P.L.1995, c.76 (C.3B:12-67 et seq.). The act allows parents and guardians to ask the court to appoint temporary guardians for their children without giving up parental rights. The bill as amended also expands N.J.S.3B:12-39, which permits parents to delegate their parental powers through a power of attorney without involving the court.

STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

The bill adds several definitions of events that may constitute an “activating event.” These events include a “criminal proceeding” (defined as any incarceration on criminal charges, including pending charges, or a criminal sentence that separates a parent, custodian, or guardian from a minor child or minor ward); an “immigration administrative action” (any immigration proceeding, enforcement action, detention, removal, or deportation that separates a parent, custodian, or guardian from a minor child or ward); and “military service” (duty by any person in the active military service of the United States or the active military service of the State, including in the National Guard or State Guard, that separates a parent, custodian, or guardian from a minor child or minor ward).

STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

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

STANDBY GUARDIANSHIP ACT: PROCEDURE

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

The bill as amended deletes the term “triggering event” in current law and replaces it with the term “activating event.” The bill also removes the requirement in current law for an attending physician to provide a copy of his determination concerning the incapacity or debilitation of the parent or legal custodian under certain circumstances.

Under current law, within 60 days following the assumption of guardianship duties, the appointed standby guardian must petition the court for confirmation. The confirmation petition must include a determination of incapacity or debilitation or a death certificate, as appropriate. The amended bill increases this time period from 60 days to 90 days. In addition, the bill removes the requirement that the appointed standby guardian must include a determination of incapacity or debilitation or a death certificate in the confirmation petition. Instead, under the bill as amended, the confirmation petition must include a determination that the activating event has occurred.

DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

N.J.S.3B:12-39 authorizes a parent or legal guardian, by a properly executed power of attorney, to delegate powers regarding care, custody, or property of his minor child or ward to another

person. The court is not involved in this process. Under the current statute, the parent or guardian may delegate the parent or guardian's powers with the consent of the other parent, or without such consent if the other parent is incapacitated. The bill as amended expands the instances when a parent, custodian, or guardian may delegate the parent's, custodian's, or guardian's powers. When one parent seeks to make a delegation, or when a custodian who shares legal custody with a parent seeks to do so, the bill requires the consent of the other parent or the consent of the parent who shares legal custody with the custodian, unless such parent is incapacitated or unavailable.

The amended bill defines the term "incapacitated" to mean the parent, custodian, or guardian is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic alcoholism, or other cause, except minority, to the extent that the person lacks sufficient capacity to manage the affairs of and provide care for the parent's, custodian's, or guardian's minor child or minor ward, and a consequent inability to make these decisions.

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

The bill provides that a delegation of parental powers may become effective upon proper execution of the power of attorney or upon another "activating event." The bill defines an "activating event" as an event stated in the delegation that empowers the attorney-in-fact to assume the duties of the office. Activating events include, but are not limited to: the execution of a power of attorney pursuant to the bill; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is incapacitated; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is debilitated; the parent, custodian, or guardian is subject to immigration administrative action; the parent, custodian, or guardian is subject to criminal proceedings; the parent, custodian, or guardian is in military service; or the death of the parent, custodian, or guardian in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward. The bill specifies that in no case shall a power of attorney activated by the death of a parent, guardian, or custodian extend beyond the year that the power of attorney is in effect.

Current law allows the delegation of parental powers for a period of up to six months. Under the bill as amended, the delegation would expire after one year, and could be renewed for additional

one-year periods. The delegation of parental powers could also be extended for an additional six months in exigent circumstances, as defined in the amended bill.

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

The bill as amended specifies that a delegation would not deprive the parent, custodian, or guardian of the parent's, custodian's, or guardian's existing powers regarding care, custody, or property of the minor child or minor ward, but the parent, custodian, or guardian would exercise such powers, insofar as the parent, custodian, or guardian is able, concurrently with the attorney-in-fact named in the power of attorney.

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

These amendments make this bill identical to Assembly, No. 4640 (1R).

COMMITTEE AMENDMENTS:

The committee amendments:

- delete the definition of "ward" in the bill, and provide that standby guardianship under P.L.1995, c.76 (C.3B:12-67 et seq.) and a delegation of parental powers under N.J.S.3B:12-39, in addition to applying to a minor child, also apply to a minor ward (a minor child for whom a guardian is appointed);

- provide that a delegation of parental powers may be extended for an additional six months in exigent circumstances;

- add a definition of "exigent circumstances";

- add a provision specifying that in the event of a disagreement between a parent, custodian, or guardian and the attorney-in-fact regarding the care, custody, or property of the minor child or minor ward, the decision of the parent, custodian, or guardian shall control;

- replace the term "triggering event" in current law with "activating event";

- provide that the death of the parent, custodian, or guardian constitutes an activating event if the death takes place in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward;

- replace certain language throughout the bill with gender neutral language; and

- make technical changes as to grammar, punctuation, and syntax.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

Governor Murphy Signs Legislation to Allow Caregivers to Make Alternative Child Care Arrangements for Their Children

08/5/2021

TRENTON – Governor Phil Murphy today signed legislation, A4640/S2886, amending New Jersey’s standby guardianship laws to expand caregivers’ ability to make prospective alternative arrangements for their children in case of an emergency. This new law will help streamline the process to allow parents and guardians to designate alternative caregivers temporarily without going to court.

“When parents are unable to care for their children due to unforeseeable or emergent circumstances, they should have right to choose their caregivers,” **said Governor Murphy**. “This legislation will help parents make these necessary arrangements and give them peace of mind knowing that their children are being cared for.”

“This new law will provide a real sense of security for parents or caregivers who are unable to care for their children due to unforeseen or emergency circumstances,” **said DCF Commissioner Christine Norbut Beyer**. “Families know best who in their social circle is ready, willing and able to provide temporary care to their child/ren without unnecessary agency or court involvement.”

“The sad reality is that many parents find themselves in situations where they could have to leave their children on a moment’s notice, be it the possibility of a military deployment or ICE detention,” **said Senator M. Teresa Ruiz**. “By expanding the existing standby guardian law, we can ensure these individuals are able to create an action plan ahead of time, so they are confident their children will be in good hands should they be unable to care for them. This important legislation will pave the way for that.”

“With this expansion, standby guardianship will provide peace of mind for countless residents who for one reason or another are unable to look after their children,” **said Senator Nellie Pou**. “This is one humane thing we can do for families living in uncertain times. Not only is it good for the parents, but it is good for the children, providing them with continuity during an otherwise stressful and scary period.”

“This law will ensure more children receive the proper care and supervision they need if their parent is unable to provide adequate care due to challenging circumstances outside of their control,” **said Assemblymembers Raj Mukherji and Carol Murphy, in a joint statement**. “Rather than limiting standby guardianship to situations involving chronic or fatal illnesses, we must also acknowledge the possibility of military service, incarceration and other life events to restrict a parent’s ability to care for their child. New Jerseyans deserve the opportunity to delegate parental powers to a trusted adult in these scenarios without encountering needless barriers. This is a common-sense law that will benefit families in difficult situations throughout our state.”

“Under the new law, children can now avoid emergency placements in group settings and/or in the households of strangers if their parents designate family or friends as caregivers,” **said Randi Mandelbaum, Professor of Law and Director of the Child Advocacy Clinic at Rutgers Law School**.

“The Consortium applauds the Governor, the Legislature, and the advocates for children who worked to make this bill a law,” **said Emily Chertoff, Executive Director of the New Jersey Consortium for Immigrant Children**. “Every family should be able to plan in case a parent or caregiver is detained, hospitalized, or otherwise incapacitated. A4640 will make it easier to give children the stability they deserve.”

“The bill will help ensure the safety and well-being of immigrant children by allowing their caregivers to quickly and easily make alternative arrangements for their care if the caregivers are facing deportation, grave illness, or other situations that leave them unable to care for the child,” **said Gilda Holguin, Managing Attorney of Kids in Need of Defense (KIND), Newark.** “It will help ensure that immigrant children continue to receive the care they deserve and that alternative caregivers can advocate for the child’s needs at school and for healthcare, among other key issues.”