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P.L. 2005, CHAPTER 304, *approved January 11, 2006*  
Assembly Committee Substitute (*Second Reprint*) for  
Assembly, No. 1922

1 AN ACT concerning guardianship, amending and supplementing  
2 various sections of Title 3B of the New Jersey Statutes.

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:12-1 is amended to read as follows:

8 3B:12-1. Power of the court to order a protective arrangement.

9 If it is established that a minor, **[mental incompetent]** an  
10 incapacitated person or an alleged incapacitated person or a person  
11 not yet in being has property or an interest therein which may be  
12 wasted or dissipated or that a basis exists for affecting the property or  
13 interest and affairs of a minor, **[mental incompetent]** an incapacitated  
14 person or an alleged incapacitated person or person not yet in being,  
15 or that funds are needed for the support, care and welfare of the minor  
16 **[or] [mental incompetent]** , incapacitated person or alleged  
17 incapacitated person or those entitled to be supported by him, the  
18 court may, subject to the appointment of a guardian ad litem and upon  
19 notice to the guardian ad litem, without appointing a guardian of **[his]**  
20 the estate, authorize, direct or ratify any single or more than one  
21 transaction necessary or desirable to achieve any security, service, care  
22 or protective arrangement meeting the foreseeable needs of the minor  
23 **[or] [mental incompetent]**, incapacitated person or alleged  
24 incapacitated person or those dependent upon him.

25 (cf: P.L.1981, c.405, s.3B:12-1)

26

27 2. N.J.S.3B:12-2 is amended to read as follows:

28 3B:12-2. Matters within a protective arrangement.

29 Protective arrangements include, but are not limited to, payment,  
30 delivery, deposit or retention of funds or property, sale, mortgage,  
31 lease or other transfer of property, entry into an annuity contract, a  
32 contract for life care, a deposit contract, a contract for training and  
33 education, **[or]** addition to, or establishment of, a suitable trust. The  
34 court may authorize, direct or ratify any contract, trust or other  
35 transaction relating to the minor's, **[mental incompetent's]**  
36 incapacitated person's, alleged incapacitated person's or person's not

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> **Assembly AAP committee amendments adopted June 9, 2005.**

<sup>2</sup> **Senate SJU committee amendments adopted December 1, 2005.**

1 yet in being financial affairs or involving **[his]** the estate if the court  
2 determines that the transaction is in the best interests of the minor,  
3 **[mental incompetent]** incapacitated person, alleged incapacitated  
4 person or person not yet in being or those dependent upon him.

5 (cf: P.L.1981, c.405, s.3B:12-2)

6

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

8 3B:12-3. Factors to be considered before approving a protective  
9 arrangement.

10 Before approving a protective arrangement or other transaction the  
11 court shall consider the interests of creditors and dependents of the  
12 minor **[or]**, **[mental incompetent]** incapacitated person or alleged  
13 incapacitated person and, in view of his disability, whether the minor  
14 **[or]** , **[mental incompetent]** incapacitated person or alleged  
15 incapacitated person needs the continuing protection of a guardian.

16 (cf: P.L.1981, c.405, s.3B:12-3)

17

18 4. N.J.S.3B:12-4 is amended to read as follows:

19 3B:12-4. Appointment of special guardian.

20 The court may appoint a special guardian to assist in the  
21 accomplishment of any protective arrangement or other transaction  
22 authorized under this article who shall have authority conferred by the  
23 order and shall serve until discharged by the order after **[report]**  
24 reporting to the court of all matters done pursuant to the order of  
25 appointment.

26 If the court has appointed a special guardian to assist in the  
27 accomplishment of a protective arrangement pursuant to this section,  
28 the special guardian shall be entitled to receive reasonable fees for his  
29 services, as well as reimbursement of his reasonable expenses, upon  
30 application to the court, payable by the estate of the minor,  
31 incapacitated person or alleged incapacitated person.

32 (cf: P.L.1981, c.405, s.3B:12-4)

33

34 5. N.J.S.3B:12-5 is amended to read as follows:

35 3B:12-5. Right of alleged **[mental incompetent]** incapacitated  
36 person to trial on issue of **[mental incompetency]** incapacity.

37 Where application is made to the court for proceedings to affect  
38 the property and affairs of **[a mental incompetent]** an alleged  
39 incapacitated person, and the alleged **[mental incompetent]**  
40 incapacitated person has not been adjudicated as such, the alleged  
41 **[mental incompetent]** incapacitated person or someone acting in his  
42 behalf may apply for a trial of the issue of **[mental incompetency]**  
43 incapacity in accordance with N.J.S.3B:12-24 and the Rules  
44 Governing the Courts of the State of New Jersey.

45 (cf: P.L.1981, c.405, s.3B:12-5)

1       6. N.J.S.3B:12-6 is amended to read as follows:

2       3B:12-6. Circumstances under which money may be paid or  
3 personal property delivered.

4       Any person under a duty to pay or deliver money or personal  
5 property to a minor may perform this duty, in amounts not exceeding  
6 \$5,000.00 per annum, by paying or delivering the money or property  
7 to:

8       a. The minor, if [he is] married; [or]

9       b. A parent or parents of the minor; [or]

10       c. Any person having the care and custody of the minor with  
11 whom the minor resides;

12       d. A guardian of the person of the minor; or

13       e. A financial institution incident to a deposit in a  
14 [Federally-insured] federally insured savings account in the sole name  
15 of the minor and giving written notice of the deposit to the minor.

16 (cf: P.L.1981, c.405, s.3B:12-6)

17

18       7. N.J.S.3B:12-11 is amended to read as follows:

19       3B:12-11. Affidavit of receipt; contents; filing.

20       The persons making payment of money or delivery of personal  
21 property as provided in this article shall obtain from the recipient  
22 thereof, if other than a financial institution or a married minor, an  
23 affidavit signed by the recipient acknowledging receipt of the money  
24 or personal property which shall set forth the recipient's status in  
25 relation to the minor and the purpose for which the money or personal  
26 property will be used. The affidavit shall be filed in the office of the  
27 [surrogate] Surrogate of the county in which the minor resides or if  
28 the minor resides outside the State, the county which has jurisdiction  
29 of the property.

30 (cf: P.L.1981, c.405, s.3B:12-11)

31

32       8. N.J.S.3B:12-13 is amended to read as follows:

33       3B:12-13. Power to designate testamentary guardian.

34       Subject to the provisions of N.J.S.3B:12-14, either parent may, by  
35 his will, appoint a guardian of the person and a guardian of the estate,  
36 or a guardian of the person and estate, of any of [his] the parent's  
37 children, including children en ventre sa mere, who are under the age  
38 of 18 years and unmarried at [his] the death of the parent.

39 (cf: P.L.1981, c.405, s.3B:12-13)

40

41       9. N.J.S.3B:12-15 is amended to read as follows:

42       3B:12-15. Appointment of testamentary guardian by surviving  
43 parent.

44       If no guardian has been appointed pursuant to N.J.S.3B:12-13 and  
45 N.J.S.3B:12-14, or if the surviving parent was so appointed, the  
46 surviving parent may, by his will, appoint a guardian of the person and

1 a guardian of the estate, or a guardian of the person and estate, of any  
2 of ~~his~~ the parent's children, including children en ventre sa mere,  
3 who are under the age of 18 years and unmarried at ~~his~~ the death of  
4 the surviving parent.

5 (cf: P.L.1981, c.405, s.3B:12-15)

6  
7 10. N.J.S.3B:12-16 is amended to read as follows:

8 3B:12-16. Bond of testamentary guardian.

9 Before receiving his letters, a testamentary guardian of a minor  
10 shall give bond in accordance with N.J.S.3B:15-1 et seq., unless ~~he~~  
11 the guardian is relieved from doing so by direction of the will of the  
12 parent appointing the guardian or by order of the court. However,  
13 regardless of the direction, ~~he~~ the guardian shall, with respect to  
14 property to which the ward is or shall be entitled from any source,  
15 other than the parent or other than any policy of life insurance upon  
16 the life of the parent, give bond in accordance with that section before  
17 exercising any authority or control over the property.

18 (cf: P.L.1981, c.405, s.3B:12-16)

19  
20 11. N.J.S.3B:12-24 is amended to read as follows:

21 3B:12-24. Issue of ~~mental incompetency~~ incapacity triable  
22 without jury unless jury is demanded.

23 In civil actions or proceedings for the determination of ~~mental~~  
24 incompetency incapacity or for the appointment of a guardian for an  
25 alleged ~~mental incompetent~~ incapacitated person, the trial of the  
26 issue of ~~mental incompetency~~ incapacity may be had without a jury  
27 pursuant to Rules Governing the Courts of the State of New Jersey,  
28 unless a trial by jury is demanded by the alleged <sup>2</sup>~~mental~~  
29 incompetent incapacitated person<sup>2</sup> or someone on his behalf.

30 (cf: P.L.1981, c.405, s.3B:12-24)

31  
32 12. (New section) Determination by the court of need for  
33 guardianship services, specific services.

34 a. General Guardian. If the court finds that an individual is  
35 incapacitated as defined in N.J.S.3B:1-2 and is without capacity to  
36 govern himself or manage his affairs, the court may appoint a general  
37 guardian who shall exercise all rights and powers of the incapacitated  
38 person. The general guardian of the estate shall furnish a bond  
39 conditioned as required by the provisions of N.J.S.3B:15-1 et seq.,  
40 unless the guardian is relieved from doing so by the court.

41 b. Limited Guardian. If the court finds that an individual is  
42 incapacitated and lacks the capacity to do some, but not all, of the  
43 tasks necessary to care for himself, the court may appoint a limited  
44 guardian of the person, limited guardian of the estate, or limited  
45 guardian of both the person and estate. A court, when establishing a

1 limited guardianship shall make specific findings regarding the  
2 individual's capacity, including, but not limited to which areas, such as  
3 residential, educational, medical, legal, vocational and financial  
4 decision making, the incapacitated person retains sufficient capacity to  
5 manage. A judgment of limited guardianship may specify the  
6 limitations upon the authority of the guardian or alternatively the areas  
7 of decision making retained by the person. The limited guardian of the  
8 estate shall furnish a bond in accordance with the provisions of  
9 N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by  
10 the court.

11 c. Pendente lite; Temporary Guardian.

12 (1) Whenever a complaint is filed in the Superior Court to declare  
13 a person incapacitated and appoint a guardian, the complaint may also  
14 request the appointment of a temporary guardian of the person or  
15 estate, or both, pendente lite. <sup>2</sup>Notice of a pendente lite temporary  
16 guardian application shall be given to the alleged incapacitated person  
17 or alleged incapacitated person's attorney or the attorney appointed by  
18 the court to represent the alleged incapacitated person.<sup>2</sup>

19 (2) Pending a hearing for the appointment of a guardian, the court  
20 may for good cause shown and upon a finding that there is a critical  
21 need or risk of substantial harm, including, but not limited to:

22 (a) the physical or mental health, safety and well-being of the  
23 person may be harmed or jeopardized;

24 (b) the property or business affairs of the person may be  
25 repossessed, wasted, misappropriated, dissipated, lost, damaged or  
26 diminished or not <sup>2</sup>[appropriated] appropriately<sup>2</sup> managed;

27 (c) it is in the best interest of the alleged incapacitated person to  
28 have a temporary guardian appointed and such may be dealt with  
29 before the hearing to determine incapacity can be held, after any notice  
30 as the court shall direct, appoint a temporary guardian pendente lite of  
31 the person or estate, or both, of the alleged incapacitated person.

32 (3) A pendente lite temporary guardian appointed pursuant to this  
33 section may be granted authority to arrange interim financial, social,  
34 medical or mental health services or temporary accommodations for  
35 the alleged incapacitated person determined to be necessary to deal  
36 with critical needs of or risk of substantial harm to the alleged  
37 incapacitated person or the alleged incapacitated person's property or  
38 assets. The pendente lite temporary guardian may be authorized to  
39 make arrangements for payment for such services from the estate of  
40 the alleged incapacitated person.

41 (4) A pendente lite temporary guardian appointed hereunder shall  
42 be limited to act for the alleged incapacitated person only for those  
43 services determined by the court to be necessary to deal with critical  
44 needs or risk of substantial harm to the alleged incapacitated person.

45 (5) The alleged incapacitated person's attorney or attorney  
46 appointed by the court to represent the alleged incapacitated <sup>2</sup>person<sup>2</sup>

1 shall be given notice of the appointment of the pendente lite temporary  
2 guardian. The pendente lite temporary guardian shall communicate all  
3 actions taken on behalf of the alleged incapacitated individual to the  
4 alleged incapacitated person's attorney or attorney appointed by the  
5 court to represent the alleged incapacitated person who shall have the  
6 right to object to such actions.

7 (6) A pendente lite temporary guardian appointment shall not have  
8 the effect of an adjudication of incapacity or effect of limitation on the  
9 legal rights of the individual other than those specified in the court  
10 order.

11 (7) If the court enters an order appointing a pendente lite  
12 temporary guardian without notice, the alleged incapacitated person  
13 may appear and move for its dissolution or modification on two days'  
14 notice to the plaintiff and to the temporary guardian or on such shorter  
15 notice as the court prescribes.

16 (8) Every order appointing a pendente lite temporary guardian  
17 granted without notice expires as prescribed by the court, but within  
18 a period of not more than 45 days, unless within that time the court  
19 extends it for good cause shown for the same period.

20 (9) The pendente lite temporary guardian, upon application to the  
21 court, shall be entitled to receive reasonable fees for his services, as  
22 well as reimbursement of his reasonable expenses, which shall be  
23 payable by the estate of the alleged incapacitated person or minor.

24 (10) The pendente lite temporary guardian shall furnish a bond in  
25 accordance with the provisions of N.J.S.3B:15-1 et seq., unless the  
26 guardian is relieved from doing so by the court.

27 d. Disclosure of information. Physicians and psychologists licensed  
28 by the State are authorized to disclose medical information, including  
29 but not limited to medical, mental health and substance abuse  
30 information as permitted by State and federal law, regarding the  
31 alleged incapacitated person in affidavits filed pursuant to the Rules  
32 Governing the Courts of the State of New Jersey.

33 e. Court appearance. The alleged incapacitated person shall appear  
34 in court unless the plaintiff and the court-appointed attorney certify  
35 that the alleged incapacitated person is unable to appear because of  
36 physical or mental incapacity.

37 f. Communication. When a person who is allegedly in need of  
38 guardianship services appears to have a receptive or expressive  
39 communication deficit, all reasonable means of communication with  
40 the person shall be attempted for the purposes of this section,  
41 including written, spoken, sign or non-formal language, which includes  
42 translation of the person's spoken or written word when the person is  
43 unable to communicate in English, and the use of adaptive equipment.

44 g. Additional subject areas. At the request of the limited guardian,  
45 and if the incapacitated person is not represented, after appointment  
46 of an attorney for the incapacitated person and with notice to all



1 interested parties, the court may determine that a person is in need of  
2 guardian services regarding additional subject areas and may enlarge  
3 the powers of the guardian to protect the person from significant  
4 harm.

5 h. Limitations of guardian powers. At the request of the guardian,  
6 the incapacitated person or another interested person, and if the  
7 incapacitated person is not represented, after appointment of an  
8 attorney for the incapacitated person and with notice to all interested  
9 parties, the court may limit the powers conferred upon a guardian.

10  
11 13. N.J.S.3B:12-25 is amended to read as follows:

12 3B:12-25. Appointment of guardian [other than a testamentary  
13 guardian].

14 The Superior Court may determine the [mental incompetency]  
15 <sup>1</sup>[incapacitation] incapacity<sup>1</sup> of an alleged [mental incompetent]  
16 incapacitated person and appoint a guardian for [his] the person,  
17 guardian for [his] the estate or a guardian for [his] the person and  
18 estate. Letters of guardianship shall be granted to the spouse or  
19 <sup>1</sup>[registered]<sup>1</sup> domestic partner <sup>1</sup>as defined in section 3 of P.L. 2003,  
20 c. 246 (C.26:8A-3)<sup>1</sup>, if the spouse is living with the [incompetent]  
21 <sup>1</sup>[alleged]<sup>1</sup> incapacitated person as man and wife or as <sup>1</sup>[registered]  
22 a<sup>1</sup> domestic <sup>1</sup>[partners] partner as defined in section 3 of P.L. 2003,  
23 c. 246 (C.26:8A-3)<sup>1</sup> at the time the [incompetency] incapacitation  
24 arose, or to [his] the <sup>1</sup>[alleged]<sup>1</sup> incapacitated person's heirs, or  
25 <sup>1</sup>friends, or thereafter first consideration shall be given to the Office  
26 of the Public Guardian for Elderly Adults in the case of adults within  
27 the statutory mandate of the office, or<sup>1</sup> if none of them will accept the  
28 letters or it is proven to the court that no appointment from among  
29 them will be to the best interest of the [incompetent] incapacitated  
30 person or <sup>1</sup>[his] the<sup>1</sup> estate, then to any other proper person as will  
31 accept the same <sup>1</sup>[, giving consideration] . Consideration may be  
32 given<sup>1</sup> to surrogate decision-makers, if any, chosen by the  
33 incapacitated person before<sup>1</sup> [he] the person<sup>1</sup> became incapacitated  
34 by way of a durable power of attorney pursuant to section 4 of P.L.  
35 2000, c. 109 (C.46:2B-8.4), health care proxy or advance directive.

36 <sup>1</sup>The Office of the Public Guardian for Elderly Adults shall have  
37 the authority to not accept guardianship in cases determined by the  
38 public guardian to be inappropriate or in conflict with the office. <sup>1</sup>  
39 (cf: P.L.1981, c.405, s.3B:12-25)

40  
41 14. N.J.S.3B:12-26 is amended to read as follows:.

42 3B:12-26. Action against [mental incompetent] incapacitated  
43 person when guardian newly appointed; leave of court required.

44 No action shall be brought or maintained against [a mental  
45 incompetent] an incapacitated person within [1] one month after

1 appointment of a guardian except by leave of the court wherein the  
2 action is to be brought or maintained.

3 (cf: P.L.1981, c.405, s.3B:12-26)

4

5 15. N.J.S.3B:12-27 is amended to read as follows:

6 3B:12-27. Distribution of [mental incompetent's] property of an  
7 incapacitated person as intestate property.

8 If [a mental incompetent] an incapacitated person dies intestate or  
9 without any will except one which was executed after commencement  
10 of proceedings which ultimately resulted in [a judgment] adjudicating  
11 a person incapacitated [of incompetency] and before a judgment has  
12 been entered adjudicating a return to competency, [his] the person's  
13 property shall descend and be distributed as in the case of intestacy.

14 (cf: P.L.1981, c.405, s.3B:12-27)

15

16 16. N.J.S.3B:12-28 is amended to read as follows:

17 3B:12-28. Return to competency; restoration of estate.

18 The Superior Court may, on summary action filed by the person  
19 adjudicated incapacitated or the guardian, adjudicate that the [mental  
20 incompetent] incapacitated person has returned to full or partial  
21 competency and restore to [him] that person his civil rights and estate  
22 as it exists at the time of the return to competency if the court is  
23 satisfied that [he] the person has recovered his sound reason and is fit  
24 to govern himself and manage his affairs, or, in the case of [a mental  
25 incompetent] an incapacitated person determined to be [mentally  
26 incompetent] incapacitated by reason of chronic alcoholism, that [he]  
27 the person has reformed and become habitually sober and has  
28 continued so for [1] one year next preceding the commencement of  
29 the action, and in the case of [a mental incompetent] an incapacitated  
30 person determined to be [mentally incompetent] incapacitated by  
31 reason of chronic use of drugs that [he] the person has reformed and  
32 has not been a chronic user of drugs for [1] one year next preceding  
33 the commencement of the action.

34 (cf: P.L.1981, c.405, s.3B:12-28)

35

36 17. N.J.S.3B:12-29 is amended to read as follows:

37 3B:12-29. Appointment of guardian of the property for nonresident  
38 [mental incompetent] incapacitated person.

39 When a nonresident has been or shall be found to be [a mental  
40 incompetent] an incapacitated person under the laws of the [State]  
41 state or country wherein [he] the nonresident resides, the Superior  
42 Court may appoint a guardian for [his] the nonresident's property in  
43 [the] this State.

44 (cf: P.L.1981, c.405, s.3B:12-29)

1 18. N.J.S.3B:12-30 is amended to read as follows:

2 3B:12-30. Appointment of guardian of adult by parents or spouse  
3 or <sup>1</sup>[registered]<sup>1</sup> domestic partner; judgment confirming appointment.

4 The parents who have been appointed the guardian of an unmarried  
5 [mental incompetent] incapacitated person or the spouse or  
6 <sup>1</sup>[registered]<sup>1</sup> domestic partner <sup>1</sup>as defined in section 3 of P.L. 2003,  
7 c. 246 (C.26:8A-3)<sup>1</sup> who has been appointed the guardian of [a mental  
8 incompetent] an incapacitated person may, by will, appoint a  
9 testamentary guardian of the person, or a guardian of the estate, or of  
10 both the person and estate of the [mental incompetent] incapacitated  
11 person. Before the appointment of a testamentary guardian becomes  
12 effective, the person designated as the testamentary guardian shall  
13 apply to the court in a summary manner, upon notice to the [mental  
14 incompetent] incapacitated person, to any guardian who may have  
15 been appointed for [him] the incapacitated person, to the person or  
16 institution having [his] the care of the incapacitated person and to  
17 [his] such heirs as the court may direct, for a judgment confirming  
18 [his] that appointment under the will.

19 (cf: P.L.1981, c.405, s.3B:12-30)

20

21 19. N.J.S.3B:12-31 is amended to read as follows:

22 3B:12-31. Consent by surviving parent to guardian's appointment.

23 Where an appointment of a testamentary guardian is made by a  
24 parent under N.J.S.3B:12-30 and the other parent survives the  
25 appointing parent, the appointment shall be effective only when the  
26 surviving parent, at or before the issuance of letters, consents to the  
27 appointment in writing and signs and acknowledges the consent in the  
28 presence of two witnesses present at the same time who subscribe their  
29 names as witnesses thereto in [his] the presence of the surviving  
30 parent, unless the surviving parent has been adjudged [a mental  
31 incompetent] an incapacitated person.

32 (cf: P.L.1981, c.405, s.3B:12-31)

33

34 20. N.J.S.3B:12-32 is amended to read as follows:

35 3B:12-32. Temporary appointment of guardian if person not  
36 adjudicated [mentally incompetent] an incapacitated person.

37 If the person for whom a testamentary guardian has been appointed  
38 under the will of a parent <sup>1</sup>[or],<sup>1</sup> spouse or <sup>1</sup>[registered]<sup>1</sup> domestic  
39 partner <sup>1</sup>as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3)<sup>1</sup> has  
40 not been adjudicated as [a mental incompetent] an incapacitated  
41 person in accordance with N.J.S.3B:12-24 and the Rules Governing  
42 the Courts of New Jersey, the person named as the testamentary  
43 guardian may apply to the court in the manner provided in  
44 N.J.S.3B:12-30 for a judgment designating that person as the  
45 temporary guardian of the person or of the estate, or of both the  
46 person and estate of the alleged [mental incompetent] incapacitated

1 person until the issue of [mental incompetency] incapacity has been  
2 determined. Upon the determination of the issue of [mental  
3 incompetency] incapacity, the court shall either enter a judgment  
4 confirming the appointment of the testamentary guardian or vacating  
5 the appointment of the temporary guardian.

6 (cf: P.L.1981, c.405, s.3B:12-32)

7  
8 21. N.J.S.3B:12-33 is amended to read as follows:

9 3B:12-33. Bond of testamentary guardian.

10 Before receiving his letters, a testamentary guardian of [a mental  
11 incompetent] an incapacitated person shall give bond in accordance  
12 with N.J.S.3B:15-1 unless [he] the guardian is relieved from doing so  
13 by direction of the will of the parent <sup>1</sup>[or],<sup>1</sup> spouse or <sup>1</sup>[registered]<sup>1</sup>  
14 domestic partner <sup>1</sup>as defined in section 3 of P.L. 2003, c. 246  
15 (C.26:8A-3)<sup>1</sup> appointing the guardian. However, regardless of any  
16 direction, [he] the guardian shall, with respect to property to which  
17 the ward is or shall be entitled from any source, other than the parent  
18 <sup>1</sup>[or] ,<sup>1</sup> spouse or <sup>1</sup>[registered]<sup>1</sup> domestic partner <sup>1</sup>as defined in  
19 section 3 of P.L. 2003, c. 246 (C.26:8A-3)<sup>1</sup> or other than any policy  
20 of life insurance upon the life of the parent <sup>1</sup>[or],<sup>1</sup> spouse or  
21 <sup>1</sup>[registered]<sup>1</sup> domestic partner <sup>1</sup>as defined in section 3 of P.L. 2003,  
22 c. 246 (C.26:8A-3)<sup>1</sup>, give bond in accordance with that section before  
23 exercising any authority or control over that property.

24 (cf: P.L.1981, c.405, s.3B:12-33)

25  
26 22. N.J.S.3B:12-34 is amended to read as follows:

27 3B:12-34. Determination into fitness of a testamentary guardian  
28 of the person of [a mental incompetent] an incapacitated person.

29 If a will appointing a testamentary guardian of the person of [a  
30 mental incompetent] an incapacitated person has been or is to be  
31 probated in the [surrogate's court] Surrogate's Court of any county  
32 or the Superior Court, the Superior Court may, in an action brought  
33 upon notice to the ward and guardian named in the will, inquire into  
34 the present custody of the [mental incompetent] incapacitated  
35 person, and make any order touching the testamentary guardianship  
36 as may be for the best interest and welfare of the [mental  
37 incompetent] incapacitated person.

38 (cf: P.L.1981, c.405, s.3B:12-34)

39  
40 23. N.J.S.3B:12-35 is amended to read as follows:

41 3B:12-35. Effect of a testamentary appointment.

42 The appointment of a testamentary guardian of the person of [a  
43 mental incompetent] an incapacitated person or his estate shall be  
44 good and effectual against any other person claiming the guardianship  
45 over or custody of the [mental incompetent] incapacitated person or

1 his estate, as the case may be.  
2 (cf: P.L.1981, c.405, s.3B:12-35)

3  
4 24. N.J.S.3B:12-36 is amended to read as follows:

5 3B:12-36. Authority of court with respect to ward's person and  
6 estate.

7 If a guardian has been appointed as to the person of a minor or  
8 **[mentally incompetent]** an incapacitated person, the court shall have  
9 **[a full]** authority over the ward's person and all matters relating  
10 thereto; and if a guardian has been appointed **[as]** to the estate of a  
11 minor or **[mentally incompetent]** an incapacitated person, the court  
12 shall have **[full]** authority over the ward's estate, and all matters  
13 relating thereto.

14 (cf: P.L.1981, c.405, s.3B:12-36)

15

16 25. N.J.S.3B:12-37 is amended to read as follows:

17 3B:12-37. **[Authority of court to limit or relieve limitations placed**  
18 **upon powers of guardian; letters]** Letters of guardianship to state any  
19 limitations at the time of appointment or later.

20 **[The court may, at the time of appointment or later, limit the**  
21 **powers conferred upon a guardian, or previously conferred by the**  
22 **court, and may at any time relieve him of any limitation.]** If the court  
23 limits any power conferred on the guardian, the limitation shall be so  
24 stated in certificates of letters of guardianship thereafter issued.

25 (cf: P.L.1981, c.405, s.3B:12-37)

26

27 26. N.J.S.3B:12-38 is amended to read as follows:

28 3B:12-38. Title to ward's property vested in guardian as trustee.

29 The appointment of a guardian of the estate of a minor or **[mental**  
30 **incompetent]** an incapacitated person vests in him title as trustee to all  
31 property of his ward, presently held or thereafter acquired, including  
32 title to any property theretofore held for the ward by attorneys in fact.  
33 The appointment of a guardian is not a transfer or alienation within  
34 the meaning of general provisions of any Federal or State statute or  
35 regulation, insurance policy, pension plan, contract, will or trust  
36 instrument, imposing restrictions upon or penalties for transfer or  
37 alienation by the ward of his rights or interest, but this section does  
38 not restrict the ability of persons to make specific provision by  
39 contract or dispositive instrument relating to a guardian.

40 (cf: P.L.1981, c.405, s.3B:12-38)

41

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

43 3B:12-39. Delegation of parent's or guardian's powers regarding  
44 ward's care, custody or property; limitations.

45 A parent, other than where custody of a minor has been awarded

1 by a court of competent jurisdiction, with the consent of the other  
2 parent, if the latter is living and not [a mental incompetent] an  
3 incapacitated person or a guardian of the person of a minor or [mental  
4 incompetent] an incapacitated person, by a properly executed power  
5 of attorney, may delegate to another person, for a period not  
6 exceeding [6] six months, any of his powers regarding care, custody,  
7 or property of the minor child or ward, except his power to consent to  
8 marriage or adoption of a minor ward.

9 (cf: P.L.1981, c.405, s.3B:12-39)

10

11 28. N.J.S.3B:12-41 is amended to read as follows:

12 3B:12-41. Guardian of ward's person entitled to reimbursement  
13 for expenses; payments to third persons.

14 If another person has been appointed guardian of the ward's estate,  
15 the guardian of the ward's person is entitled to receive reasonable  
16 [sums] reimbursement and fees for his services and for room and  
17 board furnished to the ward, provided the same has been agreed upon  
18 between [him] the guardian of the person and the guardian of the  
19 estate; and provided, further, that the amounts agreed upon are  
20 reasonable under the circumstances. The guardian of the person may  
21 request the guardian of the estate to expend the ward's estate by  
22 payment to third persons or institutions for the ward's care and  
23 maintenance.

24 (cf: P.L.1981, c.405, s.3B:12-41)

25

26 29. N.J.S.3B:12-42 is amended to read as follows:

27 3B:12-42. Reporting condition of ward's person and property to  
28 court.

29 A guardian shall report at time intervals as ordered by the court,  
30 unless otherwise waived by the court, the condition of the ward and  
31 the condition of the ward's estate which has been subject to [his] the  
32 guardian's possession or control as ordered by the court [in an action  
33 brought by a person interested in the ward's welfare].

34 a. A report by the guardian of the person shall state or contain:

35 (1) the current mental, physical and social condition of the ward;

36 (2) the living arrangements for all addresses of the ward during the  
37 reporting period;

38 (3) the medical, educational, vocational and other services  
39 provided to the ward and the guardian's opinions as to the adequacy  
40 of the ward's care;

41 (4) a summary of the guardian's visits with the ward and activities  
42 on the ward's behalf and the extent to which the ward has participated  
43 in decision-making;

44 (5) if the ward is institutionalized, whether or not the guardian  
45 considers the current plan for care, treatment or habilitation to be in

1 the ward's best interest;

2 (6) plans for future care; and

3 (7) a recommendation as to the need for continued guardianship  
4 and any recommended changes in the scope of the guardianship.

5 b. The court may appoint an individual to review a report,  
6 interview the ward or guardian and make any other investigation the  
7 court directs.

8 c. Agencies authorized to act pursuant to P.L.1985, c. 298  
9 (C.52:27G-20 et seq), P.L.1985, c. 145 (C.30:6D-23 et seq.),  
10 P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (30:4-  
11 165.7 et seq.)<sup>1</sup> and public officials appointed as limited guardians of  
12 the person for medical purposes for individuals in psychiatric facilities  
13 listed in R.S.30:1-7<sup>1</sup> shall be exempt from this section.

14 (cf: P.L.1981, c.405, s.3B:12-42)

15

16 30. N.J.S.3B:12-43 is amended to read as follows:

17 3B:12-43. Expenditures to be made by guardian out of ward's  
18 estate.

19 A guardian of the estate of a minor or [mental incompetent]  
20 incapacitated person may expend or distribute so much or all of the  
21 income or principal of his ward for the support, maintenance,  
22 education, general use and benefit of the ward and his dependents, in  
23 the manner, at the time or times and to the extent that the guardian, in  
24 an exercise of a reasonable discretion, deems suitable and proper,  
25 taking into account the requirements of the "Prudent Investor Act,"  
26 P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without court order,  
27 with due regard to the duty and ability of any person to support or  
28 provide for the ward if the ward is a minor, and without due regard  
29 to the duty and ability of any person to support or provide for the  
30 ward if the ward is [a mental incompetent] an incapacitated person,  
31 and with or without regard to any other funds, income or property  
32 which may be available for that purpose.

33 (cf: P.L.1981, c.405, s.3B:12-43)

34

35 31. N.J.S.3B:12-44 is amended to read as follows:

36 3B:12-44. Recommendations to be considered by guardian of  
37 ward's estate in making expenditures.

38 In making expenditures under N.J.S.3B:12-43, the guardian of the  
39 estate of a minor or [mental incompetent] incapacitated person shall  
40 consider recommendations relating to the appropriate standard of  
41 support, education and benefit for the ward made by a parent or  
42 guardian of the person, if any. [He] The guardian of the estate may  
43 not be surcharged for sums paid to persons or organizations actually  
44 furnishing support, education or care to the ward pursuant to the  
45 recommendations of a parent or guardian of the person unless [he] the  
46 guardian knows that the parent or the guardian is deriving personal

1 financial benefit therefrom, or unless the recommendations are clearly  
2 not in the best interests of the ward.

3 (cf: P.L.1981, c.405, s.3B:12-44)

4

5 32. N.J.S.3B:12-45 is amended to read as follows:

6 3B:12-45. Other factors to be considered by guardian of ward's  
7 estate in making expenditures.

8 In making expenditures under N.J.S.3B:12-43, the guardian of the  
9 estate of a minor or [mental incompetent] incapacitated person shall  
10 expend or distribute sums reasonably necessary for the support,  
11 education, care or benefit of [his] the ward with due regard to:

12 a. The size of the ward's estate;

13 b. The probable duration of the guardianship and the likelihood  
14 that the ward, at some future time, may be fully able to manage his  
15 affairs and the estate which has been conserved for him; and

16 c. The accustomed standard of living of the ward and members of  
17 [his] the ward's household.

18 (cf: P.L.1981, c.405, s.3B:12-45)

19

20 33. N.J.S.3B:12-46 is amended to read as follows:

21 3B:12-46. Persons for whose benefit expenditures may be made  
22 by guardian of ward's estate.

23 The guardian of the estate of a minor or [mental incompetent]  
24 incapacitated person may expend funds of the ward's estate under  
25 N.J.S.3B:12-43 for the support of persons legally dependent on the  
26 ward and others who are members of the ward's household who are  
27 unable to support themselves, and who are in need of support.

28 (cf: P.L.1981, c.405, s.3B:12-46)

29

30 34. N.J.S.3B:12-47 is amended to read as follows:

31 3B:12-47. Persons to whom funds may be paid.

32 Funds expended by the guardian of the estate of a minor or  
33 [mental incompetent] an incapacitated person under N.J.S.3B:12-43  
34 may be paid by the guardian to any person, including the ward, to  
35 reimburse for expenditures which the guardian might have made, or in  
36 advance for services to be rendered to the ward when it is reasonable  
37 to expect that they will be performed and where advance payments are  
38 customary or reasonably necessary under the circumstances.

39 (cf: P.L.1981, c.405, s.3B:12-47)

40

41 35. N.J.S.3B:12-48 is amended to read as follows:

42 3B:12-48. Powers conferred upon a guardian.

43 A guardian of the estate of a minor or [mentally incompetent] an  
44 incapacitated person has all of the powers conferred upon [him] the  
45 guardian by law and the provisions of this chapter except as limited by  
46 the judgment. These powers shall specifically include the right to file



1 or defend any litigation on behalf of the ward, including but not limited  
2 to, the right to bring an action for divorce or annulment on any  
3 grounds authorized by law.

4 (cf: P.L.1981, c.405, s.3B:12-48)

5  
6 36. N.J.S.3B:12-49 is amended to read as follows:

7 3B:12-49. Powers conferred upon the court.

8 The court has, for the benefit of the ward, [his] the ward's  
9 dependents and members of his household, all the powers over [his]  
10 the ward's estate and affairs which he could exercise, if present and not  
11 under a disability, except the power to make a will, and may confer  
12 those powers upon a guardian of [his] the estate. These powers  
13 include, but are not limited to <sup>1</sup>, the power to<sup>1</sup> convey or release the  
14 ward's present and contingent and expectant interests in real and  
15 personal property, including dower and curtesy and any right of  
16 survivorship incident to joint tenancy or tenancy by the entirety, to  
17 exercise or release [his] the ward's powers as trustee, personal  
18 representative, custodian for minor, guardian, or donee of a power of  
19 appointment, to enter into contracts, to create revocable or irrevocable  
20 trusts of property of the estate which may extend beyond [his] the  
21 ward's disability or life, to exercise [his] the ward's options to  
22 purchase securities or other property, to exercise [his] the ward's  
23 rights to elect options and change beneficiaries under insurance  
24 annuity policies and to surrender the policies for their cash value, to  
25 exercise [his] the ward's right to an elective share in the estate of  
26 [his] the ward's deceased spouse or <sup>1</sup>[registered]<sup>1</sup> domestic partner  
27 <sup>1</sup>as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3)<sup>1</sup> to the extent  
28 permitted by law and to renounce any interest by testate or intestate  
29 succession or by inter vivos transfer and to engage in planning utilizing  
30 public assistance programs consistent with current law.

31 (cf: P.L.1981, c.405, s.3B:12-49)

32  
33 37. N.J.S.3B:12-54 is amended to read as follows:

34 3B:12-54. Duty of guardian to deliver property when minor  
35 attains 18 years of age.

36 [When] Except as provided in section 2 of P.L.2003, c.258  
37 (C.3B:12-54.1), when a minor who has not been adjudged [a mental  
38 incompetent] an incapacitated person attains 18 years of age, his  
39 guardian, after meeting all prior claims and expenses of administration,  
40 shall pay over and distribute all funds and properties to the former  
41 ward as soon as possible.

42 (cf: P.L.2003, c.258, s.1)

43  
44 38. N.J.S.3B:12-56 is amended to read as follows:

45 3B:12-56. Powers, rights and duties of a guardian of the person

1 of a [mental incompetent] ward generally.

2 [A guardian of the person of a mental incompetent has the same  
3 powers, rights and duties respecting his ward that a parent has  
4 respecting his unemancipated minor child, except that he is not legally  
5 obligated to provide for the ward from his own funds.]

6 a. A guardian of the person of a ward is not legally obligated to  
7 provide for the ward from his own funds.

8 b. A guardian of the person of a ward is not liable to a third  
9 person for acts of the ward solely by reason of the relationship and is  
10 not liable for injury to the ward resulting from the wrongful conduct  
11 of a third person providing medical or other care, treatment or service  
12 for the ward except to the extent that the guardian of the ward failed  
13 to exercise reasonable care in choosing the provider.

14 c. If a ward has previously executed a valid power of attorney for  
15 health care or advance directive under P.L.1991, c.201, (C.26:2H-53  
16 et seq.), or revocation pursuant to section 5 of P.L.1991, c.201  
17 (C.26:2H-57), a guardian of the ward shall act consistent with the  
18 terms of such document unless revoked or altered by the court.

19 d. To the extent specifically ordered by the court for good cause  
20 shown, the guardian of the person of the ward may initiate the  
21 voluntary admission, as defined in section 2 of P.L.1987, c.116  
22 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in  
23 section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric  
24 facility. A ward so admitted shall be entitled to all of the rights of a  
25 voluntarily admitted patient, which rights shall be exercised on behalf  
26 of the ward by the guardian. The guardian of the ward shall exercise  
27 the ward's rights in a manner consistent with the wishes of the ward  
28 except to the extent that compliance with those wishes would create  
29 a significant risk to the health or safety of the ward. If the wishes of  
30 the ward are not ascertainable with reasonable efforts, the guardian of  
31 the ward shall exercise the ward's rights in a manner consistent with  
32 the best interests of the ward. Notwithstanding the provisions of this  
33 section to the contrary, if the ward objects to the initiation of  
34 voluntary admission for psychiatric treatment or to the continuation of  
35 that voluntary admission, the State's procedures for involuntary  
36 commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall  
37 apply. If the ward objects to any other decision of the guardian of the  
38 ward pursuant to this section, this objection shall be brought to the  
39 attention of the Superior Court, Chancery Division, Probate Part,  
40 which may, in its discretion, appoint an attorney or guardian ad litem  
41 for the ward, hold a hearing or enter such orders as may be  
42 appropriate in the circumstances.

43 (cf: P.L.1981, c.405, s.3B:12-56)

44

45 39. N.J.S.3B:12-57 is amended to read as follows:

46 3B:12-57. Powers and duties of a guardian of the person of a

1  ~~[mental incompetent] ward.~~

2  ~~[In particular, and without qualifying the provisions of~~  
3  ~~N.J.S.3B:12-56, a guardian of the person of a mentally incompetent~~  
4  ~~person has the following powers and duties, except as modified by~~  
5  ~~order of the court:]~~

6 a.  ~~[To the extent that it is consistent with the terms of any order~~  
7  ~~by a court of competent jurisdiction relating to detention or~~  
8  ~~commitment of the ward, he is entitled to custody of the person of his~~  
9  ~~ward and may establish the ward's place of abode within or without~~  
10  ~~this State;] (Deleted by amendment, P.L. , c. (C. )(pending~~  
11  ~~before the Legislature as this bill).)~~

12 b.  ~~[If entitled to custody of his ward, he shall make provision for~~  
13  ~~the care, comfort and maintenance of his ward and, whenever~~  
14  ~~appropriate, arrange for his training and education. Whether or not he~~  
15  ~~has custodial rights over the ward's person, he shall take reasonable~~  
16  ~~care of his ward's clothing, furniture, vehicles and other personal~~  
17  ~~effects and institute an action for the appointment of a guardian of the~~  
18  ~~ward's estate, if necessary to protect it;] (Deleted by amendment,~~  
19  ~~P.L. , c. (C. )(pending before the Legislature as this bill).)~~

20 c.  ~~[He may give any consents or approvals that may be necessary~~  
21  ~~to enable the ward to receive medical or other professional care,~~  
22  ~~counsel, treatment or service;] (Deleted by amendment, P.L. , c.~~  
23  ~~(C. )(pending before the Legislature as this bill).)~~

24 d.  ~~[He may institute an action to compel the performance by any~~  
25  ~~person of a duty to support the ward or to pay sums for the welfare~~  
26  ~~of the ward;] (Deleted by amendment, P.L. , c. (C. )(pending~~  
27  ~~before the Legislature as this bill).)~~

28 e.  ~~[He may receive money, payable from any source for the~~  
29  ~~support of the ward and tangible personal property deliverable to the~~  
30  ~~ward. Any sums so received shall be applied to the ward's current~~  
31  ~~needs for support, care and education in the exercise of a reasonable~~  
32  ~~discretion, with or without court order, with or without regard to the~~  
33  ~~duty or ability of any person to support or provide for the ward and~~  
34  ~~with or without regard to any other funds, income or property which~~  
35  ~~may be available for that purpose. But he may not use funds from the~~  
36  ~~ward's estate for room and board which he, his spouse, parent, or child~~  
37  ~~have furnished the ward unless agreed upon by a guardian of the~~  
38  ~~ward's estate under N.J.S.3B:12-41 or unless a charge for the service~~  
39  ~~is approved by order of the court made upon notice to at least one of~~  
40  ~~the heirs of the incompetent ward, if notice is possible. He must~~  
41  ~~exercise care to conserve any excess for the ward's needs.] (Deleted~~  
42  ~~by amendment, P.L. c. (C. )(pending before the Legislature as~~  
43  ~~this bill).)~~

44 f.  ~~In accordance with Section 12 of P.L. , c. (C. )(now~~  
45  ~~pending before the legislature as section 12 of this bill), a guardian of~~

1 the person of a ward shall exercise authority over matters relating to  
2 the rights and best interest of the ward's personal needs, only to the  
3 extent adjudicated by a court of competent jurisdiction. In taking or  
4 forbearing from any action affecting the personal needs of a ward, a  
5 guardian shall give due regard to the preferences of the ward, if  
6 known to the guardian or otherwise ascertainable upon reasonable  
7 inquiry. To the extent that it is consistent with the terms of any order  
8 by a court of competent jurisdiction, the guardian shall:

9 (1) take custody of the ward and establish the ward's place of  
10 abode in or outside of this State;

11 (2) personally visit the ward or if a public agency which is  
12 authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.)  
13 and P.L.1970, c.289 (30:4-165.7 et seq.) or the Office of the Public  
14 Guardian pursuant to P.L. 1985, c.298 (C.52:27G-20 et seq.) or their  
15 representatives which may include a private or public agency, visits  
16 the ward not less than once every three months, or as deemed  
17 appropriate by the court, and otherwise maintain sufficient contact  
18 with the ward to know his capacities, limitations, needs, opportunities  
19 and physical and mental health;

20 (3) provide for the care, comfort and maintenance and, whenever  
21 appropriate, the education and training of the ward;

22 (4) subject to the provisions of subsection c. of N.J.S.3B:12-56,  
23 give or withhold any consents or approvals that may be necessary to  
24 enable the ward to receive medical or other professional care, counsel,  
25 treatment or service;

26 (5) take reasonable care of the ward's clothing, furniture, vehicles  
27 and other personal effects and, where appropriate, sell or dispose of  
28 such effects to meet the current needs of the ward;

29 (6) institute an action for the appointment of a guardian of the  
30 property of the ward, if necessary for the protection of the property;

31 (7) develop a plan of supportive services for the needs of the ward  
32 and a plan to obtain the supportive services;

33 (8) if necessary, institute an action against a person having a duty  
34 to support the ward or to pay any sum for the ward's welfare in order  
35 to compel the performance of the duties;

36 (9) receive money, payable from any source for the current support  
37 of the ward, and tangible personal property deliverable to the ward.  
38 Any sums so received shall be applied to the ward's current needs for  
39 support, health care, education and training in the exercise of the  
40 guardian's reasonable discretion, with or without court order, with or  
41 without regard to the duty or ability of any person to support or  
42 provide for the ward and with or without regard to any other funds,  
43 income or property that may be available for that purpose, unless an  
44 application is made to the court to establish a supplemental needs trust  
45 or other trust arrangement. However, the guardian may not use funds  
46 from the ward's estate for room and board, which the guardian, the

1 guardian's spouse or <sup>1</sup>[registered]<sup>1</sup> domestic partner <sup>1</sup>as defined in  
2 section 3 of P.L.2003, c. 246 (C.26:8A-3)<sup>1</sup>, parent or child have  
3 furnished the ward, unless agreed to by a guardian of the ward's estate  
4 pursuant to N.J.S.3B:12-41, or unless a charge for the service is  
5 approved by order of the court made upon notice to at least one of the  
6 heirs of the ward, if possible. The guardian shall exercise care to  
7 conserve any excess funds for the ward's needs ; and

8 (10) If necessary, institute an action that could be maintained by  
9 the ward including but not limited to, actions alleging fraud, abuse,  
10 undue influence and exploitation.

11 g. In the exercise of the foregoing powers, the guardian shall  
12 encourage the ward to participate with the guardian in the decision-  
13 making process to the maximum extent of the ward's ability in order  
14 to encourage the ward to act on his own behalf whenever he is able to  
15 do so, and to develop or regain higher capacity to make decisions in  
16 those areas in which he is in need of guardianship services, to the  
17 maximum extent possible.

18 (cf: P.L.1981, c.405, s.3B:12-57)

19

20 40. N.J.S. 3B:12-58 is amended to read as follows:

21 3B:12-58. Gifts to charities and other objects.

22 If the estate is ample to provide for the purposes implicit in the  
23 distributions authorized by this article, a guardian for the estate of [a  
24 mental incompetent] an incapacitated person may apply to the court  
25 for authority to make gifts to charity and other objects as the ward  
26 might have been expected to make.

27 (cf: P.L.1981, c.405, s.3B:12-58)

28

29 41. N.J.S. 3B:12-59 is amended to read as follows:

30 3B:12-59. Purchase of real property for use of [mental  
31 incompetent] an incapacitated person and his dependents

32 When it shall appear to the court that it would be advantageous to  
33 the [mental incompetent] incapacitated person and to those legally  
34 dependent upon him for their support or are members of the [mental  
35 incompetent's] incapacitated person's household, or any of them, if a  
36 dwelling house and a lot of land were purchased or a lot of land were  
37 purchased and a dwelling house built thereon, for the use of the  
38 [mental incompetent] incapacitated person and to those legally  
39 dependent upon him for their support or who are members of the  
40 [mental incompetent's] incapacitated person's household, or any of  
41 them, the court may direct the guardian of his estate to purchase a  
42 house and lot or to purchase a lot and build a dwelling house thereon  
43 and to enter into contracts therefor as the court shall deem advisable,  
44 and to expend all necessary funds from the ward's estate for that

1 purpose.

2 (cf: P.L.1981, c.405, s.3B:12-59)

3

4 42. N.J.S.3B:12-60 is amended to read as follows:

5 3B:12-60. Guardian's duty with respect to will of deceased  
6 **[mental incompetent] incapacitated person.**

7 Upon the death of **[a mental incompetent] an incapacitated person,**  
8 **[his] the** guardian shall deliver to the **[appropriate court] Surrogate**  
9 **of the county where the incapacitated person resided prior to death** for  
10 safekeeping any will of the deceased person which may have come into  
11 **[his] the guardian's** possession, inform the executor or a beneficiary  
12 named therein that he has done so, and retain the estate for delivery  
13 to a duly appointed personal representative of the decedent or other  
14 persons entitled thereto.

15 (cf: P.L.1981, c.405, s.3B:12-60)

16

17 43. N.J.S.3B:12-61 is amended to read as follows:

18 3B:12-61. Power of guardian to act as personal representative of  
19 the estate of a deceased **[mental incompetent] incapacitated person.**

20 If within 40 days after the death of **[a mental incompetent] an**  
21 **incapacitated person,** no other person has been appointed personal  
22 representative and no action for an appointment is pending in the  
23 Superior Court or **[surrogate's] Surrogate's** court of the county where  
24 the **[mental incompetent] incapacitated person** resided at his death,  
25 the guardian may apply to the Superior Court for authority to exercise  
26 the powers and duties of a personal representative so that he may  
27 proceed to administer and distribute the decedent's estate without  
28 additional or further appointment. Upon application for an order  
29 granting the powers of a personal representative to a guardian, after  
30 notice to all persons interested in the **[mental incompetent's]  
31 incapacitated person's** estate either as heirs or devisees and including  
32 any person nominated executor in any will of which the applicant is  
33 aware, the court may order the conferral of those powers, upon  
34 determining that there is no objection, and may enter judgment that the  
35 guardian has all of the powers and duties of a personal representative.  
36 The making and entry of a judgment under this section shall have the  
37 effect of an order of appointment of a personal representative, except  
38 that the estate in the name of the guardian, after administration, may  
39 be distributed to persons entitled to the decedent's estate under his will  
40 or the laws of intestacy without prior retransfer to the guardian as  
41 personal representative.

42 (cf: P.L.1981, c.405, s.3B:12-61)

43

44 44. N.J.S.3B:12-63 is amended to read as follows:

45 3B:12-63. Guardian's final account and delivery of property upon

1 [restoration of competency] termination of guardianship.

2 Upon [an adjudication that the ward has returned to competency]  
3 termination of the guardianship, pursuant to N.J.S.3B:12-64 the  
4 guardian, after the allowance of his final account, shall pay over and  
5 distribute all funds and properties of the former ward or to the estate  
6 of the former ward in accordance with the order of the court.

7 (cf: P.L.1981, c.405, s.3B:12-63)

8

9 45. N.J.S.3B:12-64 is amended to read as follows:

10 3B:12-64. When authority and responsibility of guardian terminate.

11 a. The authority and responsibility of a guardian of the person or  
12 estate of [a mental incompetent] an incapacitated person terminate  
13 upon:

14 (1) the death, resignation or removal of the guardian [or] ;

15 (2) upon the death of the [mental incompetent] incapacitated  
16 person ; or

17 (3) upon the [entry of a judgment adjudicating the restoration of  
18 competency, but] entry of a judgment adjudicating the restoration of  
19 competency or termination of guardianship for other reasons.

20 b. ~~However,~~ termination does not affect the guardian's liability for  
21 prior acts, nor [his] the guardian's obligation to account for funds and  
22 assets of [his] the ward.

23 c. Notwithstanding the termination of the guardianship, the  
24 guardian may make final burial and funeral arrangements if the body  
25 remains unclaimed for five days and may pay for burial and funeral  
26 costs, Surrogate fees of administration, probate and bond from the  
27 guardianship account. Resignation of a guardian does not terminate  
28 the guardianship unless it has been approved by a judgment of the  
29 court.

30 <sup>2</sup>d. Upon the death of an incapacitated person the guardian shall  
31 provide written notification to the Surrogate and shall provide the  
32 Surrogate with a copy of the death certificate within seven days of the  
33 guardian's receipt of the death certificate.<sup>2</sup>

34 (cf: P.L.1981, c.405, s.3B:12-64)

35

36 46. N.J.S.3B:12-66 is amended to read as follows:

37 3B:12-66. Filling vacancy in guardianship. [The court granting  
38 letters of guardianship or the court removing or discharging the  
39 guardian or in the case of a guardian of a minor, where letters were  
40 granted by the surrogate's court, then the surrogate's court shall have  
41 jurisdiction to fill the vacancy by the appointment of a substituted  
42 guardian.] The Superior Court, or the Surrogate's court in the case  
43 of a minor, shall have jurisdiction to fill the vacancy by the  
44 appointment of a substituted guardian. The Superior Court may fill  
45 the vacancy in case of a guardian of a minor or where letters of

1 guardianship were granted by the Superior Court or when removing  
2 or discharging the guardian. The Surrogate's court may fill the  
3 vacancy in the case of a guardian of a minor where letters were  
4 granted by the Surrogate's Court.

5 (cf: P.L.1981, c.405, s.3B:12-66)

6  
7 47. N.J.S.3B:22-2 is amended to read as follows:

8 3B:22-2. If the applicable assets of the estate are insufficient to  
9 pay all claims in full, the personal representative shall make payment  
10 in the following order:

11 a. Reasonable funeral expenses;

12 b. Costs and expenses of administration;

13 c. Debts for the reasonable value of services rendered to the  
14 decedent by the Office of the Public Guardian for Elderly Adults;

15 d. Debts and taxes with preference under federal law or the laws  
16 of this State[, including debts for the; and reasonable value of  
17 services rendered to the decedent by the Office of the Public Guardian  
18 for Elderly Adults];

19 [d] e. Reasonable medical and hospital expenses of the last illness  
20 of the decedent, including compensation of persons attending him;

21 [e] f. Judgments entered against the decedent according to the  
22 priorities of their entries respectively;

23 [f] g. All other claims.

24 No preference shall be given in the payment of any claim over any  
25 other claim of the same class, and a claim due and payable shall not be  
26 entitled to a preference over claims not due. The commencement of  
27 an action against the personal representative for the recovery of a debt  
28 or claim or the entry of a judgment thereon against the personal  
29 representative shall not entitle such debt or claim to preference over  
30 others of the same class.

31 (cf: P.L.2004, c.132, s.82).

32  
33 48. (New section). Removal from New Jersey after Appointment  
34 of Guardian.

35 a. A guardian appointed in this State desiring to move to another  
36 state with his ward shall obtain an order from the Superior Court of  
37 this State consenting to the ward's removal and if applicable, the  
38 guardian's discharge. The Superior Court may transfer the  
39 guardianship to another state if the court is satisfied that a transfer will  
40 serve the best interest of the ward.

41 b. The ward's removal and discharge of the guardian shall be on  
42 such terms as the Superior Court deems necessary, including requiring  
43 filing and settlement of the guardian's account and filing of an  
44 exemplified copy of the order evidencing the other state court's  
45 acceptance of jurisdiction over the guardianship and the guardian.



1       49. (New section). Transfer into New Jersey of Guardianship  
2 Established in Another State.

3       a. A guardian or like fiduciary appointed in another state may file  
4 a summary action in the Superior Court for the transfer of the  
5 guardianship and the appointment as a guardian in this State if  
6 domicile in this State is or will be established.

7       b. Notice of hearing shall be given to the ward and to the persons  
8 who would be entitled to notice if the regular procedures for  
9 appointment of a guardian under the New Jersey Rules of Court were  
10 applicable.

11       c. The Superior Court shall grant an application for the transfer a  
12 guardianship established in another state unless the court determine  
13 that the proposed guardianship is a collateral attack on an existing or  
14 proposed guardianship or the transfer and appointment would not be  
15 in the best interest of the ward.

16       d. An exemplified record of a court of competent jurisdiction  
17 evidencing the original proceeding adjudicating the ward's incapacity  
18 and any amendment or modification orders entered subsequent to the  
19 original judgment shall be filed with the Superior Court. Subject to  
20 due process principles, full faith and credit may be accorded to a court  
21 in another state determination of the ward's incapacity. The Superior  
22 Court may fix the rights, powers, and duties of the guardian that the  
23 court determines are necessary to administer the ward's person or  
24 estate, or both person and estate, in this State.

25       e. The guardian shall give notice of the application to transfer  
26 guardianship to the court in the other state.

27

28       50. This act shall take effect immediately.

29

30

31

32

33       \_\_\_\_\_

Amends the State's guardianship law.

# ASSEMBLY, No. 1922

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 26, 2003

**Sponsored by:**

**Assemblywoman LORETTA WEINBERG**

**District 37 (Bergen)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**SYNOPSIS**

Amends State's guardianship law.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/15/2005)

1 AN ACT concerning guardianship and amending various sections of  
2 Title 3B of the New Jersey Statutes.

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:12-1 is amended to read as follows:

8 3B:12-1. Power of the court to order a protective arrangement.

9 If it is established that: a. a minor, [mental incompetent] an alleged  
10 incapacitated person or a person not yet in being has property or an  
11 interest therein which may be wasted or dissipated or that a basis  
12 exists for affecting the property or interest and affairs of a minor,  
13 [mental incompetent] alleged incapacitated person or person not yet  
14 in being[, or that]; b. funds are needed for the support, care and  
15 welfare of the minor or [mental incompetent] alleged incapacitated  
16 person or those entitled to be supported by him; or c. a minor or  
17 alleged incapacitated person faces a risk of physical harm or  
18 deterioration due to circumstances beyond his control, the court may  
19 [, subject] grant such ex parte emergent relief as shall be required to  
20 protect the financial interests of the minor, alleged incapacitated  
21 person or person not yet in being, or the physical well-being of the  
22 minor or alleged incapacitated person. Subject to the appointment of  
23 a guardian ad litem and upon notice to the guardian ad litem and the  
24 person in need of protection, without appointing a guardian of [his]  
25 the person or estate, the court may authorize, direct or ratify any  
26 single or more than one transaction necessary or desirable to achieve  
27 any security, service, care or protective arrangement meeting the  
28 foreseeable needs of the minor or [mental incompetent] alleged  
29 incapacitated person or those dependent upon him. Any ex parte order  
30 issued pursuant to this provision shall be served upon the guardian ad  
31 litem and the person in need of protection within a reasonable time, as  
32 permitted by the court, and shall be subject to immediate review upon  
33 two days' notice to all interested parties.

34 (cf: P.L.1981, c.405, s.3B:12-1)

35  
36 2. N.J.S.3B:12-2 is amended to read as follows:

37 3B:12-2. Matters within a protective arrangement.

38 Protective arrangements include, but are not limited to, payment,  
39 delivery, deposit or retention of funds or property, sale, mortgage,  
40 lease or other transfer of property, entry into an annuity contract, a  
41 contract for life care, a deposit contract, a contract for training and  
42 education, [or] addition to, or establishment of, a suitable trust,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 relocation of the person for the purpose of protection or obtaining  
2 medical services or authorizing such medical services. The court may  
3 authorize, direct or ratify any contract, trust or other transaction  
4 relating to the minor's, [mental incompetent's] alleged incapacitated  
5 person's or person's not yet in being financial affairs or involving  
6 [his] the estate if the court determines that the transaction is in the  
7 best interests of the minor, [mental incompetent] alleged  
8 incapacitated person or person not yet in being or those dependent  
9 upon him.

10 (cf: P.L.1981, c.405, s.3B:12-2)

11

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

13 3B:12-3. Factors to be considered before approving a protective  
14 arrangement.

15 Before approving a protective arrangement or other transaction the  
16 court shall consider the interests of creditors and dependents of the  
17 minor or [mental incompetent] alleged incapacitated person and, in  
18 view of his disability, whether the minor or [mental  
19 incompetent]alleged incapacitated person needs the continuing  
20 protection of a guardian.

21 (cf: P.L.1981, c.405, s.3B:12-3)

22

23 4. N.J.S.3B:12-4 is amended to read as follows:

24 3B:12-4. Appointment of special guardian.

25 The court may appoint a special guardian to assist in the  
26 accomplishment of any protective arrangement or other transaction  
27 authorized under this article who shall have authority conferred by the  
28 order and shall serve until discharged by order after report to the court  
29 of all matters done pursuant to the order of appointment. If a  
30 guardianship with a protective arrangement is otherwise warranted,  
31 and the legal requirements for appointment of a special medical  
32 guardian have been satisfied, the court may, on application and for  
33 good cause shown, grant to the special guardian the authority of a  
34 special medical guardian to consent to such medical and surgical  
35 diagnosis, treatment and care of the alleged incapacitated person as  
36 may be needed before a hearing can reasonably be held on the petition  
37 for guardianship, if it is demonstrated that the health, safety and  
38 welfare of the alleged incapacitated person will be at risk if the medical  
39 and surgical diagnosis, treatment and care are not provided before the  
40 hearing on the guardianship petition can reasonably be held.

41 If the court has appointed a special guardian to assist in the  
42 accomplishment of a protective arrangement pursuant to this section,  
43 the special guardian shall be entitled to receive reasonable sums for his  
44 services, as well as reimbursement of his reasonable expenses, upon  
45 application to the court, payable by the estate of the alleged  
46 incapacitated person.

47 (cf: P.L.1981, c.405, s.3B:12-4)

1 5. N.J.S.3B:12-5 is amended to read as follows:

2 3B:12-5. Right of alleged [mental incompetent] incapacitated  
3 person to trial on issue of [mental incompetency] incapacity.

4 Where application is made to the court for proceedings to affect the  
5 property and affairs of [a mental incompetent] an alleged  
6 incapacitated person, and the alleged [mental incompetent]  
7 incapacitated person has not been adjudicated as such, the alleged  
8 [mental incompetent] incapacitated person or someone acting in his  
9 behalf may apply for a trial of the issue of [mental incompetency]  
10 incapacity in accordance with N.J.S.3B:12-24 and the Rules  
11 Governing the Courts of the State of New Jersey.  
12 (cf: P.L.1981, c.405, s.3B:12-5)

13

14 6. N.J.S.3B:12-6 is amended to read as follows:

15 3B:12-6. Circumstances under which money may be paid or  
16 personal property delivered.

17 Any person under a duty to pay or deliver money or personal  
18 property to a minor may perform this duty, in amounts not exceeding  
19 \$5,000.00 per annum, by paying or delivering the money or property  
20 to:

- 21 a. The minor, if [he is] married; [or]
- 22 b. A parent or parents of the minor; [or]
- 23 c. Any person having the care and custody of the minor with whom  
24 the minor resides;
- 25 d. A guardian of the person of the minor; or
- 26 e. A financial institution incident to a deposit in a  
27 [Federally-insured] federally insured savings account in the sole name  
28 of the minor and giving written notice of the deposit to the minor.

29 (cf: P.L.1981, c.405, s.3B:12-6)

30

31 7. N.J.S.3B:12-11 is amended to read as follows:

32 3B:12-11. Affidavit of receipt; contents; filing.

33 The persons making payment of money or delivery of personal  
34 property as provided in this article shall obtain from the recipient  
35 thereof, if other than a financial institution or a married minor, an  
36 affidavit signed by the recipient acknowledging receipt of the money  
37 or personal property which shall set forth the recipient's status in  
38 relation to the minor and the purpose for which the money or personal  
39 property will be used. The affidavit shall be filed in the office of the  
40 surrogate of the county in which the minor resides or the county which  
41 has jurisdiction of the property.

42 (cf: P.L.1981, c.405, s.3B:12-11)

43

44 8. N.J.S.3B:12-13 is amended to read as follows:

45 3B:12-13. Power to designate testamentary guardian.

1 Subject to the provisions of N.J.S.3B:12-14, either parent may, by  
2 his will, appoint a guardian of the person and a guardian of the estate,  
3 or a guardian of the person and estate, of any of [his] the parent's  
4 children, including [children en ventre sa mere] fetuses, who are under  
5 the age of 18 years and unmarried at [his] the death of the parent.  
6 (cf: P.L.1981, c.405, s.3B:12-13)

7  
8 9. N.J.S.3B:12-15 is amended to read as follows:

9 3B:12-15. Appointment of testamentary guardian by surviving  
10 parent.

11 If no guardian has been appointed pursuant to N.J.S.3B:12-13 and  
12 N.J.S.3B:12-14, or if the surviving parent was so appointed, the  
13 surviving parent may, by his will, appoint a guardian of the person and  
14 a guardian of the estate, or a guardian of the person and estate, of any  
15 of [his] the parent's children, including [children en ventre sa mere]  
16 fetuses, who are under the age of 18 years and unmarried at [his] the  
17 death of the surviving parent.

18 (cf: P.L.1981, c.405, s.3B:12-15)

19  
20 10. N.J.S.3B:12-16 is amended to read as follows:

21 3B:12-16. Bond of testamentary guardian.

22 Before receiving his letters, a testamentary guardian of a minor shall  
23 give bond in accordance with N.J.S.3B:15-1, unless [he] the guardian  
24 is relieved from doing so by direction of the will of the parent  
25 appointing the guardian or by order of the court. However, regardless  
26 of the direction, [he] the guardian shall, with respect to property to  
27 which the ward is or shall be entitled from any source, other than the  
28 parent or other than any policy of life insurance upon the life of the  
29 parent, give bond in accordance with that section before exercising any  
30 authority or control over the property.

31 (cf: P.L.1981, c.405, s.3B:12-16)

32  
33 11. N.J.S.3B:12-24 is amended to read as follows:

34 3B:12-24. [Issue of mental incompetency triable without jury  
35 unless jury is demanded] Determination by the court of need for  
36 guardianship services, specific services; triable without jury unless jury  
37 is demanded.

38 [In civil actions or proceedings for the determination of mental  
39 incompetency or for the appointment of a guardian for an alleged  
40 mental incompetent, the trial of the issue of mental incompetency may  
41 be had without a jury pursuant to Rules Governing the Courts of the  
42 State of New Jersey, unless a trial by jury is demanded by the alleged  
43 mental incompetent or someone on his behalf.]

44 a. The court may appoint a guardian, other than a special guardian  
45 appointed under N.J.S.3B:12-4, in the event that no general or natural

1 guardian is available and has authority to consent to action needed to  
2 deal with a substantial threat to the health, safety and welfare of an  
3 alleged incapacitated person, only if the court determines that the  
4 individual is an incapacitated person, within the meaning of N.J.S.  
5 3B:1-2 of this article, and that as a result of the person's incapacity it  
6 is likely that:

7 (1) the health, safety and well-being of the person will be harmed  
8 or jeopardized;

9 (2) the property or business affairs of the person will be  
10 repossessed, wasted, misappropriated, dissipated, lost, damaged or  
11 diminished, or not appropriately managed; or

12 (3) it is in the best interest of the alleged incapacitated person to  
13 have a guardian appointed.

14 b. An order appointing a guardian for an incapacitated person shall  
15 authorize the guardian to exercise only those powers necessary to  
16 meet the essential requirements for the incapacitated person's health,  
17 safety, education and self-care or to manage the incapacitated person's  
18 property or finances, or both, consistent with the incapacitated  
19 person's functional limitations, the incapacitated person's  
20 understanding and appreciation of the harm that he is likely to suffer  
21 as a result of the functional limitations, the incapacitated person's  
22 preferences and the least restrictive form of intervention.

23 c. A determination of incapacity shall not deprive an incapacitated  
24 person of the free and unrestricted exercise of any rights, powers and  
25 privileges under law, unless otherwise provided in an order appointing  
26 a guardian. These rights, powers and privileges shall include, but shall  
27 not be limited to, determinations concerning the following  
28 considerations, which shall be addressed by the court-appointed  
29 attorney in his report and in the judgment of guardianship:

30 (1) deciding on living arrangements;

31 (2) obtaining medical treatment or other professional care, counsel,  
32 treatment or service;

33 (3) marriage;

34 (4) executing an advance directive;

35 (5) exercising the right to vote;

36 (6) deciding whether or not to give a gift;

37 (7) managing finances;

38 (8) executing a will;

39 (9) establishing a trust or engaging in asset or tax planning;

40 (10) making judgments regarding daily activities.

41 The court-appointed attorney and the court shall always address  
42 whether or not a limited guardianship may be appropriate in  
43 consideration of the above factors.

44 d. When a person who is allegedly in need of guardianship services  
45 appears to have a receptive or expressive communication deficit, all  
46 reasonable means of communication with the person shall be attempted

1 for the purpose of this section, including written, spoken, sign or non-  
2 formal language, which includes translation of the person's spoken or  
3 written word when the person is unable to communicate in English and  
4 the use of adaptive equipment.

5 e. In civil actions or proceedings for the determination of whether  
6 or not a person is in need of guardianship services or for the  
7 appointment of a guardian for a person allegedly in need of  
8 guardianship services, the trial of the issue of need for guardianship  
9 services may be had without a jury pursuant to the Rules Governing  
10 the Courts of the State of New Jersey, unless a trial by jury is  
11 demanded by the person allegedly in need of guardianship services or  
12 an individual on the person's behalf.

13 f. At the request of the guardian, and after appointment of counsel  
14 with notice to all interested parties, the court may determine that a  
15 person is in need of guardian services regarding additional subject  
16 areas and may enlarge the powers of the guardian to protect that  
17 person from significant harm; however, the additional powers  
18 conferred on the guardian shall be no greater than is necessary to  
19 protect the incapacitated person from significant harm.

20 g. At the request of the guardian, the ward or another interested  
21 person, and after appointment of counsel with notice to all interested  
22 parties, the court may limit the powers conferred upon a guardian.

23 (cf: P.L.1981, c.405, s.3B:12-24)

24  
25 12. N.J.S.3B:12-25 is amended to read as follows:

26 3B:12-25. Appointment of guardian [other than a testamentary  
27 guardian].

28 The Superior Court may determine the [mental incompetency]  
29 incapacitation of an alleged [mental incompetent] incapacitated  
30 person and appoint a guardian for [his] the person, guardian for [his]  
31 the estate or a guardian for [his] the person and estate. Letters of  
32 guardianship shall be granted to the spouse, if the spouse is living with  
33 the [incompetent] alleged incapacitated person as man and wife at the  
34 time the [incompetency] incapacitation arose, or to [his] the alleged  
35 incapacitated person's heirs, or if none of them will accept the letters  
36 or it is proven to the court that no appointment from among them will  
37 be to the best interest of the [incompetent] incapacitated person or his  
38 estate, then to any other proper person as will accept the same, giving  
39 due deference to surrogate decision-makers, if any, chosen by the  
40 incapacitated person by way of a durable power of attorney, health  
41 care proxy or advance directive.

42 (cf: P.L.1981, c.405, s.3B:12-25)

43  
44 13. N.J.S.3B:12-26 is amended to read as follows:.

45 3B:12-26. Action against [mental incompetent] incapacitated



1 person when guardian newly appointed; leave of court required.

2 No action shall be brought or maintained against [a mental  
3 incompetent] an incapacitated person within [1] one month after  
4 appointment of a guardian except by leave of the court wherein the  
5 action is to be brought or maintained.

6 (cf: P.L.1981, c.405, s.3B:12-26)

7

8 14. N.J.S.3B:12-27 is amended to read as follows:

9 3B:12-27. Distribution of [mental incompetent's] property of an  
10 incapacitated person as intestate property.

11 If [a mental incompetent] an incapacitated person dies intestate or  
12 without any will except one which was executed after commencement  
13 of proceedings which ultimately resulted in a judgment [of  
14 incompetency] that the person lacks the decision-making capacity to  
15 execute a will, and before a judgment has been entered adjudicating a  
16 return to competency, [his] the person's property shall descend and  
17 be distributed as in the case of intestacy.

18 (cf: P.L.1981, c.405, s.3B:12-27)

19

20 15. N.J.S.3B:12-28 is amended to read as follows:

21 3B:12-28. Return to competency; restoration of estate.

22 The Superior Court may, on motion by the person adjudicated  
23 incapacitated or the guardian, adjudicate that the [mental  
24 incompetent] incapacitated person has returned to full or partial  
25 competency and restore to[him] that person his estate as it exists at  
26 the time of the return to competency if the court is satisfied that [he]  
27 the person has recovered his sound reason and is fit to govern himself  
28 and manage his affairs, or, in the case of [a mental incompetent] an  
29 incapacitated person determined to be [mentally incompetent]  
30 incapacitated by reason of chronic alcoholism, that [he] the person  
31 has reformed and become habitually sober and has continued so for  
32 [1] one year next preceding the commencement of the action, and in  
33 the case of [a mental incompetent] an incapacitated person  
34 determined to be [mentally incompetent] incapacitated by reason of  
35 chronic use of drugs that [he] the person has reformed and has not  
36 been a chronic user of drugs for [1] one year next preceding the  
37 commencement of the action.

38 (cf: P.L.1981, c.405, s.3B:12-28)

39

40 16. N.J.S.3B:12-29 is amended to read as follows:

41 3B:12-29. Appointment of guardian of the property for nonresident  
42 [mental incompetent] incapacitated person.

43 When a nonresident has been or shall be found to be [a mental  
44 incompetent] an incapacitated person under the laws of the [State]  
45 state or country wherein [he] the nonresident resides, the Superior

1 Court may appoint a guardian for ~~his~~ the nonresident's property in  
2 ~~the~~ this State.

3 (cf: P.L.1981, c.405, s.3B:12-29)

4

5 17. N.J.S.3B:12-30 is amended to read as follows:

6 3B:12-30. Appointment of guardian of adult by parents or spouse;  
7 judgment confirming appointment.

8 The parents who have been appointed the guardian of an unmarried  
9 ~~mental incompetent~~ incapacitated person or the spouse who has  
10 been appointed the guardian of ~~a mental incompetent~~ an  
11 incapacitated person may, by will, appoint a testamentary guardian of  
12 the person, or a guardian of the estate, or of both the person and  
13 estate of the ~~mental incompetent~~ incapacitated person. Before the  
14 appointment of a testamentary guardian becomes effective, the person  
15 designated as the testamentary guardian shall apply to the court in a  
16 summary manner, upon notice to the ~~mental incompetent~~ alleged  
17 incapacitated person, to any guardian who may have been appointed  
18 for ~~him~~ the incapacitated person, to the person or institution having  
19 ~~his~~ the care of the incapacitated person and to ~~his~~ such heirs as  
20 the court may direct, for a judgment confirming ~~his~~ that  
21 appointment under the will.

22 (cf: P.L.1981, c.405, s.3B:12-30)

23

24 18. N.J.S.3B:12-31 is amended to read as follows:

25 3B:12-31. Consent by surviving parent to guardian's appointment.

26 Where an appointment of a testamentary guardian is made by a  
27 parent under N.J.S.3B:12-30 and the other parent survives the  
28 appointing parent, the appointment shall be effective only when the  
29 surviving parent, at or before the issuance of letters, consents to the  
30 appointment in writing and signs and acknowledges the consent in the  
31 presence of two witnesses present at the same time who subscribe  
32 their names as witnesses thereto in ~~his~~ the presence of the surviving  
33 parent, unless the surviving parent has been adjudged ~~a mental~~  
34 incompetent an incapacitated person.

35 (cf: P.L.1981, c.405, s.3B:12-31)

36

37 19. N.J.S.3B:12-32 is amended to read as follows:

38 3B:12-32. Temporary appointment of guardian if person not  
39 adjudicated ~~mentally incompetent~~ an incapacitated person.

40 If the person for whom a testamentary guardian has been appointed  
41 under the will of a parent or spouse has not been adjudicated as ~~a~~  
42 mental incompetent an incapacitated person in accordance with  
43 N.J.S.3B:12-24 and the Rules Governing the Courts of New Jersey,  
44 the person named as the testamentary guardian may apply to the court  
45 in the manner provided in N.J.S.3B:12-30 for a judgment designating

1 that person as the temporary guardian of the person or of the estate,  
2 or of both the person and estate of the alleged [mental incompetent]  
3 incapacitated person until the issue of [mental incompetency]  
4 incapacity has been determined. Upon the determination of the issue  
5 of [mental incompetency] incapacity, the court shall either enter a  
6 judgment confirming the appointment of the testamentary guardian or  
7 vacating the appointment of the temporary guardian.

8 (cf: P.L.1981, c.405, s.3B:12-32)

9

10 20. N.J.S.3B:12-33 is amended to read as follows:

11 3B:12-33. Bond of testamentary guardian.

12 Before receiving his letters, a testamentary guardian of [a mental  
13 incompetent] an incapacitated person shall give bond in accordance  
14 with N.J.S.3B:15-1 unless [he] the guardian is relieved from doing so  
15 by direction of the will of the parent or spouse appointing the  
16 guardian. However, regardless of any direction, [he] the guardian  
17 shall, with respect to property to which the ward is or shall be entitled  
18 from any source, other than the parent or spouse or other than any  
19 policy of life insurance upon the life of the parent or spouse, give bond  
20 in accordance with that section before exercising any authority or  
21 control over that property.

22 (cf: P.L.1981, c.405, s.3B:12-33)

23

24 21. N.J.S.3B:12-34 is amended to read as follows:

25 3B:12-34. Determination into fitness of a testamentary guardian of  
26 the person of [a mental incompetent] an incapacitated person.

27 If a will appointing a testamentary guardian of the person of [a  
28 mental incompetent] an incapacitated person has been or is to be  
29 probated in the surrogate's court of any county or the Superior Court,  
30 the Superior Court may, in an action brought upon notice to the ward  
31 and guardian named in the will, inquire into the present custody of the  
32 [mental incompetent] incapacitated person, and make any order  
33 touching the testamentary guardianship as may be for the best interest  
34 and welfare of the [mental incompetent] incapacitated person.

35 (cf: P.L.1981, c.405, s.3B:12-34)

36

37 22. N.J.S.3B:12-35 is amended to read as follows:

38 3B:12-35. Effect of a testamentary appointment.

39 The appointment of a testamentary guardian of the person of [a  
40 mental incompetent] an incapacitated person or his estate shall be  
41 good and effectual against any other person claiming the guardianship  
42 over or custody of the [mental incompetent] incapacitated person or  
43 his estate, as the case may be.

44 (cf: P.L.1981, c.405, s.3B:12-35)

1 23. N.J.S.3B:12-36 is amended to read as follows:

2 3B:12-36. Authority of court with respect to ward's person and  
3 estate.

4 If a guardian has been appointed as to the person of a minor or  
5 **[mentally incompetent] incapacitated** person, the court shall have **[a**  
6 **full]** authority over the ward's person and all matters relating thereto  
7 to the extent provided for in the judgment pursuant to subsection c. of  
8 N.J.S.3B:12-24; and if a guardian has been appointed **[as]** to the  
9 estate of a minor or **[mentally incompetent]incapacitated** person, the  
10 court shall have **[full]** authority over the ward's estate, and all matters  
11 relating thereto to the extent provided for in the judgment pursuant to  
12 subsection c. of N.J.S.3B:12-24.

13 (cf: P.L.1981, c.405, s.3B:12-36)

14

15 24. N.J.S.3B:12-37 is amended to read as follows:

16 3B:12-37. **[Authority of court to limit or relieve limitations placed**  
17 **upon powers of guardian; letters] Letters of guardianship to state any**  
18 **limitations at the time of appointment or later.**

19 **[The court may, at the time of appointment or later, limit the**  
20 **powers conferred upon a guardian, or previously conferred by the**  
21 **court, and may at any time relieve him of any limitation.] If the court**  
22 **limits any power conferred on the guardian, in accordance with**  
23 **N.J.S.3B:12-24,** the limitation shall be so stated in certificates of  
24 letters of guardianship thereafter issued.

25 (cf: P.L.1981, c.405, s.3B:12-37)

26

27 25. N.J.S.3B:12-41 is amended to read as follows:

28 3B:12-41. Guardian of ward's person entitled to reimbursement for  
29 expenses; payments to third persons.

30 If another person has been appointed guardian of the ward's estate,  
31 the guardian of the ward's person is entitled to receive reasonable sums  
32 for his services and for room and board furnished to the ward,  
33 provided the same has been agreed upon between **[him] the guardian**  
34 **of the person** and the guardian of the estate; and provided, further,  
35 that the amounts agreed upon are reasonable under the circumstances.  
36 The guardian of the person may request the guardian of the estate to  
37 expend the ward's estate by payment to third persons or institutions for  
38 the ward's care and maintenance. **If the court has appointed a special**  
39 **guardian to assist in the accomplishment of a protective arrangement**  
40 **pursuant to N.J.S.3B:12-4,** the special guardian shall be entitled to  
41 **receive reasonable sums for his services, as well as reimbursement of**  
42 **his reasonable expenses, upon application to the court, payable by the**  
43 **estate of the alleged incapacitated person.**

44 (cf: P.L.1981, c.405, s.3B:12-41)

1 26. N.J.S.3B:12-42 is amended to read as follows:

2 3B:12-42. Reporting condition of ward's person and property to  
3 court.

4 A guardian shall report at least annually, unless otherwise waived  
5 by the court, and any additional periods that may be ordered by the  
6 court, the condition of the ward and the condition of the ward's estate  
7 which has been subject to [his] the guardian's possession or control  
8 as ordered by the court [in an action brought by a person interested in  
9 the ward's welfare].

10 a. A report by the guardian of the person shall state or contain:

11 (1) the current mental, physical and social condition of the ward;

12 (2) the living arrangements for all addresses of the ward during the  
13 reporting period;

14 (3) the medical, educational, vocational and other services  
15 provided to the ward and the guardian's opinions as to the adequacy  
16 of the ward's care;

17 (4) a summary of the guardian's visits with the ward and activities  
18 on the ward's behalf and the extent to which the ward has participated  
19 in decision-making;

20 (5) if the ward is institutionalized, whether or not the guardian  
21 considers the current plan for care, treatment or habilitation to be in  
22 the ward's best interest;

23 (6) plans for future care; and

24 (7) a recommendation as to the need for continued guardianship  
25 and any recommended changes in the scope of the guardianship.

26 b. The court may appoint an individual to review a report,  
27 interview the ward or guardian and make any other investigation the  
28 court directs.

29 c. The court shall establish a system for monitoring guardianships,  
30 including the filing and review of annual reports.

31 (cf: P.L.1981, c.405, s.3B:12-42)

32

33 27. N.J.S.3B:12-43 is amended to read as follows:

34 3B:12-43. Expenditures to be made by guardian out of ward's  
35 estate.

36 A guardian of the estate of a minor or [mental incompetent]  
37 incapacitated person may expend or distribute so much or all of the  
38 income or principal of his ward for the support, maintenance,  
39 education, general use and benefit of the ward and his dependents, in  
40 the manner, at the time or times and to the extent that the guardian, in  
41 an exercise of a reasonable discretion, deems suitable and proper,  
42 taking into account the requirements of the "Prudent Investor Act,"  
43 P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without court order,  
44 with due regard to the duty and ability of any person to support or  
45 provide for the ward if the ward is a minor, and without due regard  
46 to the duty and ability of any person to support or provide for the

1 ward if the ward is [a mental incompetent] an incapacitated person,  
2 and with or without regard to any other funds, income or property  
3 which may be available for that purpose.  
4 (cf: P.L.1981, c.405, s.3B:12-43)

5

6 28. N.J.S.3B:12-44 is amended to read as follows:

7 3B:12-44. Recommendations to be considered by guardian of  
8 ward's estate in making expenditures.

9 In making expenditures under N.J.S.3B:12-43, the guardian of the  
10 estate of a minor or [mental incompetent] incapacitated person shall  
11 consider recommendations relating to the appropriate standard of  
12 support, education and benefit for the ward made by a parent or  
13 guardian of the person, if any. [He] The guardian of the estate may  
14 not be surcharged for sums paid to persons or organizations actually  
15 furnishing support, education or care to the ward pursuant to the  
16 recommendations of a parent or guardian of the person unless [he] the  
17 guardian knows that the parent or the guardian is deriving personal  
18 financial benefit therefrom, or unless the recommendations are clearly  
19 not in the best interests of the ward.

20 (cf: P.L.1981, c.405, s.3B:12-44)

21

22 29. N.J.S.3B:12-45 is amended to read as follows:

23 3B:12-45. Other factors to be considered by guardian of ward's  
24 estate in making expenditures.

25 In making expenditures under N.J.S.3B:12-43, the guardian of the  
26 estate of a minor or [mental incompetent] incapacitated person shall  
27 expend or distribute sums reasonably necessary for the support,  
28 education, care or benefit of [his] the ward with due regard to:

29 a. The size of the ward's estate;

30 b. The probable duration of the guardianship and the likelihood  
31 that the ward, at some future time, may be fully able to manage his  
32 affairs and the estate which has been conserved for him; [and]

33 c. The accustomed standard of living of the ward and members of  
34 [his] the ward's household; and

35 d. Public entitlement programs available to the ward and members  
36 of the ward's household.

37 (cf: P.L.1981, c.405, s.3B:12-45)

38

39 30. N.J.S.3B:12-46 is amended to read as follows:

40 3B:12-46. Persons for whose benefit expenditures may be made by  
41 guardian of ward's estate.

42 The guardian of the estate of a minor or [mental incompetent]  
43 incapacitated person may expend funds of the ward's estate under  
44 N.J.S.3B:12-43 for the support of persons legally dependent on the  
45 ward and others who are members of the ward's household who are

1 unable to support themselves, and who are in need of support.  
2 (cf: P.L.1981, c.405, s.3B:12-46)

3

4 31. N.J.S.3B:12-47 is amended to read as follows:

5 3B:12-47. Persons to whom funds may be paid.

6 Funds expended by the guardian of the estate of a minor or [mental  
7 incompetent] incapacitated person under N.J.S.3B:12-43 may be paid  
8 by the guardian to any person, including the ward, to reimburse for  
9 expenditures which the guardian might have made, or in advance for  
10 services to be rendered to the ward when it is reasonable to expect  
11 that they will be performed and where advance payments are  
12 customary or reasonably necessary under the circumstances.

13 (cf: P.L.1981, c.405, s.3B:12-47)

14

15 32. N.J.S.3B:12-48 is amended to read as follows:

16 3B:12-48. Powers conferred upon a guardian.

17 A guardian of the estate of a minor or [mentally incompetent] an  
18 incapacitated person has all of the powers conferred upon [him] the  
19 guardian by law and the provisions of this chapter except as limited by  
20 the judgment.

21 (cf: P.L.1981, c.405, s.3B:12-48)

22

23 33. N.J.S.3B:12-49 is amended to read as follows:

24 3B:12-49. Powers conferred upon the court.

25 The court has, for the benefit of the ward, [his] the ward's  
26 dependents and members of his household, all the powers over [his]  
27 the ward's estate and affairs which he could exercise, if present and not  
28 under a disability, [except the power to make a will,] and may confer  
29 those powers upon a guardian of [his] the estate. These powers  
30 include, but are not limited to, the power to engage in estate and gift  
31 tax planning, to make transfers to natural objects of the ward's bounty  
32 with due regard to the effect of such transfers on the eligibility of the  
33 ward for certain public entitlement programs, to convey or release the  
34 ward's present and contingent and expectant interests in real and  
35 personal property, including dower and curtesy and any right of  
36 survivorship incident to joint tenancy or tenancy by the entirety, to  
37 exercise or release [his] the ward's powers as trustee, personal  
38 representative, custodian for minor, guardian, or donee of a power of  
39 appointment, to enter into contracts, to create revocable or irrevocable  
40 trusts of property of the estate which may extend beyond [his] the  
41 ward's disability or life, to exercise [his] the ward's options to  
42 purchase securities or other property, to exercise [his] the ward's  
43 rights to elect options and change beneficiaries under insurance  
44 annuity policies and to surrender the policies for their cash value, to  
45 exercise [his] the ward's right to an elective share in the estate of

1 [his] the ward's deceased spouse to the extent permitted by law and  
2 to renounce any interest by testate or intestate succession or by inter  
3 vivos transfer.

4 (cf: P.L.1981, c.405, s.3B:12-49)

5

6 34. N.J.S.3B:12-50 is amended to read as follows:

7 3B:12-50. Additional powers which may be exercised by the court.

8 The court may exercise, or direct the exercise of, or release the  
9 powers of appointment of which the ward is donee, to renounce  
10 interests, to make gifts in trust or otherwise, or to change beneficiaries  
11 under insurance and annuity policies, only if satisfied[, after notice  
12 and hearing,] that it is in the best interests of the ward.

13 (cf: P.L.1981, c.405, s.3B:12-50)

14

15 35. N.J.S.3B:12-54 is amended to read as follows:

16 3B:12-54. Duty of guardian to deliver property when minor attains  
17 18 years of age.

18 When a minor who has not been adjudged [a mental incompetent]  
19 an incapacitated person attains 18 years of age, his guardian, after  
20 meeting all prior claims and expenses of administration, shall pay over  
21 and distribute all funds and properties to the former ward as soon as  
22 possible.

23 (cf: P.L.1981, c.405, s.3B:12-54)

24

25 36. N.J.S.3B:12-56 is amended to read as follows:

26 3B:12-56. Powers, rights and duties of a guardian of the person of  
27 a [mental incompetent] ward generally.

28 [A guardian of the person of a mental incompetent has the same  
29 powers, rights and duties respecting his ward that a parent has  
30 respecting his unemancipated minor child, except that he is not legally  
31 obligated to provide for the ward from his own funds.]

32 a. A guardian of the person of a ward is not legally obligated to  
33 provide for the ward from his own funds.

34 b. A guardian of the person of a ward is not liable to a third person  
35 for acts of the ward solely by reason of the relationship and is not  
36 liable for injury to the ward resulting from the wrongful conduct of a  
37 third person providing medical or other care, treatment or service for  
38 the ward except to the extent that the guardian of the ward failed to  
39 exercise reasonable care in choosing the provider.

40 c. If a ward has previously executed a valid power of attorney for  
41 health care or advance directive under P.L.1991, c.201, (C.26:2H-53  
42 et seq.), absent an order to the contrary, or revocation pursuant to  
43 section 5 of P.L.1991, c.201 (C.26:2H-57), a guardian of the ward  
44 shall be bound by the terms of such document and a health care  
45 decision by the health care representative takes precedence over that  
46 of a guardian.



1        d. To the extent specifically ordered by the court for good cause  
2 shown, the guardian of the person of the ward may initiate the  
3 voluntary admission, as defined in section 2 of P.L.1987, c.116  
4 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in  
5 section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric  
6 facility. A ward so admitted shall be entitled to all of the rights of a  
7 voluntarily admitted patient, which rights shall be exercised on behalf  
8 of the ward by the guardian. The guardian of the ward shall exercise  
9 the ward's rights in a manner consistent with the wishes of the ward  
10 except to the extent that compliance with those wishes would create  
11 a significant risk to the health or safety of the ward. If the wishes of  
12 the ward are not ascertainable with reasonable efforts, the guardian of  
13 the ward shall exercise the ward's rights in a manner consistent with  
14 the best interests of the ward. Notwithstanding the provisions of this  
15 section to the contrary, if the ward objects to the initiation of  
16 voluntary admission for psychiatric treatment or to the continuation of  
17 that voluntary admission, the State's procedures for involuntary  
18 commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall  
19 apply. If the ward objects to any other decision of the guardian of the  
20 ward pursuant to this section, this objection shall be brought to the  
21 attention of the Superior Court, Chancery Division, Probate Part,  
22 which may, in its discretion, appoint an attorney or guardian ad litem  
23 for the ward, hold a hearing or enter such orders as may be  
24 appropriate in the circumstances.

25 (cf: P.L.1981, c.405, s.3B:12-56)

26

27        37. N.J.S.3B:12-57 is amended to read as follows:

28        3B:12-57. Powers and duties of a guardian of the person of a  
29 **[mental incompetent] ward.**

30        **[In particular, and without qualifying the provisions of**  
31 **N.J.S.3B:12-56, a guardian of the person of a mentally incompetent**  
32 **person has the following powers and duties, except as modified by**  
33 **order of the court:]**

34        a. **[To the extent that it is consistent with the terms of any order**  
35 **by a court of competent jurisdiction relating to detention or**  
36 **commitment of the ward, he is entitled to custody of the person of his**  
37 **ward and may establish the ward's place of abode within or without**  
38 **this State;]** ~~(Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)(C. \_\_\_\_\_)(pending~~  
39 ~~before the Legislature as this bill).)~~

40        b. **[If entitled to custody of his ward, he shall make provision for**  
41 **the care, comfort and maintenance of his ward and, whenever**  
42 **appropriate, arrange for his training and education. Whether or not he**  
43 **has custodial rights over the ward's person, he shall take reasonable**  
44 **care of his ward's clothing, furniture, vehicles and other personal**  
45 **effects and institute an action for the appointment of a guardian of the**  
46 **ward's estate, if necessary to protect it;]**~~(Deleted by amendment,~~

- 1 P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending before the Legislature as this bill).  
2 c. [He may give any consents or approvals that may be necessary  
3 to enable the ward to receive medical or other professional care,  
4 counsel, treatment or service;] (Deleted by amendment, P.L. \_\_\_\_\_, c.  
5 (C. \_\_\_\_\_)(pending before the Legislature as this bill).  
6 d. [He may institute an action to compel the performance by any  
7 person of a duty to support the ward or to pay sums for the welfare  
8 of the ward;] (Deleted by amendment, P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending  
9 before the Legislature as this bill).  
10 e. [He may receive money, payable from any source for the  
11 support of the ward and tangible personal property deliverable to the  
12 ward. Any sums so received shall be applied to the ward's current  
13 needs for support, care and education in the exercise of a reasonable  
14 discretion, with or without court order, with or without regard to the  
15 duty or ability of any person to support or provide for the ward and  
16 with or without regard to any other funds, income or property which  
17 may be available for that purpose. But he may not use funds from the  
18 ward's estate for room and board which he, his spouse, parent, or child  
19 have furnished the ward unless agreed upon by a guardian of the  
20 ward's estate under N.J.S.3B:12-41 or unless a charge for the service  
21 is approved by order of the court made upon notice to at least one of  
22 the heirs of the incompetent ward, if notice is possible. He must  
23 exercise care to conserve any excess for the ward's needs.] (Deleted  
24 by amendment, P.L. \_\_\_\_\_ c. (C. \_\_\_\_\_)(pending before the Legislature as  
25 this bill).  
26 f. In accordance with N.J.S.3B:12-24, a guardian of the person of  
27 a ward shall exercise authority over matters relating to the rights and  
28 best interest of the ward's personal needs, only to the extent  
29 adjudicated by a court of competent jurisdiction. In taking or  
30 forbearing from any action affecting the personal needs of a ward, a  
31 guardian shall give due regard to the preferences of the ward, if  
32 known to the guardian or otherwise ascertainable upon reasonable  
33 inquiry. To the extent that it is consistent with the terms of any order  
34 by a court of competent jurisdiction, the guardian shall:  
35 (1) take custody of the ward and establish the ward's place of  
36 abode in or outside of this State;  
37 (2) personally visit the ward or have his representative visit the  
38 ward not less frequently than once every three months, or as deemed  
39 appropriate by the court, and otherwise maintain sufficient contact  
40 with the ward to know his capacities, limitations, needs, opportunities  
41 and physical and mental health;  
42 (3) provide for the care, comfort and maintenance and, whenever  
43 appropriate, the education and training of the ward;  
44 (4) subject to the provisions of subsection c. of N.J.S.3B:12-56,  
45 give or withhold any consents or approvals that may be necessary to  
46 enable the ward to receive medical or other professional care, counsel,

1 treatment or service;

2 (5) take reasonable care of the ward's clothing, furniture, vehicles  
3 and other personal effects;

4 (6) institute an action for the appointment of a guardian of the  
5 property of the ward, if necessary for the protection of the property;

6 (7) develop a plan of supportive services for the needs of the ward  
7 and a plan to obtain the supportive services;

8 (8) if necessary, institute an action against a person having a duty  
9 to support the ward or to pay any sum for the ward's welfare in order  
10 to compel the performance of the duties;

11 (9) receive money, payable from any source for the support of the  
12 ward, and tangible personal property deliverable to the ward. Any  
13 sums so received shall be applied to the ward's current needs for  
14 support, health care, education and training in the exercise of the  
15 guardian's reasonable discretion, with or without court order, with or  
16 without regard to the duty or ability of any person to support or  
17 provide for the ward and with or without regard to any other funds,  
18 income or property that may be available for that purpose, unless an  
19 application is made to the court to establish a supplemental needs trust  
20 or other trust arrangement with due regard to the effect of receiving  
21 such sums on the eligibility of the ward for certain public entitlement  
22 programs. However, the guardian may not use funds from the ward's  
23 estate for room and board, which the guardian, the guardian's spouse,  
24 parent or child have furnished the ward, unless agreed to by a guardian  
25 of the ward's estate pursuant to N.J.S.3B:12-41, or unless a charge for  
26 the service is approved by order of the court made upon notice to at  
27 least one of the heirs of the ward, if possible. The guardian shall  
28 exercise care to conserve any excess funds for the ward's needs.

29 g. In the exercise of the foregoing powers, the guardian shall  
30 encourage the ward to participate with the guardian in the decision-  
31 making process to the maximum extent of the ward's ability in order  
32 to encourage the ward to act on his own behalf whenever he is able to  
33 do so, and to develop or regain higher capacity to make decisions in  
34 those areas in which he is in need of guardianship services, to the  
35 maximum extent possible.

36 (cf: P.L.1981, c.405, s.3B:12-57)

37

38 38. N.J.S.3B:12-60 is amended to read as follows:

39 3B:12-60. Guardian's duty with respect to will of deceased [mental  
40 incompetent] incapacitated person.

41 Upon the death of [a mental incompetent] an incapacitated person,  
42 [his] the guardian shall deliver to the [appropriate court] surrogate  
43 of the county where the guardian was appointed for safekeeping any  
44 will of the deceased person which may have come into [his] the  
45 guardian's possession, inform the executor or a beneficiary named  
46 therein that he has done so, and retain the estate for delivery to a duly

1 appointed personal representative of the decedent or other persons  
2 entitled thereto.

3 (cf: P.L.1981, c.405, s.3B:12-60)

4

5 39. N.J.S.3B:12-61 is amended to read as follows:

6 3B:12-61. Power of guardian to act as personal representative of  
7 the estate of a deceased [mental incompetent] incapacitated person.

8 If within 40 days after the death of [a mental incompetent] an  
9 incapacitated person, no other person has been appointed personal  
10 representative and no action for an appointment is pending in the  
11 Superior Court or surrogate's court of the county where the [mental  
12 incompetent] incapacitated person resided at his death, the guardian  
13 may apply to the Superior Court for authority to exercise the powers  
14 and duties of a personal representative so that he may proceed to  
15 administer and distribute the decedent's estate without additional or  
16 further appointment. Upon application for an order granting the  
17 powers of a personal representative to a guardian, after notice to all  
18 persons interested in the [mental incompetent's] incapacitated person's  
19 estate either as heirs or devisees and including any person nominated  
20 executor in any will of which the applicant is aware, the court may  
21 order the conferral of those powers, upon determining that there is no  
22 objection, and may enter judgment that the guardian has all of the  
23 powers and duties of a personal representative. The making and entry  
24 of a judgment under this section shall have the effect of an order of  
25 appointment of a personal representative, except that the estate in the  
26 name of the guardian, after administration, may be distributed to  
27 persons entitled to the decedent's estate under his will or the laws of  
28 intestacy without prior retransfer to the guardian as personal  
29 representative.

30 (cf: P.L.1981, c.405, s.3B:12-61)

31

32 40. N.J.S.3B:12-63 is amended to read as follows:

33 3B:12-63. Guardian's final account and delivery of property upon  
34 [restoration of competency] termination of guardianship.

35 Upon [an adjudication that the ward has returned to competency]  
36 termination of the guardianship, the guardian, after the allowance of  
37 his final account, shall pay over and distribute all funds and properties  
38 of the former ward.

39 (cf: P.L.1981, c.405, s.3B:12-63)

40

41 41. N.J.S.3B:12-64 is amended to read as follows:

42 3B:12-64. When authority and responsibility of guardian terminate.

43 The authority and responsibility of a guardian of the person or  
44 estate of [a mental incompetent] an incapacitated person terminate  
45 upon the death, resignation or removal of the guardian [or], upon the

1 death of the [mental incompetent] incapacitated person or upon the  
2 [entry of a judgment adjudicating the restoration of competency, but]  
3 termination of guardianship for other reasons. However, termination  
4 does not affect the guardian's liability for prior acts, nor [his] the  
5 guardian's obligation to account for funds and assets of [his] the  
6 ward. Notwithstanding the termination of the guardianship, the  
7 guardian may make final burial and funeral arrangements if the body  
8 remains unclaimed for five days and may pay for burial and funeral  
9 costs and surrogate fees of administration, probate and bond from the  
10 guardianship account. Resignation of a guardian does not terminate  
11 the guardianship unless it has been approved by a judgment of the  
12 court.

13 (cf: P.L.1981, c.405, s.3B:12-64)

14

15 42. This act shall take effect immediately.

16

17

18

#### STATEMENT

19

20 This bill amends several sections of chapter 12 of Title 3B of the  
21 New Jersey Statutes, concerning guardianship.

22 Specifically, the bill amends:

23 \* N.J.S.A.3B:12-1 to clarify that the court may order a protective  
24 arrangement when a minor or an alleged incapacitated person faces  
25 a risk of physical harm or deterioration due to circumstances  
26 beyond his control, and that any protective order is subject to  
27 immediate review upon two days' notice to all interested parties;

28 \* N.J.S.A.3B:12-2 to add relocation of the person for the purpose of  
29 protection or obtaining or authorizing medical services as a matter  
30 to be included in a protective arrangement;

31 \* N.J.S.A.3B:12-4 to allow the court to appoint a special medical  
32 guardian to consent to medical treatment before a hearing on  
33 guardianship can be held, if it can be shown that the health, safety  
34 and welfare of the incapacitated person would otherwise be at risk,  
35 and to provide for reasonable compensation for the special medical  
36 guardian, when warranted;

37 \* N.J.S.A.3B:12-11 to allow an affidavit of receipt in connection with  
38 a person making a payment of money or delivery of personal  
39 property in connection with the guardianship of a minor to be filed  
40 in the county which has jurisdiction over the property;

41 \* N.J.S.A.3B:12-16 to permit the court to issue an order relieving a  
42 testamentary guardian from posting a bond in accordance with  
43 N.J.S.A.3B:15-1;

44 \* N.J.S.A.3B:12-24 to:

45 -- permit appointment of a temporary guardian, when no general or  
46 natural guardian is available and has authority to consent to action

- 1 needed to deal with a substantial threat to the health, safety and  
2 welfare of an alleged incapacitated person, under certain  
3 circumstances;
- 4 -- clarify that an order appointing a guardian shall authorize the  
5 guardian to exercise only those powers necessary to meet the  
6 essential requirements for the incapacitated person's health, safety,  
7 education and self-care or to manage the incapacitated person's  
8 property or finances, or both, consistent with the incapacitated  
9 person's functional limitations, his understanding and appreciation  
10 of the harm likely to be suffered as a result of the limitations, his  
11 preferences and the least restrictive form of intervention;
- 12 -- clarify that a determination of incapacity will not deprive an alleged  
13 incapacitated person of the exercise of any rights, powers and  
14 privileges under law, unless specifically provided for in the  
15 protective order. Those rights, powers and privileges include, but  
16 are not limited to, living arrangements, medical treatment or other  
17 professional care, counsel, treatment or service, marriage, advance  
18 directives, exercising the right to vote, deciding whether or not to  
19 give gifts, managing finances, executing a will, establishing a trust  
20 or engaging in asset or tax planning and making judgments  
21 regarding daily activities;
- 22 -- permit the court to establish a limited guardianship at any time;
- 23 -- require all reasonable means of communication to be attempted  
24 when an alleged incapacitated person appears to have a receptive  
25 or communication deficit;
- 26 -- provide for a trial without a jury in guardianship matters unless  
27 the alleged incapacitated person or someone on the person's behalf  
28 demands otherwise;
- 29 -- allow the court to expand the powers of a guardian, if necessary,  
30 but only to the extent necessary to protect the alleged incapacitated  
31 person from significant harm; and
- 32 -- permit the court to limit the powers conferred upon a guardian at  
33 the request of the guardian, ward or another interested person;
- 34 \* N.J.S.A.3B:12-25 to direct that, when appointing a guardian, the  
35 court look first to the alleged incapacitated person's spouse and  
36 heirs, and then give due deference to surrogate decision-makers  
37 designated by the alleged incapacitated person in a power of  
38 attorney, health care proxy or advance directive;
- 39 \* N.J.S.A.3B:12-30 to clarify that the statute relates to the  
40 appointment of a guardian by the parents or spouse of an  
41 incapacitated adult;
- 42 \* N.J.S.A.3B:12-34 to require notice to the alleged incapacitated  
43 person prior to probating a will that appoints a testamentary  
44 guardian;
- 45 \* N.J.S.A.3B:12-41 to provide for reasonable compensation, plus  
46 expenses, for a court-appointed special guardian;

- 1 \* N.J.S.A.3B:12-42 to:  
2 -- require the guardian to report annually to the court on the ward's  
3 condition and his estate, and specify items that the report must  
4 contain;  
5 -- permit the court to appoint an individual to review a report,  
6 interview the ward or guardian and make any other investigation  
7 the court directs; and  
8 -- require the court to establish a system for monitoring  
9 guardianships, including the filing and review of annual reports;
- 10 \* N.J.S.A.3B:12-43 to require a guardian to follow the requirements  
11 of the "Prudent Investor Act" when dealing with the assets of the  
12 ward;
- 13 \* N.J.S.A.3B:12-45 to add public entitlement programs to those  
14 factors a guardian must consider in making expenditures from a  
15 ward's estate;
- 16 \* N.J.S.A.3B:12-49 to clarify that the powers conferred upon a  
17 guardian of the estate may include the power to engage in estate  
18 and gift tax planning and to make transfers with due regard to the  
19 effect of the transfers on the eligibility of the ward for certain public  
20 entitlement programs;
- 21 \* N.J.S.A.3B:12-56 to describe the powers, rights and responsibilities  
22 of a guardian of the person as follows: a guardian of an  
23 incapacitated person is not legally obligated to provide for the ward  
24 from his own funds; a guardian is not liable to a third person for  
25 acts of the ward solely by reason of the relationship; a guardian is  
26 not liable for injury to the ward resulting from wrongful conduct of  
27 a third person providing medical or other care, treatment or service  
28 for the ward except to the extent that the guardian failed to exercise  
29 reasonable care in choosing the provider; if a ward has previously  
30 executed a valid power of attorney for health care or advance  
31 directive under N.J.S.A.26:2H-53 et seq., absent an order to the  
32 contrary or revocation pursuant to N.J.S.A.26:2H-57, a guardian  
33 shall be bound by the terms of the document and a health care  
34 decision by the health care representative takes precedence over  
35 that of a guardian; to the extent specifically ordered by the court for  
36 good cause shown, the guardian may initiate the voluntary  
37 admission of a ward to a State or private psychiatric facility and the  
38 ward shall be entitled to all of the rights of a voluntarily admitted  
39 patient, which would be exercised on behalf of the ward by the  
40 guardian;
- 41 \* N.J.S.A.3B:12-57 to require a guardian to exercise authority over  
42 matters relating to the rights and best interest of a ward's personal  
43 needs to the extent ordered by the court, to require a guardian to  
44 give due regard to the preferences of the ward and to require the  
45 guardian to encourage the ward's participation in the decision-  
46 making process. Also, to the extent consistent with the protective

- 1 order, the bill requires the guardian to:
- 2 -- take custody of the ward and establish the ward's place of abode
  - 3 within or without the State;
  - 4 -- personally visit the ward or have his representative visit the ward
  - 5 not less frequently than once every three months, or as deemed
  - 6 appropriate by the court, and otherwise maintain sufficient contact
  - 7 with the ward to know his capacities, limitations, needs,
  - 8 opportunities and physical and mental health;
  - 9 -- provide for the care, comfort and maintenance and, whenever
  - 10 appropriate, the education and training of the ward;
  - 11 -- subject to the provisions of subsection c. of N.J.S.A.3B:12-56,
  - 12 give or withhold any consents or approvals that may be necessary
  - 13 to enable the ward to receive medical or other professional care,
  - 14 counsel, treatment or service;
  - 15 -- take reasonable care of the ward's clothing, furniture, vehicles and
  - 16 other personal effects;
  - 17 -- institute an action for the appointment of a guardian of the property
  - 18 of the ward, if necessary for the protection of the property;
  - 19 -- develop a plan of supportive services for the needs of the ward and
  - 20 a plan to obtain the supportive services;
  - 21 -- if necessary, institute an action against a person having a duty
  - 22 to support the ward or to pay any sum for the ward's welfare in
  - 23 order to compel the performance of the duties; and
  - 24 -- receive money, payable from any source for the support of the
  - 25 ward, and tangible personal property deliverable to the ward; and
  - 26 use the money for the ward's current needs for support, health care,
  - 27 education and training;
  - 28 \* N.J.S.A.3B:12-60 to require the guardian to deliver an
  - 29 incapacitated person's will to the surrogate of the county where the
  - 30 guardian was appointed; and
  - 31 \* N.J.S.A.3B:12-64 to clarify that notwithstanding the termination of
  - 32 the guardianship, the guardian may make final burial and funeral
  - 33 arrangements if the body remains unclaimed for five days and may
  - 34 pay for burial and funeral costs and surrogate fees of
  - 35 administration, probate and bond from the guardianship account.
  - 36 In addition, throughout chapter 12 of Title 3B, references to
  - 37 "mental incompetent" have been changed to "incapacitated person,"
  - 38 to comport with the enactment of P.L.1997, c.379, which changed
  - 39 the designation of "mental incompetent" to "incapacitated person"
  - 40 in the definition section of Title 3B.



ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1922  
  
**STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1922.

This substitute revises several sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship. This substitute clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person. The substitute establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary pendente lite guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It also specifically sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted to a guardian. The substitute also expands the current reporting procedures for guardians. In addition, the substitute revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.

The pertinent provisions in the substitute are as follows:

**Section 4: N.J.S.A.3B:12-4. (Appointment of special guardian)** Current law authorizes the court to appoint a special guardian to assist the court in providing for any protective arrangements. This provision remains unchanged. The substitute provides that if a special guardian is appointed he would be entitled to reasonable fees for his services as well as reimbursement for his reasonable expenses, upon application to the court and payable by the estate of the minor, incapacitated person or alleged incapacitated person.

**Section 7: N.J.S.A.3B:12-11. (Affidavit of receipt)** This section requires filing of an affidavit by the recipient for money or property in connection with the guardianship of a minor. The section is amended to add if the minor resides outside the State, the filing is in the county which has jurisdiction over the property.

**Section 12: (New section). (Determination by the court of need for guardianship services)** This section of the substitute supplements the current law by specifically outlining the different types of guardians and their powers and duties.

General Guardian -If the court finds that an individual is incapacitated and is without capacity to govern himself or manage his affairs, the court may appoint a *general guardian* who would exercise all rights and powers of the incapacitated person. The general guardian would furnish a bond unless the court relieves him from doing so.

Limited Guardian. If the court finds a person is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court can appoint a *limited guardian* of the person, limited guardian of the estate, or limited guardian of both. The court must make specific findings as to the person's decision making capacity with regard to residential, education, medical, legal, vocational and financial decisions. A judgment of limited guardianship may specify the limitations upon the authority or the areas of decision making retained by the person. The limited guardian would furnish a bond unless the court relieves him from doing so. Pendente lite;

Temporary Guardian. Whenever a complaint is filed in court to declare a person incapacitated and to appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, *pendente lite*. Pending a hearing for the appointment of a guardian, the court may for good cause shown appoint a *pendente lite* temporary guardian upon a finding that there is a critical need or risk of substantial harm. If appointed the temporary guardian may be granted authority to arrange interim services or temporary accommodations.

Payments for such services may be made from the estate of the alleged incapacitated person. A *pendente lite* temporary guardian appointed is limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person.

The attorney for the alleged incapacitated person is given notice of the appointment. The *pendente lite* temporary guardian is required to advise the attorney of all actions and the attorney would have the right to object.

A *pendente lite* temporary guardian appointment does not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

The *pendente lite* temporary guardian, upon application to the court, would be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which would be payable by the estate of the alleged incapacitated person or minor. The *pendente lite* temporary guardian would also be required to furnish a bond, unless the court relieves him of doing so.

This sections also addresses the following:disclosure of information;Court appearance;Communication;enlarging or limiting guardianship powers

**Section 13: N.J.S.A.3B:12-25. (Appointment of guardian)** This

section was amended to clarify that letters of guardianship may be granted to the spouse or registered domestic partner if the person is living with the alleged incapacitated person or his heirs, or if none of them will accept letters, then consideration should be given to the surrogate decision-makers designated in a durable power of attorney, health care proxy or advance directive.

**Section 16: N.J.S.A.3B:12-28.** (*Return to competency*) This section was amended to clarify that the court may, on a summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency.

**Section 28: N.J.S.A.3B:12-41.** (*Guardian of ward's person entitled to reimbursement for expenses*) This section was amended to clarify that the guardian would receive reasonable reimbursement and fees for his services.

**Section 29: N.J.S.A.3B:12-42.** (*Reporting condition of ward's person and property to court*) The section was amended to expand the reporting requirements for guardians in order to provide uniformity and consistency. This section sets forth when the report should be made and what it must contain. However, the substitute does exempt from this reporting requirement the Bureau of Guardianship Services in the Division of Developmental Disabilities and the Office of the Public Guardian.

**Section 30: N.J.S.A.3B:12-43.** (*Expenditures to be made by guardian out of ward's estate.*) The substitute amends this section concerning expenditures for the incapacitated person to require a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward.

**Section 35: N.J.S.A.3B:12-48.** (*Powers conferred upon a guardian*) The section was amended to clarify that the guardian has the power to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

**Section 36: N.J.S.A.3B:12-49.** (*Powers conferred upon a court*) The section was amended to clarify that among the court's powers with regard to a ward and his estate is the power to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or registered domestic partner and to engage in planning utilizing public assistance programs.

**Section 38: N.J.S.A.3B:12-56.** (*Powers, rights and duties of a guardian of a ward*) This section was amended to clarify the powers, rights and duties of a guardian of a ward. The section provides that a guardian is not legally obligated to provide for the ward from his own funds. A guardian is also not liable to a third person for acts of the ward solely by reason of the relationship and is not liable to the ward for injury resulting from wrongful conduct of a third person. In addition, if a ward has previously executed a valid power of attorney

for health care or advance directive, a guardian is required to act consistent with the terms of such document. To the extent specifically ordered by the court, the guardian can initiate the voluntary admission of a ward to a State or private psychiatric facility and the ward would be entitled to all of the rights of a voluntarily admitted patient. The guardian of the ward would be required to exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment would apply. If the ward objects to any other decision of the guardian, this objection shall be brought to the attention of the court which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate.

**Section 39: N.J.S.A.3B:12-57.** (*Powers and duties of a guardian of a person*) This section is amended to clarify that a guardian of the person of a ward is required to exercise authority over matters relating to the rights and best interest of a ward's personal needs only to the extent ordered by the court. This section provides that a guardian is required to give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. This section also provides that to the extent that it is consistent with the terms of any order by a court, the guardian shall: take custody; provide for visitation; provide for the care, comfort, maintenance and education; provide for necessary consents or approvals; provide for possessions; institute any necessary actions; develop a plan of supportive services; and receive money and tangible personal property.

The guardian shall exercise care to conserve any excess funds for the ward's needs. If necessary, the guardian may institute an action that could be maintained by the ward including actions alleging fraud, abuse, undue influence and exploitation.

**Section 45: N.J.S.A.3B:12-64.** The section was amended to clarify that the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for these costs and surrogate fees.

**Section 46: N.J.S.A.3B:12-66.** The section was amended to clarify that the Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill the vacancy by the appointment of a substituted guardian.

**Section 47: N.J.S.A.3B:22-2.** The section provides an order of payment if the applicable assets of the estate are insufficient to pay all claims in full. This section was amended to clarify that the debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults would be paid before debts and taxes, reasonable medical expenses, judgments and all other claims are paid.

***New sections 48 and 49.*** These sections establish procedures for transfer of guardianship services when a guardian in this State is seeking to move to another state and when a guardian in another state is seeking to transfer services into New Jersey. *Section 48* concerns a guardian who is appointed in this State who desires to move to another state with his ward. *Section 49* provides for the transfer into New Jersey of guardianship established in another state.

***Remaining provisions of the substitute.*** The remaining sections of the substitute were amended to replace the term "mental incompetent" with "incapacitated or alleged incapacitated" person. These sections were also amended to make certain technical changes to make those sections consistent with the remaining provisions of the bill. The sections are as follows:

Sections 1 through 3 (N.J.S.A.3B:12-1 through N.J.S.A.3B:12-3-*Protective arrangements*);

Sections 5 and 6 (N.J.S.A.3B:12-5 and N.J.S.A.3B:12-6-*Personal property delivered*);

Section 8 (N.J.S.A.3B:12-13-*Power to designate testamentary guardian*);

Section 9 (N.J.S.A. 3B:12-15- *Appointment of guardian*);

Section 10 (N.J.S.A.3B:12-16-*Bonds*);

Section 11 (N.J.S.A.3B:12-24-*Jury demand*);

Sections 14 and 15 (N.J.S.A.3B:12-26 and N.J.S.A.3B:12-27-*Actions against incapacitated persons and Distribution of intestate property*);

Sections 17 through 27 (N.J.S.A.3B:12-29 through N.J.S.A. 3B:12-39- *Appointment of guardian; Bond of testamentary guardian; Determination into fitness; Authority of court; Letters of guardianship; Delegation of parent's or guardian's powers*);

Sections 31 through 34 (N.J.S.A.3B:12-44 through N.J.S.A.3B:12-47-*Expenditures*);

Section 37 (N.J.S.A.3B:12-54-*Delivery of property when minor attains 18 years age*);

Section 40 (N.J.S.A. 3B:12-58-*Gifts to charities*);

Section 41 (N.J.S.A.3B:12-59-*Purchasing of property*);

Section 42 (N.J.S.A.3B:12-60- *Wills*);

Section 43 (N.J.S.A.3B:12-61-*Guardian-personal representative powers*); and

Section 44 (N.J.S.A.3B:12-63- *Final accounting*)

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1922

with Assembly committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 9, 2005

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1922 (ACS), with committee amendments.

Assembly Bill No. 1922 (ACS), as amended, revises numerous sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.

This bill clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person. The bill establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary "pendente lite" guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It also specifically sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted to a guardian. The bill also expands the current reporting procedures for guardians. In addition, the bill revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.

The pertinent provisions in the bill are as follows:

**Section 4: N.J.S.A.3B:12-4. (Appointment of special guardian)** Current law authorizes the court to appoint a special guardian to assist the court in providing for any protective arrangements. This provision remains unchanged by the bill. The bill provides that if a special guardian is appointed, the guardian is entitled to reasonable fees for services as well as reimbursement for reasonable expenses, upon application to the court and payable by the estate of the minor, incapacitated person or alleged incapacitated person.

**Section 7: N.J.S.A.3B:12-11. (Affidavit of receipt)** This section requires filing of an affidavit by the recipient for money or property in connection with the guardianship of a minor. The section is amended to add that if the minor resides outside the State, the filing is in the county which has jurisdiction over the property.

**Section 12: (New section).** (*Determination by the court of need for guardianship services*) This section of the bill supplements the current law by specifically outlining the different types of guardians and their powers and duties.

General Guardian -If the court finds that an individual is incapacitated and *is without capacity to govern* himself or manage his affairs, the court may appoint a *general guardian* who will exercise all rights and powers of the incapacitated person. The general guardian must furnish a bond unless the court relieves him from doing so.

Limited Guardian. If the court finds a person is incapacitated and *lacks the capacity to do some, but not all*, of the tasks necessary to care for himself, the court can appoint a *limited guardian* of the person, limited guardian of the estate, or limited guardian of both. The court must make specific findings as to the person's decision making capacity with regard to residential, education, medical, legal, vocational and financial decisions. A judgment of limited guardianship may specify the limitations upon the authority or the areas of decision making retained by the person. The limited guardian must furnish a bond unless the court relieves him from doing so. Pendente lite:

Temporary Guardian. Whenever a complaint is filed in court to declare a person incapacitated and to appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, *pendente lite*. Pending a hearing for the appointment of a guardian, the court may for good cause shown appoint a *pendente lite* temporary guardian upon a finding that there is a critical need or risk of substantial harm. If appointed the temporary guardian may be granted authority to arrange interim services or temporary accommodations.

Payments for such services may be made from the estate of the alleged incapacitated person. A *pendente lite* temporary guardian appointed is limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person. *Pendente lite* temporary guardians are not designed to act as special medical guardians appointed under Rules of Court to authorize emergent medical or surgical intervention needed to deal with substantial threat to a person's life or health.

The attorney for the alleged incapacitated person is given notice of the appointment. The *pendente lite* temporary guardian is required to advise the attorney of all actions and the attorney would have the right to object.

A *pendente lite* temporary guardian appointment does not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

The *pendente lite* temporary guardian, upon application to the court, would be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which would be

payable by the estate of the alleged incapacitated person or minor. The pendent lite temporary guardian would also be required to furnish a bond, unless the court relieves him of doing so.

This sections also addresses the following: *disclosure of information; court appearance; communication; enlarging or limiting guardianship powers*

**Section 13: N.J.S.A.3B:12-25.** (*Appointment of guardian*) This section was amended to clarify that letters of guardianship may be granted to the spouse or registered domestic partner if the person is living with the alleged incapacitated person or his heirs, or if none of them will accept letters thereafter to the Office of Public Guardian for Elderly Adults. Consideration may be given to the surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney, health care proxy or advance directive .

**Section 16: N.J.S.A.3B:12-28.** (*Return to competency*) This section was amended to clarify that the court may, on a summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency.

**Section 28: N.J.S.A.3B:12-41.** (*Guardian of ward's person entitled to reimbursement for expenses*) This section was amended to clarify that the guardian will receive reasonable reimbursement and fees for his services.

**Section 29: N.J.S.A.3B:12-42.** (*Reporting condition of ward's person and property to court*) The section was amended to expand the reporting requirements for guardians in order to provide uniformity and consistency. This section sets forth when the report should be made and what it must contain. However, the bill does exempt from this reporting requirement the Bureau of Guardianship Services in the Division of Developmental Disabilities, the Office of the Public Guardian, and public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes..

**Section 30: N.J.S.A.3B:12-43.** (*Expenditures to be made by guardian out of ward's estate.*) The bill amends this section concerning expenditures for the incapacitated person to require a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward.

**Section 35: N.J.S.A.3B:12-48.** (*Powers conferred upon a guardian*) The section was amended to clarify that the guardian has the power to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

**Section 36: N.J.S.A.3B:12-49.** (*Powers conferred upon a court*) The section was amended to clarify that among the court's powers with regard to a ward and his estate is the power to exercise the ward's right to an elective share in the estate of the ward's deceased spouse



or registered domestic partner and to engage in planning utilizing public assistance programs.

**Section 38: N.J.S.A.3B:12-56.** (*Powers, rights and duties of a guardian of a ward*) This section was amended to clarify the powers, rights and duties of a guardian of a ward. The section provides that a guardian is not legally obligated to provide for the ward from his own funds. A guardian is also not liable to a third person for acts of the ward solely by reason of the relationship and is not liable to the ward for injury resulting from wrongful conduct of a third person. In addition, if a ward has previously executed a valid power of attorney for health care or advance directive, a guardian is required to act consistent with the terms of such document. To the extent specifically ordered by the court, the guardian can initiate the voluntary admission of a ward to a State or private psychiatric facility and the ward will be entitled to all of the rights of a voluntarily admitted patient. The guardian of the ward is required to exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment apply. If the ward objects to any other decision of the guardian, this objection shall be brought to the attention of the court which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate.

**Section 39: N.J.S.A.3B:12-57.** (*Powers and duties of a guardian of a person*) This section is amended to clarify that a guardian of the person of a ward is required to exercise authority over matters relating to the rights and best interest of a ward's personal needs only to the extent ordered by the court. This section provides that a guardian is required to give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. This section also provides that to the extent that it is consistent with the terms of any order by a court, the guardian shall: take custody; provide for visitation; provide for the care, comfort, maintenance and education; provide for necessary consents or approvals; provide for possessions; institute any necessary actions; develop a plan of supportive services; and receive money and tangible personal property.

The guardian shall exercise care to conserve any excess funds for the ward's needs. If necessary, the guardian may institute an action that could be maintained by the ward including actions alleging fraud, abuse, undue influence and exploitation.

**Section 45: N.J.S.A.3B:12-64.** The section was amended to clarify that the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for these costs and surrogate fees.

**Section 46: N.J.S.A.3B:12-66.** The section was amended to clarify

that the Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill a vacancy by the appointment of a substituted guardian.

**Section 47: N.J.S.A.3B:22-2.** The section provides an order of payment if the applicable assets of the estate are insufficient to pay all claims in full. This section was amended to clarify that the debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults will be paid before debts and taxes, reasonable medical expenses, judgments and all other claims are paid.

**New sections 48 and 49.** These sections establish procedures for transfer of guardianship services when a guardian in this State is seeking to move to another state and when a guardian in another state is seeking to transfer services into New Jersey. Section 48 concerns a guardian who is appointed in this State who desires to move to another state with his ward. Section 49 provides for the transfer into New Jersey of guardianship established in another state.

**Remaining provisions of the bill.** The remaining sections of the bill were amended to replace the term "mental incompetent" with "incapacitated or alleged incapacitated" person. These sections were also amended to make certain technical changes to make those sections consistent with the remaining provisions of the bill. The sections are as follows:

Sections 1 through 3 (N.J.S.A.3B:12-1 through N.J.S.A.3B:12-3-*Protective arrangements*);

Sections 5 and 6 (N.J.S.A.3B:12-5 and N.J.S.A.3B:12-6-*Personal property delivered*);

Section 8 (N.J.S.A.3B:12-13-*Power to designate testamentary guardian*);

Section 9 (N.J.S.A. 3B:12-15- *Appointment of guardian*);

Section 10 (N.J.S.A.3B:12-16-*Bonds*);

Section 11 (N.J.S.A.3B:12-24-*Jury demand*);

Sections 14 and 15 (N.J.S.A.3B:12-26 and N.J.S.A.3B:12-27-*Actions against incapacitated persons and Distribution of intestate property*);

Sections 17 through 27 (N.J.S.A.3B:12-29 through N.J.S.A. 3B:12-39- *Appointment of guardian; Bond of testamentary guardian; Determination into fitness; Authority of court; Letters of guardianship; Delegation of parent's or guardian's powers*);

Sections 31 through 34 (N.J.S.A.3B:12-44 through N.J.S.A.3B:12-47-*Expenditures*);

Section 37 (N.J.S.A.3B:12-54-*Delivery of property when minor attains 18 years age*);

Section 40 (N.J.S.A. 3B:12-58-*Gifts to charities*);

Section 41 (N.J.S.A.3B:12-59-*Purchasing of property*);

Section 42 (N.J.S.A.3B:12-60- *Wills*);

Section 43 (N.J.S.A.3B:12-61-*Guardian-personal representative powers*); and

Section 44 (N.J.S.A.3B:12-63- *Final accounting*)

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1922.

**FISCAL IMPACT:**

In a fiscal note for Assembly Bill No. 1922 as introduced, the Administrative Office of the Courts (AOC) stated that filing fees regarding guardianship under the New Jersey Statutes are currently paid to the county Surrogate's office as the Deputy Superior Court Clerk of Probate Court. In this regard, there will be no impact on any Judiciary revenues as a result of this bill.

With regard to Assembly Bill No. 1922 ACS, the AOC stated that the cost of implementing the bill would be negligible.

**COMMITTEE AMENDMENTS:**

The amendments clarify the priority order with regard to letters of guardianship, the exemptions for the reporting requirements and include domestic partners.

**Section 13: N.J.S.A.3B:12-25** (appointment of guardian) amendments specify that letters of guardianship may be granted the Office of Public Guardian for Elderly Adults or if the spouse or registered domestic partner or his heirs or friends will not accept letters, and add the proviso that the Office of the Public Guardian has the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office. The amendments also clarify that consideration may be given, rather than should be given, to the surrogate decision-makers, chosen by the incapacitated person before the person became incapacitated.

**Section 29: N.J.S.A.3B:12-42.** (*Reporting condition of ward's person and property to court*) amendments exempt from the guardianship reporting requirements public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes.

**Sections 18, 20, 21, 36, 39** (N.J.S.A.3B:12-30, N.J.S.A.3B:12-32, N.J.S.A.3B:12-33, N.J.S.A.3B:12-49, N.J.S.A.3B:12-57) amendments include the reference to "domestic partner" where appropriate.

The remaining amendments make technical changes to provide consistency among all the provisions of the substitute.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1922**

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 1, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1922 (ACS/1R).

This bill revises numerous sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.

This bill clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person. The bill establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary "pendente lite" guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted. The bill expands the current reporting procedures for guardians. In addition, the bill revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.

The pertinent provisions in the bill are as follows:

**Section 4: N.J.S.A.3B:12-4. (Appointment of special guardian)**  
Current law authorizes the court to appoint a special guardian to assist the court in providing for any protective arrangements. This provision remains unchanged by the bill. The bill provides that if a special guardian is appointed, the guardian is entitled to reasonable fees for services as well as reimbursement for reasonable expenses.

**Section 7: N.J.S.A.3B:12-11. (Affidavit of receipt)** This section requires filing of an affidavit by the recipient for money or property in connection with the guardianship of a minor. If the minor resides outside the State, the filing is in the county which has jurisdiction over the property.

**Section 12: (New section).** (*Determination by the court of need for guardianship services*) This section of the bill supplements the current law by specifically outlining the different types of guardians and their powers and duties.

General Guardian -If the court finds that an individual is incapacitated and *is without capacity to govern* himself or manage his affairs, the court may appoint a *general guardian* who will exercise all rights and powers of the incapacitated person. The general guardian must furnish a bond unless relieved by the court.

Limited Guardian. If the court finds a person is incapacitated and *lacks the capacity to do some, but not all*, of the tasks necessary to care for himself, the court can appoint a *limited guardian* of the person, limited guardian of the estate, or limited guardian of both. The court must make specific findings as to the person's decision making capacity with regard to residential, education, medical, legal, vocational and financial decisions. A judgment of limited guardianship may specify the limitations upon the authority or the areas of decision making retained by the person. The limited guardian must furnish a bond unless relieved by the court.

Pendente lite; Temporary Guardian. Whenever a complaint is filed in court to declare a person incapacitated and to appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, pendente lite. Pending a hearing for the appointment of a guardian, the court may for good cause shown appoint a pendente lite temporary guardian upon a finding that there is a critical need or risk of substantial harm. If appointed the temporary guardian may be granted authority to arrange interim services or temporary accommodations.

Payments for such services may be made from the estate of the alleged incapacitated person. A pendente lite temporary guardian appointed is limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person. Pendente lite temporary guardians are not designed to act as special medical guardians appointed under Rules of Court to authorize emergent medical or surgical intervention needed to deal with substantial threat to a person's life or health.

The attorney for the alleged incapacitated person is given notice of the appointment. The pendente lite temporary guardian is required to advise the attorney of all actions and the attorney would have the right to object.

A pendente lite temporary guardian appointment does not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

The pendente lite temporary guardian, upon application to the court, would be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which would be

payable by the estate of the alleged incapacitated person or minor. The pendent lite temporary guardian would be required to furnish a bond, unless the court relieves him of doing so.

This sections also addresses the following: *disclosure of information; court appearance; communication; enlarging or limiting guardianship powers.*

**Section 13: N.J.S.A.3B:12-25.** (*Appointment of guardian*) Clarifies that letters of guardianship may be granted to the spouse or registered domestic partner if the person is living with the alleged incapacitated person or his heirs, or if none of them will accept letters thereafter to the Office of Public Guardian for Elderly Adults. Consideration may be given to the surrogate decision-makers, if any, chosen by the incapacitated person by way of a durable power of attorney, health care proxy or advance directive.

**Section 16: N.J.S.A.3B:12-28.** (*Return to competency*) Clarifies that the court may, on a summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the person has returned to full or partial competency and restore his civil rights and estate.

**Section 28: N.J.S.A.3B:12-41.** (*Guardian of ward's person entitled to reimbursement for expenses*) Clarifies that the guardian will receive reasonable reimbursement and fees for his services.

**Section 29: N.J.S.A.3B:12-42.** (*Reporting condition of ward's person and property to court*) Expands the reporting requirements for guardians in order to provide uniformity and consistency. This section sets forth when the report should be made and what it must contain. Exempts from this reporting requirement the Bureau of Guardianship Services in the Division of Developmental Disabilities, the Public Guardian, and public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes.

**Section 30: N.J.S.A.3B:12-43.** (*Expenditures to be made by guardian out of ward's estate.*) Requires a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward.

**Section 35: N.J.S.A.3B:12-48.** (*Powers conferred upon a guardian*) Clarifies that the guardian has the power to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

**Section 36: N.J.S.A.3B:12-49.** (*Powers conferred upon a court*) Clarifies that among the court's powers with regard to a ward and his estate is the power to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or registered domestic partner and to engage in planning the use of public assistance programs.

**Section 38: N.J.S.A.3B:12-56.** (*Powers, rights and duties of a guardian of a ward*) Clarifies the powers, rights and duties of a guardian of a ward. Provides that a guardian is not legally obligated to provide for the ward from his own funds and is not liable to a third

person for acts of the ward solely by reason of the relationship and is not liable to the ward for injury resulting from wrongful conduct of a third person. A guardian is required to act consistently with a previously executed valid power of attorney for health care or advance directive. To the extent ordered by a court, the guardian can initiate the voluntary admission of a ward to a psychiatric facility with all of the rights of a voluntarily admitted patient. If the ward objects, the State's procedures for involuntary commitment apply.

**Section 39: N.J.S.A.3B:12-57.** (*Powers and duties of a guardian of a person*) Clarifies that a guardian of the person of a ward is required to exercise authority over matters relating to the ward's personal needs only to the extent ordered by the court. Provides that a guardian is required to give due regard to the preferences of the ward. The guardian shall exercise care to conserve any excess funds. The guardian may institute an action that could be maintained by the ward including actions alleging fraud, abuse, undue influence and exploitation.

**Section 45: N.J.S.A.3B:12-64.** Clarifies that the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for these costs and surrogate fees.

**Section 46: N.J.S.A.3B:12-66.** Clarifies that the Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill a vacancy by the appointment of a substituted guardian.

**Section 47: N.J.S.A.3B:22-2.** Provides an order of payment if the applicable assets of the estate are insufficient to pay all claims in full. Clarifies that the debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian will be paid before certain other claims.

**New sections 48 and 49.** These sections establish procedures for transfer of guardianship services when a guardian in this State is seeking to move to another state and when a guardian in another state is seeking to transfer services into New Jersey.

**Other provisions of the bill.** The remaining sections of the bill replace the term "mental incompetent" with "incapacitated or alleged incapacitated" person.

**Sections 18, 20, 21, 36, 39** (N.J.S.A.3B:12-30, N.J.S.A.3B:12-32, N.J.S.A.3B:12-33, N.J.S.A.3B:12-49, N.J.S.A.3B:12-57) include the reference to "domestic partner" where appropriate.

The committee amendments are technical in nature. In section 11 they include a missing reference to "incapacitated person" in the last sentence; in section 12 they correct two typos: the use of "appropriately" and the insertion of "person."

As amended, this bill is identical to Senate, No. 224 (1R).

**FISCAL NOTE**  
**ASSEMBLY, No. 1922**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JULY 12, 2004

**SUMMARY**

**Synopsis:** Amends guardianship law.  
**Type of Impact:** General Fund expenditure  
**Agencies Affected:** Judiciary, counties

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$1,905,870	\$1,868,853	\$1,962,167

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! The bill amends several sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.
- ! The Administrative Office of the Courts (AOC) states that the Judiciary would be required to create one position within each county to oversee the review of annual reports and any interviews or investigations with regards to the ward or guardian. Those counties with larger aging populations (Essex, Bergen, Hudson and Ocean) would each need two positions. For the purpose of this analysis, the AOC has placed this position at the level of a Court Services Supervisor 3 or an Administrative Supervisor 4 level.
- ! The first year salary and fringe benefits expenses would total \$1.7 million. Assuming a five percent increase in costs, salaries and fringe benefits, this amount would increase to \$1.785 million and \$1.874 million during the second and third years of program operation. One time startup costs would total \$126,250 during the program's first year. Annual operating costs would total \$80,000 during the first year of program operation and increase to \$84,000 and \$88,200 during the second and third year, respectively.

**BILL DESCRIPTION**

Assembly Bill No. 1922 of 2004 amends several sections of chapter 12 of Title 3B of the New Jersey Statutes, concerning guardianship.

Specifically, the bill amends:

- C N.J.S.A.3B:12-1 to clarify that the court may order a protective arrangement when a minor



or an alleged incapacitated person faces a risk of physical harm or deterioration due to circumstances beyond his control, and that any protective order is subject to immediate review upon two days' notice to all interested parties;

- C N.J.S.A.3B:12-2 to add relocation of the person for the purpose of protection or obtaining or authorizing medical services as a matter to be included in a protective arrangement;
  - C N.J.S.A.3B:12-4 to allow the court to appoint a special medical guardian to consent to medical treatment before a hearing on guardianship can be held, if it can be shown that the health, safety and welfare of the incapacitated person would otherwise be at risk, and to provide for reasonable compensation for the special medical guardian, when warranted;
  - C N.J.S.A.3B:12-11 to allow an affidavit of receipt in connection with a person making a payment of money or delivery of personal property in connection with the guardianship of a minor to be filed in the county which has jurisdiction over the property;
  - C N.J.S.A.3B:12-16 to permit the court to issue an order relieving a testamentary guardian from posting a bond in accordance with N.J.S.A.3B:15-1;
  - C N.J.S.A.3B:12-24 to permit appointment of a temporary guardian, when no general or natural guardian is available and has authority to consent to action needed to deal with a substantial threat to the health, safety and welfare of an alleged incapacitated person, under certain circumstances;
- clarify that an order appointing a guardian shall authorize the guardian to exercise only those powers necessary to meet the essential requirements for the incapacitated person's health, safety, education and self-care or to manage the incapacitated person's property or finances, or both, consistent with the incapacitated person's functional limitations, his understanding and appreciation of the harm likely to be suffered as a result of the limitations, his preferences and the least restrictive form of intervention;
- clarify that a determination of incapacity will not deprive an alleged incapacitated person of the exercise of any rights, powers and privileges under law, unless specifically provided for in the protective order;
- permit the court to establish a limited guardianship at any time;
- require all reasonable means of communication to be attempted when an alleged incapacitated person appears to have a receptive or communication deficit;
- provide for a trial without a jury in guardianship matters unless the alleged incapacitated person or someone on the person's behalf demands otherwise;
- allow the court to expand the powers of a guardian, if necessary, but only to the extent necessary to protect the alleged incapacitated person from significant harm;
- permit the court to limit the powers conferred upon a guardian at the request of the guardian, ward or another interested person;
- C N.J.S.A.3B:12-25 to direct that, when appointing a guardian, the court look first to the alleged incapacitated person's spouse and heirs, and then give due deference to surrogate decision-makers designated by the alleged incapacitated person in a power of attorney, health care proxy or advance directive;
  - C N.J.S.A.3B:12-30 to clarify that the statute relates to the appointment of a guardian by the parents or spouse of an incapacitated adult;
  - C N.J.S.A.3B:12-34 to require notice to the alleged incapacitated person prior to probating a will that appoints a testamentary guardian;
  - C N.J.S.A.3B:12-41 to provide for reasonable compensation, plus expenses, for a court-appointed special guardian;
  - C N.J.S.A.3B:12-42 to: -- require the guardian to report annually to the court on the ward's condition and his estate;

- permit the court to appoint an individual to review a report, interview the ward or guardian and make any other investigation the court directs;
- require the court to establish a system for monitoring guardianships;
- C N.J.S.A.3B:12-43 to require a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward;
- C N.J.S.A.3B:12-45 to add public entitlement programs to those factors a guardian must consider in making expenditures from a ward's estate;
- C N.J.S.A.3B:12-49 to clarify that the powers conferred upon a guardian of the estate may include the power to engage in estate and gift tax planning and to make transfers with due regard to the effect of the transfers on the eligibility of the ward for certain public entitlement programs;
- C N.J.S.A.3B:12-56 to describe the powers, rights and responsibilities of a guardian of the person;
- C N.J.S.A.3B:12-57 to require a guardian to;
  - exercise authority over matters relating to the rights and best interest of a ward's personal needs to the extent ordered by the court, to require a guardian to give due regard to the preferences of the ward and to require the guardian to encourage the ward's participation in the decision- making process;
  - take custody of the ward and establish the ward's place of abode within or without the State;
  - personally visit the ward or have his representative visit the ward not less frequently than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;
  - provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;
  - subject to the provisions of subsection c. of N.J.S.A.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;
  - take reasonable care of the ward's clothing, furniture, vehicles and other personal effects;
  - institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;
  - develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;
  - if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties; and
  - receive money, payable from any source for the support of the ward, and tangible personal property deliverable to the ward; and use the money for the ward's current needs for support, health care, education and training;
- C N.J.S.A.3B:12-60 to require the guardian to deliver an incapacitated person's will to the surrogate of the county where the guardian was appointed;
- C N.J.S.A.3B:12-64 to clarify that notwithstanding the termination of the guardianship, the guardian is authorized to make final burial and funeral arrangements if the body remains unclaimed for five days, and to make payment for burial and funeral costs and surrogate fees of administration, probate and bond from the guardianship account.

## FISCAL ANALYSIS

### ***EXECUTIVE BRANCH***

The Administrative Office of the Courts (AOC) states that filing fees regarding guardianship under the New Jersey Statutes are currently paid to the county Surrogate's office as the Deputy Superior Court Clerk of Probate Court. In this regard, there will be no impact on any Judiciary revenues as a result of this bill.

The AOC further states that the bill requires the courts to establish a system for monitoring guardianships, including the filing and review of annual reports that the guardian will be required to submit on an annual basis. The bill also allows the court to appoint an individual to review the annual report, interview the ward or guardian and make any other investigation the court directs.

The AOC states that the Judiciary would be required to create one position within each county to oversee the review of annual reports and any interviews or investigations with regards to the ward or guardian. Those counties with larger aging populations (Essex, Bergen, Hudson and Ocean) would each need two positions. For the purpose of this analysis, the AOC has placed this position at the level of a Court Services Supervisor 3 or an Administrative Supervisor 4 level. The first year salary and fringe benefits expenses would total \$1.7 million. Assuming a five percent increase in costs, salaries and fringe benefits, this amount would increase to \$1.785 million and \$1.874 million during the second and third years of program operation. One time startup costs would total \$126,250 during the program's first year. Annual operating costs would total \$80,000 during the first year of program operation and increase to \$84,000 and \$88,200 during the second and third year, respectively.

Total annual costs to the Judiciary would be \$1,905,870 in the first year, \$1,868,853 in the second year, and \$1,962,167 million in the third year after the bill's enactment.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Executive estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*  
*Lead Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

**FISCAL NOTE**  
 [First Reprint]  
 ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1922**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JULY 6, 2005

**SUMMARY**

**Synopsis:** Amends the State's guardianship law.

**Type of Impact:** General Fund expenditure

**Agencies Affected:** Judiciary

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Negligible-See Comments Below		

- ! The Office of Legislative Services **concurs** with the Executive estimate.
- ! The substitute revises several sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.
- ! The substitute clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person.
- ! The substitute establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary pendente lite guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It also specifically sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted to a guardian.
- ! The substitute also expands the current reporting procedures for guardians. In addition, the substitute revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.
- ! Amendments to the substitute specify that letters of guardianship may be granted the Office of Public Guardian for Elderly Adults or if the spouse or registered domestic partner or his heirs or friends will not accept letters, and add the proviso that the Office of the Public Guardian has the authority to not accept guardianship in cases determined by the public



guardian to be inappropriate or in conflict with the office. The amendments also clarify that consideration may be given, rather than should be given, to the surrogate decision-makers, chosen by the incapacitated person before the person became incapacitated.

- ! Amendments to the substitute exempt from the guardianship reporting requirements public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes.
- ! In a fiscal note for Assembly Bill No. 1922, the Administrative Office of the Courts (AOC) stated that filing fees regarding guardianship under the New Jersey Statutes are currently paid to the county Surrogate's office as the Deputy Superior Court Clerk of Probate Court. In this regard, there will be no impact on any Judiciary revenues as a result of this bill.
- ! The AOC states that the cost of implementing this committee substitute as amended would be negligible.
- ! The Office of the Public Guardian states that the cost of implementing this committee substitute as amended would be negligible.

## **BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill No. 1922 (1R) of 2004 revises several sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.

The substitute clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person. The substitute establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary pendente lite guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It also specifically sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted to a guardian.

The substitute also expands the current reporting procedures for guardians. In addition, the substitute revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.

Amendments made to the substitute by the Assembly Appropriations Committee specify that letters of guardianship may be granted the Office of Public Guardian for Elderly Adults or if the spouse or registered domestic partner or his heirs or friends will not accept letters, and add the proviso that the Office of the Public Guardian has the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office. The amendments also clarify that consideration may be given, rather than should be given, to the surrogate decision-makers, chosen by the incapacitated person before the person became incapacitated.

Additional amendments to the substitute made by the committee exempt from the guardianship reporting requirements public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Administrative Office of the Courts**

In a fiscal note for Assembly Bill No. 1922, the AOC stated that filing fees regarding guardianship under the New Jersey Statutes are currently paid to the county Surrogate's office as the Deputy Superior Court Clerk of Probate Court. In this regard, there will be no impact on any Judiciary revenues as a result of this bill.

With regard to the committee substitute, the AOC states that the cost of implementing the committee substitute as amended would be negligible.

#### **The Office of the Public Guardian**

The Office of the Public Guardian states that the cost of implementing this committee substitute as amended would be negligible.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services concurs with the Executive estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*  
*Lead Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

**SENATE, No. 224**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**SYNOPSIS**

Amends guardianship law.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning guardianship and amending various sections of  
2 Title 3B of the New Jersey Statutes.

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:12-1 is amended to read as follows:

8 3B:12-1. Power of the court to order a protective arrangement.

9 If it is established that: a. a minor, [mental incompetent]an alleged  
10 incapacitated person or a person not yet in being has property or an  
11 interest therein which may be wasted or dissipated or that a basis  
12 exists for affecting the property or interest and affairs of a minor,  
13 [mental incompetent]alleged incapacitated person or person not yet  
14 in being[, or that]; b. funds are needed for the support, care and  
15 welfare of the minor or [mental incompetent]alleged incapacitated  
16 person or those entitled to be supported by him; or c. a minor or  
17 alleged incapacitated person faces a risk of physical harm or  
18 deterioration due to circumstances beyond his control, the court may  
19 [, subject]grant such ex parte emergent relief as shall be required to  
20 protect the financial interests of the minor, alleged incapacitated  
21 person or person not yet in being, or the physical well-being of the  
22 minor or alleged incapacitated person. Subject to the appointment of  
23 a guardian ad litem and upon notice to the guardian ad litem and the  
24 person in need of protection, without appointing a guardian of  
25 [his]the person or estate, the court may authorize, direct or ratify any  
26 single or more than one transaction necessary or desirable to achieve  
27 any security, service, care or protective arrangement meeting the  
28 foreseeable needs of the minor or [mental incompetent]alleged  
29 incapacitated person or those dependent upon him. Any ex parte order  
30 issued pursuant to this provision shall be served upon the guardian ad  
31 litem and the person in need of protection within a reasonable time, as  
32 permitted by the court, and shall be subject to immediate review upon  
33 two days' notice to all interested parties.

34 (cf: P.L.1981, c.405, s.3B:12-1)

35  
36 2. N.J.S.3B:12-2 is amended to read as follows:

37 3B:12-2. Matters within a protective arrangement.

38 Protective arrangements include, but are not limited to, payment,  
39 delivery, deposit or retention of funds or property, sale, mortgage,  
40 lease or other transfer of property, entry into an annuity contract, a  
41 contract for life care, a deposit contract, a contract for training and  
42 education, [or] addition to, or establishment of, a suitable trust,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**



1 relocation of the person for the purpose of protection or obtaining  
2 medical services or authorizing such medical services. The court may  
3 authorize, direct or ratify any contract, trust or other transaction  
4 relating to the minor's, [mental incompetent's] alleged incapacitated  
5 person's or person's not yet in being financial affairs or involving [his]  
6 the estate if the court determines that the transaction is in the best  
7 interests of the minor, [mental incompetent] alleged incapacitated  
8 person or person not yet in being or those dependent upon him.  
9 (cf: P.L.1981, c.405, s.3B:12-2)

10  
11 3. N.J.S.3B:12-3 is amended to read as follows:

12 3B:12-3. Factors to be considered before approving a protective  
13 arrangement.

14 Before approving a protective arrangement or other transaction the  
15 court shall consider the interests of creditors and dependents of the  
16 minor or [mental incompetent] alleged incapacitated person and, in  
17 view of his disability, whether the minor or [mental  
18 incompetent] alleged incapacitated person needs the continuing  
19 protection of a guardian.

20 (cf: P.L.1981, c.405, s.3B:12-3)

21  
22 4. N.J.S.3B:12-4 is amended to read as follows:

23 3B:12-4. Appointment of special guardian.

24 The court may appoint a special guardian to assist in the  
25 accomplishment of any protective arrangement or other transaction  
26 authorized under this article who shall have authority conferred by the  
27 order and shall serve until discharged by order after report to the court  
28 of all matters done pursuant to the order of appointment. When a  
29 guardianship with a protective arrangement is otherwise warranted,  
30 and the legal requirements for appointment of a special medical  
31 guardian have been satisfied, the court may, on application and for  
32 good cause shown, grant to the special guardian the authority of a  
33 special medical guardian to consent to such medical and surgical  
34 diagnosis, treatment and care of the alleged incapacitated person as  
35 may be needed before a hearing can reasonably be held on the petition  
36 for guardianship, if it is demonstrated that the health, safety and  
37 welfare of the alleged incapacitated person will be at risk if the medical  
38 and surgical diagnosis, treatment and care are not provided before the  
39 hearing on the guardianship petition can reasonably be held.

40 If the court has appointed a special guardian to assist in the  
41 accomplishment of a protective arrangement pursuant to this section,  
42 the special guardian shall be entitled to receive reasonable sums for his  
43 services, as well as reimbursement of his reasonable expenses, upon  
44 application to the court, payable by the estate of the alleged  
45 incapacitated person.

46 (cf: P.L.1981, c.405, s.3B:12-4)

1 5. N.J.S.3B:12-5 is amended to read as follows:

2 3B:12-5. Right of alleged [~~mental incompetent~~]incapacitated  
3 person to trial on issue of [~~mental incompetency~~]incapacity.

4 Where application is made to the court for proceedings to affect the  
5 property and affairs of [~~a mental incompetent~~]an alleged incapacitated  
6 person, and the alleged [~~mental incompetent~~]incapacitated person has  
7 not been adjudicated as such, the alleged [~~mental~~  
8 ~~incompetent~~]incapacitated person or someone acting in his behalf may  
9 apply for a trial of the issue of [~~mental incompetency~~]incapacity in  
10 accordance with N.J.S. 3B:12-24 and the Rules Governing the Courts  
11 of the State of New Jersey.  
12 (cf: P.L.1981, c.405, s. 3B:12-5)

13

14 6. N.J.S.3B:12-6 is amended to read as follows:

15 3B:12-6. Circumstances under which money may be paid or  
16 personal property delivered.

17 Any person under a duty to pay or deliver money or personal  
18 property to a minor may perform this duty, in amounts not exceeding  
19 \$5,000.00 per annum, by paying or delivering the money or property  
20 to:

- 21 a. The minor, if [~~he is~~] married; [~~or~~]
- 22 b. A parent or parents of the minor; [~~or~~]
- 23 c. Any person having the care and custody of the minor with whom  
24 the minor resides;
- 25 d. A guardian of the person of the minor; or
- 26 e. A financial institution incident to a deposit in a  
27 [~~Federally-insured~~]federally insured savings account in the sole name  
28 of the minor and giving written notice of the deposit to the minor.

29 (cf: P.L.1981, c.405, s.3B:12-6)

30

31 7. N.J.S.3B:12-11 is amended to read as follows:

32 3B:12-11. Affidavit of receipt; contents; filing.

33 The persons making payment of money or delivery of personal  
34 property as provided in this article shall obtain from the recipient  
35 thereof, if other than a financial institution or a married minor, an  
36 affidavit signed by the recipient acknowledging receipt of the money  
37 or personal property which shall set forth the recipient's status in  
38 relation to the minor and the purpose for which the money or personal  
39 property will be used. The affidavit shall be filed in the office of the  
40 surrogate of the county in which the minor resides or the county which  
41 has jurisdiction of the property.

42 (cf: P.L.1981, c.405, s.3B:12-11)

43

44 8. N.J.S.3B:12-13 is amended to read as follows:

45 3B:12-13. Power to designate testamentary guardian.

1 Subject to the provisions of N.J.S. 3B:12-14, either parent may, by  
2 his will, appoint a guardian of the person and a guardian of the estate,  
3 or a guardian of the person and estate, of any of ~~his~~ the parent's  
4 children, including ~~children en ventre sa mere~~ fetuses, who are under  
5 the age of 18 years and unmarried at ~~his~~ the death of the parent.

6 (cf: P.L.1981, c.405, s.3B:12-13)

7  
8 9. N.J.S.3B:12-15 is amended to read as follows:

9 3B:12-15. Appointment of testamentary guardian by surviving  
10 parent.

11 If no guardian has been appointed pursuant to N.J.S.3B:12-13 and  
12 N.J.S.3B:12-14, or if the surviving parent was so appointed, the  
13 surviving parent may, by his will, appoint a guardian of the person and  
14 a guardian of the estate, or a guardian of the person and estate, of any  
15 of ~~his~~ the parent's children, including ~~children en ventre sa~~  
16 ~~mere~~ fetuses, who are under the age of 18 years and unmarried at  
17 ~~his~~ the death of the surviving parent.

18 (P.L.1981, c.405, s.3B:12-15)

19  
20 10. N.J.S.3B:12-16 is amended to read as follows:

21 3B:12-16. Bond of testamentary guardian.

22 Before receiving his letters, a testamentary guardian of a minor shall  
23 give bond in accordance with N.J.S.3B:15-1, unless ~~he~~ the guardian  
24 is relieved from doing so by direction of the will of the parent  
25 appointing the guardian or by order of the court. However, regardless  
26 of the direction, ~~he~~ the guardian shall, with respect to property to  
27 which the ward is or shall be entitled from any source, other than the  
28 parent or other than any policy of life insurance upon the life of the  
29 parent, give bond in accordance with that section before exercising any  
30 authority or control over the property.

31 (cf: P.L.1981, c.405, s.3B:12-16)

32  
33 11. N.J.S.3B:12-24 is amended to read as follows:

34 3B:12-24. ~~Issue of mental incompetency triable without jury~~  
35 ~~unless jury is demanded~~ Determination by the court of need for  
36 guardianship services, specific services; triable without jury unless jury  
37 is demanded.

38 [In civil actions or proceedings for the determination of mental  
39 incompetency or for the appointment of a guardian for an alleged  
40 mental incompetent, the trial of the issue of mental incompetency may  
41 be had without a jury pursuant to Rules Governing the Courts of the  
42 State of New Jersey, unless a trial by jury is demanded by the alleged  
43 mental incompetent or someone on his behalf.]

44 a. The court may appoint a guardian, other than a special guardian  
45 appointed under N.J.S. 3B:12-4, when no general or natural guardian

1 is available and has authority to consent to action needed to deal with  
2 a substantial threat to the health, safety and welfare of an alleged  
3 incapacitated person, only if the court determines that the individual  
4 is an incapacitated person, within the meaning of N.J.S.3B:1-2 of this  
5 article, and that as a result of the person's incapacity it is likely that:

6 (1) the health, safety and well-being of the person will be harmed  
7 or jeopardized;

8 (2) the property or business affairs of the person will be  
9 repossessed, wasted, misappropriated, dissipated, lost, damaged or  
10 diminished, or not appropriately managed; or

11 (3) it is in the best interest of the alleged incapacitated person to  
12 have a guardian appointed.

13 b. An order appointing a guardian for an incapacitated person shall  
14 authorize the guardian to exercise only those powers necessary to  
15 meet the essential requirements for the incapacitated person's health,  
16 safety, education and self-care or to manage the incapacitated person's  
17 property or finances, or both, consistent with the incapacitated  
18 person's functional limitations, the incapacitated person's  
19 understanding and appreciation of the harm that he is likely to suffer  
20 as a result of the functional limitations, the incapacitated person's  
21 preferences and the least restrictive form of intervention.

22 c. A determination of incapacity shall not deprive an incapacitated  
23 person of the free and unrestricted exercise of any rights, powers and  
24 privileges under law, unless otherwise provided in an order appointing  
25 a guardian. These rights, powers and privileges shall include, but shall  
26 not be limited to, determinations concerning the following  
27 considerations, which shall be addressed by the court-appointed  
28 attorney in his report and in the judgment of guardianship:

29 (1) deciding on living arrangements;

30 (2) obtaining medical treatment or other professional care, counsel,  
31 treatment or service;

32 (3) marriage;

33 (4) executing an advance directive;

34 (5) exercising the right to vote;

35 (6) deciding whether or not to give a gift;

36 (7) managing finances;

37 (8) executing a will;

38 (9) establishing a trust or engaging in asset or tax planning;

39 (10) making judgments regarding daily activities.

40 The court-appointed attorney and the court shall always address  
41 whether a limited guardianship may be appropriate in consideration of  
42 the above factors.

43 d. When a person who is allegedly in need of guardianship services  
44 appears to have a receptive or expressive communication deficit, all  
45 reasonable means of communication with the person shall be attempted  
46 for the purpose of this section, including written, spoken, sign or non-

1 formal language, which includes translation of the person's spoken or  
2 written word when the person is unable to communicate in English and  
3 the use of adaptive equipment.

4 e. In civil actions or proceedings for the determination of whether  
5 a person is in need of guardianship services or for the appointment of  
6 a guardian for a person allegedly in need of guardianship services, the  
7 trial of the issue of need for guardianship services may be had without  
8 a jury pursuant to the Rules Governing the Courts of the State of New  
9 Jersey, unless a trial by jury is demanded by the person allegedly in  
10 need of guardianship services or an individual on the person's behalf.

11 f. At the request of the guardian, and after appointment of counsel  
12 with notice to all interested parties, the court may determine that a  
13 person is in need of guardian services regarding additional subject  
14 areas and may enlarge the powers of the guardian to protect that  
15 person from significant harm; however, the additional powers  
16 conferred on the guardian shall be no greater than is necessary to  
17 protect the incapacitated person from significant harm.

18 g. At the request of the guardian, the ward or another interested  
19 person, and after appointment of counsel with notice to all interested  
20 parties, the court may limit the powers conferred upon a guardian.

21 (cf: P.L.1981, c.405, s.3B:12-24)

22  
23 12. N.J.S.3B:12-25 is amended to read as follows:

24 3B:12-25. Appointment of guardian [other than a testamentary  
25 guardian].

26 The Superior Court may determine the [mental incompetency]  
27 incapacitation of an alleged [mental incompetent] incapacitated person  
28 and appoint a guardian for [his] the person, guardian for [his] the  
29 estate or a guardian for [his] the person and estate. Letters of  
30 guardianship shall be granted to the spouse, if the spouse is living with  
31 the [incompetent] alleged incapacitated person as man and wife at the  
32 time the [incompetency] incapacitation arose, or to [his] the alleged  
33 incapacitated person's heirs, or if none of them will accept the letters  
34 or it is proven to the court that no appointment from among them will  
35 be to the best interest of the [incompetent] incapacitated person or his  
36 estate, then to any other proper person as will accept the same, giving  
37 due deference to surrogate decision-makers, if any, chosen by the  
38 incapacitated person by way of a durable power of attorney, health  
39 care proxy or advance directive.

40 (cf: P.L.1981, c.405, s.3B:12-25)

41  
42 13. N.J.S.3B:12-26 is amended to read as follows:.

43 3B:12-26. Action against [mental incompetent] incapacitated  
44 person when guardian newly appointed; leave of court required.

45 No action shall be brought or maintained against [a mental

1 incompetent] an incapacitated person within [1] one month after  
2 appointment of a guardian except by leave of the court wherein the  
3 action is to be brought or maintained.

4 (cf: P.L.1981, c.405, s.3B:12-26)

5

6 14. N.J.S.3B:12-27 is amended to read as follows:

7 3B:12-27. Distribution of [mental incompetent's] property of an  
8 incapacitated person as intestate property.

9 If [a mental incompetent] an incapacitated person dies intestate or  
10 without any will except one which was executed after commencement  
11 of proceedings which ultimately resulted in a judgment [of  
12 incompetency] that the person lacks the decision-making capacity to  
13 execute a will, and before a judgment has been entered adjudicating a  
14 return to competency, [his] the person's property shall descend and be  
15 distributed as in the case of intestacy.

16 (cf: P.L.1981, c.405, s.3B:12-27)

17

18 15. N.J.S.3B:12-28 is amended to read as follows:

19 3B:12-28. Return to competency; restoration of estate.

20 The Superior Court may, on motion by the person adjudicated  
21 incapacitated or the guardian, adjudicate that the [mental  
22 incompetent] incapacitated person has returned to full or partial  
23 competency and restore to [him] that person his estate as it exists at  
24 the time of the return to competency if the court is satisfied that  
25 [he] the person has recovered his sound reason and is fit to govern  
26 himself and manage his affairs, or, in the case of [a mental  
27 incompetent] an incapacitated person determined to be [mentally  
28 incompetent] incapacitated by reason of chronic alcoholism, that [he]  
29 the person has reformed and become habitually sober and has  
30 continued so for [1] one year next preceding the commencement of the  
31 action, and in the case of [a mental incompetent] an incapacitated  
32 person determined to be [mentally incompetent] incapacitated by  
33 reason of chronic use of drugs that [he] the person has reformed and  
34 has not been a chronic user of drugs for [1] one year next preceding  
35 the commencement of the action.

36 (cf: P.L.1981, c.405, s.3B:12-28)

37

38 16. N.J.S.3B:12-29 is amended to read as follows:

39 3B:12-29. Appointment of guardian of the property for nonresident  
40 [mental incompetent] incapacitated person.

41 When a nonresident has been or shall be found to be [a mental  
42 incompetent] an incapacitated person under the laws of the  
43 [State] state or country wherein [he] the nonresident resides, the  
44 Superior Court may appoint a guardian for [his] the nonresident's

1 property in [the] this State.

2 (cf: P.L.1981, c.405, s.3B:12-29)

3

4 17. N.J.S.3B:12-30 is amended to read as follows:

5 3B:12-30. Appointment of guardian of adult by parents or spouse;  
6 judgment confirming appointment.

7 The parents who have been appointed the guardian of an unmarried  
8 [mental incompetent] incapacitated person or the spouse who has  
9 been appointed the guardian of [a mental incompetent] an  
10 incapacitated person may, by will, appoint a testamentary guardian of  
11 the person, or a guardian of the estate, or of both the person and  
12 estate of the [mental incompetent] incapacitated person. Before the  
13 appointment of a testamentary guardian becomes effective, the person  
14 designated as the testamentary guardian shall apply to the court in a  
15 summary manner, upon notice to the [mental incompetent] alleged  
16 incapacitated person, to any guardian who may have been appointed  
17 for [him] the incapacitated person, to the person or institution having  
18 [his] the care of the incapacitated person and to [his] such heirs as  
19 the court may direct, for a judgment confirming [his] that  
20 appointment under the will.

21 (cf: P.L.1981, c.405, s.3B:12-30)

22

23 18. N.J.S.3B:12-31 is amended to read as follows:

24 3B:12-31. Consent by surviving parent to guardian's appointment.

25 Where an appointment of a testamentary guardian is made by a  
26 parent under N.J.S.3B:12-30 and the other parent survives the  
27 appointing parent, the appointment shall be effective only when the  
28 surviving parent, at or before the issuance of letters, consents to the  
29 appointment in writing and signs and acknowledges the consent in the  
30 presence of two witnesses present at the same time who subscribe  
31 their names as witnesses thereto in [his] the presence of the surviving  
32 parent, unless the surviving parent has been adjudged [a mental  
33 incompetent] an incapacitated person.

34 (cf: P.L.1981, c.405, s.3B:12-31)

35

36 19. N.J.S.3B:12-32 is amended to read as follows:

37 3B:12-32. Temporary appointment of guardian if person not  
38 adjudicated [mentally incompetent] an incapacitated person.

39 If the person for whom a testamentary guardian has been appointed  
40 under the will of a parent or spouse has not been adjudicated as [a  
41 mental incompetent] an incapacitated person in accordance with  
42 N.J.S.3B:12-24 and the Rules Governing the Courts of New Jersey,  
43 the person named as the testamentary guardian may apply to the court  
44 in the manner provided in N.J.S.3B:12-30 for a judgment designating  
45 that person as the temporary guardian of the person or of the estate,

1 or of both the person and estate of the alleged [mental incompetent]  
2 incapacitated person until the issue of [mental incompetency]  
3 incapacity has been determined. Upon the determination of the issue  
4 of [mental incompetency] incapacity, the court shall either enter a  
5 judgment confirming the appointment of the testamentary guardian or  
6 vacating the appointment of the temporary guardian.

7 (cf: P.L.1981, c.405, s.3B:12-32)

8

9 20. N.J.S.3B:12-33 is amended to read as follows:

10 3B:12-33. Bond of testamentary guardian.

11 Before receiving his letters, a testamentary guardian of [a mental  
12 incompetent]an incapacitated person shall give bond in accordance  
13 with N.J.S.3B:15-1 unless [he] the guardian is relieved from doing so  
14 by direction of the will of the parent or spouse appointing the  
15 guardian. However, regardless of any direction, [he] the guardian  
16 shall, with respect to property to which the ward is or shall be entitled  
17 from any source, other than the parent or spouse or other than any  
18 policy of life insurance upon the life of the parent or spouse, give bond  
19 in accordance with that section before exercising any authority or  
20 control over that property.

21 (cf: P.L.1981, c.405, s.3B:12-33)

22

23 21. N.J.S.3B:12-34 is amended to read as follows:

24 3B:12-34. Determination into fitness of a testamentary guardian of  
25 the person of [a mental incompetent] an incapacitated person.

26 If a will appointing a testamentary guardian of the person of [a  
27 mental incompetent]an incapacitated person has been or is to be  
28 probated in the surrogate's court of any county or the Superior Court,  
29 the Superior Court may, in an action brought upon notice to the ward  
30 and guardian named in the will, inquire into the present custody of the  
31 [mental incompetent] incapacitated person, and make any order  
32 touching the testamentary guardianship as may be for the best interest  
33 and welfare of the [mental incompetent]incapacitated person.

34 (cf: P.L.1981, c.405, s.3B:12-34)

35

36 22. N.J.S.3B:12-35 is amended to read as follows:

37 3B:12-35. Effect of a testamentary appointment.

38 The appointment of a testamentary guardian of the person of [a  
39 mental incompetent] an incapacitated person or his estate shall be  
40 good and effectual against any other person claiming the guardianship  
41 over or custody of the [mental incompetent] incapacitated person or  
42 his estate, as the case may be.

43 (cf: P.L.1981, c.405, s.3B:12-35)

44

45 23. N.J.S.3B:12-36 is amended to read as follows:



1 3B:12-36. Authority of court with respect to ward's person and  
2 estate.

3 If a guardian has been appointed as to the person of a minor or  
4 ~~[mentally incompetent]~~incapacitated person, the court shall have [a  
5 full] authority over the ward's person and all matters relating thereto  
6 to the extent provided for in the judgment pursuant to subsection c. of  
7 N.J.S.3B:12-24; and if a guardian has been appointed [as] to the  
8 estate of a minor or ~~[mentally incompetent]~~incapacitated person, the  
9 court shall have [full] authority over the ward's estate, and all matters  
10 relating thereto to the extent provided for in the judgment pursuant to  
11 subsection c. of N.J.S.3B:12-24.

12 (cf: P.L.1981, c.405, s.3B:12-36)

13

14 24. N.J.S.3B:12-37 is amended to read as follows:

15 3B:12-37. [Authority of court to limit or relieve limitations placed  
16 upon powers of guardian; letters]Letters of guardianship to state any  
17 limitations at the time of appointment or later.

18 [The court may, at the time of appointment or later, limit the  
19 powers conferred upon a guardian, or previously conferred by the  
20 court, and may at any time relieve him of any limitation.] If the court  
21 limits any power conferred on the guardian, in accordance with N.J.S.  
22 3B:12-24, the limitation shall be so stated in certificates of letters of  
23 guardianship thereafter issued.

24 (cf: P.L.1981, c.405, s.3B:12-37)

25

26 25. N.J.S.3B:12-41 is amended to read as follows:

27 3B:12-41. Guardian of ward's person entitled to reimbursement for  
28 expenses; payments to third persons.

29 If another person has been appointed guardian of the ward's estate,  
30 the guardian of the ward's person is entitled to receive reasonable sums  
31 for his services and for room and board furnished to the ward,  
32 provided the same has been agreed upon between ~~[him]~~the guardian  
33 of the person and the guardian of the estate; and provided, further,  
34 that the amounts agreed upon are reasonable under the circumstances.  
35 The guardian of the person may request the guardian of the estate to  
36 expend the ward's estate by payment to third persons or institutions for  
37 the ward's care and maintenance. If the court has appointed a special  
38 guardian to assist in the accomplishment of a protective arrangement  
39 pursuant to N.J.S.3B:12-4, the special guardian shall be entitled to  
40 receive reasonable sums for his services, as well as reimbursement of  
41 his reasonable expenses, upon application to the court, payable by the  
42 estate of the alleged incapacitated person.

43 (cf: P.L.1981, c.405, s.3B:12-41)

44

45 26. N.J.S.3B:12-42 is amended to read as follows:

1 3B:12-42. Reporting condition of ward's person and property to  
2 court.

3 A guardian shall report at least annually, unless otherwise waived  
4 by the court, and any additional periods that may be ordered by the  
5 court, the condition of the ward and the condition of the ward's estate  
6 which has been subject to [his] the guardian's possession or control  
7 as ordered by the court [in an action brought by a person interested in  
8 the ward's welfare].

9 a. A report by the guardian of the person shall state or contain:

10 (1) the current mental, physical and social condition of the ward;

11 (2) the living arrangements for all addresses of the ward during the  
12 reporting period;

13 (3) the medical, educational, vocational and other services  
14 provided to the ward and the guardian's opinions as to the adequacy  
15 of the ward's care;

16 (4) a summary of the guardian's visits with the ward and activities  
17 on the ward's behalf and the extent to which the ward has participated  
18 in decision-making;

19 (5) if the ward is institutionalized, whether the guardian considers  
20 the current plan for care, treatment or habilitation to be in the ward's  
21 best interest;

22 (6) plans for future care; and

23 (7) a recommendation as to the need for continued guardianship  
24 and any recommended changes in the scope of the guardianship.

25 b. The court may appoint an individual to review a report,  
26 interview the ward or guardian and make any other investigation the  
27 court directs.

28 c. The court shall establish a system for monitoring guardianships,  
29 including the filing and review of annual reports.

30 (cf: P.L.1981, c.405, s.3B:12-42)

31

32 27. N.J.S.3B:12-43 is amended to read as follows:

33 3B:12-43. Expenditures to be made by guardian out of ward's  
34 estate.

35 A guardian of the estate of a minor or [mental  
36 incompetent]incapacitated person may expend or distribute so much  
37 or all of the income or principal of his ward for the support,  
38 maintenance, education, general use and benefit of the ward and his  
39 dependents, in the manner, at the time or times and to the extent that  
40 the guardian, in an exercise of a reasonable discretion, deems suitable  
41 and proper, taking into account the requirements of the "Prudent  
42 Investor Act," P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without  
43 court order, with due regard to the duty and ability of any person to  
44 support or provide for the ward if the ward is a minor, and without  
45 due regard to the duty and ability of any person to support or provide  
46 for the ward if the ward is [a mental incompetent]an incapacitated

1 person, and with or without regard to any other funds, income or  
2 property which may be available for that purpose.

3 (cf: P.L.1981, c.405, s.3B:12-43)

4

5 28. N.J.S.3B:12-44 is amended to read as follows:

6 3B:12-44. Recommendations to be considered by guardian of  
7 ward's estate in making expenditures.

8 In making expenditures under N.J.S.3B:12-43, the guardian of the  
9 estate of a minor or **[mental incompetent]**incapacitated person shall  
10 consider recommendations relating to the appropriate standard of  
11 support, education and benefit for the ward made by a parent or  
12 guardian of the person, if any. **[He]** The guardian of the estate may  
13 not be surcharged for sums paid to persons or organizations actually  
14 furnishing support, education or care to the ward pursuant to the  
15 recommendations of a parent or guardian of the person unless **[he]** the  
16 guardian knows that the parent or the guardian is deriving personal  
17 financial benefit therefrom, or unless the recommendations are clearly  
18 not in the best interests of the ward.

19 (cf: P.L.1981, c.405, s.3B:12-44)

20

21 29. N.J.S.3B:12-45 is amended to read as follows:

22 3B:12-45. Other factors to be considered by guardian of ward's  
23 estate in making expenditures.

24 In making expenditures under N.J.S.3B:12-43, the guardian of the  
25 estate of a minor or **[mental incompetent]** incapacitated person shall  
26 expend or distribute sums reasonably necessary for the support,  
27 education, care or benefit of **[his]** the ward with due regard to:

28 a. The size of the ward's estate;

29 b. The probable duration of the guardianship and the likelihood  
30 that the ward, at some future time, may be fully able to manage his  
31 affairs and the estate which has been conserved for him; **[and]**

32 c. The accustomed standard of living of the ward and members of  
33 **[his]** the ward's household; and

34 d. Public entitlement programs available to the ward and members  
35 of the ward's household.

36 (cf: P.L.1981, c.405, s.3B:12-45)

37

38 30. N.J.S.3B:12-46 is amended to read as follows:

39 3B:12-46. Persons for whose benefit expenditures may be made by  
40 guardian of ward's estate.

41 The guardian of the estate of a minor or **[mental**  
42 **incompetent]**incapacitated person may expend funds of the ward's  
43 estate under N.J.S.3B:12-43 for the support of persons legally  
44 dependent on the ward and others who are members of the ward's  
45 household who are unable to support themselves, and who are in need

1 of support.  
2 (cf: P.L.1981, c.405, s.3B:12-46)

3  
4 31. N.J.S.3B:12-47 is amended to read as follows:

5 3B:12-47. Persons to whom funds may be paid.

6 Funds expended by the guardian of the estate of a minor or [mental  
7 incompetent]incapacitated person under N.J.S.3B:12-43 may be paid  
8 by the guardian to any person, including the ward, to reimburse for  
9 expenditures which the guardian might have made, or in advance for  
10 services to be rendered to the ward when it is reasonable to expect  
11 that they will be performed and where advance payments are  
12 customary or reasonably necessary under the circumstances.  
13 (cf: P.L.1981, c.405, s.3B:12-47)

14  
15 32. N.J.S.3B:12-48 is amended to read as follows:

16 3B:12-48. Powers conferred upon a guardian.

17 A guardian of the estate of a minor or [mentally incompetent]an  
18 incapacitated person has all of the powers conferred upon [him] the  
19 guardian by law and the provisions of this chapter except as limited by  
20 the judgment.

21 (cf: P.L.1981, c.405, s.3B:12-48)

22  
23 33. N.J.S.3B:12-49 is amended to read as follows:

24 3B:12-49. Powers conferred upon the court.

25 The court has, for the benefit of the ward, [his]the ward's  
26 dependents and members of his household, all the powers over [his]  
27 the ward's estate and affairs which he could exercise, if present and not  
28 under a disability, [except the power to make a will,] and may confer  
29 those powers upon a guardian of [his] the estate. These powers  
30 include, but are not limited to, the power to engage in estate and gift  
31 tax planning, to make transfers to natural objects of the ward's bounty  
32 with due regard to the effect of such transfers on the eligibility of the  
33 ward for certain public entitlement programs, to convey or release the  
34 ward's present and contingent and expectant interests in real and  
35 personal property, including dower and curtesy and any right of  
36 survivorship incident to joint tenancy or tenancy by the entirety, to  
37 exercise or release [his]the ward's powers as trustee, personal  
38 representative, custodian for minor, guardian, or donee of a power of  
39 appointment, to enter into contracts, to create revocable or irrevocable  
40 trusts of property of the estate which may extend beyond [his] the  
41 ward's disability or life, to exercise [his]the ward's options to  
42 purchase securities or other property, to exercise [his]the ward's  
43 rights to elect options and change beneficiaries under insurance  
44 annuity policies and to surrender the policies for their cash value, to  
45 exercise [his]the ward's right to an elective share in the estate of

1 ~~his~~ the ward's deceased spouse to the extent permitted by law and to  
2 renounce any interest by testate or intestate succession or by inter  
3 vivos transfer.

4 (cf: P.L.1981, c.405, s.3B:12-49)

5

6 34. N.J.S.3B:12-50 is amended to read as follows:

7 3B:12-50. Additional powers which may be exercised by the court.

8 The court may exercise, or direct the exercise of, or release the  
9 powers of appointment of which the ward is donee, to renounce  
10 interests, to make gifts in trust or otherwise, or to change beneficiaries  
11 under insurance and annuity policies, only if satisfied ~~[, after notice~~  
12 and hearing,] that it is in the best interests of the ward.

13 (cf: P.L.1981, c.405, s.3B:12-50)

14

15 35. N.J.S.3B:12-54 is amended to read as follows:

16 3B:12-54. Duty of guardian to deliver property when minor attains  
17 18 years of age.

18 When a minor who has not been adjudged ~~[a mental incompetent]~~  
19 an incapacitated person attains 18 years of age, his guardian, after  
20 meeting all prior claims and expenses of administration, shall pay over  
21 and distribute all funds and properties to the former ward as soon as  
22 possible.

23 (cf: P.L.1981, c.405, s.3B:12-54)

24

25 36. N.J.S.3B:12-56 is amended to read as follows:

26 3B:12-56. Powers, rights and duties of a guardian of the person of  
27 a ~~[mental incompetent]~~ ward generally.

28 [A guardian of the person of a mental incompetent has the same  
29 powers, rights and duties respecting his ward that a parent has  
30 respecting his unemancipated minor child, except that he is not legally  
31 obligated to provide for the ward from his own funds.]

32 a. A guardian of the person of a ward is not legally obligated to  
33 provide for the ward from his own funds.

34 b. A guardian of the person of a ward is not liable to a third person  
35 for acts of the ward solely by reason of the relationship and is not  
36 liable for injury to the ward resulting from the wrongful conduct of a  
37 third person providing medical or other care, treatment or service for  
38 the ward except to the extent that the guardian of the ward failed to  
39 exercise reasonable care in choosing the provider.

40 c. If a ward has previously executed a valid power of attorney for  
41 health care or advance directive under P.L.1991, c.201, (C.26:2H-53  
42 et seq.), absent an order to the contrary, or revocation pursuant to  
43 section 5 of P.L.1991, c.201 (C.26:2H-57), a guardian of the ward  
44 shall be bound by the terms of such document and a health care

1 decision by the health care representative takes precedence over that  
2 of a guardian.

3 d. To the extent specifically ordered by the court for good cause  
4 shown, the guardian of the person of the ward may initiate the  
5 voluntary admission, as defined in section 2 of P.L.1987, c.116  
6 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in  
7 section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric  
8 facility. A ward so admitted shall be entitled to all of the rights of a  
9 voluntarily admitted patient, which rights shall be exercised on behalf  
10 of the ward by the guardian. The guardian of the ward shall exercise  
11 the ward's rights in a manner consistent with the wishes of the ward  
12 except to the extent that compliance with those wishes would create  
13 a significant risk to the health or safety of the ward. If the wishes of  
14 the ward are not ascertainable with reasonable efforts, the guardian of  
15 the ward shall exercise the ward's rights in a manner consistent with  
16 the best interests of the ward. Notwithstanding the provisions of this  
17 section to the contrary, if the ward objects to the initiation of  
18 voluntary admission for psychiatric treatment or to the continuation of  
19 that voluntary admission, the State's procedures for involuntary  
20 commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall  
21 apply. If the ward objects to any other decision of the guardian of the  
22 ward pursuant to this section, this objection shall be brought to the  
23 attention of the Superior Court, Chancery Division, Probate Part,  
24 which may, in its discretion, appoint an attorney or guardian ad litem  
25 for the ward, hold a hearing or enter such orders as may be  
26 appropriate in the circumstances.

27 (cf: P.L.1981, c.405, s.3B:12-56)

28

29 37. N.J.S.3B:12-57 is amended to read as follows:

30 3B:12-57. Powers and duties of a guardian of the person of a  
31 **[mental incompetent]**ward.

32 [In particular, and without qualifying the provisions of N.J.S.  
33 3B:12-56, a guardian of the person of a mentally incompetent person  
34 has the following powers and duties, except as modified by order of  
35 the court:]

36 a. [To the extent that it is consistent with the terms of any order  
37 by a court of competent jurisdiction relating to detention or  
38 commitment of the ward, he is entitled to custody of the person of his  
39 ward and may establish the ward's place of abode within or without  
40 this State;] (~~Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(pending~~  
41 ~~before the Legislature as this bill).~~)

42 b. [If entitled to custody of his ward, he shall make provision for  
43 the care, comfort and maintenance of his ward and, whenever  
44 appropriate, arrange for his training and education. Whether or not he  
45 has custodial rights over the ward's person, he shall take reasonable  
46 care of his ward's clothing, furniture, vehicles and other personal

- 1 effects and institute an action for the appointment of a guardian of the  
2 ward's estate, if necessary to protect it;](Deleted by amendment,  
3 P.L. , c. (C. )(pending before the Legislature as this bill).)
- 4 c. [He may give any consents or approvals that may be necessary  
5 to enable the ward to receive medical or other professional care,  
6 counsel, treatment or service;] (Deleted by amendment, P.L. , c.  
7 (C. )(pending before the Legislature as this bill).)
- 8 d. [He may institute an action to compel the performance by any  
9 person of a duty to support the ward or to pay sums for the welfare  
10 of the ward;](Deleted by amendment, P.L. , c. (C. )(pending  
11 before the Legislature as this bill).)
- 12 e. [He may receive money, payable from any source for the  
13 support of the ward and tangible personal property deliverable to the  
14 ward. Any sums so received shall be applied to the ward's current  
15 needs for support, care and education in the exercise of a reasonable  
16 discretion, with or without court order, with or without regard to the  
17 duty or ability of any person to support or provide for the ward and  
18 with or without regard to any other funds, income or property which  
19 may be available for that purpose. But he may not use funds from the  
20 ward's estate for room and board which he, his spouse, parent, or child  
21 have furnished the ward unless agreed upon by a guardian of the  
22 ward's estate under N.J.S.3B:12-41 or unless a charge for the service  
23 is approved by order of the court made upon notice to at least one of  
24 the heirs of the incompetent ward, if notice is possible. He must  
25 exercise care to conserve any excess for the ward's needs.](Deleted  
26 by amendment, P.L. , c. (C. )(pending before the Legislature as  
27 this bill).)
- 28 f. In accordance with N.J.S.3B:12-24, a guardian of the person of  
29 a ward shall exercise authority over matters relating to the rights and  
30 best interest of the ward's personal needs, only to the extent  
31 adjudicated by a court of competent jurisdiction. In taking or  
32 forbearing from any action affecting the personal needs of a ward, a  
33 guardian shall give due regard to the preferences of the ward, if  
34 known to the guardian or otherwise ascertainable upon reasonable  
35 inquiry. To the extent that it is consistent with the terms of any order  
36 by a court of competent jurisdiction, the guardian shall:
- 37 (1) take custody of the ward and establish the ward's place of  
38 abode in or outside of this State;
- 39 (2) personally visit the ward or have his representative visit the  
40 ward not less frequently than once every three months, or as deemed  
41 appropriate by the court, and otherwise maintain sufficient contact  
42 with the ward to know his capacities, limitations, needs, opportunities  
43 and physical and mental health;
- 44 (3) provide for the care, comfort and maintenance and, whenever  
45 appropriate, the education and training of the ward;

1       (4) subject to the provisions of subsection c. of N.J.S.3B:12-56,  
2 give or withhold any consents or approvals that may be necessary to  
3 enable the ward to receive medical or other professional care, counsel,  
4 treatment or service;

5       (5) take reasonable care of the ward's clothing, furniture, vehicles  
6 and other personal effects;

7       (6) institute an action for the appointment of a guardian of the  
8 property of the ward, if necessary for the protection of the property;

9       (7) develop a plan of supportive services for the needs of the ward  
10 and a plan to obtain the supportive services;

11       (8) if necessary, institute an action against a person having a duty  
12 to support the ward or to pay any sum for the ward's welfare in order  
13 to compel the performance of the duties;

14       (9) receive money, payable from any source for the support of the  
15 ward, and tangible personal property deliverable to the ward. Any  
16 sums so received shall be applied to the ward's current needs for  
17 support, health care, education and training in the exercise of the  
18 guardian's reasonable discretion, with or without court order, with or  
19 without regard to the duty or ability of any person to support or  
20 provide for the ward and with or without regard to any other funds,  
21 income or property that may be available for that purpose, unless an  
22 application is made to the court to establish a supplemental needs trust  
23 or other trust arrangement with due regard to the effect of receiving  
24 such sums on the eligibility of the ward for certain public entitlement  
25 programs. However, the guardian may not use funds from the ward's  
26 estate for room and board, which the guardian, the guardian's spouse,  
27 parent or child have furnished the ward, unless agreed to by a guardian  
28 of the ward's estate pursuant to N.J.S.3B:12-41, or unless a charge for  
29 the service is approved by order of the court made upon notice to at  
30 least one of the heirs of the ward, if possible. The guardian shall  
31 exercise care to conserve any excess funds for the ward's needs.

32       g. In the exercise of the foregoing powers, the guardian shall  
33 encourage the ward to participate with the guardian in the decision-  
34 making process to the maximum extent of the ward's ability in order  
35 to encourage the ward to act on his own behalf whenever he is able to  
36 do so, and to develop or regain higher capacity to make decisions in  
37 those areas in which he is in need of guardianship services, to the  
38 maximum extent possible.

39 (cf: P.L.1981, c.405, s.3B:12-57)

40  
41       38. N.J.S.3B:12-60 is amended to read as follows:

42       3B:12-60. Guardian's duty with respect to will of deceased [mental  
43 incompetent]incapacitated person.

44       Upon the death of [a mental incompetent] an incapacitated person,  
45 [his] the guardian shall deliver to the [appropriate court]surrogate of  
46 the county where the guardian was appointed for safekeeping any will



1 of the deceased person which may have come into [his] the guardian's  
2 possession, inform the executor or a beneficiary named therein that he  
3 has done so, and retain the estate for delivery to a duly appointed  
4 personal representative of the decedent or other persons entitled  
5 thereto.

6 (cf: P.L.1981, c.405, s.3B:12-60)

7

8 39. N.J.S.3B:12-61 is amended to read as follows:

9 3B:12-61. Power of guardian to act as personal representative of  
10 the estate of a deceased [mental incompetent] incapacitated person.

11 If within 40 days after the death of [a mental incompetent] an  
12 incapacitated person, no other person has been appointed personal  
13 representative and no action for an appointment is pending in the  
14 Superior Court or surrogate's court of the county where the [mental  
15 incompetent] incapacitated person resided at his death, the guardian  
16 may apply to the Superior Court for authority to exercise the powers  
17 and duties of a personal representative so that he may proceed to  
18 administer and distribute the decedent's estate without additional or  
19 further appointment. Upon application for an order granting the  
20 powers of a personal representative to a guardian, after notice to all  
21 persons interested in the [mental incompetent's] incapacitated person's  
22 estate either as heirs or devisees and including any person nominated  
23 executor in any will of which the applicant is aware, the court may  
24 order the conferral of those powers, upon determining that there is no  
25 objection, and may enter judgment that the guardian has all of the  
26 powers and duties of a personal representative. The making and entry  
27 of a judgment under this section shall have the effect of an order of  
28 appointment of a personal representative, except that the estate in the  
29 name of the guardian, after administration, may be distributed to  
30 persons entitled to the decedent's estate under his will or the laws of  
31 intestacy without prior retransfer to the guardian as personal  
32 representative.

33 (cf: P.L.1981, c.405, s.3B:12-61)

34

35 40. N.J.S.3B:12-63 is amended to read as follows:

36 3B:12-63. Guardian's final account and delivery of property upon  
37 [restoration of competency] termination of guardianship.

38 Upon [an adjudication that the ward has returned to  
39 competency] termination of the guardianship, the guardian, after the  
40 allowance of his final account, shall pay over and distribute all funds  
41 and properties of the former ward.

42 (cf: P.L.1981, c.405, s.3B:12-63)

43

44 41. N.J.S.3B:12-64 is amended to read as follows:

45 3B:12-64. When authority and responsibility of guardian terminate.

1 The authority and responsibility of a guardian of the person or  
2 estate of [a mental incompetent] an incapacitated person terminate  
3 upon the death, resignation or removal of the guardian [or], upon the  
4 death of the [mental incompetent] incapacitated person or upon the  
5 [entry of a judgment adjudicating the restoration of competency,  
6 but] termination of guardianship for other reasons. However,  
7 termination does not affect the guardian's liability for prior acts, nor  
8 [his] the guardian's obligation to account for funds and assets of  
9 [his] the ward. Notwithstanding the termination of the guardianship,  
10 the guardian is authorized to make: final burial and funeral  
11 arrangements if the body remains unclaimed for five days; and  
12 payment for burial and funeral costs and surrogate fees of  
13 administration, probate and bond from the guardianship account.  
14 Resignation of a guardian does not terminate the guardianship unless  
15 it has been approved by a judgment of the court.

16 (cf: P.L.1981, c.405, s.3B:12-64)

17

18 42. This act shall take effect immediately.

19

20

21

#### STATEMENT

22

23 This bill amends several sections of chapter 12 of Title 3B of the  
24 New Jersey Statutes, concerning guardianship.

25 Specifically, the bill amends:

- 26 \* N.J.S.A.3B:12-1 to clarify that the court may order a protective  
27 arrangement when a minor or an alleged incapacitated person faces  
28 a risk of physical harm or deterioration due to circumstances  
29 beyond his control, and that any protective order is subject to  
30 immediate review upon two days' notice to all interested parties;
- 31 \* N.J.S.A.3B:12-2 to add relocation of the person for the purpose of  
32 protection or obtaining or authorizing medical services as a matter  
33 to be included in a protective arrangement;
- 34 \* N.J.S.A.3B:12-4 to allow the court to appoint a special medical  
35 guardian to consent to medical treatment before a hearing on  
36 guardianship can be held, if it can be shown that the health, safety  
37 and welfare of the incapacitated person would otherwise be at risk,  
38 and to provide for reasonable compensation for the special medical  
39 guardian, when warranted;
- 40 \* N.J.S.A.3B:12-11 to allow an affidavit of receipt in connection with  
41 a person making a payment of money or delivery of personal  
42 property in connection with the guardianship of a minor to be filed  
43 in the county which has jurisdiction over the property;
- 44 \* N.J.S.A.3B:12-16 to permit the court to issue an order relieving a  
45 testamentary guardian from posting a bond in accordance with  
46 N.J.S.A.3B:15-1;

- 1 \* N.J.S.A.3B:12-24 to:  
2 -- permit appointment of a temporary guardian, when no general or  
3 natural guardian is available and has authority to consent to action  
4 needed to deal with a substantial threat to the health, safety and  
5 welfare of an alleged incapacitated person, under certain  
6 circumstances;  
7 -- clarify that an order appointing a guardian shall authorize the  
8 guardian to exercise only those powers necessary to meet the  
9 essential requirements for the incapacitated person's health, safety,  
10 education and self-care or to manage the incapacitated person's  
11 property or finances, or both, consistent with the incapacitated  
12 person's functional limitations, his understanding and appreciation  
13 of the harm likely to be suffered as a result of the limitations, his  
14 preferences and the least restrictive form of intervention;  
15 -- clarify that a determination of incapacity will not deprive an alleged  
16 incapacitated person of the exercise of any rights, powers and  
17 privileges under law, unless specifically provided for in the  
18 protective order. Those rights, powers and privileges include, but  
19 are not limited to, living arrangements, medical treatment or other  
20 professional care, counsel, treatment or service, marriage, advance  
21 directives, exercising the right to vote, deciding whether or not to  
22 give gifts, managing finances, executing a will, establishing a trust  
23 or engaging in asset or tax planning and making judgments  
24 regarding daily activities;  
25 -- permit the court to establish a limited guardianship at any time;  
26 -- require all reasonable means of communication to be attempted  
27 when an alleged incapacitated person appears to have a receptive  
28 or communication deficit;  
29 -- provide for a trial without a jury in guardianship matters unless  
30 the alleged incapacitated person or someone on the person's behalf  
31 demands otherwise;  
32 -- allow the court to expand the powers of a guardian, if necessary,  
33 but only to the extent necessary to protect the alleged incapacitated  
34 person from significant harm; and  
35 -- permit the court to limit the powers conferred upon a guardian at  
36 the request of the guardian, ward or another interested person;  
37 \* N.J.S.A.3B:12-25 to direct that, when appointing a guardian, the  
38 court look first to the alleged incapacitated person's spouse and  
39 heirs, and then give due deference to surrogate decision-makers  
40 designated by the alleged incapacitated person in a power of  
41 attorney, health care proxy or advance directive;  
42 \* N.J.S.A.3B:12-30 to clarify that the statute relates to the  
43 appointment of a guardian by the parents or spouse of an  
44 incapacitated adult;  
45 \* N.J.S.A.3B:12-34 to require notice to the alleged incapacitated  
46 person prior to probating a will that appoints a testamentary

- 1 guardian;
- 2 \* N.J.S.A.3B:12-41 to provide for reasonable compensation, plus  
3 expenses, for a court-appointed special guardian;
- 4 \* N.J.S.A.3B:12-42 to:
- 5 -- require the guardian to report annually to the court on the ward's  
6 condition and his estate, and specify items that the report must  
7 contain;
- 8 -- permit the court to appoint an individual to review a report,  
9 interview the ward or guardian and make any other investigation  
10 the court directs; and
- 11 -- require the court to establish a system for monitoring  
12 guardianships, including the filing and review of annual reports;
- 13 \* N.J.S.A.3B:12-43 to require a guardian to follow the requirements  
14 of the "Prudent Investor Act" when dealing with the assets of the  
15 ward;
- 16 \* N.J.S.A.3B:12-45 to add public entitlement programs to those  
17 factors a guardian must consider in making expenditures from a  
18 ward's estate;
- 19 \* N.J.S.A.3B:12-49 to clarify that the powers conferred upon a  
20 guardian of the estate may include the power to engage in estate  
21 and gift tax planning and to make transfers with due regard to the  
22 effect of the transfers on the eligibility of the ward for certain public  
23 entitlement programs;
- 24 \* N.J.S.A.3B:12-56 to describe the powers, rights and responsibilities  
25 of a guardian of the person as follows: a guardian of an  
26 incapacitated person is not legally obligated to provide for the ward  
27 from his own funds; a guardian is not liable to a third person for  
28 acts of the ward solely by reason of the relationship; a guardian is  
29 not liable for injury to the ward resulting from wrongful conduct of  
30 a third person providing medical or other care, treatment or service  
31 for the ward except to the extent that the guardian failed to exercise  
32 reasonable care in choosing the provider; if a ward has previously  
33 executed a valid power of attorney for health care or advance  
34 directive under N.J.S.A.26:2H-53 et seq., absent an order to the  
35 contrary or revocation pursuant to N.J.S.A.26:2H-57, a guardian  
36 shall be bound by the terms of the document and a health care  
37 decision by the health care representative takes precedence over  
38 that of a guardian; to the extent specifically ordered by the court for  
39 good cause shown, the guardian may initiate the voluntary  
40 admission of a ward to a State or private psychiatric facility and the  
41 ward shall be entitled to all of the rights of a voluntarily admitted  
42 patient, which would be exercised on behalf of the ward by the  
43 guardian;
- 44 \* N.J.S.A.3B:12-57 to require a guardian to exercise authority over  
45 matters relating to the rights and best interest of a ward's personal  
46 needs to the extent ordered by the court, to require a guardian to

- 1 give due regard to the preferences of the ward and to require the  
2 guardian to encourage the ward's participation in the decision-  
3 making process. Also, to the extent consistent with the protective  
4 order, the bill requires the guardian to:
- 5 -- take custody of the ward and establish the ward's place of abode  
6 within or without the State;
  - 7 -- personally visit the ward or have his representative visit the ward  
8 not less frequently than once every three months, or as deemed  
9 appropriate by the court, and otherwise maintain sufficient contact  
10 with the ward to know his capacities, limitations, needs,  
11 opportunities and physical and mental health;
  - 12 -- provide for the care, comfort and maintenance and, whenever  
13 appropriate, the education and training of the ward;
  - 14 -- subject to the provisions of subsection c. of N.J.S.A.3B:12-56,  
15 give or withhold any consents or approvals that may be necessary  
16 to enable the ward to receive medical or other professional care,  
17 counsel, treatment or service;
  - 18 -- take reasonable care of the ward's clothing, furniture, vehicles and  
19 other personal effects;
  - 20 -- institute an action for the appointment of a guardian of the property  
21 of the ward, if necessary for the protection of the property;
  - 22 -- develop a plan of supportive services for the needs of the ward and  
23 a plan to obtain the supportive services;
  - 24 -- if necessary, institute an action against a person having a duty  
25 to support the ward or to pay any sum for the ward's welfare in  
26 order to compel the performance of the duties; and
  - 27 -- receive money, payable from any source for the support of the  
28 ward, and tangible personal property deliverable to the ward; and  
29 use the money for the ward's current needs for support, health care,  
30 education and training;
  - 31 \* N.J.S.A.3B:12-60 to require the guardian to deliver an  
32 incapacitated person's will to the surrogate of the county where the  
33 guardian was appointed; and
  - 34 \* N.J.S.A.3B:12-64 to clarify that notwithstanding the termination of  
35 the guardianship, the guardian is authorized to make final burial and  
36 funeral arrangements if the body remains unclaimed for five days,  
37 and to make payment for burial and funeral costs and surrogate fees  
38 of administration, probate and bond from the guardianship account.
- 39 In addition, throughout chapter 12 of Title 3B, references to  
40 "mental incompetent" have been changed to "incapacitated person,"  
41 to comport with the enactment of P.L.1997, c.379, which changed  
42 the designation of "mental incompetent" to "incapacitated person"  
43 in the definition section of Title 3B.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 224**

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 1, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 224.

This bill, as amended, revises numerous sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.

This bill clarifies the court's authority with regard to addressing the immediate needs of an incapacitated person. The bill establishes procedures for the appointment of a general guardian, a limited guardian of the person, estate or of both, a special guardian or a temporary "pendente lite" guardian who would act on behalf of the incapacitated person with regard to his medical, financial, educational, legal or vocational needs. It sets forth the powers and duties of the guardian, when a bond must be furnished by a guardian and when reasonable compensation for services would be granted. The bill expands the current reporting procedures for guardians. In addition, the bill revises various sections throughout chapter 12 of Title 3B by deleting all references to "mental incompetent" and replacing them with "incapacitated or alleged incapacitated" to provide uniformity and consistency in these sections.

The pertinent provisions in the bill are as follows:

**Section 4: N.J.S.A.3B:12-4. (Appointment of special guardian)** Current law authorizes the court to appoint a special guardian to assist the court in providing for any protective arrangements. This provision remains unchanged by the bill. The bill provides that if a special guardian is appointed, the guardian is entitled to reasonable fees for services as well as reimbursement for reasonable expenses.

**Section 7: N.J.S.A.3B:12-11. (Affidavit of receipt)** This section requires filing of an affidavit by the recipient for money or property in connection with the guardianship of a minor. Amended to add that if the minor resides outside the State, the filing is in the county which has jurisdiction over the property.

**Section 12: (New section). (Determination by the court of need for guardianship services)** This section of the bill supplements the current law by specifically outlining the different types of guardians and their powers and duties.

General Guardian -If the court finds that an individual is incapacitated and *is without capacity to govern* himself or manage his affairs, the court may appoint a *general guardian* who will exercise all rights and powers of the incapacitated person. The general guardian must furnish a bond unless relieved by the court.

Limited Guardian. If the court finds a person is incapacitated and *lacks the capacity to do some, but not all*, of the tasks necessary to care for himself, the court can appoint a *limited guardian* of the person, limited guardian of the estate, or limited guardian of both. The court must make specific findings as to the person's decision making capacity with regard to residential, education, medical, legal, vocational and financial decisions. A judgment of limited guardianship may specify the limitations upon the authority or the areas of decision making retained by the person. The limited guardian must furnish a bond unless relieved by the court.

Pendente lite; Temporary Guardian. Whenever a complaint is filed in court to declare a person incapacitated and to appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, *pendente lite*. Pending a hearing for the appointment of a guardian, the court may for good cause shown appoint a *pendente lite* temporary guardian upon a finding that there is a critical need or risk of substantial harm. If appointed the temporary guardian may be granted authority to arrange interim services or temporary accommodations.

Payments for such services may be made from the estate of the alleged incapacitated person. A *pendente lite* temporary guardian appointed is limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person. *Pendente lite* temporary guardians are not designed to act as special medical guardians appointed under Rules of Court to authorize emergent medical or surgical intervention needed to deal with substantial threat to a person's life or health.

The attorney for the alleged incapacitated person is given notice of the appointment. The *pendente lite* temporary guardian is required to advise the attorney of all actions and the attorney would have the right to object.

A *pendente lite* temporary guardian appointment does not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

The *pendente lite* temporary guardian, upon application to the court, would be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which would be payable by the estate of the alleged incapacitated person or minor. The *pendente lite* temporary guardian would also be required to furnish a bond, unless relieved by the court.

This sections also addresses the following: *disclosure of*

*information; court appearance; communication; enlarging or limiting guardianship powers.*

**Section 13: N.J.S.A.3B:12-25.** (*Appointment of guardian*) Amended to clarify that letters of guardianship may be granted to the spouse or registered domestic partner if the person is living with the alleged incapacitated person or his heirs, or if none of them will accept letters thereafter to the Office of Public Guardian for Elderly Adults. Consideration may be given to the surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney, health care proxy or advance directive. Amendments specify that letters of guardianship may be granted the Office of Public Guardian for Elderly Adults or if the spouse or registered domestic partner or his heirs or friends will not accept letters, and add the proviso that the Office of the Public Guardian has the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office. The amendments also clarify that consideration may be given, rather than should be given, to the surrogate decision-makers, chosen by the incapacitated person before the person became incapacitated.

**Section 16: N.J.S.A.3B:12-28.** (*Return to competency*) Amended to clarify that the court may, on a summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency.

**Section 28: N.J.S.A.3B:12-41.** (*Guardian of ward's person entitled to reimbursement for expenses*) Amended to clarify that the guardian will receive reasonable reimbursement and fees for his services.

**Section 29: N.J.S.A.3B:12-42.** (*Reporting condition of ward's person and property to court*) Amended to expand the reporting requirements for guardians in order to provide uniformity and consistency. This section sets forth when the report should be made and what it must contain. However, the bill does exempt from this reporting requirement the Bureau of Guardianship Services in the Division of Developmental Disabilities, the Office of the Public Guardian, and public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes. Amendments exempt from the guardianship reporting requirements public officials appointed as limited guardians for individuals in psychiatric facilities for medical purposes.

**Section 30: N.J.S.A.3B:12-43.** (*Expenditures to be made by guardian out of ward's estate.*) Amended to require a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward.

**Section 35: N.J.S.A.3B:12-48.** (*Powers conferred upon a guardian*) Amended to clarify that the guardian has the power to file



or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

**Section 36: N.J.S.A.3B:12-49.** (*Powers conferred upon a court*)

The section was amended to clarify that among the court's powers with regard to a ward and his estate is the power to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or registered domestic partner and to engage in planning utilizing public assistance programs.

**Section 38: N.J.S.A.3B:12-56.** (*Powers, rights and duties of a guardian of a ward*) Amended to clarify the powers, rights and duties of a guardian of a ward. The section provides that a guardian is not legally obligated to provide for the ward from his own funds. A guardian is also not liable to a third person for acts of the ward solely by reason of the relationship and is not liable to the ward for injury resulting from wrongful conduct of a third person. In addition, if a ward has previously executed a valid power of attorney for health care or advance directive, a guardian is required to act consistent with the terms of such document. To the extent specifically ordered by the court, the guardian can initiate the voluntary admission of a ward to a State or private psychiatric facility and the ward will be entitled to all of the rights of a voluntarily admitted patient. The guardian of the ward is required to exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment apply. If the ward objects to any other decision of the guardian, this objection shall be brought to the attention of the court which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate.

**Section 39: N.J.S.A.3B:12-57.** (*Powers and duties of a guardian of a person*) Amended to clarify that a guardian of the person of a ward is required to exercise authority over matters relating to the rights and best interest of a ward's personal needs only to the extent ordered by the court. This section provides that a guardian is required to give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. This section also provides that to the extent that it is consistent with the terms of any order by a court, the guardian shall: take custody; provide for visitation; provide for the care, comfort, maintenance and education; provide for necessary consents or approvals; provide for possessions; institute any necessary actions; develop a plan of supportive services; and receive money and tangible personal property.

The guardian shall exercise care to conserve any excess funds for the ward's needs. If necessary, the guardian may institute an action that could be maintained by the ward including actions alleging fraud,

abuse, undue influence and exploitation.

**Section 45: N.J.S.A.3B:12-64.** Amended to clarify that the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for these costs and surrogate fees.

**Section 46: N.J.S.A.3B:12-66.** Amended to clarify that the Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill a vacancy by the appointment of a substituted guardian.

**Section 47: N.J.S.A.3B:22-2.** Provides an order of payment if the applicable assets of the estate are insufficient to pay all claims in full. This section was amended to clarify that the debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults will be paid before debts and taxes, reasonable medical expenses, judgments and certain other claims are paid.

**New sections 48 and 49.** These sections establish procedures for transfer of guardianship services when a guardian in this State is seeking to move to another state and when a guardian in another state is seeking to transfer services into New Jersey.

**Other provisions of the bill.** The remaining sections of the bill were amended to replace the term "mental incompetent" with "incapacitated or alleged incapacitated" person.

**Sections 18, 20, 21, 36, 39** (N.J.S.A.3B:12-30, N.J.S.A.3B:12-32, N.J.S.A.3B:12-33, N.J.S.A.3B:12-49, N.J.S.A.3B:12-57) amendments are made to include the reference to "domestic partner" where appropriate.

Additional committee amendments are technical in nature. In section 11 they include a missing reference to "incapacitated person" in the last sentence; in section 12 they correct two typos: the use of "appropriately" and the insertion of "person."

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended, this bill is identical to Assembly, No. 1922 (ACS/2R).

**FISCAL NOTE**  
**SENATE, No. 224**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JULY 12, 2004

**SUMMARY**

**Synopsis:** Amends guardianship law.  
**Type of Impact:** General Fund expenditure  
**Agencies Affected:** Judiciary, counties

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$1,905,870	\$1,868,853	\$1,962,167

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! The bill amends several sections of chapter 12 of Title 3B of the New Jersey Statutes concerning guardianship.
- ! The Administrative Office of the Courts (AOC) states that the Judiciary would be required to create one position within each county to oversee the review of annual reports and any interviews or investigations with regards to the ward or guardian. Those counties with larger aging populations (Essex, Bergen, Hudson and Ocean) would each need two positions. For the purpose of this analysis, the AOC has placed this position at the level of a Court Services Supervisor 3 or an Administrative Supervisor 4 level.
- ! The first year salary and fringe benefits expenses would total \$1.7 million. Assuming a five percent increase in costs, salaries and fringe benefits, this amount would increase to \$1.785 million and \$1.874 million during the second and third years of program operation. One time startup costs would total \$126,250 during the program's first year. Annual operating costs would total \$80,000 during the first year of program operation and increase to \$84,000 and \$88,200 during the second and third year, respectively.

**BILL DESCRIPTION**

Senate Bill No. 224 of 2004 amends several sections of chapter 12 of Title 3B of the New Jersey Statutes, concerning guardianship.

Specifically, the bill amends:

- C N.J.S.A.3B:12-1 to clarify that the court may order a protective arrangement when a minor

or an alleged incapacitated person faces a risk of physical harm or deterioration due to circumstances beyond his control, and that any protective order is subject to immediate review upon two days' notice to all interested parties;

- C N.J.S.A.3B:12-2 to add relocation of the person for the purpose of protection or obtaining or authorizing medical services as a matter to be included in a protective arrangement;
  - C N.J.S.A.3B:12-4 to allow the court to appoint a special medical guardian to consent to medical treatment before a hearing on guardianship can be held, if it can be shown that the health, safety and welfare of the incapacitated person would otherwise be at risk, and to provide for reasonable compensation for the special medical guardian, when warranted;
  - C N.J.S.A.3B:12-11 to allow an affidavit of receipt in connection with a person making a payment of money or delivery of personal property in connection with the guardianship of a minor to be filed in the county which has jurisdiction over the property;
  - C N.J.S.A.3B:12-16 to permit the court to issue an order relieving a testamentary guardian from posting a bond in accordance with N.J.S.A.3B:15-1;
  - C N.J.S.A.3B:12-24 to permit appointment of a temporary guardian, when no general or natural guardian is available and has authority to consent to action needed to deal with a substantial threat to the health, safety and welfare of an alleged incapacitated person, under certain circumstances;
- clarify that an order appointing a guardian shall authorize the guardian to exercise only those powers necessary to meet the essential requirements for the incapacitated person's health, safety, education and self-care or to manage the incapacitated person's property or finances, or both, consistent with the incapacitated person's functional limitations, his understanding and appreciation of the harm likely to be suffered as a result of the limitations, his preferences and the least restrictive form of intervention;
- clarify that a determination of incapacity will not deprive an alleged incapacitated person of the exercise of any rights, powers and privileges under law, unless specifically provided for in the protective order;
- permit the court to establish a limited guardianship at any time;
- require all reasonable means of communication to be attempted when an alleged incapacitated person appears to have a receptive or communication deficit;
- provide for a trial without a jury in guardianship matters unless the alleged incapacitated person or someone on the person's behalf demands otherwise;
- allow the court to expand the powers of a guardian, if necessary, but only to the extent necessary to protect the alleged incapacitated person from significant harm;
- permit the court to limit the powers conferred upon a guardian at the request of the guardian, ward or another interested person;
- C N.J.S.A.3B:12-25 to direct that, when appointing a guardian, the court look first to the alleged incapacitated person's spouse and heirs, and then give due deference to surrogate decision-makers designated by the alleged incapacitated person in a power of attorney, health care proxy or advance directive;
  - C N.J.S.A.3B:12-30 to clarify that the statute relates to the appointment of a guardian by the parents or spouse of an incapacitated adult;
  - C N.J.S.A.3B:12-34 to require notice to the alleged incapacitated person prior to probating a will that appoints a testamentary guardian;
  - C N.J.S.A.3B:12-41 to provide for reasonable compensation, plus expenses, for a court-appointed special guardian;
  - C N.J.S.A.3B:12-42 to: -- require the guardian to report annually to the court on the ward's condition and his estate;

- permit the court to appoint an individual to review a report, interview the ward or guardian and make any other investigation the court directs;
- require the court to establish a system for monitoring guardianships;
- C N.J.S.A.3B:12-43 to require a guardian to follow the requirements of the "Prudent Investor Act" when dealing with the assets of the ward;
- C N.J.S.A.3B:12-45 to add public entitlement programs to those factors a guardian must consider in making expenditures from a ward's estate;
- C N.J.S.A.3B:12-49 to clarify that the powers conferred upon a guardian of the estate may include the power to engage in estate and gift tax planning and to make transfers with due regard to the effect of the transfers on the eligibility of the ward for certain public entitlement programs;
- C N.J.S.A.3B:12-56 to describe the powers, rights and responsibilities of a guardian of the person;
- C N.J.S.A.3B:12-57 to require a guardian to;
  - exercise authority over matters relating to the rights and best interest of a ward's personal needs to the extent ordered by the court, to require a guardian to give due regard to the preferences of the ward and to require the guardian to encourage the ward's participation in the decision- making process;
  - take custody of the ward and establish the ward's place of abode within or without the State;
  - personally visit the ward or have his representative visit the ward not less frequently than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;
  - provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;
  - subject to the provisions of subsection c. of N.J.S.A.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;
  - take reasonable care of the ward's clothing, furniture, vehicles and other personal effects;
  - institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;
  - develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;
  - if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties; and
  - receive money, payable from any source for the support of the ward, and tangible personal property deliverable to the ward; and use the money for the ward's current needs for support, health care, education and training;
- C N.J.S.A.3B:12-60 to require the guardian to deliver an incapacitated person's will to the surrogate of the county where the guardian was appointed;
- C N.J.S.A.3B:12-64 to clarify that notwithstanding the termination of the guardianship, the guardian is authorized to make final burial and funeral arrangements if the body remains unclaimed for five days, and to make payment for burial and funeral costs and surrogate fees of administration, probate and bond from the guardianship account.

## FISCAL ANALYSIS

### ***EXECUTIVE BRANCH***

The Administrative Office of the Courts (AOC) states that filing fees regarding guardianship under the New Jersey Statutes are currently paid to the county Surrogate's office as the Deputy Superior Court Clerk of Probate Court. In this regard, there will be no impact on any Judiciary revenues as a result of this bill.

The AOC further states that the bill requires the courts to establish a system for monitoring guardianships, including the filing and review of annual reports that the guardian will be required to submit on an annual basis. The bill also allows the court to appoint an individual to review the annual report, interview the ward or guardian and make any other investigation the court directs.

The AOC states that the Judiciary would be required to create one position within each county to oversee the review of annual reports and any interviews or investigations with regards to the ward or guardian. Those counties with larger aging populations (Essex, Bergen, Hudson and Ocean) would each need two positions. For the purpose of this analysis, the AOC has placed this position at the level of a Court Services Supervisor 3 or an Administrative Supervisor 4 level. The first year salary and fringe benefits expenses would total \$1.7 million. Assuming a five percent increase in costs, salaries and fringe benefits, this amount would increase to \$1.785 million and \$1.874 million during the second and third years of program operation. One time startup costs would total \$126,250 during the program's first year. Annual operating costs would total \$80,000 during the first year of program operation and increase to \$84,000 and \$88,200 during the second and third year, respectively.

Total annual costs to the Judiciary would be \$1,905,870 in the first year, \$1,868,853 in the second year, and \$1,962,167 million in the third year after the bill's enactment.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Executive estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*  
*Lead Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.