

3B:12-67

LEGISLATIVE HISTORY CHECKLIST
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("Standby Guardianship Act")

NJSA: 3B:12-67

LAWS OF: 1995 CHAPTER: 76

BILL NO: S1585

SPONSOR(S): DiFrancesco and others

DATE INTRODUCED: November 10, 1995

COMMITTEE: ASSEMBLY: ---

SENATE: Women's Issues

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: March 13, 1995

SENATE: February 9, 1995

DATE OF APPROVAL: April 11, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: ~~Yes~~ No

See newspaper clippings--attached:

"Keeping AIDS families together," 4-12-95, Asbury Park Press.

"Terminally ill parents gain power to name standby guardians," 4-12-95,
Star Ledger.

[SECOND REPRINT]

SENATE, No. 1585

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 10, 1994

By Senators DiFRANCESCO, LIPMAN, Rice ,Cafiero,
Sinagra, Ciesla, Kosco, LaRossa and Inverso

1 AN ACT providing for the creation of standby guardianships and
2 supplementing chapter 12 of Title 3B of the New Jersey
3 Statutes.

4

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

7 1. This act shall be known and may be cited as the "New
8 Jersey Standby Guardianship Act."

9 2. The Legislature finds and declares that there is an
10 imperative need to create an expeditious manner of establishing a
11 guardianship known as a standby guardianship, in order to enable
12 a custodial parent or legal ¹[guardian] custodian¹ suffering from
13 a progressive chronic condition or a fatal illness to make plans
14 for the permanent future care or the interim care of a ¹[child]
15 child¹ without terminating parental or legal rights. The
16 Legislature further finds that current law does not adequately
17 address the needs of custodial parents or legal ¹[guardians]
18 custodians¹ who are suffering from a progressive chronic
19 condition or a fatal illness and who desire to make plans for the
20 future care of their children without terminating parental or
21 legal rights.

22 3. As used in this act:

23 "Appointed standby guardian" means a person appointed
24 pursuant to section 6 of this act to assume the duties of guardian
25 over the person and, when applicable, the property of a minor
26 child upon the death or a determination of incapacity or
27 debilitation, and with the consent, of the parent or legal
28 ¹[guardian] custodian¹.

29 "Attending physician" means the physician who has primary
30 responsibility for the treatment and care for the petitioning
31 parent or legal ¹[guardian] custodian¹. When more than one
32 physician shares this responsibility, or when a physician is acting
33 on the primary physician's behalf, any such physician may act as
34 the attending physician pursuant to this section. When no
35 physician has this responsibility, a physician who is familiar with
36 the petitioner's medical condition may act as the attending
37 physician pursuant to this section.

38 "Consent" means written consent signed by the parent or legal
39 ¹[guardian] custodian¹ in the presence of two witnesses who shall
40 also sign the document. The written consent shall constitute the
41 terms for the commencement of the duties of the standby
42 guardian.

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:

¹ Senate SWF committee amendments adopted December 1, 1994.

² Senate floor amendments adopted January 19, 1995.

1 "Debilitation" means a chronic and substantial inability, as a
2 result of a physically debilitating illness, disease, or injury, to
3 care for one's minor child.

4 "Designated standby guardian" means a person designated
5 pursuant to section 8 of this act to assume temporarily the duties
6 of guardianship over the person and, when applicable, the
7 property of a minor child upon the death or a determination of
8 incapacity or debilitation, and with the consent, of the parent or
9 legal ¹[guardian] custodian¹.

10 "Designation" means a written document voluntarily executed
11 by the designator pursuant to this act.

12 "Designator" means a competent parent or legal ¹[guardian]
13 custodian¹ of a minor child who makes a designation pursuant to
14 this act.

15 "Determination of debilitation" means a written determination
16 made by the attending physician which contains the physician's
17 opinion to a reasonable degree of medical certainty regarding the
18 nature, cause, extent and probable duration of the parent's or
19 legal ¹[guardian's] custodian's¹ debilitation.

20 "Determination of incapacity" means a written determination
21 made by the attending physician which contains the physician's
22 opinion to a reasonable degree of medical certainty regarding the
23 nature, cause, extent and probable duration of the parent's or
24 legal ¹[guardian's] custodian's¹ incapacity.

25 "Incapacity" means a chronic and substantial inability, as a
26 result of mental or organic impairment, to understand the nature
27 and consequences of decisions concerning the care of one's minor
28 child, and a consequent inability to make these decisions.

29 "Minor child¹" means a child under the age of eighteen years
30 but excludes a child residing in a placement ¹funded or approved¹
31 by the Division of Youth and Family Services in the Department
32 of Human Services pursuant to ¹either¹ a voluntary placement
33 agreement or court order.

34 "Triggering event" means an event stated in the designation,
35 petition or decree which empowers the standby guardian to
36 assume the duties of the office, which event may be the death,
37 incapacity or debilitation, with the consent, of the custodial
38 parent or legal ¹[guardian] custodian¹, whichever occurs first.

39 4. The surrogate's court of the county in which a minor child
40 resides or has real or personal property shall have jurisdiction
41 under this act pursuant to N.J.S.3B:12-12.

42 5. The provisions of N.J.S.3B:12-1 et seq. shall apply to a
43 standby guardian except as otherwise provided in this act.

44 6. a. Upon petition of the parent, legal ¹[guardian] custodian¹
45 or designated standby guardian, the court may appoint a standby
46 guardian ¹[of the person or property]¹ of a minor child. The
47 court may also appoint an alternate standby guardian, if
48 identified by the petitioner, to act if the appointed standby
49 guardian dies, becomes incapacitated, or otherwise refuses or is
50 unable to assume the duties of the standby guardian after the
51 death, incapacity or debilitation of the parent or legal ¹[guardian]
52 custodian¹ of the minor child.

53 b. A petition for the judicial appointment of a standby
54 guardian ²[for the person or property]² of a minor child shall
55 state:

- 1 (1) which triggering event or events shall cause the authority
2 of the appointed standby guardian to become effective;
- 3 (2) that there is a significant risk that the parent or legal
4 ¹[guardian] custodian¹ will die, become incapacitated, or become
5 debilitated as a result of a progressive chronic condition or a
6 fatal illness; however, a petitioner shall not be required to submit
7 medical documentation of the parent's or legal ¹[guardian's]
8 custodian's¹ terminal status by his attending physician; and
- 9 (3) the name, address, and qualifications of the proposed
10 standby guardian.
- 11 c. A parent or legal ¹[guardian] custodian¹ petitioning the
12 court pursuant to this section shall not be required to appear in
13 court if ¹[the petitioner is]¹ unable to appear, except upon
14 motion of the court or by any party and for good cause shown.
- 15 d. The court shall appoint the standby guardian if the court
16 finds that there is a significant risk that the parent or legal
17 ¹[guardian] custodian¹ will die, become incapacitated, or become
18 debilitated as a result of a progressive chronic condition or a
19 fatal illness, and that the interests of the minor child would be
20 promoted by the appointment of the standby guardian.
- 21 e. The decree appointing the standby guardian shall specify the
22 triggering event which shall activate the authority of the standby
23 guardian.
- 24 f. ¹[A person who files a petition for appointment of a standby
25 guardian shall serve notice] Upon petition for the appointment of
26 a standby guardian by a person as specified in subsection a. of
27 this section, notice shall be served¹ on the minor child's parent
28 or legal ¹[guardian] custodian¹ , or the designated standby
29 guardian, as appropriate, within 30 days of the filing. The court
30 shall give preference to maintaining custody with either the
31 parent or legal ¹[guardian] custodian¹, or the designated standby
32 guardian, during the time that the petition is pending. Nothing in
33 this section shall be construed to deprive any parent of parental
34 rights. If the petition alleges that after diligent search, the
35 parent or legal ¹[guardian] custodian¹ cannot be found, the parent
36 or legal ¹[guardian] custodian¹ shall be served by notice delivered
37 pursuant to New Jersey court rules. No notice is necessary to a
38 parent who is deceased or whose parental rights have been
39 previously terminated by court order or consent.
- 40 7. a. Upon the occurrence of a triggering event set forth in a
41 decree appointing a standby guardian, the standby guardian shall
42 be empowered to assume the duties of his office immediately.
- 43 b. If the triggering event is the incapacity or debilitation of
44 the parent or legal ¹[guardian] custodian¹, the attending
45 physician shall provide a copy of his determination to the
46 appointed standby guardian if the guardian's identity is known to
47 the attending physician.
- 48 c. Within 60 days following the assumption of guardianship
49 duties, the appointed standby guardian shall petition the court for
50 confirmation. The confirmation petition shall include a
51 determination of incapacity or debilitation or a death certificate,
52 as appropriate.
- 53 d. The court shall confirm an appointed standby guardian
54 named in accordance with this act and otherwise qualified to

1 serve as guardian pursuant to N.J.S.3B:12-1 et seq. unless there is
2 a judicial determination of unfitness with regard to the appointed
3 standby guardian.

4 e. A standby guardian appointed pursuant to section 6 of this
5 act may decline appointment at any time before the assumption
6 of his duties by filing a written statement to that effect with the
7 court, with notice to be provided to the petitioner and to the
8 minor child if the latter is 14 years of age or older.

9 f. Commencement of the duties of the standby guardian shall
10 confer upon the appointed standby guardian shared authority with
11 the custodial parent or legal ¹[guardian] custodian¹ of the minor
12 child, unless the petition states otherwise.

13 g. A parent or legal ¹[guardian] custodian¹ may revoke a
14 standby guardianship by executing a written revocation, filing it
15 with the court where the petition was filed, and promptly
16 notifying the appointed standby guardian of the revocation. An
17 unwritten revocation may be considered by the court if the
18 revocation can be proved by clear and convincing evidence
19 submitted to the court.

20 8. a. When the consent of a parent or legal ¹[guardian]
21 custodian¹ for the execution of a power of attorney delegating
22 another person to exercise the parent's or legal ¹[guardian's]
23 custodian's¹ powers is not appropriate or is unavailable pursuant
24 to N.J.S.3B:12-39, the other parent or legal ¹[guardian]
25 custodian¹ may execute a written statement to designate a
26 standby guardian, as follows:

27 (1) The parent or legal ¹[guardian] custodian¹ may choose a
28 standby guardian by means of a written designation that names
29 the standby guardian in the event of the designator's death,
30 incapacity or debilitation. The written designation shall
31 reasonably identify the designator, the minor child and the
32 standby guardian.

33 (2) A written designation pursuant to this section shall be
34 signed by the designator in the presence of two witnesses who
35 shall also sign the designation. Another person may sign the
36 written designation on the parent's or legal ¹[guardian's]
37 custodian's¹ behalf if the parent or legal ¹[guardian] custodian¹
38 is physically unable to do so, provided the designation is signed at
39 the express request of the parent or legal ¹[guardian] custodian¹
40 and in the presence of the parent or legal ¹[guardian] custodian¹
41 and two witnesses.

42 (3) The designation shall state the triggering event by which
43 the parent or legal ¹[guardian] custodian¹ intends the designated
44 standby guardianship of the minor child to be activated.

45 (4) A parent or legal ¹[guardian] custodian¹ may designate an
46 alternate standby guardian in the same document, and by the
47 same manner, as the designation of a standby guardian.

48 b. A designation may, but need not, be in the following form:

49
50 DESIGNATION OF STANDBY GUARDIAN

51
52 I, (name of parent or legal ¹[guardian] custodian¹) hereby
53 name(name, home address and telephone number of standby
54 guardian) as designated standby guardian of ²[the person]² [and

1 property of my child(ren)] (name of child(ren))², my child(ren)².

2 ²[(NOTE: You may, if you wish, provide that the designated
3 standby guardian's authority shall extend only to the person, or
4 only to the property, of your child by crossing out "person" or
5 "property," whichever is inapplicable, above.)]²

6 By this consent and designation, I am providing that the
7 designated standby guardian's authority shall take effect if and
8 when the following event or events occur: (choose as follows):

9 (1) my attending physician concludes that I am mentally
10 incapacitated, and thus unable to care for my child(ren); or

11 (2) my attending physician concludes that I am physically
12 debilitated, and thus unable to care for my child(ren), and I
13 consent in writing before two witnesses to the designated standby
14 guardian's authority taking effect; or

15 (3) upon my death.

16 In the event that the person designated above is unable or
17 unwilling to act as guardian to my child(ren), I hereby name
18 (name, address and telephone number of alternate designated
19 standby guardian), as alternate designated standby guardian of my
20 child(ren).

21 I understand that this designation will expire six months from
22 the date of this designation, and that the authority of the
23 designated standby guardian, if any, will cease, unless by that
24 date either I or the designated standby guardian petitions the
25 court for appointment as standby guardian pursuant to section 6
26 of P.L. , c. (C.)(pending before the Legislature as this
27 bill).

28 I hereby authorize that the person designated standby guardian
29 as set forth above shall be provided with a copy of the attending
30 physician's statement.

31 In the event that I am incapacitated or debilitated and a
32 designated standby guardianship is activated pursuant to this
33 statement, I declare that it is my intention to retain full parental
34 rights to the extent consistent with my condition and, further,
35 that I retain the authority to revoke the designated standby
36 guardianship consistent with my rights herein at any time.

37

38 Designator's Signature:

39 Witness Signature:

40 Address:

41 Date:

42 Witness Signature:

43 Address:

44 Date:

45

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

48 9. a. Upon the occurrence of the triggering event stated in
49 the written designation executed pursuant to section 8 of this
50 act, the designated standby guardian shall be empowered to
51 assume the duties of his office immediately.

52 b. If the triggering event is the designator's incapacity or
53 debilitation, a copy of the attending physician's determination
54 shall be provided to the designated standby guardian if the

1 guardian's identity is known to the attending physician.

2 c. A designated standby guardian may decline the designation
3 at any time before the assumption of his duties by notifying the
4 designator of this refusal in writing.

5 d. Commencement of the designated standby guardian's duties
6 shall confer upon the designated standby guardian shared
7 authority with the custodial parent or legal ¹[guardian]
8 custodian¹ of the minor child, unless the designation of the
9 parent or legal ¹[guardian] custodian¹ states otherwise.

10 e. A designator may revoke a designation of standby
11 guardianship by notifying the designated standby guardian orally
12 or in writing or by any other act evidencing a specific intent to
13 revoke the designation.

14 10. a. Unless a petition for judicial appointment of a standby
15 guardian is made by the designator or the designated standby
16 guardian, the designation made under section 8 of this act shall
17 expire six months from the date of the written designation.

18 b. In a proceeding for judicial appointment of a designated
19 standby guardian, a designation shall constitute a rebuttable
20 presumption that the designated standby guardian is capable of
21 serving as guardian. In the event of the designator's death, a
22 designation shall be deemed to confer a preference upon the
23 designated standby guardian for the choice of a permanent
24 guardian, notwithstanding any law to the contrary, subject to the
25 rights of the other parent.

26 c. Except as set forth in this section, the petition for the
27 judicial appointment of a designated standby guardian shall
28 comply with the procedure set forth in section 6 of this act.

29 11. Notice of a petition or designation filed with the court
30 pursuant to ¹[section 6 of]¹ this act shall be served upon the
31 minor child for whom the standby guardianship is sought if the
32 minor is 14 years of age or older. Notice to a minor child less
33 than 14 years of age shall be served at the discretion of the
34 court. The court may appoint a guardian ad litem or counsel to
35 represent ¹[the best interest of]¹ the child. The court shall
36 consider the preferences of the minor child in the appointment of
37 a standby guardian pursuant to ¹[section 6 of]¹ this act.

38 12. a. The court clerk, upon being paid the fees allowed by
39 law, shall receive for filing any instrument appointing or
40 designating a standby guardian pursuant to this act made by a
41 domiciliary of the county, and shall give a written receipt
42 therefor to the person delivering it. The filing of an appointment
43 or designation of standby guardian shall be for the sole purpose of
44 safekeeping and shall not affect the validity of the appointment
45 or designation.

46 b. The appointment or designation shall be delivered only to:
47 the parent or legal ¹[guardian] custodian¹ who appointed or
48 designated the standby guardian; or the person appointed or
49 designated as standby guardian or alternate standby guardian; or
50 the minor child, upon his request or the request of his legal
51 representative, if applicable; or any other person directed by the
52 court.

1 13. This act shall take effect immediately.

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6 Designated the "New Jersey Standby Guardianship Act."

1 b. In a proceeding for judicial appointment of a designated
2 standby guardian, a designation shall constitute a rebuttable
3 presumption that the designated standby guardian is capable of
4 serving as guardian. In the event of the designator's death, a
5 designation shall be deemed to confer a preference upon the
6 designated standby guardian for the choice of a permanent
7 guardian, notwithstanding any law to the contrary, subject to the
8 rights of the other parent.

9 c. Except as set forth in this section, the petition for the
10 judicial appointment of a designated standby guardian shall
11 comply with the procedure set forth in section 6 of this act.

12 11. Notice of a petition or designation filed with the court
13 pursuant to section 6 of this act shall be served upon the minor
14 child for whom the standby guardianship is sought if the minor is
15 14 years of age or older. Notice to a minor child less than 14
16 years of age shall be served at the discretion of the court. The
17 court may appoint a guardian ad litem or counsel to represent the
18 best interest of the child. The court shall consider the
19 preferences of the minor child in the appointment of a standby
20 guardian pursuant to section 6 of this act.

21 12. a. The county clerk, upon being paid the fees allowed by
22 law, shall receive for filing any instrument appointing or
23 designating a standby guardian pursuant to this act made by a
24 domiciliary of the county, and shall give a written receipt
25 therefor to the person delivering it. The filing of an appointment
26 or designation of standby guardian shall be for the sole purpose of
27 safekeeping and shall not affect the validity of the appointment
28 or designation.

29 b. The appointment or designation shall be delivered only to:
30 the parent or legal guardian who appointed or designated the
31 standby guardian; or the person appointed or designated as
32 standby guardian or alternate standby guardian; or the minor
33 child, upon his request or the request of his legal representative,
34 if applicable; or any other person directed by the court.

35 13. This act shall take effect immediately.
36
37

38 STATEMENT

39
40 This bill provides for the establishment of standby
41 guardianships to permit custodial parents or legal guardians who
42 face the prospect of a progressive chronic disability or a fatal
43 illness to plan for the future of their children while they are still
44 able to do so.

45 A number of states have already enacted this kind of
46 legislation, which meets a pressing need in New Jersey. This
47 State ranks first nationally in the number of women with AIDS
48 and is third in the number of pediatric AIDS cases (behind only
49 New York and Florida); it is estimated that the AIDS epidemic
50 will create more than 7,000 orphans in the northern region of this
51 State alone by the year 2000.

52 This bill is intended to provide an urgently needed
53 compassionate response to help families devastated by AIDS, in
54 which parents seek to appoint temporary guardians for their

1 children without giving up their parental rights. The bill was
2 crafted by a subcommittee of the Governor's Advisory Council
3 on AIDS and included input from a broad range of sources,
4 including the Association for Children of New Jersey, the AIDS
5 Resource Foundation for Children, the Department of Human
6 Services, the Attorney General, the Office of the Public
7 Defender, Legal Services of New Jersey and the Hyacinth
8 Foundation.

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13 Designated the "New Jersey Standby Guardianship Act."

SENATE WOMEN'S ISSUES, CHILDREN
AND FAMILY SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 1585

with committee amendments

STATE OF NEW JERSEY

DATED: December 1, 1994

The Senate Women's Issues, Children and Family Services Committee favorably reports Senate Bill No. 1585 with committee amendments.

As amended, the bill provides for the establishment of standby guardianships to permit custodial parents or legal custodians who face the prospect of a progressive chronic disability or a fatal illness to plan for the future of their children while they are still able to do so.

A number of states have already enacted this kind of legislation, which meets a pressing need in New Jersey. This State ranks first nationally in the number of women with AIDS and is third in the number of pediatric AIDS cases (behind only New York and Florida); it is estimated that the AIDS epidemic will create more than 7,000 orphans in the northern region of this State alone by the year 2000.

This bill is intended to provide an urgently needed compassionate response to help families devastated by AIDS, in which parents seek to appoint temporary guardians for their children without giving up their parental rights. The bill was crafted by a subcommittee of the Governor's Advisory Council on AIDS and included input from a broad range of sources, including the Association for Children of New Jersey, the AIDS Resource Foundation for Children, the Department of Human Services, the Attorney General, the Office of the Public Defender, Legal Services of New Jersey and the Hyacinth Foundation.

The committee amended the bill to change all references of legal guardian to legal custodian. The committee also amended the bill to clarify that upon petition for the appointment of a standby guardian by a person as specified in subsection a. of section 6 of the bill (a parent, legal guardian or designated standby guardian), notice shall be served on the minor child's parent, legal guardian or designated standby guardian, as appropriate, within 30 days of the filing of the petition.

The committee also amended the bill to eliminate a reference to "person and property" in section 6 of the bill to clarify that standby guardianship is not intended to be used solely for the guardianship of a child's property.

Another amendment added language to the definition of "minor child" to clarify that the provisions of the bill would not apply to a child residing in a placement funded or approved by the Division of Youth and Family Services pursuant to either a voluntary placement agreement or court order.

The committee also made various technical changes to the bill in order for it to conform to the original draft proposed by the AIDS Council's Working Committee on Standby Guardianship.