

CHAPTER 192
(CORRECTED COPY)

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

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

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

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

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

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

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

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

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

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

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

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

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

g. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Such parent is deceased.

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

Such parent is mentally or physically unable to give consent.

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

Identity or whereabouts of such parent are unknown to me.

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

Diligent efforts included:

Other: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

___ I am deployed in military service; or

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

___ Other (specify reason).

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

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

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

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

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

Date:

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

Date:

Witness's Signature:

Address:

Date:

Witness's Signature:

Address:

Date:

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

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

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

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

C.3B:12-69 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the qualifications of the proposed standby guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

Repealer.

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

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

Approved August 5, 2021.