

SENATE, No. 2886

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

SYNOPSIS

Revises law concerning standby guardianship for minor child or ward.

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.3B:12-39 is amended to read as follows:

8 3B:12-39. Delegation of parent's, custodian's, or guardian's
9 powers regarding child's or ward's care, custody or property;
10 limitations.

11 a. **[A]** (1) A parent, other than where sole or full legal and
12 physical custody of [a] the parent's minor child has been awarded
13 to another by a court of competent jurisdiction, may with the
14 consent of the other parent, **[if the latter is living and not an**
15 **incapacitated person]** unless the other parent is deceased,
16 incapacitated, or unavailable, or

17 (2) a custodian of a minor child who is not that child's parent
18 may, with the consent of a parent with whom the custodian shares
19 legal custody, unless that parent is deceased, incapacitated, or
20 unavailable, or

21 (3) a guardian of the person of a minor or an incapacitated
22 person**[,]** may:

23 by a properly executed power of attorney, [may] delegate to
24 another person[, for a period not exceeding six months,] any of his
25 powers regarding care, custody, or property of the minor child or
26 ward[, except his power to consent to marriage or adoption of a
27 minor ward].

28 b. A delegation made under this section shall expire one year
29 from the effective date of the properly executed power of attorney,
30 provided however that the parent, custodian, or guardian shall be
31 permitted to renew the delegation for additional one-year periods
32 using the same process as applies to the original delegation.

33 c. A delegation made under this section may become effective
34 upon proper execution of the power of attorney or upon another
35 triggering event specified in a properly executed power of attorney.

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

40 e. A parent, custodian, or guardian may delegate under this
41 section only such powers as he possesses.

42 f. A delegation made under this section shall not deprive the
43 parent, custodian, or guardian of his existing powers regarding care,
44 custody, or property of the minor child or ward, but the parent,
45 custodian, or guardian shall exercise such powers, insofar as he is

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

Matter underlined thus is new matter.

1 able, concurrently with the attorney-in-fact named in the power of
2 attorney.

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

5 h. As used in this section:

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

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

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

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

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

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

32 “Guardian” means a person appointed by a court of competent
33 jurisdiction as a guardian of the person of a minor or an
34 incapacitated person, including but not limited to a kinship legal
35 guardian.

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

40 “Incapacitated” means the parent, custodian, or guardian has a
41 chronic and substantial inability, as a result of mental or physical
42 impairment, to understand the nature and consequences of decisions
43 concerning the care of the parent's, custodian's, or guardian's
44 minor child or ward, and a consequent inability to make these
45 decisions.

46 “Military service” means duty by any person in the active
47 military service of the United States or the active military service of
48 the State, including in the National Guard or State Guard, that

1 separates a parent, custodian, or guardian from a minor child or
2 ward.

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

8 "Parent" means the biological or adoptive parent of a minor
9 child.

10 "Triggering event" means an event stated in the delegation that
11 empowers the attorney-in-fact to assume the duties of the office.
12 Triggering events include, but are not limited to: (1) the execution
13 of a power of attorney pursuant to this section; (2) the parent's,
14 custodian's, or guardian's attending physician concludes that the
15 parent, custodian, or guardian is "incapacitated" as defined in this
16 section; (3) the parent's, custodian's, or guardian's attending
17 physician concludes that the parent, custodian, or guardian is
18 "debilitated" as defined in this section; (4) the parent, custodian, or
19 guardian is subject to "immigration administrative action" as
20 defined in this section; (5) the parent, custodian, or guardian is
21 subject to "criminal proceedings" as defined in this section; (6) the
22 parent, custodian, or guardian is in "military service" as defined in
23 this section; or (7) the death of the parent, custodian, or guardian.

24 "Unavailable" means: (a) a parent who has not been involved in
25 raising or financially supporting the child for two years or a third of
26 the life of the child, whichever is less, immediately preceding the
27 delegation made pursuant to this section; (b) a parent whose identity
28 or whereabouts are unknown; or (c) a parent who cannot be reached
29 after diligent efforts.

30 "Ward" means an individual for whom a guardian is appointed.

31 i. A delegation may, but need not, be in the following form:

32

33 POWER OF ATTORNEY AND DELEGATION OF AUTHORITY
34 BY PARENT, CUSTODIAN, OR GUARDIAN CONCERNING
35 MINOR CHILD(REN) OR WARD(S) PURSUANT TO N.J.S.

36 3B:12-39

37

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

45

46 If a parent is signing, the other parent must generally also sign
47 below to show consent. Similarly, if a custodian who shares legal
48 custody with a parent is signing, the parent who shares legal

1 custody must generally also sign below to show consent. If such
2 parent does not sign below, please check off reason(s) to explain
3 why:

4

5 ____ Such parent is deceased.

6

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

9

10 ____ Such parent is mentally or physically unable to give consent.

11

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

16

17 ____ Identity or whereabouts of such parent are unknown to me.

18

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

21

22 Diligent efforts included:

23

24 _____

25 _____

26 _____

27 _____

28 _____

29 _____

30

31 Other: _____

32 _____

33 _____

34 _____

35 _____

36

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

43

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

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

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

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

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

32
33 Financial Interests. The attorney-in-fact may handle any and
34 all financial affairs and any and all personal and legal matters
35 concerning the child(ren)/ward(s).

36
37 All Other Powers. The attorney-in-fact shall have the authority
38 to handle and engage in any and all other matters relating to the
39 care, custody, and property of the child or ward which are permitted
40 pursuant to applicable State law.

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

45
46 _____The execution of this document on the latest date below; or

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

4 My attending physician concludes that I am physically
5 debilitated, and thus unable to care for my child(ren)/ward(s); or
6

7 I am detained in immigration detention, removed, or deported;
8 or
9

10 I am incarcerated based on criminal charges, including pending
11 charges, or conviction; or
12

13 I am deployed in military service; or
14

15 Upon my death.
16

17 In the event that the person designated above is unable or unwilling
18 to act as attorney-in-fact to my child(ren)/ward(s), I hereby name
19 (name, address and telephone number of alternate attorney-in-fact),
20 as alternate attorney-in-fact of my child(ren)/ward(s).
21

22 I/we understand that this delegation will expire one year from the
23 execution of this document on the latest date below, and that the
24 authority of the attorney-in-fact, if any, will cease, unless by that
25 date (i) I renew this delegation, by the same process applicable to
26 the original delegation, or (ii) a court of competent jurisdiction
27 appoints a custodian, guardian, or standby guardian for the minor
28 child or ward.
29

30 I/we hereby authorize that the attorney-in-fact as set forth above
31 shall be provided with a copy of my/our attending physician's
32 statement(s), if applicable.
33

34 In the event that a triggering event occurs and a power of attorney is
35 activated pursuant to this statement, I declare that it is my intention
36 to retain full parental rights to the extent consistent with my
37 condition and circumstances and, further, that I retain the authority
38 to revoke the power of attorney consistent with my rights herein at
39 any time.
40

41 Parent's/Custodian's/Guardian's Signature:
42

43 Date:
44

45 Signature of other parent or of parent who shares legal custody with
46 a custodian who signed above:
47

48 Date:

1 Witness's Signature:

2

3 Address:

4

5 Date:

6

7

8 Witness's Signature:

9

10 Address:

11

12 Date:

13

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

15

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

18 2. The Legislature finds and declares that there is an imperative
19 need to create an expeditious manner of establishing a guardianship
20 known as a standby guardianship, in order to enable a **【custodial】**
21 parent **【or legal】**, custodian **【suffering from a progressive chronic**
22 **condition or a fatal illness】**, or guardian who cannot currently, or
23 who anticipates being unable to, provide adequate care to a minor
24 child or ward, to make plans for the permanent future care or the
25 interim care of a minor child or ward without terminating parental
26 or legal rights. The Legislature further finds that current law does
27 not adequately address the needs of **【custodial】** parents, custodians,
28 or 【legal custodians】 guardians who are **【suffering from a**
29 **progressive chronic condition or a fatal illness】** facing separation
30 from their minor children or wards because of illness, immigration
31 administrative action, criminal proceedings, military service, or
32 other reasons, and who desire to make plans for the future care of
33 their children or wards without terminating parental or legal rights.
34 (cf: P.L.1995, c.76, s.2)

35

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 “Ward” means an individual for whom a guardian is appointed.
41 (cf: P.L.2012, c.16, s.12)

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

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

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

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

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

12 (2) **【that there is a significant risk that the parent or legal**
13 **custodian will die, become incapacitated, or become debilitated as a**
14 **result of a progressive chronic condition or a fatal illness; however,**
15 **a petitioner shall not be required to submit medical documentation**
16 **of the parent's or legal custodian's terminal status by his attending**
17 **physician; and**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3
4 7. This act shall take effect on the 90th day following
5 enactment.

6
7
8 STATEMENT

9
10 The “New Jersey Standby Guardianship Act,” P.L.1995, c.76
11 (C.3B:12-67 et seq.) allows parents and guardians to ask the court
12 to appoint temporary guardians for their children without giving up
13 parental rights. This bill would make a number of changes to the
14 Standby Guardianship Act. The bill would also expand
15 N.J.S.A.3B:12-39, which permits parents to delegate their parental
16 powers through a power of attorney without involving the court.

17 STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

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

40 STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

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

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

3 STANDBY GUARDIANSHIP ACT: PROCEDURE

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

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

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

32 DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

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

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

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

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

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

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

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

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

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

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

43 SUGGESTED FORM

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

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

19

20 Among other provisions, the suggested form provides:

21

22 In the event that a triggering event occurs and a

23 power of attorney is activated pursuant to this

24 statement, I declare that it is my intention to retain

25 full parental rights to the extent consistent with my

26 condition and circumstances and, further, that I retain

27 the authority to revoke the power of attorney

28 consistent with my rights herein at any time.