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.

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:

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

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

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

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

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

b. A delegation made under this section shall 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.

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

d. 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.

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

f. A delegation made under this section shall not deprive the parent, custodian, or guardian of his existing powers regarding care, custody, or property of the minor child or ward, but the parent, 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.

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

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

h. As used in this section:

"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 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 ward.

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

"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 has a chronic and substantial inability, as a result of mental or physical impairment, to understand the nature and consequences of decisions concerning the care of the parent's, custodian's, or guardian's minor child or 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 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.

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

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

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

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

i. A delegation 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 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 child/ward, (name of child/ward), born on _____ day of _____, 20___ (add other children's or wards' names and birthdates as appropriate)

___Care-Giving. The attorney-in-fact shall have temporary care-giving authority for the child(ren)/ward(s), until such time as the child(ren)/ward(s) is/are returned to our/my 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 child(ren)/ward(s), including but not limited to providing food and shelter.

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

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

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

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

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

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

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

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

___My attending physician concludes that I am physically debilitated, and thus unable to care for my child(ren)/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.

In the event that the person designated above is unable or unwilling to act as attorney-in-fact to my child(ren)/ward(s), I hereby name (name, address and telephone number of alternate attorney-in-fact), as alternate attorney-in-fact of my child(ren)/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, or (ii) a court of competent jurisdiction appoints a custodian, guardian, or standby guardian for the minor child or ward.

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 a triggering 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:

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

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

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 ⟦custodial⟧ parent ⟦or legal⟧, custodian ⟦suffering from a progressive chronic condition or a fatal illness⟧, or guardian who cannot currently, or who anticipates being unable to, provide adequate care to a minor child or ward, to make plans for the permanent future care or the interim care of a minor child or ward without terminating parental or legal rights. The Legislature further finds that current law does not adequately address the needs of ⟦custodial⟧ parents, custodians, or ⟦legal custodians⟧ guardians who are ⟦suffering from a progressive chronic condition or a fatal illness⟧ facing separation from their minor children or 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 children or wards without terminating parental or legal rights.

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

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

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

"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 ward upon ⟦the death or a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian⟧ a "triggering event" as defined in this section.

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

custodian, or [legal custodian] 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.).

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

"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 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.

[**"Debilitation"**] "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 [**one's**] the parent's, custodian's, or guardian's minor child or ward.

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

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

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

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

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

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

"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.

["Incapacity"**]** "Incapacitated" means the parent, custodian, or guardian has a chronic and substantial inability, as a result of mental or **[**organic**]** physical impairment, to understand the nature and consequences of decisions concerning the care of **[**one's**]** the parent's, custodian's, or guardian's minor child or 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 ward.

"Minor child" means a child under the age of eighteen 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.

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

"Triggering event" means an event stated in the **[**designation,**]** petition or decree **[**which**]** that empowers the standby guardian to assume the duties of the office**[**, which event may be the death, incapacity or debilitation, with the consent, of the custodial parent or legal custodian, whichever occurs first**]**. Triggering events include, but are not limited to: (1) the appointment of a standby guardian by a court of competent jurisdiction; (2) the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is "incapacitated" as defined in this section; (3) the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is "debilitated" as defined in this section; (4) the parent, custodian, or guardian is subject to "immigration administrative action" as defined in this section; (5) the parent, custodian, or guardian is subject to "criminal proceedings" as defined in this section; (6) the the parent, custodian, or guardian is in "military service" as defined in this section; or (7) the death of the parent, custodian, or guardian.

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

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

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

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

standby guardian of a minor child or ward. The court may also appoint an alternate standby guardian, 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 [death, incapacity or debilitation of the parent or legal custodian of the minor child] triggering event stated in the petition.

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

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

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

(3)] the name[,] and address[, and qualifications] of the proposed standby guardian; and

(3) the qualifications of the proposed standby guardian.

c. A parent, custodian, or [legal custodian] 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 [there is a significant risk that the parent or legal custodian will die, become incapacitated, or become debilitated as a result of a progressive chronic condition or a fatal illness,] 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 triggering 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 [or legal], custodian, guardian, or [the designated standby guardian] attorney-in-fact appointed pursuant to N.J.S.3B:12-39, as appropriate, within 30 days of the filing. [The] During the time that the petition is pending, the court shall give preference to maintaining custody with [either the parent or legal custodian, or the designated standby guardian, during the time that the petition is pending] whoever had custody of the minor child or 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 [or legal], custodian, or guardian cannot be found, the parent [or legal],

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

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

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

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

c. Within [60] 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 [of incapacity or debilitation or a death certificate, as appropriate] that the triggering 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 [this act] P.L.1995, c.76 (C.3B:12-72) may decline appointment at any time before the assumption of his 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 ward if the [latter] 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 [custodial] parent, custodian, or [legal custodian] guardian of the minor child or ward, unless the petition states otherwise.

g. A parent, custodian, or guardian [or legal custodian] 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.
(cf: P.L.1995, c.76, s.7)

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.

STATEMENT

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

STANDBY GUARDIANSHIP ACT: DEFINITIONS

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

In order to define what constitutes a "triggering event," the bill adds several definitions. The term "criminal proceeding" is defined as any incarceration on criminal charges, including pending charges, or a criminal sentence that separates a parent, custodian, or guardian from a minor child or ward. The term "immigration administrative action" is defined as any immigration proceeding, enforcement action, detention, removal, or deportation that separates a parent, custodian, or guardian from a minor child or ward. The term "military service" is defined as duty by any person in the active military service of the United States or the active military service of the State, including in the National Guard or State Guard, that separates a parent, custodian, or guardian from a minor child or ward.

STANDBY GUARDIANSHIP ACT: LEGISLATIVE FINDINGS

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

currently, or who anticipates being unable to, provide adequate care" to the child.

STANDBY GUARDIANSHIP ACT: PROCEDURE

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

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

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

DELEGATION OF PARENTAL POWERS BY POWER OF ATTORNEY

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

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

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

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

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

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

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

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

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

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

SUGGESTED FORM

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

> By this delegation, I/we provide that the attorney-in-fact's authority shall take effect upon the following "triggering event" (check one that applies):
> ___The execution of this document on the latest date below; or
> ___My attending physician concludes that I am mentally incapacitated, and thus unable to care for my child(ren)/ward(s); or
> ___My attending physician concludes that I am physically debilitated, and thus unable to care for my child(ren)/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.

Among other provisions, the suggested form provides:

> In the event that a triggering 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.