

SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO **SENATE, No. 2886**

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2886.

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. As amended by the committee, this bill makes 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.”

The bill adds the following definitions:

“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;

“Guardian” means a person appointed by a court of competent jurisdiction as a guardian of a minor child or an incapacitated person, including but not limited to a kinship legal guardian; and

“Ward” means a person for whom a guardian is appointed.

The bill further adds a number of definition in the context of what constitutes a “triggering event.” 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 will 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 is to provide a copy of that 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 a 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 those 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 these 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: (1) 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; (2) a parent whose identity or whereabouts are unknown to the delegating parent; or (3) 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.” Under the bill, a triggering event is an event stated in the delegation that empowers the attorney-in-fact to assume the duties of the office.

Triggering events may 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 may 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 existing powers regarding care, custody, or property of the minor child or ward, but the parent, custodian, or guardian is to exercise such powers, insofar as the parent, custodian, or guardian is able, concurrently with the attorney-in-fact named in the power of attorney.

The bill also specifies that its provisions should not be construed to involuntarily deprive any parent of parental rights.

COMMITTEE AMENDMENTS

The committee amendments replace certain language throughout the bill with gender neutral language.

The committee amendments revise the definition of “ward” throughout the bill to replace the term “individual” with the term “person.”

The committee amendments remove a definition of “parent” that would have unintentionally excluded certain legal parents of minor children from the provisions of the bill.

The committee amendments make technical changes as to grammar, punctuation, and syntax.