SENATE, No. 696



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

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District 35 (Bergen and Passaic)

SYNOPSIS

Allows parents or legal custodians separated from their children because of immigration matters to appoint standby guardians.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning standby guardianship and amending P.L.1995, c.76.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. 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 upon an administrative separation to make plans for the permanent future care or the interim care of a child without terminating parental or legal rights. The Legislature further finds that current law does not adequately address the needs of custodial parents or legal custodians who are suffering from a progressive chronic condition, or a fatal illness, or who are or will be subject to an administrative separation and who desire to make plans for the future care of their children without terminating parental or legal rights.

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

2. 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.):

"Administrative separation" means the separation of a parent or legal custodian from the parent’s or legal custodian’s child as a result of a federal immigration matter, including, but not limited to, arrest, detention, incarceration, or removal, or the receipt of official communication by federal, State, or local authorities responsible for immigration enforcement that gives reasonable notice that the care and supervision of the parent’s or legal custodian’s child will be interrupted or cannot be provided as the result of the parent’s or legal custodian’s impending arrest, detention, incarceration, or removal.

"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 upon the death or a determination of incapacity **[**or**]**,debilitation, administrative separation, and with the consent, of the parent or legal custodian.

"Attending physician" means the physician who has primary responsibility for the treatment and care for the petitioning parent or legal custodian. 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.

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

"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, or administrative separation, 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 administrative separation" means a written determination by federal, State, or local authorities responsible for immigration enforcement regarding the nature, cause, and extent of a parent’s or legal guardian’s arrest, detention, incarceration, or removal

"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.

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

"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.

"Triggering event" means an event stated in the designation, petition or decree which empowers the standby guardian to assume the duties of the office, which event may be the death, incapacity **[**or**]**, debilitation, or administrative separation, with the consent, of the custodial parent or legal custodian, whichever occurs first.

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

3. Section 6 of P.L.1995, c.76 (C3B:12-72) is amended to read as follow:

6. a. Upon petition of the parent, legal custodian or designated standby guardian, the court may appoint a standby guardian of a minor child. 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, or if the parent or legal custodian is subject to an administrative separation.

b. A petition for the judicial appointment of a standby guardian of a minor child 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, or that the parent or legal custodian is or will be subject to an administrative separation; 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, or submit documentation of an impending administrative separation; and

(3) the name, address, and qualifications of the proposed standby guardian.

c. A parent or legal custodian 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, or that the parent or legal custodian is or will be subject to an administrative separation, and that the interests of the minor child 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, or the designated standby guardian, as appropriate, within 30 days of the filing. 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. 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 cannot be found, the parent or legal custodian shall be served by notice delivered pursuant to New Jersey court rules. No notice is necessary to a parent who is deceased or whose parental rights have been previously terminated by court order or consent.

(cf: P.L.1995, c.76, s.6)

4. 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. If the triggering event is an administrative separation, the parent’s or legal custodian’s attorney or legal representative shall provide a copy of a determination of administrative separation to the appointed standby guardian, if the guardian’s identity is known to the parent’s or legal custodian’s attorney.

c. Within 60 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, administrative separation, or a death certificate, as appropriate.

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 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 if the latter 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 or legal custodian of the minor child, unless the petition states otherwise.

g. A parent 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)

5. Section 8 of P.L.1995, c.76 (C.3B:12-74) is amended to read as follows:

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

(1) The parent or legal custodian may choose a standby guardian by means of a written designation that names the standby guardian in the event of the designator's death, incapacity **[**or**]**, debilitation, or administrative separation. The written designation shall reasonably identify the designator, the minor child and the standby guardian.

(2) A written designation pursuant to this section shall be signed by the designator in the presence of two witnesses who shall also sign the designation. Another person may sign the written designation on the parent's or legal custodian's behalf if the parent or legal custodian is physically unable to do so, or the parent or legal guardian has been arrested, detained, incarcerated, or removed from the State as a result of an administrative separation, provided the designation is signed at the express request of the parent or legal custodian and in the presence of the parent or legal custodian and two witnesses.

(3) The designation shall state the triggering event by which the parent or legal custodian intends the designated standby guardianship of the minor child to be activated.

(4) A parent or legal custodian may designate an alternate standby guardian in the same document, and by the same manner, as the designation of a standby guardian.

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

DESIGNATION OF STANDBY GUARDIAN

I, (name of parent or legal custodian) hereby name (name, home address and telephone number of standby guardian) as designated standby guardian of (name of child(ren)), my child(ren).

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

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

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

(3) upon my death; or

(4) upon my arrest, detention, incarceration, or removal from the State as a result of an administrative separation.

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

I understand that this designation will expire six months from the date of this designation, and that the authority of the designated standby guardian, if any, will cease, unless by that date either I or the designated standby guardian petitions the court for appointment as standby guardian pursuant to section 6 of P.L.1995, c.76 (C.3B:12-72).

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

In the event that I am incapacitated **[**or**]**, debilitated, or subject to an administrative separation and a designated standby guardianship 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, further, that I retain the authority to revoke the designated standby guardianship consistent with my rights herein at any time.

Designator's Signature:

Witness' Signature:

Address:

Date:

Witness' Signature:

Address:

Date:

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

(cf: P.L.1995, c.76, s.8.)

6. This act shall take effect immediately.

STATEMENT

This bill allows a parent or legal custodian who has been separated from their child as a result of a federal immigration matter to appoint a standby guardian.

Specifically, the bill amends P.L.1995, c.76 (C.3B:12-64 et seq.) to allow the parent or legal custodian to petition the court for the appointment of a standby guardian of a child or to allow the other parent or legal guardian to designate in writing a standby guardian, under specific circumstances, if the parent or custodian is subject to an administrative separation.

Currently, a parent or legal custodian can petition the court for the appointment of a standby guardian, and the court may appoint the standby guardian, or another parent or custodian may designate in writing a standby guardian, if the triggering event requiring the appointment is death, incapacity, or debilitation and there is significant risk that the parent or custodian will die, become incapacitated, or become debilitated as a result of a progressive chronic condition or a fatal illness.

As used in the bill, “administrative separation” means the separation of a parent or legal custodian from the parent’s or legal custodian’s child as a result of a federal immigration matter, including, but not limited to, arrest, detention, incarceration, or removal, or receipt of official communication by federal, State, or local authorities responsible for immigration enforcement which gives reasonable notice that the care and supervision of the parent’s or legal custodian’s child will be interrupted or cannot be provided as the result of the parent’s or custodian’s impending arrest, detention, incarceration, or removal.

Under the provisions of the bill, the petition would state that the triggering event, an impending administrative separation, occurred to require the appointment of a standby guardian and that there is significant risk that the parent or legal custodian will be the subject of such separation. However, the parent or custodian would not be required to submit documentation of an impending administrative separation. If the court finds that that there is a significant risk that the parent or legal guardian will be subject to an administrative separation, a standby guardian would be appointed.

Current law does not recognize an administrative separation as a triggering event for the appointment of a standby guardian and does not allow a parent or legal custodian to petition the court for the appointment of a standby guardian, and the court to appoint such a guardian, if there is significant risk that the parent or legal custodian will be the subject to an administrative separation.

As required under current law for standby guardians who are appointed due to death, incapacity, or debilitation, the bill stipulates that: if the triggering event that causes the appointment of a standby guardian is an administrative separation, the parent’s or legal custodian’s attorney or legal representative would provide a copy of a determination of administrative separation to the appointed standby guardian, if the guardian’s identity is known to the parent’s or custodian’s attorney or legal representative; and the appointed standby guardian is required to petition the court, including a determination of administrative separation, within 60 days of assuming guardianship duties for confirmation of the appointment.

As used in the bill, “determination of administrative separation” means a written determination by federal, state, or local authorities responsible for immigration enforcement regarding the nature, cause, and extent of the parent’s or legal guardian’s arrest, detention, incarceration, or removal.

As mandated by the current law for standby guardians who are appointed due to death, incapacity, or debilitation, the bill also stipulates that if the consent of a child’s parent or legal custodian for the execution of a power of attorney delegating another person to exercise the parent's or legal custodian's powers is not appropriate or is unavailable pursuant to N.J.S.3B:12-39, the other parent or legal custodian may execute a written statement to designate a standby guardian in the event of the designator's administrative separation.

The written designation would identify the designator, the minor child, and the standby guardian. If the parent or legal custodian has been arrested, detained, incarcerated, or removed from the State as a result of an administrative separation, another person may sign the written designation on the parent's or legal custodian's behalf.