**South Carolina General Assembly**

124th Session, 2021-2022

**H. 4544**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bennett, Bustos, Gatch and Morgan

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Introduced in the House on January 11, 2022

Currently residing in the House Committee on **Judiciary**

Summary: Family court, jury trials and GALs

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/10/2021 House Prefiled

11/10/2021 House Referred to Committee on **Judiciary**

1/11/2022 House Introduced and read first time ([House Journal‑page 49](file:///h:\hj\20220111.docx))

1/11/2022 House Referred to Committee on **Judiciary** ([House Journal‑page 49](file:///h:\hj\20220111.docx))

1/27/2022 House Member(s) request name added as sponsor: Gatch, Morgan

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**VERSIONS OF THIS BILL**

[11/10/2021](file:///p:\pprever\2021-22\4544_20211110.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 20‑3‑75 AND 63‑15‑215 SO AS TO REQUIRE JURY TRIALS IN DIVORCE AND PRIVATE CHILD CUSTODY ACTIONS; TO AMEND SECTIONS 63‑3‑530 AND 63‑3‑590, RELATING TO THE FAMILY COURT, AND SECTION 63‑15‑210, RELATING TO COURT‑ORDERED CHILD CUSTODY, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTIONS 63‑3‑820 AND 63‑3‑850, RELATING TO GUARDIANS AD LITEM IN DIVORCE AND PRIVATE CUSTODY ACTIONS, SO AS TO REQUIRE SUCH GUARDIANS AD LITEM TO BE LICENSED TO PRACTICE LAW.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Article 1, Chapter 3, Title 20 of the 1976 Code is amended by adding:

“Section 20‑3‑75. Actions for divorce from the bonds of matrimony must be decided in the family court with questions of fact being decided by a jury of six jurors, presided over by a judge who decides questions of law.”

B. Article 2, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑215. Actions for custody of children filed pursuant to this article must be decided in the family court with questions of fact being decided by a jury of six jurors, presided over by a judge who decides questions of law, except as otherwise provided in this article.”

SECTION 2. A. Section 63‑3‑530(A)(30) of the 1976 Code is amended to read:

“(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction~~, without the intervention of a jury~~; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition;”

B. Section 63‑3‑590 of the 1976 Code is amended to read:

“Section 63‑3‑590. All cases of children must be dealt with as separate hearings by the court and without a jury, with the exception of private custody cases filed pursuant to Article 2, Chapter 15, Title 63, which must be heard by the court with a jury of six jurors. The hearings must be conducted in a formal manner and may be adjourned from time to time. The general public must be excluded and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted. The presence of the child in court may be waived by the court at any stage of the proceedings. Hearings may be held at any time or place within the county designated by the judge. In any case where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed, the privilege against self‑incrimination and the right of cross‑examination must be preserved. In all cases where required by law, the child must be accorded all rights enjoyed by adults, and where not required by law the child must be accorded adult rights consistent with the best interests of the child.”

SECTION 3. Section 63‑15‑210(1) of the 1976 Code is amended to read:

“(1) ‘Joint custody’ means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training; however, a ~~judge~~ court may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions.”

SECTION 4. A. Section 63‑3‑820 of the 1976 Code is amended to read:

“Section 63‑3‑820. (A) A guardian ad litem ~~may~~ must be ~~either~~ an attorney ~~or a layperson~~. A person must not be appointed as a guardian ad litem pursuant to Section 63‑3‑810 unless ~~he possesses the following qualifications~~ the person:

(1) ~~a guardian ad litem must be~~ is twenty‑five years of age or older;

(2) ~~a guardian ad litem must possess~~ has earned a ~~high school diploma or its equivalent~~ juris doctor degree from an accredited law school and maintains an active law license in good standing with the South Carolina Bar; and

(3) ~~an attorney guardian ad litem must~~ annually ~~complete~~ completes a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court~~;~~.

~~(4)~~ ~~for initial qualification, a lay guardian ad litem must have completed a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization;~~

~~(5)~~ ~~a lay guardian ad litem must observe three contested custody merits hearings prior to serving as a guardian ad litem. The lay guardian must maintain a certificate showing that observation of these hearings has been completed. This certificate, which shall be on a form approved by Court Administration, shall state the names of the cases, the dates and the judges involved and shall be attested to by the respective judge; and~~

~~(6)~~ ~~lay guardians ad litem must complete annually six hours of continuing education courses in the areas of custody and visitation.~~

(B) A person shall not be appointed as a guardian ad litem pursuant to Section 63‑3‑810 who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16‑17‑490.

(C) No person may be appointed as a guardian ad litem pursuant to Section 63‑3‑810 if he is or has ever been on the Department of Social Services Central Registry of Abuse and Neglect.

(D) Upon appointment to a case, a guardian ad litem must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:

(1) a statement affirming that the guardian ad litem has completed the ~~training~~ continuing legal education requirements provided for in subsection (A);

(2) a statement affirming that the guardian ad litem has complied with the requirements of this section, including a statement that the person has not been convicted of a crime enumerated in subsection (B); and

(3) a statement affirming that the guardian ad litem is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect pursuant to Subarticle 13, Article 3, Chapter 7.

~~(E)~~ ~~The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for the appointment of an attorney for the guardian ad litem. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.~~”

B. Section 63‑3‑850(D) of the 1976 Code is amended to read:

“(D) At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian ad litem ~~or the attorney for the guardian ad litem~~.”

SECTION 5. This act takes effect upon approval by the Governor.

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