

House Bill 464 (AS PASSED HOUSE AND SENATE)

By: Representatives Scoggins of the 14th, Gambill of the 15th, Williams of the 145th, Leverett of the 33rd, and Smith of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward,
2 so as to provide for when a petition for the appointment of a temporary guardian of a minor
3 filed in the probate court may be transferred from the probate court to the juvenile court; to
4 revise the assessment of certain costs, compensation, fees, and expenses; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
9 amended by revising subsection (f) of Code Section 29-2-6, relating to parental consent to
10 temporary guardianship, failure to consent, and minor's preference, as follows:

11 "(f)(1) In all hearings held pursuant to this Code section, the standard for determination
12 for all matters at issue shall be the best ~~interest~~ interests of the minor, as determined in
13 accordance with Code Section 15-11-26 and other applicable Georgia law. As to the
14 selection of the temporary guardian, the preference of the minor may be heard.

15 (2) In all proceedings under this Code section, the court may, in its discretion, enter an
16 order transferring ~~has the option to refer~~ the petition to the juvenile court, which shall,

17 after notice and hearing, determine whether the temporary guardianship is in the best
18 interest interests of the minor.

19 (3) Notwithstanding subsection (a) of this Code section, an order by the court
20 transferring the petition to the juvenile court pursuant to paragraph (2) of this subsection
21 shall be a proper order of the court under paragraph (4) of Code Section 15-11-11."

22 SECTION 2.

23 Said title is further amended by revising Code Section 29-9-3, relating to assessment of costs,
24 compensation, fees, and expenses, factors determining allocation of fees and costs, and
25 enforcement of award of costs, compensation, fees, and expenses, as follows:

26 "29-9-3.

27 (a) Except as otherwise ordered by the court under paragraph (2) of subsection (a) of Code
28 Section 29-4-10, under paragraph (2) of subsection (a) of Code Section 29-5-10, or under
29 subsection (b) of Code Section 29-11-16, and except as otherwise provided in subsection
30 (a) of Code Section 9-12-135, all costs of court under Code Sections 15-9-60 and 15-9-126
31 or other applicable law and all compensation, fees, and expenses awarded by the court
32 under subsections (a) and (b) of Code Section 29-9-15, under Code Section 29-9-16, or
33 under subsection (b) of Code Section 29-9-18, may be assessed and shall be paid as
34 directed by the court in the exercise of its sound discretion and as the court may deem to
35 be in the best interest of the minor, proposed ward, or ward who is the subject of the
36 particular proceeding as provided in subsections (b) and (c) of this Code section.

37 (b) In any proceeding for the appointment of a guardian or conservator pursuant to the
38 provisions of Chapter 2, 3, 4, 5, 7, or 11 of this title, the costs, compensation, fees, and
39 expenses provided for by subsection (a) of this Code section; may be assessed and shall be
40 paid as directed by the court in the exercise of its sound discretion and as the court may
41 deem to be in the best interest of the minor, proposed ward, or ward who is the subject of

42 ~~the proceeding, considering shall consider~~ the following in determining allocation of fees
43 ~~and costs set out in subsection (a) of this Code section:~~

44 (1) The estate of the minor or ward for whom a guardian or conservator is appointed in
45 such proceeding;

46 (2) The conduct of the petitioners in any such proceeding in which no guardianship order
47 or conservatorship order is entered by the court;

48 (3) ~~If Whether such costs, compensation, fees, and expenses shall be paid by the county~~
49 ~~of the court exercising jurisdiction over such proceeding, provided that~~ the judge who
50 actually presided over the hearing includes a finding in the order that the party against
51 whom such costs, compensation, fees, and expenses are cast pursuant to paragraph (1),
52 ~~(2), or (2) (4)~~ (4) of this subsection appears to lack sufficient assets to defray such costs,
53 compensation, fees, and expenses ~~shall be paid by the county of the court exercising~~
54 ~~jurisdiction over any such proceeding;~~

55 (4) The conduct of any party or other person subject to the jurisdiction of the court who
56 has been the perpetrator of abuse, neglect, or exploitation against the person or property
57 of the minor, proposed ward, or ward, provided that the judge who actually presided over
58 the hearing includes a finding in the order determining that such abuse, neglect, or
59 exploitation against the person or property of the minor, proposed ward, or ward has
60 occurred and identifying the perpetrator thereof; or

61 (5) Any property, fund, or proceeds recovered on behalf of or in favor of a the minor or
62 ward ~~in accordance with an order of the court assessing such costs, compensation, fees,~~
63 ~~and expenses against such property, fund, or proceeds.~~

64 (c) In all proceedings pursuant to the provisions of Chapter 2, 3, 4, 5, 7, or 11 of this title
65 other than for the appointment of a guardian or conservator, the costs, compensation, fees,
66 and expenses provided for by subsection (a) of this Code section may be assessed and shall
67 be paid as directed by the court in the exercise of its sound discretion and as the court may

68 deem to be in the best interest of the minor, proposed ward, or ward who is the subject of
69 the particular proceeding, ~~as follows~~ considering the following:

70 (1) ~~From the~~ The estate of the minor or ward for whom a guardian or conservator has
71 been appointed in any such proceeding, if the court finds that the proceeding was brought
72 in the best interest of the minor or ward;

73 (2) ~~By the~~ The conduct of the petitioners or movants in any such proceeding;

74 (3) ~~From~~ The conduct of a guardian or conservator or ~~from~~ the surety on such guardian's
75 or conservator's bond, subject to other applicable law governing the liability of sureties
76 on such bonds, in any such proceeding, if:

77 (A) Such guardian or conservator admits to a violation of any obligation of such
78 guardian or conservator in such guardian's or conservator's representative capacity
79 under this title or other applicable law;

80 (B) The court finds that such guardian or conservator has committed a breach of
81 fiduciary duty or has threatened to commit a breach of fiduciary duty;

82 (C) The court revokes or suspends such guardian's letters of guardianship or such
83 conservator's letters of conservatorship or imposes sanctions upon such guardian or
84 conservator in such proceeding; or

85 (D) The court otherwise finds that such guardian or conservator has committed
86 misconduct or has acted contrary to the best interest of the minor or ward;

87 (4) ~~By~~ Whether such costs, compensation, fees, and expenses shall be paid by the county
88 of the court exercising jurisdiction over any such proceeding, provided that the judge who
89 actually presided over the hearing includes a finding in the order that the party against
90 whom such costs, compensation, fees, and expenses are cast pursuant to paragraph (1),
91 (2), (3), or (5) of this subsection appears to lack sufficient assets to defray such costs,
92 compensation, fees, and expenses;

93 (5) ~~By~~ The conduct of any party or other person subject to the jurisdiction of the court
94 who has been the perpetrator of abuse, neglect, or exploitation against the person or

95 property of the minor, proposed ward, or ward, provided that the judge who actually
96 presided over the hearing includes a finding in the order determining that such abuse,
97 neglect, or exploitation against the person or property of the minor, proposed ward, or
98 ward has occurred and identifying the perpetrator thereof; or

99 ~~(6) From any~~ Any property, fund, or proceeds recovered on behalf of or in favor of a the
100 minor or ward in accordance with an order of the court assessing such costs,
101 compensation, fees, and expenses against such property, fund, or proceeds.

102 (d) An award of costs, compensation, fees, and expenses under this Code section may be
103 enforced by a judgment, writ of fieri facias, execution, or attachment for contempt.

104 (e) For purposes of paragraph (4) of subsection (b) and paragraph (5) of subsection (c) of
105 this Code section, 'abuse, neglect, or exploitation' shall include, but shall not be limited to,
106 the following when committed by an identified perpetrator against the person or property
107 of the minor, proposed ward, or ward:

108 (1) Conduct for which an additional civil penalty has been imposed under Code Section
109 10-1-851 after consideration of the factors enumerated in Code Section 10-1-852;

110 (2) Conduct giving rise to a cause of action under Code Section 10-1-853;

111 (3) Abuse, child abuse, coercion, deception, emotional abuse, exploitation, isolation,
112 sexual abuse, or sexual exploitation as such terms are defined in Code Sections 15-11-2,
113 16-5-100, 16-5-102.1, 30-5-3, and 49-5-40;

114 (4) Trafficking of persons for labor or sexual servitude as prohibited by Code Section
115 16-5-46;

116 (5) Conduct in violation of Code Section 16-5-70, 16-5-72, 16-5-102, 16-12-1,
117 16-12-100.1, 16-12-100.2, or 30-5-8;

118 (6) Conduct constituting neglect within the meaning of Code Section 16-5-101 or 30-5-3;

119 (7) A serious violent felony as such term is defined in Code Section 17-10-6.1;

120 (8) A sexual offense as such term is defined in Code Section 17-10-6.2; and

121 (9) Conduct giving rise to a report, investigation, or hearing in accordance with Code
122 Section 30-5-4, 30-5-5, or 31-7-9. For purposes of this paragraph, a probate court acting
123 under this Code section is a court of competent jurisdiction as provided for in subsection
124 (a) of Code Section 30-5-7."

125 **SECTION 3.**

126 All laws and parts of laws in conflict with this Act are repealed.