

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4648

(By Delegates Perry and Sigler)
[By Request of the Supreme Court of Appeals]



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4648

(BY DELEGATES PERRY AND SIGLER)
[BY REQUEST OF THE SUPREME COURT OF APPEALS]

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2A-2 of said code, all relating to authorizing the Supreme Court of Appeals to utilize existing judicial officers and resources to establish and implement one domestic violence court pilot project; establishing and clarifying the jurisdiction of the pilot project court; establishing an expiration date for the pilot project and requesting reports to the President of the Senate and Speaker of the House of Delegates prior to the convening of the regular sessions of the legislature in the years 2015 and 2016.

Be it enacted by the Legislature of West Virginia:

That §48-27-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2A-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

1 (a) Circuit courts, family courts and magistrate courts,
2 have concurrent jurisdiction over domestic violence
3 proceedings as provided in this article.

4 (b) The Supreme Court of Appeals is authorized to assign
5 an appropriate judicial officer for one pilot domestic violence
6 court in any jurisdiction chosen by the Supreme Court of
7 Appeals. The judicial officer assigned has the authority and
8 jurisdiction to preside over criminal misdemeanor crimes of
9 domestic violence involving family or household members as
10 defined in subdivisions one through six and paragraphs (A),
11 (B) and (H), subdivision seven, section two hundred four of
12 this article, relating to offenses under subsections (b) and (c),
13 section nine, article two, chapter sixty-one of this code,
14 misdemeanor violations of section nine-a, article two, chapter
15 sixty-one of this code, misdemeanor violations of section
16 twenty-eight, article two, chapter sixty-one of this code,
17 misdemeanor offenses under article three, chapter sixty-one
18 of this code, where the alleged perpetrator and the victim are
19 said family or household members, subdivisions seven and
20 eight, section seven, article seven, chapter sixty-one of this
21 code and civil and criminal domestic violence protective
22 order proceedings as provided in this article. The judicial
23 officer chosen for any pilot domestic violence court may be
24 a current or senior status circuit judge, family court judge,
25 temporary family court judge or magistrate. The Supreme
26 Court of Appeals is requested to maintain statistical data to

27 determine the feasibility and effectiveness of any pilot
 28 domestic violence court established by the provisions of this
 29 section. The program shall terminate December 31, 2016,
 30 and the Supreme Court is requested to provide a report to the
 31 President of the Senate and the Speaker of the House of
 32 Delegates regarding the program’s efficacy prior to the
 33 regular sessions of the Legislature in 2015 and 2016.

34 (c) The assigned judicial officer, in this pilot domestic
 35 violence court, does not have jurisdiction to preside over any
 36 felony crimes.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
 2 following matters:

3 (1) All actions for divorce, annulment or separate
 4 maintenance brought under the provisions of article three,
 5 four or five, chapter forty-eight of this code except as
 6 provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
 8 under the provisions of articles eleven, twelve and fourteen,
 9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
 11 provisions of article twenty-four, chapter forty-eight of this
 12 code and any dependent claims related to such actions
 13 regarding child support, parenting plans or other allocation of
 14 custodial responsibility or decision-making responsibility for
 15 a child;

16 (4) All actions for grandparent visitation brought under
17 the provisions of article ten, chapter forty-eight of this code;

18 (5) All actions for the interstate enforcement of family
19 support brought under article sixteen, chapter forty-eight of
20 this code and for the interstate enforcement of child custody
21 brought under the provisions of article twenty of said chapter;

22 (6) All actions for the establishment of a parenting plan
23 or other allocation of custodial responsibility or decision-
24 making responsibility for a child, including actions brought
25 under the Uniform Child Custody Jurisdiction and
26 Enforcement Act, as provided in article twenty, chapter forty-
27 eight of this code;

28 (7) All petitions for writs of habeas corpus wherein the
29 issue contested is custodial responsibility for a child;

30 (8) All motions for temporary relief affecting parenting
31 plans or other allocation of custodial responsibility or
32 decision-making responsibility for a child, child support,
33 spousal support or domestic violence;

34 (9) All motions for modification of an order providing for
35 a parenting plan or other allocation of custodial responsibility
36 or decision-making responsibility for a child or for child
37 support or spousal support;

38 (10) All actions brought, including civil contempt
39 proceedings, to enforce an order of spousal or child support
40 or to enforce an order for a parenting plan or other allocation
41 of custodial responsibility or decision-making responsibility
42 for a child;

43 (11) All actions brought by an obligor to contest the
44 enforcement of an order of support through the withholding

45 from income of amounts payable as support or to contest an
46 affidavit of accrued support, filed with the circuit clerk,
47 which seeks to collect an arrearage;

48 (12) All final hearings in domestic violence proceedings;

49 (13) Petitions for a change of name, exercising concurrent
50 jurisdiction with the circuit court;

51 (14) All proceedings for payment of attorney fees if the
52 family court judge has jurisdiction of the underlying action;

53 (15) All proceedings for property distribution brought
54 under article seven, chapter forty-eight of this code;

55 (16) All proceedings to obtain spousal support brought
56 under article eight, chapter forty-eight of this code;

57 (17) All proceedings relating to the appointment of
58 guardians or curators of minor children brought pursuant to
59 sections three, four and six, article ten, chapter forty-four of
60 this code, exercising concurrent jurisdiction with the circuit
61 court; and

62 (18) All proceedings relating to petitions for sibling
63 visitation.

64 (b) If an action for divorce, annulment or separate
65 maintenance does not require the establishment of a parenting
66 plan or other allocation of custodial responsibility or
67 decision-making responsibility for a child and does not
68 require an award or any payment of child support, the circuit
69 court has concurrent jurisdiction with the family court over
70 the action if, at the time of the filing of the action, the parties
71 also file a written property settlement agreement executed by
72 both parties.

73 (c) If an action for divorce, annulment or separate
74 maintenance is pending and a petition is filed pursuant to the
75 provisions of article six, chapter forty-nine of this code
76 alleging abuse or neglect of a child by either of the parties to
77 the divorce, annulment or separate maintenance action, the
78 orders of the circuit court in which the abuse or neglect
79 petition is filed shall supercede and take precedence over an
80 order of the family court respecting the allocation of custodial
81 and decision-making responsibility for the child between the
82 parents. If no order for the allocation of custodial and
83 decision-making responsibility for the child between the
84 parents has been entered by the family court in the pending
85 action for divorce, annulment or separate maintenance, the
86 family court shall stay any further proceedings concerning
87 the allocation of custodial and decision-making responsibility
88 for the child between the parents and defer to the orders of
89 the circuit court in the abuse or neglect proceedings.

90 (d) If a family court judge is assigned as a judicial officer
91 of a pilot domestic violence court then jurisdiction of all
92 proceedings relating to criminal misdemeanor crimes of
93 domestic violence as referenced in section three hundred one
94 of this article involving a family or household member as
95 referenced in subdivisions one through six and paragraphs
96 (A), (B), and (H), subdivision seven, section two hundred
97 four, article twenty-seven, chapter forty-eight of this code
98 shall be concurrent with the circuit and magistrate courts.

99 (e) A family court is a court of limited jurisdiction. A
100 family court is a court of record only for the purpose of
101 exercising jurisdiction in the matters for which the
102 jurisdiction of the family court is specifically authorized in
103 this section and in chapter forty-eight of this code. A family
104 court may not exercise the powers given courts of record in
105 section one, article five, chapter fifty-one of this code or
106 exercise any other powers provided for courts of record in

107 this code unless specifically authorized by the Legislature. A
108 family court judge is not a “judge of any court of record” or
109 a “judge of a court of record” as the terms are defined and
110 used in article nine of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor