

H. B. 4648

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

[Introduced February 20, 2012; referred to the
Committee on the Judiciary.]

A BILL 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 current judicial officers and resources to establish and implement a domestic violence court pilot project.

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
5 appoint an appropriate judicial officer for a pilot domestic
6 violence court in any jurisdiction chosen by the Supreme
7 Court of Appeals. The judicial officer appointed has the
8 authority to preside over criminal misdemeanor crimes of
9 domestic violence under chapter sixty-one of this code and
10 civil and criminal domestic violence protective order
11 proceedings as provided in this article. The judicial officer
12 appointed for any pilot domestic violence court may be a
13 current or senior status circuit judge, family court judge or
14 magistrate. The Supreme Court of Appeals is requested to

15 maintain statistical data to determine the feasibility and
16 effectiveness of any pilot domestic violence court established
17 by the provisions of this section.

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 decision-
67 making responsibility for a child and does not require an award
68 or any payment of child support, the circuit court has concurrent
69 jurisdiction with the family court over the action if, at the time of

70 the filing of the action, the parties also file a written property
71 settlement agreement executed by both parties.

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

89 (d) If a family court judge is appointed as a judicial
90 officer of a pilot domestic violence court then jurisdiction of
91 all proceedings relating to criminal misdemeanor crimes of
92 domestic violence of a family or household member as
93 defined in, and brought under, article two, chapter sixty-one
94 or article twenty-seven, chapter forty-eight of this code shall
95 be concurrent with both the circuit court and magistrate court.

96 ~~(d)~~(e) A family court is a court of limited jurisdiction. A
97 family court is a court of record only for the purpose of
98 exercising jurisdiction in the matters for which the
99 jurisdiction of the family court is specifically authorized in
100 this section and in chapter forty-eight of this code. A family
101 court may not exercise the powers given courts of record in
102 section one, article five, chapter fifty-one of this code or
103 exercise any other powers provided for courts of record in
104 this code unless specifically authorized by the Legislature. A
105 family court judge is not a “judge of any court of record” or
106 a “judge of a court of record” as the terms are defined and
107 used in article nine of this chapter.

NOTE: The purpose of this bill is to authorize the Supreme Court of Appeals to utilize current judicial officers and resources to implement a domestic violence court pilot project. Since this bill only utilizes current judicial officers and resources, it has no fiscal impact.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.