

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 581

(BY SENATORS MAYNARD, ASHLEY, LAIRD, KESSLER,
PALUMBO, WOELFEL, ROMANO AND STOLLINGS)

[Originating in the Committee on the Judiciary;
reported on February 18, 2016]

1 A BILL to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §51-2A-2 of said code, all relating to eliminating the sunset
3 provision terminating the pilot domestic violence court program; continuing domestic
4 violence court initiative designed to prevent domestic violence; expanding the initiative
5 from one pilot court to five courts; permitting Supreme Court of Appeals to determine each
6 domestic violence court is to be located; and making other technical and conforming
7 changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

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

3 (b) The Supreme Court of Appeals is authorized to assign ~~an~~ appropriate judicial officer
4 ~~officers~~ for ~~one pilot~~ five domestic violence ~~court~~ courts in any jurisdiction chosen by the Supreme
5 Court of Appeals. ~~The judicial officer~~ Judicial officers so assigned ~~has~~ have the authority and
6 jurisdiction to preside over criminal misdemeanor crimes of domestic violence involving family or
7 household members as defined in subdivisions (1) through (6), inclusive, and paragraphs (A), (B)
8 and (H), subdivision (7), section two hundred four of this article relating to offenses under
9 subsections (b) and (c), section nine, article two, chapter sixty-one of this code, misdemeanor
10 violations of section nine-a, article two, chapter sixty-one of this code, misdemeanor violations of
11 section twenty-eight, article two, chapter sixty-one of this code, misdemeanor offenses under
12 article three, chapter sixty-one of this code where the alleged perpetrator and the victim are said
13 family or household members, subdivisions (7) and (8), section seven, article seven, chapter sixty-

14 one of this code and civil and criminal domestic violence protective order proceedings as provided
15 in this article. The judicial officer chosen for any ~~pilot~~ domestic violence court may be a current or
16 senior status circuit judge, family court judge, temporary family court judge or magistrate. The
17 Supreme Court of Appeals is requested to maintain statistical data to determine the feasibility and
18 effectiveness of any ~~pilot~~-domestic violence court established by the provisions of this section.
19 ~~The program shall terminate December 31, 2016, and the Supreme Court is requested to provide~~
20 ~~a report to the President of the Senate and the Speaker of the House of Delegates regarding the~~
21 ~~program's efficacy prior to the regular sessions of the Legislature in 2015 and 2016~~

22 (c) The assigned judicial officer in ~~this pilot~~ a domestic violence court, does not have
23 jurisdiction to preside over any felony crimes unless the assigned judicial officer is a circuit court
24 judge.

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

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

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

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

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

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

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

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

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

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

25 (9) All motions for modification of an order providing for a parenting plan or other allocation
26 of custodial responsibility or decision-making responsibility for a child or for child support or
27 spousal support;

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

31 (11) All actions brought by an obligor to contest the enforcement of an order of support
32 through the withholding from income of amounts payable as support or to contest an affidavit of
33 accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

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

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

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

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

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

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

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

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

51 (c) If an action for divorce, annulment or separate maintenance is pending and a petition
52 is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or
53 neglect of a child by either of the parties to the divorce, annulment or separate maintenance
54 action, the orders of the circuit court in which the abuse or neglect petition is filed shall supercede
55 and take precedence over an order of the family court respecting the allocation of custodial and
56 decision-making responsibility for the child between the parents. If no order for the allocation of
57 custodial and decision-making responsibility for the child between the parents has been entered
58 by the family court in the pending action for divorce, annulment or separate maintenance, the
59 family court shall stay any further proceedings concerning the allocation of custodial and decision-
60 making responsibility for the child between the parents and defer to the orders of the circuit court
61 in the abuse or neglect proceedings.

62 (d) If a family court judge is assigned as a judicial officer of a ~~pilot~~ domestic violence court
63 then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence
64 as referenced in section three hundred one, article twenty-seven, chapter forty-eight of this code
65 involving a family or household member as referenced in subdivisions (1) through (6), inclusive,
66 and paragraphs (A), (B), and (H), subdivision (7), section two hundred four, article twenty-seven,
67 chapter forty-eight of this code shall be concurrent with the circuit and magistrate courts.

68 (e) A family court is a court of limited jurisdiction. A family court is a court of record only
69 for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court
70 is specifically authorized in this section and in chapter forty-eight of this code. A family court may
71 not exercise the powers given courts of record in section one, article five of this chapter or exercise
72 any other powers provided for courts of record in this code unless specifically authorized by the
73 Legislature. A family court judge is not a “judge of any court of record” or a “judge of a court of
74 record” as the terms are defined and used in article nine of this chapter.

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