

1 **ENROLLED**

2 **H. B. 4648**

3
4 (By Delegates Perry and Sigler)

5 [By Request of the Supreme Court of Appeals]

6 [Passed March 10, 2012; in effect ninety days from passage.]

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9
10 AN ACT to amend and reenact §48-27-301 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §51-2A-2
12 of said code, all relating to authorizing the Supreme Court of
13 Appeals to utilize existing judicial officers and resources to
14 establish and implement one domestic violence court pilot
15 project; establishing and clarifying the jurisdiction of the
16 pilot project court; establishing an expiration date for the
17 pilot project and requesting reports to the President of the
18 Senate and Speaker of the House of Delegates prior to the
19 convening of the regular sessions of the legislature in the
20 years 2015 and 2016.

21 *Be it enacted by the Legislature of West Virginia:*

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

1 **CHAPTER 48. DOMESTIC RELATIONS.**

2 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

3 PART 3. PROCEDURE.

4 **§48-27-301. Jurisdiction.**

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

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

1 in this article. The judicial officer chosen for any pilot
2 domestic violence court may be a current or senior status circuit
3 judge, family court judge, temporary family court judge or
4 magistrate. The Supreme Court of Appeals is requested to maintain
5 statistical data to determine the feasibility and effectiveness of
6 any pilot domestic violence court established by the provisions of
7 this section. The program shall terminate December 31, 2016, and
8 the Supreme Court is requested to provide a report to the President
9 of the Senate and the Speaker of the House of Delegates regarding
10 the program's efficacy prior to the regular sessions of the
11 Legislature in 2015 and 2016.

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

15 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

16 **ARTICLE 2A. FAMILY COURTS.**

17 **§51-2A-2. Family court jurisdiction; exceptions; limitations.**

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

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

24 (2) All actions to obtain orders of child support brought

1 under the provisions of articles eleven, twelve and fourteen,
2 chapter forty-eight of this code;

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

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

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

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

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

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

1 domestic violence;

2 (9) All motions for modification of an order providing for a
3 parenting plan or other allocation of custodial responsibility or
4 decision-making responsibility for a child or for child support or
5 spousal support;

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

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

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

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

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

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

23 (16) All proceedings to obtain spousal support brought under

1 article eight, chapter forty-eight of this code;

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

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

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

16 (c) If an action for divorce, annulment or separate
17 maintenance is pending and a petition is filed pursuant to the
18 provisions of article six, chapter forty-nine of this code alleging
19 abuse or neglect of a child by either of the parties to the
20 divorce, annulment or separate maintenance action, the orders of
21 the circuit court in which the abuse or neglect petition is filed
22 shall supercede and take precedence over an order of the family
23 court respecting the allocation of custodial and decision-making

1 responsibility for the child between the parents. If no order for
2 the allocation of custodial and decision-making responsibility for
3 the child between the parents has been entered by the family court
4 in the pending action for divorce, annulment or separate
5 maintenance, the family court shall stay any further proceedings
6 concerning the allocation of custodial and decision-making
7 responsibility for the child between the parents and defer to the
8 orders of the circuit court in the abuse or neglect proceedings.

9 (d) If a family court judge is assigned as a judicial officer
10 of a pilot domestic violence court then jurisdiction of all
11 proceedings relating to criminal misdemeanor crimes of domestic
12 violence as referenced in section three hundred one of this article
13 involving a family or household member as referenced in
14 subdivisions one through six and paragraphs (A), (B), and (H),
15 subdivision seven, section two hundred four, article twenty-seven,
16 chapter forty-eight of this code shall be concurrent with the
17 circuit and magistrate courts.

18 (e) A family court is a court of limited jurisdiction. A
19 family court is a court of record only for the purpose of
20 exercising jurisdiction in the matters for which the jurisdiction
21 of the family court is specifically authorized in this section and
22 in chapter forty-eight of this code. A family court may not
23 exercise the powers given courts of record in section one, article

1 five, chapter fifty-one of this code or exercise any other powers
2 provided for courts of record in this code unless specifically
3 authorized by the Legislature. A family court judge is not a
4 "judge of any court of record" or a "judge of a court of record" as
5 the terms are defined and used in article nine of this chapter.