

1 **H. B. 4648**

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3 (By Delegates Perry and Sigler)
4 [By Request of the Supreme Court of Appeals]
5 [Introduced February 20, 2012; referred to the
6 Committee on the Judiciary.]
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10 A BILL 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 current judicial officers and resources to
14 establish and implement a domestic violence court pilot
15 project.

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

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

20 **CHAPTER 48. DOMESTIC RELATIONS.**

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

22 **PART 3. PROCEDURE.**

23 **§48-27-301. Jurisdiction.**

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

4 (b) The Supreme Court of Appeals is authorized to appoint an
5 appropriate judicial officer for a pilot domestic violence court in
6 any jurisdiction chosen by the Supreme Court of Appeals. The
7 judicial officer appointed has the authority to preside over
8 criminal misdemeanor crimes of domestic violence under Chapter
9 sixty-one of this code and civil and criminal domestic violence
10 protective order proceedings as provided in this article. The
11 judicial officer appointed for any pilot domestic violence court
12 may be a current or senior status circuit judge, family court judge
13 or magistrate. The Supreme Court of Appeals is requested to
14 maintain statistical data to determine the feasibility and
15 effectiveness of any pilot domestic violence court established by
16 the provisions of this section.

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

18 **ARTICLE 2A. FAMILY COURTS.**

19 **§51-2A-2. Family court jurisdiction; exceptions; limitations.**

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

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

1 (b) and (c) of this section;

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

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

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

12 (5) All actions for the interstate enforcement of family
13 support brought under article sixteen, chapter forty-eight of this
14 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
17 other allocation of custodial responsibility or decision-making
18 responsibility for a child, including actions brought under the
19 Uniform Child Custody Jurisdiction and Enforcement Act, as provided
20 in article twenty, chapter forty-eight of this code;

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

23 (8) All motions for temporary relief affecting parenting plans
24 or other allocation of custodial responsibility or decision-making

1 responsibility for a child, child support, spousal support or
2 domestic violence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 provided for courts of record in this code unless specifically
2 authorized by the Legislature. A family court judge is not a
3 "judge of any court of record" or a "judge of a court of record" as
4 the terms are defined and 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.