

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 346**

4 (By Senator Ferns)

5 _____
6 [Originating in the Committee on Judiciary;

7 reported February 23, 2015.]

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9 **FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7,
12 §62-16-8, §62-16-9, §62-16-10, §62-16-11, §62-16-12 and §62-16-13, all relating to
13 establishing a Mental Health and Military Service Member Court program within Supreme
14 Court of Appeals; defining terms; granting authority to oversee court to Administrator of
15 Supreme Court of Appeals; setting forth structure of court; providing for written agreement
16 to participate in court; setting forth incentives for successful participation; providing for
17 sanctions for violation of provisions of court; setting out disposition on successful
18 completion; providing for teams to function within court; setting forth eligibility
19 requirements for participation; setting forth procedure to participate in court; allowing for
20 mental health and drug treatment services for participants; providing for governance of court
21 by Supreme Court of Appeals; setting forth information to be maintained on participants;
22 providing for funding mechanisms which may include court fees; and providing for

1 limitation of liability.

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

3 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
4 article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7,
5 §62-16-8, §62-16-9, §62-16-10, §62-16-11, §62-16-12 and §62-16-13, all to read as follows:

6 **ARTICLE 16. THE MENTAL HEALTH AND MILITARY SERVICE MEMBERS COURT**
7 **ACT.**

8 **§62-16-1. Short title.**

9 This may be cited as the Mental Health and Military Service Members Court Act.

10 **§62-16-2. Definitions.**

11 For the purposes of this article:

12 (a) "Assessment" means an evaluation to determine whether a person is mentally ill or a
13 military service member as defined by this section and would benefit from the provisions set forth
14 in this article.

15 (b) "Court" means a Mental Health and Military Service Members Court.

16 (c) "Department" means the West Virginia Department of Veterans' Assistance.

17 (d) "Mental Health and Military Service Members Court team" or "team" is a group of
18 professionals which assesses offenders and follows and reports to a court on an offender's progress.

19 (e) "Mental Health and Military Service Members Court program" or "program" is a
20 program that includes preadjudicatory and post-adjudicatory treatment for mentally ill persons and
21 military service members.

22 (f) "Military Service Member" means a person who is currently serving in the Army, Air

1 Force, Marines, Navy, or Coast Guard on active duty, reserve status or in the National Guard or a
2 person who served in the active military, naval or air service and who was discharged or released
3 under conditions other than dishonorable.

4 (g) "Post-adjudicatory program" means a program in which the offender has admitted guilt
5 or has been found guilty and agrees, with the prosecutor's consent, to enter a court program as part
6 of his or her sentence.

7 (h) "Preadjudication Order" means a court order requiring a mentally ill person or a military
8 service member to participate in a program as set forth in this article.

9 (i) "Preadjudicatory program" means a program that allows the offender, with the consent
10 of the prosecutor, to expedite the offender's criminal case before conviction or before filing of a
11 criminal case and requires the offender to agree to and successfully complete the court program as
12 part of the written agreement.

13 (j) "Post Adjudication Order" means a court order requiring a mentally ill person or a
14 military service member to participate in a court program as set forth in this article after having
15 entered a plea of guilty or nolo contendere or having been found guilty.

16 (k) "Split Sentencing" means a sentence which includes a period of incarceration followed
17 by a period of supervised release.

18 (l) "Staffing" means the meeting before a mentally ill or military service member offender's
19 appearance in court, in which the team discusses a coordinated response to the mentally ill or the
20 military service member offender's behavior.

21 (m) "VA" means the United States Department of Veterans' Affairs.

22 (n) "Written Agreement" means the agreement executed to allow a mentally ill person or

1 military service member to participate in a court program.

2 **§62-16-3. Court authorization and structure.**

3 (a) The Supreme Court of Appeals shall establish a mental health and military service
4 members court program, under the oversight of its administrator. Each Mental Health and Military
5 Service Members Court shall be a separate court. Each court shall administer a program providing
6 an immediate and highly structured judicial intervention process for substance abuse treatment,
7 mental health treatment or other assessed treatment needs of eligible mentally ill and military service
8 member offenders. Each court shall bring together, under one umbrella, substance abuse
9 professionals, mental health professionals, department professionals, local social programs and
10 intensive judicial monitoring.

11 (b) The courts shall be established in the areas of the state with the highest need, as
12 determined by the administrator. On or before July 1, 2016, the Supreme Court of Appeals shall
13 establish two courts. The Supreme Court of Appeals shall establish two additional courts each July
14 1 for the next four years, resulting in a total of ten courts operating by July 1, 2020. At the discretion
15 of the administrator of the Court, the court program may be operated in one county in the circuit, and
16 allow mentally ill and military service member offenders from all counties within the circuit to
17 participate.

18 (c) A court may offer preadjudication or post-adjudication programs for adult offenders.

19 (d) Nothing contained in this article confers a right or an expectation of a right to participate
20 in a court program nor does it obligate a court to accept every mentally ill person or military service
21 member offender.

22 (e) Neither the establishment of a mental health and military service members court nor

1 anything in this article may be construed as limiting the discretion of the jurisdiction's prosecutor
2 to act on any criminal case which he or she determines advisable to prosecute.

3 (f) Each court judge may establish rules and may make special orders as necessary that do
4 not conflict with rules and orders promulgated by the Supreme Court of Appeals. The Supreme
5 Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all
6 mental health and military service members courts in this state.

7 **§62-16-4. Written agreements.**

8 (a) Participation in a mental health and military service members court program, with the
9 consent of the prosecutor and the court, shall be pursuant to a written agreement. This written
10 agreement shall set forth all of the agreed upon provisions to allow the mentally ill person or military
11 service member to proceed in the court. The offender shall execute a written agreement with the
12 court as to his or her participation in the program and shall agree to all of the terms and conditions
13 of the program, including, but not limited to, the possibility of sanctions or incarceration for failing
14 to comply with the terms of the program.

15 (b) A court may grant reasonable incentives or impose reasonable sanctions on the offender,
16 including incarceration for the underlying offense or expulsion from the program under the written
17 agreement depending on whether or not the offender:

- 18 (1) Is performing satisfactorily in the court program;
- 19 (2) Is benefitting from education, treatment and rehabilitation;
- 20 (3) Has engaged in criminal conduct;
- 21 (4) Has violated the terms and conditions of the agreement; or
- 22 (5) Is for any reason unable to participate.

23 (c) Upon successful completion of a court program, the judge shall dispose of an offender's

1 case in the manner prescribed by the written agreement and by the applicable policies and procedures
2 adopted by the court. Disposition may include, but is not limited to, withholding criminal charges,
3 dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a
4 reduced period of incarceration.

5 **§62-16-5. Mental Health and Military Service Member Court teams.**

6 (a) Each court shall have a local court team as defined in subsection (d), section one of this
7 article. A team may include, but is not limited to:

8 (1) A judge, magistrate, mental hygiene commissioner or other hearing officer;

9 (2) The prosecuting attorney of the jurisdiction;

10 (3) A public defender or member of the criminal defense bar;

11 (4) A probation officer;

12 (5) A case coordinator;

13 (6) A case manager;

14 (7) A treatment provider; or

15 (8) A peer recovery coach.

16 (b) The court team shall conduct a staffing prior to each court session to discuss and provide
17 updated information regarding the mentally ill or military service member offender. After
18 determining the offender's progress or lack thereof, the court team shall recommend the appropriate
19 incentive or sanction to be applied. If the team cannot agree on the appropriate action, the court shall
20 make the decision based upon the information presented at the staffing.

21 **§62-16-6. Eligibility.**

22 (a) A mentally ill or military service member offender, who is eligible for probation based
23 on the nature of the crime he or she is convicted of and in consideration of his or her criminal

1 background, if any, may be admitted into a court program only upon the agreement of the prosecutor
2 and the offender and with the approval of the court.

3 (b) A mentally ill or military service member offender may not participate in the court
4 program if:

5 (1) The underlying offense involves a felony crime of violence, unless there is a specific
6 treatment program available designed to address violent offenders;

7 (2) The underlying offense involves an offense that requires registration as a sex offender
8 pursuant to article twelve, chapter fifteen of this code;

9 (3) The mentally ill or military service member offender has a prior felony conviction in this
10 state or another state for a felony crime of violence; or

11 (3) The mentally ill or military service member offender has a prior conviction in this state
12 or another state for a crime that requires registration as a sex offender pursuant to article twelve,
13 chapter fifteen of this code.

14 **§62-16-7. Procedure.**

15 (a) The court shall order the offender to submit to an eligibility screening, a mental health
16 and drug/alcohol screening and an assessment by the VA or by the department to provide
17 information on the offender's mental health or military service member status. The assessment shall
18 include a risks assessment and be based, in part, upon the known availability of treatment resources
19 available to the court. The assessment shall also include recommendations for treatment of the
20 conditions which are indicating a need for treatment under the monitoring of the court and reflect
21 a level of risk assessed for the individual seeking admission. The court is not required to order an
22 assessment if a valid screening or assessment related to the present charge pending against the
23 offender has been completed within the previous sixty days.

1 (b) The court may order the offender to complete substance abuse treatment in an outpatient,
2 inpatient, residential, or jail-based custodial treatment program, order the offender to complete
3 mental health counseling in an inpatient or outpatient basis, comply with all physicians'
4 recommendations regarding medications and complete all follow up treatment. The mental health
5 issues for which treatment may be provided, include, but are not limited to, post-traumatic stress
6 disorder, traumatic brain injury and depression.

7 (c) The judge shall inform the offender that if he or she fails to meet the conditions of the
8 court, eligibility to participate in the program may be revoked and the offender would be subject to
9 the sanctions set forth in section nine of this article.

10 **§62-16-8. Mental health and substance abuse treatment.**

11 (a) The court may maintain a network of mental health treatment programs and substance
12 abuse treatment programs representing a continuum of graduated mental health and substance abuse
13 treatment options commensurate with the needs of offenders; these shall include programs with the
14 VA, the department, this state and community-based programs.

15 (b) The court may, in its discretion, employ additional services or interventions, as it
16 determines necessary, on a case by case basis.

17 (c) The court may maintain or collaborate with a network of mental health treatment
18 programs and, if it is a co-occurring mental health and substance abuse court program, a network of
19 mental health treatment programs and substance abuse treatment programs representing a continuum
20 of treatment options commensurate with the needs of the offender and available resources including
21 programs with the VA, the department and this state.

22 **§62-16-9. Violation; termination; discharge.**

23 (a) The court may impose reasonable sanctions under the offender's written agreement of the

1 offender, including, but not limited to, imprisonment or dismissal of the offender from the program.
2 The court may reinstate criminal proceedings against him or her for a violation of probation,
3 conditional discharge, or supervision hearing, if the court finds from the evidence presented,
4 including, but not limited to, the reports or proffers of proof from the court's professionals that:

5 (1) The offender is not performing satisfactorily in the assigned program;

6 (2) The offender is not benefitting from educational treatment or rehabilitation;

7 (3) The offender has engaged in criminal conduct rendering him or her unsuitable for the
8 program; or

9 (4) The offender has otherwise violated the terms and conditions of the program or his or her
10 sentence or is for any reason unable to participate.

11 (b) Upon successful completion of the terms and conditions of the program, the court may
12 dismiss the original charges against the offender or successfully terminate the offender's sentence
13 or otherwise discharge him or her from any further proceedings against him or her in the original
14 prosecution.

15 **§62-16-10. Governance.**

16 The Supreme Court of Appeals is responsible for court funding, administration, and
17 continuance or discontinuance of mental health and military service members courts. The
18 administrator of the Supreme Court of Appeals, or his or her designee, shall oversee the planning,
19 implementation, and development of these courts as the administrative arm of the Supreme Court
20 of Appeals.

21 **§62-16-11. Program integrity and offender accountability.**

22 (a) The courts shall collect and maintain the following information and any other information
23 on participants as required by the Supreme Court of Appeals or its administrative office:

- 1 (1) The participants' prior criminal history;
- 2 (2) The participants' prior substance abuse and mental health treatment history;
- 3 (3) The participants' employment, education and income histories;
- 4 (4) The participants' gender, race, ethnicity, marital and family status, and any child custody
5 and support obligations;
- 6 (5) Instances of participants' recidivism occurring during and after participation in a court
7 program. Recidivism shall be measured at intervals of six months, one year, two years, and five years
8 after successful graduation from mental health or military service member court;
- 9 (6) The number of offenders screened for eligibility, the number of eligible offenders who
10 were and were not admitted and their case dispositions; and
- 11 (7) The costs of operation and sources of funding.
- 12 (b) An offender may be required, as a condition of pretrial diversion, probation, or parole,
13 to provide the information described in this section. The collection and maintenance of information
14 under this section shall be collected in a standardized format according to applicable guidelines set
15 forth by the Supreme Court of Appeals.
- 16 (c) To protect an offenders' privacy in accordance with federal and state confidentiality laws,
17 a court shall keep treatment records in a secure environment, separated from the court records to
18 which the public has access.

19 **§62-16-12. Funding.**

- 20 (a) Each mental health and military service member court, with the guidance of the Supreme
21 Court of Appeals, may establish a schedule for the payment of reasonable fees and costs necessary
22 to conduct the program;
- 23 (b) Nothing in this article shall prohibit court teams from obtaining supplemental funds or

1 exploring grants to support the mental health and military service member courts.

2 **§62-16-13. Immunity from Liability.**

3 Any individual who, in good faith, provides services pursuant to this article is not liable in
4 any civil action, unless his or her actions were the result of the gross negligence or willful
5 misconduct. The grant of immunity provided in this subsection extends to all employees and
6 administrative personnel of a court.