

**Senate Bill No. 346**

(By Senator Ferns)

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[Introduced January 28, 2015; referred to the Committee on the Judiciary; and then to the  
Committee on Finance.]

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**FISCAL  
NOTE**

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

1 the court by the Supreme Court of Appeals; setting forth information to be maintained on  
2 participants; providing for funding mechanisms which may include court fees; providing for  
3 limitation of liability; and providing for statutory construction.

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

5 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
6 article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7,  
7 §62-16-8, §62-16-9, §62-16-10, §62-16-11, §62-16-12, §62-16-13 and §62-16-14, all to read as  
8 follows:

9 **ARTICLE 16. THE MENTAL HEALTH, VETERANS AND SERVICE MEMBERS COURT**

10 **ACT.**

11 **§62-16-1. Short title.**

12 This may be cited as the Mental Health, Veterans and Service Members Court Act.

13 **§62-16-2. Definitions.**

14 For the purposes of this article:

15 "Assessment" means an evaluation to determine whether a person is a veteran or service  
16 member as defined by this section and would benefit from the provisions set forth in this article.

17 "Court" means the Mental Health, Veterans and Service Members Court which is a court or  
18 program with an immediate and highly structured judicial intervention process for substance abuse  
19 treatment, mental health, or other assessed treatment needs of eligible mental health, veteran and  
20 service member defendants that brings together substance abuse professionals, mental health  
21 professionals, Department of Veteran Affairs professionals, local social programs and intensive

1 judicial monitoring.

2 "Department" means the West Virginia Department of Veterans' Assistance.

3 "Mental Health, Veterans and Service Members Court team" means a member of the Mental  
4 Health, Veterans and Service Members Court. These may include, but are not limited to:

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

6 (B) The prosecuting attorney;

7 (C) A public defender or member of the criminal defense bar;

8 (D) A probation officer;

9 (E) A case coordinator;

10 (F) A case manager;

11 (G) A treatment provider; or

12 (H) Peer recovery coach.

13 "Mental Health, Veterans and Service Members Court program" means a court program that  
14 includes a preadjudicatory and a post-adjudicatory mental health, veterans and service members  
15 court program.

16 "Post-adjudicatory Mental Health, Veterans and Service Members Court program" means  
17 a program in which the defendant has admitted guilt or has been found guilty and agrees, along with  
18 the prosecution, to enter a Mental Health, Veterans and Service Members Court program as part of  
19 the defendant's sentence.

20 "Preadjudication Order" means a court order requiring a veteran or service member to  
21 participate in a Mental Health, Veterans and Service Members Court program as set forth in this

1 article.

2 "Preadjudicatory Mental Health, Veterans and Service Members Court program" means a  
3 program that allows the defendant with the consent of the prosecution, to expedite the defendant's  
4 criminal case before conviction or before filing of a criminal case and requires successful completion  
5 of the veterans and service members court programs as part of the agreement.

6 "Post Adjudication Order" means a court order requiring a veteran or service member to  
7 participate in a Mental Health, Veterans and Service Members Court program as set forth in this  
8 article after having entered a plea of guilty or nolo contendere or having been found guilty.

9 "Service Member" means a person who is currently serving in the Army, Air Force, Marines,  
10 Navy, or Coast Guard on active duty, reserve status or in the National Guard.

11 "Split Sentencing" means a sentence which includes a period of incarceration followed by  
12 a period of supervision.

13 "Staffing" means the meeting before a mental health, veteran or service member offender's  
14 appearance in court in which the Mental Health, Veterans and Service Members Court team  
15 discusses a coordinated response to the mental health, veteran or service member offender's  
16 behavior.

17 "VA" means the United States Department of Veterans' Affairs.

18 "Veteran" means a person who served in the active military, naval, or air service and who was  
19 discharged or released under conditions other than dishonorable.

20 "Written Agreement" means the agreement executed to allow a mental health, veteran or  
21 service member to participate in the Mental Health, Veteran or Service Members Court program.

1 This agreement shall set forth all of the agreed upon provisions to allow the mental health, veteran  
2 or service member to proceed in the Mental Health, Veteran or Service Member Court.

3 **§62-16-3. Policy, intent and goals.**

4         The Legislature recognizes that veterans and active, Reserve and National Guard service  
5 members have provided, or are currently providing, an invaluable service to our country. In so  
6 doing, some may suffer the effects of post traumatic stress disorder, traumatic brain injury,  
7 depression and may also suffer drug and alcohol dependency or addiction and co-occurring mental  
8 illness and substance abuse problems. As a result of this, some veterans or active duty service  
9 members come into contact with the criminal justice system and may be charged with felony or  
10 misdemeanor offenses. There is a critical need for the criminal justice system to recognize these  
11 veterans or service members, provide accountability for their wrongdoing, provide for the safety of  
12 the public and provide for the treatment of our veterans and service members. It is the intent of the  
13 Legislature to create specialized mental health, veteran and service member courts or programs with  
14 the necessary flexibility to meet the specialized problems faced by these mental health, veteran and  
15 service member defendants.

16 **§62-16-4. Court authorization and structure.**

17         (a) The Supreme Court of Appeals shall establish a mental health, veterans and service  
18 members court program including a format under which it operates pursuant to the provisions of this  
19 article. The program shall be under the oversight of the Administrator of the Court. The courts shall  
20 be implemented in the areas of the state with the highest need. Commencing on July 1, 2015, two  
21 courts shall be established. Each shall operate at the direction of the Administrator of the Court.  
22 Two additional courts shall be added on each July 1 for the next four years resulting in a total of ten

1 such courts operating by July 1, 2019.

2 (b) The Mental Health, Veterans and Service Members Court shall be a separate court or a  
3 program. At the discretion of the Administrator of the Court, the Mental Health, Veterans and  
4 Service Members Court program may be operated in one county in the Circuit, and allow mental  
5 health, veteran and service member defendants from all counties within the Circuit to participate.

6 (c) A Mental Health, Veteran and Service Members Court program may be preadjudication  
7 or post-adjudication for an adult offender.

8 (d) Participation in Mental Health, Veteran and Service Members Court, with the consent of  
9 the prosecution and the court, shall be pursuant to a written agreement.

10 (e) A Mental Health, Veteran and Service Members Court may grant reasonable incentives  
11 under the written agreement if it finds that the drug offender:

- 12 (1) Is performing satisfactorily in Mental Health, Veteran and Service Members Court;
- 13 (2) Is benefitting from education, treatment and rehabilitation;
- 14 (3) Has not engaged in criminal conduct; or
- 15 (4) Has not violated the terms and conditions of the agreement.

16 (f) A Mental Health, Veteran and Service Members Court may impose reasonable sanctions  
17 on the offender, including incarceration for the underlying offense or expulsion from the program,  
18 pursuant to the written agreement, if it finds that the offender:

- 19 (1) Is not performing satisfactorily in Mental Health, Veteran and Service Members Court;
- 20 (2) Is not benefitting from education, treatment or rehabilitation;
- 21 (3) Has engaged in conduct rendering him or her unsuitable for the program;
- 22 (4) Has otherwise violated the terms and conditions of the agreement; or

1 (5) Is for any reason unable to participate.

2 (g) Upon successful completion of Mental Health, Veteran and Service Members Court, an  
3 offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by  
4 the applicable policies and procedures adopted by the Mental Health, Veteran and Service Members  
5 Court. This may include, but is not limited to, withholding criminal charges, dismissal of charges,  
6 probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of  
7 incarceration.

8 (h) Nothing contained in this article confers a right or an expectation of a right to participate  
9 in a Mental Health, Veteran and Service Members Court nor does it obligate a Mental Health,  
10 Veteran and Service Members Court to accept every mental health, veteran or service member  
11 offender.

12 (I) Neither the establishment of a mental health, veteran and service members court nor  
13 anything herein may be construed as limiting the discretion of the jurisdiction's prosecutor to act on  
14 any criminal case which he or she deems advisable to prosecute.

15 (j) Each Mental Health, Veteran and Service Members Court judge may establish rules and  
16 may make special orders as necessary that do not conflict with rules and orders promulgated by the  
17 Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court  
18 of Appeals shall provide uniform referral, procedure and order forms that shall be used in all Mental  
19 Health, Veteran and Service Members Courts in this state.

20 **§62-16-5. Mental Health, Veteran and Service Member Court teams.**

21 (a) Each mental health, veteran and service member court shall have a local mental health,  
22 veteran or service member court team as defined in subsection (5), section one of this article.

1 (b) The mental health, veteran and service member court team who shall conduct a staffing  
2 prior to each session to discuss and provide updated information regarding the mental health, veteran  
3 or service member offenders. After determining their progress or lack thereof, the mental health,  
4 veteran and service member court team shall recommend the appropriate incentive or sanction to be  
5 applied. If the mental health, veteran and service member team cannot agree on the appropriate  
6 action, the court shall make the decision based upon the information presented at the staffing.

7 **§62-16-6. Eligibility.**

8 Mental Health, veteran and service members are eligible for Mental Health, Veteran and  
9 Service Members Courts, provided the following:

10 (1) A defendant, who is eligible for probation based on the nature of the crime convicted of  
11 and in consideration of his or her criminal background, if any, may be admitted into a Mental Health,  
12 Veteran and Service Members Court program only upon the agreement of the prosecutor and the  
13 defendant and with the approval of the court.

14 (2) A defendant shall be excluded from Mental Health, Veteran and Service Members Court  
15 program if:

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

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

20 (C) The mental health, veteran or service member offender has a prior felony conviction in  
21 this state or another state for a felony crime of violence; or

22 (D) The mental health, veteran or service member offender has a prior conviction in this state



1 or another state for a crime that requires registration as a sex offender pursuant to article twelve,  
2 chapter fifteen of this code.

3 **§62-16-7. Procedure.**

4 (a) The court shall order the defendant to submit to an eligibility screening and an assessment  
5 through the VA or the department to provide information on the defendant's mental health, veteran  
6 or service member status.

7 (b) The court shall order the defendant to submit to an eligibility screening and mental health  
8 and drug/alcohol screening and assessment of the defendant by the VA or by the department to  
9 provide assessment services for the court. The assessment shall include a risks assessment and be  
10 based, in part, upon the known availability of treatment resources available to the Mental Health,  
11 Veteran and Service Members Court. The assessment shall also include recommendations for  
12 treatment of the conditions which are indicating a need for treatment under the monitoring of the  
13 court and be reflective of a level of risk assessed for the individual seeking admission. An  
14 assessment need not be ordered if the court finds a valid screening and/or assessment related to the  
15 present charge pending against the defendant has been completed within the previous sixty days.

16 (c) The judge shall inform the defendant that if the defendant fails to meet the conditions of  
17 the Mental Health, Veteran and Service Members Court program, eligibility to participate in the  
18 program may be revoked and the defendant may be sentenced or the prosecution continued as  
19 provided by this code for the crime charged.

20 (d) The defendant shall execute a written agreement with the court as to his or her  
21 participation in the program and shall agree to all of the terms and conditions of the program,  
22 including, but not limited to, the possibility of sanctions or incarceration for failing to abide or

1 comply with the terms of the program.

2 (e) The court may order the defendant to complete substance abuse treatment in an outpatient,  
3 inpatient, residential, or jail-based custodial treatment program, order the defendant to complete  
4 mental health counseling in an inpatient or outpatient basis, comply with physicians'  
5 recommendation regarding medications and all follow up treatment. This treatment may include,  
6 but is not limited to, post-traumatic stress disorder, traumatic brain injury and depression.

7 **§62-16-8. Mental health and substance abuse treatment.**

8 (a) The Mental Health, Veteran and Service Members Court program may maintain a  
9 network of mental health treatment programs and substance abuse treatment programs representing  
10 a continuum of graduated mental health and substance abuse treatment options commensurate with  
11 the needs of defendants; these shall include programs with the VA, the department, the State of West  
12 Virginia and community-based programs.

13 (b) The Mental Health, Veteran and Service Members Court program may, in its discretion,  
14 employ additional services or interventions, as it deems necessary on a case by case basis.

15 (c) The Mental Health, Veteran and Service Members Court program may maintain or  
16 collaborate with a network of mental health treatment programs and, if it is a co-occurring mental  
17 health and substance abuse court program, a network of mental health treatment programs and  
18 substance abuse treatment programs representing a continuum of treatment options commensurate  
19 with the needs of the defendant and available resources including programs with the VA, the  
20 department and the State of West Virginia.

21 **§62-16-9. Violation; termination; discharge.**

22 (a) The court may impose reasonable sanctions under prior written agreement of the

1 defendant, including, but not limited to, imprisonment or dismissal of the defendant from the  
2 program and the court may reinstate criminal proceedings against him or her for a violation of  
3 probation, conditional discharge, or supervision hearing, if the court finds from the evidence  
4 presented, including, but not limited to, the reports or proffers of proof from the Mental Health,  
5 Veteran and Service Members Court professionals that:

6 (1) The defendant is not performing satisfactorily in the assigned program;

7 (2) The defendant is not benefitting from educational treatment, or rehabilitation;

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

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

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

16 **§62-16-10. Governance.**

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

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

22 (a) Mental health, veteran and service member courts shall collect and maintain the following

1 information and any other information on participants as required by the Supreme Court of Appeals  
2 or its administrative office:

3 (1) Prior criminal history;

4 (2) Prior substance abuse and mental health treatment history;

5 (3) Employment, education, and income histories;

6 (4) Gender, race, ethnicity, marital and family status, and any child custody and support  
7 obligations;

8 (5) Instances of recidivism occurring during and after participation in drug court. Recidivism  
9 shall be measured at intervals of six months, one year, two years, and five years after successful  
10 graduation from veteran or service member court;

11 (6) The number of offenders screened for eligibility, the number of eligible offenders who  
12 were and were not admitted and their case dispositions; and

13 (7) The costs of operation and sources of funding.

14 (b) An offender may be required as a condition of pretrial diversion, probation, or parole to  
15 provide the information described in this section. The collection and maintenance of information  
16 under this section shall be collected in a standardized format according to applicable guidelines set  
17 forth by the Supreme Court of Appeals.

18 (c) To protect an offenders' privacy in accordance with federal and state confidentiality laws,  
19 treatment records must be kept in a secure environment, separated from the court records to which  
20 the public has access.

21 **§62-16-12. Funding.**

22 (a) Each mental health, veteran or service member court, with the guidance of the Supreme

1 Court of Appeals, may establish a schedule for the payment of reasonable fees and costs necessary  
2 to conduct the program;

3 (b) Nothing in this article shall prohibit mental health, veteran or service member court teams  
4 from obtaining supplemental funds or exploring grants to support drug courts.

5 **§62-16-13. Immunity from Liability.**

6 Any individual who, in good faith, provides services pursuant to this article shall not be liable  
7 in any civil action unless their actions were the result of the gross negligence or willful misconduct.  
8 The grant of immunity provided in this subsection shall extend to all employees and administrative  
9 personnel.

10 **§62-16-14. Statutory construction.**

11 The provisions of this article shall be broadly construed to effectuate its remedial purposes.

NOTE: The purpose of this bill is establishing a Mental Health, Veteran and Service Member Court within the Supreme Court of Appeals. The bill defines terms. The bill sets forth the policy and goals of the Legislature in establishes the court. The bill grants authority to oversee the court to the Administrator of the Supreme Court. The bill sets forth the structure of the court. The bill provides for a written agreement to participate in the court. The bill sets forth incentives for successful participation. The bill provides for sanctions for a violation of the provisions of the court. The bill sets out disposition on successful completion. The bill provides for teams to function within the court. The bill sets forth eligibility requirements for participation. The bill sets forth a procedure to participate in the court. The bill allows for mental health and drug treatment services for participants. The bill provides for governance of the court by the Supreme Court of Appeals. The bill sets forth information to be maintained on participants. The bill provides for a funding mechanisms which may include court fees. The bill provides for limitation of liability. The bill provides for statutory construction.

This article is new; therefore, strike-throughs and underscoring have been omitted.