

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 107

FISCAL
NOTE

BY SENATOR FERNS

[Introduced January 10, 2018; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

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

Be it enacted by the Legislature of West Virginia:

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

ACT.

§62-16-1. Short title.

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

§62-16-2. Definitions.

1 For the purposes of this article:

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

4 "Court" means the Mental Health, Veterans and Service Members Court which is a court

5 or program with an immediate and highly structured judicial intervention process for substance
6 abuse treatment, mental health, or other assessed treatment needs of eligible mental health,
7 veteran and service member defendants that brings together substance abuse professionals,
8 mental health professionals, Department of Veteran Affairs professionals, local social programs
9 and intensive judicial monitoring.

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

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

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

14 (B) The prosecuting attorney;

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

16 (D) A probation officer;

17 (E) A case coordinator;

18 (F) A case manager;

19 (G) A treatment provider; or

20 (H) Peer recovery coach.

21 "Mental Health, Veterans and Service Members Court program" means a court program
22 that includes a preadjudicatory and a post-adjudicatory mental health, veterans and service
23 member's court program.

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

28 "Preadjudication order" means a court order requiring a veteran or service member to

29 participate in a Mental Health, Veterans and Service Members Court program as set forth in this
30 article.

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

35 "Post-adjudication order" means a court order requiring a veteran or service member to
36 participate in a Mental Health, Veterans and Service Members Court program as set forth in this
37 article after having entered a plea of guilty or nolo contendere or having been found guilty.

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

40 "Split sentencing" means a sentence which includes a period of incarceration followed by
41 a period of supervision.

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

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

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

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

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

§62-16-3. Policy, intent and goals.

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

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

1 (a) The Supreme Court of Appeals shall establish a mental health, veterans and service
2 members court program including a format under which it operates pursuant to the provisions of
3 this article. The program shall be under the oversight of the Administrator of the Court. The
4 courts shall be implemented in the areas of the state with the highest need. Commencing on July
5 1, 2018, two courts shall be established. Each shall operate at the direction of the Administrator
6 of the Court. Two additional courts shall be added on each July 1 for the next four years resulting
7 in a total of ten such courts operating by July 1, 2022.

8 (b) The Mental Health, Veterans and Service Members Court shall be a separate court or
9 a program. At the discretion of the Administrator of the Court, the Mental Health, Veterans and
10 Service Members Court program may be operated in one county in the circuit, and allow mental

11 health, veteran and service member defendants from all counties within the circuit to participate.

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

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

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

18 (1) Is performing satisfactorily in Mental Health, Veteran and Service Members Court;

19 (2) Is benefitting from education, treatment and rehabilitation;

20 (3) Has not engaged in criminal conduct; or

21 (4) Has not violated the terms and conditions of the agreement.

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

25 (1) Is not performing satisfactorily in Mental Health, Veteran and Service Members Court;

26 (2) Is not benefitting from education, treatment or rehabilitation;

27 (3) Has engaged in conduct rendering him or her unsuitable for the program;

28 (4) Has otherwise violated the terms and conditions of the agreement; or

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

30 (g) Upon successful completion of Mental Health, Veteran and Service Members Court,
31 the judge shall dispose of an offender's case in the manner prescribed by the agreement and by
32 the applicable policies and procedures adopted by the Mental Health, Veteran and Service
33 Members Court. This may include, but is not limited to, withholding criminal charges, dismissal
34 of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced

35 period of incarceration.

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

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

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

§62-16-5. Mental Health, Veteran and Service Members Court teams.

1 (a) Each mental health, veteran and service members court shall have a local mental
2 health, veteran or service members court team as defined in §62-16-2 of this code.

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

§62-16-6. Eligibility.

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

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

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

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

11 (B) The underlying offense involves an offense that requires registration as a sex offender
12 pursuant to §15-12-1 et seq. of this code;

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

15 (D) The mental health, veteran or service member offender has a prior conviction in this
16 state or another state for a crime that requires registration as a sex offender pursuant to §15-12-
17 1 et seq. of this code.

§62-16-7. Procedure.

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

4 (b) The court shall order the defendant to submit to an eligibility screening and mental
5 health and drug/alcohol screening and assessment of the defendant by the VA or by the
6 department to provide assessment services for the court. The assessment shall include a risks

7 assessment and be based, in part, upon the known availability of treatment resources available
8 to the Mental Health, Veteran and Service Members Court. The assessment shall also include
9 recommendations for treatment of the conditions which are indicating a need for treatment under
10 the monitoring of the court and be reflective of a level of risk assessed for the individual seeking
11 admission. An assessment need not be ordered if the court finds a valid screening and/or
12 assessment related to the present charge pending against the defendant has been completed
13 within the previous sixty days.

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

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

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

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

1 (a) The Mental Health, Veteran and Service Members Court program may maintain a
2 network of mental health treatment programs and substance abuse treatment programs
3 representing a continuum of graduated mental health and substance abuse treatment options

4 commensurate with the needs of defendants; these shall include programs with the VA, the
5 department, the State of West Virginia and community-based programs.

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

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

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

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

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

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

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

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

13 (b) Upon successful completion of the terms and conditions of the program, the court may

14 dismiss the original charges against the defendant or successfully terminate the defendant's
 15 sentence or otherwise discharge him or her from any further proceedings against him or her in
 16 the original prosecution.

§62-16-10. Governance.

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

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

1 (a) Mental health, veteran and service members courts shall collect and maintain the
 2 following information and any other information on participants as required by the Supreme Court
 3 of Appeals or its administrative office:

- 4 (1) Prior criminal history;
- 5 (2) Prior substance abuse and mental health treatment history;
- 6 (3) Employment, education, and income histories;
- 7 (4) Gender, race, ethnicity, marital and family status, and any child custody and support
 8 obligations;

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

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

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

15 (b) An offender may be required as a condition of pretrial diversion, probation, or parole

16 to provide the information described in this section. The collection and maintenance of
17 information under this section shall be collected in a standardized format according to applicable
18 guidelines set forth by the Supreme Court of Appeals.

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

§62-16-12. Funding.

1 (a) Each mental health, veteran and service members court, with the guidance of the
2 Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and
3 costs necessary to conduct the program;

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

§62-16-13. Immunity from Liability.

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

§62-16-14. Statutory construction.

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

NOTE: The purpose of this bill is to establish a Mental Health, Veteran and Service Members Court within the Supreme Court of Appeals. The bill defines terms, sets forth the policy and goals of the Legislature in establishing the court, grants authority to oversee the court to the Administrator of the Supreme Court, sets forth the structure of the court, provides for a written agreement to participate in the court; sets forth incentives for successful participation, provides for sanctions for a violation of the provisions of the court, sets out disposition on successful completion, provides for teams to function within the

court, sets forth eligibility requirements for participation, sets forth a procedure to participate in the court, allows for mental health and drug treatment services for participants, provides for governance of the court by the Supreme Court of Appeals, sets forth information to be maintained on participants. provides for funding mechanisms which may include court fees, provides for limitation of liability, and provides for statutory construction.

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