

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 40**

SENATOR WELD, *original sponsor*

[Passed March 9, 2019; in effect 90 days from passage]



1 AN ACT 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, and §62-16-7,  
3 all relating to establishing a Military Service Members Court program within the Supreme  
4 Court of Appeals; providing legislative findings establishing the need for creation of a  
5 Military Service Members Court program; defining terms; granting authority to the  
6 Supreme Court of Appeals to establish a Military Service Members Court program under  
7 the oversight of its administrator; providing for no termination of any program until at least  
8 six months after written notice of the intent to terminate the program has been provided  
9 by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates  
10 and the President of the Senate; providing that a Military Service Members Court judge  
11 may establish rules and make special orders as necessary that do not conflict with rules  
12 and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of  
13 the program; providing for funding mechanisms which may include court fees; providing  
14 for limitation of liability; setting forth eligibility requirements for participation; providing for  
15 written agreement to participate in the court; setting forth procedure to participate in court;  
16 allowing for mental health and drug treatment services for participants; providing for  
17 sanctions for violation of provisions of the court; setting forth incentives for successful  
18 participation; setting out disposition on successful completion; providing that Military  
19 Service Members Courts shall if deemed appropriate by the Supreme Court of Appeals  
20 collect and maintain information on program participants; setting forth that offenders may  
21 be required to provide certain information to Military Service Members Courts; and  
22 requiring Military Service Members Courts to keep offender treatment records in a secure  
23 environment separated from the court records to which the public has access.

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

**ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.**

**§62-16-1. Short title.**

1           This may be cited as the Military Service Members Court Act.

**§62-16-2. Legislative findings.**

1           (a)(1) The Legislature recognizes that while most veterans are strengthened by their  
2 military service, the combat experiences of many veterans have unfortunately left a growing  
3 number of veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic  
4 brain injury. A growing body of research shows that one in five veterans will have symptoms of a  
5 mental illness, mental health disorder, or cognitive impairment. One in six veterans who served  
6 in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse  
7 and related issues. As a result, many veterans have found themselves in the criminal court system  
8 charged with crimes which may be directly attributable to these service-related issues.

9           (2) The Legislature further recognizes that a Military Service Members Court is necessary  
10 to link veterans with the programs, benefits, and services that are necessary to help them  
11 overcome these issues and provide them with rehabilitation services instead of incarceration.

12           (3) Given the context of veteran life, especially given their past training and experiences  
13 in the Armed Forces, it is reasonably anticipated and likely that military service members would  
14 respond favorably to a structured environment. The Military Service Members Court is a  
15 professional, structured, and monitored program which mandates and provides participant  
16 accountability and responsibility, including mandatory court appearances, treatment, and  
17 counseling sessions, as well as frequent and random testing for drug and alcohol use. However,  
18 the Legislature also finds that some may still struggle. Those are the veterans who need the  
19 structure and support of a Military Service Members Court program the most. Without the structure  
20 of a Military Service Members Court program mentally ill and challenged veterans may well  
21 reoffend, remain in the criminal court system, and suffer under the emotional, physical, and mental  
22 yoke of substance abuse.

23 (4) The Legislature creates the Military Service Members Court to ensure that these  
24 veterans in need are able meet their obligations to themselves, their family, their loved ones, the  
25 court, and their community.

**§62-16-3. Definitions.**

1 For the purposes of this article:

2 “Assessment” means an evaluation to determine whether a criminal defendant is a military  
3 service member as defined by this section, that the offense he or she has been charged with are  
4 attributable to their military service, and if the offender would benefit from the provisions set forth  
5 in this article.

6 “Court” means a Military Service Members Court.

7 “Department” means the West Virginia Department of Veterans Assistance.

8 “Military Service Members Court program” or “program” is a program that includes pre-  
9 adjudicatory and post-adjudicatory treatment for military service members.

10 “Military service member” means a person who is currently serving in the Army, Air Force,  
11 Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard, or a  
12 person who served in the active military, or who was discharged or released under conditions  
13 other than dishonorable.

14 “Offender” means a criminal defendant who qualifies as a military service member under  
15 this article.

16 “Post-adjudicatory program” means a program in which the offender has admitted guilt or  
17 has been found guilty and agrees, with the prosecutor’s consent, to enter a court program as part  
18 of his or her sentence.

19 “Pre-adjudicatory program” means a program that allows the offender, with the consent of  
20 the prosecutor, team, and the court to expedite the offender’s criminal case before conviction or  
21 before filing of a criminal case and requires the offender to agree to and successfully complete  
22 the court program as part of the written agreement.

23 “VA” means the United States Department of Veterans Affairs.

24 “VJO” means the Veterans Justice Outreach program of the United States Department of  
25 Veterans Affairs.

26 “Written agreement” means the agreement executed to allow a military service member  
27 to participate in a court program.

**§62-16-4. Court authorization; funding; immunity from liability.**

1 (a) *Court authorization.* — The Supreme Court of Appeals is hereby authorized to  
2 establish a Military Service Members Court program, under the oversight of its administrator. Each  
3 Military Service Members Court may be a stand-alone court or operated in conjunction with an  
4 existing drug court or other specialty court program. The Supreme Court of Appeals is further  
5 encouraged to give deference to circuits or regions in the operation of those programs to maximize  
6 flexibility, and to take into account regional and other differences and circumstance.

7 (b) Once a program is established, termination of any program may not take place until at  
8 least six months after written notice of the intent to terminate the program has been provided by  
9 the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the  
10 President of the Senate.

11 (c) Each court judge may establish rules and may make special orders as necessary that  
12 do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate  
13 the purposes of this article.

14 (d) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

15 (e) Nothing contained in this article confers a right or an expectation of a right to participate  
16 in a court program nor does it obligate a court to accept every military service member offender.

17 (f) Neither the establishment of a Military Service Members Court nor anything in this  
18 article may be construed as limiting the discretion of the prosecuting attorney to act on any  
19 criminal case which he or she determines advisable to prosecute.

20 (g) *Funding.* — Each Military Service Members Court, with the guidance of the Supreme

21 Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be  
22 paid by participants necessary to conduct the program.

23 (h) Nothing in this article prohibits Military Service Members Courts from obtaining  
24 supplemental funds or exploring grants to support the courts.

25 (i) *Immunity from liability.* — Any person who, in good faith, provides services pursuant to  
26 this article is not liable in any civil action, unless his or her actions were the result of gross  
27 negligence or willful misconduct. The grant of immunity provided in this section extends to all  
28 employees and administrative personnel of a court.

**§62-16-5. Eligibility; written agreement.**

1 (a) *Eligibility.* — A military service member offender, who is eligible for probation based  
2 upon the nature of the offense for which he or she has been charged, and in consideration of his  
3 or her criminal background, if any, may, upon application, be admitted into a court program only  
4 upon the agreement of the prosecutor and the offender. Additionally, the court must also  
5 determine whether the offense is in any way attributable to the offender's military service.

6 (b) A military service member offender may not participate in the court program if he or  
7 she has been charged with any of the following offenses:

8 (1) A sexual offense, including, but not limited to, a violation of the felony provisions of  
9 §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, or a criminal  
10 offense where the judge has made a written finding that the offense was sexually motivated;

11 (2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

12 (3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

13 (4) A felony violation of §61-2-9b or §61-2-14 of this code;

14 (5) A felony violation of §61-2-28 of this code;

15 (6) A felony violation of §17C-5-2(b) of this code; or

16 (7) If he or she has previously been convicted in this state, another state, or in a federal  
17 court for any of the offenses enumerated above.

18           (c) *Written agreement.* — Participation in a Military Service Members Court program, with  
19 the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This  
20 written agreement shall set forth all of the agreed upon provisions to allow the military service  
21 member offender to proceed in the court. The offender shall execute a written agreement with the  
22 court as to his or her participation in the program and shall agree to all of the terms and conditions  
23 of the program, including, but not limited to, the possibility of sanctions or incarceration for failing  
24 to comply with the terms of the program.

25           (d) Upon successful completion of a court program, the judge shall dispose of an  
26 offender's case in the manner prescribed by the written agreement and by the applicable policies  
27 and procedures adopted by the court. Disposition may include, but is not limited to, withholding  
28 criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing,  
29 split sentencing, or a reduced period of incarceration.

**§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.**

1           (a) *Procedure.* — Upon application, the court shall order the offender to submit to an  
2 eligibility screening, a mental health and drug/alcohol screening, and an assessment by the  
3 Department of Veterans Affairs (VA) Veterans Justice Outreach to provide information on the  
4 offender's mental health or military service member status. The assessment shall include a risks  
5 assessment and be based, in part, upon the known availability of treatment resources available  
6 to the court. The assessment shall also include recommendations for treatment of the conditions  
7 which are indicating a need for treatment under the monitoring of the court and reflect a level of  
8 risk assessed for the individual seeking admission. The court is not required to order an  
9 assessment if a valid screening or assessment related to the present charge(s) pending against  
10 the offender has been completed within the previous 60 days.

11           (b) The court may order the offender to complete substance abuse treatment in an  
12 outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to  
13 complete mental health counseling in an inpatient or outpatient basis, comply with all physician

14 recommendations regarding medications, and complete all follow-up treatment. The mental  
15 health issues for which treatment may be provided include, but are not limited to, post-traumatic  
16 stress disorder, traumatic brain injury, and depression.

17 (c) *Mental health and substance abuse treatment.* — The court may maintain a network  
18 of mental health treatment programs and substance abuse treatment programs representing a  
19 continuum of graduated mental health and substance abuse treatment options commensurate  
20 with the needs of offenders; these shall include programs with the VA, the department, this state,  
21 and community-based programs.

22 (d) *Violation.* — The court may impose reasonable sanctions under the offender’s written  
23 agreement, including, but not limited to, imprisonment or dismissal of the offender from the  
24 program. The court may reinstate criminal proceedings against him or her for a violation of  
25 probation, conditional discharge, or supervision hearing, if the court finds from the evidence  
26 presented, including, but not limited to, the reports or proffers of proof from the court’s  
27 professionals that:

- 28 (1) The offender is not performing satisfactorily in the assigned program;
- 29 (2) The offender is not benefitting from educational treatment or rehabilitation;
- 30 (3) The offender has engaged in criminal conduct rendering him or her unsuitable for the  
31 program; or
- 32 (4) The offender has otherwise violated the terms and conditions of the program or his or  
33 her sentence or is for any reason unable to participate.

34 (e) *Termination.* — Upon successful completion of the terms and conditions of the  
35 program, the court may dismiss the original charges against the offender, successfully terminate  
36 the offender’s sentence, permit the offender to enter into a plea agreement to a lesser offense, or  
37 otherwise discharge him or her from any further proceedings against him or her in the original  
38 prosecution.

39 (f) Notwithstanding any provision of this code to the contrary, upon successful completion  
40 of the terms and conditions of the program, or if the presiding judge determines the lack of the  
41 ability to operate a motor vehicle is preventing program success, the court may expunge any  
42 driving offenses that prevent the veteran offender from obtaining a West Virginia driver's license.

**§62-16-7. Program integrity and offender accountability.**

1 (a) If deemed appropriate by the Supreme Court of Appeals or its administrative office, the  
2 courts shall collect and maintain information on participants which may include, but is not limited  
3 to, the following:

- 4 (1) The participants' prior criminal history;
- 5 (2) The participants' prior substance abuse and mental health treatment history;
- 6 (3) The participants' employment, education, and income histories;
- 7 (4) The participants' gender, race, ethnicity, marital and family status, and any child  
8 custody and support obligations;
- 9 (5) Instances of participants' recidivism occurring during and after participation in a court  
10 program. Recidivism may be measured at intervals of six months, one year, two years, and five  
11 years after successful graduation from Military 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 information  
17 under this section shall be collected in a standardized format according to applicable guidelines  
18 set forth by the Supreme Court of Appeals.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2019.

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*Governor*