

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 40

FISCAL  
NOTE

BY SENATOR WELD

[Introduced January 9, 2019; 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,  
 3 §6-2-16-8, §62-16-9, §62-16-10, §62-16-11, §62-16-12, and §62-16-13, all relating to  
 4 establishing a Mental Health and Military Service Member Court program within Supreme  
 5 Court of Appeals; defining terms; granting authority to oversee court to Administrator of  
 6 Supreme Court of Appeals; setting forth structure of court; providing for written agreement  
 7 to participate in court; setting forth incentives for successful participation; providing for  
 8 sanctions for violation of provisions of court; setting out disposition on successful  
 9 completion; providing for teams to function within court; setting forth eligibility  
 10 requirements for participation; setting forth procedure to participate in court; allowing for  
 11 mental health and drug treatment services for participants; providing for governance of  
 12 court by Supreme Court of Appeals; setting forth information to be maintained on  
 13 participants; providing for funding mechanisms which may include court fees; and  
 14 providing for limitation of liability.

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

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

**ACT.**

**§62-16-1. Short title.**

1 This may be cited as the Mental Health and Military 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 mentally ill or a  
 3 military service member as defined by this section and would benefit from the provisions set forth  
 4 in this article.

5 “Court” means a Mental Health and Military Service Members Court.

6 “Department” means the West Virginia Department of Veterans' Assistance.

7 “Mental Health and Military Service Members Court team” or “team” is a group of  
8 professionals which assesses offenders and follows and reports to a court on an offender's  
9 progress.

10 “Mental Health and Military Service Members Court program” or “program” is a program  
11 that includes preadjudicatory and post-adjudicatory treatment for mentally ill persons and military  
12 service members.

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

17 “Post-adjudication order” means a court order requiring a mentally ill person or a military  
18 service member to participate in a court program as set forth in this article after having entered a  
19 plea of guilty or nolo contendere or having been found guilty.

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

23 “Preadjudication order” means a court order requiring a mentally ill person or a military  
24 service member to participate in a program as set forth in this article.

25 “Preadjudicatory program” means a program that allows the offender, with the consent of  
26 the prosecutor, to expedite the offender's criminal case before conviction or before filing of a  
27 criminal case and requires the offender to agree to and successfully complete the court program  
28 as part of the written agreement.

29 “Split sentencing” means a sentence which includes a period of incarceration followed by

30 a period of supervised release.

31 “Staffing” means the meeting before a mentally ill or military service member offender’s  
32 appearance in court, in which the team discusses a coordinated response to the mentally ill or  
33 the military service member offender’s behavior.

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

35 “Written agreement” means the agreement executed to allow a mentally ill person or  
36 military service member to participate in a court program.

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

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

9 (b) The courts shall be established in the areas of the state with the highest need, as  
10 determined by the administrator. On or before July 1, 2020, the Supreme Court of Appeals shall  
11 establish two courts. The Supreme Court of Appeals shall establish two additional courts each  
12 July 1 for the next four years, resulting in a total of 10 courts operating by July 1, 2024. At the  
13 discretion of the administrator of the court, the court program may be operated in one county in  
14 the circuit, and allow mentally ill and military service member offenders from all counties within  
15 the circuit to participate.

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

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

20           (e) Neither the establishment of a Mental Health and Military Service Members Court nor  
21 anything in this article may be construed as limiting the discretion of the jurisdiction's prosecutor  
22 to act on any criminal case which he or she determines advisable to prosecute.

23           (f) Each court judge may establish rules and may make special orders as necessary that  
24 do not conflict with rules and orders promulgated by the Supreme Court of Appeals. The Supreme  
25 Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in  
26 all Mental Health and Military Service Members Courts in this state.

**§62-16-4. Written agreements.**

1           (a) Participation in a Mental Health and Military Service Members Court program, with the  
2 consent of the prosecutor and the court, shall be pursuant to a written agreement. This written  
3 agreement shall set forth all of the agreed upon provisions to allow the mentally ill person or  
4 military service member to proceed in the court. The offender shall execute a written agreement  
5 with the court as to his or her participation in the program and shall agree to all of the terms and  
6 conditions of the program, including, but not limited to, the possibility of sanctions or incarceration  
7 for failing to comply with the terms of the program.

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

11           (1) Is performing satisfactorily in the court program;

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

13           (3) Has engaged in criminal conduct;

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

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

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

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

1 (a) Each court shall have a local court team as defined in §62-16-2 of this code. A team  
2 may include, but is not limited to:

3 (1) A judge, magistrate, Mental Hygiene Commissioner or other hearing officer;

4 (2) The prosecuting attorney of the jurisdiction;

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

6 (4) A probation officer;

7 (5) A case coordinator;

8 (6) A case manager;

9 (7) A treatment provider; or

10 (8) A peer recovery coach.

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

**§62-16-6. Eligibility.**

1 (a) A mentally ill or military service member offender, who is eligible for probation based  
2 on the nature of the crime he or she is convicted of and in consideration of his or her criminal  
3 background, if any, may be admitted into a court program only upon the agreement of the  
4 prosecutor and the offender and with the approval of the court.

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

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

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

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

13 (4) The mentally ill or military service member offender has a prior conviction in this state  
14 or another state for a crime that requires registration as a sex offender pursuant to §15-12-1 et  
15 seq. of this code.

**§62-16-7. Procedure.**

1 (a) The court shall order the offender to submit to an eligibility screening, a mental health  
2 and drug/alcohol screening and an assessment by the VA or by the department to provide  
3 information on the offender's mental health or military service member status. The assessment  
4 shall include a risks assessment and be based, in part, upon the known availability of treatment  
5 resources available to the court. The assessment shall also include recommendations for  
6 treatment of the conditions which are indicating a need for treatment under the monitoring of the  
7 court and reflect a level of risk assessed for the individual seeking admission. The court is not  
8 required to order an assessment if a valid screening or assessment related to the present charge

9 pending against the offender has been completed within the previous 60 days.

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

16 (c) The judge shall inform the offender that if he or she fails to meet the conditions of the  
17 court, eligibility to participate in the program may be revoked and the offender would be subject  
18 to the sanctions set forth in §62-16-9 of this code.

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

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

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

7 (c) The court may maintain or collaborate with a network of mental health treatment  
8 programs and, if it is a cooccurring mental health and substance abuse court program, a network  
9 of mental health treatment programs and substance abuse treatment programs representing a  
10 continuum of treatment options commensurate with the needs of the offender and available  
11 resources including programs with the VA, the department and this state.

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

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



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

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

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

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

10 (4) The offender 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 offender or successfully terminate the offender's  
14 sentence or otherwise discharge him or her from any further proceedings against him or her in  
15 the original prosecution.

**§62-16-10. Governance.**

1 The Supreme Court of Appeals is responsible for court funding, administration, and  
2 continuance or discontinuance of Mental Health and Military Service Members Courts. The  
3 Administrator of the Supreme Court of Appeals, or his or her designee, shall oversee the planning,  
4 implementation, and development of these courts as the administrative arm of the Supreme Court  
5 of Appeals.

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

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

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 shall be measured at intervals of six months, one year, two years, and five  
11 years after successful graduation from Mental Health or Military Service Member 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.

#### **§62-16-12. Funding.**

1 (a) Each Mental Health and Military Service Member 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 court teams from obtaining supplemental funds or  
5 exploring grants to support the Mental Health and Military Service Member Courts.

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

1 Any individual who, in good faith, provides services pursuant to this article is not liable in

- 2 any civil action, unless his or her actions were the result of the gross negligence or willful  
3 misconduct. The grant of immunity provided in this subsection extends to all employees and  
4 administrative personnel of a court.

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

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