

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 181

FISCAL
NOTE

BY SENATORS WOODRUM, BALDWIN, LINDSAY,

STOLLINGS, AND WELD

[Introduced January 12, 2022; referred to
the Committee on Health and Human Resources; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto nine new
 2 section designated, §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6, §16-42-
 3 7, §16-42-8, and §16-42-9; and to amend and reenact §24-6-6b of said code, all relating
 4 to creating the Core Behavioral Health Crisis Services System; designating crisis hotline
 5 centers; reimbursing treatment for crisis receiving and stabilization services; creating the
 6 Statewide 988 Trust Fund; providing a mechanism for funding the trust fund; establishing
 7 the uses of the fund; authorizing a statewide 988 fee; establishing the duties and powers
 8 of the secretary; providing for timelines for implementation; authorizing rulemaking,
 9 including emergency rules; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 42. CORE BEHAVIORAL HEALTH CRISIS SERVICES SYSTEM.

§16-42-1. Definitions.

1 In this article the following words have the meanings indicated.

2 “988 Crisis Hotline Center” or “hotline center” means a state-identified center participating
 3 in the National Suicide Prevention Lifeline Network to respond to statewide or regional 988 calls.

4 “Commercial mobile radio service provider” or “CMRS provider” means cellular licensees,
 5 broadband personal communications services (PCS) licensees and specialized mobile radio
 6 (SMR) providers, as those terms are defined by the Federal Communications Commission, which
 7 offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-
 8 way switched voice service that is interconnected with the public switched network and includes
 9 resellers of any commercial mobile radio service.

10 “Crisis receiving and stabilization services” means facilities providing short-term (under 24
 11 hours) with capacity for diagnosis, initial management, observation, crisis stabilization and follow
 12 up referral services to all persons in a home-like environment.

13 “Department” means the West Virginia Department of Health and Human Resources.

14 “Federal Communications Commission” or “FCC” means the federal governmental agency
15 that regulates interstate and international communications by radio, television, wire, satellite, and
16 cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S.
17 government agency overseen by Congress, the Commission is the United States’ primary
18 authority for communications law, regulation, and technological innovation.

19 “LGTBQ+” is the is an acronym for lesbian, gay, bisexual, transgender and queer or
20 questioning, terms used to describe a person’s sexual orientation or gender identity.

21 “National Suicide Prevention Lifeline” or “NSPL” means the national network of local crisis
22 centers that provides free and confidential emotional support to people in suicidal crisis or
23 emotional distress 24 hours a day, 7 days a week. Membership as an NSPL center requires
24 nationally recognized certification which includes evidence-based training for all staff and
25 volunteers in the management of calls.

26 “Peers” means individuals employed on the basis of their personal lived experience
27 of mental illness and/or addiction and recovery who meet the state’s peer certification
28 requirements where applicable.

29 “Secretary” means the Secretary of the West Virginia Department of Health and Human
30 Resources.

31 “Substance Abuse and Mental Health Services Administration” means the agency within
32 the U.S. Department of Health and Human Services that leads public health efforts to advance
33 the behavioral health of the nation.

34 “988 Suicide Prevention and Mental Health Crisis Hotline” means the National Suicide
35 Prevention Lifeline (NSPL) or its successor maintained by the Assistant Secretary for Mental
36 Health and Substance Use under section 520E–3 of the Public Health Service Act.

37 “Veterans Crisis Line” or “VCL” means Veterans Crisis Line maintained by the Secretary
38 of Veterans Affairs under section 1720F(h) of Title 38, United States Code.

§16-42-2. Designation of crisis hotline centers.

1 (a) Prior to July 1, 2022, the secretary shall designate a crisis hotline center or centers to
2 provide crisis intervention services and crisis care coordination to individuals accessing the 988
3 suicide prevention and behavioral health crisis hotline from any jurisdiction within the state 24
4 hours a day, seven days a week:

5 (b) Designated hotline center(s) shall:

6 (1) Have an active agreement with the administrator of the National Suicide Prevention
7 Lifeline (NSPL) for participation within the network.

8 (2) Meet NSPL requirements and best practices guidelines for operational and clinical
9 standards.

10 (3) Utilize technology including chat and text that is interoperable between and across
11 crisis and emergency response systems used throughout the state (911, EMS, other non-
12 behavioral health crisis services, etc.).

13 (4) Have the authority to deploy crisis and outgoing services, and coordinate access to
14 crisis receiving and stabilization services or other local resources as appropriate and according
15 to guidelines and best practices established by the NSPL.

16 (5) Coordinate access to crisis receiving and stabilization services for individuals
17 accessing the 988 suicide prevention and behavioral health crisis hotline through appropriate
18 information sharing regarding availability of services.

19 (6) Provide follow-up services to individuals accessing the 988 suicide prevention and
20 behavioral health crisis hotline consistent with guidance and policies established by the NSPL.

21 (c) The department shall work in concert with the NSPL and VCL networks for the
22 purposes of ensuring consistency of public messaging about 988 services.

23 (d) Designated hotline center(s) shall meet the requirements set forth by NSPL for serving
24 high risk and specialized populations as identified by the Substance Abuse and Mental Health
25 Services Administration, including training requirements and policies for transferring such callers

26 to an appropriate specialized center or subnetworks within or external to the NSPL network. This
27 shall include LGBTQ individuals, as well as those with co-occurring substance use, American
28 Indian and Alaskan natives and other relevant special populations.

§16-42-3. Reimbursement of treatment for crisis receiving and stabilization services.

1 (a) Crisis receiving and stabilization services as related to the call shall be reimbursed by
2 the department if the individual for whom services were provided meets the definition of an
3 uninsured person or if the crisis stabilization service is not a covered service by the individual's
4 health coverage.

5 (b) The department's Bureau for Medical Services shall work with the entity responsible
6 for the development of crisis receiving and stabilization services to explore options for appropriate
7 coding of and payment for crisis management services.

8 (c) The department shall determine how payment will be made to the provider of service.

§16-42-4. Statewide 988 Trust Fund.

1 (a) The Statewide 988 Trust Fund is established as a special fund in the State Treasury
2 for the purposes of creating and maintaining a statewide 988 suicide prevention and mental health
3 crisis system pursuant to the National Suicide Hotline Designation Act of 2020, the Federal
4 Communication Commission's rules adopted July 16, 2020, and national guidelines for crisis care.
5 Money in the fund is appropriated as set forth in subsection (b) of this section.

6 (b) The Statewide 988 Trust Fund consists of:

7 (1) The statewide 988 fee assessed on users pursuant §16-42-5 of this code and collected
8 pursuant to §24-6-6b of this code;

9 (2) Appropriations made by the State Legislature;

10 (3) Grants and gifts intended for deposit in the fund;

11 (4) Interest, premiums, gains, or other earnings on the fund; and

12 (5) Money from any other source deposited in or transferred to the fund.

13 (c) Money in the fund is allocated as follows:

14 (1) Ensuring the efficient and effective routing of calls made to the 988 suicide prevention
15 and behavioral health crisis hotline to the designated hotline center(s) including staffing and
16 technological infrastructure enhancements necessary to achieve operational and clinical
17 standards and best practices set forth by NSPL;

18 (2) Personnel and the provision of acute behavioral health, crisis outreach and stabilization
19 services by directly responding to the 988 national suicide prevention and behavioral health crisis
20 hotline;

21 (3) Data collection and reporting, evaluations and related quality improvement activities
22 as required by the 988 administrator; and

23 (4) Administration, oversight and evaluation of the fund.

24 (d) Any balance, including accrued interest or other earnings in the fund at the end of any
25 fiscal year do not revert to the General Revenue Fund, but shall remain in the fund. Expenditures
26 may be made from the fund only for the purposes set forth in this section and in accordance with
27 the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of
28 article two, chapter eleven-b of this code.

§16-42-5. Statewide 988 fee.

1 (a) In compliance with the National Suicide Hotline Designation Act of 2020, and pursuant
2 to §24-6-6b of this code, there shall be a monthly statewide 988 fee on each resident that is a
3 subscriber of commercial mobile and/or IP-enabled voice services at a rate that provides for the
4 robust creation, operation, and maintenance of a statewide 988 suicide prevention and behavioral
5 health crisis system and the continuum of services provided pursuant to national guidelines for
6 crisis services.

7 (b) The revenue generated by a 988 fee collected pursuant to §24-6-6b of this code shall
8 be sequestered in Statewide 988 Trust Fund as created by §16-42-4 of this code to be obligated
9 or expended only in support of 988 services, or enhancements of such services as provided in
10 §16-42-4 of this code.

§16-42-6. Duties and powers of the secretary.

1 The secretary at his or her discretion may hire employees, fix compensation, define duties,
2 grant such individuals appropriate authority to carry out the purposes of this article, make and
3 sign any agreements and may do and perform any acts necessary to accomplish the planning
4 required for implementation or ongoing oversight of this article in coordination with designated
5 hotline center(s), 9-1-1 centers, the state mental health authority and the National Suicide
6 Prevention Lifeline.

§16-42-7. Timeframe for implementation.

1 The secretary shall establish timeframes to accomplish the provisions of this article
2 consistent with the timeframes required by the National Suicide Hotline Designation Act of 2020
3 and the Federal Communication Commission's rules adopted on July 16, 2020.

§16-42-8. Rule-making.

1 (a) The secretary may propose rules for promulgation in accordance with §29A-3-1 et seq.
2 of this code to implement the provisions of this article, including, but not limited to, allowing
3 appropriate information sharing and communication between and across crisis and emergency
4 response systems for the purpose of real-time crisis care coordination, deployment of crisis and
5 outgoing services and linked, flexible services specific to crisis response.

6 (b) The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency
7 exists requiring the promulgation of emergency rules to preserve the public peace, health, safety
8 or welfare and to prevent substantial harm to the public interest.

§16-42-9. Annual Report.

1 The secretary shall submit an annual report to the Governor, Legislature, the Substance
2 Abuse and Mental Health Services Administration, and the Federal Communications Commission
3 that includes:

4 (1) The usage of the 988 suicide prevention and behavioral health crisis hotline and the
5 services;

- 6 (2) Statewide 988 Trust Fund deposits and expenditures; and
7 (3) Revenue generated by the 988 fee authorized by §24-6-6b of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee; public safety wireless fee; wireless tower fee; and 988 fee.

1 (a) All CMRS providers as defined in §24-6-2 of this code shall, on a monthly basis or
2 otherwise for good cause and as directed by order of the Public Service Commission, collect from
3 each of their in-state two-way service subscribers a wireless enhanced 911 fee, a public safety
4 fee, a 988 fee, and a wireless tower fee. As used in this section “in-state two-way service
5 subscriber” has the same meaning as that set forth in the rules of the Public Service Commission.
6 The CMRS providers shall, on a monthly basis, after retaining a billing fee of three percent of the
7 sum of the wireless enhanced 911 fee, the public safety fee, a 988 fee, and the wireless tower
8 fee, send moneys collected from the wireless enhanced 911 fee, the public safety fee, a 988 fee,
9 and the wireless tower fee to the Public Service Commission.

10 (b) The wireless enhanced 911 fee is \$3.47 per month for each valid in-state two-way
11 service subscriber, as that term is defined by Public Service Commission rules.

12 Beginning in the year 2021, and every two years thereafter, the Public Service
13 Commission shall conduct a survey of the enhanced 911 fees imposed by counties and shall
14 recalculate the wireless enhanced 911 fee so that increases or decreases by the same
15 percentage as the change in the weighted average rounded to the nearest penny, as of March 1
16 of the respecification year, of all of the enhanced 911 fees imposed by the counties which have
17 adopted an enhanced 911 ordinance: *Provided*, That the wireless enhanced 911 fee may never
18 be increased by more than 25 percent of its value at the beginning of the respecification
19 year: *Provided, however*, That the fee may never be less than the amount set in subsection (b) of

20 this section.

21 (c) The Public Service Commission shall, on a quarterly and approximately evenly
22 staggered basis, disburse wireless enhanced 911 fee revenue in the following manner:

23 (1) Each county that does not have a 911 ordinance in effect as of the original effective
24 date of this section in the year 1997, or has enacted a 911 ordinance within the five years prior to
25 the original effective date of this section in the year 1997, shall receive eight and one-half tenths
26 of one percent of the fee revenues received by the Public Service Commission: *Provided, That*
27 *after the effective date of this section, in the year 2005, when two or more counties consolidate*
28 *into one county to provide government services, the consolidated county shall receive one percent*
29 *of the fee revenues received by the Public Service Commission for itself and for each county*
30 *merged into the consolidated county. Each county shall receive eight and one-half tenths of one*
31 *percent of the remainder of the wireless enhanced 911 fee revenues received by the Public*
32 *Service Commission: Provided, however, That after the effective date of this section, in the year*
33 *2005, when two or more counties consolidate into one county to provide government services,*
34 *the consolidated county shall receive one percent of the fee revenues received by the Public*
35 *Service Commission for itself and for each county merged into the consolidated county. Then,*
36 *from any moneys remaining, each county shall receive a pro rata portion of that remainder based*
37 *on that county's population as determined in the most recent decennial census as a percentage*
38 *of the state total population. The Public Service Commission shall recalculate the county*
39 *disbursement percentages on a yearly basis, with the changes effective on July 1, and using data*
40 *as of the preceding March 1. The public utilities which normally provide local exchange*
41 *telecommunications service by means of lines, wires, cables, optical fibers, or by other means*
42 *extended to subscriber premises shall supply the data to the Public Service Commission on a*
43 *county specific basis no later than June 1 of each year;*

44 (2) Counties which have an enhanced 911 ordinance in effect shall receive their share of
45 the wireless enhanced 911 fee revenue for use in the same manner as the enhanced 911 fee

46 revenues received by those counties pursuant to their enhanced 911 ordinances;

47 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue
48 for each county which does not have an enhanced 911 ordinance in effect into an escrow account
49 which it has established for that county. Any county with an escrow account may, immediately
50 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the
51 escrow account for use as specified in subdivision (2) of this subsection: *Provided*, That a county
52 that adopts a 911 ordinance after the original effective date of this section in the year 1997, or
53 has adopted a 911 ordinance within five years of the original effective date of this section in the
54 year 1997, shall continue to receive one percent of the total 911 fee revenue for a period of five
55 years following the adoption of the ordinance. Thereafter, each county shall receive that county's
56 eight and one-half tenths of one percent of the remaining fee revenue, plus that county's additional
57 pro rata portion of the fee revenues then remaining, based on that county's population as
58 determined in the most recent decennial census as a percentage of the state total
59 population: *Provided, however*, That every five years from the year 1997, all fee revenue residing
60 in escrow accounts shall be disbursed on the pro rata basis specified in subdivision (1) of this
61 subsection, except that data for counties without enhanced 911 ordinances in effect shall be
62 omitted from the calculation and all escrow accounts shall begin again with a zero balance. From
63 any funds distributed to a county pursuant to this section, a total of three percent shall be set
64 aside in a special fund to be used exclusively for the purchase of equipment that will provide
65 information regarding the x and y coordinates of persons who call an emergency telephone
66 system through a commercial mobile radio service: *Provided further*, That upon purchase of the
67 necessary equipment, the special fund shall be dissolved and any surplus shall be used for
68 general operation of the emergency telephone system as may otherwise be provided by law.

69 (d) Beginning July 1, 2020, CMRS providers shall collect the public safety fee from each
70 in-state two-way service subscriber. The public safety fee shall be 29 cents per month and will be
71 shown as a separate fee on the subscriber's bill. On a monthly basis, the Public Service

72 Commission will distribute 10 cents of the public safety fee to the West Virginia State Police to be
73 used for equipment upgrades for improving and integrating their communication efforts with those
74 of the enhanced 911 systems, and the Public Service Commission will deposit 19 cents of the
75 public safety fee in a special fund established by the Division of Homeland Security and
76 Emergency Management to be used solely for the construction, maintenance, and upgrades of
77 the West Virginia Interoperable Radio Project and any other costs associated with establishing
78 and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of
79 the fiscal year shall automatically be reappropriated for the following year.

80 (e) Beginning July 1, 2020, CMRS providers shall collect the wireless tower fee from each
81 in-state two-way service subscriber. The wireless tower fee shall be eight cents per month and
82 will be shown as a separate fee on the subscriber's bill. On a monthly basis, the commission shall
83 distribute the wireless tower fee to a fund administered by the Public Service Commission, entitled
84 the Wireless Tower Access Assistance Fund, to subsidize the construction of wireless towers.
85 The moneys shall be expended in accordance with an enhanced 911 wireless tower access
86 matching grant order adopted by the Public Service Commission. The commission order shall
87 contain terms and conditions designed to provide financial assistance loans or grants to state
88 agencies, political subdivisions of the state, and wireless telephone carriers for the acquisition,
89 equipping, and construction of new wireless towers, which would not be available otherwise due
90 to marginal financial viability of the applicable tower coverage area: *Provided*, That the grants
91 shall be allocated among potential sites based on application from county commissions
92 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any
93 tower constructed with assistance from the fund created by this subsection shall be available for
94 use by emergency services, fire departments, and law-enforcement agencies' communications
95 equipment, so long as that use does not interfere with the carriers' wireless signal.

96 (f) Beginning July 1, 2022, CMRS providers shall collect the 988 fee from each in-state
97 two-way service subscriber. The 988 fee shall be 11 cents per month and will be shown as a

98 separate fee on the subscriber's bill. On a monthly basis, the Public Service Commission will
99 distribute amounts collected to in the Statewide 988 Trust Fund established pursuant to §16-42-
100 4 of this code and shall be used pursuant to §16-42-5 of this code. Any funds remaining in this
101 fund at the end of the fiscal year shall automatically be reappropriated for the following year.

102 ~~(f)~~ (g) CMRS providers have the same rights and responsibilities as other telephone
103 service suppliers in dealing with the failure by an in-state two-way service subscriber to timely pay
104 the wireless enhanced 911 fee, the public safety fee, a 988 fee, and the wireless tower fee.

105 ~~(g)~~ (h) Notwithstanding the provisions of §24-6-1a of this code, for the purposes of this
106 section, the term "county" means one of the counties provided in §1-1-1 of this code.

107 ~~(h)~~ (i) Notwithstanding anything to the contrary in this code, prepaid wireless calling
108 service is not subject to the wireless enhanced 911 fee, the public safety fee, a 988 fee, and the
109 wireless tower fee.

110 ~~(i)~~ (j) The Public Service Commission shall promulgate rules in accordance with §29A-3-
111 1 *et seq.* of this code to effectuate the provisions of this section. The Public Service Commission
112 may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

NOTE: The purpose of this bill is to improve the quality and access to behavioral health crisis services; reducing stigma surrounding suicide and mental health and substance use disorders and saving lives; and for the purpose of complying with the National Suicide Hotline Designation Act of 2020 and the Federal Communication Commission's rules adopted July 16, 2020 to assure that all citizens and visitors of the State of West Virginia receive a consistent level of 988 and crisis behavioral health services no matter where they live, work, or travel in the state.

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