# WEST VIRGINIA CODE: §62-16-6

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

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

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

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

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

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

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

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

(4) The offender has otherwise violated the terms and conditions of the program or his or

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her sentence or is for any reason unable to participate.

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

(f) Nothing in this article shall be construed to permit a military service member court or any other court or tribunal to enter an order or take any other action that violates any applicable federal law or regulation, including, but not limited to:

(1) The requirements or conditions contained in 23 U.S.C. §164 *et seq*. and 23 C.F.R. §1275 *et seq*.; and

(2) The requirements or conditions contained in 49 U.S.C. 31311 and 49 C.F.R. §384 *et seq*.

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