

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 511**

4 (By Senator Foster)

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6 [Originating in the Committee on the Judiciary;

7 reported February 23, 2011.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §62-12-2a, relating  
13 to implementing the Honest Opportunity Probation with  
14 Enforcement Program; providing legislative findings;  
15 establishing a pilot project at the option of each circuit  
16 court; requiring the parameters of the program to be agreed  
17 upon and placed in the sentencing order; requiring frequent  
18 random drug testing with instant result tests; and creating  
19 penalties for violations, including incarceration, possible  
20 drug treatment or removal from the program.

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

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new section, designated §62-12-2a, to read as  
24 follows:

25 **ARTICLE 12. PROBATION AND PAROLE.**

1 **§62-12-2a. Honest Opportunity Probation with Enforcement Program.**

2 (a) *Short title.* -- This section shall be known as the Honest  
3 Opportunity Probation with Enforcement (HOPE) act.

4 (b) *Legislative findings.* --

5 (1) Crime continues to inflict a severe cost on victims and  
6 communities across the country;

7 (2) Criminal apprehension and punishment similarly impose  
8 substantial costs on taxpayers, with states spending over \$50  
9 billion on corrections in fiscal year 2008, accounting for one in  
10 every fifteen state general fund dollars;

11 (3) A substantial amount of crime, and a substantial share of  
12 prison occupancy, is directly tied to illicit drug consumption. A  
13 relatively small group of chronic drug users consumes the vast  
14 majority of cocaine, heroin and methamphetamine in the United  
15 States, and approximately three-quarters of this group pass through  
16 the criminal justice system at some point. Consequently, reducing  
17 drug consumption in the United States requires effectively  
18 addressing the drug habits of supervised offenders;

19 (4) One in one hundred adults is behind bars, and one in  
20 thirty one is under some form of criminal justice supervision,  
21 including probation and parole. Of the seven million, three  
22 hundred thousand individuals in the United States who are under  
23 criminal justice supervision, the majority (four million, three  
24 hundred thousand) are serving a term of probation in their  
25 communities, in lieu of serving time behind bars;

26 (5) The failure of individuals serving terms of probation to

1 successfully complete such terms is a major contributor to prison  
2 admissions. In 2007, more than two hundred fifty thousand such  
3 individuals were admitted to prison. Consequently, controlling  
4 drug use by individuals who are serving a period of probation  
5 reduces both national drug consumption and crime rates, and reduces  
6 taxpayer burdens;

7 (6) Innovations in offender supervision prove that swift,  
8 certain and graduated sanctions for noncompliance can reduce drug  
9 use, new crimes and revocation to incarceration; and

10 (7) Hawaii's Opportunity Probation and Enforcement initiative,  
11 an offender supervision program to reduce probation violations by  
12 drug and other high-risk offenders using a structured sanctions  
13 model, has been shown to be highly successful at reducing drug use,  
14 crime and recidivism.

15 (c) *Honest Opportunity Probation with Enforcement Program:*

16 (1) A circuit court of this state, together with probation  
17 officers may choose to implement the Honest Opportunity Probation  
18 with Enforcement (HOPE) act program, as detailed in this section.  
19 The terms "program" or "the program" refer to the Honest  
20 Opportunity Probation with Enforcement (HOPE) act program.

21 (2) If a circuit court chooses, pursuant to subdivision (1) of  
22 this subsection, to implement the program, then the circuit court,  
23 together with probation officers, shall identify for enrollment in  
24 the program individuals who are serving a term of probation who are  
25 at high risk of failing to observe the conditions of supervision  
26 and of being returned to incarceration as a result of such failure.

1           (3) Upon enrollment in the program, individuals assigned to  
2 the program will be notified by the circuit court of the rules of  
3 the Honest Opportunity Probation with Enforcement Program and the  
4 consequences for violating the rules, as established by this  
5 section. Such rules and consequences shall be placed in the  
6 sentencing order that sentences the individual to probation within  
7 the HOPE program.

8           (4) (A) Each individual enrolled in the program is required to  
9 submit to random drug testing at least once a week for the first  
10 two months that they are in the program and regularly thereafter as  
11 determined by the probation department. The individual shall  
12 contact his or her probation officer each weekday to determine if  
13 he or she is scheduled for a drug test that day. Probation  
14 officers shall use instant-test drug screening equipment or other  
15 method that provides an instant reading to determine the results of  
16 such drug tests. All such instant-test drug screenings shall be  
17 presumed accurate for purposes of the program.

18           (B) Probation officers shall monitor probationers for  
19 violations of other rules and probation terms, including, but not  
20 limited to, failure to pay court-ordered financial obligations such  
21 as child support or victim restitution or failure to appear at  
22 appointments with probation officers.

23           (5) Any individual who violates the terms of probation under  
24 this section shall be immediately arrested.

25           (6) Upon the arrest of the individual under subdivision five  
26 of this subsection for violation of the terms of probation, and if

1 it then appears to the satisfaction of the court or judge that any  
2 condition of probation has been violated, the court or judge shall  
3 impose a sentence on the probationer of two to ten days in jail for  
4 the first violation of probation, four to twenty days in jail for  
5 a second violation of probation, one to four weeks in jail for a  
6 third violation of probation, and one to four months in jail for a  
7 fourth and subsequent violations of probation. Probationers who  
8 are found to repeatedly violate the terms of probation under this  
9 section through the use of drugs may be ordered by the court or  
10 judge into a residential substance abuse treatment program.  
11 Probationers who are found by a court to habitually fail to abide  
12 by the program rules and pose a threat to public safety shall be  
13 removed from the program and be subject to the provisions of  
14 section ten of this article for violation of probation.

NOTE: The purpose of this bill is to create the Honest Opportunity Probation with Enforcement Program which aims to reduce crime and drug use among criminal offenders. Probationers placed in this program are subject to more frequent random drug testing and face swift and short sentences for violations of the program.

This section is new; therefore, strike-throughs and underscoring have been omitted.