

Senate Bill No. 511

(By Senator Foster)

[Introduced February 15, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §62-12-2a, relating
to implementing the Honest Opportunity Probation with
Enforcement Program; legislative findings; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

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

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

(b) *Legislative findings.* --

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

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

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

13 (4) One in one hundred adults is behind bars, and one in
14 thirty one is under some form of criminal justice supervision,
15 including probation and parole. Of the seven million, three
16 hundred thousand individuals in the United States who are under
17 criminal justice supervision, the majority (four million, three
18 hundred thousand) are serving a term of probation in their
19 communities, in lieu of serving time behind bars;

20 (5) The failure of individuals serving terms of probation to
21 successfully complete such terms is a major contributor to prison
22 admissions. In 2007, more than two hundred fifty thousand such
23 individuals were admitted to prison. Consequently, controlling
24 drug use by individuals who are serving a period of probation

1 reduces both national drug consumption and crime rates, and reduces
2 taxpayer burdens;

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

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

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

12 (1) Any circuit court of this state, together with probation
13 officers, shall identify for enrollment in the program individuals
14 who are serving a term of probation who are at high risk of failing
15 to observe the conditions of supervision and of being returned to
16 incarceration as a result of such failure.

17 (2) Upon enrollment in the program, individuals assigned to
18 the program will be notified by a circuit court of the rules of the
19 Honest Opportunity Probation with Enforcement Program and the
20 consequences for violating the rules, as established by this
21 section.

22 (3) (A) Each individual enrolled in the program is required to
23 submit to random drug testing at least once a week for the first
24 two months that they are in the program. The individual shall

1 contact his or her probation officer each weekday to determine if
2 he or she is scheduled for a drug test that day. Probation
3 officers shall use rapid-result drug screening equipment to
4 determine the results of such drug tests.

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

10 (4) Any individual who violates the terms of probation under
11 this section shall be immediately arrested. If the individual has
12 failed to appear at an appointment with a probation officer or has
13 committed another violation of the terms of probation under the
14 program, a warrant for the probationer's arrest shall be issued.

15 (5) Upon the arrest of the individual under subdivision four
16 of this subsection, a probation modification hearing shall be held
17 by the convicting court within two days. If it then appears to the
18 satisfaction of the court or judge that any condition of probation
19 has been violated, the court or judge shall impose a sentence on
20 the probationer of two days in jail for the first violation of
21 probation, four days in jail for a second violation of probation,
22 one week in jail for a third violation of probation, and one month
23 in jail for a fourth and subsequent violations of probation.
24 Probationers who found to repeatedly violate the terms of probation

1 under this section through the use of drugs may be ordered by the
2 court or judge into a residential substance abuse treatment
3 program. Probationers who are found by a court to habitually fail
4 to abide by the program rules and pose a threat to public safety
5 shall be removed from the program and be subject to the provisions
6 of section ten of this article for violation of probation.

7 (d) *Definitions.* -- As used in this section, "program" or "the
8 program" refers to the Honest Opportunity Probation with
9 Enforcement (HOPE) act.

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.