

Senate Bill No. 46

(By Senator Foster)

[Introduced January 11, 2012; 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; providing legislative findings;
establishing a pilot project at the option of each circuit
court; requiring the parameters of the program to be agreed
upon and placed in the sentencing order; requiring frequent
random drug testing with instant result tests; and creating
penalties for violations, including incarceration, possible
drug treatment or removal from the program.

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.

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

1 communities, in lieu of serving time behind bars;

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

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

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

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

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

23 (2) If a circuit court chooses, pursuant to subdivision (1) of
24 this subsection, to implement the program, then the circuit court,

1 together with probation officers, shall identify for enrollment in
2 the program individuals who are serving a term of probation who are
3 at high risk of failing to observe the conditions of supervision
4 and of being returned to incarceration as a result of such failure.

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

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

22 (B) Probation officers shall monitor probationers for
23 violations of other rules and probation terms, including, but not
24 limited to, failure to pay court-ordered financial obligations such

1 as child support or victim restitution or failure to appear at
2 appointments with probation officers.

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

5 (6) Upon the arrest of the individual under subdivision five
6 of this subsection for violation of the terms of probation, and if
7 it then appears to the satisfaction of the court or judge that any
8 condition of probation has been violated, the court or judge shall
9 impose a sentence on the probationer of two to ten days in jail for
10 the first violation of probation, four to twenty days in jail for
11 a second violation of probation, one to four weeks in jail for a
12 third violation of probation, and one to four months in jail for a
13 fourth and subsequent violations of probation. Probationers who
14 are found to repeatedly violate the terms of probation under this
15 section through the use of drugs may be ordered by the court or
16 judge into a residential substance abuse treatment program.
17 Probationers who are found by a court to habitually fail to abide
18 by the program rules and pose a threat to public safety shall be
19 removed from the program and be subject to the provisions of
20 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.