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HOUSE BILL 178

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT; PROVIDING SUBSTANCE ABUSE TREATMENT FOR PERSONS CHARGED WITH CERTAIN SUBSTANCE ABUSE OFFENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Substance Abuse and Crime Prevention Act".

Section 2. DEFINITIONS.--As used in the Substance Abuse and Crime Prevention Act:

A. "qualified treatment professional" means a person with specialized knowledge, skill, experience, training or education in the area of psychology, psychiatry or addiction therapy and who has the expertise to conduct the addiction and life skills assessment necessary to determine a person's suitability to one or more forms of treatment, including

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1 medication-assisted therapy, and to recommend an appropriate  
2 treatment plan; and

3 B. "substance abuse treatment program" means a  
4 licensed or certified community substance abuse treatment  
5 program, including an outpatient treatment program, halfway  
6 house treatment program, day treatment program, veterans  
7 treatment program, medication-assisted therapy program, drug  
8 education course, drug prevention course, limited inpatient  
9 treatment program or residential drug treatment program.

10 "Substance abuse treatment program" does not include drug  
11 treatment programs offered in prison or jail facilities.

12 Section 3. STAY OF CRIMINAL PROCEEDINGS--SUBSTANCE ABUSE  
13 TREATMENT OPTION.--

14 A. If a person is charged with a misdemeanor in  
15 magistrate or metropolitan court or a felony in district court  
16 for a violation of Subsection A, B, C or D of Section 30-31-23  
17 NMSA 1978, the court may, with the consent of the person,  
18 including a written statement signed by the person waiving the  
19 time limits for commencement of trial pursuant to court rules,  
20 stay all further proceedings with respect to the charge and  
21 order an assessment of the person by a qualified treatment  
22 professional for the purpose of determining the person's  
23 addiction severity, need for treatment and the types of drug  
24 treatment and social services that might be appropriate for the  
25 person. The assessment shall also include recommendations for

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1 an appropriate treatment plan. After receipt of the  
2 assessment, the court may refer the person to a substance abuse  
3 treatment program upon such reasonable conditions, consistent  
4 with the treatment plan, as the court may prescribe. The  
5 period of treatment shall not exceed eighteen months, and the  
6 court shall not order incarceration of the person as a  
7 condition of participation in a substance abuse treatment  
8 program. This subsection does not apply to a person entering a  
9 drug court program.

10 B. Upon violation of the terms and conditions of  
11 participation in a substance abuse treatment program, the court  
12 may allow reinstatement of the criminal proceedings against the  
13 person and the state may proceed as otherwise provided.

14 C. If the person successfully completes the  
15 substance abuse treatment program, the court shall dismiss with  
16 prejudice the proceedings against the person. The court may,  
17 in its discretion, dismiss the proceedings against the person  
18 before the expiration of the maximum period prescribed for the  
19 person's participation in the substance abuse treatment  
20 program.

21 D. Upon dismissal of the proceedings against the  
22 person pursuant to this section, the person may apply to the  
23 court for an order to seal the records relating to the criminal  
24 complaint, information or indictment and dismissal pursuant to  
25 this section. If the court determines, after a hearing, that

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1 the proceedings against the person were dismissed, it shall  
2 enter the order sealing the records; provided that the order is  
3 consistent with federal law. The effect of the order shall be  
4 to restore the person, in the contemplation of the law, to the  
5 status the person occupied before the criminal complaint,  
6 information or indictment. A person on whose behalf an order  
7 sealing the records has been entered shall not subsequently be  
8 found guilty of perjury or giving a false statement in response  
9 to any inquiry made of the person for any purpose due to the  
10 person's failure to acknowledge the arrest, information or  
11 indictment arising from an alleged violation of Subsection A,  
12 B, C or D of Section 30-31-23 NMSA 1978.

13 Section 4. PROBATION AND PAROLE VIOLATIONS--SUBSTANCE  
14 ABUSE TREATMENT OPTION.--If a person is charged with a  
15 violation of the conditions of probation or parole due to the  
16 possession or use of a controlled substance, the court or the  
17 parole board may stay the probation or parole revocation  
18 proceeding and order an assessment and referral in accordance  
19 with Section 3 of the Substance Abuse and Crime Prevention Act.

20 Section 5. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2010.

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