

1 SENATE BILL 321

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Richard C. Martinez and Antonio "Moe" Maestas

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8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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10 AN ACT

11 RELATING TO CONTROLLED SUBSTANCES; ENACTING THE SUBSTANCE ABUSE
12 AND CRIME PREVENTION ACT; PROVIDING SUBSTANCE ABUSE TREATMENT
13 FOR PERSONS CHARGED WITH CERTAIN VIOLATIONS OF THE CONTROLLED
14 SUBSTANCES ACT.

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

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

19 SECTION 2. DEFINITIONS.--As used in the Substance Abuse
20 and Crime Prevention Act:

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

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1 to one or more forms of treatment, including medication-
2 assisted therapy, and to recommend an appropriate treatment
3 plan; and

4 B. "substance abuse treatment program" means a
5 licensed or certified community substance abuse treatment
6 program, including an outpatient treatment program, halfway
7 house treatment program, day treatment program, veterans
8 treatment program, medication-assisted therapy program, drug
9 education course, drug prevention course, limited inpatient
10 treatment program or residential drug treatment program.
11 "Substance abuse treatment program" does not include drug
12 treatment programs offered in prison or jail facilities.

13 SECTION 3. STAY OF CRIMINAL PROCEEDINGS--SUBSTANCE ABUSE
14 TREATMENT OPTION.--

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

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

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

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

23 D. Upon dismissal of the proceedings against the
24 defendant pursuant to this section, the defendant may apply to
25 the court for an order to seal the records relating to the

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1 criminal complaint, information or indictment and dismissal
2 pursuant to this section. If the court determines, after a
3 hearing, that the proceedings against the defendant were
4 dismissed, it shall enter the order sealing the records;
5 provided that the order is consistent with federal law. The
6 effect of the order shall be to restore the defendant, in the
7 contemplation of the law, to the status the defendant occupied
8 before the criminal complaint, information or indictment.

9 E. A person on whose behalf an order sealing the
10 records has been entered shall not subsequently be found guilty
11 of perjury or giving a false statement in response to any
12 inquiry made for any purpose due to the person's failure to
13 acknowledge the arrest, information or indictment arising from
14 an alleged violation of Subsection A, B, C or D of Section
15 30-31-23 NMSA 1978.

16 F. Nothing in this section shall prohibit the
17 district attorneys from maintaining their internal records and
18 files or from accessing the sealed court records.

19 **SECTION 4. PROBATION AND PAROLE VIOLATIONS--SUBSTANCE**
20 **ABUSE TREATMENT OPTION.--**If a person is charged with a
21 violation of the conditions of probation or parole due to the
22 possession or use of a controlled substance, the court or the
23 parole board may stay the probation or parole revocation
24 proceeding and order an assessment and referral in accordance
25 with Section 3 of the Substance Abuse and Crime Prevention Act.

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SECTION 5. LIMITATION.--No person is eligible to participate more than twice in the substance abuse treatment option pursuant to the Substance Abuse and Crime Prevention Act.

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.