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SENATE BILL 620

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Richard C. Martinez

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; PROVIDING REPORTING REQUIREMENTS; REPEALING A SECTION OF THE CONTROLLED SUBSTANCES ACT.

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. LEGISLATIVE FINDINGS.--The legislature finds that:

A. substance abuse treatment is a proven public safety and health measure. A person charged with a nonviolent drug offense who receives appropriate substance abuse treatment will be less likely to abuse drugs and commit future crimes and

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1 will be more likely to live a healthy, stable and productive
2 life;

3 B. public safety will be enhanced by reducing drug-
4 related crime and by preserving jail and prison facilities for
5 violent offenders;

6 C. public health will be improved by reducing drug
7 abuse and drug dependence by referring those persons charged
8 with nonviolent drug offenses to substance abuse treatment
9 programs; and

10 D. community health and safety will be enhanced and
11 taxpayer dollars will be saved if those persons charged with
12 nonviolent drug offenses are referred to substance abuse
13 treatment programs instead of being prosecuted and
14 incarcerated.

15 Section 3. DEFINITION--SUBSTANCE ABUSE TREATMENT
16 PROGRAM.--As used in the Substance Abuse and Crime Prevention
17 Act, "substance abuse treatment program" means a licensed or
18 certified community substance abuse treatment program,
19 including outpatient treatment programs, halfway house
20 treatment programs, day treatment programs, narcotics
21 replacement therapy programs, drug education courses, drug
22 prevention courses, limited inpatient treatment programs,
23 residential drug treatment programs or detoxification programs.
24 "Substance abuse treatment program" does not include drug
25 treatment programs offered in prison or jail facilities.

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1 Section 4. STAY OF CRIMINAL PROCEEDINGS--TREATMENT
2 REQUIRED.--

3 A. If a person has not previously been convicted or
4 has previously been convicted once pursuant to the provisions
5 of Section 30-31-23 NMSA 1978 and is charged with a violation
6 of Section 30-31-23 NMSA 1978, the court shall, with the
7 consent of the person, stay all further criminal proceedings
8 and refer the person to a substance abuse treatment program
9 upon reasonable conditions as the court may prescribe. The
10 period of treatment shall not exceed one year and the court
11 shall not order incarceration of the person as a condition of
12 participation in a substance abuse treatment program.

13 B. Upon violation of the terms and conditions of
14 participation in a substance abuse treatment program, the court
15 may reinstate criminal proceedings against the person and
16 proceed as otherwise provided. The court may, in its
17 discretion, dismiss the proceedings against the person before
18 the expiration of the maximum period prescribed for the
19 person's participation in the substance abuse treatment
20 program.

21 C. If during the period of the person's
22 participation in a substance abuse treatment program the person
23 does not violate any of the conditions for participation in the
24 program, upon expiration of the period, the court shall dismiss
25 the proceedings against the person.

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1 D. Upon the dismissal of the proceedings against
2 the person pursuant to this section, the person may apply to
3 the court for an order to seal the records relating to the
4 person's arrest, indictment or information, finding of guilty
5 and dismissal pursuant to this section, except nonpublic
6 records filed with the attorney general. If the court
7 determines, after a hearing, that the proceedings against the
8 person were dismissed, it shall enter the order. The effect of
9 the order shall be to restore the person, in the contemplation
10 of the law, to the status the person occupied before the arrest
11 or indictment or information. A person in whose behalf an
12 order has been entered shall not subsequently be found guilty
13 of perjury or giving a false statement due to the person's
14 failure to recite or acknowledge the arrest, indictment or
15 information in response to any inquiry made of the person for
16 any purpose.

17 E. Notwithstanding the provisions of Subsection A
18 of this section, a court may elect not to refer a person
19 subject to the provisions of the Substance Abuse and Crime
20 Prevention Act to a substance abuse treatment program if:

21 (1) the person has been convicted of a violent
22 felony within three years of being charged with a violation of
23 Section 30-31-23 NMSA 1978;

24 (2) the person has been sentenced to a term of
25 incarceration that would prevent the person from participating

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1 in a substance abuse treatment program; or

2 (3) in the same proceeding that includes the
3 charge against the person for a violation of Section 30-31-23
4 NMSA 1978, the person has been convicted of or has pending
5 charges for:

6 (a) any other felony offense; or

7 (b) driving a motor vehicle while under
8 the influence of intoxicating liquor or drugs pursuant to
9 Section 66-8-102 NMSA 1978.

10 Section 5. SUBSTANCE ABUSE PROGRAMS--INTERAGENCY
11 BEHAVIORAL HEALTH PURCHASING COLLABORATIVE--REPORTING
12 REQUIREMENTS.--

13 A. The interagency behavioral health purchasing
14 collaborative shall provide a written report no later than
15 October 31, 2007 and every October 31 annually thereafter, to
16 the appropriate interim legislative committee, all New Mexico
17 criminal court judges, the administrative office of the
18 district attorneys and the chief public defender. The report
19 shall evaluate:

20 (1) the fiscal, health and public safety
21 impacts of courts referring persons to substance abuse
22 treatment programs pursuant to the Substance Abuse and Crime
23 Prevention Act; and

24 (2) changes in behavioral health
25 infrastructure, illicit drug overdose rates, drug-related

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1 incarceration costs, drug-related crime rates, drug offender
2 recidivism, prison and jail construction and health services
3 and public assistance attributable to referring persons to
4 substance abuse treatment programs pursuant to the Substance
5 Abuse and Crime Prevention Act.

6 B. The interagency behavioral health purchasing
7 collaborative may contract with public or private agencies for
8 production of the report.

9 Section 6. REPEAL.--Section 30-31-28 NMSA 1978 (being
10 Laws 1972, Chapter 84, Section 28) is repealed.

11 Section 7. EFFECTIVE DATES.--

12 A. The effective date of the provisions of Sections
13 1 through 3 and 5 of this act is July 1, 2007.

14 B. The effective date of the provisions of Sections
15 4 and 6 of this act is January 1, 2008.

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