

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

5  
6  
7  
8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9  
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.

15  
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

.184527.1

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

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

.184527.1

underscoring material = new  
~~[bracketed material] = delete~~

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

.184527.1

underscoring material = new  
~~[bracketed material]~~ = delete

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.

.184527.1

underscored material = new  
~~[bracketed material]~~ = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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.