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HOUSE BILL 441

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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.

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

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1 suitability to one or more forms of treatment, including
2 medication-assisted therapy, and to recommend an appropriate
3 treatment 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,
8 medication-assisted therapy program, drug education course,
9 drug prevention course, limited inpatient treatment program,
10 residential drug treatment program or detoxification 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 person is charged with a violation of
16 Subsection A, B, C or D of Section 30-31-23 NMSA 1978, the
17 court may, with the consent of the person, including a written
18 statement signed by the person waiving the time limits for
19 commencement of trial pursuant to court rules, stay all further
20 proceedings with respect to the charge and order an assessment
21 of the person by a qualified treatment professional for the
22 purpose of determining the person's addiction severity, need
23 for treatment and the types of drug treatment and social
24 services that might be appropriate for the person. The
25 assessment shall also include recommendations for an

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1 appropriate treatment plan. After receipt of the assessment,
2 the court shall refer the person to a substance abuse treatment
3 program upon such reasonable conditions as the court may
4 prescribe. The period of treatment shall not exceed one year,
5 and the court shall not order incarceration of the person as a
6 condition of participation in a substance abuse treatment
7 program.

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

16 C. If during the period of the person's
17 participation in a substance abuse treatment program the person
18 does not violate any of the conditions for participation in the
19 program, upon expiration of the period, the court shall dismiss
20 the proceedings against the person.

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 person's
24 arrest, criminal complaint, indictment or information, finding
25 of guilty and dismissal pursuant to this section, except

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1 nonpublic records filed with the attorney general. If the
2 court determines, after a hearing, that the proceedings against
3 the person were dismissed, it shall enter the order; provided
4 that the order is consistent with federal law. The effect of
5 the order shall be to restore the person, in the contemplation
6 of the law, to the status the person occupied before the arrest
7 or indictment or information. A person in whose behalf an
8 order has been entered shall not subsequently be found guilty
9 of perjury or giving a false statement due to the person's
10 failure to recite or acknowledge the arrest, indictment or
11 information in response to any inquiry made of the person for
12 any purpose.

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

20 Section 5. SUBSTANCE ABUSE TREATMENT PROGRAMS--
21 INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE--
22 REPORTING REQUIREMENTS.--

23 A. The interagency behavioral health purchasing
24 collaborative shall provide a written report no later than
25 October 31, 2009 and every October 31 annually thereafter, to

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1 the appropriate interim legislative committee, all New Mexico
2 criminal court judges, the administrative office of the
3 district attorneys and the chief public defender. The report
4 shall evaluate:

5 (1) the fiscal, health and public safety
6 impacts of courts referring persons to substance abuse
7 treatment programs pursuant to the Substance Abuse and Crime
8 Prevention Act; and

9 (2) changes in behavioral health
10 infrastructure, illicit drug overdose rates, drug-related
11 incarceration costs, drug-related crime rates, drug offender
12 recidivism, prison and jail construction and health services
13 and public assistance attributable to referring persons to
14 substance abuse treatment programs pursuant to the Substance
15 Abuse and Crime Prevention Act.

16 B. The interagency behavioral health purchasing
17 collaborative may contract with public or private agencies for
18 production of the report.

19 Section 6. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2009.