



RECEIVED  
2011 APR -8 AM 8:46  
OFFICE OF  
SECRETARY OF STATE

# State of New Mexico

April 8, 2011

Susana Martinez  
*Governor*

## SENATE EXECUTIVE MESSAGE NO. 51

The Honorable Timothy Z. Jennings, President Pro Tempore  
And Members of the New Mexico State Senate  
State Capitol Building  
Santa Fe, New Mexico 87501

Dear President Pro Tempore Jennings and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning SENATE BILL 321 enacted by the Fiftieth Legislature, First Session, 2011.

This bill authorizes New Mexico courts to divert defendants charged with certain substance abuse offenses from the court system to substance abuse treatment.

My concerns about this bill are many.

First, if the individual completes the prescribed substance abuse program, the court would dismiss the charges, seal any records related to the offender's arrest, and, as a result, enable the offender to commit perjury. This means anytime the offender was required to submit to an employer background check, apply for professional licensing, or asked on any form or application whether he or she had been arrested, the individual would be permitted to lie.

Second, since the offender could be diverted to a substance abuse program twice without being charged for their actions, they could also avoid facing enhanced penalties provided under New Mexico's Habitual Offender Act.

Third, I see no enforcement mechanism in the bill that would monitor an offender's successful completion of the diversion program.

Finally, the bill fails to appropriate any funds to pay for the increased number of individuals directed to undergo treatment. Substance abuse professionals are paid with

SENATE EXECUTIVE MESSAGE NO. 51  
The Honorable Timothy Z. Jennings  
April 8, 2011  
Page 2

General Fund monies, so this is an unfunded mandate. General Fund monies earmarked for substance abuse treatment will be spent in Fiscal Year 2011 under existing programs.

Respectfully yours,



Susana Martinez  
Governor

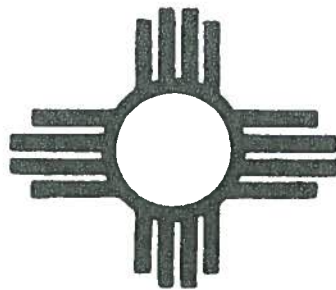
RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 8:46 a.m. p.m.  
Date: April 8 2011

By Billy Klauer  
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_ 2011

By \_\_\_\_\_  
Chief Clerk of the Senate



# The Legislature of the State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER \_\_\_\_\_

SENATE BILL 321

**VETOED**

Introduced by

SENATOR RICHARD C. MARTINEZ AND REPRESENTATIVE ANTONIO "MOE" MAESTAS  
 REPRESENTATIVE ELISEO LEE ALCON  
 REPRESENTATIVE GAIL CHASEY  
 REPRESENTATIVE ELEANOR CHAVEZ  
 REPRESENTATIVE ERNEST H. CHAVEZ  
 REPRESENTATIVE MIGUEL P. GARCIA  
 REPRESENTATIVE JONI MARIE GUTIERREZ  
 REPRESENTATIVE ANTONIO LUJAN  
 REPRESENTATIVE BEN LUJAN  
 REPRESENTATIVE RODOLPHO MARTINEZ  
 REPRESENTATIVE BILL B. O'NEILL  
 REPRESENTATIVE MIMI STEWART  
 REPRESENTATIVE JIM R. TRUJILLO

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE



1 AN ACT  
2 RELATING TO CONTROLLED SUBSTANCES; ENACTING THE SUBSTANCE  
3 ABUSE AND CRIME PREVENTION ACT; PROVIDING SUBSTANCE ABUSE  
4 TREATMENT FOR PERSONS CHARGED WITH CERTAIN VIOLATIONS OF THE  
5 CONTROLLED SUBSTANCES ACT.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

12 A. "qualified treatment professional" means a  
13 person with specialized knowledge, skill, experience,  
14 training or education in the area of psychology, psychiatry  
15 or addiction therapy who has the expertise to conduct the  
16 addiction and life skills assessment necessary to determine a  
17 person's suitability to one or more forms of treatment,  
18 including medication-assisted therapy, and to recommend an  
19 appropriate treatment plan; and

20 B. "substance abuse treatment program" means a  
21 licensed or certified community substance abuse treatment  
22 program, including an outpatient treatment program, halfway  
23 house treatment program, day treatment program, veterans  
24 treatment program, medication-assisted therapy program, drug  
25 education course, drug prevention course, limited inpatient

1 treatment program or residential drug treatment program.  
2 "Substance abuse treatment program" does not include drug  
3 treatment programs offered in prison or jail facilities.

4 SECTION 3. STAY OF CRIMINAL PROCEEDINGS--SUBSTANCE  
5 ABUSE TREATMENT OPTION.--

6 A. If a defendant is charged with a misdemeanor in  
7 magistrate or metropolitan court or a felony in district  
8 court for a violation of Subsection A, B, C or D of Section  
9 30-31-23 NMSA 1978, the court may, after a hearing, with  
10 input from the state and after the defendant signs a written  
11 statement waiving the time limits for commencement of trial  
12 pursuant to court rules, stay all further proceedings with  
13 respect to the charge and order an assessment of the  
14 defendant by a qualified treatment professional for the  
15 purpose of determining the defendant's addiction severity and  
16 need for treatment and the types of drug treatment and social  
17 services that might be appropriate for the defendant. The  
18 assessment shall also include recommendations for an  
19 appropriate treatment plan. After receipt of the assessment,  
20 the court may refer the defendant to a substance abuse  
21 treatment program upon such reasonable conditions, consistent  
22 with the treatment plan, as the court may prescribe,  
23 including court-ordered monitoring of the defendant. The  
24 period of treatment shall not exceed eighteen months, and the  
25 court shall not order incarceration of the defendant as a

1 condition of participation in a substance abuse treatment  
2 program. This subsection does not apply to a defendant  
3 entering a drug court program.

4 B. Upon violation of the terms and conditions of  
5 participation in a substance abuse treatment program, the  
6 court may allow reinstatement of the criminal proceedings  
7 against the defendant and the state may proceed as otherwise  
8 provided.

9 C. If the defendant successfully completes the  
10 substance abuse treatment program, the court shall dismiss  
11 with prejudice the proceedings against the defendant. The  
12 court may, in its discretion, dismiss the proceedings against  
13 the defendant before the expiration of the maximum period  
14 prescribed for the defendant's participation in the substance  
15 abuse treatment program.

16 D. Upon dismissal of the proceedings against the  
17 defendant pursuant to this section, the defendant may apply  
18 to the court for an order to seal the records relating to the  
19 criminal complaint, information or indictment and dismissal  
20 pursuant to this section. If the court determines, after a  
21 hearing, that the proceedings against the defendant were  
22 dismissed, it shall enter the order sealing the records;  
23 provided that the order is consistent with federal law. The  
24 effect of the order shall be to restore the defendant, in the  
25 contemplation of the law, to the status the defendant

1 occupied before the criminal complaint, information or  
2 indictment.

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

10 F. Nothing in this section shall prohibit the  
11 district attorneys from maintaining their internal records  
12 and files or from accessing the sealed court records.

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  
20 Act.

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

25 SECTION 6. EFFECTIVE DATE.--The effective date of the

1 provisions of this act is July 1, 2011. \_\_\_\_\_

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

UNIVERSITY OF CALIFORNIA  
SANTA BARBARA  
LIBRARY



s/John A. Sanchez  
John A. Sanchez, President  
Senate

s/Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

s/Ben Lujan  
Ben Lujan, Speaker  
House of Representatives

s/Stephen R. Arias  
Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011

s/Governor Susana Martinez  
Governor Susana Martinez  
State of New Mexico

30.11.2011 2:00

11/30/11