A bill for an act

relating to corrections; authorizing deferral of judgment for certain drug offenses; repealing the sunset on early release of nonviolent controlled substance offenders; requiring the commissioner of corrections to develop a marketing plan for MINNCOR industries; defining long-term homelessness to include persons released from incarceration for purposes of receiving supportive services; granting the Department of Corrections access to DEED preconfinement data on inmates; providing a tax credit to employers that employ persons with criminal records; requiring the commissioner of corrections to study re-entry facilities and programming; increasing funding for chemical and mental health treatment for inmates and probationers; creating a certificate of rehabilitation; establishing a task force to study and recommend approaches for developing a re-entry court pilot program; establishing a controlled substance law working group; requiring the commissioner of corrections to conduct an internal review of parole and supervised release procedures and sanctions; appropriating money; amending Minnesota Statutes 2006, sections 152.18, subdivision 1; 241.27, by adding a subdivision; 256K.26, subdivision 3; 290.06, by adding a subdivision; 611A.06, subdivision 1a; Minnesota Statutes 2007 Supplement, section 268.19, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 364; repealing Minnesota Statutes 2006, section 244.055, subdivision 11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 152.18, subdivision 1, is amended to read:

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision

16a, the court ~~may~~ shall, without entering a judgment of guilty and with the consent of the person, either (1) defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation~~. The court~~ or (2) enter a written finding that states substantial and compelling reasons why a deferral is inappropriate. For any other person who is found guilty of a violation of section 152.024, subdivision 2; 152.025, subdivision 2; or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period not to exceed the maximum sentence provided for the violation. If the court grants a deferral, it may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 2. Minnesota Statutes 2006, section 241.27, is amended by adding a subdivision to read:

Subd. 1a. **Marketing plan.** The commissioner of corrections, in conjunction with the commissioner of employment and economic development, shall develop and maintain a formal marketing plan to attract private sector businesses and industries to employ inmate services through MINNCOR industries. The plan shall be reviewed and updated annually.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 3. Minnesota Statutes 2006, section 256K.26, subdivision 3, is amended to read:

Subd. 3. **Definitions.** For purposes of this section, the following terms have the meanings given:

(1) "long-term homelessness" means: (i) lacking a permanent place to live continuously for one year or more or at least four times in the past three years; or (ii) being released from incarceration or other detention under federal or state law; and

(2) "household" means an individual, family, or unaccompanied minor experiencing long-term homelessness.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 4. Minnesota Statutes 2007 Supplement, section 268.19, subdivision 1, is amended to read:

Subdivision 1. **Use of data.** (a) Except as provided by this section, data gathered from any person under the administration of the Minnesota Unemployment Insurance Law are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except according to a district court order or section 13.05. A subpoena is not considered a district court order. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(1) state and federal agencies specifically authorized access to the data by state or federal law;

(2) any agency of any other state or any federal agency charged with the administration of an unemployment insurance program;

(3) any agency responsible for the maintenance of a system of public employment offices for the purpose of assisting individuals in obtaining employment;

(4) the public authority responsible for child support in Minnesota or any other state in accordance with section 256.978;

(5) human rights agencies within Minnesota that have enforcement powers;

(6) the Department of Revenue to the extent necessary for its duties under Minnesota laws;

(7) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(8) the Department of Labor and Industry and the Division of Insurance Fraud Prevention in the Department of Commerce for uses consistent with the administration of their duties under Minnesota law;

(9) local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department or to monitor and evaluate the statewide Minnesota family investment program by providing data on recipients and former recipients of food stamps or food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(10) local and state welfare agencies for the purpose of identifying employment, wages, and other information to assist in the collection of an overpayment debt in an assistance program;

(11) local, state, and federal law enforcement agencies for the purpose of ascertaining the last known address and employment location of an individual who is the subject of a criminal investigation;

(12) the United States Citizenship and Immigration Services has access to data on specific individuals and specific employers provided the specific individual or specific employer is the subject of an investigation by that agency;

(13) the Department of Health for the purposes of epidemiologic investigations; and

(14) the Department of Corrections for the purpose of preconfinement and postconfinement employment tracking of ~~individuals who had been committed to the custody of the commissioner of corrections~~ committed offenders for the purpose of case planning.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation under section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except under statute or district court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Data gathered by the department in the administration of the Minnesota unemployment insurance program must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 5. Minnesota Statutes 2006, section 290.06, is amended by adding a subdivision to read:

Subd. 34. **Ex-felon tax credit.** (a) A taxpayer is allowed a credit against the tax imposed under this chapter for employment of qualified ex-felons.

(b) "Qualified ex-felon" has the meaning given in section 51 of the Internal Revenue Code.

(c) The credit equals the credit allowed under section 51 of the Internal Revenue Code without regard to the limitation to federal liability, but is limited to the portion of the federal credit allowed for employment of qualified ex-felons.

(d) The credit under this subdivision is in effect without regard to whether or not the credit allowed under section 51 of the Internal Revenue Code is allowed for wages paid during the taxable year.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2007.

Sec. 6. **[364.20] CERTIFICATE OF GOOD CONDUCT.**

Subdivision 1. **Petition; filing fee.** A person who has been convicted or adjudicated delinquent for a crime may petition a court for a certificate of good conduct as provided in this section. A petition may seek a certificate for a single crime or multiple crimes. When filing the petition, the person shall pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1), unless the court allows the petitioner to proceed in forma pauperis under section 563.01.

Subd. 2. **Contents of petition.** (a) A petition for a certificate of good conduct must be signed under oath by the petitioner and state the following:

(1) the petitioner's full name and all other legal names or aliases by which the petitioner has been known at any time;

(2) the petitioner's date of birth;

(3) all of the petitioner's addresses from the date of the offense in connection with which a certificate is sought, to the date of the petition;

(4) why the certificate is sought and why it should be granted;

(5) the details of the offense for which the certificate is sought, including the date and jurisdiction of the offense; either the names of any victims or that there were no identifiable victims; whether there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims; the court file number; and the date of conviction;

(6) what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(7) the petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the conviction for which the certificate is sought;

(8) the petitioner's criminal charges record indicating all prior and pending criminal charges against the petitioner in this state or another jurisdiction, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

(9) all prior requests by the petitioner, whether for the present offense or for any other offenses, in this state or any other state or federal court, for pardon, return of arrest records, expungement or sealing of a criminal record, or certificate of good conduct or similar certificate, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

(b) If there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the petitioner shall attach a copy of the order to the petition.

Subd. 3. **Service of petition and proposed order.** (a) The petitioner shall serve by mail the petition for a certificate of good conduct and a proposed certificate order on the prosecutorial office that had jurisdiction over the offense for which the certificate is sought.

(b) The prosecutorial office that had jurisdiction over the offense for which the certificate is sought shall serve by mail the petition for the certificate and the proposed certificate order on any victims of the offense for which the certificate is sought who have requested notice pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the hearing described in subdivision 4.

Subd. 4. **Hearing.** A hearing on the petition must be held no sooner than 60 days after service of the petition. If the petition is filed in the judicial district where the offender was sentenced, the sentencing judge should preside over the hearing when possible. Parties to the action may call witnesses to establish or refute the petitioner's eligibility for the certificate. A victim of the offense for which a certificate is sought has a right to submit an oral or written statement to the court at the time of the hearing describing any conduct of the offender that has occurred after the offender's sentencing that is relevant to the issue of whether the offender has been rehabilitated, including the effect of this conduct upon the victim. The judge shall consider the victim's statement when making a decision.

Subd. 5. **Eligibility.** A person is eligible for a certificate of good conduct under this section if the following conditions are met:

(1) the person has been successfully discharged from the sentence imposed for the offense for which the certificate is sought and is not under correctional supervision for any other offense;

(2) the person is not currently required to register as a predatory offender under section 243.166;

(3) the person has been law abiding for the following period immediately preceding the filing of the petition: (i) for a person convicted of a crime against the person or who was required to register as a predatory offender, five years; or (ii) for all other persons, three years;

(4) the person demonstrates rehabilitation, which may be shown, among other ways, by evidence of the person's good character, employment, volunteer activities, or participation in vocational, educational, treatment, or rehabilitation programs;

(5) the person has paid or the court determines the person is making a good faith and consistent effort to pay court-ordered fines, restitution, and other costs related to the crime for which the certificate is sought;

(6) for petitions for certificates for crimes where an element of the offense involved alcohol or a controlled substance, that the person is not abusing alcohol or using a controlled substance;

(7) the issuance of the certificate is consistent with the public interest; and

(8) any other factor deemed relevant by the court, including, but not limited to, the severity of the conduct that constituted the offense for which the certificate is sought.

Subd. 6. **Issuance of certificate.** A judge shall issue a certificate of good conduct to a petitioner if the petitioner establishes by a preponderance of the evidence that the petitioner meets the eligibility requirements specified in subdivision 5, clauses (1) to (7), and any other factor required by the court under subdivision 5, clause (8).

Subd. 7. **Record with Bureau of Criminal Apprehension.** After ruling on a petition under this section, the court shall notify the Bureau of Criminal Apprehension of the court's ruling. The bureau shall record the court's ruling on the petitioner's criminal record.

Subd. 8. **Effect of certificate.** (a) A certificate of good conduct issued under this section creates a presumption of rehabilitation in favor of the person to whom it was issued and relieves the person of any state-imposed collateral sanction, as defined in section 609B.050, relating to eligibility for housing, employment, or professional licensing arising from a crime for which the certificate was issued.

(b) A certificate of good conduct has no effect on collateral sanctions that are unrelated to housing, employment, or licensing.

(c) Consistent with paragraph (a) and other applicable law, a housing or licensing authority or employer may, but is not required to, take into account a conviction that is the subject of a certificate of good conduct when making a housing, licensing, or hiring decision.

(d) A housing or licensing authority or employer is not civilly or criminally liable for relying on a certificate of good conduct when offering housing, employment, or licensing to a person. This paragraph does not relieve a person from any other legal duty in making a housing, employment, or licensing decision not related to the conduct that is the subject of the certificate of good conduct.

(e) Evidence relating to a conviction for which a certificate of good conduct has been issued is inadmissible in a civil action against a housing or licensing authority or employer for negligence or other fault in renting, leasing, licensing, or hiring if the authority or employer relied on the certificate when making the underlying decision.

(f) The existence of a certificate of good conduct is admissible as evidence of reasonable care by a person who relied on it when making a housing, licensing, or hiring decision related to the subject of the certificate.

Subd. 9. **Revocation.** A certificate of good conduct is revoked by operation of law if the subject of the certificate is subsequently convicted or adjudicated delinquent for a new crime.

Subd. 10. **Limited effect.** A certificate of good conduct has only the effect given in this section. A certificate does not act as a pardon or expungement. The certificate

does not relieve the person to whom it was issued of any collateral sanctions or legal disabilities related to predatory offender registration, eligibility to possess firearms, or driver's license sanctions.

Subd. 11. **Crime for misuse.** Unless a greater penalty is specified elsewhere in statute, a person who knowingly uses or attempts to use a revoked certificate of good conduct or who fraudulently alters or forges a certificate of good conduct is guilty of a misdemeanor.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 7. Minnesota Statutes 2006, section 611A.06, subdivision 1a, is amended to read:

Subd. 1a. **Notice of expungement or certificate of good conduct required.** The prosecuting authority with jurisdiction over an offense for which expungement or a certificate of good conduct under section 364.20 is being sought shall make a good faith effort to notify a victim that the expungement or a certificate is being sought if: (1) the victim has mailed to the prosecuting authority with jurisdiction over an offense for which expungement or a certificate is being sought a written request for this notice, or (2) the victim has indicated on a request for notice of ~~expungement~~ release submitted under subdivision 1 a desire to be notified in the event the offender seeks an expungement or a certificate for the offense.

A copy of any written request for a notice of expungement or a certificate request received by the commissioner of corrections or other custodial authority shall be forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates. The prosecutorial authority complies with this section upon mailing a copy of an expungement or a certificate petition relating to the notice to the address which the victim has most recently provided in writing.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 8. **GUIDELINES FOR REVOCATION OF PAROLE AND SUPERVISED RELEASE; DEPARTMENT OF CORRECTIONS INTERNAL REVIEW; REPORT TO LEGISLATURE.**

The commissioner of corrections shall perform an internal review of the department's guidelines for revocation of parole and supervised release. At a minimum, the commissioner shall assess: (1) the appropriateness and proportionality of the sanctions set forth in the guidelines; (2) the use of intermediate sanctions and the potential for expanding the use and number of intermediate sanctions; and (3) the option of capping the

number of days that an offender may be re-incarcerated for a parole or supervised release violation. By December 1, 2008, the commissioner shall report the results of the internal review to the chairs and ranking minority members of the senate and house committees and divisions having jurisdiction over criminal justice policy and funding.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 9. **WORKING GROUP ON CONTROLLED SUBSTANCE LAWS; REPORT TO LEGISLATURE.**

Subdivision 1. **Establishment; membership; staff.** (a) By July 1, 2008, the chair of the house Public Safety Finance Division and the chair of the senate Public Safety Budget Division shall jointly appoint a working group on the state's controlled substance laws. The working group shall include:

(1) two representatives of the Minnesota County Attorneys Association;

(2) two representatives of the Board of Public Defense;

(3) two representatives of state law enforcement associations;

(4) two representatives of the Judicial Council;

(5) two representatives from community corrections and probation;

(6) two experts in the fields of drug treatment and controlled substance laws;

(7) three individuals who are not affiliated with any of the associations in clauses (1) to (6) and who have relevant experience related to sentencing policy or the criminal justice field; and

(8) two community members that reside in an area adversely affected by controlled substance crimes and violent crimes, one of whom is a member of a community crime prevention organization.

(b) Staff support for the working group shall be provided by the Department of Corrections and the Sentencing Guidelines Commission.

Subd. 2. **Subject matter.** (a) The working group must review, assess, and make specific recommendations regarding the following alternatives for modification of Minnesota's controlled substance laws:

(1) revising the threshold amounts for Minnesota's controlled substance crimes;

(2) establishing a separate sentencing guidelines grid for drug offenses;

(3) establishing additional aggravating factors so as to target certain particularly dangerous offenders; and

(4) revising the criminal history point calculations for repeat drug offenders.

(b) As part of its review of the various possible reforms, the working group may also study and consider:

(1) the significance, if any, of current rates of departure from presumptive guidelines sentences for controlled substance crimes;

(2) the significance, if any, of current rates of departure from presumptive guidelines sentences for controlled substance crimes for identifiable categories of offenders;

(3) the impact that recent United States Supreme Court criminal sentencing decisions have on implementing further reform;

(4) the barriers to comparing Minnesota's sentencing data with data from other states;

(5) strategies for reducing probation and supervised release violations among drug offenders;

(6) strategies for increasing the efficacy of programs that are now available to treat drug offenders;

(7) the likely impact of any recommended change in policy upon victims of drug-related crimes and the neighborhoods in which these crimes occur;

(8) the likely impact of any recommended change in policy upon the efficacy of law enforcement, prosecution, public defender, or court personnel; or

(9) any other sentencing-related matter that the working group sees fit to consider.

Subd. 3. **Report to legislature.** The working group shall report its findings and recommendations to the chair of the house Public Safety Finance Division and the chair of the senate Public Safety Budget Division by January 16, 2009.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. **RE-ENTRY FACILITIES STUDY; REPORT TO LEGISLATURE.**

The commissioner of corrections shall study and make recommendations regarding the need for and feasibility of establishing re-entry facilities designed to assist in the reintegration of offenders released from incarceration. The commissioner shall specifically study and make recommendations regarding: (1) whether there are existing state facilities that can serve as re-entry facilities; (2) the cost of developing and operating re-entry facilities; (3) what programming re-entry facilities should provide; (4) which offenders should spend time in re-entry facilities and the amount of time offenders should spend in the facilities; and (5) any other issues the commissioner deems appropriate. On or before December 1, 2008, the commissioner shall submit a report containing the study's findings and recommendations to the chairs and ranking minority members of the senate and house committees and divisions with jurisdiction over criminal justice funding and policy.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 11. **RE-ENTRY COURT TASK FORCE.**

Subdivision 1. **Establishment.** The Judicial Council shall establish a task force to study and recommend approaches and strategies for developing a re-entry court pilot program. The purpose of the re-entry court is to aid the reintegration of offenders into the community and reduce recidivism by:

(1) improving tracking and supervision of offenders upon release;

(2) preparing communities to address public safety concerns; and

(3) providing services necessary to assist offenders in reconnecting with their families and communities.

Subd. 2. **Membership.** The task force shall consist of the following members:

(1) a representative from the supreme court;

(2) two district court judges;

(3) a court administrator;

(4) a county attorney selected by the Minnesota County Attorneys Association;

(5) a public defender selected by the Board of Public Defense;

(6) a law enforcement representative;

(7) a representative from community corrections;

(8) the commissioner of corrections or a designee;

(9) the commissioner of human services or a designee;

(10) representatives from community organizations that specialize in mental health counseling, substance abuse treatment, family counseling, employment and vocational assistance; and housing assistance; and

(11) any other persons designated by the Judicial Council.

Subd. 3. **Report.** By December 1, 2008, the task force shall report to the chairs and ranking minority members of the senate and house committees and divisions having jurisdiction over criminal justice policy and funding on its findings and recommendations regarding a re-entry court pilot program, including anticipated costs and any legislative recommendations. As part of its study and report, the task force shall assess the re-entry court's ability to issue certificates of relief to offenders to exempt them from specific collateral consequences.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 12. **APPROPRIATION.**

$..... is appropriated in fiscal year 2009 from the general fund to the commissioner of corrections to provide additional chemical and mental health treatment services to inmates in state prisons and to offenders on supervised and conditional release.

This appropriation shall become part of the base level funding for the Department of Corrections.

Sec. 13. **REPEALER.**

Minnesota Statutes 2006, section 244.055, subdivision 11, is repealed.

244.055 CONDITIONAL RELEASE OF NONVIOLENT CONTROLLED SUBSTANCE OFFENDERS; OPPORTUNITY FOR DRUG TREATMENT.

Subd. 11. **Sunset.** This section expires July 1, 2009.