A bill for an act

relating to public safety; establishing certificates of good conduct and describing the effects of a certificate and eligibility for one; appropriating money; amending Minnesota Statutes 2010, sections 364.03, subdivision 3; 364.09; 609A.03, subdivisions 1, 2; 611A.06, subdivision 1a; proposing coding for new law in Minnesota Statutes, chapter 364.

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

Section 1. Minnesota Statutes 2010, section 364.03, subdivision 3, is amended to read:

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of a certificate of good conduct under section 364.19 or:

(1) a copy of the local, state, or federal release order; and

(2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

(3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(1) the nature and seriousness of the crime or crimes for which convicted;

(2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) the age of the person at the time the crime or crimes were committed;

(4) the length of time elapsed since the crime or crimes were committed; and

(5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Sec. 2. Minnesota Statutes 2010, section 364.09, is amended to read:

364.09 EXCEPTIONS.

(a) ~~This chapter does~~ Sections 364.01 to 364.10 do not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) ~~This chapter does~~ Sections 364.01 to 364.10 do not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this

chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) ~~This chapter does~~ Sections 364.01 to 364.10 do not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

(e) This chapter does not apply to any person who has been denied a license to practice chiropractic or whose license to practice chiropractic has been revoked by the board in accordance with section 148.10, subdivision 7.

Sec. 3. **[364.19] CERTIFICATE OF GOOD CONDUCT.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given in this subdivision.

(b) "Petitioner" means the person who files a petition for a certificate of good conduct.

(c) "Prosecuting attorney" means the attorney representing the jurisdiction where the petitioner was convicted or adjudicated delinquent for the crime for which the petitioner seeks a certificate of good conduct.

Subd. 2. **Petition; filing fee.** (a) A person who has been convicted or adjudicated delinquent by a Minnesota state district court for a crime committed in this state may petition a court for a certificate of good conduct as provided in this section. A petitioner may seek a certificate for a single crime or multiple crimes. When filing the petition, the petitioner shall pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1).

(b) A person is not eligible for a certificate of good conduct and may not file a petition under this section if the person has filed a petition for a certificate of good conduct or expungement in the past two years.

Subd. 3. **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 name under which the petitioner was convicted or adjudicated and all other aliases or names by which the petitioner has been known at any time;

(2) the petitioner's date of birth;

(3) all of the addresses at which the petitioner has resided at any time from the date of the offense in connection with which a certificate is sought, to the date of the petition;

(4) a statement of the reasons why the petitioner is seeking a certificate and why it should be granted;

(5) the date and terms of sentence or disposition and the name of the offense for which it was imposed; a detailed description of the crime for which the certificate is sought; the names of the judge and prosecuting attorney; the names of any individuals or businesses who were 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 or adjudication;

(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 or delinquency adjudications for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions or adjudications in any other state, federal court, or foreign country, whether the convictions or adjudications occurred before or after the conviction or adjudication 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;

(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; and

(10) any other information included on the form created by the district court for certificate of good conduct petitions.

(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.

(c) The petitioner shall include with the petition an executed criminal history consent form, including fingerprints, and a money order or check payable to either the Bureau of Criminal Apprehension or the court, at the discretion of the court, in an amount equal to the actual cost to the bureau and the court of conducting the criminal history background check. A court deciding to receive payment may, at its discretion, accept payment in

the form of a negotiable instrument other than a money order or check and shall pay the superintendent of the Bureau of Criminal Apprehension directly to conduct the background check. The superintendent shall conduct the background check by retrieving criminal history data maintained in the criminal justice information system computers and shall also conduct a search of the national criminal records repository, including the criminal justice data communications network. The superintendent is authorized to exchange fingerprints with the Federal Bureau of Investigation for purposes of the criminal history check. After concluding the background check, the superintendent shall provide the court with a copy of the petitioner's criminal record or a statement that the petitioner is not the subject of a criminal history record at the bureau.

Subd. 4. **Service of petition and proposed order.** (a) The petitioner shall serve the petition for a certificate of good conduct and a proposed certificate order on the prosecutorial office with jurisdiction over the conviction or adjudication for which the certificate is sought. Service must comply with rule 4.03 or 4.05 of the Minnesota Rules of Civil Procedure.

(b) The prosecutorial office shall make a reasonable and good-faith effort to notify 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 5.

Subd. 5. **Hearing.** A hearing on the petition shall 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. The prosecuting attorney may be a party to the hearing and represent the interests of the state at the petition proceedings. 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 petitioner that has occurred after the petitioner's sentencing that is relevant to the issue of whether the petitioner has been rehabilitated, including the effect of this conduct upon the victim. The court shall receive testimony or evidence from either party to the petition. When making a decision, the court shall consider the entire record, including the victim's statement.

Subd. 6. **Eligibility.** (a) A petitioner is eligible for a certificate of good conduct under this section if the following conditions are met:

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

(2) if applicable, a period of at least five years has elapsed since the petitioner was required to register as a predatory offender under section 243.166;

(3) the petitioner has never been convicted of a violation of section 609.342, 609.343, 609.344, or 609.3453, or a similar offense from another state or the United States;

(4) the petitioner has not been convicted of a crime, other than a violation of chapter 169, for the following period immediately preceding the filing of the petition: (i) for a person convicted of a violent crime, as defined in section 609.1095, or who was required to register as a predatory offender, five years; or (ii) for all other persons, three years;

(5) the petitioner is not currently charged with a criminal offense;

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

(7) the petitioner has paid or the court determines the petitioner 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;

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

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

(10) 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.

(b) The waiting period described in paragraph (a), clause (4), does not include any period of time that the petitioner is under correctional or probationary supervision for an offense.

(c) As used in paragraph (a), clauses (3) and (4), "convicted" includes a stay of adjudication, imposition, or execution of sentence.

Subd. 7. **Issuance of certificate.** The court 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 subdivisions 2, paragraph (b); and 6, paragraph (a), clauses (1) to (9), and any other factor required by the court under subdivision 6, paragraph (a), clause (10).

Subd. 8. **Record with Bureau of Criminal Apprehension.** If a court grants a certificate of good conduct under this section, the court shall notify the Bureau of

Criminal Apprehension of the court's ruling. The bureau shall record the certificate on the petitioner's criminal record.

Subd. 9. **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 or occupational licensing arising from a crime for which the certificate was issued. For background studies under chapter 245C, the commissioner of human services may not disqualify any individual solely for a crime for which the individual has received a certificate of good conduct. A disqualified holder of a certificate still must request a set aside. The commissioner may deny the request only if other factors exist that indicate that the risk of harm posed by the person outweighs the presumption of rehabilitation under the certificate.

(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, consider a conviction or delinquency adjudication that is the subject of a certificate of good conduct when making a housing, licensing, or employment decision. No cause of action exists against a housing or licensing authority or employer based on consideration of or a failure to consider a certificate of good conduct when making a housing, licensing, or employment decision. This paragraph does not relieve a person from any other legal duty in making a housing, licensing, or employment decision not related to the conduct that is the subject of the certificate of good conduct.

(d) Evidence relating to a conviction or delinquency adjudication 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 making a housing, licensing, or employment decision if the authority or employer relied on the certificate when making the underlying decision.

(e) 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. 10. **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. The district court may revoke a certificate of good conduct at any time based on evidence that the petitioner has not been law abiding or that the petitioner intentionally provided information in the petition that was false.

Subd. 11. **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. Any crime for which a certificate has been granted may still be used in any criminal sentencing proceeding and to enhance the charging or sentence for any crime as provided by law.

Subd. 12. **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 gross misdemeanor.

Sec. 4. Minnesota Statutes 2010, section 609A.03, subdivision 1, is amended to read:

Subdivision 1. **Petition; filing fee.** (a) An individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition under this section and pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The filing fee may be waived in cases of indigency and shall be waived in the cases described in section 609A.02, subdivision 3.

(b) A person is not eligible for an expungement and may not file a petition under this chapter if the person has filed a petition for an expungement or a certificate of good conduct under section 364.19 in the past two years.

Sec. 5. Minnesota Statutes 2010, section 609A.03, subdivision 2, is amended to read:

Subd. 2. **Contents of petition.** (a) A petition for expungement shall be signed under oath by the petitioner and shall 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 or alleged offense in connection with which an expungement order is sought, to the date of the petition;

(4) why expungement is sought, if it is for employment or licensure purposes, the statutory or other legal authority under which it is sought, and why it should be granted;

(5) the details of the offense or arrest for which expungement is sought, including the date and jurisdiction of the occurrence, 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 or of dismissal;

(6) in the case of a conviction, 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) 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 arrest or conviction for which expungement is sought;

(8) 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, a certificate of good conduct or similar certificate, or expungement or sealing of a criminal record, 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.

Sec. 6. Minnesota Statutes 2010, 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 364.19 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.

Sec. 7. **APPROPRIATIONS.**

(a) $..... for the fiscal year ending June 30, 2012, and $..... for the fiscal year ending June 30, 2013, are appropriated to the district courts from the general fund to implement Minnesota Statutes, section 364.19.

(b) $..... for the fiscal year ending June 30, 2012, and $..... for the fiscal year ending June 30, 2013, are appropriated to the commissioner of public safety from the general fund to implement Minnesota Statutes, section 364.19.