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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. 1238

February 22, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act  
1.2 relating to public safety; proposing the Controlled Substance Reform Act of  
1.3 2007; authorizing deferral of judgment for certain drug offenses; making certain  
1.4 affirmative defenses available for driving while impaired offenses; requiring  
1.5 appointment of a conditional release screening committee; requiring the  
1.6 commissioner of human services to publish best practice standards for publicly  
1.7 funded prison-based substance abuse treatment programs; appropriating money;  
1.8 amending Minnesota Statutes 2006, sections 152.18, subdivision 1; 169A.46, by  
1.9 adding a subdivision; 244.055, subdivision 1.

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

1.11 Section 1. CONTROLLED SUBSTANCE REFORM ACT OF 2007.

1.12 Sections 2 to 7 shall be known as the Controlled Substance Reform Act of 2007.

1.13 Sec. 2. Minnesota Statutes 2006, section 152.18, subdivision 1, is amended to read:

1.14 Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If  
1.15 any person who has not previously participated in or completed a diversion program  
1.16 authorized under section 401.065 or who has not previously been placed on probation  
1.17 without a judgment of guilty and thereafter been discharged from probation under  
1.18 this section is found guilty of a violation of section 152.024, subdivision 2, 152.025,  
1.19 subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance,  
1.20 after trial or upon a plea of guilty, and the court determines that the violation does not  
1.21 qualify as a subsequent controlled substance conviction under section 152.01, subdivision  
1.22 16a, the court ~~may~~ shall, without entering a judgment of guilty and with the consent of  
1.23 the person, either (1) defer further proceedings and place the person on probation upon  
1.24 such reasonable conditions as it may require and for a period, not to exceed the maximum  
1.25 sentence provided for the violation. ~~The court~~ or (2) enter a written finding that states

2.1 substantial and compelling reasons why a deferral is inappropriate. For any other person  
2.2 who is found guilty of a violation of section 152.024, subdivision 2; 152.025, subdivision  
2.3 2; or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial  
2.4 or upon a plea of guilty, and the court determines that the violation does not qualify as a  
2.5 subsequent controlled substance conviction under section 152.01, subdivision 16a, the  
2.6 court may, without entering a judgment of guilty and with the consent of the person, defer  
2.7 further proceedings and place the person on probation upon such reasonable conditions  
2.8 as it may require and for a period not to exceed the maximum sentence provided for the  
2.9 violation. If the court grants a deferral, it may give the person the opportunity to attend  
2.10 and participate in an appropriate program of education regarding the nature and effects of  
2.11 alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the  
2.12 probation, the court may enter an adjudication of guilt and proceed as otherwise provided.  
2.13 The court may, in its discretion, dismiss the proceedings against the person and discharge  
2.14 the person from probation before the expiration of the maximum period prescribed for the  
2.15 person's probation. If during the period of probation the person does not violate any of the  
2.16 conditions of the probation, then upon expiration of the period the court shall discharge the  
2.17 person and dismiss the proceedings against that person. Discharge and dismissal under this  
2.18 subdivision shall be without court adjudication of guilt, but a not public record of it shall  
2.19 be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts  
2.20 in determining the merits of subsequent proceedings against the person. The not public  
2.21 record may also be opened only upon court order for purposes of a criminal investigation,  
2.22 prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections  
2.23 authorities, the bureau shall notify the requesting party of the existence of the not public  
2.24 record and the right to seek a court order to open it pursuant to this section. The court shall  
2.25 forward a record of any discharge and dismissal under this subdivision to the bureau which  
2.26 shall make and maintain the not public record of it as provided under this subdivision. The  
2.27 discharge or dismissal shall not be deemed a conviction for purposes of disqualifications  
2.28 or disabilities imposed by law upon conviction of a crime or for any other purpose.

2.29 For purposes of this subdivision, "not public" has the meaning given in section  
2.30 13.02, subdivision 8a.

2.31 **EFFECTIVE DATE.** This section is effective July 1, 2007.

2.32 Sec. 3. Minnesota Statutes 2006, section 169A.46, is amended by adding a subdivision  
2.33 to read:

2.34 **Subd. 3. Application in appeal to administrative sanction.** The affirmative  
2.35 defenses described in this section are available to a defendant in a criminal proceeding

3.1 for the specified violation or violations, as well as to the person when making an  
3.2 administrative or judicial appeal of an administrative sanction in accordance with sections  
3.3 169A.53 (driver's license revocation), 169A.60 (vehicle license plate impoundment),  
3.4 or 169A.63 (vehicle forfeiture).

3.5 **EFFECTIVE DATE.** This section is effective July 1, 2007, for use in criminal and  
3.6 civil law proceedings occurring on or after that date.

3.7 Sec. 4. Minnesota Statutes 2006, section 244.055, subdivision 1, is amended to read:

3.8 Subdivision 1. **Conditional release authority; conditional release screening**  
3.9 **committee.** (a) The commissioner of corrections shall appoint a conditional release  
3.10 screening committee. The committee shall make recommendations regarding an inmate's  
3.11 suitability for conditional release under this section. The committee shall consist of  
3.12 five members: one retired judge, a public defender, a county attorney, a mental health  
3.13 professional, and a probation officer. Committee members serve at the pleasure of the  
3.14 commissioner and shall not collect a salary. Members are entitled to per diem and expense  
3.15 reimbursement.

3.16 (b) The commissioner of corrections has the authority to release offenders committed  
3.17 to the commissioner's custody who meet the requirements of this section and of any  
3.18 rules adopted by the commissioner. The commissioner's decisions must be based on  
3.19 the conditional release screening committee's recommendations. If the commissioner  
3.20 rejects the screening committee's recommendation for an inmate, the commissioner must  
3.21 state in writing why the recommendation was rejected. A copy of the commissioner's  
3.22 recommendation rejection must be provided to the screening committee and the inmate.

3.23 **EFFECTIVE DATE.** This section is effective July 1, 2007.

3.24 Sec. 5. **PRISON-BASED TREATMENT; BEST PRACTICE STANDARDS.**

3.25 To improve the quality of prison-based substance abuse treatment and to reduce the  
3.26 rate of criminal recidivism among drug offenders, the commissioner of human services, in  
3.27 conjunction with the commissioner of corrections, shall develop best practice standards  
3.28 for publicly funded prison-based substance abuse treatment programs. The commissioner  
3.29 of human services shall publish the best practice standards on or before March 15, 2008.  
3.30 The commissioner of corrections shall implement the best practice standards on or  
3.31 before November 1, 2008. The commissioner of human services shall provide technical  
3.32 assistance and support to the commissioner of corrections while implementing the best  
3.33 practice standards.

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

4.2 **Sec. 6. SENTENCING GUIDELINES; CONTROLLED SUBSTANCE**  
4.3 **SENTENCING PROPORTIONALITY.**

4.4 As part of the sentencing guidelines commission's annual report to the legislature,  
4.5 due on or before January 1, 2008, the commission shall recommend changes to the  
4.6 sentencing guidelines grid for controlled substance offenses. The recommendations  
4.7 shall seek to make presumptive sentences for controlled substance offenses proportional  
4.8 with similarly severe offenses in Minnesota and proportional with similar controlled  
4.9 substance offenses from other states in the Upper Midwest, including Iowa, Michigan,  
4.10 North Dakota, South Dakota, and Wisconsin.

4.11 **Sec. 7. APPROPRIATION.**

4.12 \$..... is appropriated from the general fund to the commissioner of health to develop  
4.13 the best practice standards required under section 5. This is a onetime appropriation.