

A bill for an act

relating to public defense; updating and clarifying public defense provisions of law; modifying right to representation by the public defender; requiring the state public defender to supervise the statewide public defender system; authorizing appointment of a chief appellate public defender; providing for representation by the chief appellate public defender; striking statutory language relating to public defender co-pays; amending Minnesota Statutes 2006, sections 270A.03, subdivision 5; 590.05; 611.14; 611.17, subdivision 1; 611.20, subdivision 6; 611.215, subdivisions 1, 1a; 611.23; 611.24; 611.25, subdivision 1; 611.26, subdivisions 2, 7; 611.27, subdivisions 3, 13, 15; 611.35; repealing Minnesota Statutes 2006, section 611.20, subdivision 5.

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

Section 1. Minnesota Statutes 2006, section 270A.03, subdivision 5, is amended to read:

Subd. 5. **Debt.** "Debt" means a legal obligation of a natural person to pay a fixed and certain amount of money, which equals or exceeds \$25 and which is due and payable to a claimant agency. The term includes criminal fines imposed under section 609.10 or 609.125, fines imposed for petty misdemeanors as defined in section 609.02, subdivision 4a, and restitution. ~~The term also includes the co-payment for the appointment of a district public defender imposed under section 611.17, paragraph (c).~~ A debt may arise under a contractual or statutory obligation, a court order, or other legal obligation, but need not have been reduced to judgment.

A debt includes any legal obligation of a current recipient of assistance which is based on overpayment of an assistance grant where that payment is based on a client waiver or an administrative or judicial finding of an intentional program violation; or where the debt is owed to a program wherein the debtor is not a client at the time

notification is provided to initiate recovery under this chapter and the debtor is not a current recipient of food support, transitional child care, or transitional medical assistance.

A debt does not include any legal obligation to pay a claimant agency for medical care, including hospitalization if the income of the debtor at the time when the medical care was rendered does not exceed the following amount:

- (1) for an unmarried debtor, an income of \$8,800 or less;
- (2) for a debtor with one dependent, an income of \$11,270 or less;
- (3) for a debtor with two dependents, an income of \$13,330 or less;
- (4) for a debtor with three dependents, an income of \$15,120 or less;
- (5) for a debtor with four dependents, an income of \$15,950 or less; and
- (6) for a debtor with five or more dependents, an income of \$16,630 or less.

The income amounts in this subdivision shall be adjusted for inflation for debts incurred in calendar years 2001 and thereafter. The dollar amount of each income level that applied to debts incurred in the prior year shall be increased in the same manner as provided in section 1(f) of the Internal Revenue Code of 1986, as amended through December 31, 2000, except that for the purposes of this subdivision the percentage increase shall be determined from the year starting September 1, 1999, and ending August 31, 2000, as the base year for adjusting for inflation for debts incurred after December 31, 2000.

Debt also includes an agreement to pay a MinnesotaCare premium, regardless of the dollar amount of the premium authorized under section 256L.15, subdivision 1a.

Sec. 2. Minnesota Statutes 2006, section 590.05, is amended to read:

590.05 INDIGENT PETITIONERS.

A person financially unable to obtain counsel who desires to pursue the remedy provided in section 590.01 may apply for representation by the state public defender. The state public defender shall represent such person under the applicable provisions of sections 611.14 to 611.27, if the person has not already had a direct appeal of the conviction. ~~If, however, the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case.~~ The state public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to obtain counsel.

Sec. 3. Minnesota Statutes 2006, section 611.14, is amended to read:

611.14 RIGHT TO REPRESENTATION BY PUBLIC DEFENDER.

The following persons who are financially unable to obtain counsel are entitled to be represented by a public defender:

(1) a person charged with a felony, gross misdemeanor, or misdemeanor including a person charged under sections 629.01 to 629.29;

(2) a person appealing from a conviction of a felony or gross misdemeanor, or a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction, ~~but if the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case;~~

(3) a person who is entitled to be represented by counsel under section 609.14, subdivision 2; or

(4) a minor ten years of age or older who is entitled to be represented by counsel under section 260B.163, subdivision 4, or 260C.163, subdivision 3.

Sec. 4. Minnesota Statutes 2006, section 611.17, subdivision 1, is amended to read:

Subdivision 1. **Standards for district public defense eligibility.** (a) Each judicial district must screen requests for representation by the district public defender. A defendant is financially unable to obtain counsel if:

(1) the defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or

(2) the defendant, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter.

(b) Upon a request for the appointment of counsel, the court shall make appropriate inquiry into the financial circumstances of the applicant, who shall submit a financial statement under oath or affirmation setting forth the applicant's assets and liabilities, including the value of any real property owned by the applicant, whether homestead or otherwise, less the amount of any encumbrances on the real property, the source or sources of income, and any other information required by the court. The applicant shall be under a continuing duty while represented by a public defender to disclose any changes in the applicant's financial circumstances that might be relevant to the applicant's eligibility for a public defender. The state public defender shall furnish appropriate forms for the financial

statements. The forms must contain conspicuous notice of the applicant's continuing duty to disclose to the court changes in the applicant's financial circumstances. The forms must also contain conspicuous notice of the applicant's obligation to make a co-payment for the services of the district public defender, as specified under paragraph (c). The information contained in the statement shall be confidential and for the exclusive use of the court and the public defender appointed by the court to represent the applicant except for any prosecution under section 609.48. A refusal to execute the financial statement or produce financial records constitutes a waiver of the right to the appointment of a public defender. The court shall not appoint a district public defender to a defendant who is financially able to retain private counsel but refuses to do so.

An inquiry to determine financial eligibility of a defendant for the appointment of the district public defender shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the prerelease investigation provided for in Minnesota Rule of Criminal Procedure 6.02, subdivision 3. In no case shall the district public defender be required to perform this inquiry or investigate the defendant's assets or eligibility. The court has the sole duty to conduct a financial inquiry. The inquiry must include the following:

- (1) the liquidity of real estate assets, including the defendant's homestead;
- (2) any assets that can be readily converted to cash or used to secure a debt;
- (3) the determination of whether the transfer of an asset is voidable as a fraudulent conveyance; and
- (4) the value of all property transfers occurring on or after the date of the alleged offense. The burden is on the accused to show that he or she is financially unable to afford counsel. Defendants who fail to provide information necessary to determine eligibility shall be deemed ineligible. The court must not appoint the district public defender as advisory counsel.

~~(c) Upon appointment of the public defender, an individual who receives public defender services shall be obligated to pay to the court a co-payment for representation provided by a public defender. The co-payment shall be according to the following schedule:~~

- ~~(1) if the person was charged with a felony, \$200;~~
- ~~(2) if the person was charged with a gross misdemeanor, \$100; or~~
- ~~(3) if the person was charged with a misdemeanor, \$50.~~

~~If the person is a child and was appointed counsel under the provisions of section 260B.163, subdivision 4, the parents of the child shall pay to the court a co-payment of \$100. If the person is a parent of a child and the parent was appointed counsel under~~

~~the provisions of section 260C.163, subdivision 3, the parent shall pay to the court a co-payment of \$200.~~

~~If a term of probation is imposed as a part of an offender's sentence, the co-payment required by this section must not be made a condition of probation. The co-payment required by this section is a civil obligation and must not be made a condition of a criminal sentence. Collection of the co-payment may be made through the provisions of chapter 270A, the Revenue Recapture Act.~~

~~(d) All public defender co-pay revenue collected under paragraph (c) and revenues less statutory fees collected under chapter 270A shall be deposited in the public defender co-pay account in the special revenue fund.~~

~~The first \$2,740,000 deposited in the public defender co-pay account must be transferred to the general fund. This is not an annual transfer. Receipts in excess of the first \$2,740,000 are appropriated to the Board of Public Defense for public defender services.~~

(c) Upon disposition of the case, an individual who has received public defender services shall pay to the court a \$28 co-payment for representation provided by a public defender, unless the co-payment is, or has been, waived by the court.

The co-payment must be credited to the general fund. If a term of probation is imposed as a part of an offender's sentence, the co-payment required by this section must not be made a condition of probation. The co-payment required by this section is a civil obligation and must not be made a condition of a criminal sentence.

Sec. 5. Minnesota Statutes 2006, section 611.20, subdivision 6, is amended to read:

Subd. 6. **Reimbursement schedule guidelines.** In determining a defendant's reimbursement schedule, the court may derive a specific dollar amount per month by multiplying the defendant's net income by the percent indicated by the following guidelines:

Net Income Per Month of Defendant	Number of Dependents Not Including Defendant				
	4 or more	3	2	1	0
\$200 and Below	Percentage based on the ability of the defendant to pay as determined by the court.				
\$200 - 350	8%	9.5%	11%	12.5%	14%
\$351 - 500	9%	11%	12.5%	14%	15%
\$501 - 650	10%	12%	14%	15%	17%
\$651 - 800	11%	13.5%	15.5%	17%	19%
\$801 and above	12%	14.5%	17%	19%	20%

~~"Net income" shall have the meaning given it in section 518.551, subdivision 5.~~

Sec. 6. Minnesota Statutes 2006, section 611.215, subdivision 1, is amended to read:

Subdivision 1. **Structure; membership.** (a) The State Board of Public Defense is a part of, but is not subject to the administrative control of, the judicial branch of government. The State Board of Public Defense shall consist of seven members including:

(1) four attorneys admitted to the practice of law, well acquainted with the defense of persons accused of crime, but not employed as prosecutors, appointed by the Supreme Court; and

(2) three public members appointed by the governor.

~~After the expiration of the terms of persons appointed to the board before March 1, 1991,~~ The appointing authorities may not appoint a person who is a judge to be a member of the State Board of Public Defense, other than as a member of the ad hoc Board of Public Defense.

(b) All members shall demonstrate an interest in maintaining a high quality, independent defense system for those who are unable to obtain adequate representation. Appointments to the board shall include qualified women and members of minority groups. At least three members of the board shall be from judicial districts other than the First, Second, Fourth, and Tenth Judicial Districts. The terms, compensation, and removal of members shall be as provided in section 15.0575. The chair shall be elected by the members from among the membership for a term of two years.

(c) In addition, the State Board of Public Defense shall consist of a nine-member ad hoc board when considering the appointment of district public defenders under section 611.26, subdivision 2. The terms of chief district public defenders currently serving shall terminate in accordance with the staggered term schedule set forth in section 611.26, subdivision 2.

Sec. 7. Minnesota Statutes 2006, section 611.215, subdivision 1a, is amended to read:

Subd. 1a. **Chief administrator.** The State Board of Public Defense, with the advice of the state public defender, shall appoint a chief administrator who must be chosen solely on the basis of training, experience, and other qualifications, and who will serve at the pleasure of the ~~state public defender~~ State Board of Public Defense. The chief administrator need not be licensed to practice law. The chief administrator shall attend all meetings of the board, but may not vote, and shall:

(1) enforce all resolutions, rules, regulations, or orders of the board;

(2) present to the board and the state public defender plans, studies, and reports prepared for the board's and the state public defender's purposes and recommend to the board and the state public defender for adoption measures necessary to enforce or carry

out the powers and duties of the board and the state public defender, or to efficiently administer the affairs of the board and the state public defender;

(3) keep the board fully advised as to its financial condition, and prepare and submit to the board its annual budget and other financial information as it may request;

(4) recommend to the board the adoption of rules and regulations necessary for the efficient operation of the board and its functions; and

(5) perform other duties prescribed by the board and the state public defender.

Sec. 8. Minnesota Statutes 2006, section 611.23, is amended to read:

**611.23 OFFICE OF STATE PUBLIC DEFENDER; APPOINTMENT;
SALARY.**

The state public defender is responsible to the State Board of Public Defense. The state public defender shall supervise the operation, activities, policies, and procedures of the statewide public defender system. When requested by a district public defender or appointed counsel, the state public defender may assist the district public defender, appointed counsel, or an organization designated in section 611.216 in the performance of duties, including trial representation in matters involving legal conflicts of interest or other special circumstances, and assistance with legal research and brief preparation.

The state public defender shall be appointed by the State Board of Public Defense for a term of four years, except as otherwise provided in this section, and until a successor is appointed and qualified. The state public defender shall be a full-time qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state, and be removed only for cause by the appointing authority. Vacancies in the office shall be filled by the appointing authority for the unexpired term. The salary of the state public defender shall be fixed by the State Board of Public Defense but must not exceed the salary of a district court judge. Terms of the state public defender shall commence on July 1. The state public defender shall devote full time to the performance of duties and shall not engage in the general practice of law.

Sec. 9. Minnesota Statutes 2006, section 611.24, is amended to read:

**611.24 CHIEF APPELLATE PUBLIC DEFENDER; ORGANIZATION OF
OFFICE; ASSISTANTS.**

~~The state public defender shall supervise the operation, activities, policies and procedures of the state public defender system. The state public defender shall employ or retain assistant state public defenders, a chief administrator, a deputy state~~ (a) Beginning January 1, 2007, and for every four years after that date, the State Board of Public Defense

shall appoint a chief appellate public defender in charge of appellate services, who shall employ or retain assistant state public defenders and other personnel as may be necessary to discharge the functions of the office. The chief appellate public defender shall serve a four-year term and may be removed only for cause upon the order of the State Board of Public Defense. The chief appellate public defender shall be a full-time qualified attorney, licensed to practice law in this state, and serve in the unclassified service of the state. Vacancies in the office shall be filled by the appointing authority for the unexpired term.

(b) An assistant state public defender shall be a qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state if employed, and serve at the pleasure of the appointing authority at a salary or retainer fee not to exceed reasonable compensation for comparable services performed for other governmental agencies or departments. Retained or part-time employed assistant state public defenders may engage in the general practice of law. The compensation of the chief appellate public defender and the compensation of each assistant state public defender shall be set by the State Board of Public Defense. The chief appellate public defender shall devote full time to the performance of duties and shall not engage in the general practice of law.

(c) The incumbent deputy state public defender as of December 31, 2006, shall be appointed as the chief appellate public defender for the four-year term beginning on January 1, 2007.

Sec. 10. Minnesota Statutes 2006, section 611.25, subdivision 1, is amended to read:

Subdivision 1. **Representation.** (a) The ~~state~~ chief appellate public defender shall represent, without charge:

(1) a defendant or other person appealing from a conviction of a felony or gross misdemeanor;

(2) a person convicted of a felony or gross misdemeanor who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction; ~~but if the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case; and~~

(3) a child who is appealing from a delinquency adjudication or from an extended jurisdiction juvenile conviction.

(b) The ~~state~~ chief appellate public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to obtain counsel.

(c) ~~The state public defender shall represent any other person, who is financially unable to obtain counsel, when directed to do so by the Supreme Court or the Court of Appeals, except that~~ The state chief appellate public defender shall not represent a person in any action or proceeding in which a party is seeking a monetary judgment, recovery or award. ~~When requested by a district public defender or appointed counsel, the state public defender may assist the district public defender, appointed counsel, or an organization designated in section 611.216 in the performance of duties, including trial representation in matters involving legal conflicts of interest or other special circumstances, and assistance with legal research and brief preparation. When the state public defender is directed by a court to represent a defendant or other person, the state public defender may assign the representation to any district public defender.~~

Sec. 11. Minnesota Statutes 2006, section 611.26, subdivision 2, is amended to read:

Subd. 2. **Appointment; terms.** The state Board of Public Defense shall appoint a chief district public defender for each judicial district. When appointing a chief district public defender, the state Board of Public Defense membership shall be increased to include two residents of the district appointed by the chief judge of the district to reflect the characteristics of the population served by the public defender in that district. The additional members shall serve only in the capacity of selecting the district public defender. The ad hoc state Board of Public Defense shall appoint a chief district public defender only after requesting and giving reasonable time to receive any recommendations from the public, the local bar association, and the judges of the district. Each chief district public defender shall be a qualified attorney licensed to practice law in this state. The chief district public defender shall be appointed for a term of four years, beginning January 1, pursuant to the following staggered term schedule: (1) in ~~2000~~ 2008, the second and eighth districts; (2) in ~~2001~~ 2009, the first, third, fourth, and tenth districts; (3) in ~~2002~~ 2010, the fifth and ninth districts; and (4) in ~~1999~~ 2011, the sixth and seventh districts. The chief district public defenders shall serve for four-year terms and may be removed for cause upon the order of the state Board of Public Defense. Vacancies in the office shall be filled by the appointing authority for the unexpired term. The chief district public defenders shall devote full time to the performance of duties and shall not engage in the general practice of law.

Sec. 12. Minnesota Statutes 2006, section 611.26, subdivision 7, is amended to read:

10.1 Subd. 7. **Other employment.** ~~Chief district public defenders and~~ Assistant district
10.2 public defenders may engage in the general practice of law where not employed on a
10.3 full-time basis.

10.4 Sec. 13. Minnesota Statutes 2006, section 611.27, subdivision 3, is amended to read:

10.5 Subd. 3. **Transcript use.** If the ~~state~~ chief appellate public defender or a district
10.6 public defender deems it necessary to make a motion for a new trial, to take an appeal,
10.7 or other postconviction proceedings in order to properly represent a defendant or other
10.8 person whom that public defender had been directed to represent, that public defender
10.9 may use the transcripts of the testimony and other proceedings filed with the court
10.10 administrator of the district court as provided by section 243.49.

10.11 Sec. 14. Minnesota Statutes 2006, section 611.27, subdivision 13, is amended to read:

10.12 Subd. 13. **Public defense services; correctional facility inmates.** All billings for
10.13 services rendered and ordered under subdivision 7 shall require the approval of the chief
10.14 district public defender before being forwarded on a monthly basis to the state public
10.15 defender. In cases where adequate representation cannot be provided by the district public
10.16 defender and where counsel has been appointed under a court order, the state public
10.17 defender shall forward to the commissioner of finance all billings for services rendered
10.18 under the court order. The commissioner shall pay for services from ~~county criminal~~
10.19 ~~justice aid retained by the commissioner of revenue for that purpose under section~~
10.20 ~~477A.0121, subdivision 4, or from~~ county program aid retained by the commissioner of
10.21 revenue for that purpose under section 477A.0124, subdivision 1, clause (4), or 477A.03,
10.22 subdivision 2b, paragraph (a).

10.23 The costs of appointed counsel and associated services in cases arising from new
10.24 criminal charges brought against indigent inmates who are incarcerated in a Minnesota
10.25 state correctional facility are the responsibility of the state Board of Public Defense. In
10.26 such cases the state public defender may follow the procedures outlined in this section for
10.27 obtaining court-ordered counsel.

10.28 Sec. 15. Minnesota Statutes 2006, section 611.27, subdivision 15, is amended to read:

10.29 Subd. 15. **Costs of transcripts.** In appeal cases and postconviction cases where the
10.30 ~~state~~ appellate public defender's office does not have sufficient funds to pay for transcripts
10.31 and other necessary expenses because it has spent or committed all of the transcript funds
10.32 in its annual budget, the state public defender may forward to the commissioner of finance
10.33 all billings for transcripts and other necessary expenses. The commissioner shall pay for

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11.1 these transcripts and other necessary expenses from ~~county criminal justice aid retained~~
11.2 ~~by the commissioner of revenue under section 477A.0121, subdivision 4, or from county~~
11.3 program aid retained by the commissioner of revenue for that purpose under section
11.4 477A.0124, subdivision 1, clause (4), or 477A.03, subdivision 2b, paragraph (a).

11.5 Sec. 16. Minnesota Statutes 2006, section 611.35, is amended to read:

11.6 **611.35 REIMBURSEMENT OF ~~PUBLIC DEFENDER AND APPOINTIVE~~**
11.7 **APPOINTED COUNSEL.**

11.8 Subdivision 1. **Reimbursement; civil obligation.** Any person who is represented
11.9 by a ~~public defender or appointive~~ appointed counsel shall, if financially able to pay,
11.10 reimburse the governmental unit chargeable with the compensation of ~~such public~~
11.11 ~~defender or appointive~~ appointed counsel for the actual costs to the governmental unit in
11.12 providing the services of the ~~public defender or appointive~~ appointed counsel. The court in
11.13 hearing such matter shall ascertain the amount of such costs to be charged to the defendant
11.14 and shall direct reimbursement over a period of not to exceed six months, unless the court
11.15 for good cause shown shall extend the period of reimbursement. If a term of probation is
11.16 imposed as a part of a sentence, reimbursement of costs as required by this chapter must
11.17 not be made a condition of probation. Reimbursement of costs as required by this chapter
11.18 is a civil obligation and must not be made a condition of a criminal sentence.

11.19 Subd. 2. **Civil action.** The county attorney may commence a civil action to recover
11.20 such cost remaining unpaid at the expiration of six months unless the court has extended
11.21 the reimbursement period and shall, if it appears that such recipient of ~~public defender or~~
11.22 ~~appointive~~ appointed counsel services is about to leave the jurisdiction of the court or sell
11.23 or otherwise dispose of assets out of which reimbursement may be obtained, commence
11.24 such action forthwith. The county attorney may compromise and settle any claim for
11.25 reimbursement with the approval of the court which heard the matter. No determination or
11.26 action shall be taken later than two years after the termination of the duties of the ~~public~~
11.27 ~~defender or appointive~~ appointed counsel.

11.28 Sec. 17. **REPEALER.**

11.29 Minnesota Statutes 2006, section 611.20, subdivision 5, is repealed.

APPENDIX
Repealed Minnesota Statutes: h0455-3

611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.

Subd. 5. **Reimbursement rate.** Legal fees required to be reimbursed under subdivision 4, shall be determined by multiplying the total number of hours worked on the case by a public defender by \$40 per hour. The public defender assigned to the defendant's case shall provide to the court, upon the court's request, a written statement containing the total number of hours worked on the defendant's case up to the time of the request.