

A bill for an act
relating to public defenders; modifying provisions providing for representation
by a public defender; amending Minnesota Statutes 2008, sections 609.131,
subdivision 1; 611.17; 611.18; 611.20, subdivisions 3, 4; repealing Minnesota
Statutes 2008, section 611.20, subdivisions 6, 7.

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

Section 1. Minnesota Statutes 2008, section 609.131, subdivision 1, is amended to read:

Subdivision 1. **General rule.** Except as provided in subdivision 2, an alleged
misdemeanor violation must be treated as a petty misdemeanor if the prosecuting attorney
believes that it is in the interest of justice that the defendant not be imprisoned if convicted
and certifies that belief to the court at or before the time of arraignment or pretrial
hearing, and the court approves of the certification motion. The defendant's consent to the
certification is ~~not~~ required. When an offense is certified as a petty misdemeanor under
this section, the defendant's eligibility for court-appointed counsel must be evaluated
as though the offense were a petty misdemeanor and the defendant will not be eligible
for the appointment of a public defender.

Sec. 2. Minnesota Statutes 2008, section 611.17, is amended to read:

**611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT;
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~~ is charged with

a misdemeanor and has an annual income not greater than 150 percent of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of United States Code, title 42, section 9902(2); or

(2) the defendant is charged with a gross misdemeanor and has an annual income not greater than 175 percent of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of United States Code, title 42, section 9902(2); or

(3) the defendant is charged with a felony and has an annual income not greater than 200 percent of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of United States Code, title 42, section 9902(2); or

(4) 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 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. 3. Minnesota Statutes 2008, section 611.18, is amended to read:

611.18 APPOINTMENT OF PUBLIC DEFENDER.

If it appears to a court that a person requesting the appointment of counsel satisfies the requirements of this chapter, the court shall order the appropriate public defender to represent the person ~~at all further stages of the proceeding through appeal, if any.~~ For a person appealing from a conviction, or a person pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction, according to the standards of sections 611.14, clause (2), and 611.25, subdivision 1, paragraph (a), clause (2), the ~~state chief appellate~~ public defender shall be appointed. For a person covered by section 611.14, clause (1), (3), or (4), a district public defender shall be appointed to represent that person. ~~If (a) conflicting interests exist, (b) the district public defender for any other reason is unable to act, or (c) the interests of justice require, the state public defender may be ordered to represent a person. 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.~~ If at any stage of the proceedings, ~~including~~
~~an appeal,~~ the court finds that the defendant is financially unable to pay counsel whom the
defendant had retained, the court may appoint the appropriate public defender to represent
the defendant, as provided in this section. Prior to any court appearance, a public defender
may represent a person accused of violating the law, who appears to be financially unable
to obtain counsel, and shall continue to represent the person unless it is subsequently
determined that the person is financially able to obtain counsel. The representation may
be made available at the discretion of the public defender, upon the request of the person
or someone on the person's behalf. Any law enforcement officer may notify the public
defender of the arrest of any such person.

Sec. 4. Minnesota Statutes 2008, section 611.20, subdivision 3, is amended to read:

Subd. 3. **Reimbursement.** In each fiscal year, the commissioner of finance shall
deposit the payments in the general fund and credit them to a separate account with the
Board of Public Defense. The amount credited to this account is appropriated to the Board
of Public Defense, except that reimbursements collected in the Fourth Judicial District
shall be returned to Hennepin County to offset the county's contribution to pay for the
public defender system under section 611.26, subdivision 3a, paragraph (c).

The balance of this account does not cancel but is available until expended.
Expenditures by the board from this account for each judicial district public defense office
must be based on the amount of the payments received by the state from the courts in
each judicial district. A district public defender's office that receives money under this
subdivision shall use the money to supplement office overhead payments to part-time
attorneys providing public defense services in the district. By January 15 of each year,
the Board of Public Defense shall report to the chairs and ranking minority members of
the senate and house of representatives divisions having jurisdiction over criminal justice
funding on the amount appropriated under this subdivision, the number of cases handled
by each district public defender's office, the number of cases in which reimbursements
were ordered, the average amount of reimbursement ordered, and the average amount of
money received by part-time attorneys under this subdivision.

Sec. 5. Minnesota Statutes 2008, section 611.20, subdivision 4, is amended to read:

Subd. 4. **Employed defendants.** A court ~~shall~~ may order a defendant who
is employed when a public defender is appointed, or who becomes employed while
represented by a public defender, to reimburse the state for the cost of the public defender.
If reimbursement is required under this subdivision, the court ~~shall~~ may order the

reimbursement when a public defender is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from the defendant if the defendant's financial circumstances warrant a reduced reimbursement schedule. The court may consider the ~~guidelines in subdivision 6 in determining a defendant's reimbursement schedule. If a defendant does not agree to make payments, the court may order the defendant's employer to withhold a percentage of the defendant's income to be turned over to the court. The percentage to be withheld may be determined under subdivision 6~~ income and assets of the defendant based on the financial statement provided by the defendant when applying for the public defender under section 611.17.

Sec. 6. **REPEALER.**

Minnesota Statutes 2008, section 611.20, subdivisions 6 and 7, are repealed.

611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.

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%

Subd. 7. **Income withholding.** (a) Whenever an obligation for reimbursement of public defender costs is ordered by a court under this section, the amount of reimbursement as determined by court order must be withheld from the income of the person obligated to pay. The court shall serve a copy of the reimbursement order on the defendant's employer. Notwithstanding any law to the contrary, the order is binding on the employer when served. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. The employer shall withhold from the income payable to the defendant the amount specified in the order and shall remit, within ten days of the date the defendant is paid the remainder of the income, the amounts withheld to the court.

(b) An employer shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer shall be liable to the court for any amounts required to be withheld. An employer that fails to withhold or transfer funds in accordance with this section is also liable for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld. An employer that has failed to comply with the requirements of this section is subject to contempt of court.

(c) Amounts withheld under this section do not supersede or have priority over amounts withheld pursuant to other sections of law.