

A bill for an act
relating to public defenders; modifying provisions providing for representation
by a public defender; amending Minnesota Statutes 2010, sections 609.131,
subdivision 1; 611.16; 611.17; 611.18; 611.20, subdivision 4; repealing
Minnesota Statutes 2010, section 611.20, subdivision 6.

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

Section 1. Minnesota Statutes 2010, 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. Prior to the appointment of a public
defender to represent a defendant charged with a misdemeanor, the court shall inquire of
the prosecutor whether the prosecutor intends to certify the case as a petty misdemeanor.
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 misdemeanor~~ defendant is not
eligible for the appointment of a public defender.

Sec. 2. Minnesota Statutes 2010, section 611.16, is amended to read:

611.16 REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER.

Any person described in section 611.14 ~~or any other person entitled by law to
representation by counsel,~~ may at any time request the court in which the matter is pending,
or the court in which the conviction occurred, to appoint a public defender to represent the

person. In a proceeding defined by ~~clause (2) of~~ section 611.14, clause (2), application for the appointment of a public defender may also be made to a judge of the Supreme Court.

Sec. 3. Minnesota Statutes 2010, 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; or is charged with a misdemeanor and has an annual income not greater than 125 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);~~

~~(2) the defendant is charged with a gross 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);~~

~~(3) the defendant is charged with a felony 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~~

~~(2) (4) the court makes a written finding that 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 without causing substantial hardship to the defendant or the defendant's family.~~

(b) Upon a request for the appointment of counsel, the court shall make an appropriate inquiry into the determination of financial circumstances eligibility under paragraph (a) 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,

which must be used by the district courts throughout the state. 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 the accused 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 \$75 co-payment for representation provided by a public defender, unless the co-payment is, or has been, reduced in part or 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.

(d) The court shall not appoint a public defender to a defendant who is financially able to retain counsel but refuses to do so, refuses to execute the financial statement or

refuses to provide information necessary to determine financial eligibility under this section, or waives appointment of a public defender under section 611.19.

Sec. 4. Minnesota Statutes 2010, 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), ~~a~~ (3), or (4), the chief 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. 5. Minnesota Statutes 2010, section 611.20, subdivision 4, is amended to read:

Subd. 4. **Employed defendants; ability to pay.** (a) A court shall order a defendant who is employed when a public defender is appointed, or who becomes employed while represented by a public defender, or who is or becomes able to make partial payments for counsel, to reimburse the state for the cost of the public defender. If reimbursement is required under this subdivision, the court shall 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

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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~~ In determining the percentage to be withheld, the court shall consider the 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.

(b) If a court determines under section 611.17 that a defendant is financially unable to pay the reasonable costs charged by private counsel due to the cost of a private retainer fee, the court shall evaluate the defendant's ability to make partial payments or reimbursement.

Sec. 6. **REPEALER.**

Minnesota Statutes 2010, section 611.20, subdivision 6, is repealed.