

For the purposes of this act the governing body of a town is the town board of supervisors.

Approved May 26, 1965.

CHAPTER 868—S. F. No. 2083

[Not Coded]

An act relating to salaries of the county auditor and county treasurer in Grant county.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Grant county; officials; salaries.** Subdivision 1. The annual salaries of the county auditor and county treasurer of Grant county shall be not less than \$6,000 nor more than \$7,200 annually as shall be determined by the board of county commissioners of Grant county.

Subd. 2. The salaries established as provided in subdivision 1 shall constitute the base salaries of the auditor and treasurer and such officials shall be entitled to cost of living increases in accordance with Minnesota Statutes, Section 375.43.

Sec. 2. This act becomes effective upon its approval by the board of county commissioners of Grant county and upon compliance with Minnesota Statutes, Section 645.021.

Approved May 26, 1965.

CHAPTER 869—H. F. No. 640

[Coded in Part]

An act relating to the administration of justice; providing for adequate representation of certain persons charged with the commission of certain crimes or who have been sentenced therefor; creating a system of state and district public defenders; amending Minnesota Statutes 1961, Sections 243.49, 243.50, and 628.32, Subdivision 5; repealing Minnesota Statutes 1961, Sections 611.07; 611.12, as amended; 611.13; and Laws 1963, Chapter 838.

Changes or additions indicated by italics, deletions by ~~strikeout~~.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [611.14] Public defenders; right to representation. *The persons hereinafter described who are financially unable to obtain counsel, shall be entitled to be represented by a public defender:*

(a) *a person charged with a felony or gross misdemeanor, including such a person when charged pursuant to Minnesota Statutes, Sections 629.01 to 629.29;*

(b) *a person appealing to the supreme court from a conviction of a felony or gross misdemeanor, or a person convicted of a felony or gross misdemeanor who is pursuing a post-conviction proceeding, after the time for appeal from the judgment has expired; or*

(c) *a person who is entitled to be represented by counsel pursuant to the provisions of Minnesota Statutes, Section 609.14, Subdivision 2, or Section 609.16.*

The rights afforded by this section shall be in addition to, and not exclusive of any other law entitling a person to representation by counsel.

Sec. 2. [611.15] Notification of right to representation. *In every criminal case or proceeding in which any person entitled by law to representation by counsel shall appear without counsel, the court shall advise such person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel.*

Sec. 3. [611.16] Request for appointment of public defender. *Any person described in section 1 of this act 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 he was convicted, to appoint a public defender to represent him. In a proceeding defined by clause (b) of section 1, application for the appointment of a public defender may also be made to a judge of the supreme court.*

Sec. 4. [611.17] Financial inquiry; statements. *Upon a request for the appointment of counsel, the court or magistrate shall proceed to make appropriate inquiry into the financial circumstances of the applicant, who shall submit, unless waived in whole or in part by the court, a financial statement under oath or affirmation setting forth his assets and liabilities, source or sources of income, and such other information as may be required by the court or magistrate. The State Public Defender shall furnish appropriate forms for such financial statements. The information contained in such a*

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statement shall be confidential and for the exclusive use of the court or magistrate, except for any prosecution under section 609.48. A refusal to execute a financial statement as provided herein shall constitute a waiver of the right to the appointment of a public defender.

Sec. 5. [611.18] Appointment of public defender. *When it shall appear to a court or magistrate that a person requesting the appointment of counsel satisfies the requirements of this act, the court or magistrate shall order the appropriate public defender to represent him at all further stages of the proceeding through appeal, if any. For those persons appealing to the supreme court from a conviction or pursuing a post conviction proceeding, after the time for appeal has expired, the state public defender shall be appointed. For all other persons covered by section 1 of this act, a district public defender shall be appointed to represent them. If conflicting interests exist, or if the district public defender for any other reason is unable to act, or if the interests of justice require, the state public defender may be ordered to represent such a person. If at any stage of the proceedings, including an appeal, the court finds that the defendant is financially unable to pay counsel whom he had retained, the court may appoint the appropriate public defender to represent him, as provided in this section.*

Sec. 6. [611.19] Waiver of appointment of counsel. *Where counsel is waived by a defendant, the waiver shall in all instances be made in writing, signed by the defendant, except that in such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel.*

Sec. 7. [611.20] Subsequent ability to pay counsel. *If at any time after the state public defender or a district public defender has been directed to act, the court having jurisdiction in the matter is satisfied that the defendant or other person is financially able to obtain counsel or to make partial payment for the representation, the court may terminate the appointment of the public defender, unless the person so represented is willing to pay therefor. If a public defender continues the representation, the court shall direct payment for such representation as the interests of justice may dictate. Any payments directed by the court shall be deposited with the clerk thereof and the clerk shall forthwith remit the amount thereof to the treasurer of the governmental unit chargeable with the compensation of such public defender for deposit in the treasury to the credit of the general revenue fund of such governmental unit or units.*

If at any time after his appointment a public defender should have reason to believe that a defendant is financially able to obtain

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counsel or to make partial payment for counsel, it shall be his duty to so advise the court so that appropriate action may be taken.

Sec. 8. [611.21] Services other than counsel. *Counsel, whether or not appointed by the court, for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The court may establish a limit on the amount which may be expended or promised for such services. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained, but such ratification shall be given only in unusual situations. The court shall determine reasonable compensation for the services and direct payment by the county in which the prosecution originated, to the organization or person who rendered them, upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source. The compensation to be paid to a person for such service rendered by him to a defendant under this subsection, or to be paid to an organization for such services rendered by an employee thereof, shall not exceed \$300, exclusive of reimbursement for expenses reasonably incurred.*

Sec. 9. [611.22] Office of state public defender created. *The office of state public defender, under the control and supervision of the state public defender, is hereby created and established as an agency of government.*

Sec. 10. [611.23] Appointment; salary. *The state public defender shall be appointed by the state judicial council for a term of four years, except as otherwise provided herein, and until his successor is appointed and qualified. He shall be a qualified attorney, licensed to practice law in this state, shall be in the unclassified service of the state, and shall 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 \$16,500 annually. The first state public defender appointed pursuant to this section shall be appointed for a term commencing July 1, 1965, and expiring December 31, 1969. Subsequent terms of the state public defender shall commence on January 1. The state public defender shall devote full time to the per-*

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formance of his duties and shall not engage in the general practice of law.

Sec. 11. **[611.24] Organization of office; assistants.** *Subject to the approval of the judicial council, the state public defender may employ assistant state public defenders and such other employees as may be necessary to discharge the function of the office. The commissioner of administration shall provide such office with suitable quarters outside the capitol building. An assistant public defender shall be a qualified attorney, licensed to practice law in this state, shall be in the unclassified service of the state, and shall serve at the pleasure of the appointing authority at a salary not to exceed \$12,500 annually. An assistant state public defender may be employed on a part time basis and when so employed, may engage in the general practice of law.*

Sec. 12. **[611.25] Powers; duties; limitations.** *The state public defender shall represent, without charge, a defendant or other person appealing to the supreme court from a conviction or pursuing a post conviction proceeding after the time for appeal has expired when the state public defender is directed so to do by a judge of the district court or of the supreme court. The state public defender may assist a district public defender in the performance of his duties when the district public defender so requests. Whenever the state public defender is directed by a court to represent any defendant or other person, with the approval of the court he may assign such representation to any district public defender.*

He also shall supervise the training of all state and district public defenders, and may establish a training course for such purpose.

Sec. 13. **[611.26] District public defenders.** *Subdivision 1. All the judges of any judicial district not subject to the provisions of Minnesota Statutes Sections 611.12 or 611.13 may, by written order filed with the state judicial council, establish in such district the public defender system provided in this act. Such an order shall be effective 30 days after its filing.*

Subd. 2. Upon the filing of an order pursuant to subdivision 1 of this section the state judicial council shall appoint a district public defender after receiving recommendations from the judges of the district. Each district public defender shall be a qualified attorney, licensed to practice law in this state. He shall be appointed for a term of four years. The district public defender may be removed upon the order of the state judicial council for cause. Vacancies in the office shall be filled by the appointing authority for the unexpired term.

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Subd. 3. The compensation of the district public defender for each judicial district shall be set by the judicial council at a specified sum per month or an hourly or per diem basis.

Subd. 4. A district public defender may appoint assistants, after receiving recommendations from the judges of the district, each of whom shall be a qualified attorney, licensed to practice law in this state, but only with the approval of the judicial council and in accordance with the other provisions of this section. Each assistant district public defender shall serve at the pleasure of the district public defender.

Subd. 5. The compensation of each assistant district public defender for each of the judicial districts shall be set by the district public defender with the approval of the judicial council, at a specified sum per month or an hourly or per diem basis.

Subd. 6. The district public defender shall represent, without charge, a defendant or other person when so directed.

Subd. 7. District public defenders and assistant district public defenders may engage in the general practice of law where not employed on a full time basis.

Subd. 8. The effective date of this section shall be January 1, 1966.

Sec. 14. [611.27] Financing the offices of district public defender. *Subdivision 1. The compensation and expenses of the district public defender are to be paid by the county or counties comprising the judicial district and in conformity with the following:*

(1) Within ten days after a district public defender or an assistant district public defender is appointed and on or before July 1 of each year thereafter, the appointing authority shall certify to the district judges of the respective judicial districts the compensation which has been set for each such district public defender and each such assistant.

(2) Immediately thereafter, the judges of such district shall determine and certify to the respective county boards a comprehensive budget for the office of the district public defender including all salaries, expenses, and office equipment and supplies. Suitable office space shall be provided where available in publicly owned buildings in a location within the district selected by such judges. If no such space is available, the judges shall include in the budget a reasonable allowance for office rental which shall be in addition to his compensation. Except in the second and fourth judicial districts, the district judges of the judicial district shall apportion the compensation of

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such public defenders in their respective judicial districts among the several counties and each county shall be required by such order to pay the specific amounts thereof in monthly installments. The specified amount of the compensation which each county shall pay shall be such proportion of the whole compensation as the population in such county bears to the total population in the district as set forth in the last federal census. If the district public defender or an assistant district public defender is temporarily transferred to some county not situated in his judicial district, said county shall pay the proportionate part of his compensation for the services performed in said county.

(3) *Reimbursement for actual and necessary travel expenses in the conduct of the office of the district public defender shall be charged to either (1) the general expenses of the office, (2) the general expenses of the district for which the expenses were incurred if outside the district, or (3) the office of the state public defender if the services were rendered for that office.*

Subd. 2. The judges of the judicial district by order shall:

(1) *Designate the county officials of one or more counties within the district to handle the funds for the office of district public defender and provide that charges against each county of the district shall be paid to the county treasurer of such county who shall be responsible for the payment of the expenses of the office of district public defender. The order may provide for reimbursement of the counties so designated for extra services incurred.*

(2) *Provide for a revolving fund in the custody of the officials of the county designated in subdivision 2 (1) into which revolving fund each county shall pay an initial deposit and its respective share of the expenses of the office of district public defender and from which the expenses of said office shall be paid in the manner provided in this act.*

Subd. 3. If the state public defender or a district public defender deems it necessary to make a motion for a new trial, to take an appeal, or other post-conviction proceedings in order to properly represent a defendant or other person whom he had been directed to represent, he may use the transcripts of the testimony and other proceedings filed with the clerk of the district court as provided by Minnesota Statutes, Section 243.49.

Subd. 4. The effective date of this section shall be January 1, 1966.

Sec. 15. Minnesota Statutes 1961, Section 243.49, is amended to read:

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243.49 Commitment papers; duty of clerk. *Upon a plea of guilty or finding of guilty after trial, the clerk of every court by which a convict person shall be sentenced for a felony or gross misdemeanor to the state prison or a state reformatory custody of the commissioner of corrections or to the youth conservation commission, or to the superintendent of the work house or work farm, shall furnish to the officer or person having such convict person in charge a record containing a copy of the indictment and plea, the name and residence of the judge presiding, of the prosecuting officer, of the convict's person's attorney, of the jurors, and of the witnesses sworn on the trial or proceedings, a transcript of the arraignment and all other district court pre-trial proceedings, the charge of the court, the verdict and the sentence a transcript of the sentencing proceedings, with the date thereof, together with the convict's person's statement under oath, if obtainable from him, as to his true name, his residence, if any, the date and place of his birth, the names and addresses of his parents and other relatives and of persons by whom he has been employed or is well known, his social and other affiliations, his past occupations and employments, his former places of residence and the period of time he has resided in each, with the dates thereof, his citizenship, the number, dates, places and causes of prior convictions, and the event thereof, and, in cases in which the convict person pleads guilty, his testimony concerning his guilt a transcript of the proceedings relative thereto; to which shall be attached, in all cases, the impressions of the trial judge as to the mental and physical condition of the convict person, his general character, capacity, disposition, habits and special needs; which record, duly certified by such clerk may be used as evidence against such convict in any post-conviction proceeding for release taken by habeas corpus brought by the person. A certified transcript of the convict's statement aforesaid The transcripts above referred to shall be furnished by the court reporter acting on the trial. The clerk shall also deliver to the sheriff or other officer or person conveying the convict person to the state prison; state reformatory; or other place of confinement specified therein place of confinement designated by the commissioner of corrections or the youth conservation commission or judge, a commitment directing him to deliver the convict person and the copy of record to the principal officer in charge of the prison or reformatory such place of confinement, and take his receipt therefor. The clerk shall retain one copy of the transcripts above referred to, and a tape recording and the court reporter's notes of all proceedings.*

Sec. 16. Minnesota Statutes 1961, Section 243.50, is amended to read:

243.50 Payment of court reporter. ~~When Such synopsis of~~

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testimony is *transcripts and tapes shall be furnished by the stenographer court reporter acting on the trial and he shall be paid therefor by the county, on certificates duly certified to by the judge presiding at the trial sentence, and filed with the county auditor, the same fee per folio provided by statute for transcripts of testimony furnished to parties ordering the same in civil proceedings and for tapes on a costs basis.*

Sec. 17. Minnesota Statutes 1961, Section 628.32, Subdivision 5, is amended to read:

Subd. 5. Unless the person accused shall expressly waive the services of counsel *in writing or open court*, and unless the court shall concur therein, no plea of guilty shall be received or entered upon this section unless the person accused shall be represented by competent counsel; ~~and, if he have no means with which to employ counsel, the court shall appoint such counsel and shall be authorized to provide and pay compensation therefor under the provisions of sections 611.07 and 611.12.~~

Sec. 18. **[611.28] Repealer and savings clause.** *Subdivision 1. Minnesota Statutes 1961, Sections 260.115, Subdivision 2; 611.07; and Laws 1963, Chapter 838, are hereby repealed.*

Subd. 2. The provisions of sections 1 through 7 of this act and the provisions of subdivision 1 of this section are in effect as to any judicial district of the state upon the effective date of the establishment of a public defender system for said district as authorized by this act. Section 8 of this act shall be effective on July 1, 1965.

Subd. 3. The repeal of the provisions of law set forth in subdivision 1 shall not affect the right of any defendant or other person to continue to be represented by counsel appointed pursuant to such repealed sections and counsel so appointed shall continue such representation until his duties for such defendant or other persons have been completed or he is otherwise discharged from performing such duties by his appointing authority.

Sec. 19. **[611.29] Effective date.** *Except as otherwise provided in section 18, this act is in effect on July 1, 1965.*

Sec. 20. **Appropriation.** *There is hereby appropriated to the state public defender out of the general revenue fund in the state treasury for the purposes specified in sections 9 through 12, the sum of \$130,000 for the biennium beginning July 1, 1965.*

Approved May 26, 1965.

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