

CHAPTER 212—S.F.No. 1678

An act relating to public defenders; amending provisions related to public defender representation, appointment, and reimbursement obligations; outlining financial responsibility for public defender costs, cost for counsel in CHIPS cases, pretrial appeals costs, and standby counsel costs; amending Minnesota Statutes 2010, sections 244.052, subdivision 6; 257.69, subdivision 1; 260B.163, subdivision 4; 260B.331, subdivision 5; 260C.163, subdivision 3; 260C.331, subdivision 5; 609.115, subdivision 4; 609.131, subdivision 1; 611.14; 611.16; 611.17; 611.18; 611.20, subdivision 4; 611.25, subdivision 1; 611.26, subdivision 6; 611.27, subdivision 5, by adding a subdivision; 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 244.052, subdivision 6, is amended to read:

Subd. 6. **Administrative review.** (a) An offender assigned or reassigned to risk level II or III under subdivision 3, paragraph (e) or (h), has the right to seek administrative review of an end-of-confinement review committee's risk assessment determination. The offender must exercise this right within 14 days of receiving notice of the committee's decision by notifying the chair of the committee. Upon receiving the request for administrative review, the chair shall notify: (1) the offender; (2) the victim or victims of the offender's offense who have requested disclosure or their designee; (3) the law enforcement agency that investigated the offender's crime of conviction or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed; (4) the law enforcement agency having jurisdiction where the offender expects to reside, providing that the release plan has been approved by the hearings and release unit of the department of corrections; and (5) any other individuals the chair may select. The notice shall state the time and place of the hearing. A request for a review hearing shall not interfere with or delay the notification process under subdivision 4 or 5, unless the administrative law judge orders otherwise for good cause shown.

(b) An offender who requests a review hearing must be given a reasonable opportunity to prepare for the hearing. The review hearing shall be conducted on the record before an administrative law judge. The review hearing shall be conducted at the correctional facility in which the offender is currently confined. If the offender no longer is incarcerated, the administrative law judge shall determine the place where the review hearing will be conducted. The offender has the burden of proof to show, by a preponderance of the evidence, that the end-of-confinement review committee's risk assessment determination was erroneous. The attorney general or a designee shall defend the end-of-confinement review committee's determination. The offender has the right to be present ~~and be represented by counsel at the hearing~~, to present evidence in support of the offender's position, to call supporting witnesses and to cross-examine witnesses testifying in support of the committee's determination. ~~Counsel for indigent offenders shall be provided by the Legal Advocacy Project of the state public defender's office.~~

(c) After the hearing is concluded, the administrative law judge shall decide whether the end-of-confinement review committee's risk assessment determination was erroneous and, based on this decision, shall either uphold or modify the review committee's determination. The judge's decision shall be in writing and shall include the judge's reasons for the decision. The judge's decision shall be final and a copy of it shall be given to the offender, the victim, the law enforcement agency, and the chair of the end-of-confinement review committee.

(d) The review hearing is subject to the contested case provisions of chapter 14.

(e) The administrative law judge may seal any portion of the record of the administrative review hearing to the extent necessary to protect the identity of a victim of or witness to the offender's offense.

EFFECTIVE DATE. This section is effective July 1, 2012, and applies to review hearings requested on or after that date.

Sec. 2. Minnesota Statutes 2010, section 257.69, subdivision 1, is amended to read:

Subdivision 1. **Representation by counsel.** In all proceedings under sections 257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the public authority. ~~The court shall appoint counsel for a party who is unable to pay timely for counsel.~~ In proceedings under sections 257.51 to 257.74, the court shall appoint counsel for a party who would be financially unable to obtain counsel under the guidelines set forth in section 611.17. The representation of appointed counsel is limited in scope to the issue of establishment of parentage.

Sec. 3. Minnesota Statutes 2010, section 260B.163, subdivision 4, is amended to read:

Subd. 4. **Appointment of counsel.** (a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court. This right does not apply to a child who is charged with a juvenile petty offense as defined in section 260B.007, subdivision 16, unless the child is charged with a third or subsequent juvenile alcohol or controlled substance offense and may be subject to the alternative disposition described in section 260B.235, subdivision 6.

(b) The court shall appoint counsel, or standby counsel if the child waives the right to counsel, for a child who is:

- (1) charged by delinquency petition with a gross misdemeanor or felony offense; or
- (2) the subject of a delinquency proceeding in which out-of-home placement has been proposed.

(c) ~~If they desire counsel but are unable to employ it,~~ The court shall appoint counsel to represent the child under section 611.14, clause (4), or the parents or guardian in any case in which it feels that such an appointment is appropriate if the person would be financially unable to obtain counsel under the guidelines set forth in section 611.17, except a juvenile petty offender who does not have the right to counsel under paragraph (a). If the court appoints standby or advisory counsel, the cost of counsel shall be paid for by the Office of the State Court Administrator with state funds or, if the prosecutor requests the appointment, by the governmental unit conducting the prosecution. In no event may the court order the Board of Public Defense to pay the cost of standby or advisory counsel.

(d) Counsel for the child shall not also act as the child's guardian ad litem.

Sec. 4. Minnesota Statutes 2010, section 260B.331, subdivision 5, is amended to read:

Subd. 5. **Attorneys fees.** (a) In proceedings in which the court has appointed counsel pursuant to section 260B.163, subdivision 4, for a minor unable to employ counsel, the court ~~may~~ shall inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees.

(b) The court may order a parent under paragraph (a) to reimburse the state for the cost of the child's appointed counsel. In determining the amount of reimbursement, the court shall consider the parent's income, assets, and employment. If reimbursement is required under this subdivision, the court shall order the reimbursement when counsel is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from a parent if the parent's financial circumstances warrant establishing a reduced reimbursement schedule. If the parent does not agree to make payments, the court may order the parent's employer to withhold a percentage of the parent's income to be turned over to the court.

Sec. 5. Minnesota Statutes 2010, section 260C.163, subdivision 3, is amended to read:

Subd. 3. **Appointment of counsel.** (a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court as provided in this subdivision.

(b) Except in proceedings where the sole basis for the petition is habitual truancy, if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older under section 611.14, clause (4), or the ~~parents or guardian~~ parent, guardian, or custodian in any case in which it feels that such an appointment is appropriate if the person would be financially unable to obtain counsel under the guidelines set forth in section 611.17.

(c) In any proceeding where the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense in accordance with ~~paragraph (b)~~ this subdivision.

(d) Counsel for the child shall not also act as the child's guardian ad litem.

(e) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

(f) Court-appointed counsel for the parent, guardian, or custodian under this subdivision is at county expense. If the county has contracted with counsel meeting qualifications under paragraph (g), the court shall appoint the counsel retained by the county, unless a conflict of interest exists. If a conflict exists, after consulting with the chief judge of the judicial district or the judge's designee, the county shall contract with competent counsel to provide the necessary representation. The court may appoint only one counsel at public expense for the first court hearing to represent the interests of the parents, guardians, and custodians, unless, at anytime during the proceedings upon petition of a party, the court determines and makes written findings on the record that extraordinary

circumstances exist that require counsel to be appointed to represent a separate interest of other parents, guardians, or custodians subject to the jurisdiction of the juvenile court.

(g) Counsel retained by the county under paragraph (f) must meet the qualifications established by the Judicial Council in at least one of the following: (1) has a minimum of two years' experience handling child protection cases; (2) has training in handling child protection cases from a course or courses approved by the Judicial Council; or (3) is supervised by an attorney who meets the minimum qualifications under clause (1) or (2).

Sec. 6. Minnesota Statutes 2010, section 260C.331, subdivision 5, is amended to read:

Subd. 5. **Attorneys fees.** (a) In proceedings in which the court has appointed counsel pursuant to ~~section~~ sections 260C.163, subdivision 3, and 611.14, clause (4), for a minor unable to employ counsel, the court ~~may~~ shall inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees.

(b) In proceedings in which the court has appointed counsel pursuant to section 260C.163, subdivision 3, for a parent, guardian, or custodian, the court shall inquire into the ability of the parents, guardians, or custodians to pay for such counsel's services and, after giving these persons a reasonable opportunity to be heard, may order the appropriate person to pay attorneys fees.

(c) The court may order the appropriate person or persons under paragraph (a) or (b), or both, to reimburse the governmental unit providing counsel for the cost of appointed counsel. In determining the amount of reimbursement, the court shall consider the appropriate person's income, assets, and employment. If reimbursement is required under this subdivision, the court shall order the reimbursement when counsel is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from a person if the person's financial circumstances warrant establishing a reduced reimbursement schedule. If the person does not agree to make payments, the court may order the person's employer to withhold a percentage of the person's income to be turned over to the court.

Sec. 7. Minnesota Statutes 2010, section 609.115, subdivision 4, is amended to read:

Subd. 4. **Confidential sources of information.** (a) Any report made pursuant to subdivision 1 shall be, if written, provided to counsel for all parties before sentence. The written report shall not disclose confidential sources of information unless the court otherwise directs. On the request of the prosecuting attorney or the defendant's attorney a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the presentence report is given orally the defendant or the defendant's attorney shall be permitted to hear the report.

(b) Any report made under subdivision 1 or 2 shall be provided to counsel for the defendant for purposes of representing the defendant on any appeal or petition for postconviction relief. The reports shall be provided by the court and the commissioner of corrections at no cost to the defendant or the defendant's attorney.

Sec. 8. 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. 9. Minnesota Statutes 2010, 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 misdemeanor, or a person convicted of a felony ~~or~~ gross misdemeanor, or misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction;

(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.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to requests for appointment of a public defender made on or after that date.

Sec. 10. 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, application for the appointment of a public defender may also be made to a judge of the Supreme Court.~~

Sec. 11. 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

(2) the court determines 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.

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

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 or notice of the action. 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 or standby counsel. If the court appoints advisory or standby counsel, the cost of counsel shall be paid for by the Office of the State Court Administrator or, if the prosecutor requests the appointment, by the governmental unit conducting the prosecution. In no event may the court order the Board of Public Defense to pay the cost of advisory or standby 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.

Sec. 12. 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), (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. 13. Minnesota Statutes 2010, section 611.20, subdivision 4, is amended to read:

Subd. 4. **Employed defendants; ability to pay.** (a) 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. In determining the amount of reimbursement, the court shall consider the defendant's income, assets, and employment. 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 defendant if the defendant's financial circumstances warrant establishing 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.~~

(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. 14. Minnesota Statutes 2010, section 611.25, subdivision 1, is amended to read:

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

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

(2) a person convicted of a felony, ~~or~~ gross misdemeanor, or misdemeanor who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction; and

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

(b) The 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 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.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to requests for appointment of a public defender made on or after that date.

Sec. 15. Minnesota Statutes 2010, section 611.26, subdivision 6, is amended to read:

Subd. 6. **Persons defended.** The district public defender shall represent, without charge, a defendant charged with a felony, a gross misdemeanor, or misdemeanor when so directed by the district court. The district public defender shall also represent a minor ten years of age or older in the juvenile court when so directed by the juvenile court. The district public defender must not serve as advisory counsel or standby counsel. The juvenile court may not order the district public defender to represent a minor who is under the age of ten years, to serve as a guardian ad litem, or to represent a guardian ad litem.

Sec. 16. Minnesota Statutes 2010, section 611.27, subdivision 5, is amended to read:

Subd. 5. **District public defender budgets and county payment responsibility.** ~~The Board of Public Defense may only fund those items and services in district public defender budgets which were included in the original budgets of district public defender offices as of January 1, 1990. All other public defense related costs remain the responsibility of the counties unless the state specifically appropriates for these. The cost of additional state funding of these items and services must be offset by reductions in local aids in the same manner as the original state takeover is solely responsible to provide counsel in adult criminal and juvenile cases, as specified under section 611.14. The court shall not appoint counsel at county expense for representation under section 611.14, except as provided in section 611.26, subdivision 3a, paragraph (c).~~

Sec. 17. Minnesota Statutes 2010, section 611.27, is amended by adding a subdivision to read:

Subd. 16. **Appeal by prosecuting attorney; attorney fees.** (a) When a prosecuting attorney appeals to the Court of Appeals, in any criminal case, from any pretrial order of the district court, reasonable attorney fees and costs incurred shall be allowed to the defendant on the appeal which shall be paid by the governmental unit responsible for the prosecution involved in accordance with paragraph (b).

(b) By January 15, 2013, and every year thereafter, the chief judge of the judicial district, after consultation with city and county attorneys, the chief public defender, and members of the private bar in the district, shall establish a reimbursement rate for attorneys fees and costs associated with representation under paragraph (a). The compensation to be paid to an attorney for such service rendered to a defendant under this subdivision may not exceed \$5,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the chief judge of the district as necessary to provide fair compensation for services of an unusual character or duration.

Sec. 18. **REPEALER.**

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

Presented to the governor April 19, 2012

Signed by the governor April 23, 2012, 11:12 a.m.