

(SENATE AUTHORS: LIMMER and Newman)

DATE	D-PG	OFFICIAL STATUS
03/21/2011	604	Introduction and first reading Referred to Judiciary and Public Safety
04/18/2011	1372a	Comm report: To pass as amended
	1385	Second reading
05/20/2011	2940	HF substituted on General Orders HF988

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; 611.17; 611.20, subdivision 4; proposing coding for new law in
Minnesota Statutes, chapter 611; 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. [611.145] MISDEMEANORS NOT ELIGIBLE FOR INCARCERATION;
CERTIFICATION; NONELIGIBILITY FOR PUBLIC DEFENDER.

(a) If a prosecuting attorney believes that it is in the interest of justice that a
defendant accused of committing a misdemeanor not be incarcerated if convicted and

certifies this belief to the court and the court approves of this certification, the defendant, if subsequently convicted of the misdemeanor offense, may not be incarcerated for it.

(b) If a misdemeanor is certified as a petty misdemeanor under section 609.131 or the certification described in paragraph (a) has occurred, the defendant is not eligible for the appointment of a public defender.

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~~ 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, 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 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. 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.

Sec. 4. 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 or full payment 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

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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~~ 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. 5. **REPEALER.**

Minnesota Statutes 2010, section 611.20, subdivision 6, is repealed.