

CHAPTER 611

RIGHTS OF ACCUSED

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611.14 RIGHT TO REPRESENTATION BY PUBLIC DEFENDER.

The following persons 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 a person charged pursuant to sections 629.01 to 629.29;
- (b) a person appealing from a conviction of a felony or gross misdemeanor, or a person convicted of a felony or gross misdemeanor who is pursuing a postconviction proceeding, after the time for appeal from the judgment has expired;
- (c) a person who is entitled to be represented by counsel pursuant to the provisions of section 609.14, subdivision 2;
- (d) a minor who is entitled to be represented by counsel pursuant to the provisions of section 260.155, subdivision 2, if the judge of the juvenile court concerned has requested and received the approval of a majority of the district court judges of the judicial district to utilize the services of the public defender in such cases, and approval of the compensation on a monthly, hourly or per diem basis to be paid for such services pursuant to section 260.251, subdivision 2, clause (e); or
- (e) a person, entitled by law to be represented by counsel, charged with an offense within the trial jurisdiction of a municipal, county, or probate court, if the trial judge or a majority of the trial judges of the court concerned have requested and received approval of a majority of the district court judges of the judicial district to utilize the services of the public defender in such cases and approval of the compensation on a monthly, hourly, or per diem basis to be paid for such services by the county or municipality within the court's jurisdiction.

History: 1987 c 384 art 2 s 111

611.214 APPLICABILITY.

Sections 611.26 and 611.27 do not apply to Hennepin county or to Ramsey county.

History: 1987 c 250 s 1

611.215 STATE BOARD OF PUBLIC DEFENSE CREATED.

Subdivision 1. **Structure; membership.** (a) The state board of public defense is a part of, but is not subject to the administrative control of, the judicial branch of government. The state board of public defense shall consist of seven members including:

- (1) a district court judge appointed by the supreme court;
 - (2) four attorneys admitted to the practice of law, well acquainted with the defense of persons accused of crime, but not employed as prosecutors, appointed by the supreme court; and
 - (3) two public members appointed by the governor.
- (b) All members shall demonstrate an interest in maintaining a high quality, independent defense system for those who are unable to obtain adequate representation. The terms, compensation, and removal of members shall be as provided in

section 15.0575. The chair shall be elected by the members from among the membership for a term of two years.

(c) In addition, the state board of public defense shall consist of an 11-member ad hoc board when considering the appointment of district public defenders under section 611.26, subdivision 2. The terms of district public defenders currently serving shall terminate in accordance with the staggered term schedule set forth in section 611.26, subdivision 2.

Subd. 1a. Chief administrator. The chair of the state board of public defense may, subject to the approval of the board, appoint a chief administrator who must be chosen solely on the basis of training, experience, and other qualifications, and who will serve at the pleasure of the board. The chief administrator need not be licensed to practice law. The administrator shall attend all meetings of the board, but may not vote, and shall:

- (1) enforce all resolutions, rules, regulations, or orders of the board;
- (2) appoint and remove all subordinate officers and regular employees of the board upon the basis of merit and fitness, subject to the provisions of a personnel code adopted by the board;
- (3) present to the board plans, studies, and reports prepared for board purposes and recommend to the board for adoption measures necessary to enforce or carry out the powers and duties of the board, or to efficiently administer the affairs of the board;
- (4) keep the board fully advised as to its financial condition, and prepare and submit to the board its annual budget and other financial information as it may request;
- (5) recommend to the board the adoption of rules and regulations necessary for the efficient operation of the board and its functions; and
- (6) perform other duties prescribed by the board.

Subd. 2. Duties and responsibilities. (a) The state board of public defense shall appoint the state public defender, who serves full time for a term of four years. The board must prepare an annual report to the governor, the legislature, and the supreme court on the operation of the state public defender's office, district defender systems, and appointed counsel systems. The board shall approve and recommend to the legislature a budget for the board, the office of state public defender, and the public defense corporations. The board shall establish procedures for distribution of state funding under this chapter to the state and district public defenders, including Hennepin and Ramsey county public defenders, and to the public defense corporations.

(b) The board shall establish standards for the offices of the state and district public defenders and for the conduct of all appointed counsel systems. The standards must include, but are not limited to:

- (1) standards needed to maintain and operate an office of public defender including requirements regarding the qualifications, training, and size of the legal and supporting staff for a public defender or appointed counsel system;
- (2) standards for public defender caseloads;
- (3) standards and procedures for the eligibility for appointment, assessment, and collection of the costs for legal representation provided by public defenders or appointed counsel;
- (4) standards for contracts between a board of county commissioners and a county public defender system for the legal representation of indigent persons;
- (5) standards prescribing minimum qualifications of counsel appointed under the board's authority or by the courts; and
- (6) standards ensuring the economical and efficient delivery of legal services, including alternatives to the present geographic boundaries of the public defender districts.

The board may require the reporting of statistical data, budget information, and other cost factors by the state and district public defenders and appointed counsel systems.

[For text of subd 3, see M.S.1986]

History: 1987 c 250 s 2-4

611.216 CRIMINAL AND JUVENILE DEFENSE GRANTS.

Subdivision 1. Eligible recipients. The board of public defense shall establish procedures for public defense corporations based in this state to apply for funding by the legislature. The applications must be submitted to the board. The board must review and prioritize them and include a recommended funding level for each corporation in the budget request the board submits to the legislature. Money appropriated to provide criminal and juvenile defense to indigent individuals must be distributed by the board of public defense to the nonprofit criminal and juvenile defense corporations included in the board's budget request or otherwise designated by law. Money may not be disbursed to a corporation in the Leech Lake reservation area or the White Earth reservation area without prior approval by the respective reservation tribal council. A corporation may accept cases involving felony, gross misdemeanor, and misdemeanor charges, and juvenile cases if financial eligibility standards are met, unless there is a legal or ethical reason for rejecting a case. A corporation may accept cases arising outside its geographic area of responsibility, as appropriate. Each corporation, in order to ensure broad support, shall provide matching money received from nonstate sources, which may include money or in-kind contribution from federal agencies, local governments, private agencies, and community groups, equal to ten percent of its state appropriation. The board of public defense shall give notice 30 days in advance and conduct a hearing if it has reasonable grounds to believe money appropriated for this purpose is being improperly used, or if it has reasonable cause to believe criminal and juvenile defense of proper quality is not being supplied. Payment must cease from the date of notice until either the board of public defense determines that the money appropriated will be properly handled, or the board of public defense determines that criminal and juvenile defense of proper quality will be provided. A participating corporation may give notice at any time of its withdrawal from this program of financial assistance.

Subd. 2. Discrimination; penalty. An employee, administrator, officer, contractor, or agent of a recipient of the money provided by this section who discriminates on the basis of sex, race, color, national origin, religion, or creed is guilty of a gross misdemeanor.

Subd. 3. Report. Each corporation shall submit reports showing, at a minimum, the number of clients served, the number of charges brought, the number of cases of each kind, such as felonies, gross misdemeanors, misdemeanors, and juvenile delinquencies, the number of dispositions of each kind, such as jury trials, court trials, guilty pleas, and dismissals, the number of court appearances, and financial data. This information must be summarized for each corporation in the budget documents submitted to the legislature.

[For text of subd 4, see M.S.1986]

History: 1987 c 250 s 5-7

611.22 [Repealed, 1987 c 250 s 20]

611.23 OFFICE OF STATE PUBLIC DEFENDER; APPOINTMENT; SALARY.

The office of state public defender is under the supervision of the state board of public defense. The state public defender shall be appointed by the state board of public defense for a term of four years, except as otherwise provided in this section, and until a successor is appointed and qualified. The state public defender shall be a full-time qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state, and 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 fixed by the state board of public defense but must not exceed the salary of the chief deputy attorney general. Terms of the state public defender shall commence on January 1. The state public defender shall devote full time to the performance of duties and shall not engage in the general practice of law.

History: 1987 c 250 s 8

611.24 ORGANIZATION OF OFFICE; ASSISTANTS.

The state public defender, subject to the limitations imposed by, and the supervision of, the state board of public defense, may employ or retain assistant state public defenders and other personnel as may be necessary to discharge the function of the office. The commissioner of administration shall provide the office with suitable quarters outside the capitol building. An assistant public defender shall be a qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state if employed, and serve at the pleasure of the appointing authority at a salary or retainer fee not to exceed reasonable compensation for comparable services performed for other governmental agencies or departments. Retained or part-time employed assistant state public defenders may engage in the general practice of law.

History: 1987 c 250 s 9

611.25 POWERS; DUTIES; LIMITATIONS.

Subdivision 1. **Representation.** The state public defender shall represent, without charge, a defendant or other person appealing from a conviction or pursuing a postconviction proceeding after the time for appeal has expired when the state public defender is directed to do so by a judge of the district court, of the court of appeals or of the supreme court. The state public defender shall represent any other person, who is financially unable to obtain counsel, when directed to do so by the supreme court or the court of appeals, except that the state public defender shall not represent a person in any action or proceeding in which a party is seeking a monetary judgment, recovery or award. When requested by a district public defender or appointed counsel, the state public defender may assist the district public defender, appointed counsel, or an organization designated in section 611.216 in the performance of duties, including trial representation in matters involving legal conflicts of interest or other special circumstances, and assistance with legal research and brief preparation. When the state public defender is directed by a court to represent a defendant or other person, the state public defender may, with the court's approval, assign the representation to any district public defender.

Subd. 2. **General duties.** The state public defender shall design and conduct programs, with the approval of the board of public defense, for the training of all state and district public defenders, appointed counsel, and attorneys for legal service corporations funded in section 611.216.

History: 1987 c 250 s 10

611.26 DISTRICT PUBLIC DEFENDERS.

Subdivision 1. Each judicial district shall have a district public defender. Public defenders and appointed counsel may request the assistance of the state public defender as provided in section 611.25, subdivision 1.

Subd. 2. The state board of public defense shall appoint a district public defender. When appointing a district public defender, the state board of public defense membership shall be increased to include two judges of the district and two county commissioners of the counties within the district. The additional members shall serve only in the capacity of selecting the district public defender. The judges within the district shall elect their two ad hoc members. The two county commissioners within the district shall be selected by the county boards of the counties within the district. The ad hoc state board of public defense shall appoint a district public defender only after requesting

and giving reasonable time to receive any recommendations from the public, the local bar association, the judges of the district, and the county commissioners within the district. Each district public defender shall be a qualified attorney, licensed to practice law in this state. The district public defender shall be appointed for a term of four years, beginning August 1, pursuant to the following staggered term schedule: (1) in 1987, the third and eighth districts; (2) in 1988, the first and tenth districts; (3) in 1989, the fifth and ninth districts; and (4) in 1990, the sixth and seventh districts. The district public defenders shall serve for staggered four-year terms and may be removed for cause upon the order of the state board of public defense. Vacancies in the office shall be filled by the appointing authority for the unexpired term.

Subd. 3. The compensation of the district public defender shall be set by the board of public defense. The compensation of each assistant district public defender shall be set by the district public defender with the approval of the board of public defense. The compensation for district public defenders may not exceed the prevailing compensation for county attorneys within the district, and the compensation for assistant district public defenders may not exceed the prevailing compensation for assistant county attorneys within the district. To assist the board of public defense in determining prevailing compensation under this subdivision, counties shall include in their review and comment on proposed district public defender budgets information on the compensation of county attorneys, including salaries and benefits, rent, secretarial staff, and other pertinent budget data. For purposes of this subdivision, compensation means salaries, cash payments, and employee benefits including paid time off and group insurance benefits, and other direct and indirect items of compensation including the value of office space provided by the employer.

Subd. 4. A district public defender shall appoint assistants who are qualified attorneys licensed to practice law in this state and other staff as the district public defender finds prudent and necessary subject to the standards adopted by the state board of public defense. Assistant district public defenders must be appointed to ensure broad geographic representation and caseload distribution within the district. Each assistant district public defender serves at the pleasure of the district public defender.

Subd. 5. [Repealed, 1987 c 250 s 20]

Subd. 6. The district public defender shall represent, without charge, a defendant charged with a felony or a gross misdemeanor when so directed by the district court.

[For text of subd 7, see M.S.1986]

Subd. 8. [Repealed, 1987 c 250 s 20]

History: 1987 c 250 s 11-15

611.262 REPRESENTATION BEFORE APPOINTMENT.

A district public defender or appointed assistant may, on request of a peace officer, a defendant, suspect, or other person, represent or consult with a person before formal appointment if there is a substantial factual basis to believe the person is indigent.

History: 1987 c 250 s 16

611.27 FINANCING THE OFFICES OF DISTRICT PUBLIC DEFENDER.

Subdivision 1. (a) The total compensation and expenses, including office equipment and supplies, of the district public defender are to be paid by the county or counties comprising the judicial district.

(b) A district public defender shall annually submit a comprehensive budget to the state board of public defense. The budget shall be in compliance with standards and forms required by the board and must, at a minimum, include detailed substantiation as to all revenues and expenditures. The district public defender shall, at times and in the form required by the board, submit reports to the board concerning its operations, including the number of cases handled and funds expended for these services.

Within ten days after an assistant district public defender is appointed, the district public defender shall certify to the state board of public defense the compensation that has been recommended for the assistant.

(c) The state board of public defense shall transmit the proposed budget of each district public defender to the respective district court administrators and county budget officers for comment before the board's final approval of the budget. The board shall determine and certify to the respective county boards a final comprehensive budget for the office of the district public defender that includes all expenses. After the board determines the allocation of the state funds authorized pursuant to paragraph (e), the board shall apportion the expenses of the district public defenders among the several counties and each county shall pay its share in monthly installments. The county share is the proportion of the total expenses that the population in the county bears to the total population in the district as determined by the last federal census. If the district public defender or an assistant district public defender is temporarily transferred to a county not situated in that public defender's judicial district, said county shall pay the proportionate part of that public defender's expenses for the services performed in said county.

(d) 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.

(e) Money appropriated to the state board of public defense and the public defender must be spent with the approval of the state board of public defense for the board's administration and for the state public defender and public defense corporations in amounts determined by the board. Funds may also be distributed by the state board of public defense to district public defenders including those in Hennepin and Ramsey counties. In making distributions to district public defenders, priority must be given, to the extent feasible and reasonable, to those districts having the greatest number of felonies and gross misdemeanors, and to those districts having the greatest number of distressed counties designated under section 297A.257. The board shall further consider each district's number of dispositions, such as jury trials, court trials and guilty pleas, the number of court appearances, and other trial-related financial data, and any special needs of districts organized in the calendar year 1987.

Subd. 2. The state board of public defense, after consultation with the county boards, shall designate the county officials of one or more counties within the district to pay the expenses of the district public defender. The county share assessed under subdivision 1 against each county of the district must be paid to the county treasurer of the designated county. The board may reimburse the designated counties for extra costs incurred. The board must provide for a revolving fund in the custody of the officials of the designated county into which each county must 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 Laws 1965, chapter 869.

[For text of subs 3 and 4, see M.S.1986]

History: 1987 c 250 s 17,18