

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 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 a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction, but if the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case;

(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.

History: 1Sp2003 c 2 art 3 s 3

611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT.

Subdivision 1. 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 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 appropriate inquiry into the financial circumstances 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. 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 he or she 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 appointment of the public defender, an individual who receives public defender services shall be obligated to pay to the court a co-payment for representation provided by a public defender. The co-payment shall be according to the following schedule:

- (1) if the person was charged with a felony, \$200;
- (2) if the person was charged with a gross misdemeanor, \$100; or
- (3) if the person was charged with a misdemeanor, \$50.

If the person is a child and was appointed counsel under the provisions of section 260B.163, subdivision 4, the parents of the child shall pay to the court a co-payment of \$100. If the person is a parent of a child and the parent was appointed counsel under the provisions of section 260C.163, subdivision 3, the parent shall pay to the court a co-payment of \$200.

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. Collection of the co-payment may be made through the provisions of chapter 270A, the Revenue Recapture Act.

(d) All public defender co-pay revenue collected under paragraph (c) and revenues less statutory fees collected under chapter 270A shall be deposited in the public defender co-pay account in the special revenue fund.

The first \$2,740,000 deposited in the public defender co-pay account must be transferred to the general fund. This is not an annual transfer. Receipts in excess of the first \$2,740,000 are appropriated to the Board of Public Defense for public defender services.

History: 1Sp2003 c 2 art 3 s 4; 1Sp2003 c 23 s 6

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 and 611.25, subdivision 1, paragraph (a), clause (2), the state public defender shall be appointed. For a person covered by section 611.14, clause (1), a 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.

History: 1Sp2003 c 2 art 3 s 5

611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.

[For text of subd 1, see M.S.2002]

Subd. 2. **Partial payment.** If the court determines that the defendant is able to make partial payment, the court shall direct the partial payments to the state general fund. Payments directed by the court to the state shall be recorded by the court administrator who shall transfer the payments to the commissioner of finance.

Subd. 3. **Reimbursement.** In each fiscal year, the commissioner of finance shall deposit the payments in the general fund and credit them to a separate account with the Board of Public Defense. The amount credited to this account is appropriated to the Board of Public Defense.

The balance of this account does not cancel but is available until expended. Expenditures by the board from this account for each judicial district public defense office must be based on the amount of the payments received by the state from the courts in each judicial district. A district public defender's office that receives money under this subdivision shall use the money to supplement office overhead payments to part-time attorneys providing public defense services in the district. By January 15 of each year, the Board of Public Defense shall report to the chairs and ranking minority members of the senate and house divisions having jurisdiction over criminal justice funding on the amount appropriated under this subdivision, the number of cases handled by each district public defender's office, the number of cases in which reimbursements were ordered, the average amount of reimbursement ordered, and the average amount of money received by part-time attorneys under this subdivision.

[For text of subds 4 to 7, see M.S.2002]

History: 2003 c 112 art 2 s 50

611.25 POWERS; DUTIES; LIMITATIONS.

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

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

(2) a person convicted of a felony or gross misdemeanor who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction, but if the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case; and

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

(b) The state 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 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 assign the representation to any district public defender.

[For text of subd 3, see M.S.2002]

History: 1Sp2003 c 2 art 3 s 6

611.26 DISTRICT PUBLIC DEFENDERS.

[For text of subds 2 to 4, see M.S.2002]

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. 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.

[For text of subds 7 and 10, see M.S.2002]

History: 1Sp2003 c 2 art 3 s 7

611.27 FINANCING THE OFFICES OF DISTRICT PUBLIC DEFENDER.

[For text of subds 1 to 12, see M.S.2002]

Subd. 13. Public defense services; correctional facility inmates. All billings for services rendered and ordered under subdivision 7 shall require the approval of the chief district public defender before being forwarded on a monthly basis to the state public defender. In cases where adequate representation cannot be provided by the district public defender and where counsel has been appointed under a court order, the state public defender shall forward to the commissioner of finance all billings for services rendered under the court order. The commissioner shall pay for services from county criminal justice aid retained by the commissioner of revenue for that purpose under section 477A.0121, subdivision 4, or from county program aid retained by the commissioner of revenue for that purpose under section 477A.0124, subdivision 1, clause (4), or 477A.03, subdivision 2b, paragraph (a).

The costs of appointed counsel and associated services in cases arising from new criminal charges brought against indigent inmates who are incarcerated in a Minnesota state correctional facility are the responsibility of the state Board of Public Defense. In such cases the state public defender may follow the procedures outlined in this section for obtaining court-ordered counsel.

Subd. 15. Costs of transcripts. In appeal cases and postconviction cases where the state public defender's office does not have sufficient funds to pay for transcripts and other necessary expenses because it has spent or committed all of the transcript funds in its annual budget, the state public defender may forward to the commissioner of finance all billings for transcripts and other necessary expenses. The commissioner shall pay for these transcripts and other necessary expenses from county criminal justice aid

retained by the commissioner of revenue under section 477A.0121, subdivision 4, or from county program aid retained by the commissioner of revenue for that purpose under section 477A.0124, subdivision 1, clause (4), or 477A.03, subdivision 2b, paragraph (a).

History: 1Sp2003 c 21 art 6 s 7,8; 1Sp2003 c 23 s 29

611.272 ACCESS TO GOVERNMENT DATA.

The district public defender, the state public defender, or an attorney working for a public defense corporation under section 611.216 has access to the criminal justice data communications network described in section 299C.46, as provided in this section. Access to data under this section is limited to data regarding the public defender's own client as necessary to prepare criminal cases in which the public defender has been appointed, including, but not limited to, criminal history data under section 13.87; juvenile offender data under section 299C.095; warrant information data under section 299C.115; incarceration data under section 299C.14; conditional release data under section 299C.147; and diversion program data under section 299C.46, subdivision 5. The public defender does not have access to law enforcement active investigative data under section 13.82, subdivision 7; data protected under section 13.82, subdivision 17; or confidential arrest warrant indices data under section 13.82, subdivision 19. The public defender has access to the data at no charge, except for the monthly network access charge under section 299C.46, subdivision 3, paragraph (b), and a reasonable installation charge for a terminal. Notwithstanding section 13.87, subdivision 3; 299C.46, subdivision 3, paragraph (b); 299C.48, or any other law to the contrary, there shall be no charge to public defenders for Internet access to the criminal justice data communications network.

History: 1Sp2003 c 2 art 3 s 8