

**611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.**

Subdivision 1. **Court determination.** 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, the court shall terminate the appointment of the public defender. The judicial district may investigate the financial status of a defendant or other person for whom a public defender has been appointed and may act to collect payments directed by the court.

If at any time after appointment a public defender should have reason to believe that a defendant is financially able to obtain counsel or to make partial payment for counsel, it shall be the public defender's duty to so advise the court so that appropriate action may be taken.

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 management and budget.

Subd. 3. **Reimbursement.** In each fiscal year, the commissioner of management and budget shall deposit the payments in the special revenue 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 of representatives 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.

Subd. 4. **Employed defendants; ability to pay.** (a) A court may order a defendant 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. 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.

(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.

Subd. 5. [Repealed, 2007 c 54 art 5 s 21; 2007 c 61 s 17]

Subd. 6. [Repealed, 2012 c 212 s 18]

Subd. 7. **Income withholding.** (a) Whenever an obligation for reimbursement of public defender costs is ordered by a court under this section, the amount of reimbursement as determined by court order must be withheld from the income of the person obligated to pay. The court shall serve a copy of the reimbursement

order on the defendant's employer. Notwithstanding any law to the contrary, the order is binding on the employer when served. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. The employer shall withhold from the income payable to the defendant the amount specified in the order and shall remit, within ten days of the date the defendant is paid the remainder of the income, the amounts withheld to the court.

(b) An employer shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer shall be liable to the court for any amounts required to be withheld. An employer that fails to withhold or transfer funds in accordance with this section is also liable for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld. An employer that has failed to comply with the requirements of this section is subject to contempt of court.

(c) Amounts withheld under this section do not supersede or have priority over amounts withheld pursuant to other sections of law.

**History:** 1965 c 869 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 604 art 9 s 5; 1991 c 345 art 3 s 5; 1993 c 146 art 2 s 20,31; 1994 c 636 art 11 s 4; 1995 c 226 art 2 s 25-29,36; 1998 c 367 art 8 s 13-15; 2003 c 112 art 2 s 50; 2007 c 61 s 5; 2009 c 101 art 2 s 109; 1Sp2010 c 1 art 14 s 18; 2012 c 212 s 13