

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 or gross 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;

(3) a person who is entitled to be represented by counsel under section 609.14, subdivision 2;

(4) a minor who is entitled to be represented by counsel under 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 under section 260.251, subdivision 2, clause (e); or

(5) a person, entitled by law to be represented by counsel, charged with an offense within the trial jurisdiction of a district 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 within the court's jurisdiction.

History: 1991 c 345 art 3 s 2

611.17 FINANCIAL INQUIRY; STATEMENTS.

(a) Each judicial district must screen requests under paragraph (b).

(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, source or sources of income, and any other information required by the court. The state public defender shall furnish appropriate forms for the financial statements. The information contained in the statement shall be confidential and for the exclusive use of the court 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.

History: 1991 c 345 art 3 s 3

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, 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: 1991 c 345 art 3 s 4

611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.

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 or to make partial payment for the representation, the court may terminate the appointment of the public defender, unless the person so represented is willing to pay therefor. If a public defender continues the representation, the court shall direct payment for such representation as the interests of justice may dictate. Any payments directed by the court shall be recorded by the court administrator, who shall transfer the payments to the governmental unit responsible for the costs 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.

History: 1991 c 345 art 3 s 5

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) 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

(2) three public members appointed by the governor.

After the expiration of the terms of persons appointed to the board before March 1, 1991, the appointing authorities may not appoint a person who is a judge to be a member of the state board of public defense, other than as a member of the ad hoc board of public defense.

(b) All members shall demonstrate an interest in maintaining a high quality, independent defense system for those who are unable to obtain adequate representation. Appointments to the board shall include qualified women and members of minority groups. At least three members of the board shall be from judicial districts other than the first, second, fourth, and tenth judicial districts. 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 a nine-member ad hoc board when considering the appointment of district public defenders under section 611.26, subdivision 2. The terms of chief 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 state public defender shall 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 state public defender. The chief administrator need not be licensed to practice law. The chief 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) present to the board and the state public defender plans, studies, and reports prepared for the board's and the state public defender's purposes and recommend to the board and the state public defender for adoption measures necessary to enforce or carry out the powers and duties of the board and the state public defender, or to efficiently administer the affairs of the board and the state public defender;
- (3) 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;
- (4) recommend to the board the adoption of rules and regulations necessary for the efficient operation of the board and its functions; and
- (5) perform other duties prescribed by the board and the state public defender.

Subd. 2. Duties and responsibilities. (a) The board shall approve and recommend to the legislature a budget for the board, the office of state public defender, the judicial district public defenders, and the public defense corporations.

(b) The board shall establish procedures for distribution of state funding under this chapter to the state and district public defenders and to the public defense corporations.

(c) The state public defender with the approval of 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 independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts.

(d) 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.1990]

Subd. 4. [Repealed, 1991 c 345 art 3 s 30]

History: 1991 c 345 art 3 s 6-8

611.23 OFFICE OF STATE PUBLIC DEFENDER; APPOINTMENT; SALARY.

The state public defender is responsible to 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 July 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: 1991 c 345 art 3 s 9

611.24 ORGANIZATION OF OFFICE; ASSISTANTS.

The state public defender shall supervise the operation, activities, policies and procedures of the state public defender system. The state public defender shall employ or retain assistant state public defenders, a chief administrator, a deputy state public defender in charge of appellate services, and other personnel as may be necessary to discharge the functions of the office. An assistant state 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: 1991 c 345 art 3 s 10

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 of a felony or gross misdemeanor. The state public defender shall represent, without charge, 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. 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. 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.

Subd. 3. Duties. The state public defender shall prepare an annual report to the board and a report to the governor, the legislature, and the supreme court on the operation of the state public defender's office, district defender systems, and public defense corporations. The state public defender may require the reporting of statistical data, budget information, and other cost factors by the chief district public defenders and appointed counsel systems. The state public defender shall design and conduct programs for the training of all state and district public defenders, appointed counsel, and attorneys for public defense corporations funded under section 611.26. The state public defender shall establish policies and procedures to administer the district public defender system, consistent with standards adopted by the state board of public defense.

History: 1991 c 345 art 3 s 11,12

611.26 DISTRICT PUBLIC DEFENDERS.

Subdivision 1. [Repealed, 1991 c 345 art 3 s 30]

Subd. 2. **Appointment; terms.** The state board of public defense shall appoint a chief district public defender for each judicial district. When appointing a chief district public defender, the state board of public defense membership shall be increased to include two residents of the district appointed by the chief judge of the district to reflect the characteristics of the population served by the public defender in that district. The additional members shall serve only in the capacity of selecting the district public defender. The ad hoc state board of public defense shall appoint a chief 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 chief district public defender shall be a qualified attorney, licensed to practice law in this state. The chief district public defender shall be appointed for a term of four years, beginning January 1, pursuant to the following staggered term schedule: (1) in 1992, the second and eighth districts; (2) in 1993, the first, third, fourth, and tenth districts; (3) in 1994, the fifth and ninth districts; and (4) in 1995, the sixth and seventh districts. The chief district public defenders shall serve for 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. **Compensation.** (a) The compensation of the chief 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 chief district public defender with the approval of the board of public defense. The compensation for chief 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 provide to the board 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.

(b) This subdivision does not limit the rights of public defenders to collectively bargain with their employers.

Subd. 3a. (a) Notwithstanding subdivision 3 or any other law to the contrary, compensation and economic benefit increases for chief district public defenders and assistant district public defenders, who are full-time county employees, shall be paid out of the budget for that judicial district public defender's office.

(b) Those budgets for district public defender services under the jurisdiction of the state board of public defense shall be eligible for adjustments to their base budgets in the same manner as other state agencies. In making biennial budget base adjustments, the commissioner of finance shall consider the budgets for district public defender services, as allocated by the state board of public defense, in the same manner as other state agencies.

Subd. 4. **Assistant public defenders.** A chief district public defender shall appoint assistants who are qualified attorneys licensed to practice law in this state and other staff as the chief district public defender finds prudent and necessary subject to the standards adopted by the state public defender. 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 chief district public defender.

Subd. 6. **Persons defended.** 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. In the second, third, fourth, sixth, and eighth districts only, the dis-

trict public defender shall also represent a defendant charged with a misdemeanor when so directed by the district court and shall represent a minor in the juvenile court when so directed by the juvenile court.

Subd. 7. Other employment. Chief district public defenders and assistant district public defenders may engage in the general practice of law where not employed on a full-time basis.

Subd. 9. Insurance. Notwithstanding any other law to the contrary, district public defenders and assistant district public defenders, and their employees and their dependents, may elect to enroll in the appropriate life insurance, hospital, medical and dental benefits, and optional coverages of their respective host county, as designated by the state board of public defense under section 611.27, subdivision 2, at the time, in the manner, and under conditions of eligibility as established by the host county for its employees. The host county must provide for payroll deductions to be made in the same manner and under the same conditions as provided for an eligible county employee and the employee's dependents. Nothing in this subdivision obligates the state or county to payments in the absence of an appropriation for those purposes.

Subd. 10. Services. The chief district public defender is responsible for the administration of public defender services in the district, consistent with standards adopted by the state board of public defense and the policies and procedures adopted by the state public defender.

History: 1991 c 345 art 3 s 13-20

611.261 [Repealed, 1991 c 345 art 3 s 30]

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 for the board's administration, for the state public defender, for the judicial district public defenders, and for the public defense corporations shall be expended as determined by the board. In distributing funds to district public defenders, the board shall consider the geographic distribution of public defenders, the equity of compensation among the judicial districts, public defender case loads, and the results of the weighted case load study.

[For text of subs 2 and 3, see M.S.1990]

Subd. 4. County portion of costs. That portion of subdivision 1 directing counties to pay the costs of public defense service shall not be in effect between July 1, 1991, and July 1, 1993. This subdivision only relates to costs associated with felony and gross misdemeanor public defense services in all judicial districts and to juvenile and misdemeanor public defense services in the second, third, fourth, sixth, and eighth judicial districts.

Subd. 5. District public defender budgets. 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.

Subd. 6. District public defenders; reporting cases. The state board of public defense shall adopt and implement a uniform system for reporting of hours and cases by district public defenders. District public defenders shall provide whatever assistance the board requires in order to implement this reporting system.

Subd. 7. Public defender services; responsibility. Notwithstanding subdivision 4, the state's obligation for the costs of the public defender services is limited to the appropriations made to the board of public defense. Services and expenses beyond those appropriated for shall be the responsibility of the counties within a judicial district. Expenses shall be distributed among the counties in proportion to their populations.

History: 1991 c 345 art 3 s 21-25

611.28 [Repealed, 1991 c 345 art 3 s 30]

611.29 [Repealed, 1991 c 345 art 3 s 30]

611.31 HANDICAPPED PERSON.

For the purposes of sections 611.30 to 611.34, "person handicapped in communication" means a person who: (a) because of a hearing, speech or other communication disorder, or (b) because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presentation of a defense.

History: 1991 c 323 s 4

611.32 PROCEEDINGS WHERE INTERPRETER APPOINTED.

Subdivision 1. Proceedings and preliminary proceedings involving possible criminal sanctions or confinement. In any proceeding in which a person handicapped in communication may be subjected to confinement, criminal sanction, or forfeiture of the person's property, and in any proceeding preliminary to that proceeding, including coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the person handicapped in communication and any witness handicapped in communication throughout the proceedings.

Subd. 2. Proceedings at time of apprehension or arrest. Following the apprehension or arrest of a person handicapped in communication for an alleged violation of a crimi-

nal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention. A law enforcement officer shall, with the assistance of the interpreter, explain to the person handicapped in communication, all charges filed against the person, and all procedures relating to the person's detainment and release. If the property of a person is seized under section 609.531, subdivision 4, the seizing officer, sheriff, or other law enforcement official shall, upon request, make available to the person at the earliest possible time a qualified interpreter to assist the person in understanding the possible consequences of the seizure and the person's right to judicial review. If the seizure is governed by section 609.5314, subdivision 2, a request for an interpreter must be made within 15 days after service of the notice of seizure and forfeiture. For a person who requests an interpreter under this section because of a seizure of property under section 609.5314, the 60 days for filing a demand for a judicial determination of a forfeiture begins when the interpreter is provided. The interpreter shall also assist the person with all other communications, including communications relating to needed medical attention. Prior to interrogating or taking the statement of the person handicapped in communication, the arresting officer, sheriff, or other law enforcement official shall make available to the person a qualified interpreter to assist the person throughout the interrogation or taking of a statement.

History: 1991 c 323 s 5