

## CHAPTER 611

## RIGHTS OF ACCUSED

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**611.01 GROUND OF ARREST, KNOWLEDGE.**

Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of arrest; and every such officer who shall refuse to answer relative thereto, or shall answer untruly, or neglect on request to exhibit to the arrested person, or to any person acting in the arrested person's behalf, the precept by virtue of which such arrest is made, shall be punished by a fine not exceeding \$3,000, or by imprisonment in the county jail not exceeding one year.

**History:** (9951) *RL s 4783; 1984 c 628 art 3 s 11; 1986 c 444*

**611.02 PRESUMPTION OF INNOCENCE; CONVICTION OF LOWEST DEGREE, WHEN.**

Every defendant in a criminal action is presumed innocent until the contrary is proved and, in case of a reasonable doubt, is entitled to acquittal; and when an offense has been proved against the defendant, and there exists a reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest.

**History:** (9952) *RL s 4784; 1986 c 444*

**611.025 PRESUMPTION OF RESPONSIBILITY.**

Except as otherwise provided by law, in every criminal proceeding, a person is presumed to be responsible for the person's acts and bears the burden of rebutting such presumption.

**History:** (9913) *RL s 4754; 1963 c 753 art 2 s 7; 1986 c 444*

**611.026 CRIMINAL RESPONSIBILITY OF MENTALLY ILL OR DEFICIENT.**

No person shall be tried, sentenced, or punished for any crime while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or making a defense; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.

**History:** (9915) *RL s 4756; 1971 c 352 s 1; 1986 c 444*

**611.03 CONVICTION.**

No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in a demurrer, or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court.

**History:** (9953) *RL s 4785; 1986 c 444*

**611.033 COPY OF CONFESSION OR ADMISSION.**

A statement, confession, or admission in writing shall not be received in evidence in any criminal proceeding against any defendant unless within a reasonable time of the taking thereof the defendant is furnished with a copy thereof and which statement, confession, or admission shall have endorsed thereon or attached thereto the receipt of the accused or certification of a peace officer which shall state that a copy thereof has been received by or made available to the accused. Nothing in this section requires that a videotape, audiotape, or transcript of a tape be given to the defendant at the time the statement, confession, or admission is made or within a reasonable time thereafter, provided that the videotape or audiotape is available to the defendant or the defendant's attorney for review within a reasonable time of the defendant's arrest, as well as in discovery pursuant to the rules of criminal procedure.

**History:** 1951 c 263 s 1; 1951 c 284 s 1; 1979 c 258 s 20; 1986 c 435 s 11

**611.04** [Repealed, 1979 c 233 s 42]**611.05 CONTINUANCE; EFFECT; BAIL.**

When the defendant is not indicted or tried as herein provided, and good reasons therefor are shown, the court may order the action continued from term to term, and in the meantime commit the defendant, or, in case the offense is bailable, admit the defendant to bail, on the defendant's furnishing satisfactory sureties. When the action is dismissed, the defendant shall be discharged from custody, or, if admitted to bail, the bail shall be exonerated, and, if money has been deposited for bail, that shall be refunded.

**History:** (9955) *RL s 4787; 1986 c 444*

**611.06 DEFENDANT ENTITLED TO BLANK SUBPOENAS.**

The court administrator of the court in which any indictment is to be tried shall at all times, upon application of a defendant not represented by counsel, and without charge, issue as many blank subpoenas, under the seal of the court, and subscribed by the court administrator as court administrator, for witnesses in the state, as are approved by order of court as provided by rule 22.01, subdivision 3, of the rules of criminal procedure and required by the defendant.

Issuance of subpoenas shall not require court approval if defendant is represented by counsel.

**History:** (9956) *RL s 4788; 1979 c 233 s 25; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

**611.07** [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]**611.071** [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]**611.08** [Repealed, 1979 c 233 s 42]**611.09** [Repealed, 1963 c 753 art 2 s 17]**611.10** [Repealed, 1963 c 753 art 2 s 17]**611.11 NO PRESUMPTION FROM FAILURE TO TESTIFY.**

The defendant in the trial of an indictment, complaint, or other criminal proceeding shall, at the defendant's own request and not otherwise, be allowed to testify; but

failure to testify shall not create any presumption against the defendant, nor shall it be alluded to by the prosecuting attorney or by the court.

**History:** (9815) *RL s 4661; 1986 c 444*

**611.12** [Repealed, 1989 c 335 art 3 s 57 subd 2]

**611.13** [Repealed, 1969 c 838 s 7]

#### **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;

(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:** 1965 c 869 s 1; 1969 c 655 s 1; 1976 c 2 s 153; 1983 c 247 s 213; 1987 c 384 art 2 s 111; 1991 c 345 art 3 s 2; 1998 c 367 art 8 s 12; 1999 c 139 art 4 s 2; 2000 c 357 s 2

#### **611.15 NOTIFICATION OF RIGHT TO REPRESENTATION.**

In every criminal case or proceeding, including a juvenile delinquency or extended jurisdiction juvenile proceeding, in which any person entitled by law to representation by counsel shall appear without counsel, the court shall advise such person of the right to be represented by counsel and that counsel will be appointed to represent the person if the person is financially unable to obtain counsel.

**History:** 1965 c 869 s 2; 1986 c 444; 1994 c 576 s 50

#### **611.16 REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER.**

Any person described in section 611.14 or any other person entitled by law to representation by counsel, may at any time request the court in which the matter is pending, or the court in which the conviction occurred, to appoint a public defender to represent the person. In a proceeding defined by clause (2) of section 611.14, application for the appointment of a public defender may also be made to a judge of the supreme court.

**History:** 1965 c 869 s 3; 1986 c 444

#### **611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT.**

(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, 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 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.

(c) Upon disposition of the case, an individual who has received public defender services shall pay to the court a \$28 co-payment for representation provided by a public defender, unless the co-payment is, or has been, waived by the court. The co-payment shall be deposited in the state 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.

**History:** 1965 c 869 s 4; 1983 c 359 s 91; 1986 c 444; 1989 c 335 art 1 s 260; 1991 c 345 art 3 s 3; 1993 c 146 art 2 s 19; 1994 c 636 art 11 s 3; 1995 c 226 art 2 s 24; 2002 c 220 art 6 s 13

#### **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:** 1965 c 869 s 5; 1969 c 655 s 2; 1983 c 247 s 214; 1986 c 444; 1991 c 345 art 3 s 4

#### **611.19 WAIVER OF APPOINTMENT OF COUNSEL.**

Where counsel is waived by a defendant, the waiver shall in all instances be made in writing, signed by the defendant, except that in such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel. Waiver of counsel by a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding is governed by section 260B.163, subdivisions 4 and 10.

**History:** 1965 c 869 s 6; 1994 c 576 s 51; 1999 c 139 art 4 s 2

#### **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 state treasurer.

Subd. 3. **Reimbursement.** In each fiscal year, the state treasurer 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.

Subd. 4. **Employed defendants.** 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, to reimburse the state for the cost of the public defender. 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 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.

Subd. 5. **Reimbursement rate.** Legal fees required to be reimbursed under subdivision 4, shall be determined by multiplying the total number of hours worked on the case by a public defender by \$40 per hour. The public defender assigned to the defendant's case shall provide to the court, upon the court's request, a written statement containing the total number of hours worked on the defendant's case up to the time of the request.

Subd. 6. **Reimbursement schedule guidelines.** In determining a defendant's reimbursement schedule, the court may derive a specific dollar amount per month by multiplying the defendant's net income by the percent indicated by the following guidelines:

Net Income Per Month of Defendant	Number of Dependents Not Including Defendant				
	4 or more	3	2	1	0
\$200 and Below	Percentage based on the ability of the defendant to pay as determined by the court.				
\$200 - 350	8%	9.5%	11%	12.5%	14%
\$351 - 500	9%	11%	12.5%	14%	15%

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\$501 - 650	10%	12%	14%	15%	17%
\$651 - 800	11%	13.5%	15.5%	17%	19%
\$801 and above	12%	14.5%	17%	19%	20%

“Net income” shall have the meaning given it in section 518.551, subdivision 5.

**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

## 611.21 SERVICES OTHER THAN COUNSEL.

(a) Counsel appointed by the court for an indigent defendant, or representing a defendant who, at the outset of the prosecution, has an annual income not greater than 125 percent of the poverty line established under United States Code, title 42, section 9902(2), may file an ex parte application requesting investigative, expert, or other services necessary to an adequate defense in the case. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The court may establish a limit on the amount which may be expended or promised for such services. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained, but such ratification shall be given only in unusual situations. The court shall determine reasonable compensation for the services and direct payment by the county in which the prosecution originated, to the organization or person who rendered them, upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

(b) The compensation to be paid to a person for such service rendered to a defendant under this section, or to be paid to an organization for such services rendered by an employee, may not exceed \$1,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court as necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the chief judge of the district. The chief judge of the judicial district may delegate approval authority to an active district judge.

(c) If the court denies authorizing counsel to obtain services on behalf of the defendant, the court shall make written findings of fact and conclusions of law that

state the basis for determining that counsel may not obtain services on behalf of the defendant. When the court issues an order denying counsel the authority to obtain services, the defendant may appeal immediately from that order to the court of appeals and may request an expedited hearing.

**History:** 1965 c 869 s 8; 1969 c 9 s 91; 1986 c 444; 1989 c 335 art 1 s 261; 1994 c 636 art 8 s 14

**611.214** [Repealed, 1989 c 335 art 3 s 57 subd 2]

**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.

**Subd. 3. Limitation.** In no event shall the board or its members interfere with the discretion, judgment or zealous advocacy of counsel in their handling of individual cases as a part of the judicial branch of government.

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

**History:** 1981 c 356 s 360; 1985 c 285 s 49; 1986 c 444; 1987 c 250 s 2-4; 1988 c 686 art 1 s 73; 1989 c 335 art 1 s 262; 1990 c 604 art 9 s 6; 1990 c 612 s 12; 1991 c 345 art 3 s 6-8

### 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. 1a. [Repealed, 1998 c 367 art 8 s 26]

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.

Subd. 4. **Audits.** The legislative auditor may conduct periodic postaward audits of these grants as may be requested by the board of public defense and approved by the legislative audit commission.

**History:** 1984 c 544 s 86; 1Sp1985 c 13 s 367,368; 1987 c 250 s 5-7; 1993 c 146 art 2 s 21; 1997 c 7 art 2 s 62

**611.22** [Repealed, 1987 c 250 s 20]

### **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 a district court judge. 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:** 1965 c 869 s 10; 1967 c 696 s 2; 1981 c 356 s 361; 1986 c 444; 1987 c 250 s 8; 1991 c 345 art 3 s 9; 1Sp2001 c 9 art 18 s 18; 2002 c 379 art 1 s 113

### **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:** 1965 c 869 s 11; 1978 c 540 s 1; 1981 c 356 s 362; 1987 c 250 s 9; 1988 c 686 art 1 s 74; 1991 c 345 art 3 s 10

### **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; 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.

Subd. 2. [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]

Subd. 3. **Duties.** 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:** 1965 c 869 s 12; 1969 c 655 s 3; 1983 c 247 s 215; 1986 c 444; 1987 c 250 s 10; 1991 c 345 art 3 s 11,12; 1993 c 146 art 2 s 22; 1994 c 576 s 52; 1997 c 7 art 2 s 63; 1998 c 367 art 8 s 16

### 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, and the judges of 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 2000, the second and eighth districts; (2) in 2001, the first, third, fourth, and tenth districts; (3) in 2002, the fifth and ninth districts; and (4) in 1999, 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 and the compensation of each assistant district public defender shall be set by the board of public defense. To assist the board of public defense in determining 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. **Budget; compensation.** (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) In the second judicial district, the district public defender's office shall be funded by the board of public defense. The budget for the second judicial public defender's office shall not include Ramsey county property taxes.

(c) In the fourth judicial district, the district public defender's office shall be funded by the board of public defense and by the Hennepin county board. Personnel expenses of state employees hired on or after January 1, 1999, in the fourth judicial district public defender's office shall be funded by the board of public defense.

(d) Those budgets for district public defender services in the second and fourth judicial districts 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 in all judicial districts, 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. A chief district public defender is authorized, subject to approval by the state board of public defense or their designee, to hire an independent contractor to perform the duties of an assistant public defender.

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

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 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.

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

Subd. 9. [Repealed, 1998 c 367 art 8 s 26]

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:** 1965 c 869 s 13; 1969 c 655 s 4; 1971 c 25 s 93; 1974 c 322 s 10; 1981 c 356 s 363-367; 1986 c 444; 1987 c 250 s 11-15; 1989 c 335 art 3 s 36; 1990 c 604 art 9 s 7,8; 1990 c 612 s 12; 1991 c 345 art 3 s 13-20; 1993 c 146 art 2 s 23; 1994 c 636 art 11 s 5,6; 1998 c 367 art 8 s 17-19; 2000 c 357 s 3

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

**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

**611.263 EMPLOYER; RAMSEY, HENNEPIN DEFENDERS.**

Subdivision 1. **Employees.** (a) Except as provided in subdivision 3, the district public defender and assistant public defenders of the second judicial district are employees of Ramsey county in the unclassified service under section 383A.286.

(b) Except as provided in subdivision 3, the district public defender and assistant public defenders of the fourth judicial district are employees of Hennepin county under section 383B.63, subdivision 6.

Subd. 2. **Public employer.** (a) Except as provided in subdivision 3, and notwithstanding section 179A.03, subdivision 15, clause (c), the Ramsey county board is the public employer under the Public Employment Labor Relations Act for the district public defender and assistant public defenders of the second judicial district.

(b) Except as provided in subdivision 3, and notwithstanding section 179A.03, subdivision 15, clause (c), the Hennepin county board is the public employer under the Public Employment Labor Relations Act for the district public defender and assistant public defenders of the fourth judicial district.

Subd. 3. **Exception.** Notwithstanding section 611.265, district public defenders and employees in the second and fourth judicial districts who are hired on or after January 1, 1999, are state employees of the board of public defense and are governed by the personnel rules adopted by the board of public defense. Employees of the public defender's office in the second and fourth judicial districts who are hired before January 1, 1999, remain employees of Ramsey and Hennepin counties, respectively, under subdivisions 1 and 2.

**History:** 1989 c 335 art 3 s 37; 1998 c 367 art 8 s 20

**611.265 TRANSITION.**

(a) District public defenders and their employees, other than in the second and fourth judicial districts, are state employees in the judicial branch, and are governed by the personnel rules adopted by the state board of public defense.

(b) A district public defender or district public defender employee who becomes a state employee under this section, and who participated in a county insurance program on June 30, 1993, may elect to continue to participate in the county program according to procedures established by the board of public defense. An affected county shall bill the board of public defense for employer contributions, in a manner prescribed by the board. The county shall not charge the board any administrative fee. Notwithstanding any law to the contrary, a person who is first employed as a district public defender after July 1, 1993, shall participate in the state employee insurance program, as determined by the state board of public defense, in consultation with the commissioner of employee relations.

(c) A district public defender or district public defender employee who becomes a state employee under this section, and who participated in the public employee retirement association on June 30, 1993, may elect to continue to participate in the public employee retirement association according to procedures established by the board of public defense and the association. Notwithstanding any law to the contrary, a person who is first employed as a state employee or by a district public defender after July 1, 1993, must participate in the Minnesota state retirement system.

(d) A person performing district public defender work as an independent contractor is not eligible to be covered under the state group insurance plan or the public employee retirement association.

**History:** 1993 c 146 art 2 s 24

#### 611.27 FINANCING THE OFFICES OF DISTRICT PUBLIC DEFENDER.

Subdivision 1. **County payment responsibility.** (a) A chief 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. The chief 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.

(b) 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.

Subd. 2. [Repealed, 1998 c 367 art 8 s 26]

Subd. 3. **Transcript use.** If the state public defender or a district public defender deems it necessary to make a motion for a new trial, to take an appeal, or other postconviction proceedings in order to properly represent a defendant or other person whom that public defender had been directed to represent, that public defender may use the transcripts of the testimony and other proceedings filed with the court administrator of the district court as provided by section 243.49.

Subd. 4. [Repealed, 1998 c 367 art 8 s 26]

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.** The state's obligation for the costs of the public defender services is limited to the appropriations made to the board of public defense.

Subd. 8. **Public defender services; state public defender review.** In a case where the chief district public defender does not believe that the office can provide adequate representation, the chief public defender of the district shall immediately notify the state public defender.

Subd. 9. **Public defender services; request to the court.** The chief district public defender with the approval of the state public defender may request that the chief judge of the district court, or a district court judge designated by the chief judge, authorize appointment of counsel other than the district public defender in such cases.

Subd. 10. **Public defender services; no permanent staff.** The chief public defender may not request the court nor may the court order the addition of permanent staff under subdivision 7.

Subd. 11. **Public defender services; appointment of counsel.** If the court finds that the provision of adequate legal representation, including associated services, is beyond the ability of the district public defender to provide, the court shall order counsel to be appointed, with compensation and expenses to be paid under the provisions of this

subdivision and subdivision 7. Counsel in such cases shall be appointed by the chief district public defender. If the court issues an order denying the request, the court shall make written findings of fact and conclusions of law. Upon denial, the chief district public defender may immediately appeal the order denying the request to the court of appeals and may request an expedited hearing.

Subd. 12. **Public defender services; compensation and expenses.** Counsel appointed under this subdivision shall document the time worked and expenses incurred in a manner prescribed by the chief district public defender.

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.

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. 14. [Repealed, 1997 c 7 art 2 s 67]

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.

**History:** 1965 c 869 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 250 s 17,18; 1990 c 604 art 9 s 9; 1991 c 345 art 3 s 21-25; 1992 c 513 art 4 s 50-57; 1993 c 146 art 2 s 25; 1994 c 636 art 11 s 7; 1995 c 226 art 6 s 14; 1997 c 239 art 12 s 7,8; 1998 c 367 art 8 s 21,22

#### 611.271 COPIES OF DOCUMENTS; FEES.

The court administrators of courts, the prosecuting attorneys of counties and municipalities, and the law enforcement agencies of the state and its political subdivisions shall furnish, upon the request of the district public defender, the state public defender, or an attorney working for a public defense corporation under section 611.216, copies of any documents in their possession at no charge to the public defender, including the following: police reports, photographs, copies of existing grand jury transcripts, audiotapes, videotapes, copies of existing transcripts of audiotapes or videotapes and, in child protection cases, reports prepared by local welfare agencies. Nothing in this section shall compel production of documents that are not discoverable under the rules of court, court order, or chapter 13.

**History:** 1969 c 655 s 5; 1Sp1986 c 3 art 1 s 82; 1990 c 604 art 9 s 10; 1992 c 571 art 15 s 4; 1993 c 146 art 2 s 26; 1996 c 408 art 11 s 8

#### 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, there shall be no charge to public defenders for Internet access to public criminal history data.

**History:** 1999 c 227 s 22; 2000 c 377 s 5; 1Sp2001 c 8 art 5 s 11

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

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

**611.30 RIGHT TO INTERPRETER, STATE POLICY.**

It is hereby declared to be the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to provide a procedure for the appointment of interpreters to avoid injustice and to assist persons handicapped in communication in their own defense.

**History:** 1969 c 955 s 1; 1981 c 131 s 4

**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:** 1969 c 955 s 2; 1981 c 131 s 5; 1984 c 460 s 2; 1986 c 444; 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 criminal 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 detention 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:** 1969 c 955 s 3; 1984 c 460 s 3; 1986 c 444; 1991 c 323 s 5

### 611.33 QUALIFIED INTERPRETER.

Subdivision 1. No person shall be appointed as a qualified interpreter pursuant to sections 611.30 to 611.34 unless said person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.

Subd. 2. Every qualified interpreter appointed pursuant to the provisions of sections 611.30 to 611.34, before entering upon duties as such, shall take an oath, to make to the best of the interpreter's skill and judgment a true interpretation to the handicapped person being examined of all the proceedings, in a language which said person understands, and to repeat the statements, in the English language, of said person to the court or other officials before whom the proceeding is taking place.

Subd. 3. The fees and expenses of a qualified interpreter shall be fixed and ordered paid by the presiding official before whom the proceeding is taking place. The fees and expenses must be paid by the state courts. Payment for any activities requiring interpreter services on behalf of law enforcement, the board of public defense, prosecutors, or corrections agents other than court appearances is the responsibility of the agency that requested the services.

Subd. 4. An interpreter pursuant to sections 611.30 to 611.34 shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as an interpreter.

**History:** 1969 c 955 s 4; 1971 c 25 s 94; 1981 c 131 s 6; 1986 c 444; 1999 c 216 art 7 s 41

### 611.34 APPLICABILITY TO ALL COURTS.

The provisions of sections 611.30 to 611.34 shall apply to all courts in this state and political subdivisions thereof.

**History:** 1969 c 955 s 5

### 611.35 REIMBURSEMENT OF PUBLIC DEFENDER AND APPOINTIVE COUNSEL.

Subdivision 1. Any person who is represented by a public defender or appointive counsel shall, if financially able to pay, reimburse the governmental unit chargeable with the compensation of such public defender or appointive counsel for the actual costs to the governmental unit in providing the services of the public defender or appointive counsel. The court in hearing such matter shall ascertain the amount of such costs to be charged to the defendant and shall direct reimbursement over a period of not to exceed six months, unless the court for good cause shown shall extend the period of reimbursement. If a term of probation is imposed as a part of a sentence, reimbursement of costs as required by this chapter must not be made a condition of probation. Reimbursement of costs as required by this chapter is a civil obligation and must not be made a condition of a criminal sentence.

Subd. 2. The county attorney may commence a civil action to recover such cost remaining unpaid at the expiration of six months unless the court has extended the



reimbursement period and shall, if it appears that such recipient of public defender or appointive counsel services is about to leave the jurisdiction of the court or sell or otherwise dispose of assets out of which reimbursement may be obtained, commence such action forthwith. The county attorney may compromise and settle any claim for reimbursement with the approval of the court which heard the matter. No determination or action shall be taken later than two years after the termination of the duties of the public defender or appointive counsel.

**History:** 1969 c 1002 s 1,2; 1986 c. 444; 1995 c 226 art 2 s.30