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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1948**

March 12, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 27, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to public defense; providing for public defender representation for
1.3 juveniles, children in need of protection, and other persons; amending Minnesota
1.4 Statutes 2006, sections 260C.163, subdivision 3; 260C.331, subdivision 3;
1.5 611.14; 611.16; 611.18.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 260C.163, subdivision 3, is amended to
1.8 read:

1.9 Subd. 3. **Appointment of counsel.** (a) The child, parent, guardian or custodian has
1.10 the right to effective assistance of counsel in connection with a proceeding in juvenile
1.11 court.

1.12 (b) Except in proceedings where the sole basis for the petition is habitual truancy, if
1.13 the child, parent, guardian, or custodian desires counsel but is unable to employ it, the
1.14 court shall appoint counsel to represent the child who is ten years of age or older or the
1.15 parents or guardian ~~in any case in which it feels that such an appointment is appropriate~~
1.16 pursuant to section 611.14.

1.17 (c) In any proceeding where the sole basis for the petition is habitual truancy, the
1.18 child, parent, guardian, and custodian do not have the right to appointment of a public
1.19 defender or other counsel at public expense. However, before any out-of-home placement,
1.20 including foster care or inpatient treatment, can be ordered, the court must appoint a public
1.21 defender ~~or other counsel at public expense in accordance with paragraph (b)~~ for the child
1.22 in accordance with section 611.14, paragraph (a), clause (4).

1.23 (d) Counsel for the child shall not also act as the child's guardian ad litem.

1.24 (e) In any proceeding where the subject of a petition for a child in need of
1.25 protection or services is not represented by an attorney, the court shall determine the

2.1 child's preferences regarding the proceedings, if the child is of suitable age to express
2.2 a preference.

2.3 **EFFECTIVE DATE.** This section is effective January 1, 2008.

2.4 Sec. 2. Minnesota Statutes 2006, section 260C.331, subdivision 3, is amended to read:

2.5 Subd. 3. **Court expenses.** (1) The following expenses are a charge upon the county
2.6 in which proceedings are held upon certification of the judge of juvenile court or upon
2.7 such other authorization provided by law:

2.8 (a) The fees and mileage of witnesses, and the expenses and mileage of officers
2.9 serving notices and subpoenas ordered by the court, as prescribed by law.

2.10 (b) The expense of transporting a child to a place designated by a child-placing
2.11 agency for the care of the child if the court transfers legal custody to a child-placing
2.12 agency.

2.13 (c) The expense of transporting a minor to a place designated by the court.

2.14 (d) ~~Reasonable compensation for an attorney appointed by the court to serve as~~
2.15 ~~counsel, except in the Eighth Judicial District where the state courts shall pay for counsel~~
2.16 ~~to a guardian ad litem until the recommendations of the task force created in Laws 1999,~~
2.17 ~~chapter 216, article 7, section 42, are implemented.~~ The reimbursement to the Board of
2.18 Public Defense for trial court representation of noncustodial parents from the time that
2.19 the noncustodial parent is made a party to the child protection or permanent placement
2.20 proceedings under section 260C.201, subdivision 11, paragraph (d), clauses (1) to (5).
2.21 Compensation for attorney services shall be set at a rate of \$60 per hour. Funds collected
2.22 by the board shall be deposited in the special revenue fund and are appropriated to the
2.23 board and do not cancel.

2.24 (2) The state courts shall pay for guardian ad litem expenses.

2.25 **EFFECTIVE DATE.** This section is effective January 1, 2008.

2.26 Sec. 3. Minnesota Statutes 2006, section 611.14, is amended to read:

2.27 **611.14 RIGHT TO REPRESENTATION BY PUBLIC DEFENDER.**

2.28 (a) The following persons who are financially unable to obtain counsel are entitled
2.29 to be represented by a public defender:

2.30 (1) a person charged with a felony, gross misdemeanor, or misdemeanor including a
2.31 person charged under sections 629.01 to 629.29;

2.32 (2) a person appealing from a conviction of a felony or gross misdemeanor, or
2.33 a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction

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

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

3.8 (4) a minor ten years of age or older who is entitled to be represented by counsel
3.9 under section 260B.163, subdivision 4, or 260C.163, subdivision 3;

3.10 (5) a child under ten years of age when the child's misbehavior is the sole basis for
3.11 a petition filed by the county attorney and any out-of-home placement including foster
3.12 care or inpatient treatment is being sought;

3.13 (6) a custodial parent or parents who are entitled to counsel in trial court under
3.14 section 260C.163, subdivision 3, pursuant to a petition filed by a county attorney, or, if
3.15 there is no parent, the guardian or the custodian of the child, but in cases governed by
3.16 the Indian Child Welfare Act, the district public defender may represent both parents
3.17 regardless of whether they have custody of the child, or may represent the guardian or
3.18 custodian of the child; or

3.19 (7) a noncustodial parent made a party to a child protection or permanent placement
3.20 proceeding under section 260C.201, subdivision 11, paragraph (d), clauses (1) to (5), the
3.21 cost of which will be reimbursed under section 260C.331, subdivision 3, paragraph (d).

3.22 (b) The Board of Public Defense must not provide or pay for public defender
3.23 services to persons other than those entitled to representation under this section.

3.24 **EFFECTIVE DATE.** This section is effective January 1, 2008.

3.25 Sec. 4. Minnesota Statutes 2006, section 611.16, is amended to read:

3.26 **611.16 REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER.**

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

3.32 **EFFECTIVE DATE.** This section is effective January 1, 2008.

4.1 Sec. 5. Minnesota Statutes 2006, section 611.18, is amended to read:

4.2 **611.18 APPOINTMENT OF PUBLIC DEFENDER.**

4.3 If it appears to a court that a person requesting the appointment of counsel satisfies
4.4 the requirements of this chapter, the court shall order the appropriate public defender to
4.5 represent the person at all further stages of the proceeding through appeal, if any. For a
4.6 person appealing from a conviction, or a person pursuing a postconviction proceeding
4.7 and who has not already had a direct appeal of the conviction, according to the standards
4.8 of sections 611.14 and 611.25, subdivision 1, paragraph (a), clause (2), the state public
4.9 defender shall be appointed. For a person covered by section 611.14, paragraph (a), clause
4.10 (1), (3), (4), (5), (6), or (7), a district public defender shall be appointed to represent that
4.11 person. ~~If (a) conflicting interests exist, (b) the district public defender for any other~~
4.12 ~~reason is unable to act, or (c) the interests of justice require, the state public defender~~
4.13 ~~may be ordered to represent a person. When the state public defender is directed by a~~
4.14 ~~court to represent a defendant or other person, the state public defender may assign the~~
4.15 ~~representation to any district public defender.~~ If at any stage of the proceedings, including
4.16 an appeal, the court finds that the defendant is financially unable to pay counsel whom the
4.17 defendant had retained, the court may appoint the appropriate public defender to represent
4.18 the defendant, as provided in this section. Prior to any court appearance, a public defender
4.19 may represent a person accused of violating the law, who appears to be financially unable
4.20 to obtain counsel, and shall continue to represent the person unless it is subsequently
4.21 determined that the person is financially able to obtain counsel. The representation may
4.22 be made available at the discretion of the public defender, upon the request of the person
4.23 or someone on the person's behalf. Any law enforcement officer may notify the public
4.24 defender of the arrest of any such person.

4.25 **EFFECTIVE DATE.** This section is effective January 1, 2008.