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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1145**

February 26, 2009

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The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

1.1 A bill for an act
1.2 relating to public safety; modifying application request for payment of
1.3 investigative and expert services for indigent defendants; amending Minnesota
1.4 Statutes 2008, sections 611.17; 611.21.

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

1.6 Section 1. Minnesota Statutes 2008, section 611.17, is amended to read:

1.7 **611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT;**
1.8 **STANDARDS FOR DISTRICT PUBLIC DEFENSE ELIGIBILITY.**

1.9 (a) Each judicial district must screen requests for representation by the district public
1.10 defender. A defendant is financially unable to obtain counsel if:

1.11 (1) the defendant, or any dependent of the defendant who resides in the same
1.12 household as the defendant, receives means-tested governmental benefits; or

1.13 (2) the defendant, through any combination of liquid assets and current income,
1.14 would be unable to pay the reasonable costs charged by private counsel in that judicial
1.15 district for a defense of the same matter.

1.16 (b) Upon a request for the appointment of counsel, the court shall make appropriate
1.17 inquiry into the financial circumstances of the applicant, who shall submit a financial
1.18 statement under oath or affirmation setting forth the applicant's assets and liabilities,
1.19 including the value of any real property owned by the applicant, whether homestead or
1.20 otherwise, less the amount of any encumbrances on the real property, the source or sources
1.21 of income, and any other information required by the court. The applicant shall be under
1.22 a continuing duty while represented by a public defender to disclose any changes in the
1.23 applicant's financial circumstances that might be relevant to the applicant's eligibility for a
1.24 public defender. The state public defender shall furnish appropriate forms for the financial

2.1 statements. The forms must contain conspicuous notice of the applicant's continuing duty
2.2 to disclose to the court changes in the applicant's financial circumstances. The forms must
2.3 also contain conspicuous notice of the applicant's obligation to make a co-payment for the
2.4 services of the district public defender, as specified under paragraph (c). The information
2.5 contained in the statement shall be confidential and for the exclusive use of the court
2.6 and the public defender appointed by the court to represent the applicant except for any
2.7 prosecution under section 609.48 or application under section 611.21. A refusal to execute
2.8 the financial statement or produce financial records constitutes a waiver of the right to the
2.9 appointment of a public defender. The court shall not appoint a district public defender to
2.10 a defendant who is financially able to retain private counsel but refuses to do so.

2.11 An inquiry to determine financial eligibility of a defendant for the appointment of
2.12 the district public defender shall be made whenever possible prior to the court appearance
2.13 and by such persons as the court may direct. This inquiry may be combined with the
2.14 prerelease investigation provided for in Minnesota Rule of Criminal Procedure 6.02,
2.15 subdivision 3. In no case shall the district public defender be required to perform this
2.16 inquiry or investigate the defendant's assets or eligibility. The court has the sole duty to
2.17 conduct a financial inquiry. The inquiry must include the following:

- 2.18 (1) the liquidity of real estate assets, including the defendant's homestead;
2.19 (2) any assets that can be readily converted to cash or used to secure a debt;
2.20 (3) the determination of whether the transfer of an asset is voidable as a fraudulent
2.21 conveyance; and

2.22 (4) the value of all property transfers occurring on or after the date of the alleged
2.23 offense. The burden is on the accused to show that he or she is financially unable to afford
2.24 counsel. Defendants who fail to provide information necessary to determine eligibility
2.25 shall be deemed ineligible. The court must not appoint the district public defender as
2.26 advisory counsel.

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

2.30 The co-payment must be credited to the general fund. If a term of probation is
2.31 imposed as a part of an offender's sentence, the co-payment required by this section must
2.32 not be made a condition of probation. The co-payment required by this section is a civil
2.33 obligation and must not be made a condition of a criminal sentence.

2.34 **EFFECTIVE DATE.** This section is effective July 1, 2009.

3.1 Sec. 2. Minnesota Statutes 2008, section 611.21, is amended to read:

3.2 **611.21 SERVICES OTHER THAN ~~COUNSEL~~ PUBLIC DEFENDER.**

3.3 (a) ~~Counsel~~ A public defender appointed by the court for an indigent defendant, or
3.4 representing a defendant who, at the outset of the prosecution, has an annual income not
3.5 greater than 125 percent of the poverty line established under United States Code, title 42,
3.6 section 9902(2), may file an ~~ex parte~~ application requesting investigative, expert, or other
3.7 services necessary to an adequate defense in the case. The public defender shall provide
3.8 written notice of the application to the prosecutor at least five days prior to the hearing.

3.9 (b) The application shall include:

3.10 (1) an updated financial statement required under section 611.17 from the defendant;

3.11 and

3.12 (2) an affidavit from the chief district public defender specifying:

3.13 (i) the annual allotted budget for the requested services at both the district and

3.14 state level;

3.15 (ii) that the entire allotted budget for the requested services has been exhausted for

3.16 the fiscal year at both the district and state level;

3.17 (iii) that there is no budget surplus in the district or state public defender budget for

3.18 the previous year, and none is expected for the current year; and

3.19 (iv) that there is no contingency fund or other source of funds in the district or state

3.20 public defender budget to cover the expenses.

3.21 Upon finding, after appropriate inquiry in ~~an ex parte proceeding~~ a hearing, that the
3.22 services are necessary and that the defendant is financially unable to obtain them, the
3.23 court shall authorize ~~counsel~~ the public defender to obtain the services on behalf of the
3.24 defendant. The court may establish a limit on the amount which may be expended or
3.25 promised for such services. The court may, in the interests of justice, and upon a finding
3.26 that timely procurement of necessary services could not await prior authorization, ratify
3.27 such services after they have been obtained, but such ratification shall be given only in
3.28 unusual situations. The court shall determine reasonable compensation for the services
3.29 and direct payment by the county in which the prosecution originated, to the organization
3.30 or person who rendered them, upon the filing of a claim for compensation supported by
3.31 an affidavit specifying the time expended, services rendered, and expenses incurred on
3.32 behalf of the defendant, and the compensation received in the same case or for the same
3.33 services from any other source.

3.34 ~~(b)~~ (c) The compensation to be paid to a person for such service rendered to a
3.35 defendant under this section, or to be paid to an organization for such services rendered by
3.36 an employee, may not exceed \$1,000, exclusive of reimbursement for expenses reasonably

4.1 incurred, unless payment in excess of that limit is certified by the court as necessary to
4.2 provide fair compensation for services of an unusual character or duration and the amount
4.3 of the excess payment is approved by the chief judge of the district. The chief judge of the
4.4 judicial district may delegate approval authority to an active district judge.

4.5 ~~(e)~~ (d) If the court denies authorizing ~~counsel~~ the public defender to obtain services
4.6 on behalf of the defendant, the court shall make written findings of fact and conclusions of
4.7 law that state the basis for determining that ~~counsel~~ the public defender may not obtain
4.8 services on behalf of the defendant. When the court issues an order denying ~~counsel~~ the
4.9 public defender the authority to obtain services, the defendant may appeal immediately
4.10 from that order to the Court of Appeals and may request an expedited hearing.

4.11 **EFFECTIVE DATE.** This section is effective July 1, 2009.