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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 1578

March 12, 2009

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The bill was read for the first time and referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to public defenders; amending the co-payment amount for public
1.3 defender representation; amending Minnesota Statutes 2008, section 611.17.

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

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

1.6 **611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT;**
1.7 **STANDARDS FOR DISTRICT PUBLIC DEFENSE ELIGIBILITY.**

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

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

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

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

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

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

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

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

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

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