

1.1 A bill for an act

1.2 relating to public defense; providing for public defender representation for
1.3 certain minors and persons; removing certain provisions requiring mandatory
1.4 representation by the public defender; amending Minnesota Statutes 2006,
1.5 sections 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 611.14, is amended to read:

1.8 **611.14 RIGHT TO REPRESENTATION BY PUBLIC DEFENDER.**

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

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

1.13 (2) a person appealing from a conviction of a felony or gross misdemeanor, or
1.14 a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction
1.15 proceeding and who has not already had a direct appeal of the conviction, but if the person
1.16 pled guilty and received a presumptive sentence or a downward departure in sentence,
1.17 and the state public defender reviewed the person's case and determined that there was no
1.18 basis for an appeal of the conviction or of the sentence, then the state public defender may
1.19 decline to represent the person in a postconviction remedy case;

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

1.22 (4) a minor ten years of age or older who is entitled to be represented by counsel
1.23 under section 260B.163, subdivision 4, or 260C.163, subdivision 3; except that in cases
1.24 where the child is under ten years of age and the child's misbehavior is the sole basis for a

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2.1 petition filed by the county attorney, and any out-of-home placement, including foster care
2.2 or inpatient treatment, is being sought, the public defender may represent the child but
2.3 must not represent the parents or any other party in the case; or

2.4 (5) a custodial parent who is entitled to counsel under section 260C.163, subdivision
2.5 3, pursuant to a petition filed by a county attorney, or, if there is no parent, the guardian or
2.6 the custodian of the child, except that in cases governed by the Indian Child Welfare Act,
2.7 the district public defender may represent both parents regardless of whether they have
2.8 custody of the child, or may represent the guardian or custodian of the child.

2.9 (b) The Board of Public Defense must not provide or pay for public defender
2.10 services to persons other than those entitled to representation under this section. If,
2.11 however, a custodial parent does not qualify financially for representation by a public
2.12 defender under paragraph (a), clause (5), the board may provide one public defender to
2.13 represent a financially qualified party in the case, but in no event shall more than one
2.14 public defender be provided in that proceeding, other than for the children.

2.15 Sec. 2. Minnesota Statutes 2006, section 611.16, is amended to read:

2.16 **611.16 REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER.**

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

2.22 Sec. 3. Minnesota Statutes 2006, section 611.18, is amended to read:

2.23 **611.18 APPOINTMENT OF PUBLIC DEFENDER.**

2.24 If it appears to a court that a person requesting the appointment of counsel satisfies
2.25 the requirements of this chapter, the court shall order the appropriate public defender to
2.26 represent the person at all further stages of the proceeding through appeal, if any. For a
2.27 person appealing from a conviction, or a person pursuing a postconviction proceeding
2.28 and who has not already had a direct appeal of the conviction, according to the standards
2.29 of sections 611.14 and 611.25, subdivision 1, paragraph (a), clause (2), the state public
2.30 defender shall be appointed. For a person covered by section 611.14, paragraph (a), clause
2.31 (1), (3), (4), or (5), a district public defender shall be appointed to represent that person. ~~If~~
2.32 ~~(a) conflicting interests exist, (b) the district public defender for any other reason is unable~~
2.33 ~~to act, or (c) the interests of justice require, the state public defender may be ordered to~~
2.34 ~~represent a person. When the state public defender is directed by a court to represent a~~

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3.1 ~~defendant or other person, the state public defender may assign the representation to~~
3.2 ~~any district public defender.~~ If at any stage of the proceedings, including an appeal, the
3.3 court finds that the defendant is financially unable to pay counsel whom the defendant
3.4 had retained, the court may appoint the appropriate public defender to represent the
3.5 defendant, as provided in this section. Prior to any court appearance, a public defender
3.6 may represent a person accused of violating the law, who appears to be financially unable
3.7 to obtain counsel, and shall continue to represent the person unless it is subsequently
3.8 determined that the person is financially able to obtain counsel. The representation may
3.9 be made available at the discretion of the public defender, upon the request of the person
3.10 or someone on the person's behalf. Any law enforcement officer may notify the public
3.11 defender of the arrest of any such person.