

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** S.F. 1678                      **DATE:** April 5, 2012  
**Version:** Second engrossment  
**Authors:** Woodard  
**Subject:** Public defenders; appointed counsel  
**Analyst:** Rebecca Pirius

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd](http://www.house.mn/hrd).

---

### Overview

This bill amends various provisions relating to appointment and costs of publicly funded counsel. In particular, the bill makes the following changes:

It expands the right to a public defender to misdemeanor appeals. It eliminates the statutory right to be represented by counsel in end-of-confinement risk level assignment appeals.

It addresses the appointment of counsel for children, parents, guardians, and custodians in juvenile delinquency and child protection (CHIPS) cases and financial responsibility for such costs. In addition, it directs the court to inquire into the ability of the parents, guardians, or custodians to pay for these services and authorizes the court to order reimbursement.

The bill amends certain provisions regarding public defender eligibility and reimbursement of costs. Finally, it addresses costs associated with pretrial appeals and standby or advisory counsel.

- 1 Administrative review; predatory offenders.** Strikes the provision giving an offender the right to be represented by counsel when challenging the offender's assignment to risk level II or III. Also strikes the provision providing that counsel for indigent offenders be provided by the Legal Advocacy Project of the state public defender's office.  
  
Effective July 1, 2012, and applies to review hearings requested on or after that date.
- 2 Representation by counsel.** Amends the law governing right to counsel in paternity proceedings. Provides that the court shall appoint counsel if the party would be unable to afford counsel under the public defender eligibility guidelines. Limits the right to counsel to the issue of establishment of parentage.
- 3 Appointment of counsel; juvenile delinquency.** Amends the juvenile delinquency law addressing the appointment of counsel. Cross-references current law providing that a child age 10 or older is entitled to a public defender (§ 611.14(4)). Provides that the court may appoint counsel to represent a parent or guardian if the person would be unable to afford counsel under the public defender eligibility guidelines.

Provides that if a court appoints standby or advisory counsel, these costs are to be paid by the state court administrator's office using state funds, or if appointed based on the prosecutor's request, by the governmental unit conducting the prosecution. Prohibits the court from ordering the board of public defense to pay these costs.

- 4 Attorneys fees; juvenile delinquency.** Amends the juvenile delinquency law requiring courts to inquire into the ability of a parent to pay for appointed counsel. Provides that the court may order a parent to reimburse the state for the cost of the child's counsel. Directs the court to consider the parent's assets, income, and employment when determining the amount of reimbursement. Includes provisions for partial reimbursement and payment plans.
- 5 Appointment of counsel; CHIPS.** Amends the law governing appointment of counsel in CHIPS cases and specifies whether various parties will be represented by the public defender or court-appointed counsel at county expense. A child who is age 10 or older would be entitled to appointment of a public defender, consistent with current law under § 611.14(4). A custodian of the child, in addition to a parent or guardian, may be entitled to appointment of counsel if financially unable to obtain counsel under the public defender eligibility guidelines.
- Specifies that court-appointed counsel for the parent, guardian, or custodian would be at county expense. Only one counsel would be appointed to represent the interests of those persons, unless extraordinary circumstances exists. Conflict of interest provisions are included. Counsel retained by the county must meet qualifications established by the Judicial Council in specified areas.
- 6 Attorney fees; CHIPS.** Amends the law governing attorney fees in CHIPs proceedings and the court's inquiry into the ability of the appropriate person(s) to pay for counsel. The court would be required to inquire into the ability of a parent to pay for the child's appointed counsel, as well as the parents, guardians, or custodians' ability to pay for their own appointed counsel. Paragraph (c) includes provisions for reimbursement of the cost of counsel, partial reimbursement, and payment plans.
- 7 Pre-sentence investigations.** Requires PSI reports and lifetime imprisonment reports to be provided free of cost to defense counsel on appeals or post-conviction relief petitions.
- 8 General rule.** Requires a court to inquire whether the prosecutor intends to certify a misdemeanor as a petty misdemeanor. This must be done before the appointment of a public defender. Provides that when an offense is certified as a petty misdemeanor, the defendant is not eligible for a public defender.
- 9 Right to representation by public defenders.** Provides that an indigent person is entitled to a public defender on a misdemeanor appeal or post-conviction proceeding.
- Effective August 1, 2012, and applies to requests for a public defender appointment made on or after that date.
- 10 Request for public defender appointment.** Amends the law on requesting the appointment of a public defender. Strikes language authorizing a person entitled by a law other than § 611.14 to request a court to appoint a public defender. Also strikes language authorizing an application for appointment of a public defender to the supreme court.
- 11 Public defender eligibility.** Paragraph (a) clarifies that the court must determine whether a defendant would be unable to pay for counsel.

Paragraph (b) requires the court to make a determination of financial eligibility of a defendant (as opposed to an inquiry). Strikes language limiting a defendant's continuing duty to disclose changes in financial circumstances to only changes relevant to public defender eligibility. Requires district

courts throughout the state to use the forms furnished by the state public defender related to financial eligibility. Strikes language allowing only the public defender representing the applicant to see information in the application. Provides that a court may not appoint a public defender if the defendant refuses to execute a financial statement, refuses to provide information on financial eligibility, or waives the appointment of a public defender.

Prohibits a court from appointing the district public defender as standby counsel. Provides that if a court appoints standby counsel, this cost must be paid by the state court administrator, or if appointed based on the prosecutor's request, by the governmental unit conducting the prosecution. Prohibits the board of public defense from being forced to pay the cost for advisory or standby counsel.

Paragraph (c) authorizes the court to reduce the \$75 co-payment for public defender representation. Currently, the court can only impose or waive the full amount.

- 12 Appointment of public defenders.** Amends the law addressing the appointment of a public defender to clarify situations in which the chief appellate public defender is appointed versus the chief district public defender.
- 13 Employed defendants; ability to pay.** Amends the law addressing defendants reimbursing the state for public defender costs. Directs the court to consider the defendant's income, assets, and employment when determining the amount of reimbursement.
- Strikes references to use of the guidelines being repealed in § 18.
- Provides that if a defendant is financially unable to pay the reasonable costs charged by private counsel due to the cost of a private retainer fee, the court must evaluate the defendant's ability to make partial payment or reimbursement.
- 14 Representation.** Requires the chief appellate public defender to represent defendants in misdemeanor appeals and post-conviction proceedings.
- Effective August 1, 2012, and applies to requests for a public defender appointment made on or after that date.
- 15 Persons defended.** Prohibits the district public defender from serving as standby counsel.
- 16 Public defender budgets and county responsibility.** Provides that the board of public defense is solely responsible to provide counsel in adult criminal and juvenile cases as specified in § 611.14. Prohibits courts from appointing counsel at county expense for representation under § 611.14, except in Hennepin County (which partially funds public defender services).
- 17 Appeal by prosecuting attorney; fees.** Provides that when the prosecutor appeals a pre-trial order in a criminal case, reasonable attorney fees and costs shall be allowed to the defendant. These costs are to be paid by the governmental unit responsible for the prosecution. Requires the chief judge of a judicial district, after consulting with listed parties, to establish a reimbursement rate for attorney fees and costs associated with pre-trial appeals. Caps the compensation at \$5,000, except where additional money is certified by the chief judge as being necessary.
- 18 Repealer.** Repeals a subdivision of law setting forth a public defender reimbursement schedule guideline based on a defendant's net income and number of dependents. (See § 13.)