

Minnesota's Public Defender System

Who is entitled to a public defender?

The United States and Minnesota Constitutions both establish the right to an attorney for anyone facing a charge punishable by "loss of liberty." Minnesota law entitles anyone who is financially unable to obtain counsel to a public defender if he or she: (1) is charged with a felony, gross misdemeanor, or misdemeanor; (2) is appealing a felony, gross misdemeanor, or misdemeanor conviction, or pursuing post-conviction relief and has not already had a direct appeal; or (3) is contesting grounds for a probation revocation.

Are juveniles entitled to a public defender?

Similar to adults, juveniles who are financially unable to obtain counsel are entitled to a public defender. In delinquency cases, juveniles have the right to the appointment of a public defender except for juvenile petty offenses (e.g., minor alcohol or controlled substance offenses, minor traffic offenses, etc.).

In CHIPS (Child in Need of Protection or Services) and TPR (Termination of Parental Rights) cases, juveniles who are ten years of age or older have the right to a public defender, except in habitual truancy cases. A guardian ad litem may be appointed to a juvenile under age ten.

Who is considered "financially unable" to obtain counsel?

Pursuant to statute, a defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits, or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney. The court must *not* appoint a public defender to a person who is able to afford private counsel but refuses to do so.

The burden is on the defendant to show financial inability to pay. The defendant must submit a financial statement under oath, and the court makes the determination of the defendant's financial eligibility. The defendant is under a continuing duty to disclose any change in financial circumstances.

How does a person request a public defender?

A person may ask the court to appoint a public defender at any time where the matter is pending or the conviction has occurred. Depending on the judicial district, a financial inquiry may occur before the first court appearance or in court. Prior to a court appearance, a person may request a public defender if facing a police interrogation or other procedures affecting one's rights. For more information, see the websites for the State of Minnesota Board of Public Defense (<http://www.pubdef.state.mn.us/getapublicdefender>) and the Minnesota Judicial Branch (<http://www.mncourts.gov/Help-Topics/Public-Defender.aspx>).

Does the defendant ever have to reimburse the state for the cost of a public defender?

The court may order a defendant to reimburse the state, in whole or in part, for the cost of a public defender. In determining the amount of reimbursement, the court must consider the defendant's income, assets, and employment. If necessary, the court may establish a reimbursement schedule or issue an order for wage withholding. In cases where a public defender is appointed to represent a juvenile,

the court may order a parent to reimburse the state. The presiding judge must terminate the appointment of a public defender to any person who subsequently becomes financially able to pay for private counsel.

How do co-pays work?

Upon disposition of the case, a defendant who received public defender services must pay a \$75 co-payment, unless the court reduces or waives the co-payment. The statute does not indicate when a court should exercise its discretion to waive the co-payment. In 2003, the Minnesota Court of Appeals held that the court must waive the co-payment when a defendant is indigent or when the co-payment would cause manifest hardship on a defendant.

Are public defenders appointed in civil cases?

Public defenders represent individuals only in criminal cases. A person is not generally entitled to representation by counsel in civil cases (e.g., divorce, eviction, contract, personal injury, wrongful death, etc.). There are organizations (with limited resources) throughout the state that may assist low-income individuals in civil lawsuits (e.g., legal aid, see Legal Services State Support, www.mnlegalservices.org), and certain judicial districts offer legal advice clinics (<http://www.mncourts.gov/selfhelp/?page=251>).

In certain civil cases, a person may have a statutory right to counsel at public expense. This is different from a public defender; generally, court-appointed counsel in such matters is a county expense.

How is the Minnesota public defender system organized?

There is a district public defender office in each of the state's ten judicial districts. District public defenders represent individuals in trial and juvenile court. In addition, there is an appellate and a state public defender office. Attorneys in the appellate office represent individuals who are appealing a conviction or seeking post-conviction relief. The state public defender supervises the operation, activities, policies, and procedures of the statewide public defender system.

How is the Minnesota public defender system governed?

There is a State Board of Public Defense consisting of seven members. The board appoints the state public defender for a four-year term, and, with the advice of the state public defender, appoints a chief administrator. The board also appoints a chief public defender in each of the state's ten judicial districts and a chief appellate public defender. In addition, the board distributes funding from the legislature to the district and appellate offices. Although the State Board of Public Defense is part of the judicial branch of government, it is not under the judicial branch's administrative control.

How is the public defender system funded?

Money is appropriated to the Board of Public Defense from the state general fund each biennium. (In the 1990s, the state assumed the cost of the public defender system from the counties, with the exception of Hennepin County. In the Fourth Judicial District, costs are shared between the state and Hennepin County.) There are also four legal defense corporations funded through grants from the board.

For more information: Contact legislative analyst Rebecca Pirius for legal citations. House Research does not provide legal advice or representation for members of the public.

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