

UPDATE ON ACHIEVING QUALITY PUBLIC DEFENSE
(as of Monday, January 03, 2011)

It continues to be our perception that most people already agree with the laudable message of the Michigan Campaign for Justice (MCJ) of WHAT needs to be done to improve the quality of public defense throughout our state by having uniformly throughout all of our counties and judicial districts, a Criminal Justice System (CJS) that minimally meets the principles adopted by the American Bar Association and the State Bar of Michigan of what a public defense system should be and are already fully supportive of the proposed legislation in HB 5676 for enactment of a law which accomplishes that end. Thus the issue that we need to debate is "HOW" to best accomplish that noble end because the devil is too often in the details of implementation.

However, before proceeding further, this Office would like to emphasize at the outset that HB 5676 grandfathers in county public defense offices such as ours. See Sec. 7, (1), (c), page 9 & Sec. 3, (i), page 3, of HB 5676. Thus we have no self preservation personal concerns whatsoever for the continued existence of our Office regardless of the final outcome of this proposed legislation, one way or the other, and therefore our comments on HB 5676 are motivated solely by what we perceive to be in the best interest collectively of all of us in choosing the wisest course of action to follow to improve the quality of public defense throughout our state and thereby enhance rather than hamper the enactment of this proposed legislation into law voluntarily and as soon as possible. And indeed that is why our 38 year old Washtenaw County Office of Public Defender continues to be a living testimonial that quality public defense can be provided with the utmost cost effectiveness as an exception to the abysmal status of public defense nationwide as evidenced by a recently released survey (September 16, 2010), by the U.S. Department of Justice, Bureau of Justice Statistics (BJS). Recent reports also reveal particularly that the states of Minnesota and Montana have the same public defense deficiencies as exists everywhere throughout our country.

And that is why, in a nutshell, this Office has always enthusiastically supported having the central government of Michigan fully or partially fund public defense in support of our counties, municipalities and townships, where the state trial level criminal justice system is always actually implemented, but to do so without taking any power whatsoever away from these same counties, municipalities and townships, to select the method of public defense service delivery (i.e. the private bar in groups or as solo practitioners or by the nonprofit Legal Aid & Defenders Association of Detroit (NLADA) of Detroit/Wayne County or the Washtenaw County Office of Public Defender) most suitable for them, as a contractual requirement for continued funding support from the state, by strict adherence to uniform quality standards that enforce the 11 principles of what a public defense system should be, by the most operationally sound and cost effective method possible, while permitting local governments to continue to be able to select and hold accountable to the community served, the Officials whom they choose to elect or appoint to serve them (i.e., their elected Sheriff, Prosecutor and Judges and appointed Police Chiefs, Correction Officials and County Public Defender).

That is why also, In keeping with the adage that "a picture is worth a thousand words" and an "Organization Chart" is worth even more, this Office has prepared the accompanying Chart # 1, attached, to more clearly, succinctly and readily explain what HB 5676 (which is lengthy and reader un-friendly) could become if enacted into law, as currently written, while our accompanying Chart # 2, attached, sets forth the recommendations of this Office that HB 5676 be cleansed of the unnecessary and expensive "power grab" agenda adroitly interwoven throughout its text, and instead re-consider the excellent "Model Plan for Public Defense Services in Michigan of 2002" (shown at the link below) for discussion on the merits of the latter being incorporated into HB 5676 for shared power between local government and state government, in lieu of having only a dictatorship type arrangement as HB 5676 currently proposes along with unnecessary supervisory bureaucracies also that could cost many millions initially and billions over time.
<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/mi-modelplan.pdf>

We have to do this in order to get this much needed legislation voluntarily enacted into law because ACLU litigation to force our State toward that end is going to be difficult to achieve since our U.S. Supreme Court has only ruled that public defense must be provided in state courts throughout our country, without ever specifying that the central government of states must provide funding for it, rather than elect to leave that financial option solely on their counties, municipalities and townships, as thirteen (13) of our states have chosen to do nation-wide for public defense at the trial level. In addition to Michigan, those states are California, New York, Illinois, Pennsylvania, Washington, Arizona, Maine, South Dakota, Utah, Idaho, Alabama and Mississippi.

The U. S. Supreme Court also has never ruled (nor do we believe it ever will), that a particular option of oversight a/o service delivery (such as expensive new bureaucracies of "Regions and Region Branch Offices") should be required by a state, rather than to always leave such options open for careful determination later by capable management and informed leadership. Thus the real issue again for open, candid and vigorous public debate, is HOW to determine what public defense implementation method is best for Michigan, especially at this time of critical budget constraints, in order to voluntarily achieve the public defense improvements needed state-wide that are not only operationally sound but also cost effective.

Thus we should cleanse “reader unfriendly” HB 5676 of all references to unnecessary new bureaucracies of expensive “Regions” and Regional Branch Offices that would only siphon off funds from those who actually are doing the work, because in our home rule state there are more effective, efficient, economical and ethical options, or combinations thereof, from which to choose, that again are much more operationally sound and cost effective for enforcing uniform standards for quality public defense throughout our state, and these options should be left for enlightened management to later determine carefully and wisely after a commission and /or state agency has become operational and not have that mandated by law beforehand as HB 5676 currently does.

One obvious operationally sound and cost effective option from which to choose (in our “computer” rather than “horse and buggy” age) would be the use of a relatively inexpensive “Investigations and Contract Enforcement” Section at a central office headquarters in the capital to electronically monitor and enforce uniform standards effectively for quality public defense, that meet all of the ABA and SBM Principles, without creating an unneeded and expensive new statewide bureaucracy of branch offices to be superimposed over our already existing structure in place of 57 Judicial Districts (regions). Credibility is diminished when that which is optional is misleadingly advocated to be “essential”.

The current composition of the proposed Public Defense Commission should be increased to become much more diverse with stakeholders as previously recommended in the “Model Plan for Public Defense Services in Michigan of 2002” with added inclusion of county and possibly minority group representation, rather than the 9-member commission that HB 5676 currently requires, in order for it not to be controlled from the outset by the Appellate (SADO) and Trial Bureaus it is supposed to supervise. And if we are going to go with a 9 member Commission, then SBM & CDAM should get only one (1) member each, with other stakeholders like The Michigan Association of Counties (MAC) and the Michigan Association of Townships (MAT) or the Michigan Municipal League (MML) being permitted to have (1) member each.

HB 5676 should also include funding for both Juvenile Delinquency and Neglect and Abuse cases and not leave out the latter as is currently done because they are frequently interrelated. And “Independence” can be readily achieved by simply providing for local Judges to make all indigent appointments to a designated local official of the executive branch of county government, for subsequent assignment to private bar groups, solo practitioners, public defense nonprofits (such as the LADA of Detroit/Wayne) or to county offices of public defender (e.g. the Washtenaw County Office of Public Defender) as needed.

And we must remember that House & Senate Judiciary and Appropriations Committees will always have to collaborate to determine costs and from whose budgets funds will have to be taken since our state will not be able to print new money or borrow as the federal government is able to do, and “funding” is the horse that will have to pull the public defense carriage – whether that carriage be wisely put together or the most expensive one that can be constructed (as “Regions & Regional Branch Offices” would surely be).

In summary, this Office is in favor of local control, reducing bloated state governmental bureaucracies, preventing the establishment of unneeded new ones, long term fiscal stability, reducing the cost of doing business, the work ethic of providing quality service with the utmost competency and dedication to the Criminal Justice System and the profession of law as a “calling” toward that end.

That is why, while we agree with the WHAT of the 11 Guiding Principles sought by HB 5676, we very much disagree with the HOW so adroitly interwoven therein in a most reader unfriendly text, seemingly designed to deliberately obfuscate the goal of seeking to establish a state-wide dictatorship with an unneeded self-serving bureaucracy – all presented misleadingly as “essential” rather than more accurately as only an ill advised option – especially at this time of scarce budget funding at all levels of government..

And that is why we are asking all interested parties to back away from any power grab type advocacy that will only hamper, rather than help to get this much need legislation voluntarily passed ASAP to improve public defense throughout our state, whereby funds are not siphoned off from those who are actually doing the work at the local level, by unneeded, bloated, state bureaucracies that HB 5676 currently proposes in its text.

All of the above is what we recommend in order to get this legislation voluntarily enacted into law because as a DEMOCRACY, we believe strongly that the best government will always be one that is closest to and accountable to the people who are served by it, as it is with the other major components of our Criminal Justice System (i.e. the elected County Sheriff, Prosecutor, Judges, appointed Police Chiefs and a County Public Defender who is either appointed or elected) where it is always implemented for state law (not federal) at the county judicial district level.

Lloyd E.Powell <http://publicdefender.ewashtenaw.org> Monday, 01/03/2011

(SCROLL DOWN TO SEE CHARTS BELOW)

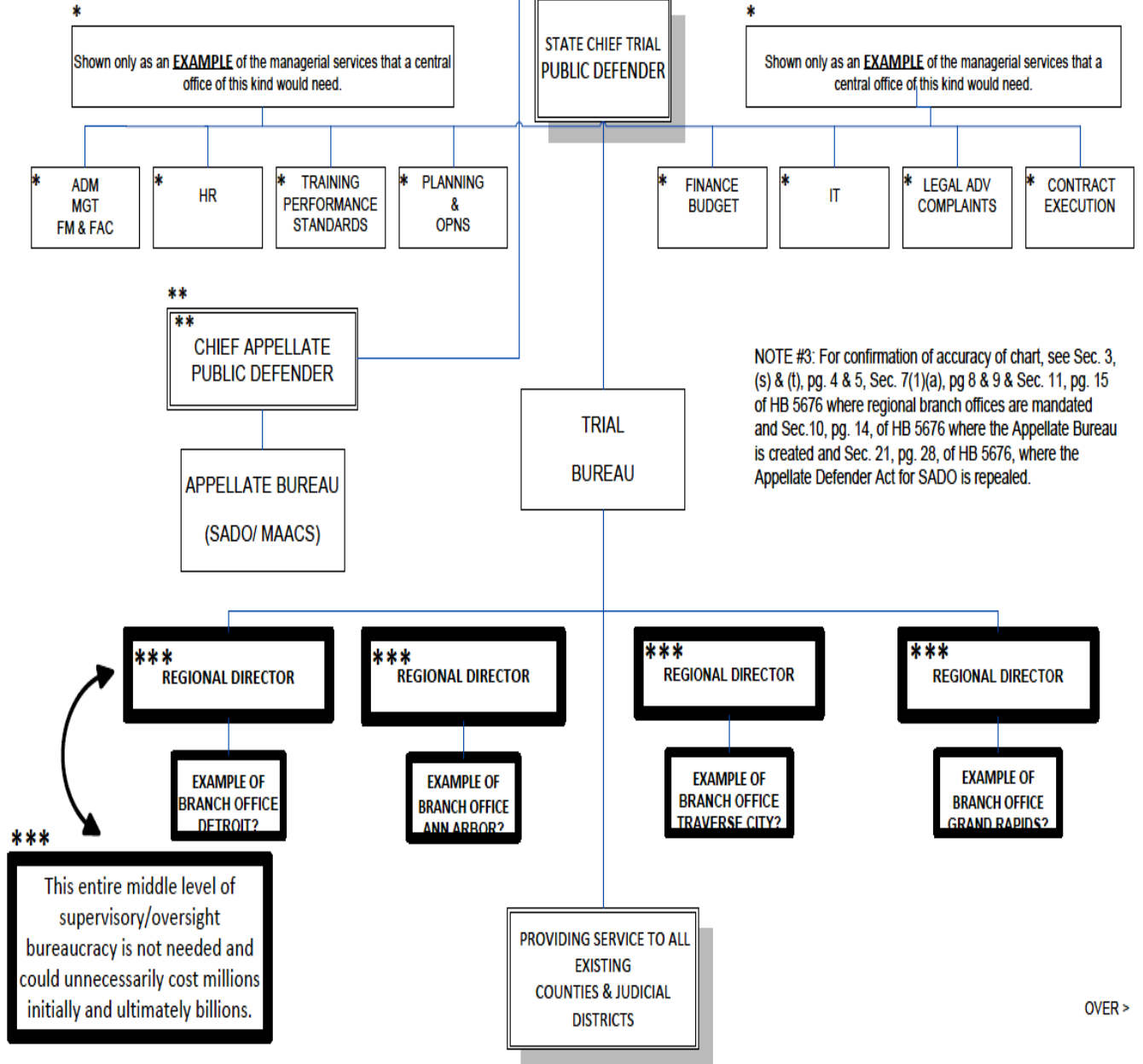
Chart #1 – The Current Proposal

HB 5676, PUBLIC DEFENSE ACT ORGANIZATION CHART (as currently written)

Contact Lloyd E. Powell for further explanation.
<http://publicdefender.ewashtenaw.org>
 Revised 01/03/11

NOTE #1: This is how State-wide Public Defense System could look under HB 5676, as currently written, with a minimum of 1 to 57 Regional Branch Offices and with Trial and Appellate Bureaus being under one Commission. **

NOTE #2: The 38 year old Washtenaw County Office of Public Defender is a living testimonial that the 11 Guiding Principles can be achieved and indeed exceeded w/o expensive Regional Offices.



NOTE #3: For confirmation of accuracy of chart, see Sec. 3, (s) & (t), pg. 4 & 5, Sec. 7(1)(a), pg 8 & 9 & Sec. 11, pg. 15 of HB 5676 where regional branch offices are mandated and Sec.10, pg. 14, of HB 5676 where the Appellate Bureau is created and Sec. 21, pg. 28, of HB 5676, where the Appellate Defender Act for SADO is repealed.

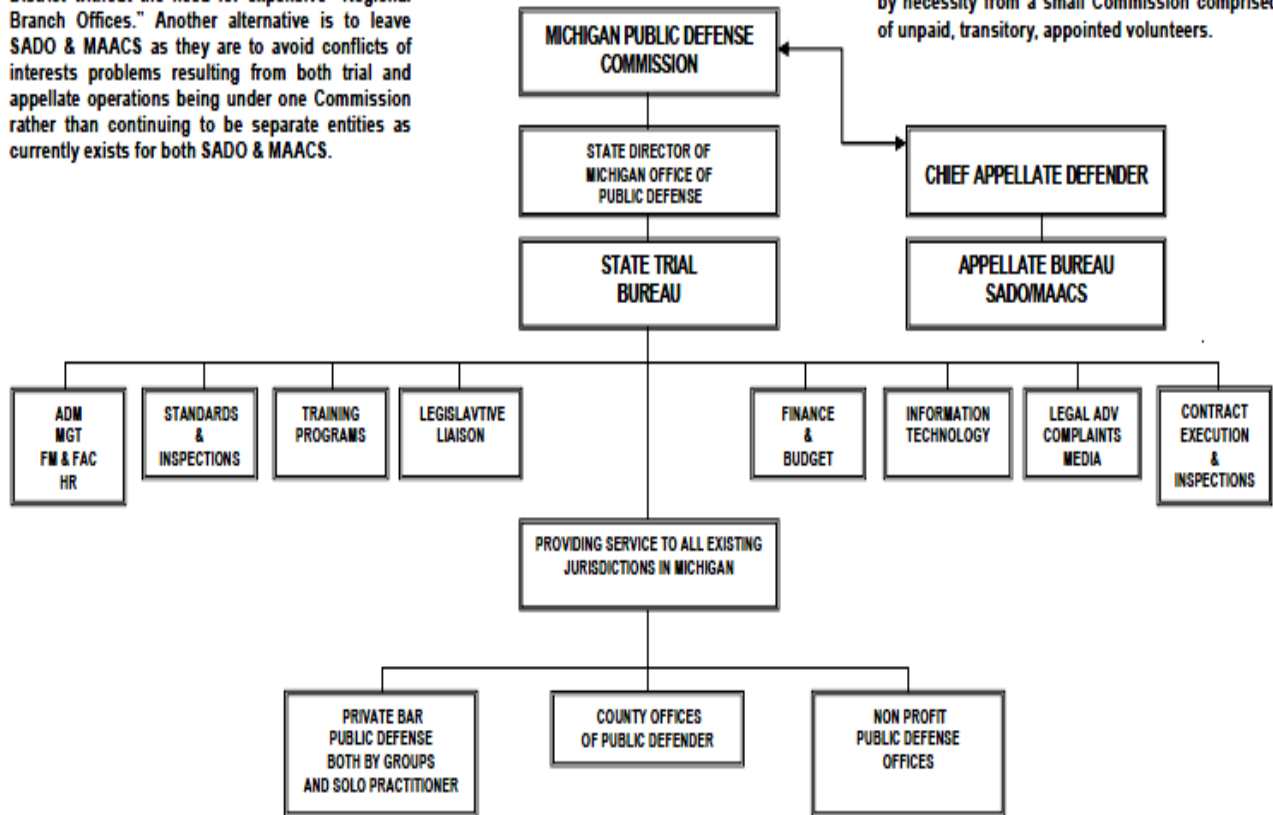
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SEE CHART 2 BELOW

Chart #2 – Our Recommendation

NOTE #1: This Organization Chart returns to the original "Model Plan for Public Defense Services in Michigan" of October, 2002 to better achieve the 11 Guiding Principles in every County & Judicial District without the need for expensive "Regional Branch Offices." Another alternative is to leave SADO & MAACS as they are to avoid conflicts of interests problems resulting from both trial and appellate operations being under one Commission rather than continuing to be separate entities as currently exists for both SADO & MAACS.

**SUGGESTED
ORGANIZATION CHART
MICHIGAN OFFICE OF PUBLIC DEFENDER
FOR HB 5676
Revised 01/03/11**



NOTE #2: We recommend that HB 5676 follow the "Model Plan for Public Defense Services in Michigan" of October, 2002 to have a much larger Commission that is representative of all stakeholders, with shared power between the central government of the state and the executive divisions of local government, in order for all components of the Criminal Justice System to be held accountable to the local people who are being served by it (i.e. the elected County Judges, Prosecutor, Sheriff, appointed Police Chiefs and elected or appointed County Public Defenders) rather than being governed solely by a state employee with dictatorship type powers received by necessity from a small Commission comprised of unpaid, transitory, appointed volunteers.

NOTE #4: We believe that this change to HB 5676 could save millions initially and billions over time. In addition to reducing the cost of doing business, it will also achieve long term fiscal stability. We must responsibly recognize budgetary constraints facing our state at the central governmental level.

NOTE #3: Juvenile Delinquency and Abuse & Neglect cases should both be included in HB 5676 as well as Friend of the Court cases with the Washtenaw County Office of Public Defender as a model for full service.