

Office of Washtenaw County Public Defender  
Recommendations for HB 5676

It is our perception that most people readily agree that we need to have uniformly throughout all counties and judicial districts in our state, a Criminal Justice System (CJS) that provides quality public defense that minimally meets the principles adopted by the American Bar Association and the State Bar of Michigan. However, as we proceed, we must remember that while our U. S. Supreme Court has ruled that public defense must be provided in state courts, it has never ruled that the central government of the state must provide it, rather than to leave that responsibility solely on the counties, municipalities and townships as seven (7) of our states (including Michigan) have currently chosen to do for public defense at the trial level. And, in that light, the U. S. Supreme Court has never ruled (nor do we believe it ever will), that a particular METHOD of oversight /service delivery (such as expensive new bureaucracies of "Regions and Region Branch Offices") should be forced upon a state by legislative trick, rather than to always leave such options open for careful determination later by capable management and informed leadership. Thus the real issue on which this Office hopefully seeks to always be a catalyst in promoting 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 deficits, in order to achieve the public defense improvements needed state-wide, that are both operationally sound and cost effective. This office therefore makes the following 18 recommendations to improve HB 5676:

1. Take the lay of the land as it presently exists with our already established infrastructure of 57 Judicial Districts and 83 Counties and make funding and oversight enforcement improvements, as needed, to achieve uniformly a quality of public defense that minimally meets all of the ABA and SBM adopted principles of what a public defense system should be.
2. Increase the current composition of the proposed Public Defense Commission [to include county officials and minority group representation]. If a Commission is to be used, instead of the Governor appointing a Public Defense Director with a State Agency to serve her/him, then we recommend that it be comprised of a much larger and diverse membership than the current 9-member commission that HB 5676 currently requires, whereby the Appellate Bureau (through SADO) does not control it almost from the outset with the 2 positions allocated CDAM and the 2 allocated SBM.
3. Once Counties are provided with quality standards to uniformly follow and full or partial financial support, give local officials the opportunity to demonstrate that they hold all major components of their local Criminal Justice System accountable to the community served.
4. Take out of HB 5676 all references to "Regions" and Regional Branch Offices because they are questionably conceived and ill suited for our home rule state. Indeed, there are more effective, efficient, economical and ethical options, or combinations thereof, from which to choose, that are much more operationally sound and cost effective for enforcing uniform standards for quality public defense throughout our state; and these methods should be left for enlightened management to later determine carefully and wisely after a commission and /or state agency has become operational.
5. One obvious example would be the use of a relatively inexpensive "Investigations and Contract Enforcement" Section at the central office headquarters to effectively monitor and enforce uniform standards 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 in place structure of 57 Judicial Districts (regions).
6. Achieve "Independence" by simply providing for local Judges to make all indigent appointments to a designated official of the executive branch of local government, to in turn be assigned to the private bar by that official to groups or to solo practitioners as needed or to the nonprofits LADA of Detroit/Wayne or to the Washtenaw County Office of Public Defender.
7. Keep SADO and MAACS, with their own separate commissions, as they are and simply continue to improve upon them, while avoiding the serious and costly conflict of interest problems experienced by Montana as a result of having the Chief Appellate Defender and the Chief (Trial) Public Defender under the same Commission, thereby necessitating the creation and operation of an entirely separate alternative system to handle conflict cases.
8. HB 5676 should include help for funding and oversight for both Juvenile Delinquency and Neglect and Abuse cases because they are frequently intertwined and/or interrelated, rather than to unjustifiably leave out the latter.
9. Provide for the House Judiciary Committee to coordinate with the House Appropriations Committee to begin a joint and simultaneous determination of how much all of this will cost. There has to be a pragmatic determination of whose budgets will the necessary funds have to come for all of this 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).
10. Correct the serious conflict of interest situation that is created by permitting the State Chief Appellate Defender to be involved in trying to influence how the State Chief (Trial) Public Defender operates in implementing a future public defense act as well as policies and procedures of the Commission as pertains to trial level public defense as currently permitted at Sec. 10, (2), (h) and (i) of HB 5676. While the State Chief Appellate Defender demands autonomy and independence, she/he appears to inappropriately seek power over everyone else in our criminal justice system.

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11. And in that light, correct the serious conflict of interest situation that is created by permitting the Chief Appellate Defender to be involved in influencing, in a controlling manner, how the Chief State (Trial) Public Defender develops the plan for implementing trial level public defense throughout the state before it is even submitted to the Commission as permitted at Sec. (2) (a) of HB 5676.
12. Also the serious conflict of interest situation that is created by the appearance of SADO (in alliance with the ACLU, NLADA and CDAM) having such a controlling involvement in the 2006 founding, funding and on-going operations to date of the non-profit Michigan Campaign for Justice (MCJ) organization and its Legislative Working Group (LWG), in particular, in the preparation of the initial draft of the current HB 5676, as if that organization is no more than an extension of SADO, rather than having any real autonomy of its own.
13. The serious conflict of interest situation that is created by the appearance of SADO (again in alliance with the ACLU, NLADA and CDAM) being the primary driving force (albeit often behind the scenes and in the background) for insisting that any future public defense act for Michigan, place enormous power in a small, part-time, unpaid, 9- member State Commission, that is comprised at the outset with a membership majority, likely to be favorable to selecting the current SADO leader as the new State Appellate Bureau Chief Defender and the current deputy SADO leader (and chief lobbyist for SADO and fund raiser) as the logical choice to be the next Chief State Public Defender, given the fact that such fund raising and lobbyist duties are primary requirements of other similar chief state public defenders in the 28 states that currently fund public defense fully from the state central government.
14. Correct the serious conflict of interest situation that is created by the appearance of SADO (in alliance once again with the ACLU, NLADA and CDAM) being the primary driving force (albeit again often behind the scenes in the background) for insisting that any future public defense act for Michigan, require the creation of an oligarchic public defense system of supervisory "Regions" and Regional Directors", where dictatorship type powers will have to be delegated by a part-time, un-paid, State Commission to two (2) people appointed to the powerful positions of Chief State (Trial) Public Defender and Chief State Appellate Defender, with full realization that the persons likely to be chosen as best qualified for those positions are again the current leader and deputy leader of SADO, who in turn would understandably be expected to select their current SADO staff members to occupy any permanent, full time state employee positions that will need to be created in this new middle level bureaucracy of regional offices.
15. The serious overall conflict of interest situation that is created generally in establishing a new middle level supervisory bureaucracy of "Regional Offices", by permitting the Chief Appellate Defender to not only perform the usual hindsight (Monday morning quarterbacking) post conviction, post adjudication, appellate defense services, but to also be physically present in the trial level courts as a kind of SADO before, during and after the fact by being physically present at all times to coach the Saturday game itself as it is played as well as being physically present for all practice preparations leading up to it, as largely conceived, crafted and/or influenced currently by SADO, whose veteran state employee staff would again be expected to be the logical ones to fill not only the positions for State Chief Appellate Defender and the Chief State (Trial) Public Defender but also all Deputy Public Defender positions (i.e. Regional Director positions) that HB 5676 would unwisely create.
16. The creation of cryptic definitions for words so general and generic as "office" and "assigned" in HB 5676 as though intended to deliberately make the text "reader unfriendly" so as to unnecessarily confuse rather than to make clear, straightforward and understandable.
17. The absence of a "Bill of Rights" type provision in HB 5676 that prevents an abuse of power, and is readily accessible to those who have a need to petition for redress of grievances, by placing some "check and balance" type constraints on the enormous powers that this State Public Defense Commission will have at the outset, and which in-turn will all have to be delegated to the State Chief (Trial) Public Defender and the State Chief Appellate Defender, because benevolent type dictatorships always seem to eventually lose their benevolence
18. Return to the course of action originally recommended in the excellent "Model Plan for Public Defense Services in Michigan "of October 2002, developed by The Task Force on Improving Public Defense Services in Michigan, a project of the Michigan Council on Crime and Delinquency (MCCD)and funded by The Standing Committee on Legal Aid and Indigent Defense of the ABA, the Open Society Institute; and local United Ways, which this Office and SADO, participated in putting together, along with a very knowledgeable, objective and diverse group of professionals to include the Michigan Association of Counties and the Prosecuting Attorneys Association of Michigan (PAAM). This reader friendly Model Plan that very wisely meets all of the ABA and SBM Principles of what a Public Defense system should be and which we all fully support.

<http://www.abanet.org/legalservices/downloads/sclair/indigentdefense/mi-modelplan.pdf>

So, in summation, we enthusiastically support 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 LADA of Detroit/Wayne County or the Washtenaw County Office of Public Defender) most suitable for them, as a contractual condition for continued funding support from the state, by strict adherence to uniform quality standards that minimally enforce the 11 principles of what a public defense system should be, by the most operationally 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). The 38 year old Washtenaw County Office of Public Defender is a living testimonial that this is an effective, efficient, economical and ethical way to go. See link from Washtenaw Legal News at <http://legalnews.com/washtenaw/636747/>.