



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued October 1, 2018

Bristol County District Attorney's Office
For the period January 1, 2017 through December 31, 2017





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Making government work better

October 1, 2018

Mr. Thomas M. Quinn III, District Attorney
Bristol County District Attorney's Office
888 Purchase Street
New Bedford, MA 02740

Dear Mr. Quinn:

I am pleased to provide this performance audit of the Bristol County District Attorney's Office. This report details the audit objectives, scope, methodology, finding, and recommendation for the audit period, January 1, 2017 through December 31, 2017. My audit staff discussed the contents of this report with management of the office, whose comments are reflected in this report.

I would also like to express my appreciation to the Bristol County District Attorney's Office for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Bristol County District Attorney's Office (BCDA) for the period January 1, 2017 through December 31, 2017.

In this performance audit, we examined BCDA's activities related to the administration of its Juvenile Diversion and Victim Witness Assistance Programs. BCDA's Juvenile Diversion Program is discretionary, is not governed by statute, and does not receive separate funding. Therefore, our assessment of this program was based on contract-specific requirements, national best practices, and general government operating standards.

Below is a summary of our finding and recommendation, with links to each page listed.

Finding 1 Page <u>7</u>	BCDA has not established a process to measure the success of its Juvenile Diversion Program.
Recommendation Page <u>8</u>	BCDA should identify the relevant data that could be used to assess the success of its Juvenile Diversion Program, establish a formal process to collect and evaluate this information, and use it to make any necessary program enhancements and support requests to the Legislature for program-specific funding.

During our audit, BCDA imposed significant constraints on the audit process because the office was concerned about the confidentiality of information related to participants in its Juvenile Diversion and Victim Witness Assistance Programs. These constraints significantly delayed the completion of the audit.

OVERVIEW OF AUDITED ENTITY

The Bristol County District Attorney's Office (BCDA) was established under Sections 12 and 13 of Chapter 12 of the Massachusetts General Laws, which provide for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with Chapter 258 of the General Laws. BCDA serves 4 cities and 16 towns¹ in southeastern Massachusetts. In addition to working from the superior and juvenile courts, BCDA operates from four district courts, all of which have six-member jury-trial sessions. BCDA represents the Commonwealth at bail hearings, at commitment proceedings related to criminal matters, at rendition proceedings, and during the presentation of evidence in all inquests. It also assists in the investigation of a variety of criminal activities. In addition to its legal and investigatory activities, BCDA operates several programs that provide educational services to the public and to people involved in the criminal justice system. The programs subject to our audit are described below.

The Juvenile Diversion Program is available, at the discretion of Assistant District Attorneys, to young offenders (age 18 and under) who are charged with certain nonviolent crimes, such as possession of alcohol, purchasing or attempting to purchase alcohol, possession of an open container of alcohol, disturbing the peace, disorderly conduct, and shoplifting. Program participants can postpone their arraignments for four months while completing the requirements of the program, which may include paying restitution, sending a letter of apology, writing an essay, performing community service, and completing an education program in person or online. When participants have successfully completed the program requirements, the charges against them are dismissed before arraignment. The Juvenile Diversion Program is discretionary, is not required or governed by statute, and does not receive separate funding. BCDA operates the program using the money the Legislature appropriates each year to fund BCDA's overall operations.

BCDA also operates a Victim Witness Assistance Program. According to BCDA's website,

The primary goals of the Victim Witness Assistance Program are to reduce the level of secondary injury associated with the aftermath of crime and to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the entitlements and services

1. The cities and towns are Acushnet, Attleboro, Berkley, Dartmouth, Dighton, Easton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, North Attleborough, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, and Westport.

mandated by the Massachusetts Victim Bill of Rights (M.G.L. c. 258B) and all additional services provided as a policy of the program within the Office of the District Attorney.

As of June 21, 2017, BCDA employed 21 full-time victim witness advocates, who support victims, witnesses, and their families throughout the criminal justice process and provide information and services as required by Section 5 of Chapter 258B of the General Laws (see Appendix).

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Bristol County District Attorney's Office (BCDA) for the period January 1, 2017 through December 31, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards, except Objective 3 below, which the audit constraints affected our ability to obtain sufficient, appropriate evidence to meet. The standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. If sufficient, appropriate evidence had been provided, we might have been able to conclude that Objective 3 was met, or we might have identified other issues with the performance of the program. For the other objectives, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does BCDA ensure that all program requirements are fulfilled and documented for participants who have successfully completed its Juvenile Diversion Program?	Yes
2. Does BCDA measure the performance of its Juvenile Diversion Program?	No; see Finding <u>1</u>
3. Does BCDA's Victim Witness Assistance Program provide assistance throughout the court process to victims and witnesses of crimes as required by Section 5 of Chapter 258B of the General Laws?	Inconclusive; see <u>Audit Constraints</u>

To achieve our objectives, we gained an understanding of BCDA's internal control environment related to our audit objectives by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting inquiries with BCDA's staff and management.

Audit Constraints

Section 7.11 of Chapter 7 of the US Government Accountability Office's *Government Auditing Standards* states,

Auditors should . . . report any significant constraints imposed on the audit approach by information limitations or scope impairments, including denials or excessive delays of access to certain records or individuals.

During our audit, BCDA imposed significant constraints on the audit process because the office was concerned about the confidentiality of information related to participants in its Juvenile Diversion and Victim Witness Assistance Programs. Specifically, BCDA did not give OSA access to specific information regarding program participants that OSA needed in order to conduct the audit testing in a timely manner. In some cases, BCDA took more than a month to provide requested information. Although OSA was eventually able to complete the audit work that was necessary to meet some of the audit objectives, these constraints significantly delayed the completion of the audit.

The constraints were as follows:

- BCDA officials initially refused to give us access to the Juvenile Diversion Program and Victim Witness Assistance Program case files because of confidentiality concerns. In September 2017, the OSA Legal Department drafted a confidentiality agreement to resolve BCDA's concerns. However, BCDA never signed this agreement and did not provide the requested documents until May 2018.
- BCDA did not give us access to source documents to conduct our audit testing. We received redacted Juvenile Diversion Program case files and were not allowed to review or handle Victim Witness Assistance Program case files containing advocate notes and dates when contact was made with victims or witnesses. Rather, the contents of the selected files were read to us by an Assistant District Attorney.
- BCDA did not allow us to review and assess the adequacy of key information technology controls, such as system access, security, and monitoring controls that it had established over its District Attorney Management Information Office Network (DAMION)² system, to conduct testing and determine the reliability of the information that BCDA provided from this system.

Methodology

We performed the following procedures to address our audit objectives:

- We reviewed a nonstatistical random sample of 15 out of 97 Juvenile Diversion Program case files disposed of during the audit period to determine whether contracts were signed by the juvenile, parent/guardian, and Assistant District Attorney and whether there was evidence that the specific conditions required by the signed contracts had been met by participants who successfully completed all program requirements (e.g., performing community service, writing an essay, or completing an online education program). However, the information in the case files we reviewed was redacted.

2. DAMION is BCDA's case-management system. BCDA uses it to track court dates for each case.

- We asked BCDA officials about the process of tracking or measuring the performance of the Juvenile Diversion Program. BCDA officials told us that the office does not track participants after they complete the program to measure the program's performance.
- For the Victim Witness Assistance Program, we selected a statistical, random sample using a 95% confidence level and a tolerable error rate of 5%. We sampled 60 out of 14,053 cases that were active during the audit period involving charges for crimes related to Chapters 265 and 266 of the General Laws to obtain cases that involved a victim and/or witness. However, because of the audit constraints mentioned above, we could not review the source documents in the files for these cases; instead, an Assistant District Attorney reviewed each file in our presence and explained how BCDA offered victims and witnesses of crimes the rights and services governed by Section 5 of Chapter 258B of the General Laws (see Appendix).

In the cases in which we applied a nonstatistical approach, we were not able to, and therefore did not, project our results to the entire population.

We obtained lists of criminal cases for the Juvenile Diversion and Victim Witness Assistance Programs from DAMION. We were not allowed to see the names of the Juvenile Diversion and Victim Witness Assistance Program participants to select a sample of case files from the file cabinet and trace the files back to the lists. Additionally, we were only allowed to see redacted Juvenile Diversion Program case files rather than original source documents. An Assistant District Attorney reviewed and read us excerpts from the victim witness advocates' notes in the case files that pertained to our audit objective. We could not determine the reliability of the data obtained because of the audit constraints noted above. Although the lists were of undetermined reliability, they comprised all the information we could obtain to perform our audit testing and on which we could base our conclusions.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Bristol County District Attorney's Office has not established a process to measure the success of its Juvenile Diversion Program.

The Bristol County District Attorney's Office (BCDA) has not established specific program performance metrics, goals, and objectives or set up a process to identify, collect, and evaluate relevant information about its Juvenile Diversion Program. As a result, BCDA's ability to measure the success of the program and determine whether any changes to it are necessary is limited.

Authoritative Guidance / Best Practices

Although there are no specific laws or requirements for data collection and evaluation for the Juvenile Diversion Program, there are state and national publications that encourage data collection as a way to ensure that diversion programs achieve their intended purpose. For example, Models for Change is a multistate initiative focused on promoting the advancement of juvenile justice reform, funded by the John D. and Catherine T. MacArthur Foundation. Models for Change has its own juvenile diversion workgroup that has prepared a *Juvenile Diversion Guidebook*, which states,

To ensure the diversion program is meeting its objectives and goals, a record-keeping and data collection system should be in place to assist in providing periodic evaluations.

Additionally, ICF International, a global consulting firm, has received grant funds to conduct an assessment study of pretrial juvenile diversion practices within District Attorneys' Offices throughout Massachusetts. Section 4.1.2 of ICF International's *Massachusetts Juvenile Diversion Assessment Study*, published in January 2015, states,

In order to ensure that diversion programs are meeting their stated goals and objectives, it is critical for DAs' offices to implement a standard record keeping and data collection system. This will allow offices to assess the need for program adjustments over time; identify whether program goals and objectives are being met, for whom, and why; and provide justification for additional resources and supports.

Therefore, collecting data to use in measuring program performance can be considered a best practice.

Reasons for Issues

BCDA officials stated that in their opinion, each juvenile who is diverted from formal processing through the juvenile justice system is a success and therefore no other measures are needed. Furthermore, they

believe there are so many facets of each juvenile diversion case that there is no way to group them in order to make a fair comparison.

Recommendation

BCDA should identify the relevant data that could be used to assess the success of its Juvenile Diversion Program, establish a formal process to collect and evaluate this information, and use it to make any necessary program enhancements and support requests to the Legislature for program-specific funding.

Auditee's Response

The Bristol County District Attorney disagrees with the auditor that the MacArthur Foundation guidebook and ICF report are authoritative guidance. In the year that the Auditor spent in our office, no one from the Auditor's staff suggested that the Auditor was using either as a basis for best practice. As the Auditor states in the report neither of these documents plays any role in Massachusetts law. The Auditor cites no source of authority for her claim that they are. Moreover, even a cursory examination of the Guidebook would show that it is inapplicable to diversion in Bristol County. The District Attorney does not have a juvenile diversion program like the elaborate model contemplated in the MacArthur Foundation models for change (the MacArthur guidebook is the standard used for a program in the ICF report). Juvenile diversion in Bristol County is premised on the exercise of prosecutorial discretion designed to treat every first or low level offender as an individual who should have the opportunity to be diverted from the criminal justice system. Each Bristol County juvenile is treated for who they are and not based on what others have done. In doing so, they are each evaluated on their own specific circumstances and given the opportunity to learn from their own mistakes. Their access to diversion is not limited by the performance of other children who are in entirely different circumstances. This approach is no different than the District Attorney's mandate to handle every criminal defendant based on all of the facts and circumstances related to the defendant's criminal case. Absent the type of program contemplated in the Guidebook, there is no rationale for the data collection suggested by the auditor's report. When the Auditor's representative was asked why we should collect this type of information, she could not provide an explanation that had any relevance to our particular program. Juvenile diversion in Bristol County is about individualized justice for each juvenile.

Auditor's Reply

We acknowledge, as BCDA states in its response, that it took longer than anticipated for the Office of the State Auditor (OSA) to complete this audit. This was because of the audit constraints imposed by BCDA during the audit, as described in the Audit Constraints section of this report.

During our audit, OSA did discuss with BCDA officials our concerns about how its Juvenile Diversion Program was administered, particularly in the area of data collection. Further, our report acknowledges

that there are no specific laws or requirements for data collection and evaluation for BCDA's Juvenile Diversion Program. However, there are state and national publications that encourage data collection as a way to ensure that diversion programs achieve their intended purpose. Although we only cite two such publications in our report, there are other publications that describe the importance of implementing a standard recordkeeping and data-collection system to, among other things, effectively assess any changes to the program that may be necessary, determine to what extent program goals are achieved, justify why the program should be funded, and identify potential barriers to participants' completion of the program. Therefore, in OSA's opinion, collecting data to use in measuring program performance can be considered a best practice.

The complexity of the program model that is used to administer this type of program is not relevant to the decision to collect, analyze, and use program data for the purposes stated above. Regardless of the program model, in OSA's opinion, collecting and analyzing data to assess program outcomes and outputs are essential elements of proper program administration.

We did not analyze how BCDA decides which juvenile offenders can participate in this program, but agree with BCDA's position that all first-time and/or low-level offenders should be assessed based on their specific circumstances and, if possible, given the opportunity to be diverted from the criminal justice system. However, we do not agree with BCDA that there is no rationale for the data collection and evaluation we suggest. We again recommend that BCDA identify the relevant data that could be used to assess the success of its Juvenile Diversion Program, establish a formal process to collect and evaluate this information, and use it to make any necessary program enhancements and support requests to the Legislature for program-specific funding.

APPENDIX

Section 5 of Chapter 258B of the Massachusetts General Laws

Each district attorney shall create and maintain, to the extent reasonably possible and subject to the available resources, a program to afford victims and witnesses of crimes the rights and services described in this chapter. Those services shall include but not be limited to the following:

- (a) court appearance notification services, including cancellations of appearances;*
- (b) informational services relative to the availability and collection of witness fees, victim compensation and restitution;*
- (c) escort and other transportation services related to the investigation or prosecution of the case, if necessary;*
- (d) case process notification services;*
- (e) employer intercession services;*
- (f) expedited return of property services;*
- (g) protection services;*
- (h) family support services including child and other dependent care services;*
- (i) waiting facilities; and*
- (j) social service referrals.*