



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

Making government work better

Official Audit Report – Issued September 13, 2018

Hampden County District Attorney's Office

For the period July 1, 2016 through December 31, 2017





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Office of the State Auditor
Suzanne M. Bump

Making government work better

September 13, 2018

District Attorney Anthony Gulluni
Hampden County District Attorney's Office
50 State Street
Springfield, MA 01102

Dear Mr. Gulluni:

I am pleased to provide this performance audit of the Hampden County District Attorney's Office. This report details the audit objectives, scope, methodology, finding, and recommendations for the audit period, July 1, 2016 through December 31, 2017. My audit staff discussed the contents of this report with officials from your office, whose comments are reflected in this report.

I would also like to express my appreciation to the Hampden 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 watermark.

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 Hampden County District Attorney's Office (HCDA) for the period July 1, 2016 through December 31, 2017.

In this performance audit, we examined HCDA's activities related to the administration of its Juvenile Diversion Program and Victim Witness Assistance Program. Unlike the Victim Witness Assistance Program, HCDA'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 its stated goals, national best practices, and general government operating standards.

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

| | |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finding 1 Page 6 | HCDA has not established a process to assess the effectiveness of its Juvenile Diversion Program. |
| Recommendations Page 7 | <ol style="list-style-type: none">1. HCDA should identify the relevant information that could be used to assess the effectiveness of its Juvenile Diversion Program, establish a formal process to collect and evaluate this information, and use it to make any necessary program enhancements.2. HCDA should identify existing resources that could be allocated to these activities and/or, if necessary, request additional funding from the Legislature for this purpose. |

OVERVIEW OF AUDITED ENTITY

The Hampden County District Attorney's Office (HCDA) 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. HCDA serves 23 cities and towns in western Massachusetts and operates from five district courts, three of which have juvenile courts. HCDA 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, HCDA operates several programs that provide educational services to the public and to individuals involved in the criminal justice system. The programs subject to our audit are described below.

The Juvenile Diversion Program is available to first-time offenders between the ages of 7 and 18 who are charged with certain crimes, such as alcohol offenses, assault and battery, breaking and entering, disorderly conduct, disturbing the peace, larceny, shoplifting, and trespassing. Program participants can postpone their arraignments while completing the requirements of the program, which include signing a contract that documents the terms of the program and performing community service and may also include paying restitution, seeking counseling, and completing educational courses. When participants successfully complete the program requirements, the charges against them are dismissed.

The Juvenile Diversion Program has one full-time employee and one part-time employee. The Juvenile Diversion Program is discretionary, is not required or governed by statute, and does not receive separate funding. HCDA chooses to operate this program using the money the Legislature appropriates each year to fund HCDA's overall operations. HCDA estimates the annual cost of the program at \$65,000.

HCDA also operates a Victim Witness Assistance Program, which is governed by Chapter 258B of the General Laws. According to HCDA's website,

The Victim Witness Unit of the Hampden County District Attorney's Office serves victims and witnesses of crime in accordance with the entitlements and services mandated by the Massachusetts Bill of Rights (M.G.L. c. 258 B).

The appendix of this report contains detailed descriptions of these entitlements and services. The Victim Witness Assistance Program has 25 full-time advocates, 1 part-time advocate, and 1 full-time director.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

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 certain activities of the Hampden County District Attorney's Office (HCDA) for the period July 1, 2016 through December 31, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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. 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 HCDA ensure that all program requirements are fulfilled and documented for participants who have successfully completed its Juvenile Diversion Program? | Yes |
| 2. Does HCDA evaluate its Juvenile Diversion Program to ensure that it meets its goal to decrease the likelihood that the juveniles will commit further offenses? | No; see Finding 1 |
| 3. Does HCDA's Victim Witness Assistance Program provide assistance throughout the court process to victims and witnesses of crimes associated with Chapter 265 of the General Laws as required by Section 5 of Chapter 258B of the General Laws? | Yes |

To achieve our objectives, we gained an understanding of HCDA's internal controls that we deemed significant to our audit objectives by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting interviews with HCDA's staff and management. We also evaluated the design and tested the effectiveness of the controls over HCDA's Juvenile Diversion Program.

Additionally, we performed the following procedures:

- We reviewed a nonstatistical, judgmental sample of 30 of 383 participants who completed the Juvenile Diversion Program during the audit period to determine whether they successfully completed all program requirements before their cases were dismissed. The requirements can include community service, restitution, questionnaires, counseling, and education courses.

- We asked two members of HCDA management whether HCDA measures and evaluates the outcomes of the Juvenile Diversion Program to determine whether the program's goal is being met.
- We reviewed a nonstatistical, judgmental sample of 60 of 5,990 cases tried during the audit period involving charges for crimes related to Chapter 265 of the General Laws to ensure that HCDA offered victims and witnesses of crime the rights and services governed by Section 5 of Chapter 258B of the General Laws.

We obtained criminal case data from the District Attorney Management Information Office Network system, which is the case-management system HCDA uses. We reviewed the controls HCDA had implemented regarding access to this system, as well as user roles and responsibilities. We traced a sample of cases to hardcopy court records for agreement. We also ensured that these cases were appropriately classified by criminal offense in the system. Based on our audit work, we determined that the data were sufficiently reliable for our purposes.

We used an Excel spreadsheet provided by HCDA to identify the participants in the Juvenile Diversion Program. To determine the reliability of the data, we traced source documents to and from data produced from the Excel spreadsheet. Based on our audit work, we determined that the data were sufficiently reliable for our purposes.

Whenever sampling was used, we applied a nonstatistical approach, and as a result, we were not able to project our results to the entire population.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Hampden County District Attorney's Office has not established a process to assess the effectiveness of its Juvenile Diversion Program.

The Hampden County District Attorney's Office (HCDA) could improve the administration of its Juvenile Diversion Program. According to the HCDA Juvenile Diversion Program Criteria, Policies, and Procedures, the program's goal is "to offer intervention at an early stage to first-time juvenile offenders to decrease the likelihood that the juvenile will commit further offenses." However, HCDA officials told us that HCDA has not set up a process to identify, collect, and evaluate relevant program data to determine whether this goal is met. As a result, HCDA is limited in its ability to assess the effectiveness of this program and determine whether any changes to the program are necessary.

Authoritative Guidance

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 provides guidance to agencies developing juvenile diversion programs. In the section titled Outcome Evaluation, the guidebook documents an example of the type of data agencies should collect and how to evaluate the data. The example provided specifically states that an agency could "[collect] recidivism data on each youth during some period of time after they have completed the diversion program, and then [compare] it to recidivism data of similar youth (e.g., types of offense) in the community in past years."

The Urban Institute, a 50-year-old nonprofit organization that researches social and economic policy, issued a report titled "Improving Recidivism as a Performance Measure." The report states,

Ongoing data collection and analysis is necessary for any performance measure. Without year-to-year data, policymakers are unable to draw conclusions about the effectiveness of government agencies or the programs they implement.

The Juvenile Diversion Guidebook also states,

Every diversion program should have a way to determine whether it is meeting its goals and objectives. Program evaluation is important for many reasons. One of its greatest values is to determine the need for program adjustments over time. Good program evaluations not only indicate whether objectives are being met, but also identify when, why, and for whom they are not.

Although HCDA is not required to follow these criteria, they can be considered best practices that HCDA should consider adopting.

Reasons for Issues

HCDA officials told us that the Juvenile Diversion Program did not have the resources necessary to collect and analyze program data, that HCDA was not sure what data to collect that would improve the program, and that the Juvenile Diversion Program's goal was not designed to be quantitatively measured. However, in the Office of the State Auditor's (OSA's) opinion, data such as information on recidivism could be collected and analyzed with minimal additional staff resources to determine the program's effectiveness in meeting the goal of decreasing the likelihood that juveniles will commit further offenses.

Recommendations

1. HCDA should identify the relevant information that could be used to assess the effectiveness of its Juvenile Diversion Program, establish a formal process to collect and evaluate this information, and use it to make any necessary program enhancements.
2. HCDA should identify existing resources that could be allocated to these activities and/or, if necessary, request additional funding from the Legislature for this purpose.

Auditee Response

The life of a juvenile is too fluid to extrapolate any discernible correlation between successfully completing a diversion program and a future violation of the law. Variables such as changes in a home environment, school, or peer group can have substantial influences on a child's life after their involvement in a diversion program is over. Therefore, once the child has completed our diversion program successfully, there is no way of determining what factors influenced his or her return to the criminal justice system. Each child and each case would be different as each situation that a juvenile finds himself in is unique based upon the previously listed variables. The type of recidivism evaluation contemplated by the audit recommendation is not reasonable nor would it provide evidence based information for adjusting the framework of the primary diversion program. The audit does not provide any guidance as to what type of data to gather, when it should be gathered, or how the data can be linked to the success or failure of the diversion program. It would require gathering data that is not in the Commonwealth's possession, custody or control, and require a juvenile, who would be a defendant with Constitutional rights, to cooperate with the evaluation. Simply comparing one new offense to a previous offense cannot provide any discernible correlation as to what "should" or "could" have been done differently in the diversion program without looking at all the substantial variables.

The goal as stated in the Hampden District Attorney's office for its Diversion Program was drafted with the notion of intending to protect the community and diverting a juvenile who is on the

verge of entering the criminal justice system by providing them some core principals of remediation. There was no discernible measurable aspect to this goal, other than whether a juvenile successfully completed the program or not, which . . . data is collected along with other pertinent time related information.

Specifically, the goal, similar to the direction that most noticeably is themed in the recent criminal justice reform legislation, is to avoid juveniles from entering the criminal justice system at all, but, if they do, having the tools necessary to divert them from the criminal justice system or convert low level cases from delinquent/criminal matters to civil/adjudicated disposition. The new reform legislation specifically allowed for the use of expanding court diversion, allowing for restorative justice programs, and statutorily recognizing [District Attorney] diversion programs, which have no restrictions. The new legislation states "A district Attorney may divert any child for who there is probable cause to issue a complaint . . . , with or without the permission of the court. . . ." See section 75 of chapter 69 of the Acts of 2018 amending c. 119 section 54A(d). If the legislature wanted diversion programs by the [District Attorneys'] offices to be "evidenced" based which would mean looking to recidivism as a bench mark, they would have addressed that and mandated such a requirement. But the truly measurable outcome is whether a particular juvenile was able to successfully complete a reasonable [District Attorney] diversion program and not penetrate into the criminal justice system at all. Measurable and meaningful retrospective of whether a diversion program is successful is the youth's successful completion of the program. This information is currently collected as part of our statistical data.

This office has assessed the effectiveness of our Juvenile Diversion program and made adjustments and improvements on an ongoing basis which is the suggested purpose for collecting recidivism data. When it was determined that some juveniles were not completing a specific program because of transportation issues, adjustments were made in the diversion requirements to allow the juveniles to continue diversion and avoid noncompliance. Collecting percentages through an arbitrary process of program evaluation would not be a measure of the program's success or failure. The development of a diversion program that can adapt to changes that take place in the juvenile's family, school and community environments in an effort to provide the juvenile with what is necessary for him or her to complete the program is the true measure of success. The core of our diversion program is to help young people avoid entering the criminal justice system and our approach of individualizing the requirements to each juvenile is a more successful approach to program completion than an arbitrary formulaic data collection analysis for recidivism.

Auditor's Reply

OSA recognizes that there can be many factors that could affect whether a juvenile offender ultimately returns to the juvenile justice system after completing the Juvenile Diversion Program. However, as noted above, HCDA's stated goal for this program is "to offer intervention at an early stage to first-time juvenile offenders to decrease the likelihood that the juvenile will commit further offenses," not just to give a juvenile offender an opportunity for remediation. Therefore, in OSA's opinion, HCDA should measure to what extent this program is meeting this goal. Although the rate at which participants

reoffend is only one metric, it does provide some understanding of the impact the program has on participants.

OSA does not agree with HCDA that collecting and analyzing recidivism data and other relevant data is not reasonable and would not provide evidence-based information that would be useful in making improvements to the program. We understand that there are limits on how recidivism information should be interpreted; however, we believe that HCDA should consider aligning itself with national standards and ensuring that the program is designed to reduce recidivism for program participants by measuring to what extent this is being achieved. In OSA's opinion, this more long-term focus may provide a greater benefit to juvenile offenders by better ensuring that they do not reoffend, which would also reduce incarceration costs and have a more significant impact on public safety. In addition, determining to what extent the goals of a program are being met is a key component of proper program administration, and in the case of the Juvenile Diversion Program, OSA believes it is essential in providing the Legislature and the public with transparency regarding program participation, outcomes, and overall impact. In its response, HCDA acknowledges the benefit of collecting and analyzing program data in order to make necessary programmatic changes when it describes how it collected data on why some juveniles did not complete a specific program and then took actions to address this problem.

Our audit did provide guidance on measuring HCDA's goal. In the Authoritative Guidance section, we detailed how the Juvenile Diversion Guidebook published by the Models for Change initiative suggested that recidivism data be compiled. The guidebook documents an example of the type of data agencies could collect, as well as how to evaluate the data. The example provided specifically states that an agency could "[collect] recidivism data on each youth during some period of time after they have completed the diversion program, and then [compare] it to recidivism data of similar youth (e.g., types of offense) in the community in past years."

Finally, we acknowledge that assessing recidivism in relation to juvenile diversion programs is not a specific requirement of the most recent criminal justice reform legislation. However, most publicly available information on diversion programs on both a state and a national level indicates that one of

the primary goals of this type of program is to reduce recidivism.¹ Therefore, we believe that HCDA should consider implementing this practice.

1. For instance, Nebraska's Juvenile Pretrial Diversion Guidelines list reducing recidivism as a purpose of juvenile pretrial diversion. In Louisiana, the office of the Caddo Parish District Attorney states that the results of its diversion program include reducing recidivism. Finally, a 2010 research summary by the US Department of Justice on pretrial diversion programs states that these programs have the goal of reducing recidivism by addressing the causes of criminal activity.

APPENDIX

Section 3 of Chapter 258B of the Massachusetts General Laws: Rights Afforded Victims, Witnesses or Family Members

To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results:

- (a) for victims, to be informed by the prosecutor about the victim's rights in the criminal process, including but not limited to the rights provided under this chapter. At the beginning of the criminal justice process, the prosecutor shall provide an explanation to the victim of how a case progresses through the criminal justice system, what the victim's role is in the process, what the system may expect from the victim, why the system requires this, and, if the victim requests, the prosecutor shall periodically apprise the victim of significant developments in the case;*
- (b) for victims and family members, to be present at all court proceedings related to the offense committed against the victim, unless the victim or family member is to testify and the court determines that the person's testimony would be materially affected by hearing other testimony at trial and orders the person to be excluded from the courtroom during certain other testimony;*
- (c) for victims and witnesses, to be notified by the prosecutor, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled, provided that such changes are known in advance. In order to notify victims and witnesses, a form shall be provided to them by the prosecutor for the purpose of maintaining a current telephone number and address. The victim or witness shall thereafter maintain with the prosecutor a current telephone number and address;*
- (d) for victims and witnesses, to be provided with information by the prosecutor as to the level of protection available and to receive protection from the local law enforcement agencies from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;*
- (e) for victims, to be informed by the prosecutor of financial assistance and other social services available to victims, including information relative to applying for such assistance or services;*
- (f) for victims and witnesses, to a prompt disposition of the case in which they are involved as a victim or a witness;*
- (g) for victims, to confer with the prosecutor before the commencement of the trial, before any hearing on motions by the defense to obtain psychiatric or other confidential records,*

and before the filing of a nolle prosequi or other act by the commonwealth terminating the prosecution or before the submission of the commonwealth's proposed sentence recommendation to the court. The prosecutor shall inform the court of the victim's position, if known, regarding the prosecutor's sentence recommendation. The right of the victim to confer with the prosecutor does not include the authority to direct the prosecution of the case;

- (h) for victims and witnesses, to be informed of the right to request confidentiality in the criminal justice system. Upon the court's approval of such request, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses;*
- (i) for victims, family members and witnesses to be provided, by the court as provided in section 17 of chapter 211B, with a secure waiting area or room which is separate from the waiting area of the defendant or the defendant's family, friends, attorneys or witnesses and separate from the district attorney's office; provided, however, that the court shall designate a waiting area at each courthouse; and provided further, that designation of those areas shall be made in accordance with the implementation plan developed by the task force.*
- (j) for victims and witnesses, to be informed by the court and the prosecutor of procedures to be followed in order to apply for and receive any witness fee to which they are entitled;*
- (k) for victims and witnesses, to be provided, where appropriate, with employer and creditor intercession services by the prosecutor to seek employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process, and to seek consideration from creditors if the victim is unable, temporarily, to continue payments;*
- (l) for victims or witnesses who have received a subpoena to testify, to be free from discharge or penalty or threat of discharge or penalty by his employer by reason of his attendance as a witness at a criminal proceeding. A victim or witness who notifies his employer of his subpoena to appear as a witness prior to his attendance, shall not on account of his absence from employment by reason of such witness service be subject to discharge or penalty by his employer. Any employer or agent of said employer who discharges or disciplines or continues to threaten to discharge or discipline a victim or witness because that victim or witness is subpoenaed to attend court for the purpose of giving testimony may be subject to the sanctions stated in section fourteen A of chapter two hundred and sixty-eight;*

- (m) *for victims and witnesses, to be informed of the right to submit to or decline an interview by defense counsel or anyone acting on the defendant's behalf, except when responding to lawful process, and, if the victim or witness decides to submit to an interview, the right to impose reasonable conditions on the conduct of the interview;*
- (n) *for victims, to confer with the probation officer prior to the filing of the full presentence report. If the victim is not available or declines to confer, the probation officer shall record that information in the report. If the probation officer is not able to confer with the victim or the victim declines to confer, the probation officer shall note in the full presentence report the reason why the probation officer did not make contact with the victim;*
- (o) *for victims, to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses. If restitution is ordered as part of a case disposition, the victim has the right to receive from the probation department a copy of the schedule of restitution payments and the name and telephone number of the probation officer or other official who is responsible for supervising the defendant's payments. If the offender seeks to modify the restitution order, the offender's supervising probation officer shall provide notice to the victim and the victim shall have the right to be heard at any hearing relative to the proposed modification.*
- (p) *for victims, to be heard through an oral and written victim impact statement at sentencing or the disposition of the case against the defendant about the effects of the crime on the victim and as to a recommended sentence, pursuant to section four B of chapter two hundred and seventy-nine, and to be heard at any other time deemed appropriate by the court. The victim also has a right to submit the victim impact statement to the parole board for inclusion in its records regarding the perpetrator of the crime;*
- (q) *for victims, to be informed by the prosecutor of the final disposition of the case, including, where applicable, an explanation of the type of sentence imposed by the court and a copy of the court order setting forth the conditions of probation or other supervised or unsupervised release within thirty days of establishing the conditions, with the name and telephone number of the probation officer, if any, assigned to the defendant;*
- (r) *for victims, to have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, the prosecutor or law enforcement agencies within ten days of its taking or recovery if it is not needed for law enforcement or prosecution purposes or as expeditiously as possible when said property is no longer needed for law enforcement or prosecution purposes;*
- (s) *for victims, to be informed by the parole board of information regarding the defendant's parole eligibility and status in the criminal justice system;*

- (t) for victims, to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody, whenever a defendant is moved from a secure facility to a less-secure facility, and whenever the defendant escapes from custody. The victim shall be informed by the prosecutor about notification rights and the certification process required to access the criminal offender record information files. Persons requesting such notice must provide the appropriate authority with current information as to their address and telephone number;*

- (u) for victims, to be informed that the victim may have a right to pursue a civil action for damages relating to the crime, regardless of whether the court has ordered the defendant to make restitution to the victim.*

- (v) for one family member of a victim of a homicide, which the matter before the court is related, to possess in the courtroom a photograph, that is not of itself of an inflammatory nature, of the deceased victim that is not larger than eight by ten inches; provided, however, that at no time may the photograph be exposed or in anyway displayed in the presence of any member of the jury, or the jury pool from which a jury is to be selected in a particular matter; provided, further, that nothing in this section shall preclude the admission into evidence of a photograph that the court deems relevant and material.*

- (w) Where the victim or witness is an employee of the department of youth services, no law enforcement agency, prosecutor, defense counsel or parole, probation or corrections official shall disclose or state the residential address, telephone number or place of employment or school of the victim, a victim's family member or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses.*

There shall be conspicuously posted in all courthouses and police stations a summary of the rights afforded under this section. The victim and witness assistance board, pursuant to section 4, shall devise and provide posters to satisfy this requirement to court officials and police station personnel, and, upon request and at the discretion of the office and board, to any other institution or organization to post and maintain in space accessible to the general public. The board shall develop such posters in a variety of languages as determined by the Massachusetts office for victim assistance. Upon request, the board will respond, to the extent possible, to any requests for additional language translations of such posters.