



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

Making government work better

Official Audit Report – Issued July 21, 2022

Juvenile Court Department

For the period November 5, 2018 through March 15, 2020





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The Honorable Amy Nechtem, Chief Justice
Juvenile Court Department
One Center Plaza, Seventh Floor
Boston, MA 02108

Dear Chief Justice Nechtem:

I am pleased to provide this performance audit of the Juvenile Court Department. This report details the audit objectives, scope, methodology, and recommendations for the audit period, November 5, 2018 through March 15, 2020, and the scope impairments we encountered. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Juvenile Court Department 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

cc: The Honorable Jeffrey Locke, Chief Justice of the Executive Office of the Trial Court

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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 Juvenile Court Department (JCD) for the period November 5, 2018 through March 15, 2020. The objectives of this audit were to determine whether JCD abided by Section 54A of Chapter 119 of the General Laws by offering pretrial diversion to juveniles and whether JCD placed juveniles in restraints during court proceedings only when necessary, as required by Section 86(b) of Chapter 119 of the General Laws.

Because of constraints we encountered in obtaining the information necessary to perform our audit work, we could not draw conclusions about these objectives. Specifically, we could not determine whether JCD used a pretrial diversion model to prevent recidivism or whether it complied with Section 86(b) of Chapter 119 of the General Laws regarding the use of restraints during court proceedings. These objectives and constraints are discussed in the “Audit Objectives, Scope, and Methodology” section of this report.

OVERVIEW OF AUDITED ENTITY

The Juvenile Court Department (JCD), established under Section 1 of Chapter 211B of the Massachusetts General Laws, is one of seven departments of the Massachusetts Trial Court. Chapter 478 of the Acts of 1978 restructured the Trial Court into seven departments: the Boston Municipal Court, the District Court, the Housing Court Department, JCD, the Probate and Family Court Department, the Superior Court, and the Land Court Department

JCD operates as the department of the Massachusetts Trial Court that is solely responsible for adjudicating cases involving juveniles, in order to separate the legal proceedings of juveniles and adults. JCD comprises 11 divisions throughout the Commonwealth, with sessions taking place in more than 40 court locations. JCD is headed by a Chief Justice, who oversaw 40 judges as of May 3, 2022.

According to JCD's website,

The Juvenile Court Department has general jurisdiction over the following case types:

- *Delinquency,*
- *Children requiring assistance (CRA),*
- *Care and protection,*
- *Adult contributing to the delinquency of a minor,*
- *Adoption,*
- *Guardianship,*
- *Youthful offender, and*
- *Termination of parental rights proceedings. . . .*

The Juvenile Court's mission is to protect children from abuse and neglect, to strengthen families, to rehabilitate juveniles, and to protect the public from delinquent and criminal behavior.

For fiscal years 2019, 2020, and 2021, JCD received direct appropriations of \$21,265,155, \$22,984,763, and \$20,915,217, respectively.

Diversion Programs

According to Section 54A(a) of Chapter 119 of the General Laws,

A juvenile court shall have jurisdiction to divert from further court processing a child who is subject to the jurisdiction of the juvenile court as the result of an application for complaint brought pursuant to section 54 [which applies to juveniles whose alleged offenses would be punishable by imprisonment if they were adults].

Section 1 of Chapter 276A of the General Laws defines diversion programs as follows:

Any program of community supervision and services including, but not limited to, medical, educational, vocational, social, substance use disorder treatment and psychological services, corrective and preventive guidance, training, performance of community service work, counseling, provision for residence in a halfway house or other suitable place, and other rehabilitative services designed to protect the public and benefit the individual.

Such programs can be funded through a variety of avenues such as state grants, city funds, or nonprofit organizations.

Juvenile Restraint

Section 86(b) of Chapter 119 of the General Laws prohibits courts from restraining juveniles in the courtroom during court proceedings without good reason to do so. If the court believes that the juvenile could be a danger to themselves or to others or has a history of disruptions of court proceedings or escape attempts, the juvenile can be restrained. In these cases, the judge must complete a document indicating the name of the juvenile, the docket number, and the reason for the use of restraints. This document is added to the juvenile's case file.

In addition, Section 86(c) of Chapter 119 of the General Laws states,

No Juvenile Court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific category of juvenile, who appear before the court.

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 Juvenile Court Department (JCD) for the period November 5, 2018 through March 15, 2020.

We performed this audit in accordance with generally accepted government auditing standards, except Section 8.90 of Chapter 8 of the United States Government Accountability Office's *Government Auditing Standards*, which pertains to obtaining sufficient, appropriate evidence to meet audit objectives. See "Scope Impairments" below for details on the lack of audit evidence that prevented us from addressing the objectives and developing findings and conclusions.

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 where each objective is discussed in this report.

Objective	Conclusion
1. Does JCD provide offenders with a pretrial diversion model (as required by Section 54A of Chapter 119 of the General Laws) that is aimed at preventing recidivism among program participants?	See <u>Scope Impairments</u>
2. Does JCD comply with Section 86(b) of Chapter 119 of the General Laws, which prohibits the use of restraints (unless there is good reason to use them) during court proceedings?	See <u>Scope Impairments</u>

To gain an understanding of the internal control environment we determined to be relevant to our audit objectives, we reviewed agency policies and procedures and conducted inquiries with the staff and management. We could not evaluate the design and operating effectiveness of internal controls regarding pretrial diversion and restraint use on juveniles because of a lack of evidence.

We conducted interviews with key individuals, such as justices and a clerk magistrate, and made a site visit to the Worcester Juvenile Court, to gain an understanding of any diversion programs that are used. However, we could not conduct substantive testing to address the audit objective related to diversion because of a scope impairment related to data.

To gain an understanding of the use of restraints during court proceedings, we conducted interviews with key individuals, such as justices and court officers. We observed the holding chamber in the Worcester

Juvenile Court, where juveniles wait until their cases are heard. However, we could not conduct substantive testing to address the audit objective related to the use of restraints because of a scope impairment related to recordkeeping.

Section 9.12 of the United States 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." During our audit of JCD, there were significant constraints on our ability to obtain the information necessary to achieve our audit objectives, as follows.

Diversion Programs

We could not perform audit procedures to determine whether JCD provided offenders with a pretrial diversion model (as required by Section 54A of Chapter 119 of the General Laws) that was aimed at preventing recidivism among program participants, because JCD does not maintain records related to the juveniles who have completed its diversion programs. JCD officials told us that since the primary purpose of a diversion program is to make sure that juveniles who complete the program do not have criminal records, JCD expunges¹ their records when they complete a program. OSA confirmed this through inspection at the Worcester Juvenile Court.

Juvenile Restraints

We could not perform audit procedures to determine whether JCD complied with Section 86(b) of Chapter 119 of the General Laws, which restricts the use of restraints during court proceedings, because JCD does not maintain a log of the use of restraints. JCD management told us the use of restraints was rare and that JCD did not log the use of restraints during court proceedings. Additionally, during interviews, we learned that the court officers within the Massachusetts Trial Court Security Department are responsible for applying restraints and seeking the judge's permission to use restraints in the courtroom by completing and submitting written forms to the judge requesting the use of restraints. Because JCD does not log the use of restraints, it was not possible to identify the population of juveniles who were restrained during court proceedings during the audit period, which we could have used to select a sample to address our audit objective.

1. When a judge dismisses the charge against the juvenile after completing a diversion program, the court enters an order for the expungement, or the destruction of, all physical or electronic records of the charge against the juvenile.

Scope Impairments

JCD lacked data that would have allowed us to perform our audit testing. Through our interviews, OSA learned that the court locations in at least one Massachusetts county use a document called the Delinquency Diversion Data Form to track diversions. This document contains certain information about a juvenile who has entered a diversion program as a result of a court case, such as the docket number; the charge/s; the date/s of offense/s; the party that requested the diversion; whether the diversion was successful; and information about the juvenile such as gender, age, ethnicity, and race. However, this document is not used by all of the counties in Massachusetts. We recommend that JCD require all its court locations to use a de-identified² version of the Delinquency Diversion Data Form and document the use of restraints during court proceedings in a master log to address these issues.

During fiscal year 2018, the state Legislature enacted Chapter 69 of the Acts of 2018. One purpose of this legislation was to amend Section 54 of Chapter 119 of the General Laws to state,

A juvenile court shall have jurisdiction to divert from further court processing a child who is subject to the jurisdiction of the juvenile court as the result of an application for complaint brought pursuant to section 54.

Although we acknowledge that Section 54A(f)(4) of Chapter 119 of the General Laws requires a juvenile's record to be expunged upon completion of a diversion program, OSA believes that JCD should maintain certain de-identified information about its diversion program participants to demonstrate that all of its diversion programs are operated without biases toward or against certain groups. We believe that JCD should require all its court locations to collect and retain information similar to that collected on the Delinquency Diversion Data Form, in a de-identified manner, about each juvenile who is offered diversion. In OSA's opinion, this would protect the identity and privacy of the juveniles who had completed a program and would document that JCD's juvenile diversion programs operate without biases toward or against certain groups. JCD could also use this information to assess the effectiveness of its programs at reducing recidivism.

Finally, OSA believes that JCD should develop policies and procedures to centrally monitor or track juveniles who are restrained during court proceedings by maintaining a master log of this information. This log would allow JCD to determine where and how often restraints are used; it could also facilitate

2. A de-identified document protects the privacy of an individual by not including their personal information.

effective examination, either by the court or by independent auditors, of JCD's compliance with Section 86(b) of Chapter 119 of the General Laws.

Auditee's Response

In response to the recommendation for all Juvenile Court locations to use a de-identified version of the Delinquency Diversion Data form currently used by Middlesex County Juvenile Court, the Administrative Office of the Juvenile Court acknowledges the need to capture when judicial diversion is ordered in the Juvenile Court and the gender, age, ethnicity, and race of the juveniles participating in diversion. To address this need, the Administrative Office of the Juvenile Court plans to issue instructions to all Juvenile Court locations regarding the entry of docket codes specific to judicial diversion ordered pursuant to [Section 54 of Chapter 119 of the General Laws]. The use of these codes will allow the Juvenile Court to generate reports regarding judicial diversion, including the gender, age, ethnicity, and race of the juvenile. These reports will provide the same information as the Delinquency Diversion Data form but in a statewide, uniform format.

In response to the recommendation for the Juvenile Court Department to develop policies and procedures to monitor or track juveniles who are restrained during court proceedings, as you are aware there is a Trial Court policy as well as [Section 86 of Chapter 119 of the General Laws], addressing the use of restraints on juveniles in all court proceedings. The Administrative Office of the Juvenile Court accepts your recommendation of monitoring and tracking the use of restraints and will create a new docket code to be used whenever the court orders that a juvenile be restrained during court proceedings.

The creation and use of this docket code will allow the Juvenile Court to generate reports regarding the use of restraints and will act similar to a master log. In addition to the creation of the docket code, the Administrative Office of the Juvenile Court will instruct all Juvenile Court judges and staff regarding [Section 86 of Chapter 119 of the General Laws] and the creation of the new docket code.

Auditor's Reply

Based on its response, JCD is taking measures to address the concerns raised in this report.