



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

Making government work better

Official Audit Report – Issued October 11, 2018

Plymouth County District Attorney's Office

For the period January 1, 2017 through December 31, 2017





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Making government work better

October 11, 2018

District Attorney Timothy J. Cruz
Plymouth County District Attorney's Office
166 Main Street
Brockton, MA 02303

Dear Mr. Cruz:

I am pleased to provide this performance audit of the Plymouth 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 Plymouth 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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LIST OF ABBREVIATIONS

CORI	Criminal Offender Record Information
DAMION	District Attorney Management Information Office Network
OSA	Office of the State Auditor
PCDA	Plymouth County District Attorney's Office

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 Plymouth County District Attorney's Office (PCDA) for the period January 1, 2017 through December 31, 2017.

In this performance audit, we examined PCDA's activities related to the administration of its Diversion Program and Victim Assistance Program. Unlike the Victim Assistance Program, PCDA's 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 governmental operating standards.

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

Finding 1 Page 7	PCDA has not established a process to measure the success of its Diversion Program.
Recommendation Page 8	PCDA should consider ways to evaluate the Diversion Program data it currently collects to help identify areas where program improvements may be needed and to support requests to the Legislature for program-specific funding.

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

OVERVIEW OF AUDITED ENTITY

The Plymouth County District Attorney's Office (PCDA) 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. PCDA serves one city and 26 towns¹ in southeastern Massachusetts. In addition to working from the superior and juvenile courts, PCDA operates from four district courts, all of which have six-member jury-trial sessions. PCDA 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, PCDA 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 Diversion Program, which encompasses both juveniles (under 17 years old) and young adults (17–23 years old), is available at the discretion of Assistant District Attorneys to first-time offenders 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 90 days 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 Diversion Program has two full-time employees. The Diversion Program is discretionary, is not required or governed by statute, and does not receive separate funding. PCDA operates the program using the money the Legislature appropriates each year to fund PCDA's overall operations. PCDA estimates the annual cost of the program at \$85,878.

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

1. The city is Brockton, and the 26 towns are Abington, Bridgewater, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marion, Marshfield, Mattapoisett, Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rochester, Rockland, Scituate, Wareham, West Bridgewater, and Whitman.

The Victim Assistance Program is committed to assisting victims of crime in Plymouth County. Advocates are available to provide information and guidance through the criminal justice process, and to protect victims' rights under the law.

As of December 31, 2017, the Victim Assistance Program had a director, a deputy director, and 17 full-time victim/witness advocates to 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 Plymouth County District Attorney's Office (PCDA) for the period January 1, 2017 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 PCDA ensure that all program requirements are fulfilled and documented for participants who have successfully completed its Diversion Program?	Yes
2. Does PCDA measure the performance of its Diversion Program?	No; see Finding <u>1</u>
3. Does PCDA's Victim 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?	Yes

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

The constraints were as follows:

- PCDA officials initially refused to give us access to the Diversion Program and Victim Assistance Program case files because of confidentiality concerns. In September 2017, the OSA Legal Department drafted a confidentiality agreement to resolve PCDA's concerns. However, PCDA never signed this agreement and did not provide the requested documents until March 2018.
- PCDA provided a list of Diversion Program case files from its case management system, the District Attorney Management Information Office Network (DAMION), that did not include names and docket numbers. Therefore, we could not trace names and docket numbers from the provided list to the hardcopy Diversion Program case files to verify that the audit population was complete and accurate. Our inability to verify the population as complete and accurate decreases the reliance we can place on the evidence obtained.

Methodology

We performed the following procedures to address our audit objectives:

- We reviewed a nonstatistical, random sample of 28 out of 301 Diversion Program case files disposed of during the audit period to determine whether contracts were signed by the program participants, their parents or guardians if the participants were juveniles, and the Assistant District Attorney, as well as whether there was evidence that the specific conditions required by the signed contracts had been met for 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.
- We asked PCDA officials about the process of tracking or measuring the performance of the Diversion Program. PCDA officials told us that the office does not track participants after they complete the program to measure the program's performance; the decision to divert a juvenile or young adult is part of the everyday business of the district and juvenile courts and is considered a type of disposition similar to the decision to bring the case forward for sentencing.
- For the Victim 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 4,513 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. We reviewed the source

documents in these files as the director and assistant director of Victim Services explained how PCDA offered victims and witnesses of crimes the rights and services governed by Section 5 of Chapter 258B of the General Laws.

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

For the lists of criminal cases for the Diversion and Victim Assistance Programs that PCDA gave us from DAMION, we were only able to perform limited procedures, such as reviewing information technology policies and testing selected system user access controls, to assess the reliability of the data obtained. We were not allowed to see the names of the Diversion and Victim Assistance Program participants to select a sample of case files from the file cabinet and trace the files back to the lists. Additionally, for the Diversion Program, we were only allowed to see redacted case files rather than original source documents. For the Victim Assistance Program, the director and assistant director of Victim Services reviewed and read us excerpts from the victim/witness advocate notes in the case files that pertained to our third audit objective.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

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

Currently, the Plymouth County District Attorney's Office (PCDA) collects Diversion Program case data, both for juveniles (under 17 years old) and for young adults (17–23 years old), that it could use to measure the results of the program and determine whether any changes to the program are necessary. However, PCDA is not evaluating these data; it is only using the data as a record of participation and completion of the program-specific requirements.

Consequently, PCDA cannot determine whether this program effectively and efficiently provides a tangible benefit to the community it serves. Had PCDA evaluated these Diversion Program data, it could have used them to consider potential improvements to the program and to support requests to the Legislature for program-specific funding.

Authoritative Guidance

Although there are no specific laws or requirements for data collection and evaluation for the 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'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.

Data collection and analysis allow program managers to assess the need for program adjustments over time and determine whether programs are meeting their intended purposes. Therefore, collecting and evaluating data for measuring the performance of diversion programs can be considered a best practice.

Additionally, there is support for using the same processes for young adult diversion that are used for juvenile diversion. For instance, the Justice Policy Institute's report *Improving Approaches to Serving Young Adults in the Justice System* states,

The evidence that adolescence extends well beyond 18 could, theoretically, be applied to the justice system to reduce long-term negative consequences for young people and take advantage of a significant opportunity to give young adults the best chance to succeed.

Reasons for Noncompliance

PCDA officials told us that they had not considered the benefits of evaluating the Diversion Program information that PCDA collects to measure the results of the program.

Recommendation

PCDA should consider ways to evaluate the Diversion Program data it currently collects to help identify areas where program improvements may be needed and to support requests to the Legislature for program-specific funding.

Auditee's Response

The Plymouth County Diversion Program does collect case and program data for each diversion candidate entered into the Program. We have recently created and implemented juvenile and adult intake forms, which will be filled out by each diversion candidate. This will further give the Program more information and data about the individuals entering the Program. Each court will collect and maintain individual data forms/sheets for the cases out of their jurisdiction, and quarterly breakdowns will be provided to the diversion director. This will help the director see what is happening in each court, what programs are being used, who is being diverted, and what is and is not working for each individual court. At the end of each year, a DAMION database search will also be performed by the Program to help identify any repeat offenders, and also to confirm all data is being collected correctly by the diversion officers. Having quarterly court breakdowns and yearly reviews of all data collected through our PCDA database by the diversion director and main office supervisor will help in identifying specific and proper program changes that need to be made. It will also assist us in tailoring better programs and requirements for each specific court, if needed. . . .

Although there are no specific laws or requirements for data collection and evaluation for the Diversion Program, we accept the recommendation that encourages data collection and review,

which may lead to improvements in overall outcomes. . . . We will be implementing any and all of [the Auditor's] suggestions.

Regarding our "Audit Constraints" disclosure, PCDA stated,

Based on G.L. c. 119 § 60A, the statute protecting certain juvenile records from disclosure, the protected information sought involved a privacy interest that was not ours to waive by signing the agreement. The statute specifically states that the juvenile records "shall be withheld from public inspection except with consent of a justice of such court. . . ." G.L. c. 119 § 60A. In addition, the authority upon which the State Auditor acts, G.L. c. 11 § 12, does not contain any specific language creating an exception for the disclosure of juvenile records. . . .

In regards to the disclosure of specific names and case information regarding the diversion of adults, this information is protected under [Criminal Offender Record Information (CORI)] G.L. c. 6 § 167. The Office of the State Auditor is not [CORI] cleared, so this information is protected from disclosure. Further, this is also a privacy interest that is held by the offender, which we cannot waive.

Auditor's Reply

Based on its response, PCDA is taking measures to address our concerns in this area.

In its response, PCDA argues that Section 167 of Chapter 6 of the General Laws restricts the disclosure of adult diversion information and Section 60A of Chapter 119 of the General Laws restricts the disclosure of juvenile records. However, OSA's enabling statute, Section 12 of Chapter 11 of the General Laws, grants it broad access to these types of records:

The department of the state auditor shall audit the accounts, programs, activities and functions directly related to . . . accounts of all departments, offices, commissions, institutions and activities of the commonwealth, including those of districts and authorities created by the general court and including those of the income tax division of the department of revenue and, for such purposes, the authorized officers and employees of the department of the state auditor shall have access to such accounts at reasonable times and the department may require the production of books, documents, vouchers and other records relating to any matter within the scope of an audit conducted under this section . . . except tax returns.

Because tax returns are the only exception to OSA's access to data and information during an audit, this legislation grants OSA access to the adult and juvenile diversion records that PCDA did not provide.

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.*