

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued December 30, 2024

Northwestern District Attorney

For the period July 1, 2021 through June 30, 2023



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

December 30, 2024

David E. Sullivan, District Attorney
Northwestern District Attorney
1 Gleason Plaza
Northampton, MA 01060

Dear District Attorney Sullivan:

I am pleased to provide to you the results of the enclosed performance audit of the Northwestern District Attorney's Office. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2021 through June 30, 2023. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Northwestern District Attorney's Office. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team has any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CIC	Conviction Integrity Committee
DAMION	District Attorney Management Information Office Network
JDP	Juvenile Diversion Program
NWDA	Northwestern District Attorney's Office
VJP	Veterans Justice Partnership
WMVTC	Western Massachusetts Veterans Treatment Court

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 Northwestern District Attorney's Office (NWDA) for the period July 1, 2021 through June 30, 2023.

The purpose of this audit was to determine (1) to what extent NWDA is administering the Veterans Diversion Program in accordance with Section 34 of Chapter 12 of the General Laws; (2) whether NWDA's Conviction Integrity Program is reviewing past convictions equitably; and (3) to what extent NWDA's Juvenile Diversion Program (JDP) provides a reasonable pretrial diversion model that discourages and prevents recidivism amongst participants.

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

Finding 1 Page 12	NWDA should improve its procedures and administration of veteran diversion cases.
Effect	<p>NWDA is not complying with Section 34 of Chapter 12 of the General Laws because it has not established a veteran diversion program and has not developed written policies and procedures to regulate it. Not establishing a diversion program limits veterans' access to diversion opportunities to help avoid prosecution where appropriate.</p> <p>Additionally, by not keeping sufficient documentation as described more fully in this audit, NWDA cannot ensure that it monitors these diversion programs to ensure successful outcomes for veterans.</p>
Recommendations Page 13	<ol style="list-style-type: none">1. NWDA should establish its own Veteran Diversion Program to comply with Section 34 of Chapter 12 of the General Laws, and NWDA should develop written policies and procedures to regulate this program.2. NWDA should ensure that it collects and retains sufficient supporting documentation related to veteran diversion cases.
Finding 2 Page 14	The Conviction Integrity Committee (CIC) should improve its outreach and procedures.
Effect	<p>By not developing policies and procedures that cover all its roles and responsibilities and by not generating and maintaining all documentation relevant to the post-conviction review, NWDA may not maximize efficacy and transparency for the review of alleged wrongful convictions. The development of, and adherence to, policies and procedures may have prevented the exception we identified in the review of case files. Failing to provide the official final decision of the post-conviction review to the convicted defendants also reduces government transparency.</p> <p>By not publicizing the Conviction Integrity Program more widely, NWDA may limit the number of cases that and defendants who could benefit from the program, potentially affecting equal opportunity for all defendants who may benefit from post-conviction review.</p>

Recommendations Page <u>18</u>	<ol style="list-style-type: none">1. NWDA should develop policies and procedures to regulate the post-conviction process. These policies and procedures should address, among other things, intakes, screening and investigation, and referring official misconduct to relevant authorities.2. NWDA should include the email address of the Conviction Integrity Program and the name of CIC's director on its website so that convicted defendants can communicate with CIC.3. To promote equal opportunity for potential convicted defendants, NWDA should publicize its Conviction Integrity Program by posting information, and including this information in orientation materials, at relevant entities such as prisons and houses of corrections, county sheriffs' offices, prisoner advocacy groups, and the Committee for Public Counsel Services.4. CIC should record its reviews, determinations, and final recommendations from its post-conviction reviews in writing and provide this information to convicted defendants and their attorneys. This information should also be maintained in convicted defendants' case files.
Finding 3 Page <u>20</u>	NWDA should improve the procedures and administration of the Juvenile Diversion Program (JDP).
Effect	By not collecting sufficient JDP data, NWDA limits its ability to achieve its goal of improving program outcomes and reducing recidivism. Without generating and retaining adequate documentation, NWDA cannot ensure that it follows best practices and procedures for an effective diversion program.
Recommendations Page <u>23</u>	<ol style="list-style-type: none">1. NWDA should consistently collect JDP data and analyze it on an annual basis and use the results for program improvement. NWDA should identify alternatives for data collection if the District Attorney Management Information Office Network does not suit NWDA's data collection.2. NWDA should create and implement adequate controls to ensure that it collects, records, and retains all supporting documentation related to JDP activities.

Post-Audit Action

During the course of our audit, we were informed that NWDA's CIC drafted and implemented policies and procedures for its Conviction Integrity Program, as recommended in our audit. Since this was outside of the audit period, however, we did not evaluate the adequacy of these policies and procedures.

OVERVIEW OF AUDITED ENTITY

The Northwestern District Attorney's Office (NWDA) 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.

NWDA is one of 11 district attorneys' offices in the Commonwealth and represents the Commonwealth in the prosecution of criminal offenses that occur within its jurisdiction. NWDA serves 47 cities and towns within Hampshire and Franklin Counties and the town of Athol in Worcester County.

According to NWDA's internal control plan,

The Mission of the Office of the Northwestern District Attorney's Office is to seek justice for all. The Office of the Northwestern District Attorney, in partnership with the communities we serve, is dedicated to the pursuit of truth and justice, protection of the innocent, and safety of the public.

NWDA had a budget of \$8,736,895 in fiscal year 2022 and \$9,060,664 in fiscal year 2023. NWDA's main administrative office is in Northampton, with another office located in Greenfield. During the audit period, NWDA had 109 employees, including the District Attorney, who is elected to office every four years.

Veteran Diversion Program

The Veteran Diversion Program offers treatment and services instead of incarceration to veterans¹ involved in the criminal justice system.

Section 34 of Chapter 12 of the General Laws requires the following:

The district attorneys shall establish a pre-arraignment diversion program which may be used to divert a veteran or person who is in active service in the armed forces, a person with a substance use disorder or a person with mental illness if such veteran or person is charged with an offense against the commonwealth.

1. To be eligible for diversion, the veteran must have committed a misdemeanor or felony that has district court jurisdiction. A veteran who commits sex offenses or arson felonies is not eligible for diversion. Veterans who are registered as sex offenders are not eligible for diversion. Veterans are accepted to the diversion program from any branch of military service and with any discharge status.

The NWDA is part of the Veterans Justice Partnership, which is a collaboration between federal government agencies, communities, and criminal justice partners to offer services to veterans, including alternatives to incarceration. When NWDA identifies,² prior to arraignment, a potential criminal case where a veteran is involved, NWDA reviews the case and the veteran's background to determine whether the veteran may qualify for diversion. According to Section 3 of Chapter 276A of the General Laws,

A defendant who is determine to be a veteran or a person on active service in the armed forces of the United States and who is qualified for consideration to diversion to a program may, at arraignment, be afforded a 30-day continuance for assessment by the United States Department of Veteran's Affairs or another state or federal agency with suitable knowledge and experience of veterans affairs to determine if the veteran or person on active service would benefit from such program.

When the US Department of Veterans Affairs (VA) performs the assessment, it is done so under its Veterans Justice Outreach (VJO) Program.

The VA evaluates the veteran's case and develops a "Brave Act Assessment and Treatment Plan,"³ which may include the veteran's military history, a psychiatric and substance use disorder history, medical and social history, a diagnostic, and the recommended treatment plan. The recommended treatment may include medical and mental health services and/or participation in programs or therapy, according to the veteran's needs.

As an alternative to diversion opportunities, the district court can refer veterans to the Western Massachusetts Veteran's Treatment Court (WMVTC). Veterans who plead guilty to their crimes, or have a past criminal record, may benefit from the WMVTC, which is a voluntary post-adjudication court that provides tailored treatment plans that may include stabilization, drug and alcohol abstinence, therapy, long-term housing placement, job training, and possible upgrade of military discharge status.

Conviction Integrity Program

NWDA is a partner organization of the Massachusetts Conviction Integrity Working Group, which was established in 2018. According to the *Conviction Integrity Programs: A Guide to Best Practices for Prosecutorial Offices*, dated March 2021, the Massachusetts Conviction Integrity Working Group convened "to study and make recommendations about 'best practices' for conviction integrity programs,

2. NWDA may learn of the defendant's veteran status from the district court's probation department or by other means.

3. The BRAVE Act was enacted in 2018 by the Massachusetts Legislature with the purpose of offering diversion resources to veterans.

and about the most effective structure(s) to promote conviction integrity and prevent and remedy wrongful convictions and miscarriages of justice.” Other key organizations that make up the working group include the Massachusetts Bar Association, the Office of the Attorney General, the Middlesex County District Attorney's Office, the Committee for Public Counsel Services, the Boston College Innocence Program, the New England Innocence Project, and the Plymouth County District Attorney's Office.

The Conviction Integrity Program is an NWDA initiative to ensure fairness and justice for victims, the community, and the convicted defendant involved in a crime. The program is led by a Conviction Integrity Committee (CIC) that reports directly to the District Attorney.

CIC performs outreach to increase awareness of the Conviction Integrity Program by contacting the convicted defendants' defense attorneys who have filed a motion in court under Chapter 278A of the General Laws. This motion is filed to request additional forensic and scientific analysis to be performed on the evidence from the convicted defendants' cases. CIC asks these defense attorneys to submit an Application for Review of a Criminal Conviction. CIC also includes information about the program on its website. A convicted defendant's defense attorney may submit to CIC an Application for Review of a Criminal Conviction in order to request that CIC review the convicted defendant's claim of innocence.

The CIC review process is independent from court proceedings. CIC reviews the application and supporting documentation to determine whether the claim of innocence is supported. If the claim is supported by the new analysis or evidence, CIC can recommend the following actions to the NWDA: a new plea deal, or a reduction of sentence, or a request for a new trial. If the claim is not supported, the original sentencing prevails.

Juvenile Diversion Program

Under the Juvenile Diversion Program, a voluntary program, NWDA offers eligible⁴ juvenile offenders the opportunity to divert from the court system. An NWDA juvenile diversion specialist develops a diversion plan according to each juvenile's individual needs. To successfully complete the program, participants must agree to, and comply with, a contract with specific deliverables, such as writing letters apologizing

4. Every diversion program establishes its own eligibility criteria. A juvenile's age, prior history with diversion or a history of prior offenses, and the nature of the current criminal charges are part of the considered criteria. Criminal charges that are usually accepted for diversion are misdemeanors and certain felonies. Felonies involving the use of weapons or violent offenses usually make the juvenile ineligible for diversion.

to the victims of the crime; performing community service and making restitution to victims; and completing counseling or drug or alcohol treatment programs. Juveniles who successfully complete the program avoid having a criminal offender record. Juvenile cases that do not qualify for diversion are prosecuted through the Juvenile 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 has conducted a performance audit of certain activities of the Northwestern District Attorney's Office (NWDA) for the period July 1, 2021 through June 30, 2023.

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. To what extent is NDWA administering the Veteran Diversion Program in accordance with Section 34 of Chapter 12 of the General Laws as it pertains to the benefits and services afforded to veterans and as reported on NWDA's website?	To a partial extent; see Finding <u>1</u>
2. Is NWDA's Conviction Integrity Program reviewing past convictions equitably, and is it completing reviews in a timely manner and in accordance with internal protocol procedures and Rule 3.8 of the Massachusetts Rules of Professional Conduct?	Partially; see Finding <u>2</u>
3. To what extent does NWDA's Juvenile Diversion Program (JDP) provide juvenile offenders with a reasonable pretrial diversion model that discourages and helps prevent recidivism among program participants, as recommended in our prior audit?	To a partial extent; see Finding <u>3</u>

To accomplish our audit objectives, we gained an understanding of NWDA's internal control environment relevant to our objectives by reviewing applicable policies and procedures and interviewing NWDA officials. We evaluated the design and tested the operating effectiveness of internal controls related to the JDP. Specifically, we tested the controls over NWDA's monitoring of juveniles' progress in the program and verified that key documentation such as intake reports, waivers of rights to a speedy trial in order to participate in the juvenile diversion program, and the juveniles' voluntary acceptance into the juvenile diversion program was included in case files.

To obtain sufficient, appropriate evidence to address our audit objectives, we performed the following procedures.

Veteran Diversion Program

To determine to what extent NWDA administered the Veteran Diversion Program in accordance with Section 34 of Chapter 12 of the General Laws as it pertains to the benefits and services afforded to veterans and as reported on NWDA's website, we reviewed the criminal cases of the entire population of 16 veterans who were identified through collaboration with the Veterans Justice Outreach (VJO) Program as being candidates for diversion via the BRAVE Act during the audit period. We requested and reviewed the physical folders of the criminal cases and identified and verified the existence of supporting documentation of the following for each veteran: criminal background records, such as arrest reports and narrative police reports; evidence of the evaluation of the case and the determination to divert the veteran; the assessment and recommended treatment plan for the veteran; and the final outcomes of the diversion program, i.e., whether the veteran completed the requirements of the program.

Similarly, to determine how NWDA administered the cases of veterans referred to the Western Massachusetts Veterans Treatment Court (WMVTC), we reviewed the entire population of 49 veteran criminal cases, involving 29 veterans⁵ who were referred to the WMVTC during the audit period. We requested and reviewed the physical folders of the criminal cases and identified and verified the existence of supporting documentation of the following: criminal background records, such as arrest reports and narrative police reports; evidence of the evaluation of the case and the determination to refer the veteran to the WMVTC; veteran's assessment and recommended treatment plan; and final outcome of the program, i.e., whether the veteran completed the treatment.

See Finding 1 for issues we identified with the administration of the Veteran Diversion Program.

Conviction Integrity Program

To determine whether NWDA's Conviction Integrity Program reviewed past convictions equitably and completed submissions in a timely manner and in accordance with internal procedures and Rule 3.8 of the Massachusetts Rules of Professional Conduct, we took the following actions:

5. Some of the 29 veterans had multiple criminal cases, which led to the 49 criminal cases.

- We interviewed NWDA employees with knowledge about Conviction Integrity Committee (CIC) roles and responsibilities.
- We reviewed information and documentation found on NWDA's website about CIC activities, such as how a convicted defendant's defense attorney can submit a case for post-conviction review,⁶ NWDA's open file discovery policy,⁷ and the "Application for Review of a Criminal Conviction" that convicted defendants must complete to start a post-conviction review.
- We reviewed information about CIC on the 2021–2023 NWDA annual reports published on NWDA's website.
- We requested and reviewed documentation regarding the six cases related to claims of innocence raised by convicted defendants during the audit period. Documentation that we reviewed included emails and correspondence between CIC members and the defendants' attorneys, information that we received from CIC about the cases, Applications for Review of a Criminal Conviction submitted by defendants' attorneys, and legal documentation, such as motions submitted in court under Chapter 278A of the General Laws.

See Finding 2 for issues we identified with the administration of the Conviction Integrity Program.

JDP

To determine whether NWDA's JDP provided a reasonable pretrial diversion model that discourages and prevents recidivism among program participants, we requested and reviewed the data collected and statistics generated of the JDP. We interviewed staff members knowledgeable about JDP procedures, and inquired about how program data was collected, as well as what actions were taken to make improvements to the program based on the statistical results.

To evaluate how NWDA administered the JDP, we obtained a list of 125 juvenile diversion cases and selected a random sample of 35 cases. We requested and reviewed the physical folders of juvenile diversion cases and identified and verified the existence of supporting documentation of the following: a completed intake report;⁸ a completed agreement called "Voluntary Request for Acceptance into the Northwestern District Attorney's Juvenile Diversion Program"; a completed Waiver of Counsel or a speedy trial; evidence of communications with a juvenile's parent or attorney or evidence that community timesheets were completed and submitted, which demonstrated that NWDA monitored the juvenile's

6. Post-conviction review is a review performed by CIC of a convicted defendant's case based on new forensic evidence or analysis that may lead to the overturn of the conviction.

7. The "NWDAO Post-Conviction Open File Discovery Policy" defines open file discovery as providing defendants with access to evidence for the purposes of determining whether a legal claim has sufficient evidence to proceed to judgement.

8. The intake report is used to gather general information about a juvenile, such as contact information, employment, and whether a juvenile had court involvement and counseling before. The intake report is used to assess a juvenile's case and determine eligibility for the JDP and to develop and manage a juvenile's diversion plan.

progress while completing the diversion program; and evidence of the final outcome of the diversion program. Additionally, we evaluated whether post-completion surveys were available in the files.

See Finding 3 for issues we identified with NWDA's administration of the JDP.

We used nonstatistical sampling methods for testing, and therefore did not project the results of our testing to the population.

Data Reliability Assessment

NWDA provided us with three sets of data obtained from the District Attorney Management Information Office Network (DAMION) case management system. This data related to veterans diverted to the VJO, veterans referred to WMVTC, and juveniles diverted to the JDP. To determine the reliability of this data, we interviewed NWDA management who were knowledgeable about the data and reviewed system documentation, such as the *DAMION Prosecutor Reference Guide*.

In addition, we performed the following procedures to determine the reliability of the data obtained from DAMION:

- Regarding the data of the 16 cases involving 16 veterans who were referred to programs handled by the VJO, we inspected the data for hidden rows and columns, missing data, and duplicate records. We also performed tests to assess completeness and accuracy of the data by tracing the 16 cases to the physical case files to review the accuracy and completeness of key data, such as case numbers, defendants' names, and docket numbers.
- Regarding the data of the 49 criminal cases involving 29 veterans who were referred to the WMVTC, we inspected the data for hidden rows and columns, missing data, and duplicate records. We performed tests to assess completeness and accuracy of the data by tracing a sample of 10 veterans' names to the physical case files and tracing a sample of 10 veterans' names from case files to review the accuracy and completeness of key data, such as case numbers, defendants' names, and docket numbers.
- Regarding the data of the 125 cases involving 108 juveniles who were referred to the JDP, we inspected the data for hidden rows and columns, missing data, and duplicate records. We performed tests to assess completeness and accuracy of the data by tracing a sample of 20 juveniles' names to the physical files and tracing a sample of 19 juveniles' names from the physical files to review the accuracy and completeness of key data, such as case numbers.

We also reviewed selected systems controls related to access controls, configuration management, contingency planning, segregation of duties, and security management.

Based on the results of the data reliability assessment procedures described above, we determined that the information we obtained was sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Northwestern District Attorney's Office should improve its procedures and administration of veteran diversion cases.

During the audit period, the Northwestern District Attorney's Office (NWDA) had not established its own veteran diversion program, as required by Section 34 of Chapter 12 of the Massachusetts General Laws. Instead, NWDA collaborated with the Veterans Justice Outreach (VJO) Program to identify appropriate candidates for diversion and shepherd the candidates into diversion opportunities. However, we found that NWDA did not develop written policies and procedures to regulate this process. In addition, our review of diverted veteran cases found missing documentation.

Our review of the 16 case files of veterans diverted found that 1 case did not have documentation regarding the veteran's completion of or dropout from the diversion program.

NWDA is not complying with Section 34 of Chapter 12 of the General Laws because it has not established a veteran diversion program and has not developed written policies and procedures to regulate it. Not establishing a diversion program limits veterans' access to diversion opportunities to help avoid prosecution where appropriate.

Additionally, by not keeping sufficient documentation as described more fully in this audit, NWDA cannot ensure that it monitors these diversion programs to ensure successful outcomes for veterans.

Authoritative Guidance

Section 34 of Chapter 12 of the General Laws states,

The district attorneys shall, within their respective districts, establish a pre-arraignment diversion program which may be used to divert a veteran or person who is in active service in the armed forces, a person with a substance use disorder or a person with mental illness if such veteran or person is charged with an offense or offenses against the commonwealth.

Reasons for Issue

NWDA told us it believes the US Department of Veterans Affairs is better qualified and has better resources to address veterans' needs for conditions such as post-traumatic stress disorder and substance use disorder, among others.

NWDA stated that it has not prepared written policies and procedures related to the Veteran Diversion Program because it has not formalized a veteran diversion program.

Regarding the one case that did not have documentation to support the outcome of the diversion program, NWDA stated that, in this case, the veteran's defense attorney orally explained to the judge the treatment provided to the veteran and asked the judge to consider this oral report as evidence of success with diversion. According to NWDA, the judge decided to dismiss the case based on the defense attorney's testimonial, and no motion was filed to document this decision. The case's cover had a hand-written note stating that the case was dismissed, despite the case not having proof of completion of the treatment.

Recommendations

1. NWDA should establish its own Veteran Diversion Program to comply with Section 34 of Chapter 12 of the General Laws, and NWDA should develop written policies and procedures to regulate this program.
2. NWDA should ensure that it collects and retains sufficient supporting documentation related to veteran diversion cases.

Auditee's Response

The NWDA does have an established process by which we divert veterans' cases out of the standard criminal justice system.

As noted above, veteran diversion as contemplated by section 34 of chapter 12 of the General Laws is a pre-arraignment opportunity for a veteran/defendant to avoid the charged crime appearing on their criminal record if they comply with certain conditions. In the same year that the Legislature passed section 34, it also passed the BRAVE Act (St. 2018, c. 218). The BRAVE Act also provides pre-arraignment diversion opportunities for veterans charged with offenses in the District Court.

Since 2018, the NWDA has used the BRAVE Act to facilitate opportunities for veterans to have their cases diverted from the standard criminal adjudicatory process, including dismissal prior to arraignment. Specifically, if our office becomes aware prior to arraignment through the probation department (which is required to ascertain veteran status for all defendants who appear in court for an arraignment), or any other source, that the defendant is a veteran, we check the defendant's record for BRAVE Act eligibility, and check if the offense is eligible for BRAVE Act diversion. If the defendant is eligible, we move to continue the arraignment so a BRAVE Act assessment can be completed. This assessment can be provided by either the Veteran Justice Outreach Officer from the VA or the veteran's pre-existing health care provider. Part of this assessment will include a recommended treatment plan for the defendant to follow.

After obtaining an assessment, the case then returns to court so it can be formally continued under the BRAVE Act for the defendant to comply with the treatment recommendations. The length of

time to accomplish this can depend on several factors (e.g. seriousness of the offense, scope of the recommended treatment), but it is not less than 90 days and usually not more than six months. Leading up to the next court date, if we receive verification that the defendant has been in compliance with the recommended treatment, we will move to dismiss the charges.

Our office also goes further than the BRAVE Act in assisting veterans. Specifically, at times our prosecutors become aware of a defendant's veteran status after the arraignment has already occurred, including at a pre-trial hearing. In such situations, although they are not technically eligible for pre-arraignment BRAVE Act diversion, we will give the veteran/defendant the same opportunities that would have been afforded them had their veteran status been known prior to the arraignment (assessment by a treatment provider and a dismissal of the case if they comply with the resulting treatment recommendations).

Therefore, while we disagree that we have not established effective procedures to properly divert veterans from the standard criminal justice process, we view the Auditor's report as an opportunity to review and formalize a veteran diversion program for our office.

The fifteen (15) veterans/defendants that were . . . diverted . . . were actually handled pursuant to the BRAVE Act procedures as outlined above. In all of those cases, our files had all appropriate and requested documentation. The only exception was one file that did not contain a document indicating compliance with the treatment program, which was through no fault of the NWDA as the case was dismissed by the Court over the Commonwealth's objection.

Auditor's Reply

In its response, the NWDA states "the NWDA does have an established process by which we divert veterans' cases out of the standard criminal justice system." However, NWDA was not able to provide this written process when we requested it.

NWDA does acknowledge in its response that one of the case files did not have documentation regarding the veteran's completion of or dropout from the diversion program, but claim that this was due to no fault of its own. However, NWDA should include all documentation regarding the status of the diversion program, even if cases are dismissed. NWDA cannot ensure successful outcomes for veterans without complete and proper documentation.

2. The Conviction Integrity Committee should improve its outreach and procedures.

During the audit period, NWDA's Conviction Integrity Committee (CIC) did not follow the recommended practices of the Massachusetts Conviction Integrity Working Group's *Conviction Integrity Programs: A Guide to Best Practices for Prosecutorial Offices*, dated March 2021. Specifically, CIC did not have written policies and procedures for the program and did not provide all the recommended information about the

program on both its website and to relevant entities such as prisons and houses of corrections, county sheriffs' offices, prisoner advocacy groups, and the Committee for Public Counsel Services. In addition, we identified an exception during our testing of the six cases related to post-conviction review.

Since its implementation in 2020, CIC has prepared an "Application for Review of a Criminal Conviction" that defendants complete to request the review of their case and an "NWDAO Post-Conviction Open File Discovery Policy" to regulate open files' discovery requests for post-conviction discovery. However, CIC has not developed policies and procedures to regulate its post-conviction review process regarding actions such as intake, screening and investigation, and referring official misconduct⁹ to relevant authorities. As noted in the "Post-Audit Action" section of this report, CIC reported to us that it has since drafted policies and procedures over its Conviction Integrity Program.

CIC has published information about its activities on NWDA's website. However, our review of the website revealed that it only contained a mailing address and did not contain an email address for the program or the name of CIC's director. In addition, we found that CIC has not prepared documentation about its post-conviction review and its requirements, which should be posted with relevant entities such as prisons and houses of corrections, county sheriffs' offices, prisoner advocacy groups, and the Committee for Public Counsel Services. Convicted defendants and their attorneys and families may be unaware of this program if they are unable to access this information because it is not posted with the entities cited above. The exclusion of alternate forms of contact does not promote transparency and may hinder CIC from operating effectively.

In our review of the six cases related to post-conviction review, we found that for one of the six cases (17%), CIC did not officially notify the attorney of the convicted defendant of CIC's decision to close the application for post-conviction review.

By not developing policies and procedures that cover all its roles and responsibilities and by not generating and maintaining all documentation relevant to the post-conviction review, NWDA may not maximize efficacy and transparency for the review of alleged wrongful convictions. The development of, and adherence to, policies and procedures may have prevented the exception we identified in the review of

9. Those who may engage in official misconduct could be prosecutors, law enforcement, expert witnesses, defense counsel, or judges.

case files. Failing to provide the official final decision of the post-conviction review to the convicted defendants also reduces government transparency.

By not publicizing the Conviction Integrity Program more widely, NWDA may limit the number of cases that and defendants who could benefit from the program, potentially affecting equal opportunity for all defendants who may benefit from post-conviction review.

Authoritative Guidance

The Massachusetts Conviction Integrity Working Group's *Conviction Integrity Programs: A Guide to Best Practices for Prosecutorial Offices*, dated March 2021, states the following:

Communication with either counsel or a pro se defendant [a defendant who defends themselves in court without counsel] or their representative should include timely updates regarding the status of the review, the sharing of evidence gathered, application of an open-file discovery policy, and an explanation of actions taken and next steps anticipated.

[District Attorney Offices (DAOs)] should develop policies and procedures for the operation of their CIUs that are designed to encourage the submission of claims of wrongful conviction, unjust prosecution, and other miscarriages of justice. . . . DAOs and the [Office of the Attorney General (AGO)] should develop policies and procedures for intake, screening, and investigation by the [Conviction Integrity Unit (CIU)]. These policies and procedures should specify the criteria that must be met to advance a case to each subsequent stage of review. . . .

The CIU staff should record its determinations and any recommendations in writing, and these documents should be made part of the case file and provided to the District Attorney or the Attorney General for their review and final decision. . . .

DAOs . . . should establish written policies and procedures about how and when to refer to the relevant authorities official misconduct by prosecutors, law enforcement, expert witnesses, defense counsel, or judges that is identified during a CIU review. . . .

At a minimum, the [CIU] website should include the mailing address, email address, and telephone number of the program; identification of the Director of the CIU; a description of the CIU, including its policies and procedures and the types of cases it reviews; and instructions as to who may submit an application for review, how submissions may be made, and how to learn the status or disposition of a matter submitted to the CIU for review. The DAOs and AGO should also make this information and any updates available to individuals incarcerated in state prisons and houses of correction, the Commissioner of the Massachusetts Department of Correction, the county sheriffs, prisoners' legal services, member organizations in the Massachusetts Innocence Network, the Committee for Public Counsel Services, the Massachusetts Association of Criminal Defense Lawyers, and the local and regional bar associations.

Prosecutorial offices should request that the Commissioner of the Department of Correction and county sheriffs make the CIU information available to persons in their custody by posting it in their facilities and including it in their orientation materials.

Reasons for Issue

Regarding the lack of policies and procedures to regulate its post-conviction review process, for intake, screening and investigation, NWDA told us that the Conviction Integrity Program is a new program, and policies and procedures will be developed once NWDA has completed more post-conviction review cases. After we discussed the issue with NWDA, it provided us a draft of the policies and procedures. Since these policies and procedures were drafted after the audit period, we did not evaluate the adequacy of these policies and procedures.

Regarding the missing information on NWDA's website, NWDA stated that potential convicted defendants could use the agency's main phone number if they want to communicate with CIC. Additionally, NWDA does not publish an email address for CIC on NWDA's website because the "Application for Review of a Criminal Conviction" cannot be filed digitally and must be printed and mailed. We do not dispute that the application must be mailed; however, including an email address does provide more transparency and offers potential convicted defendants additional methods to contact NWDA. Further, Massachusetts Conviction Integrity Working Group's *Conviction Integrity Programs: A Guide to Best Practices for Prosecutorial Offices* suggests that contact information should be readily available for use by convicted defendants. NWDA is a partner organization of this working group.

Regarding the information that was not posted with other entities, NWDA said that it does not work directly with convicted defendants and that it would be a violation of its ethics to deal with convicted defendants who represent themselves. However, making convicted defendants aware of this program would allow them to contact their counsel, or seek counsel if they are pro se, to determine whether their case could be reviewed. Even if a defendant continued to represent themselves pro se, notifying them of the program would not appear to violate the concerns expressed by NWDA if these defendants were pro se before and after the conviction.

For the one case we found in our exceptions, NWDA said it did not notify the attorney of the convicted defendant in writing of CIC's final determination because the attorney did not make the requested updates to the application.

Recommendations

1. NWDA should develop policies and procedures to regulate the post-conviction process. These policies and procedures should address, among other things, intakes, screening and investigation, and referring official misconduct to relevant authorities.
2. NWDA should include the email address of the Conviction Integrity Program and the name of CIC's director on its website so that convicted defendants can communicate with CIC.
3. To promote equal opportunity for potential convicted defendants, NWDA should publicize its Conviction Integrity Program by posting information, and including this information in orientation materials, at relevant entities such as prisons and houses of corrections, county sheriffs' offices, prisoner advocacy groups, and the Committee for Public Counsel Services.
4. CIC should record its reviews, determinations, and final recommendations from its post-conviction reviews in writing and provide this information to convicted defendants and their attorneys. This information should also be maintained in convicted defendants' case files.

Auditee's Response

We appreciate the Auditor's careful review of the Northwestern District Attorney's Conviction Integrity Committee (CIC), which is a discretionary program created by the District Attorney to ensure that defendants' claims of innocence and wrongful conviction are handled efficiently and fairly by prosecutors who are trained to review such claims. As an original member of the Massachusetts Conviction Integrity Working Group, our office has been a leader in conviction integrity practices in the Commonwealth. Our representative Assistant District Attorney was one of the authors of the Working Group's Best Practices Guide, cited by the auditors. Our CIC follows all general best practices including: leadership from the top recognizing the need to reexamine convictions in appropriate cases; direct report to the District Attorney; structural independence from trial and appellate units; screening out of prosecutors involved in the backgrounds including criminal defense; training of members; open file discovery practices; and clear and publicly accessible information about the program and how to request review. The CIC has created policies governing intake and screening, which are incorporated into its application for review, and for discovery. It is currently drafting a policy to address investigation and the referral of official misconduct.

Although our website does not include direct contact information for specific staff members due to noted security concerns, the NWDA website does provide a direct email link to contact the CIC directly along with a description of the CIC, a mailing address to contact the CIC, a link to the application for review, and a link to the discovery policy and request procedure.

In order to protect convicted defendants' rights, the CIC currently does not accept applications for review directly from defendants. Therefore, it would not be appropriate to advertise the CIC directly to convicted defendants at the facilities in which they are incarcerated. The Massachusetts Bar Association, the Committee for Public Counsel Services, the New England Innocence Project, and the Boston College Innocence Program are all very aware of the CIC and communicate frequently with its chair. These entities comprise the Massachusetts attorneys who work with convicted

defendants on post-conviction claims. Additionally, as a member of the Massachusetts Conviction Integrity Working Group, the chair of the NWDA's CIC created a form available on the public website of the Massachusetts Bar Association that includes the contact information for post-conviction review for every District Attorney's Office in the Commonwealth and the Massachusetts Attorney General's Office so that all attorneys in the Commonwealth would have direct contact information for all programs, including the NWDA. Therefore, we disagree with the Auditor's conclusion that the NWDA's Conviction Integrity Program may not be equitable, which conclusion notably does not relate to our actual review process and is based on the fact that we do not do direct outreach to incarcerated defendants. . . .

Additionally, we disagree with the Auditor's claim that, in one case. The CIC "did not officially notify the convicted defendant of CIC's decision to close the post-conviction review." In that case, there was in fact no post-conviction review. While the defendant's attorney has filed an initial, incomplete application for review, after he was advised that his application could not be considered unless he completed the application and provided additional information, he never responded to multiple attempts at contact. Therefore, no post-conviction review was completed. The defendant's attorney was fully on notice of same. . . .

Auditor's Reply

In its response, NWDA states that it has created policies governing intake and screening which are incorporated into its application for review, and for discovery. We acknowledged that NWDA has created these policies during the course of our audit in our Post-Audit Action; however, this was not the case during the audit period.

In its response, NWDA states that its website "does provide a direct email link to contact the CIC. . . ." While we acknowledge that its website currently contains a Conviction Integrity Contact Form in order to submit a question, the website did not contain this information during the course of the audit. When this issue was brought up to NWDA, it stated that it was working with its information technology department to add this information.

NWDA's response discusses how NWDA thinks "it would not be appropriate to advertise the CIC directly to convicted defendants at the facilities in which they are incarcerated." However, as stated in the finding above, this is a recommended practice by the Massachusetts Conviction Integrity Working Group, of which NWDA is a part. The guide published by this working group lists this recommendation under the "Promote Transparency" section, with the subsection "Ensure Public Accessibility and Accountability." It further states "A CIU will not function effectively if it cannot be found or accessed by members of the public, including convicted persons and their families." As such, not publicizing the recommended information is not promoting transparency, ensuring public accessibility and accountability, and ensuring that CIC is

functioning effectively. We are not suggesting that NWDA publish this information so that convicted defendants can directly apply for post-conviction review. Rather, we are suggesting that making convicted defendants aware of this program would allow them to contact their counsel, or seek counsel if they are pro se, to determine whether their case could be reviewed. Further, NWDA claims in its response that Massachusetts attorneys who work with convicted defendants on post-conviction claims are aware of the CIC. We strongly encourage NWDA to reconsider its opposition to performing the outreach recommended in this audit and in the Massachusetts Conviction Integrity Working Group's Conviction Integrity Programs: A Guide to Best Practices for Prosecutorial Offices, dated March 2021.

NWDA disagrees that one CIC case did not officially notify the convicted defendant of CIC's decision to close the post-conviction review, because there was no post-conviction review and the defendant's attorney never responded to the CIC. However, the guide specifically states,

A CIU should communicate and share information with persons petitioning to have their cases reviewed through their attorneys or, in the case of a pro se applicant, a designated representative, should the applicant so request. . . . Communication with either counsel or a pro se defendant or their representative should include timely updates regarding the status of the review, the sharing of evidence gathered, application of an open-file discovery policy, and an explanation of actions taken and next steps anticipated.

This means that these notifications should be applied to persons who petitioned for a post-conviction review and not just for those the NWDA identifies as having a post-conviction review completed. NWDA provided evidence of email communications with the defendant's attorney; however, these emails do not include the CIC's decision to close this petition.

3. The Northwestern District Attorney's Office should improve the procedures and administration of the Juvenile Diversion Program.

During the audit period, NWDA did not consistently collect and analyze data on its Juvenile Diversion Program (JDP). Further, NWDA did not provide evidence that it performed an analysis of the data it collected, or that action was taken to improve the outcome of the program. These are all recommended by the "Juvenile Diversion Guidebook: Prepared by the Models for Change Juvenile Diversion Workgroup," the "Massachusetts Youth Diversion Program: Model Program Guide," and our 2018 audit report of NWDA. Additionally, our review of juvenile diversion case files found that NWDA did not always maintain key documentation regarding juveniles' participation in the program.

In our prior audit of NWDA (No. 2018-1260-3J, dated November 29, 2018), the audit team found that the JDP “does not collect data or conduct post-completion outcome evaluations to determine the program’s effectiveness.” During our post-audit review, to verify that the recommendations made in the 2018 audit were being implemented, NWDA stated that it would (1) continue to collect statistical data and use the post-completion surveys of parents/guardians and juveniles in order to improve the effectiveness of the JDP and (2) would develop plans to expand the tracking and analysis of data to improve the outcomes of juveniles in the program.

During our audit, NWDA provided us with data, charts, and statistics for the audit period covering the following topics:

- the number and percentages of juveniles who completed and did not complete the JDP (2021, 2022, and 2023);
- the demographics of juveniles in the program, broken down by gender, race, and ethnicity (2021);
- the average time juveniles took to complete or fail a diversion program (2021, 2022, and 2023); and
- the number of juveniles by court who participated in the JDP, the number of juveniles who reoffended within one year of participating in the program, and the percentage of juvenile recidivism by year (2021, 2022, and 2023).

The data was generated mostly from data extracted from the District Attorney Management Information Office Network (DAMION). We also received a data assessment performed by NWDA to determine whether juveniles reoffended within one year of their juvenile diversion completion date.

Our review of the provided documentation revealed the following:

- NWDA did not collect or analyze all diversion data on a yearly basis.
- Data collected and analyzed was prepared during the year 2024, after the start of our audit, when this audit topic had been communicated to NWDA, and was not consistently collected and analyzed in the years in which the diversion happened.

Additionally, although NWDA did provide us evidence that it assessed this data to take action to improve the outcome of the program, this assessment may not be effective if it was based on partial data collected only.

The results of our review of the sample of 35 JDP case files identified the following:

- out of the 35 cases, 2 cases (6%) did not have a waiver of counsel;
- out of the 35 cases, 4 cases (11%) did not have evidence of monitoring of juveniles' progress in the program; and
- out of the 35 cases, 1 case (3%) did not have a completion letter.

By not collecting sufficient JDP data, NWDA limits its ability to achieve its goal of improving program outcomes and reducing recidivism. Without generating and retaining adequate documentation, NWDA cannot ensure that it follows best practices and procedures for an effective diversion program.

Authoritative Guidance

The Models for Change Juvenile Diversion Workgroup's Juvenile Diversion Guidebook recommends collecting data for outcome evaluation as part of a logic model for diversion programs. This data includes the number of juveniles referred and diverted, the number of juveniles successfully completing terms of diversion, the hours of community services assigned and completed, and the number of diverted juveniles who commit new offenses while on diversion status.

The Juvenile Justice Policy and Data Board's¹⁰ *Massachusetts Youth Diversion Program: Model Program Guide*, in March 2021, also highlights the importance of collecting and analyzing data that help staff members be aware of any issues in the program and facilitate course correction. This guide also details the types of inputs, outputs, operational measures, and outcomes that could be collected and analyzed.

Regarding the administration of the program, the "Northwestern District Attorney's Juvenile Diversion Program Policies and Procedures" states the following:

The JDP Consent, Authorization, Waiver, and Acknowledgement Form must be signed by the juvenile and parent/guardian prior to the intake. The waiver shall be explained to the juvenile and parent/guardian by an attorney appointed by the court. . . .

The JDP Specialist will monitor through the counselor to check the progress and confirm whether other services are recommended or if there are other concerns. The JDP Specialist will discuss with the counselor at the beginning of the case the plan for communication. . . .

10. The Juvenile Justice Policy and Data Board is a board within the Office of the Child Advocate that evaluates the juvenile justice system to identify areas in need of improvement.

Community service should also be monitored. JDP Specialist will work to be creative with plan for Community Service. . . .

[The Juvenile Specialist will] contact each family to notify them of successful completion and dismissal of case. Send a congratulatory letter within a 30-day period after program completion.

Reasons for Issue

Regarding the collection of data and statistics for program improvement, NWDA stated that DAMION does not allow NWDA to track all categories of information that NWDA would ideally like to track. NWDA also told us that the years impacted by COVID-19 impacted the trends and outcomes of the program.

Regarding missing documentation of monitoring juvenile compliance with diversion requirements, NWDA said that some monitoring is performed with juveniles and their parents through text messages and telephone calls, which can be difficult to document. Additionally, sometimes juveniles' attorneys do not provide documentation, such as the waiver of counsel, to NWDA. However, NWDA could use a form to log text messages and telephone calls and the topics discussed with juveniles and their parents. Also, it is important for NWDA to collect waivers of counsel from juveniles' attorneys, even if the attorneys do not send these documents to NWDA. NWDA should therefore make additional efforts to secure these documents and should document and retain records of these efforts.

Recommendations

1. NWDA should consistently collect JDP data and analyze it on an annual basis and use the results for program improvement. NWDA should identify alternatives for data collection if the District Attorney Management Information Office Network (DAMION) does not suit NWDA's data collection.
2. NWDA should create and implement adequate controls to ensure that it collects, records, and retains all supporting documentation related to JDP activities.

Auditee's Response

We appreciate the Auditor's recognition that the NWDA collects and analyzes diversion program data and assesses this data to take action to improve the Juvenile Diversion Program (JDP), which is a discretionary program run by the NWDA to divert eligible youth from the criminal justice system.

The central goal of the JDP as stated in its Policies and Procedures Manual is:

To offer intervention at an early stage to eligible juvenile offenders in order to increase safety, accountability, and competency development; improve outcomes; and decrease the likelihood of further offenses.

We believe that we meet the objectives contained in this goal by effectively measuring outcomes for juveniles who participate in the program and by maintaining data on these outcomes. Our central criteria for measuring a successful outcome is focused on the development and completion of an individualized diversion plan that is restorative for victims, juveniles, their families, and their communities.

The JDP collects data and assesses its effectiveness in meeting its core goals and objectives in many ways, including: comprehensive assessments of a juvenile and development of an individualized diversion plan that is monitored and the outcomes are tracked; regular assessment and review of the program within the organizational structure of our office; staff participation in professional development in best practices; collaborative work with community partners; and through data collection within internal office databases.

Since our last audit in 2018, the NWDA has made advances in data collection and analysis for the Juvenile Diversion Program. We have prepared report from the available data and used this data to improve the program. We developed a working group and met to develop an appropriate plan for collecting and analyzing our data. Meanwhile, the juvenile justice system, and specifically juvenile diversion, underwent significant reform by way of legislative and judicial actions. These changes and the resulting guidance offered further support to our opinion that developing appropriate metrics to track our juvenile diversion program with a goal of identifying challenges/successes and measuring outcomes is an incredibly complex and challenging endeavor. This is in large part due to the short nature of the diversion program and our limited pool of participants each year given our small rural jurisdiction. We are encouraged by our recidivism statistics that note a low percentage of re-offense after successful completion of the program, but we continue to seek more opportunities for data analysis that will support us in our work. In 2024, we engaged the services of a Data Analyst to assist us in collecting and analyzing data about our JDP from DAMION for each of the past five years. We are currently in the process of analyzing the data provided and determining what changes to our program are warranted. We also continue to explore alternative data collection systems to DAMION to allow for a more expansive collection and review in the future. We remain committed to building on the success of our well-established program with additional data expansion.

We also appreciate the Auditor's recognition that the NWDA had all expected and appropriate documentation in most of the files reviewed. We recognize the need to ensure every file is appropriately documented and are currently using a case monitoring notebook system to ensure all activities related to compliance with the diversion program are able to be recorded contemporaneously by the Diversion Specialist and included in this single locations for future cases.

Auditor's Reply

We encourage NWDA to continue to take the necessary steps to consistently collect JDP data and analyze it on an annual basis and use the results for program improvement. Only through the consistent collection and analysis of data can NWDA assess the effectiveness of satisfying its stated goals. Based on its response, the NWDA is taking measures to address our concerns regarding the collection, recording, and retention of all supporting documentation related to Juvenile Diversion Program activities.