



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

*Making government work better*

Official Audit Report – Issued April 24, 2018

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## Massachusetts District Attorney Association

For the period July 1, 2014 through June 30, 2017





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

*Making government work better*

April 24, 2018

District Attorney Michael W. Morrissey, President  
Massachusetts District Attorney Association  
Norfolk County District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021

Dear President Morrissey:

I am pleased to provide this performance audit of the Massachusetts District Attorney Association. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2014 through June 30, 2017. My audit staff discussed the contents of this report with management of the association, whose comments are reflected in this report.

I would also like to express my appreciation to the Massachusetts District Attorney Association for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| ADA    | Assistant District Attorney                              |
| CFO    | chief financial officer                                  |
| HR/CMS | Human Resource Compensation Management System            |
| ISA    | Interdepartmental Service Agreement                      |
| MDAA   | Massachusetts District Attorney Association              |
| MMARS  | Massachusetts Management Accounting and Reporting System |
| OSA    | Office of the State Auditor                              |

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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 Massachusetts District Attorney Association (MDAA) for the period July 1, 2014 through June 30, 2017.

In this performance audit, we examined MDAA's administration of funding that was appropriated to the association to improve the retention rate of Assistant District Attorneys (ADAs) with three or more years of experience and to increase the minimum starting salaries of entry-level ADAs statewide. In addition, we sought to determine what impact, if any, this funding had on improving the retention rates of ADAs with at least three years of experience.

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

|   |  |
|---|--|
| <b>Finding 1</b><br><b>Page <a href="#">8</a></b>       | MDAA did not ensure that all the funding that was appropriated to improve the retention rates of certain ADAs was used for this purpose.   |
| <b>Recommendations</b><br><b>Page <a href="#">9</a></b> | <ol style="list-style-type: none"><li>1. If the state Legislature continues to provide funding for retaining ADAs with more than three years of experience, MDAA should develop policies and procedures to monitor these funds to ensure that they are only used for their intended purpose.</li><li>2. MDAA should obtain reports from all of the District Attorney's Offices on a mutually agreed-upon schedule to monitor how these funds are being used.</li></ol> |

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## OVERVIEW OF AUDITED ENTITY

The Massachusetts District Attorney Association (MDAA) was established under Section 20D of Chapter 12 of the Massachusetts General Laws to provide administrative and technology support services to each of the 11 District Attorney's Offices in the Commonwealth. According to its website, MDAA's mission is "to support the eleven elected Massachusetts District Attorneys and their staff, including approximately 785 prosecutors and 260 victim-witness advocates." MDAA is also responsible for administering various grants and other legislative funding it receives on behalf of the District Attorney's Offices.

MDAA, located at 1 Bulfinch Place in Boston, has 11 full-time employees, including an executive director who is appointed by the 11 District Attorneys. Each year, 1 of the 11 District Attorneys is elected by his/her peers to serve as president of MDAA. MDAA was appropriated \$3,433,000 in fiscal year 2015, \$3,133,000 in fiscal year 2016, and \$3,721,000 in fiscal year 2017.

### MDAA Special Appropriations

In May 2014, the Massachusetts Bar Association Commission on Criminal Justice Attorney Compensation issued a report titled *Doing Right by Those Who Labor for Justice*. Based on its research, the commission concluded the following:

*Assistant district attorneys, assistant attorneys general, public defenders, and bar advocates (lawyers appointed to defend indigents) are grossly underpaid, earning far less than their counterparts in comparative jurisdictions across the country. They are paid less than lawyers of comparable experience employed by the state in non-criminal justice positions. They are paid substantially less than criminal justice attorneys working for the federal government. And they are paid far less than their colleagues working in private practice in small, medium, and large private law firms in Massachusetts.*

Based on this assessment, the commission made a number of recommendations, including the following:

- *Starting salaries for assistant district attorneys, assistant attorneys general and full-time public defenders . . . [should] be raised immediately to \$55,000, which must be fully funded with commensurate increases for more experienced lawyers. . . .*
- *Budget line items applicable to compensation of lawyers employed by District Attorneys offices, the Office of the Attorney General, and [the Committee for Public Counsel Services should] be increased sufficiently in the aggregate so as to allow for a 20% increase in salaries.*

- *Steps should be taken to keep the levels of compensation of full-time criminal justice attorneys at least equal to that of other public sector attorneys. Salaries must be indexed to cost-of-living increases.*

Recognizing that compensation levels are a key factor affecting retention, for fiscal years 2015, 2016, and 2017, the state Legislature appropriated funding of \$500,000, \$750,000, and \$495,000, respectively, to MDAA for an ADA Retention Fund to be used to improve the retention rates of Assistant District Attorneys (ADAs) with three or more years of experience. According to Line Item 0340-2117 in the General Appropriation Acts for fiscal years 2015, 2016, and 2017 (Chapter 165 of the Acts of 2014, Chapter 46 of the Acts of 2015, and Chapter 133 of the Acts of 2016, respectively), funding was provided for the following purpose:<sup>1</sup>

*For the retention of assistant district attorneys with more than 3 years of experience; provided, that the Massachusetts District Attorneys' Association shall transfer funds to the AA object class in each of the 11 district attorneys' offices in the commonwealth; provided further, that the association shall develop a formula for distribution of the funds; provided further, that funds distributed from this item to the district attorneys' offices shall be used for retention purposes and shall not be transferred out of the AA object class; provided further, that not more than \$100,000 shall be distributed to any 1 district attorney's office; provided further, that no less than 60 days before the distribution of funds, the Massachusetts District Attorneys' Association shall notify the house and senate committees on ways and means detailing: (a) the methodology used to determine the amount to be [disbursed]; (b) the amount to be given to each district attorney's office; (c) the reasoning behind the distribution; and (d) the number of assistant district attorneys from each office who would receive funds from this item; and provided further, that no funds shall be expended on the administrative costs of the association.*

The appropriation required MDAA to submit an allocation plan (see Appendix B) each fiscal year to the chairs of the House and Senate Committees on Ways and Means that described how these funds were to be distributed to each of the 11 District Attorney's Offices. According to each year's plan, the retention funds were to be allocated to each District Attorney's Office in proportion to the size of its annual total legislative appropriations. MDAA did not require the offices to use a specific formula or process to distribute the funds; rather, the plans stated that each District Attorney's Office should use its share of the funds to provide monetary incentives to ADAs who they believed exhibited a significant desire to remain as prosecutors and who had become valuable to the Commonwealth's judicial system because of their experience and training.

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1. The quotation is from the fiscal year 2017 appropriation, which is substantively the same as those for the previous two years.

In addition, for fiscal years 2016 and 2017, the Legislature appropriated \$3 million and \$495,000, respectively, to MDAA to distribute to increase the minimum starting annual salaries of ADAs statewide to \$45,000 by the end of fiscal year 2017. (This appropriation is referred to in this report as the Salary Reserve Fund). According to the plans, the funding was allocated to each District Attorney's Office based on the average total number of ADAs employed in the office over the previous two years. The allocation plans submitted for these fiscal years indicated that the District Attorney's Offices would distribute their share of the funding most heavily among the lowest-paid ADAs in order to meet the minimum salary requirement for all entry-level ADAs.



## 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 Massachusetts District Attorney Association (MDAA) for the period July 1, 2014 through June 30, 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. Was the funding that was provided in line item 0340-2117 in the General Appropriation Acts for fiscal years 2015, 2016, and 2017 (Chapter 165 of the Acts of 2014, Chapter 46 of the Acts of 2015, and Chapter 133 of the Acts of 2016, respectively) spent for its specific purpose?    | <b>Not all; see Finding <u>1</u></b> |
| 2. Did the use of the funds that were provided in line item 0340-2117 improve the retention rate of full-time Assistant District Attorneys (ADAs) with more than three years of experience?   | <b>Yes</b>                           |
| 3. Did the funding that was provided in line item 0340-6653 in the General Appropriation Acts for fiscal years 2016 and 2017 (Chapter 46 of the Acts of 2015 and Chapter 133 of the Acts of 2016, respectively) result in the minimum annual salary exceeding \$45,000 for a full-time ADA? | <b>Yes</b>                           |
| 4. Were the funds that were provided in line item 0340-6653 spent for their specific purpose?   | <b>Yes</b>                           |

To achieve our audit objectives, we gained an understanding of MDAA's operations and evaluated its internal control environment related to the administration of both the ADA Retention Fund and the Salary Reserve Fund. We reviewed applicable authoritative guidance and MDAA's most recent internal control plan. We also obtained and reviewed all 55 Interdepartmental Service Agreements between MDAA and all 11 District Attorney's Offices and tested to ensure that proper signatures were obtained

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and that the allocation plans for how the appropriated funds were to be distributed were sent to the House and Senate Committees on Ways and Means as required before any funding was distributed to the District Attorney's Offices.

### **ADA Retention Fund**

- We obtained expenditure reports from the Massachusetts Management Accounting and Reporting System (MMARS, the centralized state accounting system used by all state agencies and departments for processing all financial transactions) for each fiscal year in our audit period and used Audit Command Language software to analyze expenditure data to determine whether retention funding was used for the sole purpose of providing payroll incentives to ADAs with more than three years of experience.
- We interviewed, and obtained testimonial evidence from, MDAA's management and the chief financial officers (CFOs) at three District Attorney's Offices as to why they did not expend retention funds allocated to them in fiscal year 2015. Further, we obtained email correspondence from the CFOs to the state's Executive Office for Administration and Finance confirming that retention funds for fiscal year 2015 were used to offset midyear funding cuts to District Attorney's Offices' budgets.
- We interviewed 6 of the 11 District Attorney's Offices' senior managers to determine the impact that the retention fund distributions had on improving the offices' ability to retain ADAs with three or more years of experience.
- We analyzed 100% of payroll data processed through the Human Resource Compensation Management System (HR/CMS)<sup>2</sup> for each District Attorney's Office during the audit period to determine whether the funding provided by the appropriation was given only to ADAs with three or more years of experience. We analyzed HR/CMS data to identify any ADAs with more than three years of experience who transferred to other state agencies during our audit period.

### **Salary Reserve Fund**

We obtained MMARS expenditure reports and payroll data for each fiscal year of our audit and performed a test by comparing the minimum starting salaries that were paid to ADAs during fiscal years 2016 and 2017 to determine whether each of the District Attorney's Offices used the money it received from the Salary Reserve Fund during these fiscal years for its intended purpose of increasing the starting minimum annual salary level for ADAs to \$45,000 by the close of fiscal year 2017.

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2. HR/CMS is the Commonwealth's official payroll system.

Based on OSA's most recent data-reliability assessment of MMARS<sup>3</sup> and our current comparison of source documentation regarding expenditures with MMARS information, we determined that the information obtained from MMARS for our audit period was sufficiently reliable for the purposes of our audit work. To verify the integrity of data used from HR/CMS, we selected a total of 16 payroll expenditures from the data files extracted from HR/CMS and compared those expenditures to payroll record spreadsheets maintained at a District Attorney's Office. Further, we traced 10 payroll records processed through the District Attorney's Office and compared them to HR/CMS data we extracted for this audit. We determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

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3. In 2014, OSA performed a data-reliability assessment of MMARS. As part of this assessment, we tested general information-technology controls for system design and effectiveness. We tested for accessibility of programs and data, as well as system change management policies and procedures for applications, jobs, and infrastructure.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Massachusetts District Attorney Association did not ensure that all the funding that was appropriated to improve the retention rates of certain Assistant District Attorneys was used for this purpose.**

The Massachusetts District Attorney Association (MDAA) did not monitor District Attorney's Offices' use of the ADA Retention Fund. This placed the fund at risk of undetected misuse. In fact, some offices did not spend all of the money allocated for this purpose. Although the Legislature might not include such retention funding in future years, MDAA must develop appropriate monitoring controls to ensure that any future funding is properly administered.

During our audit period, MDAA entered into contractual agreements called Interdepartmental Service Agreements (ISAs)<sup>4</sup> with each District Attorney's Office. The ISAs required each office to use funds that were appropriated by the state Legislature to improve the retention rate of Assistant District Attorneys (ADAs) with more than three years of experience by providing them with additional compensation. However, in fiscal year 2015, three District Attorney's Offices (Hampden, Northwestern, and Norfolk) used a total of \$113,000 of retention funding to offset budget cuts imposed by the Commonwealth instead. Because it had not monitored the use of the money, MDAA was not aware that this had happened.

In addition, not ensuring that District Attorney's Offices used their ADA Retention Fund disbursements to provide additional compensation to ADAs may have had a negative impact on retention. Sixteen experienced ADAs left these three offices during fiscal year 2015. The loss of ADAs also results in increased workloads for the remaining ADAs, which can affect how quickly investigations can be completed.

### **Authoritative Guidance**

Section 6.03(6) of Title 815 of the Code of Massachusetts Regulations states,

*Seller Departments [in this case, the District Attorney's Offices] are required to provide whatever progress, programmatic or expenditure reports to the Buyer Department [in this case, MDAA], as specified in an ISA. Even if reports are not specified, the Seller Department is required to provide a detailed accounting of all expenditures.*

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4. An ISA specifies the terms of a contractual agreement, including those related to the transfer of funds, made between departments within any branch of state government.

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In addition, Section 8 of the ISA Form that each District Attorney's Office was required to complete in conjunction with MDAA for each fiscal year during our audit period stated, "As requested, a report will be submitted to MDAA by each District Attorney by the end of [each fiscal year's] accounts payable period reflecting the remaining funds not utilized as allocated."

Since MDAA was charged with the administration of the funds for each office, it should have established a mechanism to ensure that they were used only for their intended purpose.

Finally, the General Appropriation Acts for fiscal years 2015, 2016, and 2017 (Chapter 165 of the Acts of 2014, Chapter 46 of the Acts of 2015, and Chapter 133 of the Acts of 2016, respectively) specified that District Attorney's Offices were to use the money they received from MDAA through the ADA Retention Fund for the sole purpose of providing monetary incentives to retain ADAs with more than three years of experience.

## Reasons for Issues

According to management, MDAA believed that its administrative responsibilities were completed once the funds in question were allocated to each of the 11 District Attorney's Offices. As a result, MDAA had not developed policies and procedures to properly monitor how these funds were used, such as requesting that each District Attorney's Office provide it with a detailed accounting of all expenditures related to this funding.

## Recommendations

1. If the state Legislature continues to provide funding for retaining ADAs with more than three years of experience, MDAA should develop policies and procedures to monitor these funds to ensure that they are used only for their intended purpose.
2. MDAA should obtain reports from all of the District Attorney's Offices on a mutually agreed-upon schedule to monitor how these funds are being used.

## Auditee's Response

In response to this finding, the president of MDAA provided the following comments:

*I am concerned the audit has failed to recognize the relationship between the 11 District Attorneys and the MDAA. The Executive Director works for, and at the direction and pleasure of, the 11 Massachusetts District Attorneys. (See MGL Chapter 12, section 20D.) The District Attorneys do not work for or answer to the Executive Director of the MDAA. That said, I believe the lack of understanding of the relationship leads to faulty conclusions in the audit. Further, the*

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*auditors did not pursue or investigate the history and rationale given by the Legislature when they funded, not only those two accounts, but also the Drug Diversion and Education Fund. The Legislature has a long history and relationship with the MDAA, often using the agency as a "pass-through" entity to facilitate the funding of mutually agreed-upon priorities like the ADA Salary Reserve and Retention Funds and special programs for which they support, such as heroin and opioid education and prevention programs. The decision to provide funds to each office is the prerogative of the Legislature and Governor who have supported these policy initiatives. Historically, the Legislature has entrusted that the monies appropriated would be fairly distributed based upon a plan and formula devised by and approved by members of the MDAA (District Attorneys). The Executive Director plays no role other than implementing the plan and formula approved by the District Attorneys and complying with mandated reporting requirements set forth in the budget language. . . .*

*It is the Legislature that approves funding and decides how they wish to meet their funding goals. In this instance, the goal was to assist the District Attorneys in raising the pay and retaining ADAs who are often the lowest paid individuals in the courtroom. The District Attorneys, Legislature, and Governor have long worked together to achieve this goal of compensating ADAs at a level of [National Association of Government Employees] Counsel I. The auditors fail to recognize that . . . the state's 11 District Attorneys are constitutionally independent elected officials. The District Attorneys answer to the voters and are not employees or subservient to the Executive Director of the MDAA. The Legislature required the District Attorneys, through the MDAA, to disperse the money through a fair formula approved by them. The Executive Director was required only to report that formula and disbursement to the Legislature. The Executive Director of the MDAA is not authorized by the District Attorneys, statute, or budget line item to supervise the spending of these appropriated funds. In fact, MDAA's role was limited to sending a report to the Legislature of the formula of how the money was divided. The MDAA supports our offices mainly in IT and training, and we are very grateful for the work they do; it does not have oversight of individual spending decisions made by the state's 11 District Attorneys. The audit inaccurately and unfairly makes conclusions that are not supported by fact or law.*

*The audit raises the issue that the Hampden, Norfolk and Northwestern District Attorneys' Offices did not spend the funds for salary retention in fiscal year 2015 in accordance with the stated purpose of the Legislature. Nothing could be further from the truth. The three offices made independent executive decisions that were financially prudent to revert the money to the General Fund. In FY15, the state was faced with a budget deficit and the Governor and Legislature required all state agencies to make a mid-year cut to help balance the state's budget. The DAs were required to cut 1.79% mid-year. Each District Attorney's Office had the independent authority to determine how to make the cuts to achieve that goal. In order to reduce the cut to each office's main office appropriation, the District Attorneys collectively voted to revert the entire Drug Diversion Fund, an account created by the budget and placed within the MDAA. Each District Attorney's Office received a financial credit from the Executive Office of Administration and Finance (A&F) equal to their share determined by a formula approved by the MDAA's members. In the case of the Retention Funds, eight District Attorneys had committed the monies and three offices had not yet made their distributions. The three District Attorneys' Offices, including mine (Norfolk), chose not to spend our share of the Retention Fund. The Office of Administration and Finance also credited those amounts towards our goal of cutting 1.79% of our*

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*annual budget. It was both financially prudent, and clearly within the statutory authority of each District Attorney to revert the money. If we had distributed the money within our offices, a small number of ADAs would have received pay raises or bonuses, while others could have been facing furlough or lay-offs in order to meet the required cuts. This would have had a detrimental effect on our retention efforts as well as caused morale issues within the ranks. The Executive Director of MDAA does not and did not have the authority to make or interfere in decisions made by each District Attorney. . . .*

*I believe the other eight DAs, if given the opportunity, would have made the same decision if they had not already dispersed the Retention Funds to their ADAs. It would have been near impossible to take those funds back from some of the lowest paid attorneys in state government once they had received the money. The audit conclusion does not make sense given both the constitutional and statutory powers of the DAs and the auditors' failure to recognize prudent budget decisions to balance the state budget. . . . If one were to believe the audit findings then all 11 offices should be cited for spending 1.79% less than the amount originally set forth in the state budget. The conclusions reached are nonsensical and illogical.*

*Despite the auditors' misunderstanding of the relationship between the District Attorneys and the MDAA, the District Attorneys have agreed to voluntarily send the MDAA an interdepartmental service agreement (ISA) compliance certificate for each of the shared funds distributed by MDAA. The ISA compliance certificate's purpose is to certify the funds were distributed within each District Attorney's Office in full accordance with the budget line item language, or to notify the MDAA that some or all of the funds would be reverted, along with the reasons for the reversion. The MDAA would maintain such certificates and provide them, as requested, to the Legislature and the Executive Office of Administration and Finance and the Auditor for further review.*

## **Auditor's Reply**

During our audit period, MDAA and each District Attorney's Office entered into ISAs that required each office to use funds that were appropriated by the state Legislature to improve the retention rate of certain ADAs. Although these agreements did not require MDAA to supervise the use of these funds by District Attorney's Offices, they did allow MDAA to implement reporting requirements that would enable it to monitor whether the funds were used for their intended purposes. Specifically, as noted above, Section 8 of the ISA Form that each District Attorney's Office was required to complete in conjunction with MDAA for each fiscal year during our audit period stated, "As requested, a report will be submitted to MDAA by each District Attorney by the end of [each fiscal year's] accounts payable period reflecting the remaining funds not utilized as allocated." Further, state regulations call for organizations such as the District Attorney's Offices that expended the funds to provide a detailed accounting of all expenditures under this kind of agreement. Had MDAA received a detailed accounting of the use of this funding—including the fact that three District Attorney's Offices elected to use some of it to offset budget cuts rather than to increase the salaries of some ADAs—its use would have been

more apparent to the Legislature. Because it had not monitored the use of the money, MDAA was not aware that this had happened.

Contrary to what MDAA asserts in its response, through discussions with MDAA officials and a review of applicable statutory and regulatory requirements, as well as the ISAs that MDAA entered into with each District Attorney's Office, the Office of the State Auditor was fully aware of what the Legislature wanted MDAA's role to be in the administration of this funding. Further, we do not necessarily agree with MDAA's assertion that remitting funds that were targeted for the retention of the ADAs in question was the most fiscally prudent decision. When budgetary cuts are implemented, each agency can decide how to implement the cuts. For example, some agencies simply implement cuts across all of their operations rather than targeting funding for a specific area. Alternatively, one could argue that applying the budget cuts to one group of people might have a more negative effect—especially on the targeted group—than spreading the cuts across all operations.

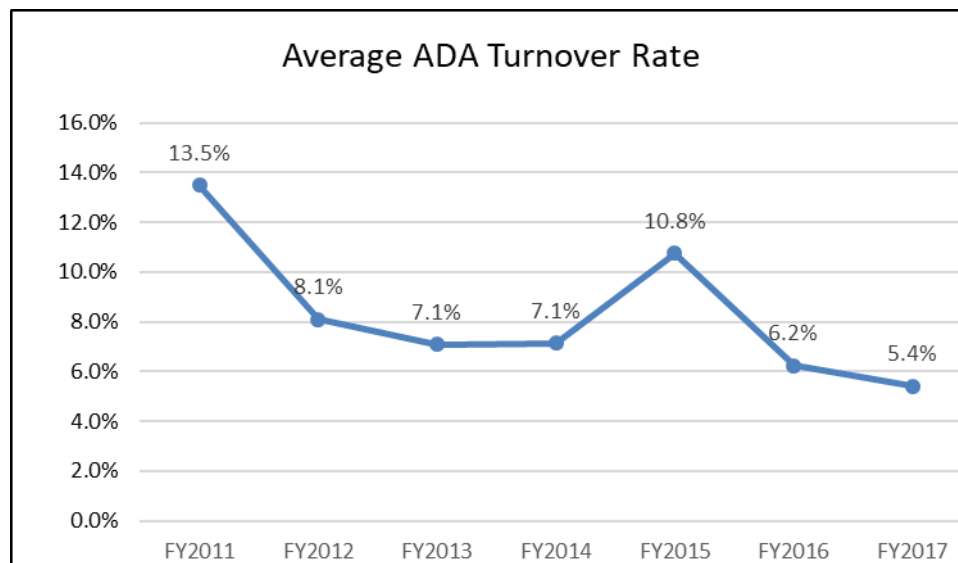
Finally, while we believe it is a prudent decision for each District Attorney's Office to provide MDAA with compliance certificates regarding the funds in question, we believe it would create more transparency if MDAA requested that each District Attorney's Office provide it with a detailed accounting of all expenditures related to these funds.



## OTHER MATTERS

### The ADA Retention Fund might have a limited long-term impact.

The state Legislature began appropriating funding for the retention of Assistant District Attorneys (ADAs) in fiscal year 2012 and provided over \$2.7 million through fiscal year 2017 to the Massachusetts District Attorney Association (MDAA) to allow District Attorney's Offices to increase the compensation they provided to more experienced ADAs to improve the retention rate for these individuals. Our analysis of staff turnover rates in each District Attorney's Office found that these additional funds appeared to be a factor in improving the retention rates of these attorneys. For example, as shown in the chart below, in fiscal year 2011, the year before retention funding began, the average turnover rate for all offices combined was 13.5% among experienced ADAs. After the ADA Retention Fund initiative began in fiscal year 2012, the average turnover rate among experienced ADAs declined to 8.1%, and by the end of fiscal year 2017, this average rate had decreased to 5.4%. During this seven-year period, the Middlesex District Attorney's Office had the highest average turnover rate, at 13%, while the Worcester District Attorney's Office had the lowest average turnover rate, at 5.8%.



\* The increase in the fiscal year 2015 turnover rate may have been caused by retention funds not being fully used as intended, as well as increased numbers of ADAs transferring to other state agencies or finding other employment.

While this funding appears to have had a positive impact in addressing the retention problem, we identified a number of factors that may cause any positive impact from this strategy for reducing ADA turnover to be temporary.

First, the Legislature is not required to appropriate additional funding for the ADA Retention Fund every year, and therefore the District Attorney's Offices have to distribute this additional funding in the form of one-time bonuses instead of permanent salary increases. Although the MDAA, in conjunction with the District Attorneys, has worked with the Legislature to improve retention rates, the current funding mechanism does not provide a long-term solution to the problem of making ADAs' compensation competitive. Not ensuring that ADAs' compensation is competitive can result in excessive turnover, causing logistical problems in terms of prosecuting cases and a potential reduction in the quality of services. In fact, according to the testimony of Suffolk County District Attorney Daniel Conley to the Commission on Criminal Justice Attorney Compensation on March 27, 2014,

*My office is a revolving door of prosecutors. We expend scarce resources in this constant cycle of recruitment, hiring, and training, and once prosecutors become experienced and really good at their jobs they are forced to leave the job they truly love. This is not just financially wasteful and inefficient but clearly detrimental to the best interests of justice.*

In response to our questionnaire concerning the reasons that the more experienced ADAs leave District Attorney's Offices, several District Attorneys indicated that the primary reason for resignations was the opportunity to earn a much higher salary in a new job. They noted that several ADAs had left to pursue positions in other state agencies, typically resulting in a significant pay increase.

During our audit, we used data analytics to evaluate information about ADAs with three or more years of experience who had left District Attorney's Offices during the period July 1, 2014 through June 30, 2017. We found that during that time, of the 152 ADAs who left, 42 (28%) went to another state agency and received, on average, a 20% increase in compensation.

Second, District Attorneys can distribute the retention funds in any manner they choose, which could result in some ADAs getting larger annual bonuses than others; this, in and of itself, could have a negative impact on morale and actually cause turnover rather than reduce it.

Finally, according to the District Attorneys with whom we spoke, while compensation appears to be the primary reason ADAs leave, other reasons that are not addressed by the retention funding—such as high caseloads—are causing some ADAs to depart.

In the Office of the State Auditor’s opinion, MDAA and the District Attorney’s Offices should continue to work with the Legislature and develop a more comprehensive long-term strategy for minimizing, to the extent possible, the turnover of experienced ADAs and obtain the funding necessary to implement this strategy.

In response to this issue, the president of MDAA provided the following comments:

*On behalf of the MDAA’s members, I would like to thank the auditors for the attention paid to the issue of ADA salaries and the importance of retaining experienced attorneys. The Audit confirms the long held belief that the District Attorneys’ Offices are losing people to other better paying state agencies because we cannot pay an equivalent salary. The current ADA starting salary is \$46,000.00, up from a statutory minimum of \$37,500.00 only a few years ago, due in large part to the support of the Governor and the Legislature. The District Attorneys are still actively pursuing additional funds to pay our ADAs a starting salary equivalent to a [National Association of Government Employees] Counsel I position, which currently is \$60,096.00. Your audit suggests the ADA Salary Reserve, when funded, is a very positive step towards a permanent solution to raise salaries. The District Attorneys as a group would welcome direct appropriation and increases to our individual budgets and line items to achieve the goals of increased salary and retention, but like all members of state government, we are bound to follow the policy and process approved by the Governor and the Legislature.*

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## APPENDIX A

### Massachusetts District Attorney's Offices

|   |  |
|---|--|
| Berkshire County District Attorney's Office<br>7 North Street<br>PO Box 1969<br>Pittsfield, MA 01202  | Norfolk County District Attorney's Office<br>45 Shawmut Road<br>Canton, MA 02021             |
| Bristol County District Attorney's Office<br>40 Broadway<br>Taunton, MA 02780                         | Northwestern County District Attorney's Office*<br>1 Gleason Plaza<br>Northampton, MA 01060  |
| Cape and Islands District Attorney's Office<br>3231 Main Street<br>PO Box 455<br>Barnstable, MA 02630 | Plymouth County District Attorney's Office<br>166 Main Street<br>Brockton, MA 02301          |
| Essex County District Attorney's Office<br>10 Federal Street<br>Salem, MA 01970                       | Suffolk County District Attorney's Office<br>1 Bulfinch Place<br>Boston, MA 02114            |
| Hampden County District Attorney's Office<br>50 State Street<br>Springfield, MA 01102                 | Worcester County District Attorney's Office<br>225 Main Street, G-301<br>Worcester, MA 01608 |
| Middlesex County District Attorney's Office<br>15 Commonwealth Avenue<br>Woburn, MA 01801             |  |

\* This office serves Hampshire and Franklin Counties and the Town of Athol.

## APPENDIX B



Jonathan W. Blodgett  
District Attorney  
Essex  
President, MDAA

Memo To: The Honorable Stephen M. Brewer  
Chair, Senate Committee on Ways and Means  
The Honorable Brian S. Dempsey  
Chair, House Committee on Ways and Means

Daniel F. Conley  
District Attorney  
Suffolk  
Vice President, MDAA

From: Tara Maguire, Executive Director  
Massachusetts District Attorneys Association

David F. Capeless  
District Attorney  
Berkshire

Date: August 20, 2014

Timothy J. Cruz  
District Attorney  
Plymouth

Re: District Attorneys' allocation plan for the ADA Retention Fund (0340-2117)

Joseph D. Early, Jr.  
District Attorney  
Worcester

In furtherance of its obligations under line item 0340-2117 of the Commonwealth's FY 2015 budget<sup>1</sup>, the MDAA reports on the District Attorneys' anticipated allocation of the "ADA Retention Fund" as follows.

**(a) The methodology used to determine the amount to be dispersed**

James Orenstein  
District Attorney  
Western

The District Attorneys will allocate the \$500,000 fund somewhat proportionately to the size of their legislative appropriations, but the distribution formula takes into account the special retention needs of the more rural counties. That is, the smaller counties will receive a proportionately larger share of the fund.

Michael W. Morrissey  
District Attorney  
Norfolk

**(b) The amount to be distributed to each District Attorney's office**

Michael O'Keefe  
District Attorney  
Cape & Islands

\$30,000: Berkshire, Cape & Islands, Northwestern  
\$40,000: Bristol, Essex, Norfolk, Plymouth  
\$43,000: Hampden, Worcester  
\$77,000: Middlesex  
\$87,000: Suffolk

Marian T. Ryan  
District Attorney  
Middlesex

David E. Sullivan  
District Attorney  
Northwestern

**(c) The reasoning behind the distribution**

C. Samuel Satter  
District Attorney  
Bristol

The District Attorneys will distribute their share of the funds as an incentive to remain in public service to those prosecutors who perform at levels that exhibit a significant desire to remain prosecutors, who have become valuable because of their experience and training, and who the District Attorneys would like to retain on staff. All recipients will have a minimum of three years of experience and will be expected, but not required, to commit to continuing service as a prosecutor.

Tara L. Maguire  
Executive Director

|                |    |
|----------------|----|
| Berkshire      | 6  |
| Bristol        | 9  |
| Cape & Islands | 6  |
| Essex          | 6  |
| Hampden        | 20 |
| Middlesex      | 25 |
| Norfolk        | 10 |
| Northwestern   | 9  |
| Plymouth       | 10 |
| Suffolk        | 29 |
| Worcester      | 10 |

<sup>1</sup> 0340-2117 For the retention of assistant district attorneys with more than 3 years of experience; provided, that the Massachusetts District Attorneys Association shall transfer funds to the AA object class in each of the 11 district attorney offices in the commonwealth; provided further, that the association shall develop a formula for distribution of the funds; provided further, that funds distributed from this item to the district attorneys' offices shall be used for retention purposes and shall not be transferred out of the AA object class; provided further, that not more than \$100,000 shall be distributed to any 1 district attorney's office; provided further that not less than 60 days prior to the distribution of funds the District Attorneys Association shall notify the house and senate committees on ways and means detailing: (a) the methodology used to determine the amount to be dispersed; (b) the amount to be given to each district attorney's office; (c) the reasoning behind the distribution; and (d) the number of assistant district attorneys from each office who would receive funds from this item; and provided further, that no funds shall be expended on the administrative costs of the association ..... \$500,000