

STATUTORY REPORT

# DISTRICT ATTORNEY DISTRICT 24

**BOGUS CHECK RESTITUTION PROGRAM, SUPERVISION  
PROGRAM, RESTITUTION AND DIVERSION PROGRAM,  
PROPERTY FORFEITURE PROGRAM**

For the period of July 1, 2007 through June 30, 2011



*Independently serving the citizens of  
Oklahoma by promoting the  
accountability and fiscal integrity of  
governmental funds.*



Oklahoma State  
Auditor & Inspector  
Gary A. Jones, CPA, CFE

**MAX COOK, DISTRICT ATTORNEY  
DISTRICT 24**

**STATUTORY REPORT  
BOGUS CHECK RESTITUTION PROGRAM  
SUPERVISION PROGRAM  
RESTITUTION AND DIVERSION PROGRAM  
PROPERTY FORFEITURE PROGRAM**

**FOR THE PERIOD JULY 1, 2007 THROUGH JUNE 30, 2011**

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This publication, issued by the Oklahoma State Auditor and Inspector's Office as authorized by 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506 has not been printed, but is available on the agency's website ([www.sai.ok.gov](http://www.sai.ok.gov)) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



# Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

August 13, 2012

Max Cook, District Attorney  
District 24  
Creek County Courthouse  
Sapulpa, Oklahoma 74006

Transmitted herewith is the statutory report for the District Attorney of District 24, Creek and Okfuskee Counties, Oklahoma (the District) for the period July 1, 2007 through June 30, 2011.

A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones". The signature is fluid and cursive, with a long horizontal stroke at the end.

GARY A. JONES, CPA, CFE  
OKLAHOMA STATE AUDITOR & INSPECTOR

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**INTRODUCTORY INFORMATION**

**BOGUS CHECK PROGRAM**

The bogus check program was created by the Oklahoma Legislature in 1982 as a special type of deferred prosecution program and every district attorney is required to operate a bogus check program. The program provides an alternative way to handle bogus check cases without any additional cost to courts, prosecutors, or the state prison system. The primary emphasis of the program is collecting restitution for the victim of the crime, rather than punishing the offender.

Bogus checks are a significant cost to business, a cost that is passed on to the consumer and paid by all citizens and taxpayers in the state. The bogus check program has been an effective way to address the economic problem caused by bogus checks. The program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

**RESTITUTION AND DIVERSION PROGRAM**

The restitution and diversion program was created by the Oklahoma Legislature in 2001 as a special type of deferred prosecution program. The legislation required that each district attorney create such a program. The purpose of the program is to allow the district attorney the discretion to divert criminal complaints involving property crimes from criminal court and to collect restitution for victims.

The program allows the district attorney's office to receive, disburse, and monitor victim restitution payments. The program offers an alternative way to address criminal conduct.

**DISTRICT ATTORNEY SUPERVISION PROGRAM**

The district attorney supervision program was created by the Oklahoma Legislature in 2005 as an alternative from supervision by the Department of Corrections. When the court imposes a deferred or a suspended sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay the district attorney a monthly supervision fee. However, the legislation provides that in hardship cases, the district attorney shall expressly waive all or part of the fee.

**DISTRICT ATTORNEY PROPERTY FORFEITURE PROGRAM**

Most district attorneys in the state have a Property Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substance laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets.

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Any cash, vehicles, real property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.



# Oklahoma State Auditor & Inspector

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## Statutory Report

Max Cook, District Attorney  
District 24  
Creek County Courthouse  
Sapulpa, Oklahoma 74006

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period July 1, 2007 through June 30, 2011.

### Bogus Check, Supervision, and Restitution and Diversion Programs:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Examine fees to determine that the correct fees are assessed, receipted, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, 991f-1.1, and 19 O.S. § 215.11.
- Determine whether expenditures are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114 and 991f-1.1, and whether expenditures are supported by approved claims, invoices, and verification that goods or services paid for are received.
- Determine whether the District Attorney reconciles all accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that shows total deposits and total expenditures for the Bogus Check Restitution Program, the Supervision Program, and Restitution and Diversion Program.

### Property Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Determine that the District Attorney maintains a true and accurate inventory of all property seized in accordance with 63 O.S. § 2-506.K.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds to determine the distribution was in accordance with court orders pursuant to 63 O.S. §§ 2-506.K and 2-508.
- Test expenditures to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.

- Determine if the District Attorney prepared and submitted an annual report to the District Attorneys Council showing the total deposits, total expenditures, beginning and ending balances in accordance with 63 O.S. § 2-506.L.3.
- Determine if the District Attorney reconciles account balances with the County Treasurer.

All information included in the financial records of the bogus check restitution program, supervision program, restitution and diversion program, and the property forfeiture program are the representation of the District Attorney for their respective district.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Creek or Okfuskee Counties.

Based on our procedures performed, we have presented our findings in the accompanying schedule.

This report is intended for the information and use of the District Attorney and the County Officials. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in blue ink, appearing to read "Gary A. Jones". The signature is fluid and cursive, with a long horizontal stroke at the end.

GARY A. JONES, CPA, CFE  
OKLAHOMA STATE AUDITOR & INSPECTOR

March 12, 2012

**MAX COOK, DISTRICT ATTORNEY  
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**SCHEDULE OF FINDINGS AND RESPONSES**

**Finding 1 – Segregation of Duties – Bogus Check, Restitution and Diversion, and DA Evidence Seizure (Property Forfeiture) Accounts**

**Condition:** The following are instances of the lack of separation of duties in personnel within District Attorney accounts:

**Creek County**

A lack of segregation of duties exists in the payments of collections and deposits in the Bogus Check Restitution Program, Restitution and Diversion, Supervision Fees (#801), and the Property Forfeiture Programs divisions (#803). One employee who receipts funds also balances the receipts to daily deposits, posts payments to individual accounts, and delivers the deposits to the County Treasurer's office.

In addition, a lack of segregation of duties exists in the payments of expenditures for the Bogus Check Restitution Fee Program, Diversion and Restitution, Supervision Fees (#802), and the Property Forfeiture Program (#803), in that one employee prepares vouchers, completes voucher claim forms, and signs as receiving agent.

One employee, who prepares deposits and vouchers, reconciles the Property Forfeiture Program (#803), Supervision Fee Program ledgers, and Bogus Check Restitution Fee ledgers (#802) to the County Treasurer. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled.

For the Bogus Check Restitution Program (#801), the same employee who receives payments and makes daily deposits also reconciles monthly to the County Treasurer.

**Okfuskee County**

A lack of segregation of duties exists in the payments of collections and deposits in the Bogus Check Restitution Program, Supervision Fees, and the Property Forfeiture Programs divisions. One employee who receipts funds also balances the receipts to daily deposits, posts payments to individual accounts, and delivers the deposits to the County Treasurer's office. In addition, the same employee performs the reconciliation monthly to County Treasurer balances. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled.

**Cause of Condition:** Procedures have not been designed to properly separate key accounting functions.

**Effect of Condition:** A single person having responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions,

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misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

**Recommendation:** OSAI recommends management be aware of these conditions and realize that concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's overseeing of office operations and a periodic review of operations. OSAI recommends management provide segregation of duties so that no one employee is able to perform all accounting functions. In the event that segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of duties. Compensating controls would include separating key processes and /or critical functions of the office, and having management review and approval of accounting functions.

**Management Response:** Due to the limited number of personnel, we will expand job descriptions of certain employees in order to put in to place the following controls to minimize errors.

#### BOGUS CHECK & SUPERVISION PROGRAMS

##### CREEK COUNTY

1. Employee A receives, opens, and distributes mail.
2. Employee B posts all payments received by mail to the account.
3. Employee C prepares daily deposit.
4. Employee B reviews and makes the deposit at the Treasurer's office and returns registered deposits to designated folder.
5. Employee C completes a monthly reconciliation for accounts and compares internal ledgers against the Treasurer's ledgers.
6. Employee A reviews monthly ledgers and records on accounting software.

OKFUSKEE COUNTY: Due to budget cuts and hiring limitations, the Okfuskee County office lacks the ability to separate duties as recommended; however, spot checks will be instituted as a partial control.

#### DA EVIDENCE SEIZURE (Property Forfeiture) ACCOUNTS

##### CREEK COUNTY

1. Employee A receives money for deposit per court order and prepares deposit.
2. Employee B takes deposit to Treasurer's office and retains copy of registered deposit.
3. Employee A prepares purchase orders approved by the District Attorney for expenditures and prepares vouchers which are signed by authorized signer.
4. Employee B reconciles internal ledgers against the Treasurer's ledgers.

OKFUSKEE COUNTY: Due to budget cuts and hiring limitations, the Okfuskee County office lacks the ability to separate duties as recommended; however, spot checks will be instituted as a partial control.

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**Criteria:** Demonstration of accountability and stewardship are goals used in evaluating management's accounting for funds. A basic component of adequate internal controls is the segregation of duties so that one individual cannot perpetuate and conceal errors and irregularities in the normal course of his/her duties. To help ensure a proper accounting of funds and strong internal controls, the duties of receiving, receipting, recording, and depositing cash and checks should be separated among employees.

**Finding 2 – Internal Control Environment - Written Policies and Procedures for District Attorney Bogus Check, Restitution and Diversion, and Supervision Fee programs**

**Condition:** As part of our review of District Attorney accounts and records, we tested receipts, disbursements, cash balances and reporting of funds to the District Attorneys Council. (DAC). The District Attorney does not have written policies and procedures and/or has not designed and implemented internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

**Creek County**

**Miscellaneous**

- 3 employees who issue receipts have the authority to make write-offs, adjustments or voids to accounts within the Bogus Check Restitution, Supervision Fee, and Restitution and Diversion programs, with no process of review or authorization prior to the transaction.
- Employees who have a unique password to process payments through Bounce Back do not log-out when they are away from their station.
- We could not determine the source of a variance of \$794.05 in expenditures and cancelled vouchers between the #801 subsidiary spreadsheet and the County Treasurer's balances at 6-30-08.

**Bogus Check Restitution Program**

- (#802) 3 of the 15 expenditure claims tested did not have the proper approval for payment.
- (#802) 1 of the 15 expenditure claims tested did not an invoice attached.
- (#802) 1 expenditure claim selected could not be found.

**Supervision Fee Program**

- We could not determine the source of a variance totaling \$747.00 in collections and expenditures between the subsidiary spreadsheet and the Supervision Fees Annual Report.
- (#802) 1 of the 20 expenditure claims tested did not have the proper approval for payment.
- (#802) 1 of the 20 expenditure claims tested did not have an invoice attached.
- (#802) 2 expenditure claims could not be found.

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**Okfuskee County**

**Bogus Check Restitution Program**

- Collections are not deposited daily.

**Supervision Fee Program (DA Fee Account)**

- Collections are not deposited daily.
- 4 of 20 expenditure claims tested did not have the proper approval for payment.
- Expenditure claims to refund overpayments to defendants are not prepared.

**Creek and Okfuskee Counties**

- A district-wide policy has not been established for the remittance of restitution to merchants/victims. Bogus Check restitution payments to victims are processed differently in both counties. Creek County submits payment to victims when partial/full payments are remitted by the offender. Okfuskee County submits payment to victims only when the amount is paid in full or a substantial amount of partial payments have been remitted by the offender.

**Cause of Condition:** The District Attorney's office does not have formal policies in place establishing procedures for collections and disbursements of the Bogus Check Restitution, Restitution and Diversion, Supervision Fee, and Drug Fund (Property Forfeiture) Program accounts.

**Effect of Condition:** This could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions and the accounting of funds. In addition, this condition could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

**Recommendation:** OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of client files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that each program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines for applying restitution payments to District Attorney fees and remitting restitution payments to merchants/victims. (ie. 50/50 split, merchants/victims are paid restitution before District Attorney fees are collected, etc.)
- Guidelines for the disposition of monies in an account when a merchant cannot be located.
- Guidelines for the oversight of the daily collection process and the deposit of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.

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Furthermore, we recommend management identify, analyze and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process overtime and implement appropriate controls and oversight of each programs daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

**Management Response:**

**BOGUS CHECK AND SUPERVISION**

**CREEK COUNTY**

We are taking the opportunity to revise and expand our policy and procedure manual in our Bogus Check and Supervision programs. The following are areas of emphasis that changes will be made:

1. Any write-offs, adjustments, or voids to accounts shall have prior approval by an appointed person overseeing daily office operations.
2. Appropriate approval can be found in Bounceback system under notes section of the individual(s) involved.
3. Employees will be prompted to change login password every 90 days.
4. Ensure that all employees are aware of their duties and responsibilities.
5. Create guidelines for the Bogus Check and Supervision programs detailing the appropriate application, collection, reconciliation, and documentation of account funds.

**OKFUSKEE COUNTY**

1. Collections made shall be deposited daily.
2. Expenditure claims shall be prepared for each transaction.

Management is aware of policy differences for the remittance of restitution to merchants/victims. Due to the disparity between collections in the counties, management approves of each county's current practices.

**Criteria:** Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

**Finding 3 – Internal Control Environment - Written Policies and Procedures for District Attorney Drug Fund (Property Forfeiture)**

**Condition:** As part of our review of District Attorney accounts and records, we tested receipts, disbursements, cash balances and reporting of funds to the District Attorneys Council. (DAC). The District Attorney does not have written policies and procedures and/or has not designed and implemented

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internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

**Creek County**

**Drug Fund (Property Forfeiture)**

- There are no formal policies for the process of seizure and forfeiture within the DA's office or local seizing agencies.
- 4 of the 5 deposits tested did not have a written receipt for collections received. Though the payments were court ordered assessments, a written receipt should be prepared for all monies received into the Drug Fund account.
- 3 of the 20 forfeited monies tested did not have a written receipt for monies received.
- 1 of 20 Drug Fund expenditures did not have an approval form or invoice.
- 1 of 20 Drug Fund expenditures did not have an invoice attached.

**Okfuskee County**

**Drug Fund (Property Forfeiture)**

- There are no formal policies for the process of seizure and forfeiture within the DA's office or local seizing agencies.
- An itemized inventory of forfeited assets is not maintained.
- 1 of 7 payments collected did not have a receipt.
- While reviewing forfeiture cases, it was noted that the Okfuskee Drug Fund still owes the Oklahoma Highway Patrol \$417.00 for its portion of an asset forfeiture.
- 1 of 20 expenditure claims tested did not have the proper approval for payment.
- 1 of 20 expenditure claims selected could not be found.

**Cause of Condition:** The District Attorney's office does not have formal policies in place establishing procedures for collections and disbursements of the Drug Fund (Property Forfeiture) Program accounts.

**Effect of Condition:** This could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions and the accounting of funds. In addition, this condition could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

**Recommendation:** OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that the program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines for the oversight of the receipting process and the deposit of funds.

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- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.

Furthermore, we recommend management identify, analyze and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process overtime and implement appropriate controls and oversight of each programs daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

**Management Response:** Management is aware of the lack of segregation of duties for the DA's property forfeiture accounting practices. The District Attorney's opinion is that this office is in compliance with applicable laws and regulations because the District Attorney gives written approval to each expenditure request.

DA EVIDENCE SEIZURE (Property Forfeiture)

1. We are in the process of developing written policies and procedures for the District Attorney's Office and participating agencies for the internal control of the submission and tracking of individual forfeitures. However, control of information origination rests with each agency.
2. We are in the process of developing a comprehensive spreadsheet to track all forfeiture cases with details of each case so that auditing is facilitated.

**Criteria:** Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.



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