

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 26

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

For the period July 1, 2009 through June 30, 2012



*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

**HOLLIS THORP, DISTRICT ATTORNEY
DISTRICT 26**

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

**FOR THE PERIOD
JULY 1, 2009 THROUGH JUNE 30, 2012**

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) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



Oklahoma State Auditor & Inspector

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September 24, 2012

Hollis Thorp, District Attorney
District 26
Woodward County Courthouse
Woodward, Oklahoma 73801

Transmitted herewith is the statutory report for the District Attorney of District 26, Alfalfa, Dewey, Major, Woods, and Woodward County, Oklahoma (the District) for the period July 1, 2009 through June 30, 2012.

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 the first name "Gary" being the most prominent.

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

**HOLLIS THORP, DISTRICT ATTORNEY
DISTRICT 26
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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

Hollis Thorp, District Attorney
District 26
Woodward County Courthouse
Woodward, Oklahoma 73801

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, 2009 through June 30, 2012.

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 Alfalfa, Dewey, Major, Woods, or Woodward County.

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.



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

September 14, 2012

**HOLLIS THORP, DISTRICT ATTORNEY
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SCHEDULE OF FINDINGS AND RESPONSES

Finding 2012-1—Inadequate Control Procedures Over Bogus Check, Restitution and Diversion and Supervision Program Computer Systems

Condition: Upon discussion with the District Attorney's staff and observation of the internal controls over the District's computer system, we noted the following weaknesses in the security of the system:

1. A time out security measure has not been assigned in the system.
2. Employees are not required to log out of the system when leaving their workstation.

Cause of Condition: Log-on controls are initiated for new employees at the office level for all computer start up; however, other security features have not been implemented by the staff.

Effect of Condition: Because other employees can access the computers without proper log-on passwords, an opportunity for errors and misappropriation of assets exists. Override of the system by one employee, without proper approval, could also lead to misappropriation of funds.

Recommendation: OSAI recommends management be aware of these conditions and realize that additional controls are needed to engage the Bounce Back software to ensure the credibility of accounting functions.

Management Response: Due to the number of programs each workstation logs into each day, it would not be economically feasible to have a workstation time out. Our office is secure behind locked doors and is not accessible to the public. Due to the layout of the offices it would be very noticeable if an employee was sitting at another employee's desk working on their computer. This is not an encouraged practice. Employees are now required to log out from their workstation when leaving the office for lunch break.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, transactions should be identifiable by employee and corrections should be adequately approved and documented.

Finding 2012-2—Mandatory "Donations" Collected for the Supervision Fee Account

Condition: As part of the plea agreement with the defendant, the District Attorney has recommended that certain agencies and non-profit organizations in District 26 receive "donations" from the defendant.

These "donations" are then incorporated into the defendant's Judgment and Sentence report signed by the judge.

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The review of 35 cases resulted in thirteen instances in which the defendant made a "donation" to various non-profit organizations or public safety agencies in amounts ranging from \$50.00 to \$500.00.

The following non-profit organizations and public safety agencies have been included in the agreements:

- White Horse Ranch Treatment Center
- Northwest Substance Abuse Treatment Center
- Western Plains Youth and Family
- County Sheriff
- Courthouse Security
- Drug Task Force
- Fairview Police Department

Cause of Condition: The District Attorney entered into plea agreements with defendants with additional costs, "donations" to be added to the defendant's judgment and sentence.

Effect of Condition: The additional costs, "donations" paid by the defendant, may give the appearance of impropriety with regard to the defendant being allowed a deferred sentence contingent upon making a "donation."

Recommendation: OSAI recommends that the District Attorney discontinue the practice of adding costs "donations" to be made by defendants as a part of the agreement and the final judgment and sentencing order.

Management Response: Even if a plea offer by the District Attorney's office includes the making of a donation and that part of the plea offer is accepted by the defendant, it is not a condition of probation until and unless it is approved by and ordered by the sentencing court. At present, it is the policy of the District #26 District Attorney's Office to include donations to non-profit charitable organizations in plea offers in certain types of cases. However, all donations must be approved and ordered by the sentencing court before the payment of those donations is required. These donations are viewed as being in the nature of community service which is specifically provided for by Title 22 O.S. § 991a(A)(1)(c), provided that the donations are approved by and ordered by the sentencing court pursuant to the court's statutory authority under Title 22 O.S. § 991a(A)(1)(hh).

Criteria: Title 22 O.S. § 991(d) does not authorize the District Attorney to order a defendant to pay "donations" in addition to costs and fees associated with the offense when providing supervision on a deferred case.

Finding 2012-3–Inadequate Control Procedures Over Supervision Fees Ordered

Condition: The District Attorney has authorized in the defendant's plea agreement and final judgment and sentence that the defendant is to pay a \$40.00 per month supervision fee for no more than two years.

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The review of 35 cases revealed the following exceptions to the written agreement:

- One defendant was ordered to pay supervision fees although no case had been filed with the courts.

Cause of Condition: The District Attorney recommended supervision fees to be paid for a time period in excess of the two year period stated in the agreement.

Effect of Condition: Supervision fees in excess of the deferral agreement are being charged to the defendant as part of the Judgment and Final Sentencing Report.

Recommendation: OSAI recommends the District Attorney ensure the amount of supervision fees does not exceed the amount stated on the Judgment and Final Sentencing Report.

Management Response: It is the policy of the District #26 District Attorney's Office that all offenders who sign a deferred prosecution agreement be supervised by the District Attorney's office and pay a \$40.00 per month supervision fee, unless that fee is waived by the District Attorney's Office. In conclusion, the lawful and proper time period for the payment of a District Attorney's supervision fee under these statutes is for the full term of the deferred or suspended sentence and for the full term of the deferred prosecution agreement unless waived in part or in whole by the District Attorney's office.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, fees charged should not be in excess of the amount stated in the official court document.

Additionally, 22 O.S. § 991d states:

When the court imposes a suspended or deferred sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay to the district attorney a supervision fee of Forty Dollars (\$40.00)

Finding 2012-4-Inadequate Control Procedures Over Reimbursements from Supervision Fee Account

Condition: The review of 41 Supervision Fee Account claims revealed the following exception:

- Two employees were reimbursed for purchases made for the Supervision Fee Account.

Cause of Condition: The District has not designed and implemented policies and procedures to ensure that reimbursements to employees are not made.

Effect of Condition: When purchasing procedures and policies are not followed, this condition could result in unrecorded transactions or misappropriation of funds.

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Recommendation: OSAI recommends that the District's purchasing policies and procedures be adhered to with regard to reimbursement of funds to an employee.

Management Response: District #26 recognizes that the purchasing requirements set out in Oklahoma Statutes Title 74 discourage reimbursement for purchases. However, there are incidents where the best interests of the District Attorney's Office and its duty to provide services to District#26 may necessitate the reimbursement of a purchase. In cases where it is deemed appropriate and necessary by the District Attorney or the First Assistant to reimburse a purchase, such reimbursement will be encumbered on a requisition form, accompanied by receipts, and properly receipted. It is and will be the policy of District#26 that such purchases are discouraged and should occur only when absolutely necessary. Effectively immediately, when a situation arises where it is in the best interest of District #26 to reimburse an employee for a purchase, the employee must submit to the District Attorney or the First Assistant a written request for permission to make such purchase and to request reimbursement. Upon approval from the District Attorney or the First Assistant, the purchase will be properly encumbered.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds the District should avoid reimbursing employees for purchases.

Finding 2012-5--Inadequate Control Procedures Over Bidding for the Supervision Fee Account

Condition: The review of claims paid from the Supervision Fee account revealed that the District entered into an agreement with MS Construction to "remodel the RAD office."

MS Construction's original bid for the remodel was \$4,600.00. However, the handwritten, untitled invoice provided to the District detailed a number of "add ons" bringing the remodeling cost to \$8,900.00.

An additional invoice for the bathroom remodel and demolition of walls and removal of trash resulted in another \$3,750.00.

Thus claim #85 to MS Construction totaled \$12,650.00. Voucher #1850 for \$8,900.00 and voucher #1851 for \$3,750 were issued to MS Construction on November 17, 2011. Subsequently, Woodward County reimbursed the District for the second invoice of \$3,750.

Cause of Condition: The District Attorney's office added several other requests for the contractor to complete, including installation of new ceiling tiles, lights, trim work painting another office and demolition of a bathroom.

Effect of Condition: The additional work requested by the District Attorney was outside the scope of the original bid, thus adding an additional \$8,050.00 to the original bid or 63% more than the initial bid.

Recommendation: OSAI recommends the District obtain complete and accurate information regarding remodeling projects prior to soliciting a detailed written bid for the work to be performed.

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Management Response: MS Construction's original bid was for a remodel of two offices in the total amount of \$4,600.00. During the remodel two bathrooms in the office backed sewage into the offices for the third time. It was decided by the County Commissioners to remove the two bathrooms causing the problems. The auditor's office was contacted to determine if MS Construction completed the second project, would it pose a problem bid wise. It was determined as long as it was documented as two separate projects for the auditor it would not be a problem. However, when MS Construction billed the project upon completion, the District Attorney's portion was added all on one invoice and the second project was listed as add-on, and the bill totaled \$8,900.00. There was an additional separate bill for the County Commissioners of \$3,750.00. The District Attorney's office paid both invoices and in return was reimbursed by the County Commissioners in the amount of \$3,750.00. In the future, our office will insure billing is completed correctly prior to payment.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, the District should solicit detailed written bids or competitive quotes for the remodeling of a public building.

Additionally, 61 O.S. § 103.B states:

Except as provided in subsection D of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

Finding 2012-6–Inadequate Control Procedures Over the Reporting Process

Condition: The reconciliation of merchant balances to the total ending balance as reported on the District Attorney's Annual Report could not be performed due to the Bounceback system providing a partial list of merchant balances.

The District has contacted Bounceback and been informed that an updated version of the software will be able to provide the necessary reports required to reconcile total account balances to individual balances.

Cause of Condition: The District's computer system has not been fully utilized to monitor and review reports.

Effect of Condition: The District is unable to determine that merchant balances reconcile to the total amount reported on the annual reports.

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Recommendation: OSAI recommends the District Attorney continue to inquire of the provider concerning the most updated version of the software. OSAI also recommends that management implement procedures to provide for accurate and complete financial records.

Management Response: Bounceback has now provided a new report which provides better tracking of voiced vouchers. Our office is in the process of researching the ending balance back to zero in this account. However, it should be noted that the Merchant Restitution account did not have a zero balance when this District Attorney assumed office, nor when the prior District Attorney assumed office.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, the computer software should provide detailed and complete reports to be reviewed and to monitor balances for propriety.



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