



DISTRICT ATTORNEY DISTRICT 5

Statutory Report

For the period of July 1, 2018 through June 30, 2020

Cindy Byrd, CPA
State Auditor & Inspector

**FRED SMITH, DISTRICT ATTORNEY
DISTRICT 5**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
DRUG ASSET FORFEITURE PROGRAM
DRUG POSSESSION DIVERSION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
SUPERVISION PROGRAM**

FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020

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 Prairie Collection (<http://digitalprairie.ok.gov/cdm/search/collection/audits/>) pursuant to 65 O.S. § 3-114.

August 24, 2021

Fred Smith, District Attorney
District 5
Lawton, Oklahoma 73501

Transmitted herewith is the statutory report for the District Attorney of District 5 Comanche and Cotton County, Oklahoma (the District) for the period of July 1, 2018 through June 30, 2020.

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,



CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR



**FRED SMITH, DISTRICT ATTORNEY
DISTRICT 5
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020**

TABLE OF CONTENTS

Introductory Information ii

Statutory Report of State Auditor and Inspector 1

Schedule of Findings and Responses 3

**FRED SMITH, DISTRICT ATTORNEY
DISTRICT #5
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020**

INTRODUCTORY INFORMATION

BOGUS CHECK RESTITUTION 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 program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

DISTRICT ATTORNEY DRUG ASSET FORFEITURE PROGRAM

The drug asset forfeiture program was created by the Oklahoma Legislature in 1971. 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. 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.

DRUG POSSESSION DIVERSION PROGRAM

The drug possession and diversion program was created by the Oklahoma Legislature in 2016 as a special type of deferred prosecution program. This law allows district attorneys to enter into a written agreement with a defendant to defer prosecution of a charge for the possession of a controlled dangerous substance and possession of drug paraphernalia, or both, for a period to be determined by the district attorney, not to exceed twenty-four (24) months. During this period, the defendant shall be supervised in the community by the district attorney or by a private supervision program.

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.

**FRED SMITH, DISTRICT ATTORNEY
DISTRICT 5
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020**

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.

Statutory Report

Fred Smith, District Attorney
District 5
Comanche County Courthouse
Lawton, Oklahoma 73501

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991a (hh), 991f-1.1, and 63 O.S. §§ 2-506 and 2-901, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period of July 1, 2018 through June 30, 2020.

Bogus Check Restitution, Supervision, Drug Possession Diversion, and Restitution and Diversion Programs:

- Determine that internal controls are designed and operating over the collections and disbursement 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, 991a (hh), 991f-1.1, 63 O.S. § 2-901, and 19 O.S. § 215.11.
- Determine whether disbursements are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114, 991d, 991a (hh), 991f-1.1, and 63 O.S. § 2-901, and whether disbursements are supported by approved claims, invoices, and verification that goods or services paid for were received.
- Determine whether the District Attorney reconciles accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that reflects total collections and total disbursements for the Bogus Check Restitution Program, Supervision Program, Drug Possession Diversion Program, and Restitution and Diversion Program.

Drug Asset Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and disbursement 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 a 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 disbursements to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council reflecting the total collections, total disbursements, 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, drug possession diversion program, restitution and diversion program, and the drug asset 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 Comanche or Cotton 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 District management. However, this report is a matter of public record and its distribution is not limited.



CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

August 11, 2021

**FRED C. SMITH, DISTRICT ATTORNEY
DISTRICT 5
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020**

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2020-001 – Lack of Internal Controls Over the Segregation of Duties in the Processes of Collections and Disbursements (Repeat Finding - 2018-001)

Condition: Regarding the processes of collections and disbursements within both Comanche and Cotton Counties, there is limited segregation of duties.

Additionally, the District accepts cash as payment for restitution accounts and fees assessed on the District Program accounts. Cash is also accepted for the Drug Asset Forfeiture Fund.

Comanche County:

The main District office is in Comanche County. Although there are several employees in the office, the duties of the disbursement process do not appear to be properly segregated to mitigate the risk of loss of funds.

Drug Asset Forfeiture Fund and Supervision Fund

One employee requisitions the purchases, prepares the claims, obtains the supporting documentation, prepares the payments, posts the payments, and reconciles the District Attorney report to the Treasurer ledger. Additionally, this employee also signs the vouchers, and mails or distributes the vouchers to the vendors.

Cotton County:

The District office located in Cotton County has one employee, that performs all the duties of collections and disbursements. The duties of receipting, depositing, recording, reconciling, and the authorization and execution of transactions are not completely segregated which increases the risk of loss of funds. To provide mitigation of the risk, the District has implemented a review and monitoring process from the part-time Assistant District Attorney when available, and offsite review and monitoring from the Comanche County office located in Lawton; however, the limited oversight does not completely reduce the risk lack of segregation duties.

Annual reports do not appear to be reviewed by someone other than the preparer prior to being sent to the District Attorneys Council.

Cause of Condition: Policies and procedures have not been completely designed and implemented to adequately segregate the duties over the collections and disbursements process which include the acceptance of cash for restitution and fees.

Effect of Condition: A single person having responsibility for more than one area of collections and disbursements functions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner. Further, accepting cash could result in higher risk of misappropriation of funds.

**FRED C. SMITH, DISTRICT ATTORNEY
DISTRICT 5
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2018 THROUGH JUNE 30, 2020**

Recommendation: The Oklahoma State Auditor & Inspector's Office (OSAI) recommends that management be aware of these conditions. A 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. If a 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 within the office and having management review and approve accounting functions.

Management Response:

District Attorney: We have implemented the best safeguards possible with limited resources. At least two or three separate individuals are involved in all receipting of payments, preparation of deposits, posting of deposits, purchase and receipt of goods and or services and posting of disbursements. We will continue having management review and approve accounting functions and document those review processes.

Criteria: The United States Government Accountability Office's *Standards for Internal Control in the Federal Government* (2014 version) aided in guiding our assessments and conclusion. Although this publication (GAO Standards) addresses controls in the federal government, this criterion can be treated as best practices and may be applied as a framework for an internal control system for state, local, and quasi-governmental entities.

The GAO Standards – Principle 10 – Design Control Activities – 10.03 states in part:

Segregation of duties

Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.

O·K·L·A·H·O·M·A
S·A·I
STATE AUDITOR & INSPECTOR



Cindy Byrd, CPA | State Auditor & Inspector

2300 N. Lincoln Blvd., Room 123, Oklahoma City, OK 73105 | 405.521.3495 | www.sai.ok.gov