



DISTRICT ATTORNEY DISTRICT 5

Statutory Report

For the period of July 1, 2020 through June 30, 2022

Cindy Byrd, CPA
State Auditor & Inspector

**KYLE CABELKA, DISTRICT ATTORNEY
DISTRICT 5**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
DRUG ASSET FORFEITURE PROGRAM
DRUG POSSESSION AND DIVERSION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
SUPERVISION FEE AND SUPERVISION FEE STATE REMITTANCE PROGRAMS
FOR THE PERIOD OF JULY 1, 2020 THROUGH JUNE 30, 2022**

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.



October 4, 2023

Kyle Cabelka, District Attorney
District 5
Comanche County Courthouse
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, 2020 through June 30, 2022.

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 "Cindy Byrd".

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

**KYLE CABELKA, DISTRICT ATTORNEY
DISTRICT 5
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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 manner to address criminal conduct without sending many offenders to state prisons.

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 AND 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.

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SUPERVISION FEE AND SUPERVISION FEE STATE REMITTANCE PROGRAMS

The district attorney supervision fee 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.

Beginning on July 1, 2019, a supervision fee state remittance account was created pursuant to 22 §991d (2) amended as follows, “Any fees collected by the district attorney shall be deposited in the General Revenue Fund of the State Treasury.” Fees collected at the district offices are deposited monthly with the county treasurer and transferred monthly for annual budgeted appropriations at the state level.



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Kyle Cabelka, 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, 991.f-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, 2020 through June 30, 2022.

Bogus Check Restitution, Drug Possession and Diversion, Restitution and Diversion, and Supervision Fee/State Remittance 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, received, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, 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, 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, Drug Possession and Diversion, Restitution and Diversion, and Supervision Fee/State Remittance Programs.

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, Drug Asset Forfeiture, Drug Possession and Diversion, Restitution and Diversion, and Supervision Fee/State Remittance Programs 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 and 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

July 31, 2023

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SCHEDULE OF FINDINGS AND RESPONSES

Finding 2022-001 – Lack of Segregation of Duties Over the Bogus Check Restitution, Supervision Fee/Supervision State Remittance, Drug Asset Forfeiture, and Drug Possession and Diversion Programs (Repeat Finding)

Condition: The District does not have an adequate segregation of duties to ensure that duties assigned to individuals are performed in a manner that would not allow one individual to control both the recording function and the procedures relative to processing a transaction. Upon inquiry of the District Attorney's office staff and observation of records, the following instances of the lack of segregation of duties in personnel were noted:

Comanche County

A lack of segregation of duties continues to exist in the procedural process of the *Drug Asset Forfeiture Program*. One employee receives and posts payments, prepares and delivers deposits, prepares and registers vouchers, issues/mails disbursements, maintains and reconciles the District's ledger, and prepares annual reports. No one independent of the preparer reviews the daily deposits or monthly reconciliations to ensure accuracy and completeness of the amounts reconciled to the County Treasurer's ledger balances.

A lack of segregation of duties continues to exist in the procedural process of the *Bogus Check Restitution (DA Fee account) Program*. One employee prepares, endorses, registers and issues/mails voucher, maintains and reconciles the District's ledger, and prepares annual reports. No one independent of the preparer reviews the monthly reconciliations to ensure accuracy and completeness of the amounts reconciled to the County Treasurer's ledger balances.

A lack of segregation of duties continues to exist in the procedural process of the *Supervision Fee/Supervision State Remittance and Drug Possession and Diversion Programs*. One employee maintains and reconciles District ledgers. No one independent of the preparer reviews the monthly reconciliations to ensure accuracy and completeness of the amounts reconciled to the County Treasurer's ledger balances.

Cause of Condition: Policies and procedures have not been fully designed and implemented to properly separate key accounting functions.

Effect of Condition: A single person that has responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: The Oklahoma State Auditor and Inspector's Office (OSAI) recommends the District Attorney 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 the District Attorney's overseeing of office operations and a periodic review of operations. OSAI

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recommends the District Attorney provide segregation of duties so that no one employee can perform all accounting functions. If 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 as follows:

The District Attorney staff should provide evidence of review and approval of accounting functions including:

- Someone other than the preparer reviewing documents,
- Initialing and dating the review of deposits, claims, and vouchers,
- Re-performing and reviewing reconciliations, and
- Initialing and dating the review of deposit summaries, monthly reports, and annual reports.

Management Response:

District Attorney: In response to the Oklahoma State Auditor and Inspector's findings: 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, purchases, 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

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