



DISTRICT ATTORNEY DISTRICT 22

Statutory Report

For the period of July 1, 2017 through June 30, 2019

Cindy Byrd, CPA
State Auditor & Inspector

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
DRUG ASSET FORFEITURE PROGRAM
SUPERVISION PROGRAM
SUPERVISION 991 PROGRAM**

FOR THE PERIOD OF JULY 1, 2017 THROUGH JUNE 30, 2019

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.

January 13, 2021

Paul Smith, District Attorney
District 22
Pontotoc County Courthouse
Ada, Oklahoma 74820

Transmitted herewith is the statutory report for the District Attorney of District 22, Pontotoc, Hughes, and Seminole County, Oklahoma (the District) for the period of July 1, 2017 through June 30, 2019.

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



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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 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.

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 SUPERVISION 991 PROGRAM

The district attorney supervision 991 program was created by the Oklahoma Legislature in 2013. If the offender is *not* ordered supervision by the district attorney (as described above) “the offender shall be required to pay a fee to the district attorney’s office during the first two (2) years of probation to compensate the district for the costs incurred during the prosecution of the offender and for the additional work of verifying the compliance of the offender with the rules and conditions of his or her probation”. However, the legislation provides the district attorney may waive any part of this requirement in the best interests of justice.

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For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991a (hh), 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 of July 1, 2017 through June 30, 2019.

Bogus Check Restitution, Supervision, Supervision 991 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), 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), 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, and Supervision 991 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, supervision 991 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 Pontotoc, Hughes, or Seminole 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

November 20, 2020

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SCHEDULE OF FINDINGS AND RESPONSES

Finding-2019-001 – Internal Controls Over the Bogus Check Restitution, Supervision Fees, Supervision 991, and Drug Asset Forfeiture Programs (Repeat Finding)

Condition: Upon inquiry of the District Attorney’s staff and observation of records, the following instances of the lack of segregation of duties in personnel within the District Attorney’s programs were noted:

Pontotoc County

Drug Asset Forfeiture (Drug Fund) Supervision (Bounce Back and Supervision accounts) Bogus Check (Merchant and DA Fees) Programs:

- The same employee for each account, prepared deposits, prepared and issued vouchers, maintained ledgers, and reconciled monthly to the County Treasurer.
- There was no evidence that someone other than the preparer of the monthly reconciliations independently reviewed the documentation for completeness and accuracy when compared to the County Treasurer’s records.

Seminole County

Bogus Check (Merchant) Supervision Fee (CORD 2 account) and Supervision 991 Programs:

- One employee received and entered payments, prepared and delivered deposits to the County Treasurer.
- There was no evidence that someone other than the preparer reviewed the deposits for completeness and accuracy.

Hughes County

Bogus Check (Merchant) Supervision Fee (CORD 2 account) and Supervision 991 Programs:

- One employee received and entered payments, prepared and delivered deposits to the County Treasurer.
- There was no evidence that someone other than the preparer reviewed the deposits for completeness and accuracy.

Cause of Condition: Although the District Attorney has designed policies and procedures to address segregation of duties over the program accounting processes, those procedures have not been completely implemented to 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, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

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Recommendation: The Oklahoma State Auditor and Inspector’s Office (OSAI) recommends management implement procedures to mitigate the risk associated with limited personnel performing all duties and assuming responsibility for accounting procedures over District Attorney programs. The most effective controls lie in evidence that someone other than the preparer of reports reviews and documents the review of those reports. Implementing the review process and documentation of that review in the form of signing and dating as approval of accounting functions is a key to mitigating the risk associated with limited personal performing all duties.

Management Response:

District Attorney: Segregation of duties recommendations to mitigate the risk of limited personnel performing duties and responsibilities for accounting procedures has been addressed and procedures more carefully implemented previously inasmuch as we now have two (2) separate employees people that approve and sign off on prepared deposits and vouchers.

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 the publication (GAO Standards) addresses controls in the federal government, this criterion can be treated as best practices and may be applied as 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.

Additionally, Principle 10 – Segregation of Duties 10.12 states:

10.12 – Management considers segregation of duties in designing control activity responsibilities so that incompatible duties are segregated and, where such segregation is not practical, designs alternative control activities to address the risk.

Finding 2019-006 – Internal Controls and Noncompliance Over the District Attorney Drug Fund (Drug Asset Forfeiture) Program (Repeat Finding)

Condition: The District Attorney has designed policies and procedures and implemented internal controls for the safeguarding and reporting of program funds; however, a test of the status of forfeiture case activity and seized assets indicated the following exception:

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Pontotoc County

- Hughes and Seminole Counties maintain a drug asset forfeiture inventory of seized and/or forfeited property; however, an inventory of seized and/or forfeited property was not maintained for Pontotoc County.

Cause of Condition: The District Attorney’s office policies were not adhered to for the tracking of civil forfeiture cases and the disposition of property inventory in Pontotoc County.

Effect of Condition: This condition could result in errors in the reporting of drug asset forfeiture case activity and the location or disposition of seized property and did result in noncompliance with state statute.

Recommendation: OSAI recommends that management adhere to written policies and procedures for the maintenance of files to include the following:

- Guidelines for the oversight and documentation of case file maintenance and status of forfeited and pending forfeiture inventory for Pontotoc County.

Further, OSAI recommends the District Attorney adhere to 63 O.S. § 2-506 K, concerning the maintenance of forfeited and pending forfeiture inventory for Pontotoc County.

District Attorney: The prior Investigator that is no longer employed with us, was responsible for that inventory list of seized and/or forfeited property. However, there is now a new investigator who maintains a very accurate and complete inventory list. Most of the inventory that was a part of the "Repeat Finding" has now been disposed of through auctions, sales and proper disposal of such property.

While we acknowledge 63 O.S. § 2-506 K ; however, we take issue with OSAI use of the term “custody.” The term refers to legal custody and not physical custody. We further acknowledge that Pontotoc County District Attorneys Drug and Violent Crime Task Force maintains an inventory of items that we have in our physical custody but facts of life in law enforcement and limited storage space restrict the DADTF's ability to maintain an inventory of items seized by other agencies or not in the physical custody of the District Attorneys Drug Task Force. As indicated in the last audit response we have made every effort to maintain an inventory of items seized by any agency wherein we have instituted forfeiture proceedings and accomplished the same as stated above.

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

Segregation of Duties

Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, and equipment that might be vulnerable to risk of loss or unauthorized use. Management periodically counts and compares such assets to control records.

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The GAO Standards Section 2 – Establishing an Effective Internal Control System-OV2.24 states:

Safeguarding of Assets

Management designs an internal control system to provide reasonable assurance regarding prevention or prompt detection and correction of unauthorized acquisition, use, or disposition of an entity's assets.

The GAO Standards – Section 2 – Objectives of an Entity - OV2.23 states in part:

Compliance Objectives

Management conducts activities in accordance with applicable laws and regulations. As part of specifying compliance objectives, the entity determines which laws and regulations apply to the entity. Management is expected to set objectives that incorporate these requirements

Title 63 O.S. § 2-506 K states in part, “Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section...”

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S·A·I
STATE AUDITOR & INSPECTOR



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