

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, 2011 through June 30, 2013



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

**MAX COOK, DISTRICT ATTORNEY  
DISTRICT 24**

**STATUTORY REPORT  
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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

December 26, 2014

Max Cook, District Attorney  
District 24  
Creek County Courthouse  
Sapulpa, Oklahoma 74066

Transmitted herewith is the statutory report for the District Attorney of District 24, Creek and Okfuskee County, Oklahoma (the District) for the period of July 1, 2011 through June 30, 2013.

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".

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

**MAX COOK, DISTRICT ATTORNEY  
DISTRICT 24  
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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 74066

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 of July 1, 2011 through June 30, 2013.

### 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 were supported by approved claims, invoices, and verification that goods or services paid for were 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 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.

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

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

November 3, 2014



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

**Finding 1 – Segregation of Duties – Bogus Check Restitution, Supervision, Restitution and Diversion, and DA 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 procedural process of the Property Forfeiture Program (DA Drug Fund). One employee prepares and delivers the deposits, prepares expenditures, and issues vouchers. In addition, the same employee maintains ledgers, reconciles monthly to the County Treasurer, and prepares the annual reports.

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution and Supervision Fee Programs (Account 801). One employee who receives payments also prepares expenditures and issues vouchers for the 801 account.

**Okfuskee County**

A lack of segregation of duties exists in the procedural process of the Supervision Fee and Bogus Check Restitution Programs (Accounts 6B and 6F). One employee prepares and delivers deposits, prepares expenditures, maintains ledgers, and reconciles monthly to the County Treasurer. No one other than the preparer reviews the deposits or monthly reconciliations for accuracy.

**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, 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.

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**Management Response:** Our office does not have the budget to hire a second person to assist with duties of the Drug Fund account in Creek County. In addition, our Bogus Check/Supervision office has two full-time employees. As with any small office we do our best to segregate duties. As one employee receives payments and also prepares expenditures the other employee also receives payments and prepares deposits. However, we will make an effort to implement controls to mitigate some of the deficiencies noted.

Our office has one full-time employee and one part-time employee in Okfuskee County. The lack of segregation of duties exists due to budget restraints and lack of proper staffing. However, we will make an effort to implement controls to mitigate some of the deficiencies noted.

**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 Bogus Check Restitution, Supervision Fee, and Restitution and Diversion Programs**

**Condition:** As part of our review of District Attorney accounts and records, we tested receipts, disbursements, and cash balances. 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:

***Information Technology***

- Employees are not required to log out of the system when leaving their workstation.
- Override or write-off reports are not reviewed periodically for unusual activity.
- A time out security measure has not been assigned in the system.
- IT software audit reports are not reviewed for voided, altered, or deleted receipts.
- Employees receiving payments are able to delete/void payments without prior approval.

***Bogus Check Restitution Program***

**Creek County**

- An unsecured Assistant District Attorney's facsimile stamp is used for the issuance of vouchers.

**Okfuskee County**

- Daily deposits are not performed.
- Bogus Check Restitution DA fees are under-assessed, resulting in a loss of \$60.00 for each Bogus Check case.

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- 6 of the 10 expenditures tested did not have any indication that goods and/or services had been received. (i.e., receiving reports, etc.)

*Supervision Fee Program*

Okfuskee County

- Daily deposits are not performed.
- Refund expenditures to defendants are not validated with supporting documentation.
- The fees assessed for the second year of a two year probation sentence is \$20.00, resulting in a loss of \$240.00 to the District Attorney's office.

*Restitution and Diversion Program*

Creek County

- 6 of the 10 cases tested were assessed fees higher than prescribed by statute.
- 8 of the 10 defendant files could not be located for agreement verification.

**Cause of Condition:** The District Attorney's office does not have formal policies in place establishing procedures for collections, disbursements, and financial reporting for the Bogus Check Restitution, Supervision Fee, and Restitution and Diversion accounts.

**Effect of Condition:** These conditions 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, these conditions 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. (i.e. 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.
- Guidelines for the assignment of IT software administrative rights to an individual not directly associated with the day to day accounting processes.

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- Guidelines for the administrative approval and review of IT software deletions, voids, and write-off activity.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process over time 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 Restitution:*** The District Attorney now personally signs all vouchers that are generated in the Bogus Check/Probation office for Creek County. In the absence of our District Attorney another Assistant District Attorney will sign the vouchers.

Due to short staffing a daily deposit is not always performed in Okfuskee County. The Bogus Check program software company has been contacted to correct the amounts for prosecution fees assessed and all purchase order forms will be corrected to include information for a receiving report and signature.

***Supervision Fees:*** Due to short staffing a daily deposit is not always performed in Okfuskee County. As stated above, until funding improves there is not an answer to this finding. Furthermore, our Creek County office was unaware of the incorrect fees for probation. In the future it should be a case by case decision as to whether there is a hardship or not.

**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.

Title 22 O.S. § 991f-1.1 E states in part, "Each restitution agreement shall include a provision requiring the accused person to pay to the district attorneys office a fee equal to the amount which would have been assessed as court costs upon the filing of the case in district court plus Twenty-five Dollars (\$25.00) for each criminal complaint covered by the agreement."

**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, and cash balances. 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:

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**Creek County**

- 2 of the 10 cases tested did not have a receipt issued for monies received.
- The District Attorney's office does not take possession of monies when seized by local agencies. \$389.00 could not be located at the seizing agency. We were informed the seizing agency had been investigated by the proper authorities and the investigation is currently active.

**Okfuskee County**

- 6 of the 10 expenditures tested did not have any indication that goods and/or services had been received. (i.e., receiving report, etc.)
- 1 of the 10 expenditures tested did not have an invoice attached to validate the expense.
- While reviewing expenditures, it was noted a non-county employee who administers District 24's Justice Assistant Grant (JAG) was requisitioning expenses on purchase order claims.

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

**Effect of Condition:** These conditions 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, these conditions 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 with local seizing agencies (i.e., 50/50 split, disposition of property, etc.) for the seizure of funds/property.
- Guidelines for the oversight and documentation of case file maintenance and status of forfeited inventory.
- Guidelines for the oversight of the receipting 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.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process over time 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.

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**Management Response:** The two payments referenced in the above finding were received through the mail and overlooked during the receipting process. We will correct the policy to ensure that all payments received through the mail are properly receipted in the Creek County Drug Fund.

Okfuskee County's purchase order form will be corrected to include information for a receiving report and signature. Our office requires invoices to be attached to all purchase orders to support expenditures. In the future we will make sure this oversight is not repeated.

**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 4 – Annual Reports**

**Condition:** As part of our review of District Attorney Programs, we ensure that amounts on Annual Reports reconcile with the County Treasurer's balances, and are accurately reflected in the amounts submitted to the District Attorneys Council (DAC). From our review, the following discrepancies were noted:

##### **Creek County**

- At June 30, 2013, the amounts for "collected for victims" and "paid to victims" on the Bogus Check Restitution Annual Report were overstated by including DA fees, in the amount of \$156,762.19.

##### **Okfuskee County**

- Bogus Check Restitution and Supervision fees are deposited into one account. Expenditures alternate and are reported on the Annual Report every other year for each account, resulting in inaccurate reporting for each program to the District Attorneys Council.

**Cause of Condition:** When preparing the Annual Report, program ledger balances were not reconciled to the County Treasurer's balances to ensure accuracy. In addition, Annual Reports are reviewed by no one other than the preparer to ensure amounts reported are accurate.

**Effect of Condition:** These conditions resulted in inaccurate annual reporting of expenditure, income, and account balances submitted to the District Attorney's Council (DAC) for program fund activity.

**Recommendation:** OSAI recommends that management adopt written policies and procedures for the accounting and reporting of program funds. 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:

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- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for accurate reporting of annual reports and the review process.

**Management Response:** Creek County's fiscal year 2013 Bogus Check Restitution Annual Report has been corrected and re-submitted to the District Attorneys Council.

Our office will look into Okfuskee County's Annual Report issues and will correct the manner in which amounts are reported.

**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 5 – Unclaimed Bogus Check Restitution**

**Condition:** Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2013. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled. They are as follows:

**Creek County**

- Bogus Check Merchant outstanding balances at June 30, 2013 totaling \$19,687.76 could not be identified.

**Okfuskee County**

- Bogus Check Merchant outstanding balances at June 30, 2013 totaling \$1,907.13 could not be identified.

**Cause of Condition:** The District Attorney's office does not have formal policies establishing procedures to ensure that returned or unpaid vouchers are examined to determine the current status of the merchant for the re-issuance of the restitution.

**Effect of Condition:** This condition resulted in the Restitution fund not being properly cleared.

**Recommendation:** OSAI recommends that management research and determine the location of the merchants so that restitution can be properly remitted. Management should then contact the proper agency for further direction to determine the manner in which the remaining unidentified balance should be distributed.

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**Management Response:** Creek County's current policy is to re-send cancelled vouchers to victims. In the cases where the victim cannot be located the vouchers are sent to the District Attorneys Council unclaimed restitution fund. For both Creek and Okfuskee Counties the existing balance that remains in the account was incurred in years before current staffing and is impossible to determine the circumstances from which it came. However, our office will make every effort to identify all merchants entitled to money in our possession. If we are unable to identify said merchants, the monies will be remitted to the proper agency.

**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 6 – Monies Not Deposited With the County Treasurer**

**Condition:** During our examination of District expenditures, we were informed the District has established an account at a private banking institution for contract employment with the Department of Human Services. The contract is for the part-time employment of child welfare District Attorney Investigator.

**Cause of Condition:** The District Attorney's office does not have formal policies in place establishing procedures for the accountability of new programs and services.

**Effect of Condition:** This condition could result in employee error for the reporting and documentation of payments, file maintenance, 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 and reporting of program funds. 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.
- 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.

**Management Response:** This account was opened in January 2000. The District Attorney's office was in no obligation to take care of said account but offered to do so. It has operated for said amount of years with no issues. The account is audited quarterly by the Department of Human Services. Our office will look further into moving account to the County Treasurer's office.



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**Criteria:** Accountability and stewardship are overall goals of management in the accounting of funds. A component objective of an effective internal control system is to ensure that all monies received by the District Attorney's office is deposited with the County Treasurer.

19 O.S. § 682 states in part, "It shall be the duty of each and every officer, county board, county commission and all members and employees of either thereof, to deposit daily in the official depository designated in Section 681 of this title, all monies, checks, drafts, orders, vouchers, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures and public charges of every kind received or collected by virtue or under color of office....."



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