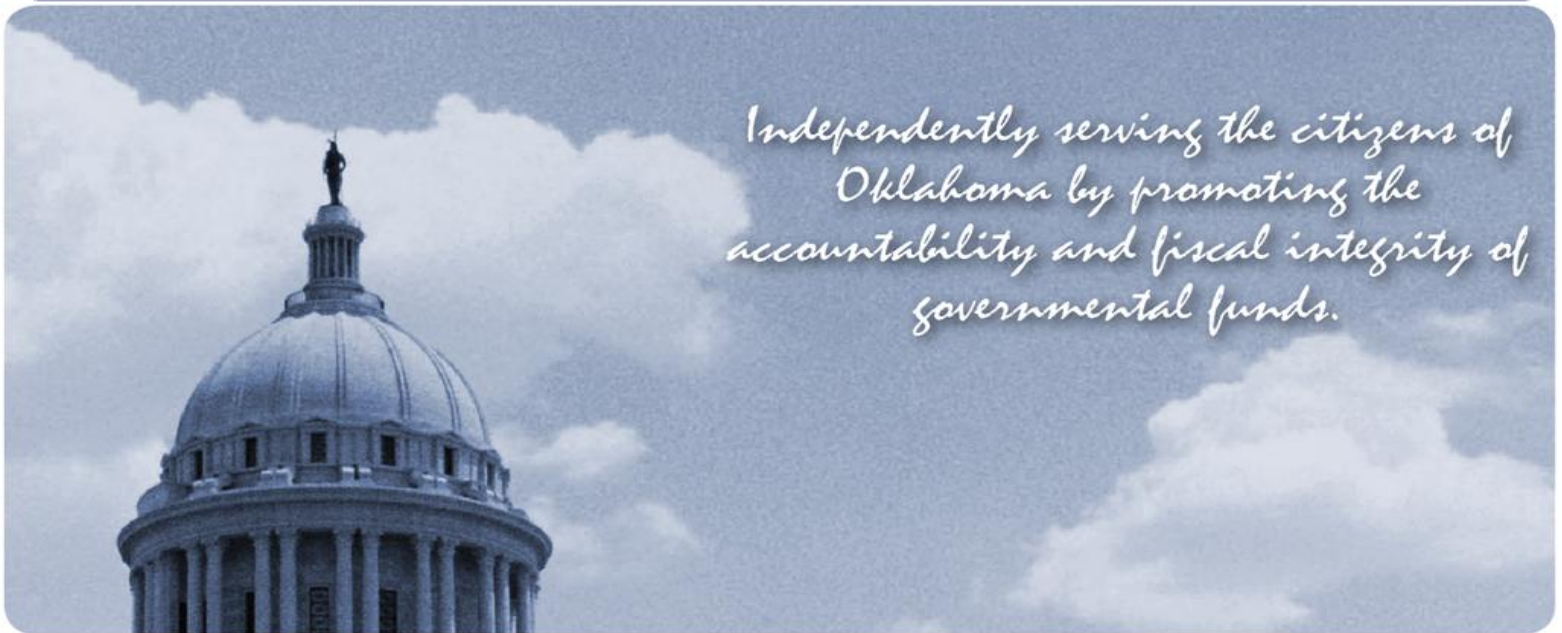


STATUTORY REPORT

**DISTRICT ATTORNEY
DISTRICT 27
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
PROPERTY FORFEITURE PROGRAM**

For the period of July 1, 2014 through June 30, 2016



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

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
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FOR THE PERIOD OF JULY 1, 2014 THROUGH JUNE 30, 2016

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

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

February 27, 2017

Brian Kuester, District Attorney
District 27
Wagoner County Courthouse
Wagoner, Oklahoma 74467

Transmitted herewith is the statutory report for the District Attorney of District 27, Cherokee, Wagoner, Sequoyah, and Adair County, Oklahoma (the District) for the period of July 1, 2014 through June 30, 2016.

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

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2014 THROUGH JUNE 30, 2016**

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**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
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FOR THE PERIOD OF JULY 1, 2014 THROUGH JUNE 30, 2016**

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

Brian Kuester, District Attorney
District 27
Wagoner County Courthouse
Wagoner, Oklahoma 74467

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, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period of July 1, 2014 through June 30, 2016.

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 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 Cherokee, Wagoner, Sequoyah, or Adair 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 that reads "Gary A. Jones". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

January 10, 2017

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2014 THROUGH JUNE 30, 2016**

SCHEDULE OF FINDINGS AND RESPONSES

Finding 1 – Inadequate Internal Control Environment - Written Policies and Procedures for Bogus Check Restitution, Supervision Fee, and Property Forfeiture Programs and Noncompliance Over Assessed Fees

Condition: As part of our review of District Attorney’s accounts and records, we tested receipts, disbursements, and cash balances. The District Attorney has established written policies and procedures and/or has designed and implemented internal controls for the safeguarding and reporting of program funds. However, deficiencies were noted in certain areas, which include the following:

Bogus Check Restitution Program

Cherokee County

- The victim fee was not correctly assessed. The victim fee should be a separate amount in addition to the fee paid to the District Attorney. This condition results in a loss of \$25.00 to the District for each bogus check case. **(Repeat Finding)**

Wagoner County

- Receipts were not issued for all Bogus Check or Victim Restitution payments that were received at Wagoner County. During our review of handwritten, duplicate receipts, several of the mailed-in payments or in-person payments were not issued receipts to ensure completeness before being delivered to Cherokee County for processing and deposit.

Supervision Fee Program

Sequoyah County

- During our review of handwritten receipts for all programs issued in the month of April 2016, it was noted that seven (7) receipt books were being simultaneously utilized in no sequential order. We traced receipts for the month to a deposit or payment log and noted instances in which 3-39 days had lapsed before payments were entered into the District’s software program and deposited for the Supervision Fee Program. **(Repeat Finding)**
- One (1) of the ten (10) Supervision cases tested was not properly assessed, resulting in a \$40.00 over assessment to the defendant.

Adair County

- Three (3) of the ten (10) Supervision Fee payments tested were not deposited in a timely manner. It was noted that 6-10 days had lapsed before the payments were deposited. **(Repeat Finding)**

Property Forfeiture Program

Cherokee County

- Receipts were not issued for seized cash to ensure completeness of the deposit.

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Cause of Condition: The District Attorney's office does not have formal policies established to ensure proper Bogus Check and Supervision fees are charged and to ensure collections are properly documented and deposited in a timely manner.

Effect of Condition: These conditions resulted in a loss to the District by not collecting the prescribed victim fee amount for Bogus Check fees and improperly charging a defendant incorrect Supervision fees. Further, these conditions could result in employee error for the reporting and documentation of the collection of payments, unrecorded transactions, and misappropriation of funds.

Recommendation: The Oklahoma State Auditor and Inspector's Office (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 the oversight of the daily collection process and the deposit of funds.
- Guidelines for the periodic review of fees to ensure the correct amount are being charged to defendants.

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:

Cherokee County - The Bogus Check Restitution fee not being correctly assessed (per DAC) has been addressed and corrected.

Wagoner County – The issue of receipts not being issued for all Bogus Check and Victim Restitution payments received has been addressed and corrected. All Bogus Check and Victim Restitution payments are now being receipted prior to being sent to Cherokee County for processing and deposit.

Supervision Fee Program:

Sequoyah County – The issue of multiple receipt books has been addressed and corrected. Only one individual will be authorized to order receipt books for the District. Books will be signed out to a specific point person in each County with an attached log (i.e., BCRP, DARP, DASF, DADF, and 991accounts) Receipt books will only be used when our software program is down or no one is available to enter payments. A backup person will be trained in each County to receive and enter payments into our software program. A point person in each County will be responsible for assigning out each receipt book as it is needed.

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The issue of untimely deposits has been addressed and corrected. The Supervision Supervisor will regularly do spot checks on the timeliness of the Supervision fee deposits.

The Supervision Case which was tested and resulted in an over-assessment of \$40.00 to defendant has been corrected.

Adair County -The issue of untimely deposits has been addressed and corrected. The Supervision Supervisor will do spot checks on the timeliness of deposits.

Property Forfeiture Program:

Cherokee County - The issue of receipts not being issued for seized cash to ensure the completeness of the deposit has been addressed and corrected. A receipt book is being maintained with the Unforfeited Fund Account deposit book and receipts will be written for each deposit made into the Unforfeited Fund Account.

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 and, and to safeguard data.

With regard to Bogus Check victim fees, Title 22 O.S. § 114 B, states in part,

“B. Each restitution agreement shall include a provision requiring the defendant to pay to the victim a Twenty –five Dollar (\$25.00) fee and to the district attorney a fee equal to the amount which would have been assessed as court costs upon filing of the case in district court plus Twenty-five Dollars (\$25.00) for each covered by the restitution agreement, provided, every check in an amount of Fifty Dollars (\$50.00) or more shall require a separate fee to be paid to the district attorney in an amount equal to the amount which would be assessed as court costs for the filing of a felony case in district court plus Twenty-five Dollars (\$25.00)....”

With regard to Supervision Fees, Title 22 O.S. §991d (2,) states,

“2. 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) per month as a fee to compensate the district attorney for the actual act of supervising the offender during the applicable period of supervision. In hardship cases, the district attorney shall expressly waive all or part of the fee.”

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Finding 2 – Inadequate Internal Controls Over the Accuracy of the Restitution and Diversion Annual Reports

Condition: As part of our review of District Attorney’s Programs, we ensured that amounts on annual reports reconciled with the County Treasurer’s balances and were accurately reflected in the amounts submitted to the District Attorney Council. From our review, the following discrepancies were noted:

- Fiscal Year 2015 - Restitution and Diversion Annual Reports were inaccurately reported to the District Attorneys Council. The District erroneously reported “Victim Restitution” account activity instead of Restitution and Diversion account activity. This resulted, in collections being overstated by \$509,746.96 and disbursements overstated by \$511,400.68.
- Fiscal Year 2016 - Restitution and Diversion Annual Reports were inaccurately reported to the District Attorneys Council. The District erroneously reported “Victim Restitution” account activity instead of Restitution and Diversion account activity. This resulted, in collections being overstated by \$432,258.04 and disbursements overstated by \$442,066.49.

Cause of Condition: Annual reports do not reflect the program’s actual collections and disbursements or account balances. Also, annual reports are reviewed by no one other than the preparer to ensure amounts reported were accurate.

Effect of Condition: These conditions resulted in inaccurate annual reporting of disbursements, income, and account balances submitted to the District Attorney’s Council 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:

- 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: Fiscal Year 2015 and Fiscal Year 2016 Restitution and Diversion Annual Reports were amended and submitted to the DAC. Policy and procedures have been implemented for proper accounting and reporting of program funds.

Criteria: Basic components of effective internal controls include an independent review of financial reports to ensure accuracy of the information. Written policies and procedures for performing essential duties should be adequately documented to ensure employees understand their responsibilities and to ensure reliability of financial reporting of the District.

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Finding 3 – Unclaimed Bogus Check Restitution (Repeat Finding)

Condition: Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2016. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled. They are as follows:

- Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2016 totaling \$5,590.63 which 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: These conditions resulted in the Bogus Check Restitution (Merchant) account not being properly cleared and victims not receiving restitution payments in a timely manner.

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.

Management Response: The Restitution Supervisor is diligently working on outstanding balances that date back years and years. The funds that cannot be allocated to a specific merchant due to the business being dissolved or to a victim that cannot be located after many attempts will be reported to the DAC and the unclaimed restitution will be sent to the Victim Compensation Fund.

Current and future restitution payments are now and will be dispersed in a timely manner.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented and communicated to employees responsible for the remittance of restitution to victims. A periodic review of the program should be performed to ensure its effectiveness and to ensure compliance with laws and regulations.



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