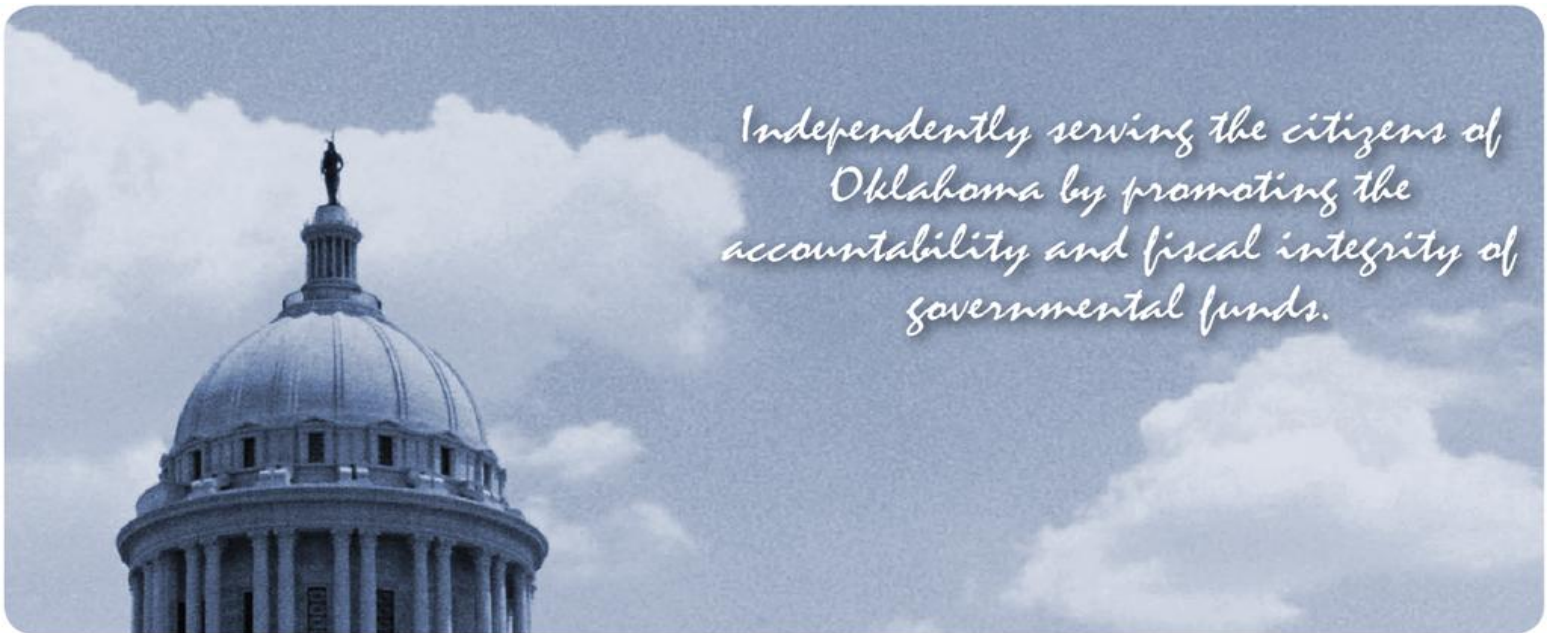


STATUTORY REPORT

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

For the period of July 1, 2012 through June 30, 2014



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



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

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
PROPERTY FORFEITURE PROGRAM**

FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014

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

May 18, 2015

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 Counties, Oklahoma (the District) for the period of July 1, 2012 through June 30, 2014.

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, 2012 THROUGH JUNE 30, 2014**

TABLE OF CONTENTS

Introductory Information ii

Statutory Report of State Auditor and Inspector 1

Schedule of Findings and Responses 3

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

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.

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

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, 2012 through June 30, 2014.

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, appearing to read "Gary A. Jones".

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

April 28, 2015

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

SCHEDULE OF FINDINGS AND RESPONSES

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

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

Information Technology

- Override or write-off reports are not reviewed periodically for unusual activity.
- IT software audit reports are not reviewed for voided, altered, or deleted receipts.
- Employees are not required to log out of the system when leaving their workstation.
- A time-out security measure has not been assigned in the system.

Bogus Check Restitution Program

Cherokee County

- District Attorney fees are 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 for each bogus check case.

Supervision Fee Program

Wagoner County

- Deposits are not made daily. We noted deposits of 5-7 days after receipts were issued for payment.

Adair County

- Deposits are not made daily. We noted deposits of 4-11 days after receipts were issued for payment.

Sequoyah County

- Deposits are not made daily. We noted deposits of 4-7 days after receipts were issued for payment.
- 1 of the 10 Supervision expenditures tested did not have an invoice attached to support the expenditure.

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

Cause of Condition: The District Attorney's office is not monitoring policies and procedures (District-Wide) for the process of collections, disbursements, and financial reporting for the Bogus Check Restitution and Supervision Fee 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: The Oklahoma State Auditor & 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 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 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.
- 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:

Information Technology –

A district-wide restructuring of both Probation and Bogus Check has recently been implemented. We have put a Supervisor in place for both divisions. The Supervisor oversees the daily operations and runs monthly reports on write-offs, voids, and overrides. The reports are then sent to the Finance Office where they are reviewed and housed.

Bogus Check Restitution Program –

Cherokee County – A breakdown of Merchant Fee, Bank Fee, District Attorney Fee and Bogus Check Fee are currently all being collected by the Bogus Check Restitution Program.

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

Supervision Fee Program –

As a result of restructuring the Probation Department, daily deposits are being completed in every county.

Guidelines are currently being revised to address the applying and remitting of restitution payments, voids, deletions, and write-offs. The oversight of daily collections and deposits are being monitored by the recently-appointed supervisor. The IT software administrative rights to an individual not directly associated with the day-to-day accounting process is being approved and monitored by the Finance Coordinator.

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 2 – 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 has written policies and procedures and has designed and implemented internal controls for the safeguarding and reporting of program funds. However, some deficiencies were noted in certain areas, which include the following:

Cherokee County

- Subsequent to an Order of Forfeiture, a firearm was returned to a defendant. A disclaimer was prepared by the District Attorney's office and never filed in court for the release of the firearm.

Cause of Condition: The District Attorney's office is not monitoring policies and procedures (District-wide) for collections, disbursements, and financial reporting for the Drug Fund (Property Forfeiture) account to ensure that internal controls are being implemented.

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 adhere to 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:

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

- Guidelines for the oversight and documentation of case file maintenance and status of forfeited inventory.
- 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.

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:

The District Attorney's Office is revising Policy and Procedures to include increased checks and balances on Asset Forfeiture specifically to cover property disclaimers. Procedure for disclaimers will now require that a "Request for Disclaimer" must be submitted. All requests will be sent to the Forfeiture clerk to check for pending forfeiture before being given to the Asst. District Attorney assigned to the case for approval. Disclaimers must now also be filed in the case.

Furthermore, additional procedures are being implemented to monitor case file management and the status of forfeited property. Oversight of case management and status of forfeited property will be conducted monthly by the Asst. District Attorney assigned to forfeitures in each of the four counties. These four attorneys will then provide case status reports to the First Asst. District Attorney.

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 3 – 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:

Cherokee County

- At June 30, 2014, total collections, total expenditures, and ending balance for the Supervision Fee Program Annual Report did not reconcile with the County Treasurer in the amounts of \$9,728.62, \$30,039.97, and \$20,311.38, respectively.

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

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 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

An appointed person in each county submits a monthly reconciliation report to the Finance Coordinator who reviews and maintains these documents to be used to complete the annual reports. As a further measure, a person other than the preparer will review the reports prior to submitting them to DAC.

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 – Unclaimed Bogus Check and RAD Restitution

Condition: Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2014. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled. They are as follows:

Cherokee County

- Bogus Check Merchant outstanding balances at 6/30/14 totaling \$7,231.00 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.

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2014**

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 recent determination that outstanding balances may be submitted to the DAC Victim Compensation fund will allow unidentified carry over from previous administrations to be deposited. The District Attorney's Office will implement procedures to deposit unclaimed restitution to that fund so the account will be properly cleared.

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.



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