

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 27

BOGUS CHECK RESTITUTION PROGRAM, SUPERVISION PROGRAM, RESTITUTION AND DIVERSION PROGRAM, PROPERTY FORFEITURE PROGRAM

For the period July 1, 2007 through June 30, 2012



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, 2007 THROUGH JUNE 30, 2012

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

June 5, 2013

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, Wagoner, Cherokee, Adair, and Sequoyah Counties, Oklahoma (the District) for the period of July 1, 2007 through June 30, 2012.

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, appearing to read "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 2007 THROUGH JUNE 30, 2012

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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

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, 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, 2007 through June 30, 2012.

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 are 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 Wagoner, Cherokee, Adair, and Sequoyah Counties.

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 8, 2013

**BRIAN KUESTER, DISTRICT ATTORNEY
DISTRICT 27
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FOR THE PERIOD OF JULY 1, 2007 THROUGH JUNE 30, 2012**

SCHEDULE OF FINDINGS AND RESPONSES

Finding-1 – Segregation of Duties – Bogus Check, Restitution and Diversion, Supervision, and DA Drug Fund (Property Forfeiture) Accounts

Condition: The following are instances of the lack of segregation of duties in personnel within District Attorney accounts:

Wagoner County

A lack of segregation of duties exists in the expenditure process of the Bogus Check Restitution Program. One employee receives and enters payments, makes daily deposits, and performs monthly reconciliations.

Cherokee County

A lack of segregation of duties exists in the expenditure process of the Property Forfeiture Program. One employee prepares vouchers, maintains account ledgers, and performs monthly reconciliations.

It was also noted that one employee receives Supervision Fee payments, prepares and delivers the deposit. Though the deposit is reviewed and verified by another employee, this practice does not adequately ensure a segregation of duties. One employee prepares vouchers, maintains account ledgers, and performs monthly reconciliations.

Adair County

A lack of segregation of duties exists in the expenditure process of the Supervision Fee Program. One employee, delivers deposits, maintains account ledgers, and performs monthly reconciliations.

Sequoyah County

A lack of segregation of duties exists in the receipts process of the Supervision Fee Program. One employee receives Supervision Fee payments and prepares the deposit. Though the deposit is reviewed and verified by another employee, this practice does not adequately ensure a segregation of duties.

Cause of Condition: Safeguards have not been implemented to ensure that designed procedures have been implemented 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: The Oklahoma State Auditor & Inspector's Office (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.

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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.

Management Response: This audit covered a five year period. Only one and a half of those five years were during the current administration. Within months of this administration beginning in 2011, new procedures were developed and implemented with a goal of ensuring a proper segregation of duties. During this audit process, it was brought to this District Attorney's attention that certain employees were not following those procedures. This issue has been corrected. Further the procedures that were developed are being amended and/or corrected to adhere to further recommendations of the State Auditor's Office.

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, Restitution and Diversion 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 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:

Wagoner, Cherokee, Adair, and Sequoyah Counties

Information Technology

- Employees are not required to log out of the system when leaving their workstation.
- An override report and write-off report are not reviewed on a regular basis.
- IT software audit logs are not reviewed for altered or deleted receipts.
- Employees receiving payments through the IT system were able to delete payments without prior approval.

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Bogus Check Restitution Program

- 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.
- The Bogus Check Restitution Program Account has not been reconciled since January 2012. Therefore, outstanding balances in merchant restitution could not be confirmed.
- Three receipts books were being utilized at one time for Bogus Check Restitution payments for the month tested in Sequoyah County.
- Receipts are not reviewed to ensure that all monies received in the District have been submitted to Wagoner County for deposit.

Restitution and Diversion Program

- District Attorney fees are not correctly assessed. \$0.00 -\$499.00 Restitution Fees are over-assessed by \$11.50. \$500.00 and greater Restitution Fees are under-assessed by \$10.50.
- The Restitution and Diversion Program Account has not been reconciled since January 2012. Therefore, outstanding balances in merchant/victim restitution could not be confirmed.

Supervision Fee Program

Wagoner County

- Daily deposits are not performed.

Of the twenty-five Supervision Fee files tested, we noted the following:

- One defendant was overcharged Supervision Fees by \$480.00.
- One defendant was undercharged Supervision Fees by \$480.00.
- One defendant was overcharged Supervision Fees by \$40.00.

Cherokee County

- Daily deposits are not performed.

Of the twenty-five Supervision Fee files tested, we noted the following:

- Two defendants were undercharged Supervision Fees by \$480.00, resulting in a total of \$960.00 of uncollected fees.

Adair County

- In the month examined, we noted that six receipts were not written for Supervision Fee payments deposited.
- Daily deposits are not performed.
- Two of nineteen expenditures tested were not properly approved.
- One of nineteen expenditure vouchers tested did not have an authorizing signature.

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Sequoyah County

- Daily deposits are not performed.

Of the twenty-five Supervision Fee files tested, we noted the following:

- Five defendants were undercharged Supervision Fees by \$480.00, resulting in a total of \$2,400.00 of uncollected fees.

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, Restitution and Diversion, and Supervision Fee Accounts.

Effect of Condition: This 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, this condition could result in loss of income, 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 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.

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: Again, this audit covered a five year period. Only one and a half of those were during the current administration. During this audit process, a report was created for the OSAI to provide certain data involving the receipt of funds in all programs that showed that receipts were being modified or deleted without prior approval. This District Attorney was not aware that an ability to delete or alter receipts existed. Once alerted, immediate action was taken that stopped the ability of all employees to delete or alter all entries involving funds received in the IT system. Policies were then developed and implemented for the correction of incorrect entries made in the system.

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Some of OSAI's recommendations with regard to policies are currently in place. Written policies to include all guidelines recommended are being developed and will be implemented.

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 – 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:

Wagoner County

- Receipts have not been written for the Unforfeited Funds Account since April 2012.
- One of twenty-five expenditures tested from the Forfeited Funds Account was not properly approved.
- Two of twenty-five expenditures tested from the Forfeited Funds Account did not have an invoice attached.

Cherokee County

- Receipts are not written for the Unforfeited Funds Account.

Adair County

- Two of the six deposits tested did not have receipts to support the monies received.
- Two instances were noted where money was seized and a case was not filed.

Sequoyah County

- Receipts are not written for monies deposited directly into the Forfeited Funds Account.

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: This 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, this condition could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

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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) 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.

Management Response: Again, this audit covered a five year period. Only one and a half of those five years were during the current administration. The majority of the policies and guidelines recommended currently exist. It was discovered during this audit that certain guidelines were not being followed. Some issues have been corrected. The remaining issues are being corrected.

Further, note that the policy with regard to seized funds that are deposited into the Unforfeited Funds Account are not counted in the District Attorney's Office but are taken by the Seizing Officer, accompanied by a clerk from the District Attorney's Office, to the County Treasurers Office. The seized funds are often sealed in an evidence envelope. The evidence envelopes are opened by the Treasurer. The funds are counted by the Treasurer, and then she enters the amount delivered to her on the deposit slip and signs it. Therefore, the funds are not actually received by the District Attorney's Office. The clerks that were not writing receipts for the seized funds were providing the Seizing Officer with a copy of the deposit slip, signed by the Treasurer, as a receipt for the funds. Further, a copy of the deposit slip was placed in the respective file to show receipt of the funds. A written receipt of the funds deposited is also now being written on all funds received.

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.

**BRIAN KUESTER, DISTRICT ATTORNEY
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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:

Wagoner County

- Victim Restitution and Diversion collections and expenditures are included on the Bogus Check Restitution Program Annual Report. Therefore, the Bogus Check Restitution Annual Report total collections and expenditures are increased by these additional funds and not a true and accurate accounting of Bogus Check activity.

Cherokee County

- FY 2008- At June 30, 2008, total expenditures and ending balance for the Drug Asset Forfeiture Annual Report did not reconcile with the County Treasurer in the amount of \$1,000.00.
- FY 2011- At June 30, 2011, the beginning balance and total collections for the Supervision Fee Annual Report did not reconcile with the County Treasurer in the amount of \$280.00.

Cause of Condition: When preparing the Annual Report, program ledger balances were not reconciled to the County Treasurer’s balances to ensure accuracy.

Effect of Condition: This could result in inaccurate annual reporting of expenditure, income, and account balances submitted to the District Attorneys 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:

- 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: Again, this audit covered a five year period. Only one and a half of those five years were during the current administration. This has been corrected.

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.



OFFICE OF THE STATE AUDITOR & INSPECTOR
2300 N. LINCOLN BOULEVARD, ROOM 100
OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV