

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 2

BOGUS CHECK RESTITUTION PROGRAM

SUPERVISION PROGRAM

RESTITUTION AND DIVERSION PROGRAM

PROPERTY FORFEITURE PROGRAM

For the period July 1, 2011 through June 30, 2013

A photograph of the Oklahoma State Capitol dome, showing its classical architecture with columns and a statue on top, set against a blue sky with white clouds.

*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

**DENNIS SMITH, DISTRICT ATTORNEY
DISTRICT 2**

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

**FOR THE PERIOD
JULY 1, 2011 THROUGH JUNE 30, 2013**



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 28, 2014

Dennis Smith, District Attorney
District 2
Custer County Courthouse
Arapaho, Oklahoma 73620

Transmitted herewith is the statutory report for the District Attorney of District Beckham, Custer, Ellis Roger Mills and Washita County, Oklahoma (the District) for the period 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, reading "Gary A. Jones", is positioned above the printed name.

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

**DENNIS SMITH, DISTRICT ATTORNEY
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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.



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Statutory Report

Dennis Smith, District Attorney
District 2
Custer County Courthouse
Arapaho, Oklahoma 73620

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 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 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 Beckham, Custer, Ellis, Roger Mills and Washita 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.



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

February 3, 2014

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SCHEDULE OF FINDINGS AND RESPONSES

Finding 2013-1 - Lack of Segregation of Duties Over Receipting and Balancing Processes (Repeat finding)

Condition: Upon inquiry of the District Attorney's employees, it was noted in Roger Mills and Ellis County, the duties of issuing receipts, balancing the cash drawer, preparing and delivering deposits to the County Treasurer, posting payments to accounts, and reconciling account balances to the County Treasurer are not adequately segregated for the Restitution and Diversion Program. Both Roger Mills County and Ellis County have one employee that performs all of these duties.

Additionally, it was noted in Custer County the duties of collecting monies, issuing receipts, and posting to the software system are not adequately segregated for the District Attorney Bogus Check, Supervision and Restitution and Diversion programs.

Cause of Condition: Policies and procedures to develop written job descriptions have not been designed and implemented to separate the key accounting functions of each office.

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: In order to mitigate the risks associated with having one employee performing all duties in Roger Mills and Ellis County, the Oklahoma State Auditor & Inspector's Office (OSAI) recommends management transfer the collection and disbursement responsibilities of the Restitution and Diversion Program to Custer County, where all other accounting functions of the District have been centralized. With regard to the Bogus Check, Supervision and Restitution and Diversion programs in Custer County, we recommend that at least one other staff member be utilized in the collection, receipting, and posting of monies so as to provide some mitigating controls in the receipting process.

Management Response:

District Attorney: We are in the process of transferring collection and disbursement responsibilities for the Restitution and Diversion Program in Ellis and Roger Mills Counties to Custer County. Due to budget restraints, we cannot hire another staff member to be utilized for entering and receipting monies we receive. We feel like the staff we have in place adequately separates the other duties of posting and depositing the monies received in our District. We utilize separate employees to open mail, enter money, and deposit money.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide

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reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-2 - Inadequate Internal Controls Over Bogus Check Restitution Program Fund, Supervision, and Restitution and Diversion Programs Monthly and Annual Reports

Condition: The Bogus Check Restitution Program Fund, Supervision, and Restitution and Diversion Programs monthly reports and annual reports submitted to the District Attorneys Council are prepared using an Excel spreadsheet to summarize the financial accounting activity of Beckham, Custer, and Washita counties. These counties use the same software system for the Restitution and Diversion program. However, Ellis and Roger Mills counties account for all restitution cases using a manual system. Therefore, these cases are not included in the annual report submitted to the District Attorney Council.

Cause of Condition: Procedures have not been designed and implemented to provide for reconciliation of the collections and disbursements in the Bounce Back system with the Custer County Treasurer for Beckham, Custer and Washita counties on a monthly basis. Procedures have not been designed and implemented to provide for reconciliation of the collections and disbursements for the Restitution and Diversion annual reports to include data for Ellis County and Roger Mills County.

Effect of Condition: These conditions resulted in inaccurate and incomplete annual reports being submitted to the District Attorney Council.

Recommendation: OSAI recommends the District Attorney implement procedures to reconcile both monthly internal reports generated through the software system and annual reports submitted to the District Attorney Council to provide assurance that accounting information is accurate and complete.

Management Response:

District Attorney: By transferring the victim Restitution and Restitution and Diversion programs from Roger Mills and Ellis Counties to Custer County, their data will be included in the annual reports submitted to the District Attorneys Council. We plan to implement a system that will allow us to reconcile the software system with the Treasurer's report on a monthly basis.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

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Finding 2013-3 - Inadequate Internal Controls Over Case Balances for the Bogus Check, Restitution and Diversion, and Supervision Programs

Condition: Upon observation and inquiry of staff, we noted the following weaknesses in accounting for the case balances for Bogus Check, Restitution and Diversion, and Supervision Programs.

- The District does not post cancelled vouchers to the defendant's case file.
- The District has not identified all fees that should be transferred from the Programs to the accounts for expenditures in the District Attorney's office.
- The District has balances in the Bogus Check and Restitution and Diversion Programs that have not been identified to a specific defendant case for reimbursement to the victim.

Cause of Condition: Written procedures have not been designed and implemented with regard to posting the cancelled vouchers and determining defendant case balances.

Effect of Condition: These conditions could result in inaccurate accounting of amounts owed to victims and amounts collected from the defendants for distribution.

Recommendation: OSAI recommends the District implement policies and procedures to ensure defendant case balances are properly identified, victim restitution is timely and accurate, and cancelled vouchers are posted to defendant case files.

Management Response:

District Attorney: Our top priority is to address the balances in the Bogus Check and Restitution and Diversion programs. We have recently reassigned an employee within our District to spend part of their time locating victims and disbursing funds that have accumulated in those accounts. The Victim Coordinator is also working to reissue the money from vouchers that were cancelled in the past. We have also been notified that we should be collecting a fee on all Restitution and Diversion (RAD) cases. Our District has worked with Bounceback to incorporate the \$1.00 fee on these cases. We are collecting the fees as payments are made to our office.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-5 - Inadequate Internal Controls Over Restitution and Diversion Program Collections

Condition: Upon inquiry and observation of the Restitution and Diversion Program deposits, we determined that restitution was not paid to the victims on a monthly basis, nor were the District Attorney

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fees transferred to the DA Expense Account in Custer County for Roger Mills and Ellis Counties. Several payments collected by the District Attorney office, were not made to vendors for over a year.

Cause of Condition: Procedures have not been developed to provide assurance that restitution funds collected are disbursed on a timely basis, and that fees are transferred to the Custer County District Attorney Expense Account in a timely manner.

Effect of Condition: This condition resulted in restitution payments not being remitted to victims in a timely manner. Further, when transfer of fees and restitution payments are not made in a timely manner, misappropriations of assets are more likely to occur.

Recommendation: OSAI recommends that funds deposited for restitution and fees be disbursed at the end of each month to provide accountability over the disbursement of those funds.

Management Response:

District Attorney: It is our practice to disburse funds at the end of each month. Fees received from Roger Mills and Ellis counties were deposited into the Supervision Account as they were received. We have opened a new account with the County Treasurer for fiscal year 2014; this is designated for Restitution and RAD fees. The reason payments were not made to the vendor for more than a year, is because the vendor could not be located. We plan to disburse these funds to the victims' compensation funds within the next year.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-6 - Inadequate Internal Controls Over Bogus Check Restitution Program Balances (Repeat Finding)

Condition: The District's Bogus Check Restitution Program was centralized in Custer County in 2005. Balances for all counties in the District were not reconciled to case file balances at that time. The beginning balance at July 1, 2011, was \$12,414.91 and the ending balance at June 30, 2013, increased to \$13,750.28. The balance as reported has not been reconciled to the case file balances in the software system.

Cause of Condition: Procedures have not been developed to ensure balances were confirmed before converting the accounts into a centralized location and to validate case balances and reporting at the end of the fiscal year.

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Effect of Condition: The balances have not been identified to cases and have not been disbursed to authorized agencies or individuals.

Recommendation: OSAI recommends the District Attorney research and determine the identity of the victims so restitution can be made. The District Attorney's staff should then contact the Unclaimed Property Division of the State Treasurer's Office for further direction, to determine the manner in which the remaining unidentified balance should be distributed.

Management Response:

District Attorney: Our office plans to begin researching our case files in order to properly disburse these funds. It is our belief that the majority of the funds are a result of cancelled vouchers not being re-entered in the software system. We plan to research these cases in order to contact these merchants and obtain current addresses for them, so their restitution can be mailed.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-7 - Inadequate Internal Controls and Noncompliance Over Restitution and Diversion Fees

Condition: Upon inquiry and observation of the collection and disbursement of fees, we determined that the District did not collect the fee allowable under statute for collection of restitution and acting as a clearing house for the collection and disbursement of restitution payments.

Cause of Condition: Policies and procedures have not been developed to collect fees as allowed by statute.

Effect of Condition: The District has not collected fees that could be used to defray the cost of the program.

Recommendation: OSAI recommends the office begin collecting the fee each time a payment is made for Restitution and Diversion cases.

Management Response:

District Attorney: We were unaware that we could charge a fee on Restitution and Diversion cases. As addressed in Finding 2013-3, we have worked with software system to enable us to collect the \$1.00 fee on all payments made to RAD cases.

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Criteria: Oklahoma statutes, Title 22 O.S. § 991f.4 provides “The district attorney shall be authorized to act as a clearing house for collection and disbursement of restitution payments made pursuant to this section, and shall assess a fee of One Dollar (\$1.00) per payment received from the defendant, except when the defendant is sentenced to incarceration in the Department of Corrections.”



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