

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 9

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

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



*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

**TOM LEE, DISTRICT ATTORNEY
DISTRICT 9**

**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

January 15, 2013

Tom Lee, District Attorney
District 9
Payne County Courthouse
Stillwater, Oklahoma 74074

Transmitted herewith is the statutory report for the District Attorney of District 9, Payne and Logan 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

**TOM LEE, 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.



Oklahoma State Auditor & Inspector

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Statutory Report

Tom Lee, District Attorney
District 9
Payne County Courthouse
Stillwater, Oklahoma 74074

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, 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 Payne or Logan 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

December 3, 2012

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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 separation of duties in personnel within District Attorney accounts:

Payne County

A lack of segregation of duties exists in the expenditure process of the Bogus Check Restitution Program, Supervision Fees, and Restitution and Diversion Programs. One employee prepares expenditure claims and vouchers, maintains account ledgers and performs monthly reconciliations. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled. In addition, the same employee delivers the daily deposit to the County Treasurer.

It was also noted that one employee issues receipts, prepares and delivers the deposit, prepares expenditure claims and vouchers, and performs monthly reconciliations for the Drug Fund Account. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled.

Logan County

A lack of segregation of duties exists in the payments of collections and deposits in the Bogus Check Restitution Program, Supervision Fees, and the Property Forfeiture Programs. One employee who receipts funds also balances the receipts to daily deposits, posts payments to individual accounts, and delivers the deposits to the County Treasurer's office. The Property Forfeiture Account is also reconciled monthly by the same individual who performs these duties.

Cause of Condition: Procedures have not been designed to properly separate key accounting functions.

Effect of Condition: A single person having responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: OSAI recommends management be aware of these conditions and realize that concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's overseeing of office operations and a periodic review of operations. OSAI recommends management provide segregation of duties so that no one employee is able to perform all accounting functions. In the event that segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of duties. Compensating controls would include separating key processes and /or critical functions of the office, and having management review and approval of accounting functions.

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Management Response: The office of District Attorney, District 9, has prepared and instituted an Accounting Policies and Procedures Handbook and distributed a copy to all employees. There is now a segregation of duties in place so that no one employee is performing all accounting functions.

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 District Attorney Programs

Condition: As part of our review of District Attorney accounts and records, we tested receipts, disbursements, cash balances, and reporting of funds to the District Attorney's Council (DAC). 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:

Payne and Logan 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.
- A time out security measure has not been assigned in the system.
- IT system audit logs are not reviewed for altered or deleted receipts.

Payne County

Bogus Check Restitution Program

- FY10 – At June 30, 2010, the total collections and expenditures for the Bogus Check Restitution Fee Annual Report did not reconcile with the County Treasurer in the amounts of \$403.35 and \$303.11, respectively.
- FY11 – At June 30, 2011, the total collections and expenditures for the Bogus Check Restitution Fee Annual Report did not reconcile with the County Treasurer in the amount of \$2,232.48.
- FY12 – At June 30, 2012, the total collections and expenditures for the Bogus Check Restitution Fee Annual report did not reconcile with the County Treasurer in the amount of \$67,933.97.

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- Five of the twenty expenditures tested did not have receiving reports attached with supporting documentation to verify that goods and/or services had been received. (Bogus Check Restitution Fee Account)

Supervision Fee Program

- FY10 – At June 30, 2010, the total collections and expenditures for the Supervision Fee Annual Report did not reconcile with the County Treasurer in the amount of \$35,401.91.
- One of the twenty-five expenditures tested did not have an invoice attached to support the expenditure.
- One of the twenty-five expenditures tested did not have a receiving report attached to supporting documentation to verify that goods and/or services had been received.

Restitution and Diversion Program (RAD)

- FY12 – At June 30, 2012, the total collections and expenditures for the Restitution and Diversion Annual Report did not reconcile with the County Treasurer in the amount of \$1,287.17.
- FY08 – Restitution and Diversion monthly accounting ledgers could not be located. Therefore, this information could not be audited.
- Two of the fourteen RAD files tested did not have District Attorney fees charged to the defendant's case.

Logan County

Bogus Check Restitution Program

- FY11 – At June 30, 2012, the total collections and expenditures for the Bogus Check Restitution Annual Report did not reconcile with the County Treasurer in the amount of \$29,782.79.
- Prior to February 2011, Bogus Check payments were not deposited daily and receipts were not written for all payments received.

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 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 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., 50/50 split, merchants/victims are paid restitution before District Attorney fees are collected, etc.).
- Guidelines for the disposition of monies in an account when a merchant cannot be located.
- Guidelines for the oversight of the daily collection process and the deposit of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.
- Guidelines for the accurate reporting of annual reports and the review process.

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, District 9's implementation of Policies and Procedures addresses the issues herein. Victims and merchants shall be paid restitution before District Attorney fees are paid.

There is now a segregation of duties with receipt of payments, entry of payments, reconciliation and deposits, and payments to victims and merchants.

The Bogus Check Coordinator shall immediately make the necessary changes in the accounting software to accurately reconcile account balances, account expenditures, and annual reports.

All employees shall lock their computers when he or she leaves their work station. The Bogus Check Supervisor shall, with the assistance of the IT system, institute a time out security measure on the District's computers and shall review the IT system audit logs for altered or deleted receipts on a monthly basis and report the review to the 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.

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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, cash balances, and reporting of funds to the District Attorneys Council (DAC). 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:

Payne County

- FY11 - At June 30, 2011, the total expenditures and ending balance for the Drug Asset Forfeiture Annual Report did not reconcile with the County Treasurer in the amount of \$1,567.50.
- FY12 - At June 30, 2012, the beginning balance, total expenditures and ending balance for the Drug Asset Forfeiture Annual Report did not reconcile with the County Treasurer in the amounts of \$1567.50, \$612.98, and \$966.49, respectively.
- \$1,100.00 in seized and forfeited cash could not be found at the local seizing agency's evidence room, which had originally requested the forfeiture and failed to deliver it to the District Attorney's office for deposit.
- A few instances were noted where the original "voided" receipt for money received was not maintained with its duplicate copy.

Logan County

- FY09 and FY10 – Annual Reports for the FY09 and FY10 Drug Assets Forfeiture Accounts were not prepared and submitted to the District Attorney's Council as required by statute.
- FY11 – At June 30, 2011, the beginning balance, collections and ending balance for the Drug Asset Forfeiture Annual Report did not reconcile with the County Treasurer in the amounts of \$1,907.31, \$1,050.27, and \$2,993.58, respectively.
- FY12 – At June 30, 2012, the beginning balance, collections and ending balance for the Drug Assets Forfeiture Annual Report did not reconcile with the County Treasurer in the amounts of \$786.27, \$1,440.00, and \$814.27, respectively.
- Pre-numbered duplicate receipts are not maintained for the District Attorney Drug Seizure Account.

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- Deposits are not made daily. One instance was noted where monies received were not deposited for three months. Another instance was noted where an Oklahoma Highway Patrol check written to the District Attorney for his share of the forfeiture proceeds was re-issued to Logan County due to the check not being deposited before the 90 day expiration.
- \$526.75 in seized and forfeited cash could not be found at the local seizing agency's evidence room, which had originally requested the forfeiture and failed to deliver it to the District Attorney's office for deposit.
- Five of the six expenditures tested did not have receiving reports attached with support documents to verify that goods and/or services had been received.

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 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.

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 for the oversight of the receipting process and the depositing of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.
- Guidelines for accurate reporting of financial reports and the review process.

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: Written policies and procedures are now in place dictating what civil forfeitures will be sought. No U.S. currency will be forfeited until and unless said currency is in the possession of the District Attorney's office and deposited with the County Treasurer.

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The seizing law enforcement agency shall deliver the currency to the District Attorney's office and shall be counted by the law enforcement agencies representative. A photocopy shall be made of the currency. The law enforcement representative and the District Attorney's representative shall take the currency to the County Treasurer for deposit. Copies of the currency, the District Attorney's receipt, and the County Treasurer's receipt shall be distributed to the law enforcement agency, and to the District Attorney's civil and criminal file.

Upon a court order of distribution of funds, the funds shall be paid immediately to the law enforcement agency and to the District Attorney.

Any necessary changes shall be made immediately to the accounting software to accurately reconcile account balances, account expenditures, and annual reports.

Within the District Attorney's Office, there shall be a segregation of duties in said process of receiving the currency and the distribution of the currency as set forth in the attached Policy and Procedure Guidelines.

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 – Assessed Supervision Fees

Condition: As part of our review of District Attorney Supervision Fee Program's, we tested individual defendant payments to ensure that correct fees were assessed according to court ordered judgments. While performing this review, we noted the following:

Payne County

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

- One defendant was undercharged Supervision fees by \$100.00.
- One defendant was undercharged Supervision fees by \$240.00.
- One defendant was overcharged Supervision fees by \$260.00.
- One defendant was overcharged Supervision fees by \$140.00.

In addition, our office noted "Supervision Adjustment Forms", where a defendant's supervision period was erroneously input and had overpaid Supervision fees during his probation period. In one instance, the defendant was reimbursed \$520.00 for overpayment.

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Cause of Condition: The District Attorney's office does not have formal policies in place establishing procedures for the accurate input of new Supervision deferred judgments into the office's tracking software.

Effect of Condition: This could result in inaccurate financial reporting where supervisions fees are not properly reflected, a loss of funds to the District Attorney's office, and the liability of improper payments by a defendant.

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 for the oversight of supervision file maintenance.
- Guidelines for the accurate input of the supervision period as ordered by the court.

Management Response: All Assistant District Attorneys shall be responsible for submitting to the Supervision Division the correct term of defendant supervision. Should there be a difference in the information provided by the Assistant District Attorney and the Court's minute, it shall be the responsibility of the Assistant District Attorney to rectify said discrepancy. The supervisor of the Supervision Division in each county shall be responsible for the accurate input of supervision payments with a special emphasis on underpaid and overpaid fees.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Finding 5 – Unclaimed Bogus Check Restitution

Condition: At June 30, 2012, an amount totaling \$10,353.97 in merchant restitution was held in the District Attorney's Bogus Check Restitution Fund. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled.

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 results in the Restitution Fund not being properly cleared.

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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 District 9 Accounting Policies and Procedures Guidelines directs that the Bogus Check Supervisor make every effort to locate victims entitled to Bogus Check Restitution the office has collected. Further, in all cases involving unclaimed Bogus Check Restitution said Supervisor shall consult with the proper agency on the distribution of said unclaimed restitution.

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 AND INSPECTOR

2300 N. LINCOLN BOULEVARD, ROOM 100

OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV