



Nicole R. Galloway, CPA
Missouri State Auditor

Eleventh Judicial Circuit

City of Foristell Municipal Division

December 2015
Report No. 2015-131



<http://auditor.mo.gov>



Nicole R. Galloway, CPA
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of Foristell Municipal Court

| | |
|------------------------------------|---|
| Background | The Foristell Municipal Court audit was completed as part of the Municipal Courts Initiative of the State Auditor's Office. The Municipal Courts Initiative adds additional areas of review to the standard court audit process. In addition to reviewing financial transactions, accounting practices, and compliance with court rules and state law, auditors also reviewed statistical information, tickets and other penalties, to identify activities and other practices that may impair impartiality or damage the court's credibility with citizens. |
| Accounting Controls and Procedures | Court personnel lack adequate procedures to record collections of fines, court costs, and bonds timely and do not transmit bond collections for deposit in a timely manner. Accurate bank reconciliations are not prepared, a list of liabilities is not reconciled to the cash balance, and unreconciled differences in accounting records are not properly investigated and resolved. Additionally, the court lacks a formal administrative plan to collect money owed to the court and does not adequately monitor accrued costs. |
| Municipal Division Procedures | The court failed to detect numerous errors in monthly reports of court activity submitted to the Office of State Court Administrator. Tickets processed by the court and plea agreements signed by defendants do not always reflect approval by the prosecuting attorney. The court assesses two potentially improper fees related to a person's failure to appear in court for a traffic violation that may not be authorized by state law. The court also did not have adequate procedures to ensure accurate calculations of revenue from traffic violations, causing an initial calculation that underreported revenue by more than \$77,000. |

In the areas audited, the overall performance of this entity was **Good**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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NICOLE R. GALLOWAY, CPA
Missouri State Auditor

Presiding Judge
Eleventh Judicial Circuit
and
Municipal Judge
and
Honorable Mayor
and
Members of the Board of Aldermen
Foristell, Missouri

We have audited certain operations of the City of Foristell Municipal Division of the Eleventh Judicial Circuit in fulfillment of our duties under Chapter 29, RSMo, and as part of the State Auditor's Municipal Courts Initiative. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2014. The objectives of our audit were to:

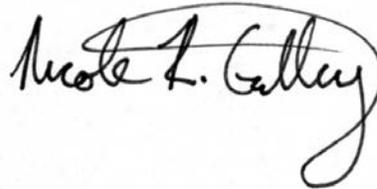
1. Evaluate the municipal division's internal controls over significant financial functions.
2. Evaluate the municipal division's and city's compliance with certain legal provisions.
3. Evaluate the municipal division's compliance with certain court rules.
4. Evaluate the city's compliance with Section 302.341.2, RSMo, which restricted the amount of fines and court costs that may be retained from traffic violations.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the municipal division, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We tested certain of those controls to obtain evidence regarding the effectiveness of their design and operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the municipal division's management and was not subjected to the procedures applied in our audit of the division.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, (3) noncompliance with court rules, and (4) no noncompliance with Section 302.341.2, RSMo. The accompanying Management Advisory Report presents our findings arising from our audit of the City of Foristell Municipal Division of the Eleventh Judicial Circuit.

A handwritten signature in black ink that reads "Nicole R. Galloway". The signature is written in a cursive style with a large, looping flourish at the end of the word "Galloway".

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

| | |
|-----------------------|------------------------------------|
| Deputy State Auditor: | John Luetkemeyer, CPA |
| Director of Audits: | Douglas J. Porting, CPA, CFE |
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| In-Charge Auditor: | Heather R. Stiles, MBA, CPA, CFE |
| Audit Staff: | Sara L. Lewis, CPA |

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City of Foristell Municipal Division

Management Advisory Report - State Auditor's Findings

1. Accounting Controls and Procedures

Accounting controls and procedures need improvement. For the year ended December 31, 2014, the municipal division collected approximately \$551,000 in fines and court costs and approximately \$131,500 in bonds.

Court personnel are responsible for receipting all monies received for fines and court costs and transmitting these collections to the City Treasurer for deposit into the municipal court account. Police department personnel transmit bond monies to the municipal division to be recorded in the court's case management system. Court personnel transmit these monies to the City Treasurer for deposit into the city's bond account.

1.1 Receipting and transmitting

The municipal division does not have adequate receipting and transmitting procedures in place.

- Court personnel do not receipt bond monies into the case management system timely or transmit them to the City Treasurer for deposit timely. The police department transmits bond monies daily to the municipal division. However, the municipal division only receipts these monies into the case management system and transmits them to the City Treasurer approximately twice per week. For example, the police department transmitted \$760 cash collected for 4 bonds to the municipal division on July 15, 2014. However, the court did not record these bond monies in the case management system or transmit them to the City Treasurer until July 18, 2014.
- Court personnel do not timely record electronic payments received into the case management system. The court uses a vendor to process electronic payments (credit/debit cards) on behalf of the court. The vendor notifies the Court Administrator of each payment made by a defendant and direct deposits the payment into the municipal division's bank account. Weekly, the Court Clerk records these electronic payments into the case management system. However, neither the city nor municipal division personnel reconcile the electronic payments recorded in case management system to amounts direct deposited into municipal court bank account to ensure all electronic payments have been processed properly. We noted a \$253 electronic payment processed on December 24, 2014, and direct deposited to the municipal division's bank account on December 29, 2014, was not recorded in the case management system until January 9, 2015.

To adequately safeguard receipts and reduce the risk of loss or misuse of funds, receipts should be promptly be recorded in the case management system and bond monies should be transmitted timely to the City Treasurer. Additionally, reconciliation procedures should be developed to ensure all electronic payments have been accounted for properly.



1.2 Reconciliations

The City Treasurer does not prepare accurate bank reconciliations for the municipal court account. In addition, a monthly listing of liabilities is not reconciled to the cash balance.

Our review of the December 2014 bank reconciliation noted a \$963 adjustment was made to the accounting records to decrease the bank balance in order to reconcile to the book balance. In addition, the reconciled bank balance at December 31, 2014, exceeded identified liabilities by \$253.

According to the City Treasurer, unreconciled differences occur each month due to timing differences between when electronic payments are posted in the case management system and the related deposits are made to the municipal court account. Often electronic payments are credited to the bank account before the court posts them in the system. Rather than following up on the unreconciled differences, the City Treasurer makes an adjusting entry to accounting records to agree the book balance to the bank balance. After further review of the \$963 adjustment, we determined that \$849 was related to electronic payments deposited into the municipal court account in December 2014, but not recorded in the case management system until January 2015. Another \$100 of the adjustment was due to a data entry error in the city's financial accounting records and the remaining \$14 related to an outstanding check erroneously marked cleared in the December 2014 bank reconciliation.

Adequate and accurate bank reconciliations are necessary to ensure all receipts and disbursements are accounted for properly. Without a regular comparison of liabilities to the reconciled cash balance, there is less likelihood errors will be identified and the ability to resolve errors is diminished. Differences must be adequately investigated and explained and the practice of making unsupported adjustments to the cash balance should be discontinued.

1.3 Accrued costs

The court has not established a formal administrative plan for the collection of court debt and does not adequately monitor accrued costs, including fines and court costs, incarceration costs, and court-ordered restitution.

The court accepts partial payments from defendants; however, formal payment plans are not documented, signed by the defendant, or approved by the Municipal Judge and no minimum payment is required monthly. The municipal division does not maintain a listing of accrued costs and cannot produce a complete list of accrued costs from the case management system.

Proper and timely monitoring of receivables is necessary to help ensure unpaid amounts are collected and proper follow-up action is taken for non-payment. Proper monitoring is necessary to provide information to the Municipal Judge and determine appropriate handling when amounts are



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deemed uncollectible. In addition, payment agreements signed by the defendant and approved by the Municipal Judge formalize the liability to the municipal division and could aid in the collection of amounts due.

Recommendations

The City of Foristell Municipal Division:

- 1.1 Record all monies received into the court management system timely and ensure bond monies are transmitted timely to the City Treasurer. In addition, the municipal division should work with the city to ensure electronic payments are reconciled to deposits in the municipal court account and promptly investigate any differences.
- 1.2 Ensure bank reconciliations are properly performed and monthly lists of liabilities are reconciled to the cash balances. Any discrepancies between accounting records and reconciliations should be investigated and resolved. In addition, the city should discontinue the practice of making unsupported adjustments to accounting records.
- 1.3 Establish procedures to monitor accrued costs and obtain signed payment plans approved by the Municipal Judge from all defendants.

Auditee's Response

The City of Foristell Municipal Division provided the following responses:

- 1.1 *Bonds that arrive by mail or from the police department are now receipted and transmitted to the city to be deposited on the day they are received.*

Electronic credit and debit payments are noted in the comments section of the system as soon as the email notification is received from CourtMoney and are receipted in one batch (separate from daily cash and money order payments) every Friday at the request of the Finance Department. We are working closely with the City Treasurer to account for each payment and are using transaction records in the CourtMoney system to ensure payments are properly credited.
- 1.2 *To reduce the risk of loss or misuse of funds, all electronic payments are now reconciled each month by the City Treasurer. Reports are pulled from the CourtMoney website and reconciled to the control ledger report from the municipal division and the monthly bank statements. Any discrepancies due to timing differences are clearly documented and followed up on the following month to ensure all payments have been properly accounted for.*



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1.3 *The municipal division will work with the software vendor to develop a report which includes all cases and accrued costs owed to the court to assist in monitoring these costs. The court will consider implementation of documented payment plans for all defendants. However, informal payment plans are already in place.*

2. Municipal Division Procedures

Procedures related to monthly reporting, Prosecuting Attorney approval, fee assessments, and monitoring of excess revenues need improvement.

2.1 Monthly reports

The Court Administrator did not submit accurate monthly reports of municipal division activity to the Office of State Courts Administrator (OSCA).

The Court Administrator generates the monthly Municipal Division Summary Reporting Form from the computerized case management system. This monthly report is submitted to the OSCA.

Our review of these monthly reports identified numerous differences between how amounts were actually distributed and how the case management system reported these distributions. The Court Administrator had not adequately reviewed these reports or identified the errors. The table below presents actual amounts distributed versus distribution amounts reported on the December 2014 Municipal Division Summary Reporting Form:

| Distributions | Actual | Reported | Over/ (Under) Reported |
|--------------------------|-----------|----------|------------------------------|
| Fines | \$ 22,713 | 21,348 | (1,365) |
| Court costs | 1,771 | 1,760 | (11) |
| Various court surcharges | 2,645 | 2,631 | (14) |
| Warrant fees | 600 | 2,700 | 2,100 |
| Letter fees | 25 | 25 | 0 |
| Bond Forfeitures | 1,042 | 1,042 | 0 |
| DWI Recoupment | 385 | 717 | 332 |
| Total | \$ 29,181 | 30,223 | 1,042 |

Most differences occurred because the case management system uses a different method to apply partial payments in the system than used by municipal division personnel to report partial payments on monthly cash control ledgers. The case management system applies partial payments to fines first and court costs and other fees second, while municipal division personnel apply partial payments to court costs first and fines and other fees second on the cash control ledgers. Additionally, the monthly reports



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overstate disbursements because they include bond forfeitures in both the fines category as well as the bond forfeiture category.

Missouri Supreme Court Operating Rules 4.28 and 4.29 and OSCA instructions require monthly reports of cases filed and fines and court costs disbursed to be submitted to the OSCA and the city. Reports are to be submitted by the 15th of the month following the reporting month and include all activities that have occurred since the last report. To ensure accurate information is reported to the OSCA, the municipal division should establish procedures to generate accurate monthly Municipal Division Summary Reporting Forms. Such procedures should include ensuring monthly reports include all activities of the entire month and reconciling reported amounts to municipal division records.

2.2 Prosecutor approval

The Prosecuting Attorney does not always sign tickets processed by the municipal division and the Prosecuting Attorney's approval of amended tickets is not clearly documented.

Our review of 60 tickets noted the Prosecuting Attorney's signature to file charges was not present on 58 of them.

The Prosecuting Attorney does not always document his review or sign the plea agreements prepared by municipal division personnel and signed by the defendants. For the 60 tickets reviewed, 5 of 25 plea agreements to amend charges were not signed or initialed by the Prosecuting Attorney. Municipal division personnel have been given verbal authorization from the Prosecuting Attorney to amend certain traffic violations if the defendant is able to provide proof of compliance; however, this authorization has not been formally documented. In addition, there is no indication charges amended by the municipal division personnel were later reviewed by the Prosecuting Attorney to ensure their propriety.

The ability of municipal division personnel to amend tickets without a review by the Prosecuting Attorney is a significant control weakness, and increases the likelihood of tickets being handled improperly and the risk of loss, theft, or misuse of monies going undetected. Missouri Supreme Court Rule 37.35 states citations shall be in writing and signed by the prosecutor and filed with the municipal division. The Prosecuting Attorney's review, documented with his signature, is needed to provide assurance proper cases and charges are filed with the municipal division. Additionally, to ensure the proper disposition of all cases has been entered in the municipal division records, the Prosecuting Attorney should sign or initial all amended tickets indicating his review and approval.

2.3 Failure to appear and warrant fees

The municipal division assesses a potentially improper \$100 failure to appear (FTA) fee when a defendant misses a required court appearance for a



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traffic violation (infraction). The municipal division assesses the FTA fee on the original traffic violation and does not charge the defendant with a separate infraction for the failure to appear. The municipal division also assesses a potentially improper \$100 warrant fee for each warrant issued for failure to appear in court and/or pay amounts due. According to municipal division records, FTA fees and warrant fees collected totaled approximately \$46,900 and \$18,800, respectively, for the year ended December 31, 2014.

Section 544.665.2(4), RSMo, states that failure to appear is an infraction if the criminal matter for which the person was released includes only the violation of a municipal ordinance, provided that the sentence imposed shall not exceed the maximum fine that could be imposed for the municipal ordinance for which the accused was arrested. Although current state law allows for the issuance of a separate violation for failure to appear, there is no statutory provision authorizing the municipal division to assess the FTA fee to the original traffic violation. In addition, per Section 479.260, RSMo, a municipality may by ordinance provide for court fees pursuant to sections 488.010 to 488.020, RSMo; however, these sections do not include any provisions that authorize the municipal division to assess the warrant fee.

2.4 Monitoring of excess revenue

The municipal division did not have adequate procedures in place to ensure the accuracy of traffic violation revenue used in the calculation of excess revenues due to the Department of Revenue (DOR). The city calculated excess revenues due to the DOR for the year ended December 31, 2014, and submitted its report to the State Auditor's Office (SAO) on June 8, 2015. While the final amount reported was accurate, traffic violation revenues would have been understated had we not pointed out procedural issues while we were onsite at the time the city was preparing its calculations.

The municipal division tracks the amount of fines collected for traffic violations, including amended charges from traffic violations, on manual cash control ledgers. The municipal division's initial calculation of traffic violation revenues for the year ended December 31, 2014, totaled \$293,125. However, based upon our preliminary review of this calculation before the city filed its report, we noted the municipal division did not include fines collected for certain traffic violation offenses (seatbelt and financial responsibility) or court costs and other fees retained by the city that are not designated by statute for a specific purpose.

The municipal division revised the traffic violation revenue amount, based on our observations, to include the previously excluded amounts. The revision increased reported traffic violation revenue by \$77,623, to the correct amount of \$370,748.

Section 302.341.2, RSMo (as it existed from August 28, 2013 to August 27, 2015), required cities to provide an accounting of the percent of annual general operating revenue from fines and court costs for traffic violations in



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its annual financial report submitted to the SAO (as required by Section 105.145, RSMo), and required cities to remit any such revenues in excess of 30 percent of annual general operating revenue to the DOR. Section 302.341.2, RSMo, further provided that a city that was noncompliant with the law was subject to immediate loss of jurisdiction of the city's municipal court on all traffic-related charges until all requirements of the section were satisfied. Under 12 CSR 10-44.100 (as it existed prior to September 11, 2015), payment was to be made by the last day of the second month immediately following the end of the fiscal year.

During the 2015 legislative session the General Assembly passed and the Governor signed into law Senate Bill 5 (SB 5), which became effective August 28, 2015. SB 5, among other things, changes the definitions of elements of the excess revenue calculation and reduces the amounts of traffic revenues the city may retain in the future. SB5 also establishes sanctions for failure to file annual excess revenue information with the SAO, including authorizing the DOR to redirect certain revenues due to the city and possible loss of municipal court jurisdiction until such filings are made.

Due to the impact of SB 5 on operations of the municipal court as well as the city's reporting requirements, it is important the city and its municipal division take immediate action to implement policies and procedures to ensure future compliance with state law.

Recommendations

The City of Foristell Municipal Division:

- 2.1 Establish procedures to ensure the accuracy of monthly Municipal Division Summary Reporting Forms and reconcile amounts reported to municipal division records.
- 2.2 Ensure the Prosecuting Attorney signs all tickets and reviews and approves all amended tickets.
- 2.3 Work with the city and legal counsel to reevaluate the FTA fee and warrant fee and the authority to assess the fees.
- 2.4 Work with the city to ensure the accuracy of annual excess revenue calculations and include appropriate revenues from fines and court costs in the calculation.

Auditee's Response

The City of Foristell Municipal Division provided the following responses:

- 2.1 *The Municipal Division will revise monthly reporting forms to ensure accurate distribution information is reported in the future.*



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- 2.2 *The Prosecuting Attorney indicated he has already implemented. He is signing all tickets and approving all amended tickets.*
- 2.3 *The Municipal Division is no longer assessing FTA and warrant fees. The Municipal Judge will waive these previously assessed fees on open cases.*
- 2.4 *The Municipal Division is working on procedures to ensure traffic revenues used in the annual excess revenue calculation are reported correctly under SB 5.*

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City of Foristell Municipal Division

Organization and Statistical Information

The City of Foristell Municipal Division is in the Eleventh Judicial Circuit, which consists of St. Charles County. The Honorable Rick Zerr serves as Presiding Judge.

The municipal division is governed by Chapter 479, RSMo, and by Supreme Court Rule No. 37. Supreme Court Rule No. 37.49 provides that each municipal division may establish a violation bureau in which fines and court costs are collected at times other than during court and transmitted to the city treasury. The municipal division does not utilize OSCA's statewide automated case management known as JIS. Instead, the municipal division utilizes Computerized Court System, an automated case management system provided by Delores McCombs & Associates, which has been approved for use in the municipal division by the State Judicial Records Committee.

Personnel

At December 31, 2014, the municipal division employees were as follows:

| Title | Name |
|---------------------|------------------|
| Municipal Judge | Joseph Porzenski |
| Court Administrator | Karen Gilliam |
| Court Clerk | Carla Fulk |

Financial and Caseload Information

| | Year Ended December 31, 2014 |
|-----------------------|---------------------------------|
| Receipts | \$551,016 |
| Number of cases filed | 3,441 |

Court Costs, Surcharges, and Fees

| Type | Amount |
|--------------------------------------|----------|
| Court Costs (Clerk Fee) | \$ 11.00 |
| Judicial Education Fund | 1.00 |
| Crime Victims' Compensation | 7.50 |
| Law Enforcement Training | 2.00 |
| Peace Officer Standards and Training | 1.00 |
| Inmate Prisoner Detainee Security | 2.00 |
| Sheriff's Retirement Fund | 3.00 |
| Failure to Appear (FTA) Fee | 100.00 |
| Warrant Fee | 100.00 |



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 Organization and Statistical Information

Vehicle Stops Report

Section 590.650, RSMo, requires law enforcement agencies report vehicle stop data to the Attorney General's Office (AGO) by March 1st of each year. The AGO compiles the data in a statewide report, which can be viewed on the AGO website at <https://ago.mo.gov/docs/default-source/public-safety/2014agencyreports.pdf?sfvrsn=2>. The following table presents data excerpted from the AGO report for the City of Foristell Police Department. In addition, see information at <https://ago.mo.gov/home/vehicle-stops-report/2014-executive-summary>, for background information on the AGO's vehicle stops executive summary along with definitions for footnotes of the following table.

Racial Profiling Data/2014 - Foristell Police Department - Population 403¹

| Key Indicators | Total | White | Black | Hispanic | Asian | Am. Indian | Other |
|----------------------------------|-------|-------|-------|----------|-------|---------------|-------|
| Stops | 5471 | 4803 | 516 | 109 | 20 | 1 | 22 |
| Searches | 438 | 349 | 72 | 15 | 1 | 0 | 1 |
| Arrests | 386 | 310 | 64 | 10 | 2 | 0 | 0 |
| Statewide Population | N/A | 82.76 | 10.90 | 2.94 | 1.71 | 0.41 | 1.28 |
| Local Population | N/A | 93.80 | 3.23 | 0.50 | 0.25 | 0.25 | 1.99 |
| Disparity Index ² | N/A | 0.94 | 2.92 | 4.01 | 1.47 | 0.07 | 0.20 |
| Search Rate ³ | 8.01 | 7.27 | 13.95 | 13.76 | 5.00 | 0.00 | 4.55 |
| Contraband hit rate ⁴ | 31.05 | 32.95 | 25.00 | 20.00 | 0.00 | #Num! | 0.00 |
| Arrest rate ⁵ | 7.06 | 6.45 | 12.40 | 9.17 | 10.00 | 0.00 | 10.00 |

¹ Population figures are from the 2010 Census for persons 16 years of age and older who designated a single race. Hispanics may be of any race. "Other" includes persons of mixed race and unknown race.

² Disparity index = (proportion of stops / proportion of population). A value of 1 represents no disparity; values greater than 1 indicate over-representation, values less than 1 indicate under-representation.

³ Search rate = (searches / stops) X 100

⁴ Contraband hit rate = (searches with contraband found / total searches) X 100

⁵ Arrest rate = (arrests / stops) X 100

#Num! indicates zero denominator