

HOT CHECK NEWS

HELPING CITIZENS PROSECUTE HOT CHECK THIEVES

DISTRICT ATTORNEY PROVIDES HELP TO MERCHANTS

A LETTER FROM THE DISTRICT ATTORNEY

This pamphlet has been prepared to assist Grimes County citizens who accept checks in the course of their business or personal transactions.

The District Attorney's Office in Grimes County is responsible for representing the people of Grimes County in all criminal matters including the issuance of "hot checks". This pamphlet is designed to emphasize the need for a standard, efficient policy, in your business or personal matters, for accepting checks. It is important that you and your employees understand, enforce and follow these policies with no exceptions. Failure to do so may result in an inability to prosecute your theft by check case or collect restitution. These policies should minimize the number of worthless checks that you receive and reduce the possibility of our office being unable to prosecute. The secondary purpose of this pamphlet is to set forth a simple procedure for the

efficient and effective prosecution of a complaint bringing the "hot check" writer to justice.

The theft statute in Texas provides that a person can be criminally prosecuted for certain transactions where property or services are obtained through the issuance of a worthless check. However, not all "bad checks" can be prosecuted under the criminal statutes. It is also important to note that "Theft by Check" is a different crime than "Forgery". Forgery cases, that is cases where an individual signs a check or other instrument representing themselves to be another, must be submitted directly to the appropriate law enforcement agency. Following the procedure in this pamphlet will help identify and even prevent forgeries. Forgeries should not be submitted to this office as "hot check" cases. Doing so can seriously delay and even preclude the successful investigation and prosecution of those cases

This pamphlet will attempt to explain, in detail, what kind of "check cases" can and cannot be prosecuted. It is important to remember this office is not a collection agency. The purpose of the "hot check" program is to prosecute those who commit theft using a check as a tool thereby violating the criminal laws of this State. In doing so, we attempt to assist victims of crime by collecting restitution, when possible, from the "hot check" writer. This, however, is not always possible or even legal.

If my office can be of any assistance, do not hesitate to contact us.

Sincerely,
Andria Bender
Grimes County District Attorney

CONTENTS

| | |
|---|---|
| A LETTER FROM THE DISTRICT ATTORNEY . . . | 1 |
| HOW TO PROCESS A WORTHLESS CHECK COMPLAINT | 2 |
| CHECKS WHICH CANNOT BE ACCEPTED FOR PROSECUTION AND WHY | 2 |
| RESTITUTION..... | 3 |
| TIPS TO AVOID ACCEPTING A HOT CHECK..... | 3 |
| COMMON TRICKS USED BY CHECK-WRITERS | 4 |
| NOTIFICATION_ | 4 |
| AFTER THE COMPLAINT IS FILED..... | 4 |
| OFFENSES | 4 |

HOW TO PROCESS A WORTHLESS CHECK COMPLAINT

1. Present the check to the bank for payment in a timely manner and retain the bank's notation stating the reason the check was not honored. **A check must be presented to bank within 30 days of its issuance.**

2. **File a complaint with the District Attorney's Office within 60 days of the check's issuance** including 1) the check itself or a copy including any bank notations, and 2) a completed, original and accurate "worthless check" affidavit signed by the complainant;

3. DO NOT accept payment after the check is filed with the District Attorney's Office. Once the complaint has been filed with the District Attorney's Office, the matter is under the jurisdiction of the court. Direct the check writer to contact the District Attorney's Office. If payment is mailed to you after the complaint is filed, forward the entire payment to the District Attorney's Office. Failure to do so could result in the person's arrest after you have accepted restitution which could subject you to possible civil responsibility for that arrest.

IN ORDER TO PROSECUTE A WORTHLESS CHECK, THE FOLLOWING INFORMATION MUST BE PROVIDED TO THE DISTRICT ATTORNEY'S OFFICE IN THE "WORTHLESS CHECK AFFIDAVIT":

1. VALID TEXAS DRIVER'S LICENSE OR STATE ID NUMBER ON THE AFFIDAVIT. THIS SHOULD BE OBTAINED AT THE TIME THE CHECK IS WRITTEN SO AS TO BE CERTAIN OF THE CHECK WRITER'S IDENTITY.
2. THE NAME OF THE PERSON WHO TOOK THE CHECK.
3. A VALID STREET OR PHYSICAL ADDRESS (NO P.O. BOXES).
4. CHECKS MUST BE DEPOSITED WITHIN 30 DAYS OF DATE RECEIVED AND MUST BE FILED WITH D.A.'S OFFICE WITHIN 60 DAYS.
5. AFFIDAVIT MUST BE COMPLETELY FILLED OUT FOR ALL CHECKS. IF YOU HAVE MULTIPLE CHECKS TAKEN BY THE SAME PERSON UNDER

THE SAME CIRCUMSTANCES, YOU MAY INCLUDE UP TO 3 CHECKS PER AFFIDAVIT. WE WILL NOT ACCEPT "XEROXED" OR "COPIED" AFFIDAVITS. ALL AFFIDAVITS MUST BE "ORIGINAL".

6. EVERY AFFIDAVIT MUST HAVE AN ORIGINAL SIGNATURE OF COMPLAINANT. WE WILL NOT ACCEPT AFFIDAVITS WITH "STAMPED" OR "COPIED" SIGNATURES NOR WITH SIGNATURES FROM COLLECTION AGENCIES OR OTHER AGENTS.

FAILURE TO PROVIDE A COMPLETE AND ACCURATE "WORTHLESS CHECK AFFIDAVIT" WILL RESULT IN THE CHECK BEING RETURN TO YOU WITHOUT PROSECUTION.

Note: Some checks may require additional documentation. We will notify you if such documentation is needed.

IMPORTANCE OF AN ACCURATE AND COMPLETE "WORTHLESS CHECK" AFFIDAVIT

The affidavit you file with each check is the basis of the criminal charges filed by this office. This means a person can be charged with a crime, arrested and jailed based on the sworn affidavit you provide. For that reason, the affidavit must be factual and accurate. It is imperative that you and your employees follow the procedures set out in this pamphlet to ensure that the person responsible for your loss is prosecuted and to make sure no innocent individual is falsely accused of a crime. In recent years, counterfeit checks, fake identifications and identity theft have become prolific. Unfortunately, it is incumbent upon you and your employees to do all that you can to ensure proper identification of individuals that you allow to pass checks in your business. It is also imperative that the information you provide to us in your affidavit be accurate and truthful. Intentional false statements on a worthless check affidavit will result in perjury charges being filed against the complainant. Negligent statements or failure to properly follow the procedures set out by this office could result in a civil law suit resulting in damages against you and/or your business. We do all we can to ensure only those cases that meet the elements of a criminal case are filed but we do so by relying on the information you provide.

CHECKS WHICH CANNOT BE ACCEPTED FOR PROSECUTION AND WHY:

Forged or Irregular Signatures

Forgeries are handled by the Police Department or Sheriff's Department and should be reported to them immediately. If we determine a "hot check" case is a actually a forge ly, we will refer the case to the appropriate agency

Postdated checks

A postdated check is a promise to pay in the future. If a check is not offered for immediate payment of goods or services, it cannot be prosecuted as a crime.

Checks deposited over 30 days from date written

This check is no longer a valid instrument. The check is considered "stale"

Partial Payments

When you accept a partial payment on a worthless check, you are accepting a promise to pay. A promise to pay in the future cannot be prosecuted as a crime.

Checks written for payment on Agreement, Account or Contract

This is a promise to pay in the future. This is a civil matter, not a criminal matter, and you should consult a private attorney.

Checks drawn on out of State banks

Sworn testimony from the bookkeeper is required to prosecute. These types of checks will be prosecuted only if the complainant will agree to pay transportation costs to Anderson, Texas.

Two or Three party checks

We cannot prosecute these checks. It must be proved that the endorser knew at the time he presented the check for payment that the writer did not have funds on deposit to pay the check.

Checks received by mail

In order to prosecute, the identity of the writer must be verified in person.

Checks given to a delive ly driver

Only with sworn affidavit from the delive ly driver that he accepted the check and he can verify the identity of the writer who signed the check in front of him. Jurisdiction may be in the county where the checked was passed.

Company checks

You must include an assumed name ce lificate that shows that the sole individual who is responsible for the funds is the same individual as signed the check.

RESTITUTION

A complaint filed with the District Attorney's Office charges the writer of a worthless check with a violation of the Penal Code of this State. Often, a pai of the punishment assessed by the Court is to order restitution. Additionally, If the merchant charges a fee for collecting wo lthless checks, the District Attorney will collect a fee per check to be paid to the merchant in addition to the restitution. The maximum fee for merchants is set by state law. If a check writer pays restitution before formal criminal charges are filed, the DA's Office may, at its discretion, refuse to file or dismiss the criminal case. By the same token, we may continue the prosecution even after restitution is paid. That decision rests solely with the prosecutor in charge of the case and is based on a number of factors including the check writer's criminal history, history writing worthless checks, and circumstances surrounding the check in addition to any other factors applicable to each individual case.

TIPS TO AVOID ACCEPTING A HOT CHECK

1. DATE

Checks must be dated the same date they are written. Postdated checks cannot be prosecuted.

2. SIGNATURE

Do not accept checks previously signed. The check writer should sign the check in your presence.

3. COMPLETE NAME ADDRESS AND PHONE NUMBER

An address is required to notify the check writer if the check is worthless. A P.O. box is not acceptable.

4. CONFIRM IDENTITY

It is essential that a valid Texas driver's license number or identification number be written on the check by the individual accepting the check. Any additional information such as student identifications, birth date, height, race, and sex will be helpful. The person who accepts the check must be able to testify, under oath, to the identity of the check writer.

5. WRITTEN AMOUNTS AND NUMBERS MUST CORRESPOND

Checks with discrepancies in amounts are unacceptable.

6. IDENTIFY WHO TOOK THE CHECK

We must know the name of the person who actually accepted the check and verified the check writer's identity. This person will be required to testify as to the check writer's identity at a trial.

COMMON TRICKS USED BY CHECK-WRITERS

BEWARE OF:

*Customers with no identification.

*People who hand write their own Texas Driver's License number.

*Strangers asking for cash over the purchase amount.

*Customers wanting to return merchandise for cash the same day the check was written.

*Payroll checks with rubber stamp address of company.

*Elaborate titles printed on a check are no assurance a check is authentic.

*Two- or three- party checks including payroll checks and insurance checks. These are frequently counterfeits.

NOTIFICATION

The law requires a person who issues a worthless check be given written notice and reasonable time to make the check good if the check is returned due to insufficient funds. Such notice is not required by law if the account is closed. This office will send written notice to the check writer demanding payment. You may send a letter to the check writer if you wish. If you do, please, attach a copy to the affidavit. This will prevent us from duplicating your effort and help expedite the prosecution of your case. If the check writer responds to our letter and pays the check and fees, no charges will be filed unless the check writer is a repeat offender or has other criminal history. If the check writer fails to take care of the check, criminal charges will be filed and a warrant will be issued for their arrest.

AFTER THE COMPLAINT IS FILED

Various law enforcement agencies of Grimes County play a part in the prosecution of a worthless check complaint. Restitution (if ordered by the court) is made through the District Attorney's Office after this set of procedures has been completed:

1. Your "worthless check" case is filed with the District Attorney's Office when you submit your completed affidavit and attached copy of the check. If your affidavit is incomplete or fails to meet the requirements of this office, acceptance of the affidavit and check will be refused or they will be returned to you.

2. If the affidavit is in proper order, we will send a letter to the check writer demanding payment of restitution and explaining failure to pay the check will result in a warrant being issued for their arrest.

3. If we do not receive restitution or communication from the check writer making arrangements to pay restitution, an

Assistant District Attorney will make a final review the case to determine if the check was properly accepted, the policies governing prosecution were followed and confirm there is sufficient evidence to proceed with the case.

4. If there is sufficient evidence to prosecute, we will finally file charges in the appropriate court and request the Clerk of the Court issue a warrant for the check writer's arrest. On occasion, we will request a warrant before formal charges are filed.

5. If the Assistant District Attorney determines there is insufficient evidence to prosecute a check, it will be reviewed with an explanation as to why we cannot prosecute.

6. The court will issue a warrant for the check writer's arrest. This warrant will be forwarded to the Sheriff's Department and where it will be entered into the state-wide crime computer. The warrant will also be entered into local computer systems. We will make every effort to arrest the defendant as soon as practical but we do not have personnel dedicated solely to the arrest of these individuals. Many are arrested as a result of routine traffic stops, driver's license renewals, warrant "round-ups" or because of involvement in another criminal matters.

7. After the check writer is arrested, their case will be set BY THE COURT. The case will have several court dates for different reasons before being set for trial. The trial dates and the timing of the settings is COMPLETELY controlled by the Judge of the Court, not by this office.

8. If a defendant pleads guilty, he will be sentenced to jail or placed on probation. He may be ordered to pay a fine and restitution or he may be ordered to serve jail time for compensation. A defendant may be allowed to pay restitution over a period of time while on probation.

9. If defendant pleads not guilty, the case will be set for trial. You will be notified when your appearance is required to testify.

OFFENSES

The Penal Code provides for two offenses that we can use in dealing with worthless checks. Theft (Sec. 31.03 T.P.C.) and Theft of Service (Sec. 31.04 T.P.C.). The penalties for these two offenses is based on the amount of the check. They are classified as follows:

AMOUNT CLASSIFICATION PENALTY

REV10/17

| | | |
|-----------------|---------------------|--|
| .01 - \$100 | Class C Misdemeanor | fine up to \$500.00 |
| \$1000 - \$750 | Class B Misdemeanor | Up to 180 days Jail / fine up to \$2000 |
| \$750 - \$2500 | Class A Misdemeanor | Up to one year in jail / fine up to \$4000 |
| \$2500 - \$30K | State Jail Felony | 180 days - 2 yrs in a State Jail / fine up to \$10,000.00. * |
| \$30K - \$150K | 3rd Degree Felony | 20- 20 yrs in Prison / a fine up to \$10,000 |
| \$150K - \$300K | 2nd Degree Felony | 2 - 20 yrs in Prison / a fine up to \$10,000 |
| Over \$300K | 1st Degree Felony | 5 - 99 yrs in or Life in Prison and a fine up to \$10,000 |

The Law requires that we prove that the person intended to deprive you of your property or avoid payment for your services at the time the check was passed. We prove this intent by using the law below. However, you must do what this law says in order for us to rely on it for prosecution.

**Section 31.06 Texas Penal Code
Presumption of Theft by Check**

(a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of the property under Section 31.03 of this code (Theft) or to avoid payment for the service under Section 31.04 of this code (Theft of Service) is presumed (Except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) for the purpose of Subsection (a)(2) of this section, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with receipt of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee;

(3) the records of the person to whom the check or order has been issued or passed.

(c) If the written notice is given in accordance with subsection (b) of this section, it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.