
HANCOCK COUNTY BAD CHECK INFORMATION PACKET

Rarely should it be necessary to prosecute a bad check writer. With proper safeguards instituted by merchants, there is little need for intervention on the part of law enforcement or the County Attorney. By following simple procedures, a merchant can significantly reduce the amount of money lost through bad checks. The materials that follow include suggested policies to be implemented by merchants, as well as the procedure to initiate criminal prosecution.

PREVENTING LOSSES DUE TO BAD CHECKS

Setting a firm check policy to be followed by all employees is the best way to prevent losses from bad checks. Make sure your check policy is in writing and that all employees are trained as to the required procedures. A copy of the written policy should be kept by the cash register for easy access by the employee. Not only are these suggestions helpful in preventing loss to your business, they also will be essential if the matter has to proceed to trial. The following procedures are recommended.

1. Verify the identity of the check writer.
 - * require photographic identification verifying that they are the account holder, such as a driver's license, passport or ID.
 - * compare the photo with the person presenting the check to see if they match.
 - * compare the signatures to see if they match.

2. Require the person presenting the check to sign it in the cashier's presence. If the check is already signed, you should still require the person presenting the check to sign it again below the first signature.

3. Make sure the check contains adequate identifying information.
 - * document the driver's license number and state of issuance
 - * document date of birth
 - * document phone number
 - * document any changes to a pre-printed address or phone number

4. After all of the security procedures are completed, the clerk should initial the check. This will serve as the clerk's assertion that they have followed the procedure and assist in identifying witnesses if the matter has to go to court.

Often, forged checks are stolen along with all of the victim's identification and credit cards. The person who presents the forged check may have several credit cards or other identification that were stolen. Therefore, asking for a social security number or recording credit card numbers will be useless. For a criminal prosecution, it is imperative that the person who took the check be able to positively identify who wrote the check.

Some additional tips to reduce your losses are:

1. Do not take checks from people outside your city, or at least outside Hancock County. (Out of area checks decrease the likelihood of a successful prosecution because the defendant generally cannot be easily identified or located.)

2. Don't take a check for more than the amount of the purchase.
3. Prohibit cash refunds until the check has cleared the bank. (It is common for a check writer to purchase an item and then to want to return it for cash.)
4. Do not cash checks.
5. Do not accept two party checks.
6. If you are suspicious, don't be afraid to stall. A check writer will often present the check when you are very busy. He may be very demanding and try to intimidate you in to trying to rush the purchase and side-step your security procedures.
7. If your losses tend to be substantial, consider check verification services and/or not accepting checks.

Remember, you **DO NOT** have to accept a check from anyone. You can insist that the requirements of your check policy be met before taking a check. Some customers may be frustrated by the new policies, but unless they are planning to write a bad check, they will comply.

These policy suggestions cannot be implemented by the courts, the police or me -- they can only be implemented by you. Whether a bad check writer is knocked out of action depends on you.

ROLE OF POLICE/SHERIFF AND THE HANCOCK COUNTY ATTORNEY'S OFFICE

Even if all the suggested policies are implemented, there may still be checks for which you do not receive payment. This is when you can turn to your local law enforcement for assistance. It is imperative to understand that neither law enforcement nor I intend to serve as a collection agency. We serve the community as enforcer of the laws. We will not use threats of arrest in order to solicit restitution from offenders. I am not your attorney and will not take direction from the merchant as to whether or not to prosecute an offender. I represent the people of the State of Iowa, and there is a larger problem than if you are repaid on your check. I have a duty to the citizens of the Iowa to see that the offender is punished and prevent the offender and others from engaging in the same behavior. Sometimes this requires convicting a person who has paid off the check right before trial. The fact that the check has been paid does not change the fact that a crime was committed. Once a check is referred to my office, the charge will NOT be dismissed just because the check has been paid. You will still be required to appear in court and testify for the State.

If you are concerned solely with collecting on the checks, you should not submit your bad checks for prosecution. There are a number of collection agencies that are available for that purpose. You may contact your local chamber of commerce for more information.

APPLICABLE LAW FOR PROSECUTION OF BAD CHECKS

A person commits theft when the person does any of the following:

Makes, utters, draws, delivers or gives any check, draft, or written order on any bank, person or corporation, and obtains property or service in exchange therefore, if the person knows that such check, draft or written order will not be paid when presented.

This requires the State to prove many things:

1. The defendant is the person who presented the check.
2. The defendant received goods or services in exchange for the check.
3. The defendant knew the check wouldn't be paid when presented.

In order to prove the first two elements, there must be a witness who can look at the defendant and say "That is the person who gave me the check" and a witness who can say that the person received something in exchange for the check.

Proving the third element (knowledge) can be very difficult unless the person has been served with a ten-day notice or the account has been closed. Without the service of a ten-day notice, prosecution will not usually be unsuccessful. However, if the check was written on a closed account, a ten-day notice is not necessary.

The penalty for bad checks is the same as any other theft and this is determined by the amount of the check itself. The law allows us to consolidate checks written to different stores by the same person. This will usually increase the penalty. The degrees of theft and their respective penalties are as follows:

FIRST DEGREE THEFT - Theft of property exceeding \$10,000 in value.

SECOND DEGREE THEFT - Theft of a motor vehicle worth less than \$10,000 or theft of other property exceeding \$1,000 in value but not exceeding \$10,000 in value.

THIRD DEGREE THEFT - Third offense theft of less than \$500 or theft of property exceeding \$500 but not exceeding \$1,000 in value.

FOURTH DEGREE THEFT - Theft of property exceeding \$200 in value but not exceeding \$500 in value.

FIFTH DEGREE THEFT - Theft of property not exceeding \$200 in value.

If the check was for less than \$200 and written more than one year ago, it cannot be prosecuted.

Please also note that the circumstances under which the check is written or your actions after a check is written may prevent criminal prosecution even if you are never paid on the check. In the following situations, a criminal offense has not occurred – even if you are never paid – and it is a civil matter which must be pursued by you on your own without the assistance of law enforcement or my office. Mediation services still could be utilized.

1. If you know the check isn't good when it's given to you (i.e. if you accept a post-dated check or the check-writer tells you it will not be good until a later date), it is a civil matter.
2. If you agree with the check writer to give them time to pay a bad check, you have made a civil contract with the person and if they do not follow through, it is a civil matter.
3. If the check is for payment on an account or on an extension of credit, it is a civil matter.
4. If the check is for something other than in exchange for property or services, such as reimbursement, security deposits, etc., it is a civil matter.

PROCEDURE FOR INITIATING CRIMINAL PROSECUTION IN HANCOCK COUNTY

If you intend to proceed with criminal prosecution of a bad check in Hancock County, the following procedure must be followed:

1. The merchant must send a ten-day notice by certified letter, return receipt requested, to the check writer. (A sample form is included in this packet.) However, if it was an account closed check, a ten-day notice need not be sent and the merchant may skip Step 1.

2. If the 10-day notice is not complied with, the merchant must provide the following information to the designated person at their local law enforcement agency:
- a. the ORIGINAL check;
 - b. copy of the ten-day notice and either the proof of receipt OR the original returned letter;
 - c. a completed Bad Check Complaint Information Form (a sample form is included in this packet);
 - d. an itemization of out-of-pocket expenses;
 - e. any response received regarding the ten-day notice.

Area check given in	Contact Person	Agency	Phone	Office Location
Britt	Bob Sankey	Britt Police	641-843-3822	8 2 nd St., SE, Britt
Corwith	Ray Penning	Sheriff	641-923-2621	875 State St., Garner
Crystal Lake	Ray Penning	Sheriff	641-923-2621	875 State St., Garner
Forest City	Rick Caldwell	Forest City Police	641-585-2113	
Garner	Cory Graham	Garner Police	641-923-3773	135 W. 5 th St., Garner
Kanawha	Mark Hennigar	Kanawha Police	641-762-3272	121 N. Main St., Kanawha
Klemme	Ray Penning	Sheriff	641-923-2621	875 State St., Garner
Woden	Ray Penning	Sheriff	641-923-2621	875 State St., Garner
Rural Areas	Ray Penning	Sheriff	641-923-2621	875 State St., Garner

3. **IN ALL JURISDICTIONS EXCEPT FOREST CITY POLICE DEPARTMENT**, the officer will send a letter to the check writer, permitting 14 days for the check writer to make payment to the merchant. If the check writer pays the merchant in FULL (including the returned check fee), the merchant must provide to the check writer a written receipt showing the date of payment and the amount of payment and signed by the appropriate agent of the merchant. The check writer must then bring proof of payment to the law enforcement agency. It would also be helpful for the merchant to advise the officer that payment was received.

WITHIN THE JURISDICTION OF THE FOREST CITY POLICE DEPARTMENT, the officer will send a letter to the check writer, permitting 14 days for the check writer to bring to the police department a money order payable to the merchant, including the returned check fee.

4. If payment is not made, the officer will file a criminal complaint, and the matter will be transferred to my office.

5. A Magistrate's citation will be issued requiring the defendant to appear at an Initial Appearance hearing or in rare instances, an arrest warrant may be issued. From this point, there are three possible outcomes.

- a. The defendant may not appear at the hearing. If this occurs, a warrant will issue for the defendant's arrest. This may delay the prosecution for a lengthy time. It is possible that the defendant will never be found and brought before the Court. Without a social security number and date of birth a warrant cannot be issued. If your clerk did not write down the information, our office will not be able to continue prosecution.
- b. The defendant may appear at the hearing and plead guilty. If this occurs, the Magistrate will enter an order convicting the defendant of theft, and ordering the defendant to make restitution to the merchant.

c. The defendant may appear at the hearing and plead not guilty. If this occurs, the matter will be set for trial. Our office will notify you of the time and date, and it will be necessary for the merchant (and all other witnesses) to appear and testify at the trial.

ISSUES REGARDING RESTITUTION

Restitution is always ordered as part of the Judgment and Sentence upon conviction of the defendant. However, you should keep the following in mind.

First, having restitution ordered does not necessarily mean the merchant will ever be paid. The Magistrate will enter an Order for the defendant to pay. If the defendant has not paid the total amount ordered, it will be sent by the Clerk of Court to the state's collection agency CCU. They will make efforts to collect any money due, which may not be sufficient for you to recover your loss.

Secondly, Iowa law permits restitution ONLY for "out-of pocket costs and expenses." This is limited to items such as postage, copies, bank fees and certified letter costs. The returned check service fee charged by many merchants CANNOT be ordered by the Magistrate as part of restitution. Neither is there any restitution for time spent trying to collect on the check. It is necessary to itemize the costs and expenses to verify to the Magistrate that you made expenditures. Therefore, it is very important to keep an accurate list of expenses. (A sample form is included in this packet.)

CONCLUSION

Many merchants become frustrated by the time and effort required to follow through with prosecution. Prosecution of a bad check is an attempt by the State of Iowa to convict a person of a criminal offense. This requires that we present evidence to prove by a reasonable doubt that the defendant is guilty. This evidence can be provided only by the merchant and the person taking the check. Additionally, there is nothing to deter bad check writing if they are continually not prosecuted as criminals. If you continue to have questions, please do not hesitate to contact me.

TEN-DAY NOTICE PURSUANT TO IOWA CODE §714.1(6)

TO: Name _____

Address _____

YOU ARE HEREBY NOTIFIED that check number _____, dated _____, _____, in the amount of \$ _____ was given in exchange for merchandise, cash and/or services. Said draft was written upon the Bank of _____, and has been returned to us because said bank has refused to honor it, either because of "Insufficient Funds" or "No Account".

YOU ARE FURTHER NOTIFIED that the giving of a check and receiving of property, cash, or services in exchange therefore, knowing that the check would not be paid by the bank, is a criminal offense. Iowa Code §714.1(6) provides that if notice of nonpayment is given to the check writer and the check is not then paid within ten (10) days, the court and jury may properly conclude that the check writer knew that the check would not be paid. The Iowa Code also provides that if the check is not paid because there is no account, the court and jury may properly conclude that the writer knew the check would not be paid.

THIS IS YOUR NOTICE TO PAY THE ABOVE CHECK WITHIN TEN DAYS OR THE MATTER WILL BE REFERRED TO AUTHORITIES FOR CRIMINAL PROSECUTION.

YOU ARE FURTHER ADVISED that:

1. Theft in the First Degree is the theft of property exceeding \$10,000. It is a class "C" felony punishable by up to ten years imprisonment, a \$10,000 fine or both.
 2. Theft in the Second Degree is the theft of property exceeding \$1000 but not exceeding \$10,000. It is a class "D" felony punishable by up to five years imprisonment, a \$7,500 fine or both.
 3. Theft in the Third Degree is the theft of property exceeding \$500 but not exceeding \$1000. It is an aggravated misdemeanor punishable by up to two years imprisonment, a \$6,250 fine or both.
 4. Theft in the Fourth Degree is the theft of property exceeding \$200 but not exceeding \$500. It is a serious misdemeanor punishable by up to one year of imprisonment or \$1,875 fine, or both.
 5. Theft in the Fifth Degree is the theft of property not exceeding \$200. It is a simple misdemeanor punishable by up to 30 days in jail or a \$625 fine.
- In addition to those penalties, the Court will also impose a 35% surcharge, a Law Enforcement Initiative surcharge of \$125, court costs and victim restitution.

_____ Signature of person sending notice

_____ Date notice is sent

_____ Name of business/person who received check

_____ Address to which payment must be remitted

REQUEST FOR CRIMINAL PROSECUTION

TO BE PROVIDED TO THE LAW ENFORCEMENT AGENCY

1. Provide all the known information regarding the person writing the check(s):

Full Name _____
Address _____
Date of Birth _____
Driver's License Number _____
Phone Number _____

2. Provide all the known information regarding the check(s):

Check Number _____
Date of Check _____
Amount of Check _____

3. Was the check for a reason other than in exchange for merchandise, services or cash? Yes No

4. Was there an agreement to hold the check? Yes No

5. Was the check in payment of an open account or credit line? Yes No

If you answered "Yes" to any of Questions 3-5, criminal prosecution likely cannot be pursued.

6. Was the check written by the account holder? Yes No

7. Who is the person who took the check? _____

8. Does that clerk still work for you? Yes No

If no, list the last known address _____

9. Was the check prepared in the clerk's presence? Yes No

10. Can the clerk positively identify the person who gave the check? Yes No

11. Who is the person who can testify to the check procedures used by your business? _____

12. Have you served a 10-day notice? Yes No

If you answered "No" to any of Questions 6-12, explain why: _____

13. Did you receive a response to the 10-day notice? Yes No

If yes, describe _____

Provide your: Full Name _____
Business Name _____
Address _____
Work Phone _____

REQUEST FOR OUT-OF-POCKET EXPENSES

TO BE PROVIDED TO LAW ENFORCEMENT WITH PROSECUTION REQUEST

NOTE: Iowa law provides that victims may be reimbursed for their out-of-pocket collection expenses resulting from the defendant's crime. These are costs actually expended by the victim as a result of the defendant's crime. Therefore, service fees are not collectable in a criminal prosecution unless you have **actually** paid a fee to your bank.

Defendant's Name _____

Check Number(s) _____

Amount of Check(s) _____

Out-of-pocket collection costs associated with the check(s):

Postage	\$
Copies	\$
Certified Mail Fee	\$
Other (specify)	\$
Total collection costs	\$