

BAD CHECK QUESTIONNAIRE

This form must be completed for each bad check for which criminal prosecution is requested.

DIVISION I

All of the following information must be provided for prosecution to be possible:

Business receiving the check: _____

Date of check: ____/____/____ Amount: _____

Defendant's name: _____

Defendant's address: _____

Bank name and address: _____

Date 10-day notice received: ____/____/____

Person taking check: _____

Check was returned for: NSF _____ Closed _____
No acct. _____ Stop Payment _____
Forgery _____

DIVISION II

The issuance of a bad check is theft if done with the intent to defraud. There are many technicalities in the prosecution of a bad check. Please answer the following to assist the County Attorney's Office in determining if prosecution is appropriate:

True False

_____ 1. I do not wish to pursue criminal charges but merely want my money back. If true, collection should be pursued in Small Claims Court by civil suit.

_____ 2. The Defendant can be identified as required in Division III.

_____ 3. The check was post-dated or the passer otherwise indicated lack of funds in the account.

_____ 4. You agreed to hold the check for a period of time.

True False

- _____ 5. The check is a two-party check.
- _____ 6. The check was payment on an account or other prior debt.
- _____ 7. The passer has made partial payment on the check.
- _____ 8. The check is written on an out-of-state bank for less than \$500.00.
- _____ 9. The passer has offered to pay the check in full but payment was refused.
- _____ 10. The check is more than three months old. Delay in prosecution only serves to hinder prosecution. As a general rule, no prosecution will be commenced after three months.
- _____ 11. The passer of the check has filed bankruptcy.

DIVISION III

In order to successfully prosecute a charge of theft for the writing of a bad check, the identification of the person writing and passing the check must be proven beyond a reasonable doubt. Therefore, identification must be made in one of the following ways:

A. PERSONAL KNOWLEDGE: The following person witnessed the passing of the check and can identify the Defendant:

Name	Address
_____ This person is the employee who took the check	
_____ Other – describe _____	

B. IDENTIFICATION PROCEDURE: At the time the check was accepted, the following clerk requested a photo ID or drivers license, compared it to the Defendant and recorded the Defendant's social security number or other identifying number on the face of the check:

Name	Address
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If neither method is possible, your check cannot be accepted for prosecution and you should use Small Claims Court to recover your loss.

THE INFORMATION CONTAINED HEREIN IS TRUE AND TO THE BEST OF MY KNOWLEDGE. I HAVE READ THE GENERAL INFORMATION ATTACHED AND UNDERSTAND THOSE PROVISIONS.

Signature

Business

Address

Telephone

Failure to provide accurate information on this questionnaire may result in the inability to prosecute your check and may result in civil liability to the holder of the check. By requesting prosecution of this bad check you are agreeing to follow the procedures described hereafter. Therefore, you should carefully review the general information attached. If you have any questions concerning the prosecution of a bad check, you should contact your local law enforcement agency or my office.

Jackson County Attorney
201 West Platt Street
Maquoketa, Iowa 52060
(563) 652-3214

GENERAL INFORMATION

1. A 10-day Notice by certified mail, return-receipt, restricted delivery, or personal service is required on all checks.
2. If your case goes to trial, you and the person who accepted the check will be required to appear and testify and to bring the check, a copy of the 10-day notice, and the mailing receipts.
3. Once a criminal prosecution is commenced, it will not be dismissed even if the Defendant makes full restitution.
4. Once a charge is filed, you shall not release the check before completion of the case without permission of the County Attorney. The check must be preserved as evidence for the trial.
5. Once a charge is filed, you may accept restitution from the Defendant without effecting the prosecution. Defendant should be given a receipt only, not the check.
6. Accepting money in exchange for agreeing to dismiss charges or refusal to testify in Court is against the law.
7. Criminal prosecution is not a collection procedure. Small Claims Court should be used for collection purposes.
8. Regardless of the outcome of the case, there is no cost to you for the expenses of prosecution. However, if any information on the Bad Check Questionnaire is incorrect, causing the charge to be dismissed, or if you fail to appear at trial, the Magistrate may assess the Court Costs against you.
9. The prosecution of bad checks is at the discretion of the County Attorney's Office.
10. Even if the Defendant is found not guilty, you may still pursue a collection action against the Defendant in Small Claims Court.
11. Upon conviction of the Defendant, the Court may order the Defendant to make restitution to you. However, criminal prosecution does not insure that you will recover the amount owed to you. The purpose of criminal prosecution is to see that the Defendant is punished for a violation of the law; it may, or may not, result in restitution to you for the bad check.

Date: _____

Hereby notified that a check (s) dated _____ in the amount of \$_____ drawn by you on _____ (name of bank) has been refused payment by the bank due to _____. If check (s) is not paid with in ten days from the date of this notice, the checks will be turned over to the Preston Police Department.

Number of checks:

Total amount of checks:

Service charges:

Certified mail charges:

Total due:

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

Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person or corporation and obtains property or service in exchange therefore, if the person knows that such check, share, share draft or written order will not be paid when presented. Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the receipt of notice from the holder, that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that he instrument would not be paid upon presentation. Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

Sincerely,