

# BURNET COUNTY ATTORNEY'S OFFICE

**Victim Services  
Hot Checks Division**



**Criminal Division  
Civil Division**

**EDDIE ARREDONDO  
Burnet County Attorney**

## **HOT CHECK DIVISION**

### **PURPOSE**

The purpose of the Hot Check Division is to prosecute individuals who commit the crime of theft by using an invalid check. This division is not a collection agency. Rather, this division will take all methods legally available to collect restitution and hold the hot check writer accountable for their actions. Our office wants to help all businesses succeed and prevent crime.

### **GOAL**

The immediate goal of the Hot Check Division is to bring about a conviction for the offense and to gain restitution for the victims of this crime. However, a conviction and/or restitution may not always be obtainable in every case despite all our efforts. Merchants must understand the limits of the Hot Check Division and know they may also pursue the matter civilly.

## **CRIMES OF THEFT USING INVALID CHECKS**

### **THEFT BY CHECK**

A person commits theft by check when the actor obtained property, goods, cash, or services through the use a check when the issuer had no account with the bank or did not have sufficient funds in or on deposit with the bank. If the property, goods, cash, or services were to be exchanged after the invalid check was presented, it is deemed an extension of credit only and is not considered a theft case.

Further, a theft by check case can also exist when a check writer issues a stop payment order and refuses to either pay the stopped check or return the merchandise within 10 days after proper notice is given as outlined in the Texas Penal Code (Sec. 31.03, 31.04).

### **ISSUANCE OF A BAD CHECK**

If there was an extension of credit and the check writer knew at the time the check was written there were insufficient funds in the bank, then a class "C" misdemeanor of **Issuance of a Bad Check** has occurred regardless of the amount of the check. These cases are filed with the Justice of the Peace in the precinct where the check was written. (Texas Penal Code Sec. 32.41)

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## **LEGAL REQUIREMENTS TO PERFECT A HOT CHECK CASE**

The law requires the check(s) in question to be presented to a bank within 30 days. Additionally, the presumption of theft arises if a letter is sent to the check writer by first class or certified mail requesting that the check writer pay the check amount and processing fees in full within 10 days after the date of receipt of the letter. This notice gives the check writer an opportunity to make good their mistake or error. Texas Penal Code Section 31.06 specifies the exact language which must be included in the letter. A sample copy of the letter is provided on our website.

### **PROCESSING FEE**

The law authorizes the prosecutor's office to collect a fee based upon the amount of the check in question. This fee is in addition to the check amount and processing fee. (Code of Criminal Procedure Art. 102.007)

## **STEP BY STEP PROCEDURE TO PRESENT A HOT CHECK CASE**

1. Once you receive notice from your bank of an invalid check, a letter outlined in Texas Penal Code Section 31.06 (sample provided on our website) via certified mail, return receipt requested, must be sent to the address on the check, records of the bank, or your records. Keep a copy of the letter and return receipt.
2. If the check is not paid in full within 10 business days after the notice was received, then it may be brought to the County Attorney's Office for possible prosecution. The check must be presented by the holder or the agent who must furnish:
  - A. A copy of the check;
  - B. A copy of the notice letter;
  - C. Proof letter was sent to check writer via certified mail; and
  - D. Notarized Affidavit for Warrant of Arrest (provided on our website).

## **CHECKS THAT MAY/MAY NOT QUALIFY FOR SUCCESSFULL PROSECUTED**

**If the person accepting the check never recorded an ID of the person presenting the check, a problem exists in identifying the Defendant in court.  
Always make sure to record the ID of the person presenting the check.**

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## **Checks that may not qualify for criminal prosecution are as follows:**

1. **Two-party checks** – A problem exists as to proving which party had the intent to commit the theft.
2. **Payroll check** – This is a two-party check and therefore a problem exists as to who had the intent to commit the theft.
3. When the check writer claims forgery

## **Checks that do not qualify for criminal prosecution are as follows:**

1. **“Hold” checks** – This is an extension of credit and therefore not a theft case.
2. **Post-dated checks** – This is an extension of credit and therefore not a theft case.
3. **Draft** – This is a promise to pay in the future and therefore is an extension of credit, not a theft case.
4. **Out-of-state checks** – Although considered theft, it is extremely difficult and expensive to subpoena bank records from an out-of-state bank.
5. **Out-of-state resident** – Extradition of a defendant from out-of-state on this misdemeanor offense is not possible.
6. **A check received and the person who accepted the check is unknown** – A person who received the check must be known in order to prove the case.
7. **“Stopped Payment” checks** - for used merchandise or service work
8. A check returned by the bank marked “refer to maker” or “drawn against uncollectible funds” or “unable to locate account”.
9. Checks not presented to the bank within 30 days

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**REMEMBER, CRIME PREVENTION BEGINS WITH ALERT AND KNOWLEDGEABLE CITIZENS. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE BURNET COUNTY ATTORNEY'S OFFICE AT 512-756-5476.**

Did you get a fingerprint? Have the check writer place a fingerprint on the front of the check with his/her right index finger. Use an inkless and stainless touch pad so that the writer simply has to rub his/her fingers together to clean the ink off their finger. The Texas Bankers Association has a fingerprint signature program and may be contacted to purchase inkless touch pads. The association is in Austin at 203 w, 10<sup>th</sup>, 78701, and its phone number is 512-472-8388.

## **Criminal Punishment Ranges** **"THEFT BY CHECK" & "ISSUANCE OF BAD CHECK"**

### **THEFT BY CHECK**

<b><u>Check Amount</u></b>	<b><u>Court</u></b>	<b><u>Punishment Range</u></b>
• Under \$100	Justice of the Peace	Fine up to \$500.00
• \$100 or more but less than \$750	County Court at Law	\$2,000.00 fine and/or up to 6 months jail
• \$750 or more but less than \$2,500.00	County Court at Law	\$4,000 fine and/or up to 12 months jail
• \$2,500.00 and over	District Court	Felony Offense Ranges

### **ISSUANCE OF A BAD CHECK**

<b><u>Check Amount</u></b>	<b><u>Court</u></b>	<b><u>Punishment Range</u></b>
• All Check Amounts	Justice of the Peace	Fine up to \$500.00

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## Frequently Asked Questions

*Can I offer to dismiss the theft case if the money is paid?* **Answer:** No. This would be against the law. Once a check is filed at the County Attorney's Office, we assume full control of the matter.

*Can I accept payments after the check has been filed with the County Attorney's Office?* **Answer:** No. The check writer must make restitution payments through the County Attorney's Office and we will disburse the restitution to you.

*What if the check writer claims that the check was forged?* **Answer:** The check writer should take the check to their local law enforcement agency for further investigation and you should proceed regardless.

*What if the check writer files for bankruptcy?* **Answer:** This may prevent collection efforts but does not prevent prosecution.

*Can I send the check to the County Attorney's Office if the check writer has made a partial payment?* **Answer:** Yes. Please bring all documents as outlined in this packet and the record of partial payment. A partial payment does not prevent the prosecution of a hot check theft case as the check writer must make payment in FULL within 10 business days after notice was received.

*Can I post the names of hot check writers?* **Answer:** Yes. However, you may suffer consequences if you make a mistake. Making a list with the title of "Hot Check Writers" may cause issues. A better practice may be to make a list saying, "Do not take checks written on the following accounts" or "Ineligible check writers." The best practice is to have a list viewable to you and your employees only.