

NODAWAY COUNTY PROSECUTOR'S OFFICE
BAD CHECK PROCEDURES PACKET

*UNDER MISSOURI LAW, WRITING A BAD CHECK IS NOT A CRIME UNTIL THE PERSON WHO WROTE THE CHECK RECEIVES NOTICE **AND** THE CHECK IS NOT PAID WITHIN TEN (10) DAYS AFTER RECEIPT OF THIS NOTICE.*

In order for you to submit a check for prosecution for violation of criminal law and in order for our office to assist you in that prosecution, the following must be true:

- The check was written or passed in Nodaway County (not received by mail);
- It is not a third party check;
- It has a face value of at least \$10.00;
- It is a personalized (imprinted) check;
- You have the person's date of birth **and either** the person's social security number or driver's license number and the state in which the license was issued;
- Notice of the bad check was sent **to the person who wrote the check**;
- Ten (10) days have passed since the notice was signed for by the individual who wrote the check;
- The check has not been paid;
- It is not a post-dated check (dated after the date the check was delivered);
- It is not a check you were asked to "hold" until it was "good".

Under Missouri law, we can not prosecute:

- * postdated checks;
- * checks that you agreed to hold;
- * third-party checks;
- * payroll checks;
- * offenders who cannot be sufficiently identified in a court of law;
- * checks stamped "refer to maker" or "uncollected funds"; or
- * any check you take after being told when you accepted the check that is was not "good," but would be "good" later.

WHEN YOU TAKE A CHECK

LOOK AT THE CHECK

Check the printed name and address. Do not take counter checks. Do not take “starter checks” or new account checks unless you take adequate precautions.

Check the date the check was written. We cannot prosecute postdated checks (a check dated for a later date). If you accept a postdated check, it is at your own risk.

OBTAIN THE WRITER’S DATE OF BIRTH AND EITHER HIS SOCIAL SECURITY NUMBER OR DRIVER’S LICENSE NUMBER AND ISSUING STATE

The Court requires these as part of the prosecution process. If you know your customer well, you may not normally take this information, but remember the Court will not issue a warrant for the defendant without this information.

RECORD THE PERSON WHO TOOK THE CHECK

You or your employee should initial the check so that the person accepting the check can be identified for court testimony. We recommend that you record this information on the front of the check. The bank usually stamps the back of the checks during processing, making essential information illegible.

WHEN THE BANK RETURNS A CHECK TO YOU

If you receive a check that is not honored because the writer lacked sufficient funds to pay the check or because the writer did not have an account with the institution the check was drawn on, the law in Missouri in Section 570.123, RSMo., provides you with a choice of remedies, civil or criminal.

CIVIL ACTION FOR MONEY

If you choose to pursue your civil remedy, you would take these steps:

By certified or registered mail, send notice that the check did not clear and a written demand for payment within 30 days to the maker of the check and to any endorser of the check. It would be sent to the address appearing on the check or to the last known address of each person. Keep a copy of the letter, the stub from the certified or registered mail form, and the green postcard when it is returned to you.

If you do not receive payment within 30 days, file a lawsuit in court. You can contact an attorney to represent you or you can represent yourself in Small Claims Court, 660-582-2531. Small Claims Court is available if the amount of money you seek does not exceed \$3,000.

CRIMINAL PROSECUTION

It may be possible to have the Prosecutor's Office file charges against the writer of a check returned for insufficient funds, a closed account, or no account check. However, the rules for prosecution are extremely strict and must be followed completely. Remember Missouri law provides that no crime has occurred until you provide actual, written notice to the writer of the check and they have failed to pay the debt within ten (10) days. You will need to take these steps:

1. Send a **certified letter, return receipt requested**, to the individual who signed the check, keeping a copy for your records. The letter must comply with Missouri law, and copies are available at the Prosecuting Attorney's Office. This must be sent by **restricted delivery**, to be signed for **only by the person who signed the check**;
2. The return receipt will be mailed back to you, providing a date the notice was signed for by the individual who wrote the check;
3. Even if the notice is returned by the Post Office marked either "address unknown" or "moved, no forwarding address" or "unclaimed", actual notice still must be given to the individual who wrote the check. In some circumstances the Sheriff's Department has been able to locate and serve the notice on the individual. The Sheriff's Department will charge an additional fee for this, which may be included as part of your service charge.
4. **After ten (10) days** have passed from **the date the notice was signed or the date of service by the law enforcement agency**, the check, signed returned receipt or Sheriff's return, and a copy of the notice are given to the Prosecutor's Office.
5. **When you turn in your check you will accompany the documents with a check affidavit.** A sample form is attached. If you do not have all the information requested, our ability to help you collect this check is limited. We urge you to modify your procedures so we can help you on bad checks you might receive.
6. Because of legal technicalities, **Missouri law does not define the following as a crime and they cannot prosecute:**
 - * postdated checks;
 - * checks that you agreed to hold;
 - * checks for which you agreed to accept or have accepted partial payment;
 - * third-party checks;
 - * payroll checks;
 - * checks with a face value less than \$10.00
 - * offenders who cannot be sufficiently identified in a court of law;
 - * checks stamped "refer to maker" or "uncollected funds"; or
 - * any check you take after being told when you accepted the check that it was not "good", but would be "good" later.

7. If criminal charges are to be filed, the Court requires that you provide us with sufficient information to correctly identify this individual. Thus, the Court requires the **date of birth** of the person who wrote the check and either **the social security number or driver's license number and the issuing state** (for use in the law enforcement computer system).

8. You should be very careful not to leave any impression in the mind of the writer of the check that by paying the check, they are not required to appear in Court. **Once charges have been filed, they still must appear on their court date, even if the person pays for the check.** If the individual fails to appear in Court, a warrant is issued for their arrest.

9. The Prosecutor's Office does not handle money. This means that even if the check has been turned into us for prosecution, **restitution will be paid directly to you.** You should go ahead and receive the money and notify our office upon receipt.

10. Please notify the Prosecutor's Office by telephone when you receive restitution. If the check is not paid within the time allotted by the Court, you will be asked to send us a letter on your letterhead, dated and signed, indicating restitution has not been paid. Through this process, we are able to save you an appearance in Court, and can enter the letter of non-payment into evidence.

11. If a check is submitted for prosecution in error (such as after the person has paid the check), **you will be responsible for the court costs** (currently \$84.50).