

## **BLOOMINGTON POLICE DEPARTMENT**

### **STANDARD OPERATING PROCEDURE**

#### **WORTHLESS CHECKS:**

#### **NSF, ACCOUNT CLOSED, NO ACCOUNT OR FORGERY**

Reviewed by: Sgt. Clayton Arnold	Effective Date: January 16, 1996
Authorized by: Chief Dan Donath	Revision Date: October 14th, 2019

#### **PURPOSE**

The purpose of this SOP is to establish guidelines for the types of bad check cases which will be accepted for criminal investigation and provides information necessary to file a police report. The Bloomington Police Department will conduct follow-up investigations on bad check cases when criminal intent to deceive is apparent and the offense is classified as a felony. The Bloomington Police Department is not a collection agency and will not conduct investigations for collection purposes.

#### **PROCEDURE**

When a citizen communicates to a Bloomington Police Officer the desire to make a criminal police report for an offense involving a bad check, the officer making the report shall ensure that the reported offense meets the criteria for follow-up investigation and that all needed documents are provided at the time the report is made. If all documents needed for further investigation are not provided by the citizen, a report shall still be taken. The officer or CSO taking the report will make the citizen aware of what documents are needed before further investigation can begin. The officer or CSO shall document this advisement in the narrative of the report.

The officer taking the report shall only take bad check report(s) from the person, business, or institution which suffers the financial loss as a result of the bad check. The officer taking the report should use the following steps to ensure the offense meets the requirements set forth herein for follow-up investigation and that prima facie evidence is provided.

#### **AMOUNT OF THE CHECK**

Only a check(s) which totals \$150.00 or more within the past 90 day period, (with the exception of a Forgery--see explanation of this later in this procedure), will be accepted by the Bloomington Police Department for follow-up criminal investigation. Check(s) less than \$150.00 may be taken to the State's Attorney's Office for the Deferred Prosecution Program on either Mondays or Tuesdays, 11:00 AM to 2:00 PM, for screening. The State's Attorney's Office may assist in collection attempts or prosecute the criminal offense. Collections for check(s) which are less than \$10.00 total value may be pursued by the citizen through a private attorney or small claims court.

### **DATE CHECK ISSUED/WRITTEN**

If the date of issuance on the check is less than 90 days, the check(s) may be accepted for follow up criminal investigation. If the check(s) are past 90 days old, (with the exception of a Forgery-- see explanation of this later in this procedure), the citizen should be informed that the check(s) will not be accepted for follow-up criminal investigation. The officer should give the citizen a copy of the Department's *Public Information Guide for Bad Checks*, and explain that restitution may be gained either through the citizen's own efforts, private attorney, a collection agency, or through small claims court.

### **BAD CHECK INFORMATION FORM**

The officer making the report should not accept any bad check(s) for follow-up criminal investigation which do not have a *Bad Check Information Form* completely filled out and attached to a photocopy of each bad check. The officer should provide extra *Bad Check Information Forms* to the citizen, as needed to ensure there is a form for each check. The *Bad Check Information Form* provides information required for a successful prosecution.

### **REASON CHECK NOT HONORED BY BANK**

1. FORGERY - Any check stamped as a "FORGERY" will be accepted for follow-up investigation regardless of the date, (within statutory limits), the amount; and
  - a. when the person who suffered the financial loss is the person/business making the criminal report; and
  - b. when a *Forgery Affidavit* is submitted as evidence that the check is a forgery.
2. ACCOUNT CLOSED, NO ACCOUNT - Any check returned and stamped "Account Closed" or "No Account" need only be presented to the bank once.
3. NON-SUFFICIENT FUNDS (NSF) - Any check returned and stamped "NSF" must have been submitted to the bank on two different occasions at least 7 days apart or the check cannot be accepted for criminal investigation.

### **COLLECTION ATTEMPTED BY VICTIM**

**Only** on "Account Closed," "No Account," and "NSF" checks, must the victim provide evidence that some attempt to contact the writer of the bad check was made, explaining the problem with the check and requesting payment within 30 days. The preferred evidence is a copy of a letter sent by certified US mail to the check writer's last known address. Evidence of the collection attempt(s) should be submitted as evidence by the officer making the report, with the copy of the original check being made and attached to the detective's work copy of the report, before the original check is submitted into evidence.

### **ORIGINAL CHECK SUBMITTED FOR EVIDENCE**

The original check must be seized for evidence at the time the criminal report is made. **NO CRIMINAL REPORT WILL BE MADE WITHOUT OBTAINING AND SUBMITTING THE ORIGINAL CHECK FOR EVIDENCE.** Without the original check as evidence, there is no evidence to establish that a criminal offense occurred. The officer taking the report should copy both the front and back of the bad check, then attach the copies to the detective's work copy of the report before submitting the original bad check as evidence.

### **SPECIFIC CHECKS ISSUED FOR PAYMENT - NOT ACCEPTABLE**

Check(s) which have been issued as payment for the below listed reasons **WILL NOT BE ACCEPTED FOR A CRIMINAL REPORT OR INVESTIGATION.** Victims of such check(s)

should be informed that they may seek restitution through their own efforts, a private attorney, collection agency, or small claims court. For example:

1. **Employment Payroll Check(s)**
2. Check(s) issued to pay **Rent, Lease, Down Payment or other contract agreement**
3. **"Stop Payment" Check(s)**
4. **Two Party Check(s)**. From one individual to another individual or previously endorsed
5. Check(s) issued to **pay off other bad check(s)**
6. Check(s) **over 90 days old**
7. NSF, Account Closed or No Account check(s) totaling less than \$150.00 within or past the 90 day period AND NSF check(s) which have not been presented to the bank twice, seven days apart.
8. Check(s) when **partial restitution** has been made
9. Check(s) when the check writer has **filed for bankruptcy**

### **SUSPECT**

The officer taking the report should explain to the citizen how important their involvement is in the investigation and successful prosecution of the case. The citizen is generally the only person who can identify the person who wrote or presented the check. Without a suspect or information which can produce a suspect, further follow up is futile. Cases without a suspect or information which could produce a suspect will not be assigned to a detective for criminal investigation, but will be Administratively Cleared. Bad check cases which are Administratively Cleared when the report is made will still be forwarded to the detective who primarily investigates worthless documents, for his/her information. The detective can compare the report with previous or future reports in hopes a suspect can be developed from other reports.

# BLOOMINGTON POLICE DEPARTMENT BAD CHECK INFORMATION FORM

## I. COMPLAINANT INFORMATION:

To whom was check made payable : \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

## II. PERSON ACCEPTING CHECK

Check only the most accurate statement below:

I do not recall accepting this check, but data on check is in my handwriting.

I do recall accepting check, data on check is in my handwriting, but I do not remember person who presented check and will not be able to identify them.

I, \_\_\_\_\_ hereby verify that I did accept the attached check for payment of \_\_\_\_\_

The data on the check is in my handwriting. I recorded all personal identifiers of the person presenting the check and I can POSITIVELY identify the person who presented the check.

Check all which are true statements for this check.

Check was written/endorsed in presence of person accepting check?  
 Person accepting check did compare writer/endorser of check with a photo identification and verify they were the same person?  
 Person accepting check did compare signature on check with some form of identification.

IDENTIFICATION PRESENTED & NUMBER:

1. \_\_\_\_\_  
2. \_\_\_\_\_

## NAME OF PERSON ACCEPTING CHECK

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

OTHER person(s) present when check was presented:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

## III. SUSPECT INFORMATION:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Race: \_\_\_\_\_ Sex: \_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Other identifying features: \_\_\_\_\_

Drivers License Number: \_\_\_\_\_ State: \_\_\_\_\_

Employed by: \_\_\_\_\_

Other locations suspect may be located: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV. BAD CHECK INFORMATION:**

Name of Bank for Check Account: \_\_\_\_\_  
Address of Bank: \_\_\_\_\_  
Phone Number of Bank: \_\_\_\_\_  
Checking Account Number : \_\_\_\_\_  
Control Number on Check: \_\_\_\_\_  
Date Check Written: \_\_\_\_\_  
Date(s) Check Presented to Bank: \_\_\_\_\_  
Amount of Check: \$ \_\_\_\_\_

**V. EFFORTS MADE TO COLLECT ON CHECK:**

- \_\_\_\_ 1. Written correspondence demanding payment, sent to last known address of suspect, by certified U.S. Mail.  
*(Attach copy of letter & proof of delivery).*
- \_\_\_\_ 2. Phone Contact (explain): \_\_\_\_\_
- \_\_\_\_ 3. Personal Contact (explain): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_ Did suspect admit check was his/hers?  
\_\_\_\_ Did suspect agree to pay for check, and if so, what arrangements were made? (explain):  
\_\_\_\_\_  
\_\_\_\_\_

To whom did suspect admit to check or agree to make payment?

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

**BLOOMINGTON POLICE DEPARTMENT  
INFORMATION GUIDE TO AVOID  
ACCEPTING BAD CHECKS**

The high volume of deceptive practice checks turned over to the Bloomington Police Department has required modification of the Department's policy. The intent of the modification is to allow the Department to focus investigative efforts on deceptive practice complaints that result in a significant loss. The Bloomington Police Department will continue to accept felony cases (i.e., Forgery and Deceptive Practice over \$150.00). The Bloomington Police Department will not act as a collection agency for worthless checks, and police investigation resulting in criminal charges can not be initiated merely to obtain restitution. Restitution can be ordered by the court at the time the defendant pleads guilty or is convicted. In many worthless check matters, the small claims court, private attorney or a professional collection agency may be more satisfactory.

The successful investigation and prosecution for deceptive practices or forgery requires the cooperation of the victim, be it a person or a business and the investigating police agency. For Criminal Prosecution, the McLean County State's Attorney must prove that the defendant, at the time he/she presented the check, specifically intended to defraud the victim. This is often difficult to do with NSF cases because the defendant may insist negligence pertaining to the amount of money in his/her account. Negligence does not amount to a specific intent to defraud required in a criminal case. In all cases the defendant must be positively identified as the person who presented the check. Should there be no suspect and a means of identifying the suspect as the person who presented the check, investigation and prosecution are futile.

The intention of this guide is to provide tips for preventing worthless checks from being accepted and to facilitate gathering enough information about the person who presented the check to ensure a successful criminal prosecution.

## **HOW DO I PROTECT MYSELF FROM ACCEPTING WORTHLESS CHECKS?**

Often persons attempting to pass a worthless check will try to do so late in the afternoon or evening when the banks are closed and verification is impossible. Verification with the bank on each check accepted is the surest method to avoid accepting a bad check, but may not be a practical business practice. If you can't call the bank to verify the check and **you are in doubt, don't take the check.**

1. Ask for a valid Illinois driver's license or photo ID with a control number. Look at the date the identification was issued. If recently issued, it may have been obtained with phony information for the purpose of passing bad checks.
2. Compare the address on the check with that on the photo ID and compare the picture on the ID with the person presenting the check.
3. Compare the signature on the check with a signature on a piece of identification.
4. The following information should be legibly recorded on the check by the person accepting the check:
  - a. Name
  - b. Driver's license number & state of issuance
  - c. Address
  - d. Sex
  - e. Telephone number: home & work if available
  - f. **Date of Birth**....needed if warrant is to be issued, charges may not be filed without the suspect's date of birth.
  - g. **Name of Employee who accepted the check.**
5. If you suspect that something is wrong, call the bank on which the check is drawn and determine if there is in fact an existing account with sufficient funds to cover the amount of the check.
6. The bank's name and address should be imprinted on the face of the check.
7. All writing on the check should be legible.
8. Is the check drawn on a Bank located in the local business area of McLean County? The risk of loss is higher, when the bank is located outside the local business area of McLean County.
9. Does the writer of the check reside in McLean County? The risk of loss is higher when the writer of the check resides outside of McLean County.
10. If a business check is presented, first verify the check with the business issuing the check (usually a telephone call to the payroll department of the business), then verify the identity of the person presenting the check for payment.

**The key is absolute employee diligence in not deviating from established procedure.**

## **WHAT ARE MY OPTIONS IF I HAVE ACCEPTED A WORTHLESS CHECK?**

### **RESTITUTION**

If your main goal is restitution, then you can institute a small claims suit with the Clerk of the Circuit Court, located in the Law & Justice Center, 104 W. Front Street, Bloomington, IL or contact a collection agency or private attorney. If the check(s) total is under \$10.00, this is the only recourse available as provided in the Deceptive Practice Civil Liability Statute (720 ILCS 5/17-1a).

### **McLean County State's Attorney Assisted Collections or Prosecution**

Check(s) returned due to NSF, Account Closed or No Account with the total loss being greater than \$10.00 but less than \$150.00 may be taken to the McLean County State's Attorney for assistance with collection attempts and/or criminal prosecution. The McLean County State's Attorney has set the following office hours for the **Deferred Prosecution Program**: Monday and Tuesday, 11:00 A. M. to 2:00 P. M. to screen bad checks. No appointment is needed for check screening during the above office hours. If you cannot make it during the scheduled office hours, then an appointment is required. You can schedule the appointment by contacting the Deferred Prosecution Program at 888-5428. The State's Attorney will need the original check and the **Deceptive Practice Complaint Form** to review the bad check case. Copies of this form are available from the State's Attorney's Office, 104 West Front Street, Room 605, (in the Law and Justice Center), Bloomington, IL 61701.

### **Procedural Steps That Need To Be Followed**

1. Submit a completed Deceptive Practice Complaint Form and attach all worthless checks and bank charges (if any) to the complaint form.
2. **CEASE ALL COLLECTION EFFORTS AFTER YOU SUBMIT THE DECEPTIVE PRACTICES COMPLAINT FORM. RESTITUTION SHOULD NOT BE MADE TO YOU AFTER YOU HAVE SUBMITTED THE COMPLAINT. RESTITUTION MUST BE MADE TO DEFERRED PROSECUTION.**
3. The Deferred Prosecution Section will notify the check writer that a deceptive practices complaint against him/her has been submitted.
4. Deferred Prosecution will offer the individual the opportunity to avoid court action and a possible criminal conviction by paying the amount owed to you through Deferred Prosecution and by participating in the bad check prevention education program.
5. Deferred Prosecution will give the individual two weeks to submit restitution to you through its office. A second stronger letter will be sent if no response is forthcoming at the end of two weeks. At the end of 30 days, any money collected by Deferred Prosecution on your behalf will be forwarded to you.
6. Should the check writer fail to provide restitution within 30 days, Deferred Prosecution will refer the case to the State's Attorney's Office for prosecution.

### **ELIGIBILITY: REFERENCE CHECKLIST**

#### **ELIGIBLE CASES**

- \* NSF checks and account closed checks issued for goods and/or Services.
- \* C. O. D.'s
- \* All transactions must take place in McLean County
- \* Restitution will be sought on all cases at or above a \$10.00 minimum.

#### **INELIGIBLE CASES**

- \* Postdated checks
- \* Two party checks
- \* Payroll checks
- \* Stop-payment checks
- \* Forged or stolen checks, (these should be reported to the police)
- \* Checks held over 90 days

**Note:** If your check is ineligible for the program, you may file a Civil Complaint in Small Claims Court, with the McLean County Circuit Clerk's Office.

### **CRIMINAL INVESTIGATION BY THE BLOOMINGTON POLICE DEPARTMENT**

The Bloomington Police Department will accept Bad Check cases for criminal investigation and pursue prosecution when there exists a willful, specific intent to deceive or cheat. For criminal prosecution, it must be shown that the maker of the check delivered it, upon a real or fictitious depository for the payment of money, **knowing** that it would not be paid by the depository. The identity of the person who issued the bad check must also be proven positively. The Bloomington Police Department will not serve as a collection agency. The acceptance of restitution before

prosecution has been completed may result in other bad check cases not being accepted for investigation by the Bloomington Police Department. To increase the chances of securing a successful prosecution, the following steps should be taken.

1. The victim must take some action toward collecting the money prior to seeking criminal prosecution. The most appropriate action is to send a letter explaining the problem with the check and demanding payment within 30 days. The letter must have been sent by registered US mail to the last known address of the suspect. You must provide evidence that this action was taken when the criminal report is made.
2. You must submit a completed Bloomington Police Department *Bad Check Information Form* along with the original check, to the Bloomington Police Department when the criminal report is made. A *Bad Check Information Form* must be filled out for each individual bad check submitted for criminal prosecution. Extra *Bad Check Information Forms* can be obtained at the front desk of the Bloomington Police Department.
3. If the check is the result of a *forgery, account closed or no account*, the check need only be presented to the bank once. If the check is marked *NSF* it must be presented to the bank twice at least 7 days apart.
4. If the check is *forged*, a Forgery Affidavit proving the document is a forgery must be submitted to the Bloomington Police Department as evidence the document is in fact a forgery when the police report is made. Only the person or institution which suffers the financial loss may make the police report.
5. All *NSF, account closed or no account* bad checks must be no more than 90 days old, the total loss must be \$150.00 or more from one of more checks within the 90 day period, and all NSF check(s) must have been presented to the bank twice, seven days apart.

## **TYPES OF BAD CHECKS NOT ACCEPTED FOR INVESTIGATION/CRIMINAL PROSECUTION**

- \* No employment **Pay Checks**
- \* No **rent, lease** or **contract** checks
- \* No **"Stop Payment"** checks
- \* No **Two Party** checks, from one individual to another individual or previous endorsement
- \* No checks written for **Down Payment**
- \* No checks issued to **pay off other bad checks**
- \* No check **over 90 days old**, (with the exception of a forgery)
- \* No check when the maker of the check lives **outside of McLean County** or the bank which the check is drawn upon is outside the local business area of McLean County, (with the exception of a forgery)
- \* No **NSF, Account Closed or No Account** check(s) totaling **less than \$150.00** within a 90 day period or less. *Account Closed or No Account* checks need only be presented to the bank for payment once.
- \* No **NSF** check which has not been **presented** to the bank **twice** at least **7 days apart**.
- \* If **partial payment** has been made toward the check
- \* No checks from people who have **filed for bankruptcy**

The Bloomington Police Department reserves the right to make exceptions in their bad check investigation guidelines when criminal intent is obvious and the circumstances are especially aggravating.



SUGGESTED LETTER

(Retain a copy of letter and the certified envelope for documentation)

DEAR Mr., Mrs., or Ms. \_\_\_\_\_:

Your check numbered \_\_\_\_\_, in the amount of \$\_\_\_\_\_, dated \_\_\_\_\_, and drawn on the (Name of Financial Institution), has been returned with the notation (NSF-Insufficient Funds, Closed Account or No Account).

I/we accepted this check from you on (date) at your request in (Payment/Exchange) for (cash/merchandise).

Pursuant to Illinois Law, 720 ILCS 17-1a (Civil Liability for Deceptive Practice), provides in part that "A person who issues a check or order to a payee in violation of section 17-1(B) (d) AND who fails to pay the amount of the check or order to the payee within thirty (30) days following either delivery and acceptance by the addressee of a written demand by certified mail to the person's last known address or attempted delivery of a written demand sent by certified mail to the person's last known address and returned to the sender with a notation that the delivery was refused by the person to whom the certified mail was addressed, shall be liable to the payee or a person subrogated to the rights of the payee for, in addition to the amount owing upon such check or order, damages of TREBLE (Triple) the amount so owing, but in no case less than \$100.00 nor more than \$500.00, PLUS attorney fees and court cost.

Please consider this letter your Official Notification of nonpayment, and be advised that if you fail to make complete restitution in accordance with Illinois Law on the aforementioned check within the next thirty (30) days, that criminal prosecution or a civil court action may be initiated against you and that as a result of that court action you may be ordered to make restitution equal to the amount of three times the original amount owed, not to be less than \$100.00 or to exceed \$500.00, plus attorney's fees and court cost.

Please be aware of these provisions, and of pending legal action should you fail to comply with payment, and govern your actions accordingly.

Sincerely,

(INDIVIDUAL/BUSINESS NAME)