

**Marion County Attorney's Office
214 E. Main
Knoxville, IA 50138
(641) 828-2223**

TO ALL BUSINESSES/PERSONS UTILIZING THE BAD CHECK PROCEDURE

Attached are forms, samples, and instructions for utilizing the bad check procedure employed by the Marion County Attorney's Office. It is important that you read the instructions and follow them exactly, including keeping copies of the form letter for your files and the Marion County Attorney's Office. When the information is received in this office, it must be complete, as required by the instructions. If the information is not complete, it will be returned to you with a request that you obtain the necessary information for criminal prosecution.

Once a criminal charge is filed by the Marion County Attorney's Office, you do not have the authority to dismiss the criminal charge. This can only be done by the Court through the County Attorney's office. Do not tell the person involved that payment of the check will automatically result in criminal charges being dismissed. This office will assume at the time of the filing of the charge that restitution has not been made to you. If restitution has been made and it is later determined that there is not a viable criminal charge, court costs and costs of service will be charged to you.

This office cannot prosecute a bad check which was based on a credit sale, on an installment payment, that was post-dated, that was held by agreement, that is a two-party check, which was accepted outside of Marion County, or other similar transaction, or is more than six (6) months old. In order to meet the definition of criminal theft statutes in Iowa, there must be a simultaneous exchange of property, merchandise, cash, etc., in exchange for the check. Due to the cost of prosecution and difficulty of extradition, we will only prosecute checks written on out-of-state banks if they are written for amounts in excess of \$1,000.00.

The County Attorney's office does not prosecute alleged bad checks written for amounts less than \$50.00. The number of complaints concerning these checks grew to the extent that the court felt the criminal process was being used as a collection agency when a more appropriate remedy would be in civil court. Forgeries do not fall within this \$50.00 floor amount and should still be turned over to law enforcement for prosecution.

Identification of the person giving or passing the check is critical, either by proper identification verified at the time the check was accepted or by personal identification by the person who took the check. If someone cannot testify in court that the Defendant is the individual who negotiated the check, we can't prosecute.

If you have questions with regard to the forms or the procedure, please contact this office.

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INSTRUCTIONS FOR INSTITUTING CRIMINAL CHARGES ON BAD CHECKS

1. Fill in the appropriate lines on the form letter that informs the person that he has ten days to make the check good.
2. Be sure to keep an exact copy of that letter for your files for later use and also a copy for the Marion County Attorney's Office.
3. Mail the letter to the person by Certified Mail, Return Receipt request, and Deliver to Addressee Only. You need to stress to the Post Office that the letter must be delivered to, and signed for by, the person indicated and no one else.
4. If the check has not been paid within ten days from the person's receipt of the letter, complete the attached Complaint and Affidavit form. Be sure to include the following on the form:
 - (a) date of birth;
 - (b) social security number of driver's license number;
 - (c) the degree of theft;
 - (d) an address, including street address and town; and
 - (e) a complete statement as to the date the check was presented, to whom, and on what bank.
5. Degrees of theft are set out below:
 - (a) \$0.00 to \$200.00 - Theft in the Fifth Degree, a Simple Misdemeanor;
 - (b) \$201.00 to \$500.00 - Theft in the Fourth Degree, a Serious Misdemeanor;
 - (c) \$501.00 to \$1,000.00 - Theft in the Third Degree, an Aggravated Misdemeanor;

(d) \$1,001.00 to \$10,000.00 - Theft in the Second Degree, a Class "D" Felony; and

(e) \$10,001.00 and above - Theft in the First Degree, a Class "C" Felony.

6. After preparing the Complaint and Affidavit form, be sure to sign it at the two places shown on the sample form. Please remember that the form must be signed in the presence of a notary.
7. After completing the Complaint and Affidavit and signing same in the presence of a notary, send the following to our office:
 - (a) a copy of the letter sent to the person;
 - (b) the return receipt card from the Post Office that shows delivery;
 - (c) the bad check;
 - (d) the completed information sheet; and
 - (e) the completed Complaint and Affidavit form.
8. Be sure to submit all of the information within six months of the date of the check.
9. The County Attorney's office, upon receipt of the above information, will then review the information to determine if there is a prosecutable case. If the information is incomplete, it may be returned to you for further information. If for some reason the case cannot be prosecuted, you will be notified of that fact. If the information is complete and there is a prosecutable case, the County Attorney's office will arrange for the filing of the Complaint and Affidavit.
10. When the Complaint and Affidavit is filed, the Defendant will either be arrested or will be summoned to appear before the Judge. If the case proceeds to trial because the Defendant pleads not guilty, the individual who deposited the check and the person who originally took the check will be required to appear as witnesses for the State of Iowa in court. Other individuals cannot be substituted, because the witnesses must have personal knowledge of the facts and may not rely on hearsay information. Subpoenas will be issued by this office for individuals who must appear in court.

11. From time to time, after criminal charges have been filed, the person will come to your business and ask you to drop the criminal charges if he pays the check and all fees. You must inform him that the criminal charges are out of your hands and now with the County Attorney's office and that you have no power to drop any charges.
12. You may, at that time, accept payment for the bad check. You should inform the party that it is impossible for either you or the County Attorney's office to return the check, as it will be held as evidence in the State's file. You should give him a receipt that is clearly marked as to exactly what the money is being received for, dated, and signed by the person giving the receipt. Immediately notify the County Attorney's office at this time.
13. IMPORTANT!!! -- You must inform the person that he or she must appear in court as they have been ordered to do. Payment of the check does not excuse their court appearance, and if they do not show up in court a warrant will be issued for their arrest.

INFORMATION ON BAD CHECK

Name of person who signed check: _____

Birthdate: _____ SS#: _____

License #: _____ Form of ID: _____

Address: _____

Presented to: _____ Phone #: _____

Address: _____

Received for check (cash, goods, etc.): _____

Date goods delivered: _____

Bank upon which check was drawn and the account number:

Date check presented: _____

Name of person who took check: _____

Address: _____ Phone #: _____

Can this person identify the person who gave the check? _____

Name of person who deposited the check: _____

Address: _____ Position: _____

Reason check was returned: _____

What efforts have been made to collect this check? _____

I ask that criminal prosecution be made on this check if possible and do state that the person who signed the check has not made restitution on the check and that the information provided herein is true and correct to the best of my knowledge.

PLEASE ATTACH ORIGINAL CHECK HERE AND ANY ADDITIONAL INFORMATION

YOU MAY HAVE TO THIS SHEET. IF THIS SHEET IS NOT FILLED OUT AND SIGNED THERE WILL BE NO PROSECUTION.

This is a sample letter that you may use to notify the person of the returned check. You will need to put this letter on your own paper or letterhead, filling in the appropriate blanks.

This letter is to be mailed by **Certified Mail, Return Receipt Requested**, and **Deliver to Addressee Only**.

You will need to send the original to the person who signed the check. Be sure to keep one copy for your files and one copy for the County Attorney's Office.

Dear _____:

You are hereby notified that the check listed below has been returned to us from your bank and that they have refused payment for following reasons:

The check involved was dated _____ and was made payable to _____.

The bank upon which this check was written was _____.

Since you have received goods and/or services in return for this check, there is a possibility that you may be guilty of Theft under Section 714.1 of the Code of Iowa. That section of the Code further states that if you do not pay this amount within ten days after the receipt of this notice, it may be inferred by the court or jury that you knew the instrument would not be paid by the bank when presented.

You are hereby notified to make this check good within ten days.

Sincerely,

INSTRUCTIONS FOR COMPLETING COMPLAINT AND AFFIDAVIT

Attached is a blank Complaint and Affidavit (please make copies so that it is reusable) and a numbered Complaint and Affidavit for your reference. Please refer to the following numbers for instructions on what you are required to put on each line:

1. The name of the person who presented the check (Defendant);
2. a complete address, including a street address;
3. date of birth for the person who presented the check;
4. social Security number or driver's license number, as given to you by the individual;
5. the degree of theft;
6. the numerical day of the month on which the check was presented;
7. the month of the year in which the check was presented;
8. the year that the check was presented;
9. the name of the person or business to whom the check was presented;
10. the city address of the person or business to whom the check was presented;
11. the amount of the check;
12. the name of the employee who accepted the check;
13. the name of the account as shown on the check;
14. the name of the bank on which the check was drawn;
15. the city and state address of the bank on which the check was drawn;
16. the name of the bookkeeper or other person who deposited the check;
17. the reason the bank returned the check, as shown on the check (e.g. "Insufficient Funds" or "Account Closed");
18. the name of the person who signed the certified letter sent to the Defendant;
19. the complaining party's signature; and
20. the complaining party's address.

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

THE STATE OF IOWA * Criminal No. _____

vs * COMPLAINT AND AFFIDAVIT

(1) * BD - (3)
(2) SS# (4)

The Defendant is accused of the crime of Theft in the (5) Degree, in violation of Sections 714.1 and 714.2 of the Code of Iowa, in that the Defendant, on or about the (6) day of (7), 20(8), in Marion County, Iowa, did: tender a check to (9) in (10), Iowa, and obtain property and/or services therefor, knowing said check would not be paid when presented to the bank on which it was drawn, said check being in the amount of \$ (11).

(19) _____ (20) _____
COMPLAINANT COMPLAINANT'S ADDRESS

AFFIDAVIT

STATE OF IOWA

ss

MARION COUNTY

I, the undersigned, being duly sworn, state that the following facts known by me or told to me by other reliable persons form the basis for my belief that the Defendant committed this crime.

On or about the (6) day of (7), 19(8), (1) presented a check in the amount of \$ (11) to (9) in (10), Iowa, in exchange for goods and/or services in that amount. (12), an employee of (9), took said check and delivered the goods and/or services to the Defendant. The check was on the account of (13) at the (14) in (15), Iowa. (16), bookkeeper for (9), deposited the check in their bank account, and it was returned marked, "(17)." (18) sent a certified letter to the Defendant, notifying him/her of the returned check, after which more than 10 days passed, and the Defendant did not make the check good.

(19) _____
COMPLAINANT'S SIGNATURE

Subscribed and sworn to before me on this _____ day of _____, 20____.

NOTARY PUBLIC

_____ Complaint and Affidavit filed this _____ day of _____, 20__, and probable cause found that the Defendant committed the offense charged.

_____ Warrant issued. Bail set at \$ _____.

_____ Citation issued.

JUDGE

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

THE STATE OF IOWA * Criminal No. _____
vs * COMPLAINT AND AFFIDAVIT
* BD -

The Defendant is accused of the crime of Theft in the _____ Degree, in violation of Sections 714.1 and 714.2 of the Code of Iowa, in that the Defendant, on or about the _____ day of _____, 20____, in Marion County, Iowa, did:

tender a check to _____ in _____, Iowa, and obtain property and/or services therefor, knowing said check would not be paid when presented to the bank on which it was drawn, said check being in the amount of \$_____.

COMPLAINANT COMPLAINTANT'S ADDRESS

AFFIDAVIT

STATE OF IOWA
ss
MARION COUNTY

I, the undersigned, being duly sworn, state that the following facts known by me or told to me by other reliable persons form the basis for my belief that the Defendant committed this crime.

On or about the _____ day of _____, 20____, _____ presented a check in the amount of \$_____ to _____ in _____, Iowa, in exchange for goods and/or services in that amount. _____, an employee of _____, took said check and delivered the goods and/or services to the Defendant. The check was on the account of _____ at the _____ in _____, Iowa. _____, bookkeeper for _____, deposited the check in their bank account, and it was returned marked, "_____." _____ sent a certified letter to the Defendant, notifying him/her of the returned check, after which more than 10 days passed, and the Defendant did not make the check good.

COMPLAINANT'S SIGNATURE

Subscribed and sworn to before me on this _____ day of _____, 20____.

NOTARY PUBLIC

_____ Complaint and Affidavit filed this _____ day of _____, 20____, and probable cause found that the Defendant committed the offense charged.
_____ Warrant issued. Bail set at \$_____.
_____ Citation issued.

JUDGE