

EAST MONTGOMERY COUNTY HOT CHECK TASK FORCE
RAPID RECOVERY PROGRAM
Overview

The PCT 4 Justice Court, Montgomery County Attorney, County Law Enforcement Agencies have joined forces with the business community to form The East Montgomery County Hot Check Task Force. The goal, to combine education and resources with a rapid response from the Court System and Law Enforcement; to reduce the impact Hot Checks have on the East Montgomery County community.

Every year, hundreds of thousands of dollars are literally stolen from businesses and individuals in Montgomery County by thieves who use checks as their "weapon" of choice. This crime occurs not with a gun or threats of violence, but with a simple piece of paper and a pen. It is the criminal offense of "Theft-by-Check". The unique nature of this offense is that the victim usually does not know he or she is a victim of a crime until several weeks after the initial event took place. Further, this particular criminal offense often has a "ripple" effect on the public in that the original criminal conduct not only impacts the original victim, but in the case of a merchant victim, the loss is frequently passed on to the consumers making them victims as well.. Committing theft by issuing a worthless check usually gives the offender several weeks before the crime is detected. As a result, the thief has a head start on the authorities and may be harder to catch. Fast action is required.

The East Montgomery County Hot Check Task Force is committed to catching these thieves and has developed a program to recover the losses suffered by our area merchants. Some people think that every worthless check is automatically a criminal offense. This is not true. Merchants and individuals who accept checks for payment should be familiar with this area of Texas law so that they can make an intelligent decision as to whether to accept a check.

It is a priority of the task force to assist the victims of hot check writers to recoup their money and to vigorously prosecute those who steal in this manner. Not every returned check can be prosecuted in a criminal court, but everything legally possible will be done to secure reimbursement and to see that justice is served for the victim. We can only assist with checks passed in Montgomery County.

DID YOU KNOW?

- Filing a check with the Justice Of the Peace James Metts or Montgomery County Attorney, David Walker's Worthless Check Department is FREE.
- You may conveniently file your case at either location.
- The County Attorney will refer Class C Misdemeanors to Justice of the Peace James Metts to file on your behalf.
- Class B or higher cases filed with Justice Of the Peace James Mett's office will be referred to the Montgomery County Attorney, David Walker for maximum prosecution for you.
- The Justice of the Peace can only file a Class C Misdemeanor on a hot check, regardless of the amount. The County Attorney can prosecute Class B Misdemeanor, Class A Misdemeanor and felony theft cases.
- We are able to collect a \$30.00 merchant fee for you on all checks and include it in your restitution (You Must Have a Sign Posted That Is Visible To The Check Writer).

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Clues for Detecting Bad Checks

The following are things to look for that might indicate that you have a bad or "hot" check on your hands. Look at these a little closer before accepting them:

- Personal checks with a low series of numbers. About 85% of all uncollected "hot checks" are new account numbers between 101 and 200.
- Know the bank routing number for your area of the state - the first four magnetic numbers to the left of the account number on the check.
- The magnetic ink used in the computer numbers on the bottom of the check should be dull - never shiny.
- Look for at least one perforated edge on the check. All checks except government and computer generated will have a perforation.
- Multicolored checks are popular, but beware of checks produced on a color photocopier, which will have shiny, tacky raised numbers

How Can I Protect Myself?

You should use the following safeguards before you accept a check ...

First, Examine the CHECK CAREFULLY!

- Be cautious when you accept a check with a low check number below 250
- Make sure the date is correct
- Make sure the amount is correct in both places
- Make sure that no one has altered the amount
- Make sure that the name the check is made payable to (the payee) is correct
- Make sure that the name the check is made payable to has not been altered.

Second, Request IDENTIFICATION!

A Texas Drivers License is the best form of identification.

A military identification card is acceptable. Local credit cards and other forms of photo identification may also be helpful. A social security card is only acceptable if it is offered with a form of picture identification that matches the check.

Third, Examine the IDENTIFICATION!

- Make sure that the person passing the check matches the photo on the identification
- Make sure the check address matches the address on the identification
- Make sure the expiration date on the identification has not already expired.
- Make sure the check name and signature matches the name and signature on the identification.
- Make sure the date of birth on the check matches the date of birth on the identification.

Fourth, Don't Ignore RED FLAGS!!

If you believe the check is suspect, don't accept the check. If you believe the identification is questionable, don't accept the check. If the check and identification do not match, don't accept the check.

You Should Take the Following Steps When You Accept a Check:

- Always copy the identification number and date of birth onto the front of the check.
- Always place your initials or I.D. number on the front of the check.
- Always record the checkwriter's home and work phone number on the front of the check.

Why Are These Safeguards Important?

The County Attorney's Office cannot effectively prosecute checkwriters who pass hot checks if you do not use these safeguards. We must be able to identify the person who accepted the check in order to take the case to trial. That person may be asked to identify the checkwriter in court at the time of trial. If that person cannot identify the checkwriter, then we must rely on the information copied or recorded onto the front of the check. If no information has been recorded onto the check and no one can identify the checkwriter who passed the worthless check, then it is very unlikely that the checkwriter will be prosecuted.

How Should I Handle a Hot Check?

You should take the following steps when you receive a hot check:

1. Send a notice of dishonor to the checkwriter.
2. In the notice of dishonor: Language required by Penal Code Sec. 31.06: a.) demand payment within 10 days of receipt of the notice; b.) request a merchant collection fee if it is authorized by Texas Statute (Art. 9022); c.) send a copy of the check(s) to the checkwriter.
3. Send the notice of dishonor by certified mail, return receipt requested.
4. Keep a copy of the notice of dishonor with the original check.

The Notice Letter- Below is a sample Notice Letter:

*Mr. John Doe
123 Bandit Trail
Somewhere, Texas 77357*

Re: Returned "NSF" Check

Dear Mr. Doe,

Check number 1234 which you presented to me for groceries on January 10, 2003 in the amount of \$XX.XX has been returned by your bank marked "NSF".

This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution.

Therefore, you have 10 business days from receipt of this letter to make full payment for this check in the form of cash, money order, or certified check or this matter will be referred for criminal prosecution."

*Sincerely,
Joe Merchant*

NOTICE OF DISHONOR

If the Checkwriter does not respond, you should send these four items immediatly for collection:

- The original check
- The copy of the notice of dishonor
- The return receipt (green card) or sealed returned envelope
- The County Attorney Check Intake Form.

PLEASE SUBMIT THIS INFORMATION TO:

Justice of the Peace James Metts
22354 Justice Drive
New Caney, Texas 77357
281-577-8970

Montgomery County Attorney's Office /Worthless Check Div.
210 W. Davis Suite 425
Conroe, Texas 77301
936-539-7847

If you have a question about a check being accepted for prosecution, please call, we will be glad to help you.

What will the Justice Of The Peace Or County Attorney Do?

They will immediately send a demand notice to the checkwriter. The checkwriter will be given ten (10) days to pay full restitution, which will include the amount of the check, any applicable merchant collection fees and the Hot Check fee. Any checkwriter who fails to pay the total amount owed is subject to criminal prosecution.

When a check is presented to a Task Force Office for prosecution, the merchant will fill out a witness statement The check will be logged and a search made to see if the check writer has any other hot check offenses pending. If he/she does, your check will be filed with the criminal cases previously filed in order to expedite your restitution upon prosecution of the check writer.

When our collection efforts are successful, you will receive restitution including a merchant fee. If collection efforts are unsuccessful, the office will review the case for prosecution. Our offices prosecutes offenders when appropriate and possible.

Normally, for first offenders and those with no other checks pending, the hot check writer will be notified both by letter and by a criminal investigator that a criminal case is about to be filed. Criminal charges will be filed if the check writer does not make restitution, to include a merchant collection fee and costs of prosecution under the Hot Check Fee Act. This may cost the hot check writer up to double the amount of the check. Also, if a criminal case is subsequently filed for failure to pay as required, the hot check writer will be faced with the expense of a fine and court costs! Checks submitted will be retained as criminal evidence whether or not restitution is made.

DO NOT ACCEPT ANY RESTITUTION FROM THE HOT CHECK WRITER AFTER THE CHECK HAS BEEN SUBMITTED TO THE HOT CHECK OFFICE.

On some occasions, the manner in which a check is made will dictate whether or not it is prosecutable under criminal law. The following types of checks are not suitable for criminal prosecution:

- A check marked "refer to maker," "drawn against uncollectible funds," or "unable to locate account."
- A postdated check (accept these at your own risk).
- A stop-payment check for services rendered.
- A check for which partial payment has been received.
- A check given in exchange for a returned hot check.
- A check received in the mail (unless received in Montgomery County and accompanied by affidavit).
- A check not passed in Montgomery County.
- A check not presented to the bank within 30 days of its issuance.
- Check stamped "irregular signature"
- Checks which are reported stolen
- Checks which have been forged or altered. These are forgery cases, file with law enforcement
- Checks issued in civil cases
- Checks for the repayment of debts, loans or charge accounts
- Old checks upon which the statute of limitations has run (Normally two years)
- Checks where partial payment has been accepted
- Two party checks
- Checks presented outside of Montgomery County or for services performed outside Montgomery County
- Checks where no property or services were given in immediate exchange
- Checks given in furtherance of any illegal activity

If you accept one of the types of checks listed above you might want to check with the County Attorney's Office to see if an exception exists whereby it can be accepted for prosecution. If not, you may still have certain remedies available to you under the Civil Laws of this State. You may want to consult with an attorney.

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Check List

Accepting a Check from a Customer

Prevention is the first protection against a hot check. You must be thorough with every check you accept. Set a consistent policy on the handling of all checks so that your customers will not have any reason to feel they are being treated unfairly - and so that any hot checks will be prosecutable. DO NOT rely on information on preprinted checks nor on the check-writer providing or filling in the information himself. The person taking the check must verify the information by actually examining the identification in order to prove that the person identified on the check is the same as the person writing it.

Have the following checklist available for your personnel, and adopt these hints as part of your check policy:

• IS IT DATED TODAY?

Checks must be dated the same day they're given. Postdated checks are not "hot checks" under the law and cannot be prosecuted!

• **IS THE SIGNATURE LEGIBLE?**

Do Not accept checks previously signed. Have them signed in your presence and compare with a driver's license or other signature ID.

• **IS THE ADDRESS COMPLETE?**

Require a permanent street address, not a P.O. Box number unless you know the check writer.

• **CAN YOU CONFIRM IDENTITY?**

Every kind of ID, including driver's licenses, can be forged. Rely on ID with photographs and physical descriptions. If the ID is suspicious, ask the person to hand it to you and then ask his address and/or birth date. If not his license, the person may be caught off guard and give the wrong information.

• **DO WRITTEN AMOUNTS AND NUMBERS CORRESPOND?**

Sometimes a check has the numbers altered. A bank will not honor checks with discrepancies between numerical and written amounts on the check.

• **RECORD INFORMATION ON THE CHECK:**

At a minimum, the following must be written on the check by the person accepting the check:

- The number and issuing state of the driver's license or state identification. (Even If Pre-Printed)
- Date of Birth Expiration Date of License
- SSAN for military members only. Dependents should have a driver's license.
- The initials or identifier of the person who accepts the check!

WHY IS THE INFORMATION NEEDED?

Recording the information convinces the judge or jury that the checkwriter actually wrote the check. This information also necessary to obtain a warrant.

CORPORATE AND DBA CHECKS

Require Special Attention. Make sure the signature is legible or print the person's name above or below the signature. You **MUST** have the name of the person who issued the check to file the check with our office. You **CANNOT** simply allege the name of the company.