

Education & Training Bulletin



Related Document: The G. O. entitled, "Inventory System for Property Taken into Custody."

Distribution: All Sworn Members

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CHECK FRAUD

Overview

- * Identification of proper check terminology.
- * Determination of the proper procedures for case reporting, classifying, and placing charges involved in check fraud cases.
- * Correct procedures for the recovery and inventory of documents (checks).

checks. Lost, stolen, mislaid, and improperly disposed of checks often land in the hands of unscrupulous individuals who commit fraudulent activity on the bank accounts of innocent victims. Also, some individuals who hold actual checking accounts find writing a check on a "Non-Sufficient Funds" (NSF) account or "Closed Account" as a simple method to commit deception.

Definition of a Check

A check is a negotiable instrument used to transfer funds from one source to another. The elements of a check are described in the example shown below.

Introduction

The purpose of this Training Bulletin is to familiarize preliminary and follow-up investigators with the proper way to conduct an investigation of check fraud. This bulletin is intended to define a check, to provide guidance for case report writing, to outline the proper procedures for the recovery of documents, and to describe the investigation with reference to Illinois statutes.

Case Reporting

Procedures for reporting check fraud can vary. Department members should evaluate the circumstances in order to determine the appropriate case report:

► **Worthless Document Case Report - CPD-11.415 (Rev. 5/00)** for cases involving bogus checks, forgery, and counterfeit checks.

General Information

Access to advanced technology has put the potential for financial crimes into the hands of people who would not have been able to forge, alter, or reproduce a check several years ago. The use of personal computers, scanners, color copiers, laser printers, desk top publishing software, and ink erasing chemicals has enabled the criminal to design, copy, print, and rewrite checks that appear to be legitimate

The diagram shows a check with the following fields and labels:

- Name of Drawer:** Mr. John Doe
- Address:** Address, City, State, Zip
- Payee:** Mr. Sample
- Drawee Bank Routing Number:** 50-852/219
- Check Number:** 8365
- Date:** October 1, 2000
- Pay To The Order Of:** Mr. Sample
- Amount:** \$ 100.00
- Dollars:** One Hundred and No/100
- Name of Drawee Bank:** USA Bank Chicago, Illinois
- Check Number (MICR):** ⑈ 8365 ⑈
- Drawee Bank Routing Number (MICR):** ⑈ 50-852/219 ⑈
- Drawer's Account # (MICR):** ⑆ 123456789 ⑆
- Drawer's Signature:** John Doe

► **General Offense Case Report** - CPD-11.380 for victims reporting STOLEN checks that have not been cashed or forged.

► **Lost & Found Case Report** - CPD-11.408 for victims reporting LOST or MISPLACED checks that have not been cashed or forged.

NOTE:

Any irregularities involving the delivery of checks through the U.S. Mail should be reported to the U.S. Postal Inspection Service at 312-983-7900. No case report is prepared for undelivered checks that have not been cashed or forged.

» **Stop Payment** - a check returned due to stop payment frequently implies, rightly or wrongly, that there is a problem with the item or service obtained with the check. If the investigation reveals that the stop payment is a conscious attempt to avoid a just indebtedness, it should be reported as a Bogus Check case.

The state statutes regarding NSF, Uncollected Funds, Closed Account, and Stop Payment cases are:

Chapter 720 ILCS, Section 5/17-1(B)(d) and (e), Deceptive Practices; and Chapter 720 ILCS, Section 5/16-1(a)(2)(A), Theft by Deception.

CLASSIFYING THE WORTHLESS DOCUMENT CASE REPORT

Dishonored checks are returned to the victim with a stamp that indicates the reason the check was rejected. A stamp of "Refer to Maker" is a general indication of a problem with a check. Other stampings may give further information as to why the check was not honored, such as Non-Sufficient Funds (NSF), Uncollected Funds, Closed Account, Stop Payment, Forged, or Counterfeit.

IUCR CODE 1110 - BOGUS CHECK

For case reporting purposes, a Bogus Check is a legitimate check written on an actual account that is not honored for one of the following reasons:

» **NSF** - a check that was presented to the drawee bank for payment and dishonored for lack of funds in the account.

» **Uncollected Funds** - an NSF check or a check written on an account that is currently not paying out funds due to a deficit.

» **Closed Account** - a check that was presented to the drawee bank for payment and dishonored because the account was closed.

Elements of a Bogus Check Deceptive Practice:

1) Failure to have sufficient funds or credit with the depository when the check or other order is issued or delivered, or when such check or other order is presented for payment and dishonored on each of two occasions at least seven days apart, is prima facie evidence that the offender knows the check will not be paid by the depository, and that he has the intent to defraud. [720 ILCS 5/17-1(B)(d)]

2) A person issues or delivers a check or other order in an amount exceeding \$150 in payment of an amount owed on any credit transaction, knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check within seven days of receiving actual notice from the depository or payee of the dishonor of the check. [720 ILCS 5/17-1(B)(e)]

Elements of a Bogus Check Theft by Deception:

A person obtains by deception, the control of property of another and intends to deprive the owner permanently of the use or benefit of the property. [(720 ILCS 5/16 - 1(a)(2)(A)]

Deception includes, but is not limited to:

a) creating or confirming another's impression which is false and which the offender does not believe to be true; or

b) promising performance which the offender does not intend to perform or knows will not be performed. (Failure to perform standing alone is not evidence that the offender did not intend to perform.) [720 ILCS 5/15-4(a), (e)]

Investigative Procedures for Bogus Check Cases:

When processing an arrest and preparing a Bogus Check case for presentation by the State's Attorney's Office, the investigating officer may be required to provide the following:

- 1) Verification by a bank representative that the account had insufficient funds at the time the check was presented for payment or that the account was in fact closed.
- 2) Evidence that the NSF check was presented for payment and refused twice, at least seven days apart.
- 3) For closed accounts, it must be determined when the account was closed, if the named offender is the actual account holder, and if the account holder was notified by the bank that the account was closed.

Note: A check written on a closed account needs only to be presented once.

- 4) Establishment of the offender's knowledge and intent to defraud by obtaining money, goods, services, etc., through deceptive means.

IUCR CODE 1120 - FORGERY

For case reporting purposes, a forged check is an alteration of or a false representation on a legitimate check drawn on an actual account. Some forged checks will be processed through the bank and discovered by the drawer, while others will be returned dishonored to the payee and possibly be stamped "Refer to Maker, Forged."

Forgeries are usually stolen, lost, or discarded checks used by the offender to obtain money or to purchase merchandise. The loss of the check is often not discovered by the victim until after the forgery has occurred.

The alteration or false representation could include any element of the check, such as the amount, the payee's name, the account number, the name of drawer, or the drawer's signature. Some checks or money orders are easily altered by erasure.

The state statute regarding forged checks is 720 ILCS 5/17-3(a)(1) through (5), Forgery.

Elements of Forgery:

A person commits Forgery when, with intent to defraud, he knowingly:

- 1) makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or
- 2) issues or delivers such document knowing it to have been thus made or altered; or
- 3) possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered; or
- 4) unlawfully uses the digital signature, as defined in the Financial Institutions Digital Signature Act [205 ILCS 705/1 et seq.], of another; or
- 5) unlawfully uses the signature device of another to create an electronic signature of that other person, as those terms are defined in the Electronic Commerce Security Act [5 ILCS 175/1-101 et seq.].

Investigative Procedures for Forgery Cases:

When processing an arrest and preparing a forged check case for presentation by the State's Attorney's Office, the investigating officer may be required to provide the following:

- 1) the identity of the individual and/or business who accepted the check (THIS IS THE VICTIM OF THE FORGERY).
- 2) the identity of the owner/listed drawer of the check (WITNESS) who must verify that he/she did not give the offender permission to possess the check, alter it in any fashion, or sign his/her name.
- 3) the offender's intent to defraud by showing that the offender knowingly made, altered, delivered, issued, or possessed with intent to deliver any forged check.

IUCR CODE 1122-COUNTERFEIT CHECK

For case reporting purposes, a counterfeit check is a check created on a real or fictitious account by a non-account holder.

The manufacture of counterfeit checks is a growing problem and will continue to expand due to advanced technology involving the personal computer and related desktop equipment. Offenders can now produce high-quality checks by scanning an authentic check into their personal computers and customizing the check usually by changing the name of the payee, the amount, the routing number, or account numbers. The drawer's signature can also be scanned or forged. Checks are often copied to look like the original or copied on common check stock available at computer or office supply stores. **Criminal charges and the related necessary elements for prosecution are the same as that for Forgery.**

Check Fraud Reported on the Worthless Document Case Report

When responding to a check fraud case, preliminary investigators should obtain and record all information related to the crime on the Worthless Document Case Report. It is important to include all identifiers on the offender, such as driver's license or state ID numbers. Any statements or admissions made by the offender to witnesses or the arresting officers should be recorded in the narrative. Complete and accurate victim data become especially important when an arrest is made after business hours.

Civil Remedy Option

A civil remedy may be more appropriate for some check cases. Upon completion of the investigation, the investigating officer can advise the victims to seek satisfaction in civil court by contacting their attorney; Small Claims Court (312-603-5145) for claims under \$5,000; or "Pro-Se" Court (312-603-5626) for claims up to \$1,500. Following are examples of cases that may be appropriate for the civil remedy option:

>>**Contractual Indebtenesses** - such as rental checks, mortgage payments, and car payments that are not honored.

>>**Personal Loans** - a loan between individuals that was repaid with a dishonored check.

>>**Payday Loans** - problems involving cash advance loans, check advance loans, deferred deposit check loans.

>>**Payroll Checks** - can rarely be prosecuted. These are typically cases in which the company has insufficient funds to cover the checks and the company is moving toward insolvency. Knowledge/intent to defraud has to be proven to pursue criminal charges.

>>**Third Party Checks** - (double-endorsed checks) can rarely be prosecuted since they have a built-in defense. The second party may not be aware that the check is bad. This check is then endorsed to a third unsuspecting party. These cases may be prosecuted if knowledge and intent between the first and second party can be proven.

>>**Post Dated Checks** - are in effect a promissory note and are not prosecuted criminally. The person who accepted a post dated check has entered into a civil contract extending credit to the person. If the post dated check is returned dishonored, the matter will have to be addressed in civil court.

Inventory of Recovered Checks and Documents

In check cases with no arrest, the original check, related documents, and any available photos of the offender should remain secured with the victim or bank. Some banks now cash checks for non-account holders, but require a thumb print from the person cashing the check. The follow-up investigator will determine if thumb-printed checks are suitable for fingerprint examination and identification via the crime lab.

In cases where the offender is in custody, the preliminary investigator should obtain originals of all documents involved, i.e., checks, deposit slips, withdrawal slips, sales receipts, etc. After making photocopies of the front and back of all documents for follow-up investigators, the original documents should be inventoried in accordance with Department directives.