

WORTHLESS CHECK POLICY
Revised October 2014

The following are the general policies for prosecution of worthless/closed account checks by the Montgomery County Attorney's office. These policies should be followed as closely as possible. *However, if you think that an exception should be made for your case, please contact the County Attorney's office for approval.*

Our office will not accept:

1. In State checks for \$20.00 or less. These checks can be processed through Small Claims Court. For information on how to file, contact the Clerk of the District Court's offices in Independence or Coffeyville.
2. Out of State checks under \$1,000.00. Passing a worthless check under \$1,000.00 is a misdemeanor. It is almost impossible to extradite people charged with misdemeanors from another state back to Kansas.

In a criminal case only \$30 can be charged on each check to cover service charges. If the receiver of the check files in Small Claims Court, an amount more than the face of the check plus more in service charges can be requested.

Situations to avoid: Taking a check without obtaining the passer's driver's license information, two-party checks, post-dated or pre-signed checks.

State law requires the passer to be notified by restricted, U.S. mail by the receiver.

The passer is to be given at least seven days to pay off the check. When a check is submitted for collection or prosecution, include the green "Domestic Return Receipt" or the unclaimed/undelivered letter with the original check. The receipt of the letter sent back by the post office is proof the receiver notified or attempted to contact the passer as required. Do not submit copies of the receipt.

Also, an "Affidavit or Prosecution" must be completed and signed in front of a Notary Public. Staff members in our office can notarize the affidavit.

An offense report must be filled out by the person who actually took the check.

These forms, available in our office, are required for each check even if the passer wrote more than one check to the same receiver.

Collection will be attempted before charges are filed. If a passer does not pay as requested, the case will be turned over to a prosecutor for review. If the case is filed and it goes to trial, the

receiver will be required to testify. Once a check has been turned over to our office, do not accept payment. If the passer offers to pay, tell the person to contact our office.

If you have any questions about worthless checks, please contact the County Attorney's Office at (620) 251-6022 or (620) 330-1020.

IN THE DISTRICT COURT OF MONTGOMERY COUNTY KANSAS

STATE OF KANSAS

vs

Plaintiff

CR _____

Defendant

AFFIDAVIT OF PROSECUTION

STATE OF KANSAS)
) ss
MONTGOMERY COUNTY)

COMES NOW, the undersigned and solemnly swears or affirms:

The return check # _____ dated _____ in the amount of \$ _____ was given to _____ on the _____ day of _____ 20____, by a person identified as _____ who was identified by means of _____

The check was personally received by _____ from the passer who can identify him/her.

1. That at the time the check was made, issued or passed, the maker or passer did not indicate by words or action that he/she had no deposit in or credit with such bank or that he/she did not have sufficient funds in or credit with such bank for the payment of the check.
2. That we were not requested to hold the check.
3. That the maker or passer of said check did not borrow any money and give the checks as security for the debt or loan.
4. That the check was submitted to the bank for payment during the usual course of business and was not held.

5. That the check was not post-dated and was not presented for payment prior to the postdated date.
6. That the check was returned and not paid.
7. That when the check was returned, we did on the _____ day of _____ 20____ by restricted mail service, addressed to the address as it appears on the check, advise _____ of the failure of the check to clear the bank and warned that if the check was not paid within seven (7) days, it would be submitted for prosecution.
8. That we also notified _____ by the following means: _____

The returned check is submitted to the County Attorney's Office for the purpose of prosecution with the full understanding that the prosecution will not be dismissed because restitution has been made.

I am aware that under the provisions of K.S.A. 21-3709, causing the unlawful prosecution for worthless check is a Class A Misdemeanor.

Having read and sworn to the above and foregoing, I do hereby affix my signature this _____ day of _____, 20 _____.

AFFIANT

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

NOTARY PUBLIC

My commission expires

OFFENSE REPORT – WORTHLESS CHECK

To be completed and signed by the person who actually took the check.

Deliver this form, together with the check, registered letter receipt (green slip), the letter itself if not delivered and/or a copy of the letter, and any regiscope pictures to the Investigating Officer.

Name and address of the business and location where check was passed:

Full name of person who actually took the check:

Business Phone: _____ Home Phone: _____

Home Address: _____

Date of Check: _____ Amount of Check: _____

Date Check was cashed: _____ Was this the full purchase price?

Can the person who accepted the check identify the passer?

Name of Passer: _____

Gender: _____ Ethnicity: _____ Age: _____ Height: _____

Hair Color: _____ Weight: _____

How dressed: _____

Any notable marks or traits: _____

Was regiscope picture taken:

By whom: _____

Did anyone else mark or approve check? _____

What identification was taken? _____

What knowledge do you have of the passer's whereabouts?

Was check signed in your presence?

Any others present? _____

Was check made out before you saw it?

Have you done business with passer before?

Was the check post-dated?

Did passer actually say it was a good check?

Did the passer make any statement to the effect that he did not have enough money in the bank at the time of the passing of the check to cover it?

Did you or your boss agree to hold the check for a period of time?

Has restitution been made, planned, or offered?

Purpose for which check was given:

If merchandise, what kind?

Has the merchandise been returned or complained about?

Has the check passer been notified in any other way?

If so, by whom, when, and how? _____

Did you accept the check in good faith believing that the money was on deposit at the time and that the check would clear?

The undersigned states that he/she has actual knowledge of the facts set out above and will be a witness in Court to the same.

Signature

VICTIM NAME
VICTIM ADDRESS

Date Sent

Restricted Mail Service

SUSPECT NAME
SUSPECT ADDRESS

RE: Return Check # _____

Written to: _____

Amount: _____

Dear SUSPECT

The above referenced check has been returned non-paid.

You have seven (7) days to pick up this check or prosecution may proceed, and a warrant may be issued for your arrest.

I will accept a **money order or cashier's check.**

Make payable to: VICTIM'S NAME

In the amount of: \$ _____

This is the amount of the returned check; a State mandated service charge of \$30.00 per check and postage of \$ _____.

Sincerely,

VICTIM NAME