

GENERAL ORDER 74-03
BAD CHECK GUIDELINES

PURPOSE:

To establish guidelines for handling bad check complaints.

INFORMATION:

This document shall replace all previously issued documents that deal with the requirements and restrictions on obtaining arrest warrants for bad check charges by the Torrington Police Department. These are general guidelines that should be followed, but are subject to exceptions in unusual circumstances. They are a compilation of the requirements and restrictions imposed by the statute on bad checks (C.G.S. 53a-128), the Assistant State's Attorney's Office for GA-18 in Bantam, Ct. to whom the Torrington Police Department must bring these complaints and those of the Torrington Police Department. The courts and the police departments are currently experiencing clogged dockets and caseloads. Consequently cases must be prioritized. Bad check cases generally are not considered serious and will be the last to be investigated, especially during busy times. The Torrington Police Department can only investigate, prepare and submit arrest warrants to the court. We have no authority or control over the prosecutors and judges of the court. We therefore cannot guarantee that any application for an arrest will be accepted and prosecuted. It has been our experience that the closer any application comes to being within the scope of these guidelines, the better chance it has to be prosecuted.

All prospective applicants for arrest warrants for bad check passers are reminded that even in the event of an arrest for passing bad checks, neither the Torrington Police Department nor the court can guarantee that restitution will be made. The State's Small Claim and Civil Court systems have remedies that are designed specifically to restore lost revenues. The Torrington Police Department strongly recommends that complainants use these remedies whenever possible, however, the Torrington Police Department will not refuse check cases where these remedies have not yet been tried.

POLICY:

Sworn personnel of the Torrington Police Department shall handle bad check complaints according to the procedures set forth in this General Order.

PROCEDURES:

A. REQUIREMENTS FOR BAD CHECK WARRANTS

1. Any person, commercial establishment or corporation, (including banks), who applies to the Torrington Police Department for an arrest warrant for the passer of any bad check shall comply with the following:

a. The complainant must send a certified return receipt letter to the

check passer (issuer) requesting restitution within eight (8) days. The issuer must fail to make good within eight (8) days after receiving notice. An issuer is presumed to have received notice if the drawer or payee provides proof of mailing such notice by certified mail, return receipt requested, to the issuer's last known address

b. The complainant must bring the original check and return receipt to the Torrington Police Department. Where it will be held as evidence until the case is disposed of in court.

c. The check must have been processed through the bank at least once and clearly show why it was dishonored by the bank. For bad check cases, only "Insufficient funds" and "Account closed" will be acceptable. This is usually stamped on the check. If only "Refer to Maker" is on the check, then a letter from the bank is needed to explain why the check was dishonored. The complainant is responsible for supplying this documentation.

d. The person who accepted the check or any supervisor who may have been asked to approve the check must complete a sworn statement or a notarized State of Connecticut Bad Check Arrest Warrant Application (JD-Cr-57) as required by the investigating officer. They must be able to identify the passer of the check. Identification can be accomplished by any (one) of the following:

1. The check passer is personally known by the person who accepted the check. The person must be able to articulate how identification was made and the length of time the passer has been known by the person making the identification.

2. The check passer presented a TRACEABLE PICTURE identification. A state driver's license with a picture is recommended. The person who accepted the check must be able to swear that he/she observed the picture and the passer and they were the same person. The I.D. number must be noted so it can be verified at a later date. (Any other information that is different than on the check should be noted. Example - A recently married woman may have her married name on her license and her maiden name on her checks or if the signer's name is not printed on a company check or addresses are different, this information should be noted.)

3. A photo of the transaction including the check and the passer is taken and later identified by someone who knows the passer or by comparison to known picture of the passer.

4. The person who accepted the check can identify the passer from a photo lineup using a known picture of the passer.

5. The following forms of identification are not acceptable:

Store courtesy cards

Social security cards

THERE ARE NO EXCEPTIONS TO THESE REQUIREMENTS

B. RESTRICTIONS ON A BAD CHECK WARRANT

1. The following restrictions to prosecutions for bad check cases should be kept in mind when deciding when and if to file charges in any bad check case:

a. WHERE - The courts have determined that the crime of passing a bad check occurs in the town where the check was actually received. It makes no difference where either party lives, where the work was done or where the bank is, only where the actual transfer took place.

b. STOP PAYMENT - This is a civil matter, the criminal court will not handle this case as a bad check case.

c. PARTIAL PAYMENT - If you accept partial payment (i.e. \$25 cash towards restitution of a \$100 bad check) the court will not accept the warrant because it no longer conforms to the statute and is now a civil case only.

d. POSTDATED CHECKS - These also do not conform to the statute and will not be accepted.

e. THIRD PARTY CHECKS - A third party is too removed from the person who wrote the check. Return the check back through the parties until the second party (The person to whom the check was originally made out to) becomes the victim. The second party when can swear out a warrant against the check writer.

f. SOMETHING OF VALUE - The check must have been for something of value. Merchandise, cash or services would qualify but payment for a gambling debt would not, nor would a deposit on undelivered goods or payment on a bill (an extension of credit).

g. TIME LIMIT - The Torrington Police Department will not submit warrants for checks over ninety (90) days old.

h. AMOUNT LIMIT - The Torrington Police Department will not submit warrants for checks under fifty dollars (\$50).

C. STOLEN AND FORGED CHECKS

1. The Torrington Police Department will investigate all cases of stolen and forged checks. These cases are felonies and will receive serious consideration from the courts. The following requirements must be met:

a. The complainant will obtain a notarized affidavit of forgery from the purported writer and/or owner of the check or the endorser of the check, as needed. This affidavit will identify the check and the affiant will state that he/she has examined the check and state that they did not write it, or give anyone else permission to write it, nor did they benefit in any way from the checks negotiation.

b. The complainant will supply the original check. It need not have gone through the bank if the affidavit of forgery is provided.

c. The person who accepted the check or any supervisor who may have been asked to approve the check, must complete a sworn statement as required by the investigating officer.

d. THEY MUST BE ABLE TO IDENTIFY THE PASSER OF THE CHECK. Identification can be accomplished in the same manner as stated in section 4 of the "REQUIREMENTS FOR BAD CHECK WARRANTS". There are essentially no restrictions on stolen or forged checks as listed with bad checks, but the Torrington Police Department strongly recommends that you follow the bad check restrictions when accepting checks. For example, know the person who is giving you the check, do not accept posted dated checks and be wary of third party checks. Following these guidelines should reduce the incidents of bad, stolen and forged checks you will receive and also aid the Police and Court in procession your warrant.

D. WARRANT APPLICATION

Attached is a sample State of Connecticut Bad Check Warrant Application. Please note that your signature as affiant must be witnessed by a Commissioner of the Court, Notary or a member of the Torrington Police Department of the rank of Sergeant or higher. This can be done at the Torrington Police Department.

State of Connecticut Bad Check Warrant Application Forms are available at the Torrington Police Department lobby or through the Torrington Police Department Detective Bureau. (Properly filled in photo copies of the original Application form is acceptable).

Order issued by: Chief Maniago 5/18/2010

Sec. 53a-128. Issuing a bad check. Penalties.

(a) A person is guilty of issuing a bad check when: (1) As a drawer or representative drawer, he issues a check knowing that he or his principal, as the case may be, does not then have sufficient funds with the drawee to cover it, and (A) he intends or believes at the time of issuance that payment will be refused by the drawee upon presentation, and (B) payment is refused by the drawee upon presentation; or (2) he passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (A) he intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and (B) payment is refused by the drawee upon presentation.

(b) For the purposes of this section, an issuer is presumed to know that the check or order, other than a postdated check or order, would not be paid, if: (1) The issuer had no account with the drawee at the time the check or order was issued; or (2) payment was refused by the drawee for insufficient funds upon presentation within thirty days after issue and the issuer failed to make good within eight days after receiving notice of such refusal. For the purposes of this subsection, an issuer is presumed to have received notice of such refusal if the drawee or payee provides proof of mailing such notice by certified mail, return receipt requested, to the issuer at his last known address.

(c) Issuing a bad check is: (1) A class D felony if the amount of the check was more than one thousand dollars; (2) a class A misdemeanor if the amount of the check was more than five hundred dollars but not more than one thousand dollars; (3) a class B misdemeanor if the amount of the check was more than two hundred fifty dollars but not more than five hundred dollars; or (4) a class C misdemeanor if the amount of the check was two hundred fifty dollars or less.

(1969, P.A. 828, S. 130; 1971, P.A. 871, S. 28; P.A. 80-109; P.A. 81-225; P.A. 83-137.)

History: 1971 act removed former Subsec. (a) containing applicable definitions, but see Sec. 53a-118(a); P.A. 80-109 amended Subsec. (b) to add provision re presumption that issuer has received notice of drawee's refusal to pay; P.A. 81-225 included proof of mailing by payee as acceptable in presuming that issuer has received notice; P.A. 83-137 amended Subsec. (c) to reclassify the offense from a class A misdemeanor to a class D felony or a class A, B or C misdemeanor depending upon the amount of the check.

Cited. 202 C. 443, 444.

Cited. 20 CA 811.

Cited. 34 CS 584. Ability of court to order personal restitution in amount of bad corporate check when there is no finding as to the ability of the defendant to pay or as to the extent of his gain. Restitution properly ordered against individual defendant issuer of bad corporate check. 35 CS 536-538, 540.