

Maricopa County Attorney's Office Prosecution Policies and Procedures

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| CHAPTER DIVERSION PROGRAMS | EFFECTIVE DATE May 18, 2020 | PROCEDURE # 17.6 |
| SECTION CHECK ENFORCEMENT | | |
| DISTRIBUTION CRIMINAL TRIAL ATTORNEYS | REVISION DATE | REVISION # |

Pursuant to A.R.S. § 13-1810 the MCAO has created a deferred prosecution program known as the Check Enforcement Program (Program) for bad check cases.

A. ACCEPTANCE CRITERIA

1. MCAO will not accept a check into the Program if any of the following are true:
 - a. The total amount of all checks in all cases is less than \$100;
 - b. It is received by MCAO more than six months after the vendor accepted it;
 - c. The check was not stamped as accepted by a bank on or after the date on the check;
 - d. The check is post-dated;
 - e. There is no driver's license number or other government issued identification number of the check writer recorded on the check or the merchant is not personally familiar with the check writer and observed them sign the check;
 - f. The vendor received the check in the mail;
 - g. The check was not deposited within 30 days of receipt;
 - h. There is no completed witness submittal form;
 - i. The check was passed outside of Maricopa County or was passed on an Indian reservation;
 - j. The check is obviously altered;
 - k. The check is a dual signature check;
 - l. The check has a stamped signature;
 - m. The check is unsigned; or
 - n. The merchant has already received restitution.
2. After accepting a check into the Program, a bad check case will not be forwarded for charging review if any of the following are true:
 - a. The check was for goods or services and the check writer submits verifiable information that there is a legitimate dispute between the parties involving the goods or services;
 - b. The identification information of the check writer recorded on the check is fictitious or does not match the check writer;
 - c. The check writer is deceased or incarcerated;
 - d. The merchant requests that the case not be pursued;

- e. Check writer is under 18;
 - f. Statute of limitations, after any tolled time has been excluded, is within 30 days of expiring; or
 - g. Witness information is missing.
3. As part of deciding whether there is a reasonable likelihood of conviction or whether additional law enforcement investigation is needed, before filing criminal charges the DCA should consider whether:
- a. any of the statements in (A)(1) or (A)(2) are true;
 - b. the check writer received notice of the Program;
 - c. the original check is missing;
 - d. the check signer's name is illegible or appears irregular;
 - e. the check writer lives out of state;
 - f. the partial payment was accepted;
 - g. the check signer is not an authorized signer on the account; or
 - h. the check itself is not legitimate bank check.

B. POLICIES RELATING TO SPECIFIC TYPES OF CHECKS

1. **Rent checks, Car Repair Checks with a Stop Payment, Loan Repayment Checks, Bad Wage Checks and COD Checks.** Rent checks, checks for car repairs where there is a stop in payment, loan repayments checks, bad wage checks, and COD checks may be accepted into the Program if all criteria above are met. However, if the check writer submits information showing there is a legitimate dispute between the parties involving the goods or services, the MCAO will not pursue the matter further allowing the parties to pursue civil remedies.
2. **Payments on a car purchase.** If a check is submitted to the Program that is the down payment on a car, the Program will not accept that case and the seller should be advised to contact local law enforcement to conduct a full investigation into the possibility of felony charges. The Program will not accept a case involving a bad check written in the course of an installment purchase of an automobile.
3. **Out-of-state banks.** The Program will accept a check drawn on an out-of-state bank if the amount of the theft or fraud exceeds \$4,000.00, or the suspect is a serious or repetitive offender. However, unless felony charges are appropriate, criminal charges will not be filed if out of State witnesses are needed to prove the case.

C. FAILURE TO APPEAR.

If a defendant fails to appear after charges have been filed, no warrant will be requested until a law enforcement officer has verified the identity of the check writer.

D. FELONY BAD CHECK CASES - §13-1807(E).

If a case is submitted by law enforcement under A.R.S. §13-1807(E) as a felony due to the amount being \$5000 or more and the reviewing attorney determines the charges are appropriate and that the case should not be pursued under another theory, the DCA will route the case to the Program if the person is otherwise eligible for diversion. The Program will follow regular procedures to attempt to obtain full payment of restitution and fees. If full restitution and fees are not paid after notification procedures are followed, the case will be returned to the DCA to file appropriate criminal charges.

E. CRIMINAL INVESTIGATIONS

If the Program receives multiple checks from the same check writer, or a single check, where the loss totals \$5,000 or more, attempts will be made to obtain full restitution and fees based on procedures in place for the program. If full restitution and fees are not paid the case will be sent to a DCA for review. The DCA may submit the case to the MCAO Investigations Division to conduct a criminal investigation.