

Purpose: While bad check cases are increasingly rare as checks fall out of common usage for day-to-day payment, they do occasionally crop up. The below guide is meant to ensure that these rare cases are handled appropriately.

The Windsor County State's Attorney's Office will consider prosecution of bad check/insufficient fund cases if the investigation produces the information set out below.

This policy does not limit prosecutions for offenses such as forgery, false pretenses, and identity theft, even though those offenses may involve the use of a check as part of that crime. This policy is intended to address fact patterns where a person passes a check drawn on an account that he/she actually has authority to use, but that account was either recently closed or has insufficient funds.

Policy Requirements:

1. The bad check or checks total \$100 or more.
2. The check or checks are held in evidence.
3. The check(s) were written on a Vermont checking account – (no out of state checks)
4. The check(s) were passed in person (no mailed checks)
5. The person who accepted the check is listed as a witness and:
 - a. Has visually identified the defendant OR
 - b. Recorded the defendant's name, driver's license number, and address.
Note: the person who accepted the check (and should be listed as a witness) is usually a cashier or clerk; it is seldom a store owner or manager.
6. The check was presented for payment within 30 days after the day of issuance (13 VSA 2022)
7. Notice of the check's dishonor was given to the individual who passed the check and more than ten (10) days was provided for them to make the check good after receipt of the notice. (13 VSA 2022) This notice is usually sent by the merchant certified mail with a return receipt. The certified receipt and return receipt (or record of in-person service) must be held as evidence.
8. The person's name and address were pre-printed on the check.
9. No two-party checks will be prosecuted under 13 VSA 2022.
10. No post-dated checks will be prosecuted under 13 VSA 2022.

11. The business agrees to advise the State's Attorney or investigating officer if and when the issuer makes good on the check.

Please remember that to prevail in a bad check case we must prove that the issuer knew the check would not be honored at the time it was written.

Prosecutors are encouraged to consider Diversion referrals for violations of 13 VSA 2022.