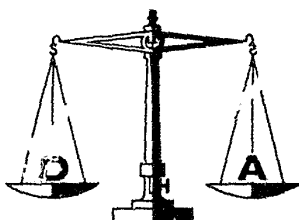


CRIME PREVENTION and the Businessman



Featuring the New Penal Code Statutes
Concerning Business Crimes

CAROL VANCE
District Attorney
Harris County, Texas

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8/9/99





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ACQUITTALS

CAROL S. VANCE

DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

To the Businessmen of Harris County:

This handbook is designed to help you prevent and report crime.

Whether the offense is passing a worthless check, theft, burglary, vandalism, or robbery, knowledge of what constitutes an offense and how to notify proper authorities will help prevent crime. The District Attorney's office, which represents the State in criminal cases, needs your full cooperation in the prosecution of offenders.

The new Penal Code of Texas took effect January 1, 1974. We have included the new statutes that are of particular interest to those in business.

I hope this pamphlet will be of assistance, and I am grateful to those Associations listed on the back cover for publishing this booklet.

Sincerely,

A handwritten signature in cursive script, reading "Carol S. Vance".

CAROL S. VANCE
District Attorney
Harris County, Texas



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INTRODUCTION

In Texas no act is a crime unless it is declared to be an offense and a penalty is specified in the Penal Code. To obtain a conviction, the prosecution must prove beyond a reasonable doubt that the defendant on trial committed the specific act charged. The prosecution must further prove each element of the offense.

The following chapters discuss prevention, prosecution, and problems, and the law concerning specifically some of the more common crimes which plague businessmen. In the beginning it may be wise to keep in mind a few rules which apply to prevention and prosecution of all crimes.

ALWAYS:

- (a) Take prompt action.
- (b) Report a crime or suspected crime to a law enforcement agency.
- (c) Preserve the evidence.
- (d) Write down the facts while they are fresh in your memory.
- (e) Concentrate on what the criminal looks like in order to make a definite identification later.

REMEMBER . . . Prevention is better than prosecution.

In the penal code every offense falls into a specific penalty category depending upon the gravity of the offense. The punishment is the same for every offense falling into a given penalty category. The new classifications, which are referred to throughout, are:

Offense

Punishment

Felonies

Capital felony Life or death

First-degree felony Life or 5 to 99 years

Second-degree felony . . . 2 to 20 years and optional
fine not to exceed \$10,000

Third-degree felony 2 to 10 years and optional
fine not to exceed \$5,000

Misdemeanors

Class A misdemeanor . . . Fine not to exceed \$2,000
and/or one year or less

Class B misdemeanor . . . Fine not to exceed \$1,000
and/or 180 days or less

Class C misdemeanor . . . Fine not to exceed \$200

This chart applies only to first offenders. For exceptional sentences for habitual and recedivist offenders and for corporations, see the Penal Code, Chapter 12.

PART I. COMMON CRIMES AFFECTING BUSINESSES

CHAPTER 1. THEFT

Summary of the Law on Theft (Texas Penal Code, Chapter 31)

There is now one single crime of theft replacing all the separate offenses previously known as theft by false pretext, theft by bailee, shoplifting, embezzlement, swindling, receiving or concealing stolen property, etc. Emphasis is now on the intent of the defendant and the results of his act rather than on whether the prosecution of the defendant is under the appropriate offense label.

The greater the value of the stolen property, the higher the penalty category the offense falls into and the more severe the sentence.

Value of Property Stolen	Penalty Category
\$.00 — Less than \$ 5.00	Class C misdemeanor
\$ 5.00 — Less than \$ 20.00	Class B misdemeanor
\$ 20.00 — Less than \$ 200.00	Class A misdemeanor
\$200.00 — Less than \$10,000	Third-degree felony
\$10,000.00 or more	Second-degree felony

It is always a third-degree felony where loss or misbranding is caused to cattle, horses, sheep, swine, or goats, or where a fence holding these animals is damaged — regardless of the monetary value of the animals.

Receiving and Concealing Stolen Property

The Penal Code takes a much stronger stand against the receiver and concealer of stolen property. The distinction between the thief and the fence is destroyed, and the fence is now as guilty as the man who actually stole the goods. This is certainly as it should be since the fence is more of a menace to society than any one individual thief. In fact, he often works thieves or is the boss of the theft ring and the big profit maker of the group. If the professional thief had no one to buy his stolen wares, the major incentive to steal would be gone. With no one to relieve him of his color television, his tape recorder, and his jewelry, he would be far less likely to steal these items in a systematic fashion.

One officer recalled not long ago "the hardest thing I ever had to do in my life was go into the shabby

one-room home of a low-income family and take away the television set a hard-working mother had finally been able to bring home for the kids.

"She bought it from a shady dealer, and it turned out to be stolen goods. It wasn't easy to walk out with all those kids crying for something they had waited for all their lives," he added.

Our new Penal Code has two evidentiary changes which will make the fence easier to prosecute and therefore discourage his profession. Evidence that the receiver has previously received and concealed stolen property is now admissible, and the testimony of the thief is sufficient, if it is believed by the jury, to prove the receiver's guilty knowledge. Proof that the receiver of stolen goods actually knew the goods were stolen has always been the difficult point to prove, and these changes should help put some guilty persons out of business.

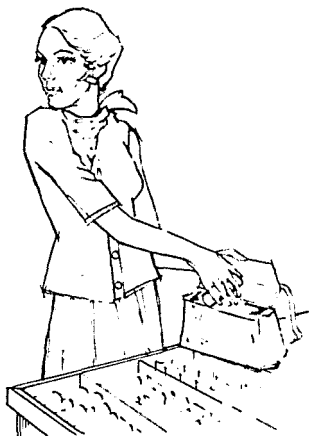
The other side of this problem is the difficulty to the owner and victim of positively identifying his property after it has been stolen. Without some means of positive identification, the merchant probably will not be able to testify that the property is his; neither will he be able to recover the property; and we will not be able to prosecute.

Since stolen property must be identified, you may want to consider this problem in evaluating your internal records and inventory control. It is wise to consider placing some stamp or unique identifying mark on articles of merchandise of significant value. Many businessmen and homeowners are using electric pencil devices to mark their more valuable items. When articles bear serial numbers, these numbers should be accurately recorded from the moment the merchandise is received in the store.

Shoplifting

Shoplifting is now prosecuted under the general statute against theft. How far must the goods be taken to constitute shoplifting? This is not spelled out in the statute. As a practical matter each case rests on its own facts. The accused does not have to leave the store with the goods, although this fact certainly makes a stronger case. The size and arrangement of the store and exactly where in the store the accused removed the goods are significant. There is a clearer case if the accused took the property to another department or another floor without paying the cashier. On the other hand, a person who walks to another

counter near the same department probably has not technically committed the offense. The degree of concealment of the items taken and whether the accused left the area of the appropriate cashier are important factors to observe. Remember, no two cases are alike, and facts that show the person indicated or desired to steal as opposed to some mistake are essential to prosecution and should be recorded for future use in a court of law.



There is a new theft provision which represents a radical departure from previous Texas law in that when several items are stolen in one scheme, the amounts may be aggregated in determining the grade of the offense. Even though the thefts are committed from different persons, if they are done "in one scheme or continuing course of conduct," the thief will receive a more realistic punishment.

A security guard or any person according to Article 18.22 of the Texas Code of Criminal Procedure has "a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay."

Special Problems in Shoplifting

There is no perfect substitute in the trial of a shoplifting case for the introduction in evidence of the actual articles shoplifted or, for example, found in the

purse of the accused. We realize that problems arise from the frequency of this offense and the volume of goods involved, but every consideration should be given to saving shoplifted items aside for use in trial. The articles should be tagged so as to relate them to the specific incident, the date, the witnesses, and any peculiar circumstances. We must prove beyond a reasonable doubt that "this" defendant took "this" article.

Prevention of Shoplifting

There are both professional and amateur shoplifters. They may be seeking "a living," a thrill, or support for a drug habit. The word spreads when a store has a professional security force or takes other effective action against shoplifters.

Mirrors, one-way mirrors, raised observation platforms, and real or fake cameras are effective prevention against shoplifters. A fact to remember is that a watched shoplifter, or one who thinks he is being watched, is much less likely to shoplift.

Good salesmanship is also good security. A courteous, attentive sales person can keep a customer from shoplifting. Sales personnel should be trained to watch for suspicious manners like the shopper's furtive glance around to determine whether he is alone. Sales personnel should be aware of the following devices and procedures:

- (1) Some shoplifters work in teams. One person diverts the attention of the salesman, while the partner takes the merchandise.
- (2) Palming is a technique in which the shoplifter covers the item with his hand and then drops the article into his pocket.
- (3) Amateurs may take several items of clothing into a booth and wear them out under other clothes.
- (4) Professionals may use a booster box. This is a box with one hinged side which opens easily to admit merchandise.
- (5) Booster pants and bloomers are worn under regular street clothes. They consist of an extra "leg" with a tight cuff. A professional can conceal and carry away surprisingly large items this way — even a small television set. Coats with numerous hooks in the lining are a similar device used to conceal small items.

Theft of Trade Secrets and Theft of Service

Two exceptions to the general rule on theft which are handled separately in the Penal Code include theft of trade secrets and theft of service. The definition of "trade secrets" is quite broad and includes about any type of technical data that has some value and that the owner has taken measures to prevent from becoming available to anyone other than a select few. It is an offense to either steal the trade secret, to make a copy of an article representing a trade secret, or to communicate or transmit a trade secret. Although there must be some value, the offense is not graded by value, but is a felony of the third degree.

In the theft of service section, "service" is defined broadly to include almost anything that is ordinarily provided for compensation but that was not classified as "property." The "normal" theft of service situation is where one refuses to pay the restaurant or motel bill. There is a presumption of intent not to pay if a person leaves without paying for the service that is ordinarily paid for immediately, as in the case of hotels, restaurants, and other like establishments. The statute also makes unlawful situations similar to the one in which a construction foreman might use employees under him to build a fence around his home on his employer's time.

CHAPTER 2. FRAUD

Frauds fall into several categories including forgery, credit card frauds, and other deceptive practices.

FORGERY

Summary of the law on forgery (Section 32.21)

This section consolidates a number of provisions relating to forgery of various documents, including counterfeiting. The definition of "forge" includes the three kinds of criminal acts:

- (1) making or altering,
- (2) passing or uttering, and
- (3) possessing with intent to utter.

It must be proved that there was an intent to defraud *or* an intent to harm. Therefore, the offense is extended to non-monetary and nonproperty injuries.

The grade of the offense of forgery depends upon the type of instrument forged. Generally speaking, it is a second-degree felony (punishable by 2 to 20 years

and optional fine not to exceed \$10,000) if the "writing" purports to be any kind of instrument issued by the government or instruments representing interests in or claims against any other person. Generally speaking, it is a felony of the third degree (punishable by 2 to 10 years and an optional fine not to exceed \$5,000) if the writing is or purports to be a will, an instrument affecting real property or any other commercial instrument. A forgery of any other writing is a Class A misdemeanor (punishable by a fine not to exceed \$2,000 and/or one year or less).

Prosecution

Forgery is usually committed out of the presence of others, making it a peculiarly difficult type of case to prosecute. For this reason we must rely on careful and thorough investigation by law enforcement agencies. It is critically important that the person accepting an instrument which turns out to be forged be able to identify the passer of the instrument. A photograph of the passer and the instrument taken at the time of the passing is a valuable aid.

CREDIT CARD ABUSE

Summary of the statute on Credit Card Abuse (Section 32.31).

It is unlawful for any person to present a credit card with the intent to defraud in order to obtain or to pay for any service or item of value.

Similarly, it is unlawful to present or to represent the validity of a credit card with the knowledge that in fact the card has expired or has been revoked. Knowledge of revocation or expiration is presumed if the presenter of the expired card fails to make good the amount charged within ten days of receiving, from the person accepting the card, written notice that the card had been revoked or had expired.

Because this law is so vital to businessmen, it is cited verbatim:

"Sec. 32.31. Credit Card Abuse. (a) For purposes of this section:

- (1) "cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued.
- (2) "credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on

credit. It includes the number of description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

- (3) "expired credit card" means a credit card bearing an expiration date after that date has passed.

(b) A person commits an offense if:

- (1) with intent to obtain property or service fraudulently, he presents or uses a credit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

- (2) with intent to obtain property or service, he uses a fictitious credit card or the pretended number or description of a fictitious credit card;

- (3) he receives property or service that he knows has been obtained in violation of this section;

- (4) he steals a credit card or, with knowledge that it has been stolen, receives a credit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

- (5) he buys a credit card from a person who he knows is not the issuer;

- (6) not being the issuer, he sells a credit card;

- (7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

- (8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card with intent to use it;

- (9) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a credit card is incomplete if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the

cardholder) has not yet been stamped, embossed, imprinted, or written on it;

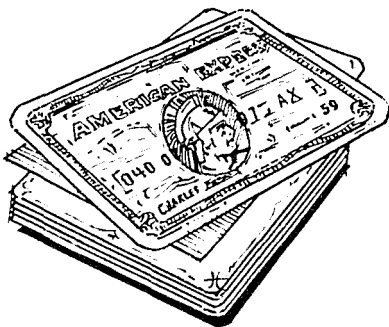
- (10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or
 - (11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.
- (c) It is presumed that a person who used a revoked, cancelled or expired credit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.
- (d) An offense under this section is a felony of the third degree."

"Sec. 32.32. False Statement to Obtain Property or Credit.

- (a) For purposes of this section, "credit" includes:
- (1) a loan of money;
 - (2) furnishing property or service on credit;
 - (3) extending the due date of an obligation;
 - (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
 - (5) a line or letter of credit; and
 - (6) a credit card, as defined in Section 32.31 of this code (Credit Card Abuse).
- (b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor."

Credit card companies and innocent merchants alike are feeling the pinch of illicit credit card practices. Credit card theft is an all too frequent occurrence as court records throughout the state will show. The underworld price for a credit card ranges from \$25 to \$100 — depending on its origin. Cards stolen from the U.S. mails and bank cards go for the top price. Stolen cards procured by pickpockets, burglars or prostitutes who "roll" a client are in the cheaper price brackets because their loss is more quickly noticed. These cards usually are good for a buying spree lasting from two days to a week. Typically, a thief will either purchase merchandise or sell the card outright.



A credit card obtained through a fraudulent application is considered the "safest" by business crooks. One shyster explains "some companies are so interested in giving you credit, they very seldom go into a really thorough check of a card applicant's background."

Some credit card abuses involve collusion with employees. A store clerk will write a fraudulent sales invoice on a "hot" card. Then he gives his cohort half the value of the merchandise which is left on the shelf. Later, that same crooked employee sells the merchandise to a legitimate purchaser at full value . . . or sells it to an out-of-town friend or gives it to another merchant at a lower price.

CONSUMER FRAUDS

Most businessmen are honest. Like any other profession, there are those few that will prey upon the public. To protect the consumer and to deter unfair

competition to the honest businessman from those who would cheat, the District Attorney's office has opened a Consumer Fraud Division. This division specializes in consumer problems just as our Worthless Check Division specializes in worthless checks.

Every business person should be aware of his obligation to the consumer. The new Penal Code protects customers or consumers from businesses that cheat. The theft statutes, already discussed, are applicable where fraudulent sales take place. Although various civil remedies have been available to the consumer, a new set of criminal statutes should work as a realistic deterrent to unscrupulous business practices.

These new laws are referred to as the Deceptive Business Practices Act and they cover a variety of acts, all of which must be committed "in the course of business." Since this law is new and since knowledge of the law is necessary to follow the law, the important sections are quoted.

Section 32.42. "(a) For purposes of this section:

- (1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.
- (2) "Business" includes trade and commerce and advertising, selling, and buying service or property.
- (3) "Commodity" means any tangible or intangible personal property.
- (4) "Contest" includes sweepstake, puzzle, and game of chance.
- (5) "Deceptive sales contest" means a sales contest:
 - (A) that misrepresents the participant's chance of winning a prize;
 - (B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game, piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):
 - (i) the geographical area or number of outlets in which the contest is to be conducted;
 - (ii) an accurate description of each type of prize;

- (iii) the minimum number and minimum amount of cash prizes; and
 - (iv) the minimum number of each other type of prize; or
- (C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.
- (6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.
- (7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.
- (8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.
- (9) "Sell" and "Sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit an offer to buy, and every disposition for value.
- (b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:
 - (1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;
 - (2) selling less than the represented quantity of a property or service;
 - (3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;
 - (4) selling an adulterated or mislabeled commodity;
 - (5) passing off property or service as that of another;
 - (6) representing that a commodity is original

- or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or second-hand;
- (7) representing that a commodity or service is of a particular style, grade, or model if it is of another;
 - (8) advertising property or service with intent:
 - (A) not to sell it as advertised, or
 - (B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;
 - (9) representing the price of property or service falsely or in a way tending to mislead;
 - (10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;
 - (11) conducting a deceptive sales contest; or
 - (12) making a materially false or misleading statement:
 - (A) in an advertisement for the purchase or sale of property or service; or
 - (B) otherwise in connection with the purchase or sale of property or service.
- (c) An offense under this section is a Class A misdemeanor."

CHAPTER 3. BURGLARY

Summary of the Statute (Section 30.02)

A person commits the offense of burglary if, without the effective consent of the owner, he enters a building with intent to commit a felony or theft. Entry means the entry of any part of the body or object connected to the body. To enter lawfully and remain concealed is also burglary. This offense is a second-degree felony (punishable by 2 to 20 years and an optional fine not to exceed \$10,000).

Formerly there was a distinction between burglary at night and by day. This distinction has been eliminated. There is an increased penalty for a burglary committed in a dwelling or if explosives or deadly weapons are used or if the actor injures or attempts to injure someone.

Burglary can also mean breaking and entering a coin operated machine (Class A misdemeanor) or a vehicle (third-degree felony). Criminal trespass is

committed when a person enters the building or property of another after notice that this is forbidden or remains on the property after notice has been given to depart.

CHAPTER 4. ROBBERY

Robbery as defined in Section 29.02 of the Penal Code is a crime against the person and occurs in the course of the commission of theft, coupled with either causing bodily injury or threatening bodily injury or death to another. This means that a robbery can be committed by acts accompanying an unsuccessful theft or while escaping from committing a theft. The amount taken has no bearing on the offense. Robbery is a second-degree felony unless serious bodily injury is caused or a deadly weapon is used in which case it is a first-degree felony.



In robberies, identification may depend solely upon the accuracy with which the victim can describe the criminals. Weapons must also be identified. Accuracy is again important, as the description given in trial testimony may be compared with the actual weapon. The sooner facts are written down, the more likely they are to be complete and accurate.

Concerning robberies, be especially watchful of the following:

- (a) Persons who ask questions about security, alarms, the number of employees, or other unusual questions about the operation of the store, the hours or the name of the manager;
- (b) Shoppers wearing sun glasses, hats, gloves, or other clothing which seem out of place;

(c) Shoppers loitering near the office or money room.

Remember that the critical times for robberies are Mondays and Fridays at opening and closing times and immediately following money deliveries. The young robber may be a particularly dangerous threat because he is nervous and inexperienced and usually armed with a loaded gun. Don't argue with a hold-up man; give him what he wants. If the victim can positively identify the robber, we will be able to prosecute on that testimony alone.

CHAPTER 5. CRIMINAL MISCHIEF

Summary of the law on criminal mischief (Section 28.03)

This offense occurs where one knowingly or intentionally damages or destroys property of another or tampers with another's property where this causes a pecuniary loss or substantial inconvenience. Note the use of the words "knowingly" and "intentionally." If the damage was due to reckless conduct, this is still a crime — although it is only a Class C misdemeanor. The penalty structure for criminal mischief parallels the theft penalties in Chapter 31 of the Penal Code (see page 4) and ties the punishment for destructive conduct to the actor's state of mind and the extent of harm his conduct threatens or causes. This section replaces 73 statutes formerly involving property damage offenses.



CHAPTER 6. WORTHLESS CHECKS

The Texas Penal Code (effective January 1, 1974) has two sections pertaining to the issuance or passing of a worthless check. They are Sections 31.06

(Presumption for Theft by Check) and Section 32.41 (Issuance of Bad Check). There are three major differences in the two sections.

Difference in crime committed

The first situation arises when a so called cash type purchase using a check to make payment is made. In this instance the payee (usually a merchant) is giving up something of value in return for the check. He is materially altering his position in reliance on the check being good. Or a hotel, restaurant, or comparable establishment may have rendered service and the payment is made with a worthless check in circumstances where payment is ordinarily made immediately upon rendering of the service. In such cases the maker of the check may be charged with theft by check under Section 31.06. Since the person is being charged with the actual theft of goods or services, it is necessary for the payee (or the person who accepted the check) to describe and place a value on the goods or services stolen.

There is a seaparate, less serious offense of issuing a bad check which covers other instances of passing worthless checks where it is made criminal merely to introduce a worthless check into commerce. Even though the recipient of the check may not have given up anything in reliance on the check, he never-the-less has been injured to the extent that he further introduces the check into commercial channels when he negotiates it at his bank. This law (Section 32.41) covers the issuance of a bad check in payment of a pre-existing debt. It may also be used to cover checks that would have come under Section 31.06 except that the person who accepted the check can not describe and place a value on the goods or services stolen.

Difference in penalties

A person giving a worthless check under Section 31.06 (Presumption for Theft by Check) may be

Penalty Range	
Type of Offense	Amount Involved
Class C Misdemeanor	Under \$5.00
Class B Misdemeanor	\$5.00 to \$19.99
Class A Misdemeanor	\$20.00 to \$199.99
Third-Degree Felony	\$200.00 to \$9,999.99
Second-Degree Felony	\$10,000.00 or more

charged under Section 31.03 (Theft) or 31.04 (Theft of Service) with a Class C, B, or A misdemeanor or a third-degree or second-degree felony, depending upon the amount involved. An offense under Section 32.41 (Issuance of Bad Check) is always a Class C misdemeanor regardless of the amount involved. See chart below.

Difference in jurisdiction

The Harris County District Attorney's Office has jurisdiction over all cases tried under Section 31.06 (Presumption for Theft by Check) where the checks were passed in Harris County, Texas. The Justice-of-the Peace Court in the precinct where the check was passed or where the defendant resides has jurisdiction over check cases tried under Section 32.41 (Issuance of Bad Check).

If the maker of the check does not make it good after receiving proper notification of the check being returned, as provided in Subsection 31.06(b) or Subsection 32.41(c), you should take the worthless check and proof of notice (see "Notice Requirements") to the Worthless Check Division of the District Attorney's Office (if filing under Section 31.06) or to the appropriate Justice Court in the precinct where the check was issued or passed (if filing under Section 32.41). In either case you will be required to fill out a Worthless Check Information form. The person bringing the check must know the name and address of the person who took the check, and the name and address of the person or company that relinquished the goods or performed the service.

Notice requirements

Regardless of whether the offense is a theft under Section 31.06 or putting a worthless check into commercial channels under Section 32.41, the maker of the check must be sent either a registered or certified letter or a telegram to his last known address, which would be either the address on the check or

Maximum Fine	Maximum Confinement
\$200	None
\$1,000 and/or	180 Days in Jail
\$2,000 and/or	One Year in Jail
\$5,000* and	10 Years in Prison (2 Years Minimum)
\$10,000* and	20 Years in Prison (2 Years Minimum)
(*Optional)	

the address on the records of the bank or the person or company to whom the check was given. The notice must advise the maker that his check has been returned, unhonored by his bank, and that he has ten days in which to make it good before further legal action will be taken.

A return receipt must be put on the registered or certified letter, or a report of delivery must be requested if sending a telegram. If the sender receives back a signed receipt for the registered or certified mail or a report of delivery showing that the telegram was delivered, he must give the maker of the check ten days from the date delivered to make the check good. If the notice was given as set out above, it is presumed by law that it was received no later than five days after it was sent. In cases wherein the letter is returned unclaimed or the report of delivery shows that the telegram could not be delivered, you may proceed with legal action immediately without waiting the ten days. After fulfilling the notice requirement, the payee (or the person designated by the payee) may take the check plus the signed receipt, the unopened returned letter, or the report of delivery to the Worthless Check Division of the District Attorney's Office or the appropriate Justice-of-the Peace Court for prosecution. (See "Difference in Jurisdiction" above.)

Description and value of goods or services stolen

It is not necessary to describe the goods or services paid for with the check if the maker is being charged with the issuance of a bad check under Section 32.41. However, under Section 31.06 (Presumption for Theft by Check), the person who accepted the check must be able to describe the merchandise and/or services stolen to such an extent that the defendant (the maker of the check) will know with certainty what he is charged with stealing. Also, the person who accepted the check must be able to place a value on the goods or services stolen, this normally being the face amount of the check.

If you do not have a descriptive sales ticket or invoice that you can retrieve, you should list on the back of the check at least a few of the goods or services purchased with the worthless check along with the price of each item listed. The defendant can only be charged with the theft of the goods or services that you can describe and show the value thereof.

An adequate description would be: one boy's jacket — \$14.95, one turkey — \$12.95 and one gal. milk — \$1.45, auto repair service — \$170.00. It would not be sufficient to describe these as: Clothing or boy's clothing, groceries or meat and produce, or service. If the check was given for cash, that is the only description necessary. You may wish to cash the check as one transaction, and then have the customer hand you back the cash for the merchandise as a separate transaction. This causes the check to have been given for cash and eliminates the need for a detailed description.

Checks that can not be prosecuted

The following type checks are not prosecutable under either Section 31.06 or 32.41: (a) Post-dated or hold checks; (b) checks held for over thirty days before being presented to the bank for payment; (c) checks received by mail or left in a receptacle; (d) checks over a year old; (e) checks wherein the person who accepted the check is not known; (f) most out-of-state checks (because of cost to the payee and other complications); (g) stop-payment checks unless they were given for cash or other no-controversy items, or unless the bank will confirm in writing that there were insufficient funds on deposit with the bank on the date the check was written; (h) checks wherein the maker's checking account has been garnisheed or otherwise frozen; and (i) checks involved with an involuntary bankruptcy that were written on or after the effective date of the bankruptcy. Note: There may be an exception to the garnisheed or otherwise frozen account or to the involuntary bankruptcy if you can establish that the maker of the check knew of this when writing the check.

Special type checks that may now be prosecuted

Under Section 31.06 (Presumption for Theft by Check) you may now criminally prosecute the passer of a check signed by the husband but passed by the wife or vice versa. This is true even if the spouse did not endorse the check but did pass it. Though the practice is discouraged, if partial payment has been accepted on a check that otherwise meets the test for being filed under Section 31.06, it may still be filed under this section. In such cases a note should be added to the Worthless Check Information form stating the amount of partial payment accepted.

Under Section 32.41 (Issuance of Bad Check) you may now criminally prosecute the maker of: (a) a check given in payment of a debt if paid in person as opposed to being sent by mail or left in a receptacle; (b) a check signed by the parent but passed by the child; (c) a check signed by one person and passed by another with or without the person who passed it having endorsed the check; (d) a check wherein partial payment has been accepted (though this practice is discouraged); (e) a check given in payment of another check so long as the original check is not also filed on (though this practice is discouraged); and (f) a check on a corporation regardless of who signed the check. You may now file on the maker (signer) of a corporation check or on the corporation itself. (Filing on the corporation was made possible by there being only a fine imposed on a Class C misdemeanor.) You may also file on the maker of a corporation check where the corporation has filed voluntary bankruptcy. If it involves an involuntary bankruptcy, the check must have been returned by the bank prior to the effective date of the bankruptcy in order to be filed on.

The payee on third party checks does not need to be contacted in order to file on the maker of the check. However, you may wish to contact the payee since he is liable for the check under civil law.

An ounce of prevention

Worthless check losses represent a great cost to Harris County merchants. Unfortunately, when a case reaches the criminal prosecution stage, the chances of collection or restitution may be nil. Perhaps the following guides will help:

- (a) Require a valid check, with all items of information legibly filled in, including the maker's address, complete date, and the same amount expressed in numerals and in words.
- (b) Require identification. Personal acquaintance is best. A single photograph showing both the checkwriter and the check is the next best. Information from the new laminated Texas Driver's License with color picture is good. A thumb print is good. Credit cards may be reliable, but they are often stolen or forged and then used by professional hot check writers.
- (c) Require the check to be signed in your presence.
- (d) Have your employees initial checks when they

accept them. There is almost no chance of conviction if the person who accepted the check cannot identify the maker of the check in court.

- (e) Call the bank or check other reference sources when in doubt.
- (f) Take immediate action when a check is returned by the bank.
- (g) Don't hesitate to check identification and compare photograph with person.
- (h) Don't hold a check for over thirty days before presenting it to the bank for payment.
- (i) Be familiar with the type checks that can not be criminally prosecuted, and remember that your only recourse is through the civil courts if these checks are returned by the bank.
- (j) Remember that criminal prosecution is not a collection process even though you may frequently benefit through the process and recover some or all the money involved.

If you have questions concerning any of the laws or procedures discussed above, you may call the Worthless Check Division of the Harris County District Attorney's Office, phone: 228-8311, ext. 423. We will attempt to answer your questions and give you any advice you may need.

Where to file checks under Section 31.06 (Presumption for Theft by Check)

Take these checks to: Harris County District Attorney's Office, Worthless Check Division, State National Bldg., 8th Floor, 412 Main St., Houston, Texas 77002, (Mr. A. Ross Rommel, Jr., Asst. District Attorney in Charge) 228-8311, Ext. 423.

Where to file checks under Section 32.41 (Issuance of Bad Check)

Take these checks to the appropriate Justice Court in the precinct where the check was issued or passed.

Reporting payments

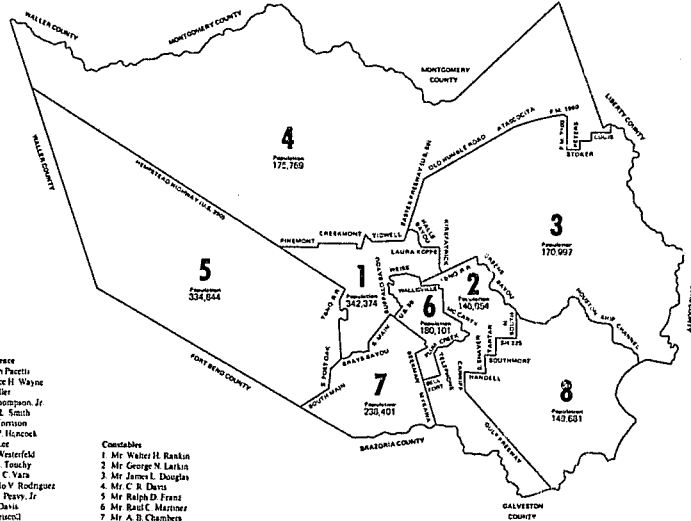
If the maker of the check pays you directly, you must immediately report this in writing to the District Attorney's Office or the appropriate Justice Court, depending upon where the check was filed. This would not be necessary if you received the payment from the District Attorney's Office or a Justice Court.

JUSTICES OF THE PEACE

Precinct- Position	Phone (228-8311)	Justice of the Peace	Address - City - Zip Code
Pct. 1, Position 1	Ext. 7135	Hon. Kenneth Pacetti	301 San Jacinto, Houston 77002
Pct. 1, Position 2	Ext. 181	Hon. Laurence H. Wayne	301 San Jacinto, Houston 77002
Pct. 2, Position 1	Ext. 195	Hon. Edd Miller	109 E. Shaw, Pasadena 77506
Pct. 2, Position 2	Ext. 195	Hon. D.F. Thompson, Jr.	109 E. Shaw, Pasadena 77506
Pct. 3, Position 1	453-5451	Hon. Robert L. Smith	1229 Evanston, Houston 77015
Pct. 3, Position 2	427-7449	Hon. N. O. Morrison	122 W. Defee, Baytown 77520
Pct. 4, Position 1	Ext. 253	Hon. Shelly P. Hancock	211 W. Market, Tomball 77375
Pct. 4, Position 2	Ext. 7161	Hon. Albert Lee	121 West Main (P. O. Box 644), Humble 77338
Pct. 5, Position 1	661-2276	Hon. Nancy V. Westerfeld	6510 S. Rice Ave., Bellaire 77401
Pct. 5, Position 2	461-5660	Hon. Hugo A. Touchy	9004 Westview, Houston 77055
Pct. 6, Position 1	923-2366	Hon. Richard C. Vara	1001 69th St., Houston 77011
Pct. 6, Position 2	921-6141	Hon. Armando Rodriguez	1001 69th St., Houston 77011
Pct. 7, Position 1	Ext. 7103	Hon. John W. Peavy, Jr.	2626 Calumet, Houston 77004
Pct. 7, Position 2	Ext. 347	Hon. Surrey Davis	2626 Calumet, Houston 77004
Pct. 8, Position 1	332-2507	Hon. Mike Driscoll	104 Pennsylvania (P. O. Box 57638), Webster 77598
Pct. 8, Position 2	471-3220	Hon. V. L. West	117 A Street (P. O. Box 1295), LaPorte 77571

HARRIS COUNTY JUSTICES OF THE PEACE AND CONSTABLES PRECINCTS

1974



- Justices of the Peace**
1. Hon. Kenneth Pacetti
 2. Hon. Laurence H. Wayne
 3. Hon. Edd Miller
 4. Hon. D. F. Thompson, Jr.
 5. Hon. Robert L. Smith
 6. Hon. N. O. Morrison
 7. Hon. Shep P. Hancock
 8. Hon. All J. Lee
 9. Hon. Nancy Westerfeld
 10. Hon. Hugo A. Touchy
 11. Hon. Richard C. Vasa
 12. Hon. Armando V. Rodriguez
 13. Hon. John W. Peavy, Jr.
 14. Hon. Surrey Davis
 15. Hon. Mike Deusch
 16. Hon. V. L. West

- Constables**
1. Mr. Walter H. Rankin
 2. Mr. George N. Larkin
 3. Mr. James L. Douglas
 4. Mr. C. R. Davis
 5. Mr. Ralph D. Franz
 6. Mr. Raul C. Martinez
 7. Mr. A. D. Chambers
 8. Mr. Jack Bussey

CHAPTER 7. DISORDERLY CONDUCT

What are your rights if you own a store and a fight breaks out between two men inside the store? Section 42.01 of the Penal Code gives more precision to the definition of conduct which is considered disorderly and which requires penal sanction. Since persons often become rowdy in places of business, this section of the Penal Code is quoted:

"Section 42.01. Disorderly Conduct. (a) A person commits an offense if he intentionally or knowingly:

- (1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;
- (2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of peace;
- (3) creates, by chemical means, a noxious and unreasonable odor in a public place;
- (4) abuses or threatens a person in a public place in an obviously offensive manner;
- (5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;
- (6) fights with another in a public place;
- (7) enters on the property of another and for lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;
- (8) discharges a firearm in a public place;
- (9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;
or
- (10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act."

The offenses defined above are all Class C misdemeanors, except those involving the use of a firearm, which are Class B misdemeanors.

CHAPTER 8. PUBLIC INTOXICATION

Public drunkenness is still an offense, and for adults (those 17 or older) would carry a fine not to exceed \$200. Under Article 534 of the Texas Penal Code, titled "Contributing to the Delinquency of Child," it is illegal to serve alcoholic beverages to

any minor (a person 17 or under). Contributing to the delinquency of a child is a misdemeanor punishable by a fine up to \$500 and/or up to one year in jail.

PART II. YOU AS A WITNESS

I urge you to consider the following suggestions so that if and when you have occasion to testify as a witness, you will be most effective. Since you are taking an oath, we want you to tell the truth and nothing but the truth, but there are different ways to tell the truth. If one is halting, stumbling, hesitant, arrogant, or inaccurate, the jury may doubt him. The witness who is confident and straight-forward will enable the jury to have faith in what he is saying.



- (1) Be prepared. Don't try to memorize what you are going to say, but do try to refresh your mind on those matters upon which you will be examined. Try to recall the scene, the objects there, the distances and just what happened. If the question is about distances or time, and if your answer is only an estimate, be sure you say it is only an estimate.
- (2) Present a proper appearance. Dress neatly. Do not come into court or testify while chewing gum or smoking. When taking the oath, stand upright, pay attention and say, "I do,"

clearly. While testifying, avoid nervous mannerisms which distract the jury.

- (3) Always face the person questioning you. Speak up clearly and loudly enough so that the farthest juror can hear you easily. Don't nod for a "yes" or "no." Be serious in the courtroom and just as respectful in your answers to the defense counsel as to the prosecutor and the judge. Never argue with the defense attorney.
- (4) Listen carefully to the questions asked of you. No matter how nice the attorney may seem on cross-examination, he may be trying to discredit you. Understand the question, have it repeated if necessary, then give a thoughtful, considered answer. Do not give a snap answer without thinking. Don't rush into answering, but neither should there be an unnaturally long delay to a simple question if you know the answer.
- (5) Explain your answer, *if necessary*. Give the answer in your own words, and if a question can't be truthfully answered with a "yes" or "no," you have a right to explain the answer.
- (6) Answer only the question asked you. Do not volunteer information not actually asked for. If your answer was not correctly stated, correct or clarify it immediately.
- (7) Unless certain, don't say, "that's all of the conversation" or "nothing else happened." Instead say, "that's all I recall," or "that's all I remember happening." It may be that after more thought or another question, you will remember something important.
- (8) Don't get mad. Keep calm. Be courteous, even if the lawyer questioning you may appear discourteous. Don't appear to be a cocky witness. Any lawyer who can make a witness mad will probably cause the witness to exaggerate, appear unobjective, and emotionally unstable.
- (9) Give positive, definite answers when at all possible. Every material truth should be readily admitted, even if not to the advantage of the prosecution. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory without exaggerations. If asked about little details which a person naturally would not remember, it is best just to say so

if you don't remember. Don't get in a trap of answering question after question with "I don't know."

- (10) If you don't want to answer a question, do not ask the judge whether you must answer it. If the question is improper, the District Attorney will object. Don't look at the District Attorney or at the judge for help in answering a question. You are on your own.
- (11) Sometimes a defense attorney may ask you, "have you talked to anybody about this case?" If you say, "no," the judge or jury knows that probably isn't right because the prosecutor talks to the witness in advance of trial. So answer very frankly that you have talked with the lawyers, your family, other witnesses, or whoever.
- (12) Finally, be your natural self. If you try to imagine that you are talking to friends or neighbors on the jury, you will be more convincing and will do a fine job.

PART III. REPORTING CRIMES

It is important that any major crime be reported immediately to your local police department. The phone numbers are listed below for your convenience.

Houston Police Department	222-3131
Baytown Police Department	422-8371
Bellaire Police Department	668-0487
Deer Park Police Department	479-1511
Friendswood Police Department	482-3301
Galena Park Police Department	675-3471
Humble Police Department	446-7127
Jacinto City Police Department	672-2455
Jersey Village Police Department	466-5824
LaPorte Police Department	471-2141
Pasadena Police Department	477-1221
Pearland Police Department	485-2300
River Oaks Police Department	622-3195
Seabrook Police Department	474-2162
South Houston Police Department	944-1910
Southside Place Police Department	668-2341
Spring Valley Police Department	465-8323
Tomball Police Department	351-5451
West University Police Department	668-4441
Village Police Department	468-7878
Webster Police Department	332-2426

If the crime is committed in the county, but outside the incorporated city limits, you may contact the Harris County Sheriff's office 228-8311

Certain offenses may be reported directly to the District Attorney's office 228-8311

Worthless Checks Worthless Check Division

Consumer Fraud Consumer Fraud Division

Major Business Frauds Special Crimes Bureau

Written Report

I cannot stress enough the importance of making a written report. This will not only aid the prosecution, but will provide insurance to the businessman against possible civil law suits.

For your convenience, we have included a sample offense report form and a form for describing the defendant. In addition to filling out these forms, any physical evidence should be initialed and marked so that it can later be identified.

Suggested CRIME REPORTING FORM for Businesses

Date _____ Time _____

Exact Location _____

Offense _____

Summary (If Shoplifting, include any details showing the accused's intent. Also mention which witnesses can testify as to which facts.)

Defendant(s) _____

Witnesses

Name	Position	Telephone
1.		
2.		
3.		
4.		

If theft, burglary, etc., who had custody and control of property?

Name	Position	Telephone
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List any evidence recovered. By whom? To whom was it turned over?

Circumstances of Arrest (include any oral or written statements the accused made) _____

Appendix

DESCRIPTION FORM

FILL OUT IMMEDIATELY AFTER HOLD-UP OR SHOPLIFTING
BEFORE DISCUSSING DESCRIPTION WITH ANYONE ELSE

PHYSICAL DESCRIPTION

COLOR _____ SEX _____ NATIONALITY _____ AGE _____

HEIGHT _____ WEIGHT _____ BUILD _____
(THIN, STOCKY, ETC.)

COMPLEXION _____ HAIR _____
(LIGHT, DARK, RUDDY, ETC.) (COLOR, WAVY, STRAIGHT,
HOW COMBED)

EYES _____ NOSE _____
(COLOR, SMALL, LARGE, ETC.) (LARGE, SMALL, BROAD, PUG, ETC.)

EARS _____ GLASSES _____
(PROMINENT, SMALL, ETC.) (DESCRIBE FRAMES)

MUSTACHE OR BEARD _____ MASK OR FALSE FACE _____
(COLOR, SHAPE, ETC.) (TYPE, COLOR, ETC.)

SCARS OR MARKS _____
(TATTOOS, BIRTHMARKS, FACIAL BLEMISHES, ETC.)

DISTINGUISHING CHARACTERISTICS _____
(HOW WOULD YOU PICK THIS PERSON OUT OF A CROWD)

CLOTHING (DESCRIBE COLOR, TYPE OF MATERIAL, STYLE, ETC.)

Hat _____

Overcoat _____

Raincoat _____

Jacket _____

Suit _____

Trousers _____

Shirt _____

Tie _____

Shoes _____

Other Clothing _____

MISCELLANEOUS

Weapon Exhibited _____
(REVOLVER, AUTOMATIC, KNIFE, ETC.)

Speech _____
(ANY ACCENT, PECULIARITY OF
SPEECH)

Any Names Used _____

Mannerisms _____
(RIGHT OR LEFT HANDED, UNUSUAL)

(WALK OR CARRIAGE,
NERVOUS HABIT, ETC.)

PROMPTLY FILL OUT THIS FORM AS ACCURATELY AND AS
COMPLETELY AS POSSIBLE AND GIVE IT TO MANAGER

We wish to express our sincere appreciation to these organizations for making this publication possible.

BANK ADMINISTRATION INSTITUTE,
Gulf Coast Chapter

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