

NJ Check Fraud Defense Info

1. What is an overview of bad check charges in New Jersey?

Passing bad checks can ultimately create a mess for you. Many people are desperate, and they pass bad checks to pay for what they have to now, and then pay for it later. The main trouble with this strategy is that bad checks cause endless aggravation for the recipient. Whether you pass bad checks because you are a dishonest sneak, or whether it was simple mistake, there could be harsh penalties and unforeseen collateral consequences for you.

According to New Jersey law, a bad check charge means that a person tries to pass a check, with the full knowledge that there isn't enough money in the bank account to cover the amount of the check. Although cashing a bad check may not seem to be very serious at the time, a conviction for a bad check crime can ruin your future. I have helped many clients fight bad check charges, and have these charges ultimately dismissed. Moreover, I have also helped many clients negotiate a reasonable settlement, so that a bad check charge would not give them a criminal record.

In summary, New Jersey strictly prohibits the writing of bad checks, drafts, and debit card orders, or stopping payment on a check, draft, or written order with intent to defraud. Nonetheless, it is important to emphasize that bad checks charges can be beat in court. At the very least, these charges can be reduced. If the prosecutor can't prove under the law that you intended to defraud a person/store by passing a bad check, then you will beat the case.

Additionally, most courts hate dealing with bad check charges. The local municipal courts also hate to handle bad check charges. These courts are swamped, and they don't even have enough personnel to handle their own caseload. The last thing the municipal courts need is to have bad check charge trials clog up their docket. Moreover, municipal courts make very little fine money on bad check charges. Therefore, many municipal court clerks try to discourage their local merchants, dentists, doctors, etc. from filing bad check charges. The local courts are swamped, and they really don't want to be used as a collection agent to collect overdue due bills or medical bills. Their response to many people who want to file a bad check charge is to go file a collection lawsuit against the bad check giver in the Special Civil Part. Given this backdrop, there is always a good chance to beat a bad check charge in any municipal court.

2. What is the statute that governs bad check charges?

2C:21-5 Bad checks.

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the

drawee, commits an offense as provided for in subsection c. of this section. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or money order (other than a postdated check or order) would not be paid, if:

a. The issuer had no account with the drawee at the time the check or order was issued; or

b. Payment was refused by the drawee for lack of funds, or due to a closed account, after a deposit by the payee into a bank for collection or after presentation to the drawee within 46 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal or after notice has been sent to the issuer's last known address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

c. A offense under this section is:

(1) a crime of the second degree if the check or money order is \$75,000 or more;

(2) a crime of the third degree if the check or money order is \$1,000 or more but is less than \$75,000;

(3) a crime of the fourth degree if the check or money order is \$200 or more but is less than \$1,000;

(4) a disorderly persons offense if the check or money order is less than \$200.

3. What are the penalties for a bad check charge under New Jersey criminal law?

If the amount of the check is less than \$200 then it is considered a DP disorderly persons offense. A DP conviction can expose you to a six-month jail term, a fine of up to \$1,000, restitution in the amount of the bad check(s), and community service and/or probation. If the defendant is a repeat offender then the fines could be increased to \$2,000.

If the amount of the bad check was between \$200 and \$999 then it is a fourth degree charge. You could also be sentenced to 18 months in jail.

If the amount of the bad check was between \$1,000 and \$74,999 then it is a third degree charge. You also could be sentenced to up to five years in jail.

If the amount of the bad check was \$75,000 or more then it is a second degree charge. You also could receive a ten-year prison term.

If you have any prior criminal history, then this factor can be very important as to what type of sentence you will receive. Generally, the more extensive that your criminal history is, then the stiffer sentence you will receive, and the larger the fine will be imposed.

4. What are some possible defenses to fight a bad check charge?

There are several defenses available to combat a worthless check criminal charge. You can't be prosecuted for writing a bad check if:

- a. The check was incompletely filled out or was illegible.
- b. The check was not deposited within a timely fashion which is typically 30 days.
- c. The check only had one signature, even though two signatures were required.
- d. The recipient of the check agreed to hold the check before depositing it no matter how short of a time they held it.
- e. The check was postdated.
- f. The recipient knew or had reason to know that the check writer had deficient funds in the bank to honor the check.
- g. The bank did not officially acknowledge the check by not stamping or imprinting on the check the reason it was dishonored.

5. How can a lawyer defend against a bad check charge?

There are several strategies to try to beat a bad check charge. Your lawyer could pursue the following legal course of action;

- a. You could file a motion to dismiss the bad check charge because of the prosecutor's failure to process the case properly.
- b. You could file a motion to dismiss the bad check charge because there is a violation of the statute of limitations.
- c. You could apply for the Pre-Trial Intervention Program (PTI) If you successfully complete this program then the charges will be dismissed.
- d. Your lawyer could also try to reach a plea bargain. Most bad check charges are ultimately reduced to a lesser offense. Moreover, you could try to have a bad check charge reduced to a municipal ordinance violation. You will not receive a criminal conviction if you only receive a municipal ordinance conviction.

6. What is a postdated check?

If you write a check with a date in the future, so that the check cannot be cashed until the date on the check, then you have written a postdated check. Unlike a normal check, a postdated check is not necessarily payable on demand. Because they are not payable on demand, New Jersey refuses to cover postdated checks under the bad check laws. Therefore, you can't be convicted of a giving a bad check if it was postdated. The key point is that it is impossible to prove that the defendant had any intent to defraud at the time when the check was issued. Any person could testify that at the time when he issued the postdated check he had the intent to honor the check.

7. How could a bad check charge hurt my future job prospects?

Both felony and DP bad check charges are considered to be crimes of dishonesty or untruthfulness. Therefore, if you are convicted of a bad check charge, then your reputation will be tarnished for many years. Almost every employer now requires that any job applicant must disclose any prior convictions. If you apply for any type of license in New Jersey then you will also be required to disclose any criminal conviction(s) that you may have. In the fields of law enforcement, accounting, teaching, medicine, banking and finance or law all applicants must disclose if they have a criminal record. If you have a conviction for a crime of dishonesty such as giving a bad check, then this could ruin your dreams. You could be denied the opportunity to become a police officer, a member of the bar, a CPA, a nurse, a teacher, etc. Given the havoc that a bad check can cause in your life, it is urgent that these charges be taken very seriously. Accordingly, it is strongly advisable to hire experienced legal counsel to contest any bad check charge case no matter the amount.

8. Can a bad check charge be expunged?

Yes, a defendant who is convicted of a DP or indictable bad check charge may have his record expunged. The conditions are that the defendant must not have been convicted of more than three disorderly or petty disorderly offenses, and the defendant has not been convicted of any prior or future crime. There is also five-year waiting period to have a bad check charge expunged.