

ATTACHMENT F
FRESNO COUNTY DISTRICT ATTORNEY NSF
CHECK DIVERSION PROGRAM



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DISTRICT ATTORNEY
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DIVERSION FOR BAD-CHECK WRITERS

A. PLAN OF THE DAY

Course Outline

Schedule

breaks, lunch

end time

Requirements

B. OBJECTIVES

To change behavior in order to avoid the consequences of future bad-check writing

To examine attitudes about bad-check writing

To learn about the law relating to bad-check writing

To understand the consequences of bad-check writing

To learn more about budgeting, financial planning, banking, and checking accounts

C. GROUND RULES

1. In order to be able to pay restitution and avoid prosecution, you'll have to participate in this class for the entire class.
2. Upon successful completion of today's class, you will be given a certificate to show that you have completed this part of your contract.
3. To successfully complete this class, you must:
 - a) Be on time after breaks and lunch.
 - b) Refrain from smoking or eating in the classroom (anyone on drugs or alcohol will give up their right to participate).
 - c) Participate in the exercises and discussions.
 - d) Respect the rights of others in the class.
 - e) Be responsible for your own learning.
 - f) Complete the evaluation at the end of the class.

D. MAKE THE BEST OF THE CLASS

Use the time to examine your problem with bad-check writing -- your difficulties with your check book, your spending habits, and your values.

Think about a way to change your behavior so that you'll be able to avoid future problems due to writing bad checks.

E. MEANING OF DIVERSION

Penal Code Section 1001.60 - Resolution for and Adoption of Program; Writing Bad Check Defined:

Upon the adoption of a resolution by the Board of Supervisors declaring that there are sufficient funds to fund the program, the District Attorney may create within his office a diversion program pursuant to this chapter for persons who write bad checks. For purposes of this chapter, "writing a bad check" means making, drawing, uttering, or delivering any check or draft upon any bank or depository for the payment of money where there is probable cause to believe there has been a violation of Section 476a. The program may be conducted by the District Attorney or by a private entity under contract with the District Attorney.

Penal Code Section 1001.62 - Reference to Diversion Program; Conditions:

On receipt of a bad check case, the District Attorney shall determine if the case is one which is appropriate to be referred to the bad check diversion program. In determining whether to refer a case to the bad check diversion program, the District Attorney shall consider, but is not limited to, all of the following:

- a) The amount of the bad check.
- b) If the person has a prior criminal record or has previously been diverted.
- c) The number of bad check grievances against the person previously received by the District Attorney.
- d) Whether there are other bad check grievances currently pending against the person.
- e) The strength of the evidence, if any, of intent to defraud the victim.

What do Penal Code Sections 1001.60 and 1001.61 mean?

That the District Attorney can establish a diversion program for bad-check writers.

What does this mean to you?

Rather than be prosecuted and convicted of a crime (bad-check writing), you are allowed this opportunity *to make good on your obligation*:

- 1) by attending this class
- 2) by making restitution for your bad checks
- 3) by paying a service charge for each bad check you have written

After you complete these requirements, if you write another bad check you risk prosecution.

- If you write bad checks totaling **less than \$200.00**, (a misdemeanor), you could be **fined up to \$1,000.00 and sentenced up to one year in county jail.**
- If you write bad checks totaling **more than \$200.00**, (a felony), you could be **sentenced to state prison**
- And don't forget, **restitution will be ordered** in both misdemeanor and felony cases

INTRODUCTORY EXERCISE

- 1) **Get acquainted with the person next to you.**

Interview that person and learn the following information about him or her:

Name _____

Occupation _____

Family _____

City where he/she lives _____

Ask: What do you like to do in your spare time? _____

Find out: What is one good thing you'd like everyone present in the room to know about you?

- 2) **Be prepared to introduce this person you have just interviewed to the rest of the group. In a few words tell the others an interesting or important fact about this person.**
- 3) **Exchange roles with your partner and repeat the above exercise.**

4) **REPORTING OUT**

Introduce your partner and tell something of interest about that person to the group.

ETHICS, BEHAVIOR, AND RESPONSIBILITY

1) What are ethics? _____

2) What has helped develop your ethics?
Below, list the influences that have shaped your ethics -- that is, what you think is right and wrong.

In Childhood

As An Adult

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

3) What is behavior? _____

4) Do you think human beings always behave in the way they think that they should?

Yes _____ No _____

Explain _____

5) Rate your own ethics. (Circle the number which best describes your own ethics.)

Poorly Developed

Well-Developed

1 2 3 4 5 6 7 8 9 10

6) Rate your own behavior. (Circle the number which best describes your own ethics.)

Dishonest Behavior

Honest Behavior

1 2 3 4 5 6 7 8 9 10

7) Define a criminal. _____

8) Is it possible for a criminal to have a strong code of ethics? _____

Yes _____ No _____

Why or why not? _____

9) Do criminals feel guilty about what they've done?

Yes _____ No _____

10) Is a criminal the same as a person who breaks the law?

Yes _____ No _____

11) As the writer of a bad check, do you feel guilty?

Yes _____ No _____

12) As the writer of a bad check in California, have you broken the law?

Yes _____ No _____

13) Is a bad-check writer and a thief the same?

Yes _____ No _____

Is there any difference between writing a bad check and stealing?

Yes _____ No _____

Why or why not? _____

California Penal Code Section 476 (a):

476(a)-Checks, drafts or orders on banks; insufficient funds; intent to defraud; punishment; evidence; credit defined; partial validity:

Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check, or draft or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with said bank or depository, or person, or firm, or corporation, for the payment of such check, draft, or order and all other checks, drafts, or orders upon such funds then outstanding, representation is made with reference thereto, is punishable by imprisonment in the county jail for not more than one year, or in the state prison.

This means:

Anybody who writes, passes, or gives a check without enough money in his/her account or on a closed account with the intent to defraud commits a crime.

The courts say that this means:

You INTEND to defraud if you know that the check is bad.

- 14) What excuses do you use for your bad-check writing behavior?

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

- 15) REPORTING OUT

Choose one spokesperson from your group to share with the entire group.

THE DIAGRAM BELOW SHOWS HOW CHECKS ARE PROCESSED

TRAVELS OF A CHECK

YOU WRITE A CHECK
TO THE MERCHANT
(THE MERCHANT SHOULD
REQUIRE TWO PIECES OF
IDENTIFICATION)

THE MERCHANT DEPOSITS
YOUR CHECK TO HIS
ACCOUNT AT HIS BANK

THE MERCHANTS BANK
ELECTRONICALLY PROCESSES
THE CHECK TO YOUR BANK

YOUR BANK DEDUCTS
(PAYS) THE CHECK
FROM YOUR ACCOUNT

ROLE PLAYING

Class members will assume the roles of a merchant and a bad-check writer in two different situations.

A) Merchant

As owner of a small sporting goods store, you have received a bad check in the amount of \$56.71. You are phoning the writer of the check to get your money.

Bad-Check Writer

You needed running shoes and wrote a bad check to cover the cost. The store owner is calling you to get you to make good on your check.

B) Merchant

The manager of a grocery store in a large grocery chain is trying to recover a bad check for \$31.92.

Fresno County's Program

There are fifty-eight counties in the state of California and each county has a District Attorney's Office. The California Penal Code allows every District Attorney to create an NSF Check Diversion program within his/her department. Fresno County is one of sixteen District Attorney Offices which has an NSF Check Diversion Program. In Fresno County, as many individuals as possible are who are deemed eligible, are diverted from the criminal justice system for writing NSF/Account Closed checks and placed in the NSF Check Diversion Program. This does not mean that Fresno County is soft on prosecuting individuals that write NSF/Account Closed checks. Currently, the Fresno County District Attorney's Office has one Senior Investigator assigned full time to investigate individuals who write NSF/Account Closed checks. The sole duties of this Senior Investigator is to prepare and serve arrest warrants for violation of P.C. 476a. It is not uncommon for individuals in Fresno County to be sentenced to prison for writing NSF/Account Closed checks.

All merchants and every resident of Fresno County can utilize the services of the Fresno County District Attorney's Office to collect and request prosecution of an individual writing NSF/Account Closed checks.

Write two ideas you learned from this exercise which you did not know before:

- 1) _____
- 2) _____

WANTS AND NEEDS

- 1) Some things are essential in order to live (needs); other things are nice to have, and these represent our wants. In the list below, identify what you think are your *needs* (N) and your *wants* (W).

- | | |
|------------------------------------|---------------------------------------|
| _____ 1. football season tickets | _____ 18. gambling money |
| _____ 2. books/magazines | _____ 19. home repair |
| _____ 3. a typewriter | _____ 20. a camera |
| _____ 4. church contributions | _____ 21. a dishwasher |
| _____ 5. a pet | _____ 22. a college education |
| _____ 6. health insurance | _____ 23. records & tapes |
| _____ 7. sporting equipment | _____ 24. a health club membership |
| _____ 8. a microwave oven | _____ 25. video games |
| _____ 9. new furniture | _____ 26. drinking money |
| _____ 10. a good, reliable car | _____ 27. a refrigerator |
| _____ 11. a telephone | _____ 28. a canoe |
| _____ 12. a stereo | _____ 29. air conditioning |
| _____ 13. tools | _____ 30. a sports car |
| _____ 14. a long vacation | _____ 31. a comfortable place to live |
| _____ 15. enough food to eat | _____ 32. a color television |
| _____ 16. a water bed | _____ 33. cigarettes |
| _____ 17. a place to sleep tonight | _____ 34. newspaper |

2) What are the basic needs that all people share?

3) What makes us want things that we really don't need?

4) Have your want-related spending habits caused you financial problems?

If so, how? _____

5) What other problems, besides financial ones, can a person face if they try to satisfy their wants before their needs?

6) Besides writing bad checks, list some alternative actions you can take in order to help your financial situation. (What are some alternatives to stealing?)

BUDGETING

1) What is a personal budget?

2) What is the real purpose of a budget?

- 3) What is the difference between "fixed" and "flexible" items in a budget?

- 4) Identify the items listed below as *fixed (F)*, *flexible (X)*, or *both (FX)*.

| | | | |
|-------|-----------------|-------|------------------------------|
| _____ | rent / mortgage | _____ | gifts / donations |
| _____ | utilities | _____ | entertainment |
| _____ | car payments | _____ | vacation / recreation |
| _____ | food / beverage | _____ | personal expenses |
| _____ | gasoline | _____ | property taxes |
| _____ | medical care | _____ | home improvement |
| _____ | life insurance | _____ | monthly installment payments |
| _____ | clothes | | |

PLANNING YOUR FINANCES

To help each person live within his income, a plan for spending is necessary; a plan for saving is useful.

SOME GENERAL RULES OF BUDGETING:

- 1) Establish a goal; to spend no more than you make.
- 2) Fixed items come first, then variables and luxuries. (Fixed items are what you must have in order to live.)
- 3) Big expense items and other "must" items have to be spread out among income periods so that each bears a share of the expense.

For example: If rent is \$700.00 per month, then it is wise to save out \$350.00 from each check to have enough to cover the rent.

- 4) Major expenses cannot be cut completely, but they can be reduced (eg. food, shelter, utilities, clothing).

A BUDGET SHOULD HELP YOU SET SPENDING PRIORITIES.

(insert)

- 1) Are there areas in your fixed and/or variable expenses where you can make cuts to enable you to live within your income?

Yes _____ No _____

- 2) List those things which you could reduce in your budget (especially your wants) and see how much you could save.

- 3) Write what you have learned from doing this exercise on budgeting and financial planning.

CONSIDER YOUR CHECKING ACCOUNT

- 1) What is a checking account? _____

- 2) What is a check? _____

- 3) Why is balancing your checkbook important? _____

- 4) Why is it important to reconcile your checkbook balance with the bank's statement?

- 5) Why is it important to enter the **number** of the check and the **amount** of the check at the time you are writing the check?

- 6) ONCE YOU HAVE WRITTEN THE CHECK, YOU HAVE SPENT THE MONEY.
(insert)

- 7) *Handouts by instructor*

- 8) How much money do you have left in your checking account after these checks have been written?

\$ _____

OVERDRAFT PROTECTION

Overdraft Protection on your checking account allows you to write a check for more than you actually have in your account. The amount you may use depends on your credit worthiness, and a maximum is set by the bank.

If you write a check for more than you have in your account, it triggers an automatic loan. For example: If you have \$25.00 in your account and you write a check for \$100.00, you have just borrowed \$75.00 or more depending on your transfer agreement.

Obvious Benefits

- It's very easy to borrow money in a pinch
- If you goof in balancing your checking account, a check won't bounce

Obvious Drawbacks

- The cost of the loan isn't free
- Banks charge 18-24% interest on this money you have just "borrowed"

HOW CAN I CHANGE MY BEHAVIOR ABOUT WRITING BAD CHECKS?

1) My check-writing goal is to _____

2) I want to do it because _____

3) I will do it by _____ (date)

4) I will do it for _____ (how long)

5) These people will know about my goal and will help me: _____

6) I will do it this way:

first _____

second _____

third _____

fourth _____

7) When I achieve my goal of operating within my budget and not writing bad checks, I will:

A) What have I learned today?

1) _____

2) _____

3) _____

B) How can I control my spending?

1) _____

2) _____

3) _____

C) From now on, what will I do differently when writing checks?

1) _____

2) _____

REMEMBER -- TO AVOID WRITING BAD CHECKS IN THE FUTURE:

PLAN AHEAD

- Reduce your wants to fit your income
- Budget how you will spend your money

KEEP ON TOP OF THINGS

- Enter each check in your checkbook register
- Subtract **each** time you write a check

STAY IN CONTROL

- Reconcile your own figures with the bank's statement
- Review your spending habits

RENEW YOUR GOAL TO WRITE ONLY GOOD CHECKS

YOU ARE IN CHARGE OF YOUR LIFE AND YOUR SPENDING AND, YOU CAN CHANGE THE WAY YOU DEAL WITH YOUR MONEY!!!