

Apply Property Thresholds to Certain Forgery Cases & Facilitate Restitution

Proposal

- Apply property thresholds to forgeries that involve faked checks and faked money orders.
- Facilitate the use of existing authority to resolve stolen or faked check cases through restitution, just as jurisdictions commonly do for theft by check.

Theft cases involving faked forms of direct payment (stolen checks, rewritten checks, stolen money orders) are currently classified as felonies, *regardless of the amount stolen*; this can involve prison time, where it is impossible to pay restitution to the victim. Meanwhile, theft by check (hot checks) is handled as a misdemeanor unless the amount stolen exceeds \$2,500, and theft by check victims (usually stores or banks) get restitution from the offender for the amount stolen.

IN SHORT

- Small-value theft cases are still ending up in felony court because theft value thresholds do not apply to check forgery.
- People in prison cannot pay restitution and face a lifetime of lost job opportunities over small theft amounts.

Check Restitution Could Provide More Money for Businesses and Other Victims

The penalty for committing theft in Texas is determined by the dollar amount of the property involved – called a monetary “threshold.” During Texas’ 2015 Legislative Session, policy-makers updated the state’s outdated thresholds to account for 22 years of inflation. So now, theft by check offenses fall under the newly updated thresholds, making many of them misdemeanors. However, the new thresholds do not yet apply to theft cases involving faked forms of direct payment. Instead, all faked checks, no matter how small, are punished as felonies.

Texas District Attorneys, mainly through their hot check divisions, returned an estimated \$18 million to the stores and service providers originally victimized last year by hot checks.¹ If property thresholds applied to check forgery cases and they were processed through hot check divisions, more victims would get restitution and fewer small theft cases would clog our felony courts.

Most Check Forgery Cases Are at Misdemeanor Levels

The Texas Criminal Justice Coalition examined the case files for a random sampling of 182 forgery cases filed in Harris County and Travis County in 2015² and found that **the average amount stolen was \$1,479.82**. Only 24 cases involved felony amounts. A handful would have been Class C misdemeanors under the theft thresholds, and dozens would have been Class B. If the state applied the property thresholds used for other kinds of theft to these crimes, and used the hot check restitution systems to process them, the state would reduce expensive felony incarceration, reduce collateral consequences of a minor theft, and allow victims to get restitution more quickly.

¹ The average value of a hot check case statewide is not available in existing datasets. This estimate is based on our review of other types of theft, including our study of fake check cases, which average \$1,480.

² We examined a total of 182 cases, but in many instances the value of the amount stolen was not noted in the case file because it is not currently a factor in determining or proving the charge. We based our analysis on the subset of 151 cases in which documentation of the amount stolen was included in the case file.