

**1469A ISSUE OF A WORTHLESS CHECK: FELONY: ONE CHECK FOR \$2,500 OR MORE — § 943.24(2)****Statutory Definition of the Crime**

Issue of a worthless check, as defined in § 943.24(2) of the Criminal Code of Wisconsin, is committed by one who issues any check or other order for the payment of \$2,500 or more which, at the time of issuance, he or she intends shall not be paid.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant issued a check.<sup>1</sup>

A check is an unconditional order to pay money.<sup>2</sup>

A check is issued when it is signed and delivered to another.<sup>3</sup>

2. The check was for the payment of \$2,500 or more.
3. At the time the check was issued, the defendant intended that it not be paid.

This requires that the defendant issued the check knowing or believing that it would not be paid.<sup>4</sup>

### Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

READ THE FOLLOWING IF THERE IS EVIDENCE OF ONE OF THE STATUTORILY-RECOGNIZED "PRIMA FACIE" CASES.<sup>5</sup>

[Evidence has been received that at the time the defendant issued the check, there was not enough money in the checking account on which the check was drawn and that the defendant failed to pay the check within five days after receiving written notice that the check was not paid, delivered by regular mail to either the person's last known address or the address provided on the check.

If you find beyond a reasonable doubt that the defendant issued a check and that at the time of issuance there was not enough money in the checking account on which the check was drawn and that the defendant failed to pay the check within five days after receiving written notice that the check was not paid, delivered by regular mail to either the person's last known address or the address provided on the check, you may find that (he) (she) intended that it not be paid. You should not so find unless you are satisfied beyond a reasonable doubt from all the evidence that at the time the defendant issued the check (he) (she) intended that it would not be paid.]<sup>6</sup>

READ ONE OF THE FOLLOWING WHEN SUPPORTED BY THE EVIDENCE.<sup>7</sup>

[The statute does not apply to a check given for a past consideration, that is, a check given for a preexisting obligation or debt. Before you may find the defendant guilty, you must be satisfied beyond a reasonable doubt that the check was not given for a past consideration.]

[The statute does not apply to a postdated check.<sup>8</sup> Before you may find the defendant guilty, you must be satisfied beyond a reasonable doubt that the check was not a postdated check.]

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

### **COMMENT**

Wis JI-Criminal 1469A was originally published in 1984 and revised in 1992 and 2002. This revision was approved by the Committee in April 2004 and involved changing the text following footnote 5.

This instruction is for the felony offense under § 943.24(2) where a single check is for \$2,500 or more. For a felony offense involving a series of checks totaling \$2,500 or more, see Wis JI-Criminal 1469B. The amount was increased to \$2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001. For a misdemeanor offense under § 943.24(1), see Wis JI-Criminal 1468.

1. The instruction is drafted for the typical case where a check is involved. However, the statute also applies to any "other order for the payment of money."

2. The definition of "check" is adapted from that used in the Uniform Commercial Code, § 403.104(2)(b).

3. The definition of "issue" is adapted from that used in the Uniform Commercial Code, § 403.102(1)(b): "'Issue' means the first delivery of an instrument to a holder or remitter." The phrase in the instruction – "signed and delivered to another" – is believed to be a more easily understood equivalent

of the statutory definition. The delivery must be of a signed check, though the defendant need not be the person who signed it.

4. The explanation of the required intent is adapted from § 939.23(4):

'With intent to' or 'with intent that' means that the actor either has a purpose to do the thing or cause the result specified or is aware that his or her conduct is practically certain to cause that result.

The instruction defines intent as "knowing or believing that it [the check] would not be paid." This is believed to be the equivalent of having the mental purpose or being aware that it is practically certain that the check would not be paid. The two alternatives for defining "with intent that" are discussed at Wis JI-Criminal 923A and 923B.

5. The model paragraphs are drafted for one of the three "prima facie" cases set forth in subsection (3) of § 943.24, namely, that found in (3)(b). If a case involves no account (subsec. (3)(a)) or insufficient funds at the time of presentment (subsec. (3)(c)), the paragraphs must be modified.

The model paraphrases the words of the statute by substituting "enough money in his checking account" for "sufficient funds or credit with the drawer" and "that the check was not paid" for "of nonpayment or dishonor." These paragraphs must be modified for cases involving orders other than checks.

The reference to "written" notice "delivered by regular mail . . ." was added to reflect changes made to § 943.23(3)(b) by 2003 Wisconsin Act 138, effective date: July 1, 2004.

6. This paragraph treats the "prima facie" case as a permissive inference and instructs the jury in the manner suggested by § 903.03. See Wis JI-Criminal 225 for discussion of the Committee's approach to instructing on "presumptions" and "prima facie cases."

7. The following paragraphs provide for the exceptions recognized by subsection (4) of § 943.24: postdated checks and checks given for past consideration (except a payroll check).

8. "Postdated checks are not included in view of the fact that some merchants encourage the giving of postdated checks when the customer does not have sufficient funds on hand to pay for the purchase. The person who takes a postdated check is put on notice that there may not be sufficient funds in the account of the issuer." 1953 Judiciary Committee Report on The Criminal Code, p. 119 (Wis. Legislative Council, February 1953).