

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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October 25, 2004

Opinion No. 04-156

Worthless Checks

QUESTIONS

1. Whether a worthless check action falls within the parameters of Tennessee Code Annotated § 39-14-121.
2. Whether notice of prosecution is required.

OPINIONS

1. Yes. Under Tennessee Code Annotated § 39-14-121, a person commits a criminal offense when he or she issues or passes a worthless check with fraudulent intent or knowingly.
2. Yes. As with any criminal offense, notice of prosecution is required.

ANALYSIS

1. Under Tennessee Code Annotated § 39-14-121(a)(1), a person commits an offense when he or she, “with fraudulent intent or knowingly,” issues or passes a check that is drawn on an account that does not have sufficient funds to pay the check in full. Under certain circumstances, it is also an offense to stop payment on a check. Tenn. Code Ann. § 39-14-121(a)(2), Sentencing Commission Comments. “The offense of issuing or passing worthless checks is punishable as theft pursuant to § 39-14-105.” Tenn. Code Ann. § 39-14-121(f).

2. As in any criminal prosecution, before a defendant may be prosecuted for issuing or passing a worthless check, he or she must be notified of the nature of the charges against him or her. Tenn. Const. Art. I, § 9; *State v. Wilson*, 92 S.W.3d 391, 394 (Tenn. 2002). A defendant is typically given notice of the charges in open court at the arraignment.

Accordingly, it is the opinion of this Office that a worthless check action does fall within the parameters of Tennessee Code Annotated § 39-14-121 and that a defendant is entitled to advance

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notice of such a prosecution.

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