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THE "OUGHT" AND "IS" OF BAD CHECK STATUTES

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."¹

The states, since their inception, operating as "insulated chambers"² within the bounds of the *Fourteenth Amendment*, have been engaging in social, economic and legal experiments with bad check statutes. The fact that there has not been more comparison of the effects of these statutes has been met with surprise,³ because this indeed is "a fertile field for modest research which promises substantial results."⁴ A comparison of the statutory language in the bad check area along with a comparison of the effect of these various statutes promises to be an effective guide to practical common-sense legislation in an area where most states are found lacking.

The states are far from uniform in their statutory enactments relating to the common problem of forged or fictitious, no-account, no-fund, insufficient-fund, and insufficient credit checks. A forged or fictitious check may be defined as one bearing the non-authorized or forged signature of an existing person, or the use of the name of a non-existing or fictitious person or bank on a check. A no-account check is one written on a bank where the writer does not have a checking account. No-fund checks are written on banks where the writer does have an account but the account is without funds. An insufficient-fund check is one written on a bank where the drawer has an account but the account does not have adequate funds with the bank to cover the check. An insufficient-credit or no-credit check is one written on a bank where the drawer does not have adequate funds or prearranged credit to cover the check. For the sake of simplicity the term 'lesser bad check offenses' is used in this article to apply to bad check offenses other than forged or fictitious checks; namely, no-account, no-fund, insufficient-fund, and insufficient-credit situations.

In considering the common problem we shall first analyze the forged

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1. Brandeis J., *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932).
 2. Holmes J., *Truax v. Corrigan*, 257 U.S. 312, 344, 42 S.Ct. 124, 66 L.Ed. 254, 27 A.L.R. 375 (1921).
 3. CAVERS, SCIENCE, RESEARCH, AND THE LAW: BEUTEL'S EXPERIMENTAL JURISPRUDENCE, 10 J. Legal Ed. 162 (1958), at p. 162.
NOTE: David F. Cavers is Associate Dean and Fressenden Professor of Law at the Harvard Law School.
 4. BEUTEL, SOME POTENTIALITIES OF EXPERIMENTAL JURISPRUDENCE AS A NEW BRANCH OF SOCIAL SCIENCE (1957), at p. 223.
NOTE: Professor Frederick K. Beutel, A.B. 1921, Cornell Univ., LL.B. 1925, S.J.D. 1928, Harvard Univ., a member of the Washington, Pennsylvania, and Nebraska bars, has taught in the law schools of the University of Pennsylvania, Louisiana State University, the College of William and Mary, and, since 1945, the University of Nebraska. He edited the fifth, sixth, and seventh editions of BRANNAN'S NEGOTIABLE INSTRUMENTS LAW and has compiled two casebooks in the field of Commercial Law. He has practiced in Pittsburgh and with the federal government.

and fictitious situation; secondly, we shall analyze the lesser bad check offenses and the statutory variations relating to these offenses; and thirdly, in the light of our comparison of the statutes and the effects resulting from them, we shall propose legislation in the bad check area based on the strong points of the various statutory systems and designed to clear up many of the inequities existing in Wyoming and a majority of the states.

COPING WITH THE COMMON PROBLEM

(1) *Forged and Fictitious Checks*

All of the states compared treat forged or fictitious checks as a mandatory felony.⁵ The Wyoming statute relating to forged or fictitious checks is typical of the statutes in this area,⁶ and it alone accounts for 18.1% of the inmates in the Wyoming State Penitentiary.⁷ This figure is high when compared with the 12.3% for forgeries in the Wisconsin State Prison,⁸ the estimate of under 10% for *all* bad check offenses in Vermont⁹ and New Hampshire,¹⁰ and the 24.15% for *all* bad check offenses in Colorado.¹¹

The differences in the percentages of convictions under these similar statutes appears to be attributable to the variations in the check cashing habits among the states. Professor Beutel¹² found that in Nebraska¹³ the

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5. Wyo. Comp. Stat. § 6-25 (1957) ". . . confinement in the penitentiary for not more than fourteen years."
Wis. Stat. Ann. ch. 943 § 38 ". . . fined not more than \$5000 or imprisoned not more than 10 years or both."
Vt. Rev. Stat. ch. 365 § 8345 ". . . not more than ten years and fined not more than \$1000."
N.H. Rev. Stat. ch. 451 § 5 ". . . not more than five years."
Colo. Rev. Stat. § 40-6-1 ". . . confinement in the penitentiary for a term not less than one year nor more than fourteen years."
Tex. Penal Code art. 996 ". . . shall be confined in the penitentiary not less than two nor more than five years."
Neb. Rev. Stat. § 28-601 (1943) ". . . shall be imprisoned in the penitentiary for any space of time not exceeding twenty years nor less than one year, and pay a fine not exceeding five hundred dollars."
Idaho Code Ann. § 18-3604 (1947) ". . . imprisonment in the state prison for not less than one nor more than fourteen years."
Calif. Penal Code § 473 ". . . imprisonment in the state prison for not less than one year nor more than fourteen years, or by imprisonment in the county jail for not more than one year."
 6. *Id.*
 7. Letter to the author from Ivan R. Daughterty, Warden, Wyoming State Penitentiary, February 12, 1963.
 8. Letter to the author from John C. Burke, Warden, Wisconsin State Prison, February 25, 1963.
 9. Letter to the author from Benjamin N. Hulburt, Chief Justice, Vermont Supreme Court, March 9, 1963.
 10. Letter to the author from Parker Hancock, Warden, New Hampshire State Prison, March 14, 1963.
 11. Letter to the author from Harry C. Tinsley, Warden, and Freddie Roche, Lieutenant, Colorado State Penitentiary.
 12. *Supra* note 4. Note: Beutel's book is not available locally, therefore, citations thereto herein are of necessity taken "second-hand" from either the Cavers article (*supra* note 3) or Hall and GLUECK, *CRIMINAL LAW AND ENFORCEMENT*, (1958), at p. 189.
 13. Nebraska does not have a civil statute, otherwise it is similar to Wyoming statutorily in its criminal statutes and statistically in its conviction rate. *Supra* notes 4 and 7.

businessmen were "fantastically careless" and that checks were accepted "under almost any conditions."¹⁴ Perhaps it is true that "there would not be so many check forgers, 'paper-hangers', and no-fund check writers if businessmen were less eager for the stranger's dollar."¹⁵

The fact that the forged or fictitious check statutes are uniform in providing for the felony penalty is a reflection of the common-law where a forged check was a false token, and obtaining goods by a false token was punishable as a cheat. There was a common-law split of authority as to whether or not a no-account check was a false token, but generally anything less than a forgery was not sufficient for a common-law cheat.¹⁶

(2) *The Lesser Bad Check Offenses*

As the analysis below will disclose, existing state statutes relating to the lesser offenses represent some "novel social and economic experiments"¹⁷ in our state "insulated chambers."¹⁸ There is considerable variation in the statutory handling of the no-account, no-fund, insufficient-fund, and insufficient-credit checks.

In the statutes of the states compared¹⁹ three distinct methods of coping with the common problem of the lesser bad check offenses emerge. We shall classify them into three groups as follows:

(A) Treatment of the lesser offenses solely as a crime.²⁰

(B) Treatment of the lesser offenses both civilly, on a quasi contractual basis, and criminally.²¹

(C) Treatment of the lesser bad check offenses as a tort.²²

We shall consider these concepts separately and in order.

(A) *Treatment of the Lesser Offenses Solely As A Crime*

The majority of the states included in this study are inclined to treat

14. Beutel, *supra* note 4 at 275.

15. BURNAUGH, *SURVEY OF CRIME STATISTICS AND PROBATION & PAROL*, State of Wyoming Department of Probation and Parol, December 6, 1961, at 14.

16. PERKINS, *PERKINS ON CRIMINAL LAW*, (1957), 'Cheating by Check', at 268.

17. Brandeis, *supra* note 1.

18. Holmes, *supra* note 2.

19. Wyoming, California, Colorado, Idaho, Nebraska, New Hampshire, Texas, Vermont Wisconsin.

20. Wyoming prior to 1961, California, Colorado, Idaho, Nebraska, and Texas.

21. Wyoming since the enactment of § 6-42.1 in 1961, and Wisconsin.

22. New Hampshire, and Vermont.

these offenses as criminal²³ with punishment ranging from a small fine²⁴ up to life imprisonment under the habitual criminal statutes.²⁵ Professor Beutel found that the Nebraska judges tended to ignore the mandatory habitual criminal statutes with regard to bad check 'felons'.²⁶

The criminal bad check statutes for the lesser offenses have many undesirable aspects from the public policy standpoint. First, they put the county attorney into the business of collecting bad checks under threat of prosecution. This, for him, raises questions of legal ethics²⁷ besides creating a definite burden on the tax dollar in paying for the cost of his activities in this area.²⁸ It is also a source of frustration to the county attorney when his complaining witness seeks to drop the complaint as soon as collection has been effected. Texas has an interesting statutory provision²⁹ to prevent this latter situation, which provides generally that

23. Wyo. Comp. Stat. § 6-39 (1957) ". . . sum of twenty-five dollars or upwards . . . felony . . . fined not more than five thousand dollars or imprisoned in the penitentiary for not more than five years or both."
 Wyo. Comp. Stat. § 6-40 (1957) ". . . sum less than twenty-five dollars . . . (first offense) fined not more than one-hundred dollars or imprisoned in the county jail not more than six months or both. . . ." (second offense penalty same as in 6-39).
 Wyo. Comp. Stat. § 6-42 (1957) ". . . no account . . . fined not more than five-thousand dollars or imprisoned in the penitentiary for not more than five years or both."
 Calif. Penal Code § 476 FIRST OFFENSE OF UNDER \$50: up to one year. SECOND OFFENSE OF UNDER \$50. OR FIRST OFFENSE OF \$50 OR MORE: up to 14 years.
 Colo. Rev. Stat. § 40-14-20 FIRST OFFENSE: fine of up to \$1000 and/or imprisonment of up to one year. SECOND OFFENSE: fine up to \$1000 and/or 20 days to one year imprisonment.
 THIRD OFFENSE: fine up to \$2000 and/or 90 days to one year imprisonment. FOURTH OFFENSE: one to five years in the state penitentiary.
 Idaho Code Ann. § 18-3601 (as amended in 1961) FIRST OFFENSE OF LESS THAN \$25: up to 6 months and/or up to \$300. SECOND OFFENSE OF LESS THAN \$25: up to one year and/or up to \$1000. THIRD OFFENSE UNDER \$25 OR FIRST OFFENSE OVER \$25: up to 3 years and/or up to \$5000.
 Neb. Rev. Stat. § 28-1213 (1943) Sum greater than \$35, punishable by a fine of \$100 to \$5000 and/or 1 to 7 years. Sum not exceeding \$35, fine \$5 to \$100 and/or up to 90 days and, at the discretion of the court, the costs of prosecution.
 Tex. Penal Code art. 567b § 4 FIRST OFFENSE OF A CHECK UNDER \$5: fine up to \$200. FIRST OFFENSE OF A CHECK OF \$5 TO \$50: up to 2 years and/or a fine of up to \$1000. SECOND OFFENSE OF UP TO \$50: 30 days to 2 years and/or a fine of up to \$2000. THIRD OFFENSE OF A CHECK OF UP TO \$50: 2 to 10 Years in the state penitentiary and a fine of up to \$5000. FIRST OFFENSE OF A CHECK OF \$50 OR MORE: 2 to 10 years and up to \$5000.
24. Tex. Penal Code art. 567b § 4.
 25. Wyo. Comp. Stat. § 6-10 (1957).
 26. Beutel, *supra* note 4 at 225.
 27. *Id.* at 287.
 28. Estimate \$80 (070.90 per year in Wyoming. During the fiscal year ending June 30, 1962 the cost of maintaining the offices of county prosecuting attorney in the state of Wyoming was \$266,903. (according to Norris E. Hartwell, State Examiner, in the published report for the fiscal year ending June 30, 1962).
 The Albany County, Wyoming, County Prosecutor's office estimates that 30% of its time is spent on bad check matters. (Personal interview with Sam Anderson, Assistant Albany County Attorney—March 29, 1963). The estimate of \$80,070.90 is based on the assumption that the Albany County Office is typical. The comparable figure in some of the larger states should be impressive!
 29. Tex. Penal Code art. 567b § 6: "If any person who has theretofore filed a complaint with any district or county attorney of this state alleging a violation of this Act, or who has furnished information to any such district or county attorney which has resulted in the acceptance by such district or county attorney of such a complaint, or who has testified concerning such a violation before a

the dropping of such a complaint is a misdemeanor, punishable by a fine of \$100 to \$500.

A second undesirable aspect of the criminal bad check statutes for offenses less than forgery is that they make a collection agency out of the sheriff's office.³⁰ Once again the taxpayer bears the brunt.³¹

A third unjustifiable aspect of the criminal bad check statutes, especially those requiring a felony penalty for offenses less than forgery, is their undue harshness in comparison with similar property offenses. Under Wyoming statutes³² the maximum sentence for obtaining credit or property by written false statements or representations of financial condition or wealth is six months, but under the bad check statutes a comparable offense is punishable by imprisonment for up to five years.³³ It is impossible to justify the harshness of the penalty under statutes relating to the lesser bad check offenses.

"The average citizen seems to have the impression that our jails are inhabited chiefly by thieves and our prisons by murderers, rapists, and kidnappers and therefore they belong where they are. If his impressions were correct, there might be some justification for his conclusion, but unfortunately he is wrong."³⁴

Wyoming has no compilation of the dollar amounts upon which bad check convictions are based,³⁵ but the Nebraska study found that, in spite of the laxity of enforcement of these harsh statutes, fully one-half of those incarcerated in the penitentiary for bad check offenses were there for writing bad checks of twenty dollars or less.³⁶

The fourth undesirable aspect of the criminal statute for the lesser bad check offenses is the heavy cost to the taxpayer of imprisonment. In Wyoming the average sentence for bad check offenses is 18 to 24 months³⁷

grand jury of this State which has thereafter returned an indictment on such violation, shall suggest to or request the county or district attorney in charge of such prosecution, that such case be dismissed, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500)."

30. Sheriff Ted Burnstad in an interview on March 29, 1963 estimated that at least 25% of the time spent in the Albany County Sheriff's Office is on bad check matters. Sheriff Burnstad did point out that the bad check activities in his office 'were spare-time operations' engaged in when the force was not working on more important matters.
31. Estimate \$146,555 per year in Wyoming. During the fiscal year ending June 30, 1962 the total cost of maintaining the office of Sheriff in the state of Wyoming was \$586,219. (according to the Hartwell report, supra note 28.) This estimate assumes the Albany County Sheriff's Office to be typical. Id.
32. Wyo. Comp. Stat. § 6-34 (1957); Wyo. Comp. Stat. § 6-36 (1957); See also, 1963 Wyo. Sess. Laws ch. 126, *Illegal Use of Credit Cards*.
33. Wyo. Comp. Stat. § 6-39 (1957); Wyo. Comp. Stat. § 6-40 (1957); Wyo. Comp. Stat. § 6-42 (1957).
34. Burnaugh, supra note 15 at 14.
35. Daugherty, supra note 7.
36. Beutel, supra note 4 at 256-420.
37. Daugherty, supra note 7.

and 35% of the admissions to the Wyoming State Penitentiary are for bad check offenses.³⁸ This presents a third major burden on the tax dollar.³⁹

It was found in Nebraska that if the State had paid off all bad checks rather than prosecuting the offenders under the statutes, a savings of over half a million dollars per year would have resulted.⁴⁰

Turning to arguments in favor of the treatment of lesser offenses solely as a crime, one good thing that can be said for the criminal bad check statutes is that they do facilitate extradition under the Uniform Extradition Act which Wyoming has adopted.⁴¹ This act provides extradition for both felony and misdemeanor.⁴²

The argument heard most often in behalf of the criminal bad check statutes is that they operate as a deterrent to potential bad check writers as well as a "cure" to past offenders. It is difficult, if not impossible, to support this speculation by responsible authority; in fact the unanimous opinion as to bad check statutes, especially those applicable to the lesser offenses, seems to be quite contra.

According to Warden Daughterty of the Wyoming State Penitentiary, criminal punishment has neither proved to be an effective deterrent to bad check writing nor a cure to bad check writers who are "alums" of the penitentiary.⁴³ Chief Justice Hulburd of the Vermont Supreme Court went one step further when he said, "I consider (Vermont's) civil statute (relating to offenses less than forgery) more of a deterrent than the criminal counterpart. Nothing is a cure."⁴⁴

(B) Treatment Of The Lesser Offenses Both Civilly, On A Quasi Contractual Basis, and Criminally

The second distinct statutory method of coping with the common problem is to provide *both* quasi contractual civil and criminal liability for the same act, that act being the writing of no-fund, no-account, insufficient-fund, and insufficient-credit checks. This concept is found in Wyoming⁴⁵ and in Wisconsin⁴⁶

38. *Id.*, Beutel found roughly the same percentage in his 1957 Nebraska study. *Supra* note 4.

39. Estimate \$132,464.75 per year in Wyoming. During the fiscal year ending June 30, 1962 the actual expenditures for maintaining the Wyoming State Penitentiary were \$378,464.76. (according to the Executive Budget Report, January 7, 1963). The estimate of \$132,464.75 is based on Warden Daughterty's statement (*supra* note 7) that 35% of the admissions to the Wyoming State Penitentiary are for bad check offenses.

40. Beutel, *supra* note 4, pp. 256 to 420.

41. Wyo. Comp. Stat. § 7-27 to § 7-53 (1957).

42. Wyo. Stat. § 7-28 (1957), 35 C. J. S. p. 388, note 50.

43. Daughterty, *supra* note 7.

44. Hulburd, *supra* note 9.

45. Wyo. Comp. Stat. § 6-42.1 (1957) adopted in 1961. This section is applicable along with § 6-39, 6-40, and 6-42.

46. Wis. Stat. Ann. ch. 118 § 66. This section is applicable along with ch. 943 § 24 which provides misdemeanor penalties for the 'issue or worthless checks.'

The Wyoming and Wisconsin civil liability statutes are the same in effect, but the wording of the Wisconsin statute is better because it is more concise and to the point.⁴⁷ These statutes provide that bad checks, other than forgeries, give rise to a civil action whereby the payee recovers costs plus the amount of the check from the payor.

From the payee's standpoint, this type of statute is desirable because he can collect the full amount of his check when it is collectable without going through an indirect process through the prosecuting attorney's office. Since the payee's immediate objective is to get his money, he is unlikely to file a criminal complaint when a civil remedy exists.⁴⁸

This civil approach *shifts the costs of collection from the taxpayer to the bad check writer*, a policy which is more likely to correct bad check writing habits than if reliance is placed on criminal statutes alone. Under this statutory system (civil coupled with criminal liability) the payor would normally settle the valid claims of the payee out of criminal court rather than risk a criminal prosecution; also he is likely to settle prior to a civil suit because, under the civil statute he would have to pay the court costs in addition to the amount of the check. If the quickest way to a man's heart is through his pocketbook, then the civil remedy may effect a more real reformation and prove to be a greater deterrent than the criminal penalty, at least when the check is collectable.

Wyoming and Wisconsin differ materially in their criminal counterparts to their civil statutes. In Wisconsin, offenses other than forgeries are punishable at most as misdemeanors with a fine of not more than \$1000. and/or imprisonment of up to one year,⁴⁹ while in Wyoming the same offense would be punishable by a fine of not more than \$5000 and/or imprisonment of up to five years.⁵⁰ The Wisconsin statute is more realistic when compared with the statutory provisions for similar property offenses.

Warden Burke of the Wisconsin State Prison reported that 16.9% of their admissions are for bad check offenses,⁵¹ whereas in Wyoming Warden Daugherty reported that 35% of our penitentiary admissions are for bad

47. Wis. Stat. Ann. ch. 118 § 66 "The issuance for any purpose of a check, draft or order which is not honored or paid upon presentation because of no account at, insufficient or no funds in, or credit with the bank upon which such instrument was drawn, shall render the person or firm issuing the same liable for all costs and expenses in connection with the collection of the amount for which it was drawn."

48. This presents a real conflict of interest problem for the prosecuting attorney who is also allowed to practice. Suppose the payee comes to such a prosecuting attorney and asks "what do I do now?" In a state like Wyoming where the elements of the civil and criminal statute are the same the next question is, what does the prosecuting attorney do now? As a general rule the Wyoming county prosecuting attorney will not take the civil case, rather than face the conflict of interest problem.

(Interview with Sam Anderson, Assistant Albany County Prosecuting Attorney, March 29, 1963).

49. Wis. Stat. Ann. ch. 943 § 24.

50. Wyo. Comp. Stat. §§ 6-39, 6-40, 6-42. (Obviously Wyoming is using too many statutes to cover the same area.)

51. Burke, *supra* note 8.

check offenses.⁵² The difference in the conviction rates in these two states is attributable to Wisconsin's reduction of the lesser offenses to the status of misdemeanors.

Both Wyoming and Wisconsin fail to tie their civil statutes to their criminal statutes, so it must be assumed that in either state the writing of a bad check, other than a forgery, would render the writer liable *both* civilly⁵³ to the payee and subject to prosecution criminally⁵⁴ for either a felony or a misdemeanor. Thus the payee may find himself both the plaintiff in a civil action and the complaining witness in a criminal action. This assumes that the prosecuting attorney will prosecute the offense for the state even though the amount of the check is satisfied in a civil action.⁵⁵ If so, the payee of a small check might seriously consider writing it off as a loss rather than becoming involved in two time-consuming court actions. As a practical matter this is unlikely to happen, because the prosecuting attorney will normally require a complaint by the payee as a condition precedent to bringing a criminal action for the lesser bad check offenses. In this instance the broad discretion of the county attorney is justifiable.⁵⁶

(C) *Treatment Of The Lesser Bad Check Offenses As A Tort*

The third concept of coping with the common problem is found in Vermont⁵⁷ and New Hampshire.⁵⁸ These statutes present the greatest deviation from the norm in handling the lesser offenses by providing that the giving of an insufficient check is a tort, and that if the injury to the payee is not compensated, body attachment may be had until compensation is made.

New Hampshire also maintains a criminal offense for bad checks. It provides that the giving of an insufficient check is an attempted larceny, and if property or services are thereby obtained the writer is guilty of larceny.⁵⁹

Both Vermont and New Hampshire provide a felony penalty for forged checks.⁶⁰

Chief Justice Hulburd of the Vermont Supreme Court,⁶¹ Chief Justice

52. Daugherty, *supra* note 7.

53. Wyo. Comp. Stat. § 6-42.1 (1957) adopted in 1961. Or Wis. Stat. Ann. ch. 118 § 66.

54. Wyo. Comp. Stat. §§ 6-39, 6-40, 6-42 (1957). Or Wis. Stat. Ann. ch. 943 § 24.

55. Wyo. Comp. Stat. §§ 6-39, 6-40 (1957) and Wyo. Comp. Stat. § 6-42.1 adopted in 1961 BOTH have the same prima facie evidence provisions.

56. *Supra* note 48.

57. Vermont Rev. Stat. ch. 364 § 8329 (1947).

58. N.H. Rev. Stat. ch. 384 § 12 (1942). NOTE: New Hampshire Revised Statute Annotated (1955) are not available at the University of Wyoming Law Library, it is assumed that this statute is still in effect.

59. N.H. Rev. Stat. Ann. ch. 582 § 12 (1955). This citation to the current N.H. Statutes is obtained from a letter to the author from Frank R. Kenison, Chief Justice, New Hampshire Supreme Court, March 14, 1963.

60. *Supra* note 5.

61. Letter to the author from Benjamin N. Hulburd, Chief Justice, Vermont Supreme Court, March 9, 1963.

Kenison of the New Hampshire Supreme Court,⁶² and Colonel Regan of the New Hampshire State Police⁶³ express satisfaction with the statutory handling of the lesser bad check offenses in their respective states.

Chief Justice Hulburd of Vermont estimates that "less than 10%" of the inmates in the Vermont State Penitentiary are there for bad check offenses.⁶⁴ Warden Hancock of the New Hampshire State Prison reports that 9% of their inmates are confined for bad checks.⁶⁵ These figures are impressive when compared with Wyoming's 35%.⁶⁶

(3) *Suggested Statutory Changes*

The following statutes are specifically suggested for adoption by the Wyoming Legislature in place of those now in existence.

STATUTE A. ISSUE OF WORTHLESS CHECK

- (1) Whoever issues any check or other order for the payment of money which, at the time of issuance, he intends shall not be paid is guilty of a misdemeanor and may be fined not more than \$1000 or imprisoned not more than one year or both.
- (2) For purposes of imprisonment, a sentence of one year may be treated as a felony.
- (3) Any of the following is prima facie evidence that the person at the time he issued the check or other order for the payment of money, intended it should not be paid:
 - (a) Proof that, at the time of issuance, he did not have an account with the drawee; or
 - (b) Proof that, at the time of issuance, he did not have sufficient funds or credit with the drawee and that he failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order; or
 - (c) Proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and he failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.
- (4) This section does not apply to a postdated check or to a check given for a past consideration, except a pay roll check.

NOTE: This statute is copied with minor change from Wisconsin Stat.

62. Letter to the author from Frank R. Kenison, Chief Justice, New Hampshire Supreme Court, March 14, 1963.

63. Letter to George O. Shovan, Clerk, N.H. Supreme Court for the author from Joseph L. Regan, Director, New Hampshire State Police, March 11, 1963.

64. *Supra* note 61.

65. Report from George O. Shovan, Clerk, N.H. Supreme Court quoting Parker Hancock, Warden, N.H. State Prison in response to a questionnaire from the author. March 14, 1963.

66. Wyoming State Penitentiary, Report, June 30, 1962; also *Supra* note 7.

Ann. ch. 943 § 24 (1961). Clause 2 of this statute derives its concept from Texas Penal Code ch. 1 art. 567 (b) § 5 and Wisconsin Stat. Ann. ch. 959 § 044, and is designed to lessen the burden on local jails which the misdemeanor statute will shift from the state penitentiary.

This statute will take the place of the present Wyoming Stat. §§ 6-39, 40, 41, 42 (1957). Statute A. provides a penalty for the 'lesser bad check offenses' which is more in keeping with the degree of moral turpitude involved in these 'crimes.' Statute A. is clear and understandable and still it provides an adequate and effective backstop to the civil statute (Statute B.).

STATUTE B. ISSUING WORTHLESS CHECKS, LIABILITY

The issuance for any purpose of a check, draft or order which is not honored or paid upon the presentation because of no account at, insufficient or no funds in, or credit with the bank upon which such instrument was drawn, shall render the person or firm issuing the same liable for all costs and expenses in connection with the collection of the amount for which it was written.

NOTE: Statute B. is taken from Wisconsin Stat. Ann. ch. 118 § 66 (1961) and it would replace and perform the same function as Wyoming Stat. § 6-42.1 which was adopted in 1961.

The civil statute should be emphasized and stressed because it shifts the costs of collection from the taxpayer to the bad check writer. Much of this emphasis can be accomplished by making the statute readable. Statute B. is clear, concise, and understandable.

STATUTE C. SUGGESTION FOR DISMISSAL BY COMPLAINING WITNESS: PENALTY

Any person who files a complaint with a county prosecuting attorney, or who in any way causes an indictment to issue for violation of *STATUTE A* or 6-25, and who shall later request the dismissal of such action is guilty of a misdemeanor, and upon conviction shall be fined not less than \$100 or more than \$500.

NOTE: Statute C. is derived from Texas Penal Code ch. 1 art. 567 (b) § 6, and it is designed to relieve the county attorney of the frustration of preparing a case only to have it dropped by a fickle complaining witness. This statute should also help shift emphasis from the criminal to the civil bad check statutes.

WILLIAM D. BAGLEY