

Contempt for Support Arrearage (Payer Appears) Checklist

If a person is ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the Friend of the Court (FOC) may commence a civil contempt proceeding. [MCL 552.631\(1\)](#). Use of contempt power to enforce support orders is provided for in [MCL 600.1701\(f\)](#). Note [MCL 600.5809\(4\)](#) provides for a “ten-year statutory period of limitations to enforce a support order in a civil proceeding [that] runs ‘from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.’” *Parks v Niemiec*, ___ Mich App ___, ___ (2018) (finding that “although the trial court erred when it determined that no statute of limitations applied to civil proceedings to enforce a child support order, it nevertheless reached the correct result because the trial court’s continuing jurisdiction in this proceeding tolled the limitations period”).

The FOC commences a civil contempt proceeding by moving for an order to show cause why the party should not be held in contempt, or by scheduling a show cause hearing before the judge or referee. See [MCR 3.208\(B\)\(1\)](#).

A copy of the order to show cause or notice of the show cause hearing must be provided to the parent by personal service, ordinary mail, or another manner permitted by [MCR 3.203](#). [MCR 3.208\(B\)\(2\)](#). Notice must comply with requirements for the form of a subpoena under [MCR 2.506\(D\)](#), and must state the amount past due and the source of information regarding the past due amount that constituted a violation of the court order. Notice must be complied with unless the person in receipt of notice is relieved by court order or the written direction of the person who executed the notice. [MCR 3.208\(B\)\(3\)\(c\)](#).

The show cause hearing cannot be held until the passage of seven days since the order or notice was served on the party or nine days after mailing, if the party was served by ordinary mail. [MCR 3.208\(B\)\(4\)](#).

The court may hold the show cause hearing without the FOC unless a party presents evidence that requires the court to receive further information from the FOC's records before making a decision. [MCR 3.208\(B\)\(5\)](#).

Procedures to follow during the show cause hearing:

- Ensure proper notice has been provided. See [MCR 3.208\(B\)\(2\)-\(3\)](#).
- Must PRESUME (in the absence of proof to the contrary introduced by the payer) that the payer has currently available resources equal to one month of payments under the support order. [MCL 552.633\(3\)](#).
 - Must NOT find that the payer has currently available resources of more than one month of payments without proof of those resources by the FOC or the recipient of support. [MCL 552.633\(3\)](#).
- Determine whether grounds for a finding of contempt exists:
 - Payer is in arrears; AND
 - the court is satisfied that the payer has the capacity to pay all or some portion of the amount due under the support order out of currently available resources; OR
 - the court is satisfied that the payer could, by the exercise of diligence, have the capacity to pay all or some portion of the amount due under the support order and that the payer fails or refuses to do so.
 - the payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the FOC. [MCL 552.633\(1\)](#).
- If grounds for finding contempt exist, MAY immediately enter an order that does one or more of the following:
 - commits the payer to the county jail or an alternative to jail. [MCL 552.633\(2\)\(a\)](#).
 - enter ONLY if other remedies appear unlikely to correct the payer's failure or refusal to pay support. See [MCL 552.637\(1\)](#).

- ensure commitment order states the amount to be paid by the payer in order to be released from the commitment order (amount may not exceed the payer's currently available resources as determined by the court). See [MCL 552.637\(2\)](#).
- may direct a portion or all of the payer's earnings in jail/alternative to jail be paid to and applied for support until:
 - the payer complies with the court order,
 - payer is released from the commitment order,
OR
 - further order of the court. See [MCL 552.637\(5\)](#).
- commits the payer to the county jail or an alternative to jail *with* the privilege of leaving the jail or other place of detention during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to satisfy the terms and conditions imposed under an order of commitment if the payer's release is necessary for the payer to comply with those terms and conditions. [MCL 552.633\(2\)\(b\)](#).
- enter ONLY if other remedies appear unlikely to correct the payer's failure or refusal to pay support. See [MCL 552.637\(1\)](#).
- ensure commitment order states the conditions that constitute diligence in order to be released from the commitment order (conditions must be within the payer's ability to perform). See [MCL 552.637\(3\)](#).
- may direct a portion or all of the payer's earnings in jail/alternative to jail be paid to and applied for support until:
 - the payer complies with the court order,
 - payer is released from the commitment order,
OR
 - further order of the court. See [MCL 552.637\(5\)](#).
- commits the payer to a penal or correctional facility in this state that is not operated by the state department of corrections. [MCL 552.633\(2\)\(c\)](#).
- enter ONLY if other remedies appear unlikely to correct the payer's failure or refusal to pay support. See [MCL 552.637\(1\)](#).

- ensure commitment order states the conditions that constitute diligence in order to be released from the commitment order (conditions must be within the payer's ability to perform). See [MCL 552.637\(3\)](#).
- may direct a portion or all of the payer's earnings in penal/correctional facility be paid to and applied for support until:
 - the payer complies with the court order,
 - payer is released from the commitment order,
OR
 - further order of the court. See [MCL 552.637\(5\)](#).
- apply any other enforcement remedy authorized under the Support and Parenting Time Enforcement Act (SPTEA), [MCL 552.601 et seq.](#), or the Friend Of the Court Act (FOCA), [MCL 552.501 et seq.](#), for the nonpayment of support if the payer's arrearage qualifies and the evidence supports applying that remedy.
- orders the payer to participate in a work activity.
- orders the payer to participate in a community corrections program established under the Community Corrections Act, [MCL 791.401 et seq.](#) (if available within the court's jurisdiction).
- except as provided by federal law and regulations, orders the parent to pay a fine of not more than \$100, which must be deposited in the FOC fund created under [MCL 600.2530](#).
- places the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including, but not limited to, one or more of the following:
 - participating in a parenting program.
 - participating in drug or alcohol counseling.
 - participating in a work program.
 - seeking employment.
 - participating in other counseling.
 - continuing compliance with a current support or parenting time order.
 - entering into and compliance with an arrearage payment plan. [MCL 552.633\(2\)\(h\)](#).

- For noncompliance of a spousal support order, MAY assess the payer actual reasonable expense incurred by the FOC in bringing any enforcement action for the payer's noncompliance with the spousal support order not eligible for funding under Title IV-D. See [MCL 552.636](#).

Duration of Commitment under Commitment Order. A commitment MUST continue until the payer performs the conditions set out in the commitment order (CANNOT exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt). [MCL 552.637\(4\)](#).

Notwithstanding the length of commitment imposed under the commitment order, the court MAY release a payer who is unemployed (and the commitment order committed the payer to a county jail) and finds employment IF:

- the payer is *self-employed*, completes two consecutive weeks at his/her employment, and makes a support payment as required by the court, OR
- the payer is *employed* and completes two consecutive weeks at his/her employment, and an order of income withholding is effective. [MCL 552.637\(6\)](#).

Violation of Commitment Order. If a payer is committed to jail or an alternative to jail *with privileges of release* under conditions set out under [MCL 552.633\(2\)\(b\)](#) and the payer:

- violates those conditions, the court MUST commit the payer to the county jail without the privileges for the balance of the period of the commitment imposed by the court. See [MCL 552.639\(1\)](#).
- fails to return to the place of confinement within the time prescribed, the payer MUST be considered to have escaped from custody and MUST be found guilty of a misdemeanor, punishable by imprisonment for not more than one year. See [MCL 552.639\(2\)](#).

For purposes of altering a commitment order, see the Michigan Judicial Institute's [Altering Commitment Order Checklist](#).

For court forms related to domestic relations actions, see the One Court of Justice [website](#).

For additional domestic relations resources, see the Friend of the Court Bureau [website](#).

