

# Contempt for Support Arrearage (Payer Fails to Appear) 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*, 325 Mich App 717, 720-721 (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\(D\)](#),<sup>1</sup> 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

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<sup>1</sup>Temporarily, “[s]ubpoenas issued under [\[MCR 2.506\]](#) may require a party or witness to appear by telephone, by two-way interactive video technology, or by other remote participation tools.” [Administrative Order No. 2020-9](#), temporarily amending certain court rules “until further order of the Court.” See [Administrative Order No. 2020-12](#); [Administrative Order No. 2020-19\(3\)](#). Please visit the One Court of Justice website for more information on the [judiciary’s response to COVID-19](#), including links to various executive and administrative orders, FAQs, and other resources.

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\(B\)\(2\)-\(3\)](#).
- Payer FAILS to appear,<sup>2</sup> MUST do one or more of the following (as the court considers appropriate given the information available at the hearing):
  - Find the payer in contempt for failure to appear. [MCL 552.631\(1\)\(a\)](#).
  - Find the payer in contempt under [MCL 552.633](#). [MCL 552.631\(1\)\(b\)](#). Refer to the Michigan Judicial Institute's *Contempt for Support Arrearage (Payer Appears) Checklist* for finding a payer in contempt under [MCL 552.633](#).
  - Adjourn the contempt proceeding. [MCL 552.631\(1\)\(d\)](#).
  - Dismiss the contempt proceeding if the court determines that the payer is not in contempt. [MCL 552.631\(1\)\(e\)](#).
  - Issue a bench warrant for the payer's arrest that:
    - requires the payer be brought before the court without unnecessary delay for further proceedings in connection with the contempt proceedings. [MCL 552.631\(1\)\(c\)](#).
    - says the payer is subject to arrest if apprehended or detained anywhere in Michigan AND requires, on arrest, unless the payer deposits a cash performance bond in the manner required by [MCL 552.632](#),<sup>3</sup> the payer must remain in custody until the time of the hearing. [MCL 552.631\(3\)](#).

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<sup>2</sup> If the payer appears for the show cause hearing, refer to the Michigan Judicial Institute's *Contempt for Support Arrearage (Payer Appears) Checklist*.

- specifies in the bench warrant the cash performance bond amount (not less than \$500 or 25% of the arrearage, whichever is greater).
  - may set the cash performance bond at an amount up to 100% of the arrearage and add to the amount of the required deposit the amount of the costs the court may require under [MCL 552.631\(4\)](#). [MCL 552.631\(3\)](#).
- requires a payer arrested on a felony warrant issued for a violation of [MCL 750.165](#) to remain in custody until the preliminary examination (unless the payer deposits a cash performance bond in the manner required by [MCL 552.632](#)).
  - may order a recall of the bench warrant on notification that a payer who has an outstanding bench warrant under [MCL 552.631](#) has been arrested or arraigned on a felony warrant for a violation of [MCL 750.165](#). [MCL 552.631\(3\)](#).
- except for good cause shown on the record, orders the payer to pay the costs related to the hearing, the issuance of the warrant, the arrest, and any later hearings. [MCL 552.631\(4\)](#).
- also, in addition to issuing the bench warrant, may enter an order permitting a law enforcement agency to render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of an appropriate bond. [MCL 552.631\(5\)](#).

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](#).

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<sup>3</sup> If the payer is arrested in Michigan, the payer must remain in custody until there is a hearing OR the payer posts an adequate cash performance bond. [MCL 552.632\(1\)](#). If the payer cannot post the cash performance bond in the amount stated in the bench warrant, the court MUST hold the hearing within 48 hours, excluding weekends and holidays. See [MCL 552.632\(1\)](#). For a checklist on the procedures for holding a hearing on a bench warrant, see the Michigan Judicial Institute's [Hearing on Bench Warrant Checklist](#).

