

CONTEMPT HEARING CHECKLIST

Factual Information

Case Number: _____ Payor/Client: _____

Case Name: _____

Children: _____

Total Amount of Arrears: _____ Monthly Ordered Support: _____

Support Owed to: _____ Date of Support Order: _____

Payment History: _____

Payor's Source of Income: _____

Amount of Income Per Month: _____

Length of Time Receiving This Income: _____

Income History: _____

Payor's Current Place of Employment: _____

Length of Time Employed There: _____

Employment History: _____

Payor Education/Training: _____

Payor Special Job Skills/Trade Skills: _____

Payor's Current Residence: _____

Payor Residing with: _____

Marital Status: _____

Payor's Other Biological/Adopted Children: _____

Payor Licenses: _____

Payor Physical/Mental Disabilities: _____

Payor Real Property: _____

Payor Personal Property (cars, other assets): _____

Payor liabilities (mortgage, rent, utilities, other child support cases, etc.): _____

Is Payor receiving state aid (ie cash assistance, food stamps, Medicaid, etc.)? _____

Possible Defenses

- No ability to pay
- Statute of limitations- see MCL 600.5809 and *Murray v Jackson*, unpublished opinion of the Court of Appeals, issued April 20, 2010 (Docket No. 281077)
- Inadequate service/no knowledge of support order
- Contesting paternity of child

Possible Dispositions

- See MCL 552.633 and 552.635:
- Dismissal of show cause hearing
- Adjournment of show cause hearing
- Jail time: 45 days, first contempt or 90 days, subsequent contempt-see MCL 552.637
 - Work release only applies with a minimum of three months incarceration
 - Tether release may be available
- License Suspension
- Fine
- Supervision of FOC
- POWER court

Relevant Statutes

Support and Parenting Time Enforcement Act

MCL 552.633 Finding payer in contempt; presumption; proof of currently available resources; order; noncompliance with arrearage payment schedule; suspension of license.

(1) The court may find a payer in contempt if the court finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order. In the absence of proofs to the contrary introduced by the payer, the court shall presume that the payer has currently available resources equal to 4 weeks of payments under the support order. The court shall not find that the payer has currently available resources of more than 4 weeks of payments without proof of those resources by the office of the friend of the court or the recipient of support. Upon finding a payer in contempt of court under this section, the court may immediately enter an order that does 1 or more of the following:

(a) Commits the payer to the county jail or an alternative to jail.

(b) 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 go to and return from his or her place of employment.

(c) Commits the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

(d) If the payer holds an occupational license, driver's license, or recreational or sporting license, conditions a suspension of the payer's license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.

(e) Orders the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under this section concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

(f) If available within the court's jurisdiction, orders the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.

(g) Except as provided by federal law and regulations, orders the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530.

(h) Places the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including 1 or more of the following:

(i) Participating in a parenting program.

(ii) Participating in drug or alcohol counseling.

(iii) Participating in a work program.

(iv) Seeking employment.

(v) Participating in other counseling.

(vi) Continuing compliance with a current support or parenting time order.

(vii) Entering into and compliance with an arrearage payment plan.

(2) If the court enters an order under subsection (1)(d) and the payer fails to comply with the arrearage payment schedule, after notice and opportunity for a hearing, the court shall order suspension of the payer's license or licenses with respect to which the order under subsection (1)(d) was entered and shall proceed under section 30.

MCL 552.635 Finding payer in contempt; order; release of payer from county jail; noncompliance with arrearage payment schedule; suspension of license.

(1) The court may find a payer in contempt if the court finds that the payer is in arrears and 1 of the following applies:

(a) The court is satisfied that by the exercise of diligence the payer could 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.

(b) The payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the friend of the court.

(2) Upon finding a payer in contempt of court under this section, the court shall, absent good cause to the contrary, immediately order the payer to participate in a work activity and may also do 1 or more of the following:

(a) Commit 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 participate in a work activity.

(b) If the payer holds an occupational license, driver's license, or recreational or sporting license, condition a suspension of the payer's license, or a combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.

(c) If available within the court's jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.

(d) Except as provided by federal law and regulations, order the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530.

(e) Place the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including 1 or more of the following:

(i) Participating in a parenting program.

(ii) Participating in drug or alcohol counseling.

(iii) Participating in a work program.

(iv) Seeking employment.

(v) Participating in other counseling.

(vi) Continuing compliance with a current support or parenting time order.

(vii) Entering into and compliance with an arrearage payment plan.

(3) Notwithstanding the length of commitment imposed under this section, the court may release a payer who is unemployed if committed to a county jail under this section and who finds employment if either of the following applies:

(a) The payer is self-employed, completes 2 consecutive weeks at his or her employment, and makes a support payment as required by the court.

(b) The payer is employed and completes 2 consecutive weeks at his or her employment and an order of income withholding is effective.

(4) If the court enters an order under subsection (2)(b) and the payer fails to comply with the arrearage payment schedule, after notice and an opportunity for a hearing, the court shall order suspension of the payer's license or licenses with respect to which the order under subsection (2)(b) was entered and shall proceed under section 30.