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## **Child Support Bench Warrants** G f 🔰 🖶 61

# Know Your Rights When a Child Support Bench Warrant is Issued for Your Arrest

## How do I know if there is a child support bench warrant?

Check your New Jersey child support account at the NJ Child Support website. It will tell you current information from Probation and tell you what you owe, what you have paid, and whether a bench warrant has been issued. If it is your first time accessing your account, you will need to register. You can also contact your Probation worker by telephone or in person to discuss the status of your case.

If there is not a bench warrant, what can I do to avoid one? If your circumstances have changed since your child support order was entered (such as you have become disabled, you are in jail, or your child is no longer living with the other parent), you should file a motion (See How to Ask the Court to Change/Enforce an Order in Your Case, or Request Another Related Action in Your Case (from New Jersey Courts)) or application to modify your support order (See How to file a request to modify a Non-Dissolution "FD" Court Order previously issued by the court (from New Jersey Courts)) right away. Don't delay! Once you miss support payments, the back support you owe will probably not be reduced. Notify Probation (up to 45 days before you file your motion or application to reduce support) that you are filing to modify the order. They are much less likely to request a bench warrant if they know you are taking steps to modify the order.

### Why was a bench warrant issued? There are three situations in which a judge will enter a bench warrant for the arrest of a parent who owes back child support or alimony:

- Probation determines that an expedited (immediate) enforcement hearing is needed;
- 2. You failed to appear at a support enforcement hearing; or
- A prior order authorizes a bench warrant if you failed to pay two weeks of support (or lump sum).

Will this affect my driver's license, my right to work, or recreational licenses?

Yes. When a bench warrant is issued, notice is sent to the Motor Vehicle Commission (MVC), and your driver's license will be suspended. Once you are arrested or the warrant is vacated by a court order, notice will be sent to the MVC so you can ask that your driving privileges be restored. You must pay a restoration fee to get your driver's license back. Occupational licenses (such as an electrician's license) and recreational licenses (such as a hunting license) may also be denied or suspended when a child support bench warrant is pending.

### Can I turn myself in or do I have to wait to be arrested? You can turn yourself in by reporting to the county sheriff's office and telling them you want to surrender on a child support bench warrant. If you don't turn yourself in, you will be subject

to arrest at any time that a member of law enforcement stops you and discovers the bench warrant. Also, law enforcement officers may seek you out at your home or work to arrest you on the bench warrant. Choosing to surrender yourself gives you some control over when the process starts and gives you the chance to bring documents you may need with you.

What should I do before surrendering or being arrested?

If you surrender at the sheriff's office, be sure to take your document evidence with you. While you are held awaiting the hearing, they will hold your papers. Make sure you tell them you will need them for the hearing. They will provide them to you in court. If you do not plan to surrender, you should still gather you document evidence. Try to arrange for someone you know to bring your document evidence to court if you are arrested on the

Review the section below on preparing for an enforcement hearing. You should review the court documents recommended and gather your document evidence discussed in that section.

bench warrant.

You will be processed and held until a Family Part judge is available to conduct a hearing. This may take up to 72 hours (three days), but it usually happens sooner. In most counties, hearings are held every afternoon (Monday-Friday). Many parents subject to a child support bench warrant choose to surrender to the sheriff's office first thing in the morning, hoping to

## be processed in time to have a hearing that afternoon. Many parents also avoid surrender on weekends and holidays (as the court is not open) and on Fridays (or the day before a

What happens once I am arrested or voluntarily surrender?

holiday), because if they are not processed in time to see a judge that afternoon, they will remain in county jail until the next regular court day. While you are in jail, you will be given jail clothes and be subject to the rules and regulations of the jail. Your clothes and personal belongings will be held until you are released. Will I get a lawyer? If the court is considering putting you in jail (called "civil contempt" or "coercive incarceration") as a possible outcome at the enforcement hearing, then you have a right to hire a lawyer. If

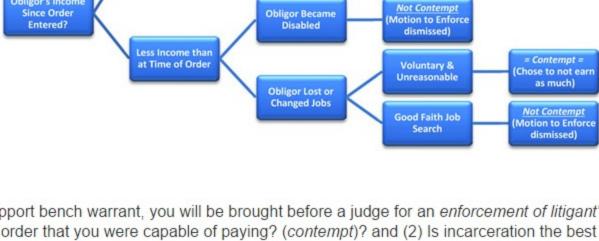
# you are "indigent" (which means that your income is very low), the court must appoint a free lawyer before it can consider incarcerating (jailing) you. If there are no lawyers available to

appoint for indigent obligors (which is currently true in most counties), then the court cannot incarcerate you. (An obligor is the parent who is required to pay child support to the other parent.) At the beginning of the hearing, you should tell the court (1) if you want a lawyer; and (2) if you believe you are indigent. The court will decide whether or not you are considered indigent.

If it decides that you are, an attorney will be appointed or there will be no incarceration. Note that an appointed free lawyer does not charge a fee before representing an indigent client. However, appointed lawyers may be permitted to collect the fee later.

Contempt (Willful Noncompliance)—Issues for the Judge

The Same or More of Order



What happens at the hearing?

Will the judge find me in contempt of the support order? Contempt requires "willful noncompliance" with the order. "Noncompliance" means that you failed to pay the full amount of the support that was ordered. "Willful" means that either you had the money and chose not to pay, or you unreasonably chose to be unemployed or to take a job paying less money. If the court finds willful noncompliance, it will then consider

whether incarceration or another sanction is appropriate. For example, if an obligor can show the court that he lost his job because he became disabled, the court will find that there was noncompliance (the support was not paid in full), but the

Will the judge send me to jail?

# Court Rule 5:3-7(b) describes the sanctions a court can impose when a parent fails to pay the child support ordered. It includes ordering any or several of the following:

 Increasing your child support order to include an amount to pay off the back child support owed (arrears) Requiring one or more lump sum payments Suspending occupational or driver's license

 Economic sanctions Requiring participation in a community service program

nonpayment was not willful, since the loss of income was due to a disability. In this case, the court would not consider incarceration.

- Incarceration, with or without work release Issuance of a warrant to be executed if you violate the judgment or order again
- Any other appropriate equitable remedy.

# amount set by the court that actually results in incarceration.

The Probation worker usually asks the court to set the release amount as the full amount of support owed or a specific fraction of that. It will be up to you to focus the court on how much you are currently able to pay. Providing the court with copies of your bank statements (or online bank account ledger) may help prove how much you can actually pay.

What can I do to prepare for a hearing? **REVIEW AOC DIRECTIVE #15-08** 

# (1) The Proceedures

(2) The Probation Questionnaire The second section begins on page 17 and has several forms. The two forms that may be most helpful in preparing for the hearing are the Probation Child Support Enforcement Obligor

The first section is "Enforcement of Child Support Orders—Use of Warrants and Incarceration." It gives a detailed description of the process.

The questionnaire is supposed to be filled out by a Probation worker who interviews you before the hearing. In case that doesn't happen, you can be prepared by completing the twopage form yourself before you surrender or are arrested. You will provide a copy of the form to both the Probation worker and the judge. It requires you to swear to the truthfulness of the

(3) The question for the Judge The five-page section of AOC Directive #15-08, titled Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant, details many questions that a judge may ask you to get an understanding of your current financial situation. Reviewing these questions and even writing down answers for each question before the hearing may help you or your lawyer

answers provided. Note that the last box is available to describe "special circumstances" (for example, disability or unemployment). This box is where you can explain why you have not

## closing, family illness, incarceration). GATHER DOCUMENTS TO USE AS EVIDENCE

Listed below are some documents that can provide the court with information about each issue. They are not all required. They are only suggestions and depend on your circumstances. Make copies of the documents (one for you and one for the court) and keep the documents in a specific and safe place. If you surrender on the bench warrant, take your evidence

documents with you. If you plan to wait to be arrested, you should also make plans with someone else to bring your evidence documents to the Family Court for you when you are

As described above, the main issues in the hearing will be (1) your income; (2) whether you are disabled; (3) whether you have made a good faith effort to find work, if you are

(1) Documenting income The following documents can be helpful in documenting your income: Paystubs (at least three most recent)

### Income tax returns Documents showing profits and losses, if self-employed Records of cash received, if paid in cash Affidavit from employer

arrested.

WorkFirst NJ Med-1 form declaring excuse from requirements due to disability

- Be prepared to describe your symptoms and what tasks you cannot perform. The following documents can be helpful in proving disability:
  - Medical reports (If you do not have any reports, be prepared to explain why—for example, lack of insurance to seek medical help) Application for benefits from Social Security Disability
  - Determination of full or partial disability from Veterans Administration Determination of full or partial disability from Workers Compensation Determination of full or partial disability from Disability Insurance.
- (3) Documenting efforts to find higher paying work

 Probation Unemployment benefits WorkFirst NJ

Job search logs should be written at or near the time you applied for jobs and should include:

- Name of person contacted Date of contact
- Type of contact (phone, email, in person) · Location of job listing, if there was one

Name of company

(4) Documenting assets

- Assets are any cash or investments that could be used to make your support payments. Be prepared to supply statements from all accounts, including:
  - Money market accounts (MMA)
  - Certificate of deposit (bank CD)
  - 401K/403B Other.
- This article is from the May 2014 issue of *Looking Out for Your Legal Rights*®.
- This information last reviewed: 6/2/2014

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- After you are arrested or surrender on the child support bench warrant, you will be brought before a judge for an enforcement of litigant's rights hearing. The two main issues at the enforcement hearing are (1) Did you fail to pay an order that you were capable of paying? (contempt)? and (2) Is incarceration the best way to coerce you to pay now?
- If the court finds you in contempt, it will then consider whether to incarcerate you. The court will have to first decide whether incarceration or another sanction is appropriate.
- You should ask the court to impose one or more of the non-jail sanctions and explain how you will satisfy those sanctions. Think about what you can realistically afford to pay both immediately and in the next few months.
- Can I avoid going to jail? If the court decides incarceration is the best sanction, it must set an amount that you are capable of paying on the day of the hearing to avoid incarceration. That is, before putting you in jail, the court must tell you how much you can pay immediately to avoid going to jail. That release amount should be based on what you can pay. It is your refusing to pay the release

# AOC Directive #15-08 (from New Jersey Courts) was prepared by the administrative director of the New Jersey court system to explain the process of child support enforcement, bench warrants, and coercive incarceration. You should review this completely and print it, if possible.

paid support in full. It can include any financial or other hardship that has made payment of support difficult. Be specific. Give dates and facts about what has happened.

Questionnaire and Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant.

present a full explanation of your financial situation. Again, it is helpful to emphasize the reasons that making full payment has been difficult (such as disability, being laid off, business

# unemployed, or higher paying work, if your income has declined; and (4) what assets you have that could be used to pay support.

- Bank statements showing deposits. (2) Documenting disability
- Submit job search logs (a list of jobs you have applied for), if possible. You may include copies of job search logs kept for:
  - Any other agency.
  - Materials provided (application, resume, cover letter) Response or status if pending response.
  - Checking Savings
  - Stocks and bonds Investment accounts IRA