

# BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

Court-ordered legal financial obligations (LFOs) include all local or State, discretionary and mandatory fines, costs, fees, surcharges, assessments, restitution and other court ordered financial sanctions in criminal cases. Willful failure to comply with court-ordered LFOs may result incarceration, except in civil traffic cases.<sup>1</sup>

A court may not incarcerate a defendant for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was willful and not due to an inability to pay; or
2. The failure to pay was due to an intentional failure to make bona fide efforts to pay.

## To make the determination of willfulness, the court should:

### 1. Confirm that adequate notice of the hearing to determine ability to pay was provided.

*Notice should include the following information:*

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the defendant's ability to pay at the hearing;
- d. That the defendant should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

### 2. Provide meaningful opportunity to explain at the hearing.

*The defendant must have an opportunity to explain:*

- a. Whether the amount due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

### 3. The following are factors the court should consider to determine willfulness

- a. Whether defendant is receiving income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% of the Federal Poverty Level (FPL);<sup>2</sup>
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

## 2017 FPL Income Based on Family Size

Family Size	130% of FPL	Family Size	130% of FPL
Individual	\$15,678	Household of 4	\$31,980
Household of 2	\$21,112	Household of 5	\$37,414
Household of 3	\$26,546	Household of 6	\$42,848

<sup>1</sup> Order to Show Cause hearings under ARS §13-810 are not used in civil traffic cases.

<sup>2</sup> U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2017, <https://aspe.hhs.gov/poverty-guidelines>

## **BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS**

### **4. At the hearing, the court should find on the record:**

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. Any fine payment alternatives imposed in 5 below.

### **5. Consider alternative sanctions for both those who have been found willful and not willful of nonpayment pursuant to ARS §13-810(D)&(E).**

The options for those defendants who willfully failed to pay, or intentionally failed to make a good faith effort to pay, after a finding of contempt include:

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to ARS §13-805;
- c. Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid;
- d. Order defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27 of the Rules of Criminal Procedure. Probation revocation cannot be determined at a §13-810 OSC hearing.

The options for those defendants who were not willful in nonpayment, or have made a good faith effort to pay include:

- a. Re-establish any original agreement regarding the payment of the LFO;
- b. Modify the manner in which the amount owed is to be paid. This may include an extension of time to pay, the establishment or the modification of a time payment plan, ordering community restitution or allowing credit for community restitution when permitted by ARS §13-824;
- c. Enter a criminal restitution order pursuant to ARS §13-805;
- d. Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid.

**Courts must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C) and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.**