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Updated May 2024

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SACC_BOTS_QUICKLAW_CivilImprisonment_Final_2025



Civil Imprisonment

QUICKLAW GUIDE





Civil Imprisonment

What is civil imprisonment?

- > Civil Imprisonment is a drastic remedy meant to force a judgement debtor who has means to pay a judgment debt but refuses to do so. This is where the defendant/ judgment debtor is jailed for the prescribed amount of time as sought and granted by the court.
- > It is usually applied for after the Plaintiff/Judgement Creditor has tried all other available avenues and failed to collect the judgement debt.
- > The underlying principle of civil imprisonment is that it is not a criminal offense meant to punish the defendant/ judgment debtor. What civil imprisonment is meant to do is to force a recalcitrant debtor (a person who has the means to pay but refuses to do so) to pay the judgment debt.
- > A summons for civil imprisonment is filed, along with a copy of the judgement/order and nulla bona.
- > One of the rules on civil imprisonment is that the summons for civil imprisonment must be served to the judgment debtor personally (in his hands), whether or not he has an attorney on record. This is because the relief sought by the plaintiff/ judgment creditor involves the Defendant's/ judgment debtor's personal liberty.
- > Once s/he has been served, the matter will be enrolled at court and s/he will be ordered to appear in court and show the Judge or Magistrate why s/he should not be imprisoned for this debt.
- > Usually, at that appearance the judgement debtor/defendant will appear with a copy of his/her salary advice slip and a written budget. This is to show the court their means. If this is done and the Judgement Debtor/Defendant makes a reasonable offer to pay off the debt in monthly installments, the judge/magistrate will likely order the civil imprisonment to be suspended, pending payment of the monthly amounts.
- > In most instances where civil imprisonment is ordered, it is because a Defendant/Judgement Debtor opts to not attend the court proceedings.
- > Even when the Defendant/Judgement Debtor does not attend the court proceedings, the judge/magistrate usually makes an order granting the civil imprisonment, but suspending the execution of the order for some time.
- > It is only when that time period passes and no arrangements are made by the Judgement Debtor/Defendant to pay the debt is a warrant for civil imprisonment issued.
- > It is usually granted for 30/60 or 90 days.
- > A Deputy Sherriff is then tasked with arresting the Judgement Debtor/Defendant.

Does going to imprison absolve the Judgement Debtor of his debt?

- > No, it does not. The judgment debtor is still expected to pay the judgment debt even after being imprisoned.
- > A debtor may be imprisoned as many times as is granted by the court provided that the judgment debtor has the means to pay but refuses to do so.

How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.