

EVERYTHING YOU WANTED TO KNOW ABOUT CONTEMPT BUT WERE AFRAID TO ASK

Kelly Flynn, Esq.
P.O. Box 729, Palmer, Massachusetts 01069
(413) 289-1917 (tel/fax)
attykflynn@charter.net
www.familylawadvantage.com

The Probate and Family Court has been given the power to enforce its orders and judgments as well as the power to punish contemptuous conduct. G.L. c. 215, § 34.

There are three types of contempt actions which can be brought before the Probate and Family Court:

- CIVIL CONTEMPT ACTIONS
- DIRECT CRIMINAL CONTEMPT ACTIONS
- INDIRECT CRIMINAL CONTEMPT ACTIONS

1. CIVIL CONTEMPT ACTIONS

In re: Birchall, 454 Mass. 837, 848, 913 N.E.2d 799, 810 (2009)

Purpose: Remedial

Its Aim: To coerce the performance of a required act by the disobedient party for the benefit of the aggrieved complainant.

Its Sanction: Involves confining a contemnor indefinitely until he complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance.' The sanction imposed by the Court is civil if "the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus 'carries the keys of his prison in his own pocket.'"

2. DIRECT CRIMINAL CONTEMPT ACTIONS

Sussman v. Com. 374 Mass. 692, 697, 374 N.E.2d 1195, 1199 (1978)

Purpose: Punitive

Its Aim: To punish an unruly contemnor who behaves offensively in open court against the dignity of the Court. "Except in cases of flagrant contemptuous conduct, the trial judge should not exercise the power of summary contempt in the absence of a prior warning as to the conduct which would place the offender in contempt. The nature of such warning is that it must be made clear to the attorney that such conduct is impermissible and that specified sanctions may be imposed for its repetition. The requirement of such a warning is not inconsistent with the role of the judge as "the directing and controlling mind at the trial, and not a mere functionary to preserve order and lend ceremonial dignity to the proceedings."

Its Sanction: Fine or Incarceration

3. INDIRECT CRIMINAL CONTEMPT ACTIONS

In re: Birchall, 454 Mass. 837, 848, 913 N.E.2d 799, 810 (2009)

Purpose: Punitive

Its Aim: To vindicate the court's authority and to punish the contemnor for doing a forbidden act or for failing to act as ordered.

Its Sanction: Involves confining a contemnor for a definite period of time. The sanction imposed by the Court is criminal if the contemnor receives a fixed sentence of imprisonment, which he cannot avoid or abbreviate through compliance with the court's order.

APPLICABLE RULES

Actions for contempt against any party for failure to obey any order or judgment of the probate court relative to support of a spouse or children or affecting the custody of children shall be commenced in accordance with the rules of probate courts applicable to domestic relations matters. G.L. c. 215, § 34A.

Practical Note: *Plaintiff should affirmatively check off either the Civil or Criminal box or both. This is especially important when part or all of the case is a criminal contempt action because the criminal feature fixes the character of the trial. Root v. MacDonald, 260 Mass. 344 (1927)*

Due process requires that the criminal contempt defendant be advised of the charges against him and have a reasonable opportunity to meet them. Sodones v. Sodones, 366 Mass. 121, 127 (1974).

If the plaintiff did not select either criminal or civil, the case will go forward as civil.

Practice XXVII of the Uniform Probate Court Practices

The contempt court date shall be no less than fifteen days from the date the court issues the original summons. Service must be complete at least seven days before the return date unless the court orders otherwise. If service is not made within seven days, the summons must be returned to the court.

Service is made pursuant to Mass.R.Dom.Rel.P. Rule 4.

THE IMPACT OF In re: Birchall, 454 Mass. 837 (2009)

After the entry of *Birchall*, the Supreme Judicial Court requires that a civil contempt finding now be supported by **clear and convincing evidence** of disobedience of a clear and unequivocal command. *Birchall at 839*

What is “clear and convincing” evidence?

Massachusetts

Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’ and ‘full, clear and decisive.’ See, *Stone v. Essex County Newspapers, Inc.* 367 Mass. 849, 871 (1975)

US Supreme Court

The Court defined the “clear and convincing” standard of proof as meaning evidence which ‘produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.’ *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)

Practice Note: *Birchall states that its decision (which is in a supplementary process case) is now more in line with Federal Law. It should be noted that there is no uniform definition of “clear and convincing” evidence under Federal Law, and each circuit contains case law using different definitions. There was a writ of certiorari made to the U.S. Supreme Court requesting that court establish one uniform definition of “clear and convincing” evidence, but it was denied. See, *Century Clinic, Inc. and Katrina Tang, M.D. v. United States of America**

TO BE HELD IN CONTEMPT, THE PLAINTIFF MUST PROVE:

A Valid Court Order or Judgment exists

The underlying order of the Court, a violation of which the defendant is accused of, must be valid and in effect at the time of the contempt hearing. See, Commonwealth v. Florence, (1999)

A judge of the probate court who has found a party to be in civil or criminal contempt for failure to obey any order or judgment of the probate court relative to the support of a spouse or children or relative to the custody of children shall, before ordering such person to be confined in a jail, review such order or judgment to determine that such order or judgment was issued by a court of competent jurisdiction and was not obtained by fraud. G.L. c. 215, § 34B.

A Clear and Unequivocal Command is set forth in the Valid Court Order or Judgment

The burden is on the Plaintiff to prove by clear and convincing evidence that the Order is clear and unequivocal. See, *In re: Birchall*, *supra* at 839.

Absent a clear and unequivocal obligation, claims fail because, in the context of a contempt proceeding, ambiguities are regularly resolved in favor of the alleged contemnor, and cannot be removed by examining the evidence underlying the judgment in which the ambiguous language is found. See, *Sax v. Sax*, 53 Mass.App.Ct. 765, 772 (2002).

A party does not create an ambiguity by merely stating it is ambiguous. See, *Stabile v. Stabile*, 55 Mass.App.Ct. 724, 726-727 (2002) (While vague or ambiguous language in a judicial decree cannot constitute a 'clear and unequivocal command,' a party's self-serving characterization of a provision as 'ambiguous' does not make it so.")

Examples:

***Pierce v. Pierce*, 455 Mass. 286, 292-293 (2009)**

Husband was not held in contempt for not paying alimony after retirement, but the provision in their agreement of the parties' intent to continue alimony until death or remarriage was clear and unambiguous as to the parties', and retirement [wa]s not among the list. Therefore, even if the parties' agreement [was] modified, the parties' original desires and purposes should not be disregarded."

***Tatar v. Schuker*, 70 Mass.App.Ct. 436, 442 (2007)**

Judgment was not sufficiently clear to hold Father in contempt for unilaterally ceasing child support upon child's eighteenth birthday, but Court properly held that child support continued beyond age eighteen without need for Mother to file a Modification.

***Wooters v. Wooters*, 74 Mass.App.Ct. 839, 844 (2009)**

Husband was properly ordered to make further payments from proceeds of stock options, but should not have been held in contempt for failing to pay alimony from the income received from exercising stock options.

***Halpern v. Rabb* 75 Mass.App.Ct. 331, 336 (2009)**

Father was not in contempt for failing to pay additional child support based on his pass-through income of his Subchapter S Corporation, because the order was not clear that the word "earnings" included this pass-through income.

Practice Note: *If a lawyer is presented with an order or judgment that may not be clear and unequivocal, but the client is being harmed because the other party is not complying with the order or judgment, the lawyer has a few options:*

If the order or judgment is less than one year and entered by a judge (as opposed to an agreement of the parties) the lawyer can file a Standing Order 2-99 Motion for Clarification. Mass.R.Dom.Rel.P. 60(b) has a strict one-year time limit.

If the order or judgment is over a year or was the product of an agreement of the parties, the lawyer can consider a Complaint for Declaratory Judgment.

The lawyer may proceed on a Complaint for Contempt. See, In Colorio v. Marx, 72 Mass.App.Ct. 382, 385 (2008)(the judge appropriately treated contempt complaint as a motion for clarification). But, lawyers must be mindful of Rule 11 that requires pleadings to be filed in good faith.

TO BE HELD IN CONTEMPT, THE PLAINTIFF MUST PROVE:

An Equally Clear and Undoubted Disobedience

The Plaintiff has the burden to prove by clear and convincing evidence that the Defendant disobeyed a clear order. *See, In re: Birchall, supra at 839.*

Where the order is ambiguous or the disobedience is doubtful, there cannot be a finding of contempt. Pedersen v. Klare 74 Mass.App.Ct. 692, 699-700 (2009)

In Pedersen, Mother's counsel sent letter to Father's counsel expressing concern for four minors traveling from Georgia to Massachusetts by air without an adult (the oldest was 13 and the youngest was 5). The Court improperly held Mother in contempt *before* the trip even took place, because these facts did constitute anticipatory repudiation.

IF PLAINTIFF MEETS THEIR BURDEN, THE BURDEN SHIFTS TO THE DEFENDANT TO PROVE AN INABILITY TO COMPLY

The burden shifts to the Defendant to prove an inability to comply with the Court's Order. *See, G.L. c. 215 s.34A, In re: Birchall, 454 Mass. 839 (2009).* A judgment of contempt and an order to pay a sum of money must be based on a finding that the contemnor has the capability to pay. *Cf. Sodones v. Sodones, 366 Mass. 121, 130 (1974).*

Poras v. Pauling 70 Mass.App.Ct. 535, 542 (2007) defines ability to pay: "The requirement of a present ability to pay set out in the case law does not in all cases mean that a support obligor is able to write a check for the entire amount owed. Such an all-or-nothing interpretation of present ability to pay would reward gamesmanship on the part of already recalcitrant support obligors who might thereby be encouraged to spend down their limited assets. This interpretation of present ability to pay would further limit the relief available to those entitled to support. Instead, present ability may also mean the ability to continue to pay ongoing support obligations along with structured repayments that do not impose undue hardship on the support obligor (such as precluding a support obligor's ability to meet his or her own living expenses). A judge is not, in all circumstances, required to hold in contempt an individual whom the judge orders to make payments over time to reduce accumulated arrearages. The totality of the paying spouse's circumstances will have to be considered in making this determination, which involves the exercise of the probate judge's sound discretion."

Practice note: *In re: Birchall* did not declare whether the clear and convincing standard imposed on the Plaintiff to show there was a clear and unequivocal order and an equally unclear disobedience carries over to the Defendant under G.L. c 215, s. 34A to his or her show inability to pay. Until it is decided, preparing to meet the higher standard is always the best course of action.

Practice note: *The financial statement is the primary document, but is not the only source from which the Court can determine whether the defendant has the ability to comply with the order. If the Defendant is unemployed, evidence such as lack of request for downward modification, lack of proof of failed attempts to secure employment, and failure to apply for Social Security Disability if claiming a disability may weaken Defendant's statement that he does not have an ability to pay.*

Blessing v. Blessing, 73 Mass.App.Ct. 1123(February 24, 2009) unpublished decision

Judge was "sympathetic" to the husband's severe illness, finding that the husband's mental condition had rendered him incapable of complying with certain of the judge's orders. The husband had no income, a minimal current earning capacity, and virtually no assets and was homeless. Judge ordered all assets in the divorce be awarded to the Wife due to Husband's failure to comply with Court orders (his failure to pay mortgage caused marital home to be foreclosed) and his inability to pay child support above the \$80 per month minimum order.

Hypothetical Examples:

There is a clear and unequivocal court order that requires Mr. X to pay child support, Mr. X knows of, but did not comply with, the order. He is now \$1500 in arrears. On the day of the contempt hearing, Mr. X does not have a job, assets, or an ability to get a job or assets. The court cannot find him in contempt. *See, Diver v. Diver, 402 Mass. 599 (1988)*

There is a clear and unequivocal court order that requires Ms. X to pay child support, Ms. X knows of, but did not comply with, the order. She is now \$2500 in arrears. Ms. X, has a job, a house and a car, but no cash. She claims she has no ability to pay the arrears. The court can find her in contempt based upon ownership of assets regardless of liquidity. See, *Krokyn v. Krokyn*, 378 Mass. 206 (1979).

There is a clear and unequivocal court order that requires Mr. X to pay child support, Mr. X knows of, but did not comply with, the order. He is now \$3500 in arrears. Mr. X, despite having a degree, job skills and an excellent work history is purposely unemployed and has no cash or assets. The court can find him in contempt based upon his future ability to earn substantially more than he earns on the date of the contempt hearing. See, *Cooper v. Cooper*, 43 Mass.App.Ct. 51, 53 (1997). A judge, however, is not obligated to use a party's potential earning capacity as the measure of the party's ability to pay. See, *Pierce v. Pierce*, 455 Mass. 286, 297 (2009).

DOES THE DEFENDANT NEED A LAWYER?

1. Criminal: YES!! If the plaintiff is proceeding on a criminal contempt action, the defendant is entitled to counsel and if indigent is entitled to have an attorney appointed for him. If the defendant chooses to proceed without counsel, his waiver must be knowing and intelligent, and in accord with accepted constitutional practice in criminal cases.
2. Civil: It has yet to be conclusively determined whether there is a legal right to court-appointed counsel in civil contempt proceedings in Probate and Family Court.

“Due process of law requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.” *Sodones, supra* at 127, quoting from *In re Oliver*, 333 U.S. 257, 275, 68 S.Ct. 499, 92 L.Ed. 682 (1948).

Pedersen v. Klare 74 Mass.App.Ct. 692, 697-698 (2009) states that contemnors have the right to be represented by counsel, whereas *In re: Birchall*, states that contemnors have the right to be represented by **paid** counsel.

IS THE CONTEMNOR ENTITLED TO AN EVIDENTIARY HEARING?

Again, “due process of law requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.”

“A defendant in a contempt proceeding may, of course, waive his right to an evidentiary trial.” *Pedersen v. Klare* 74 Mass.App.Ct. 692, 697-698 (2009)

Practice Note: While there is support for the right to an evidentiary hearing, the reality is that if every alleged contemnor was granted a one to two hour evidentiary hearing, it would over-burden the court. The practical way to allow the contemnor due process is to inform your client that he can waive the evidentiary hearing and proceed by representation of counsel. If your client elects to proceed in this manner, it may be wise to have your client sign a statement agreeing to waive the hearing, and represent to the Judge that the parties and counsel have agreed to proceed by representation.

CRIMINAL CONTEMPT ACTIONS

A criminal contempt proceeding is exclusively punitive. It is designed wholly to punish an attempt to prevent the course of justice. In re: Birchall, 454 Mass. 839 (2009), Furtado v. Furtado, 380 Mass. 137, 141 (1980).

The Court can *sua sponte* convert a civil contempt to a criminal one. *Correia v. Correia* 70 Mass.App.Ct. 811, 814-816 (2007)

Once a civil contempt is converted to a criminal one, the defendant is entitled to certain protections afforded all charged with a crime. Such protections were spelled out in the seminal case of *Furtado v. Furtado*, 380 Mass. 137, 142-143 (1980):

Due process requires that the alleged contemnor:

- be advised of the charges against him and that he have a reasonable opportunity to meet them by way of defense or explanation.
- is entitled to counsel if a sentence of imprisonment may be imposed and may waive counsel only as provided by constitutional principles and applicable court rules.
- may not be called as a witness against himself.
- is presumed to be innocent, and proof must be beyond a reasonable doubt.
- is entitled to a trial by jury to the extent provided by the Constitution of the United States or of the Commonwealth and by any applicable rule of court.
 - Concerning the right to a trial by jury, the court in *Furtado* noted, “[u]nder the Federal Constitution, no jury trial is required in a contempt proceeding unless the sentence imposed is greater than six months.... [W]e have never been squarely presented with the question of the extent to which the Constitution of the Commonwealth requires jury trials of criminal contempt proceedings.” *Id.* at 142 n. 5. Eight years later, in *Edgar v. Edgar*, 403 Mass. 616, 618-619 (1988), the court returned to this issue. “There is no constitutional right to a jury trial in a criminal contempt proceeding in which the penalty is six months’ imprisonment or less.... If the defendant’s case had arisen in the Superior Court, he would have the right to a jury trial; the Probate Courts, however, have no such provision.... The Probate Courts’ jurisdiction is special and their cases are trenchantly different from those tried in the District and Superior Courts.” *Ibid.* We note that Sandra did not request a jury trial and does not raise the issue on appeal.
- Should have the criminal contempt proceeding held in the court whose order is alleged to have been contumaciously violated.

Practice Note: *If the case has been converted or initially proceeds on a criminal matter, it is improper for the Judge to question the defendant. However, if Judge does question the defendant, and you fail to object, the Court of Appeals may deem the failure to object to a violation client’s constitutional protection as a waiver especially if there was no prejudice to the client. See, Commonwealth v. Amirault, 424 Mass. 618, 649-650 (1997).*

IF THE DEFENDANT IS NOT IN CONTEMPT, WHAT AUTHORITY DOES THE JUDGE HAVE?

The Judge can MODIFY the Judgment.

It is well established that in these circumstances, a modification of the divorce judgment made pursuant to a complaint for contempt is appropriate. See *Kennedy v. Kennedy*, 17 Mass.App.Ct. 308, 312 (1983), and cases cited. See also *Quinn v. Quinn*, 49 Mass.App.Ct. 144, 148 (2000); *Ruml v. Ruml*, 50 Mass.App.Ct. 500, 510 n. 14, (2000); *Cabot v. Cabot*, 55 Mass.App.Ct. 756, 773 n. 21 (2002).

The Judge can CLARIFY the Judgment.

Clarifying the term at issue, the judge acted within his discretion. See *Colorio v. Marx*, 72 Mass.App.Ct. 382, 385 (2008) (judge appropriately treated contempt complaint as a motion for clarification).

The Judge can ORDER compliance with the judgment even if not found in contempt.

“The judge did not exceed his authority in ordering the father to pay uninsured medical expenses though not finding him in contempt.” See *Pedersen v. Klare*, 74 Mass.App.Ct. 692, 699 (2009)

The Judge can ORDER ATTORNEY’S FEES to the Prevailing Party

Even when a party has cured or purged his contempt prior to trial, the court may exercise its discretion under G.L. c. 208, § 38, to order an award of attorney's fees to a party forced to bring a complaint (or to her counsel) to mitigate expenses incurred as a result of obstructionist conduct. See *Hennessey v. Sarkis*, 54 Mass.App.Ct. 152, 156-157 (2002); *Cooper v. Cooper*, 62 Mass.App.Ct. 130, 143-144 (2004), both of which involved situations where the recalcitrant party came into compliance with the court's order on the day of trial.

The Judge can award attorneys fees under G.L. c. 208, s. 38 to a party for having to defend against a frivolous contempt action. See, *Krock v. Krock*, 46 Mass.App.Ct. 528, 533 (1999)

IF THE DEFENDANT IS IN CONTEMPT, WHAT AUTHORITY DOES THE JUDGE HAVE?

Under G.L. c. 215, s. 34:

When a judge of the probate court finds that a defendant is in civil contempt for failure to obey any order or judgment of the court relative to support of a spouse or child, the judge shall issue an order for the defendant to do one or more of the following:

- (1) serve a sentence in jail; provided, however, that such sentence shall be stayed if the defendant purges himself of the contempt by taking such action as may be specified in the order, including one or more of the actions specified in clauses (2) to (6), inclusive;
- (2) pay the full amount due under the order or judgment for support;
- (3) make regular payments of current support and an additional specified amount towards arrears, pursuant to a payment schedule ordered by the court that requires payment of not less than the amount required under section 12 of chapter 119A and that meets all other requirements of said section 12 of said chapter 119A;
- (4) actively seek paid employment and report at regular intervals, as specified in the order, to a probation officer on actions taken to seek employment;
- (5) participate in a program of community service, as specified in the order, for up to 40 hours per week and report at regular intervals to a probation officer to present proof of participation in such program; or
- (6) participate in an appropriate job readiness or job training program, as specified in the order, and report at regular intervals to a probation officer to present proof of participation in such program.

An order or judgment in a contempt proceeding for payment of an arrearage shall not be contingent on a reduction in the amount of current support payable under an existing order or judgment for support of a spouse, former spouse or child absent a finding that a substantial change of circumstances has occurred. Neither the existence of an arrearage nor the

amount of any arrearage shall constitute a substantial change of circumstances or grounds for modification of an outstanding order or judgment for support.

In addition to any other remedy available pursuant to this section or chapter 119A to enforce an order or judgment for support, if the defendant is unable to comply with an order to make current payments of support, is unemployed and is not disabled, a judge of the probate court shall order such defendant to; (i) actively seek paid employment and report at regular intervals, as specified in the order, to a probation officer on actions taken to seek employment; (ii) to participate in a program of community service for up to 40 hours per week and to report at regular intervals, as specified in the order, to a probation officer to present proof of participation in such program; or (iii) to participate in an appropriate job readiness or job training program and to report at regular intervals, as specified in the order, to a probation officer to present proof of participation in such program. G. L. 215, s. 34.

The Court can award ATTORNEYS FEES to the prevailing party

“In entering a judgment of contempt for failure to comply with an order or judgment for monetary payment, there shall be a presumption that the plaintiff is entitled to receive from the defendant, in addition to the judgment on monetary arrears, all of his reasonable attorney's fees and expenses relating to the attempted resolution, initiation and prosecution of the complaint for contempt. The contempt judgment so entered shall include reasonable attorney's fees and expenses unless the probate judge enters specific findings that such attorney's fee and expenses shall not be paid by the defendant.” G.L. c. 215, s. 34A

Other remedies available under G.L. c. 215, s. 34A

“Any monetary contempt judgment shall carry with it interest, from the date of filing the complaint, at the rate determined under the provisions of section six C of chapter two hundred and thirty-one of the General Laws.

(b) Upon the request of the IV-D agency as set forth in chapter 119A, when a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support and the IV-D agency has been unable to bring the defendant before the court on a *capias*, the court shall issue a warrant for the arrest of the defendant. The IV-D agency shall file an affidavit accompanying the request for a warrant that states: (1) a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support; (2) the amount of the total arrearage; (3) the date of the last payment, if any; and (4) a description of the efforts made to serve the *capias* on the defendant. The IV-D agency shall also provide the court with identifying information on the defendant's name, last known address, date of birth, gender, race, height, weight, hair and eye color, any known aliases and any such information as shall be required for a warrant to be accepted by the criminal justice information system maintained by the criminal history systems board. A warrant that contains the above identifying information as provided by the IV-D agency to the court shall not be nullified if the information is later found to be inaccurate. If any of the above identifying information is not known to the IV-D agency, the IV-D agency may apply to the court for an exemption from the requirement to provide the information. The court shall grant the exemption if the court decides that the unknown information is not essential to identifying the defendant. The defendant may not challenge the validity of a warrant based on the granting of the exemption. The court shall enter the warrant, including the identifying information provided by the IV-D agency to the court and the name of the court that issued the warrant, into the warrant management system as set forth in section 23A of chapter 276. The warrant shall consist of the information that appears in the warrant management system, and a printout of the warrant from the criminal justice information system shall constitute a true copy of the warrant. The entry of the warrant into the warrant management system and the criminal justice information system shall constitute notice and delivery of the warrant to all law enforcement agencies who have arresting authority pursuant to section 23 of chapter 276.

Upon arrest, the arresting authority shall arrange for transportation of the defendant to the court that issued the warrant. If the defendant is arrested when the court is not in session, the defendant shall be held by the arresting authority or county jail facility, and transported to the issuing court during the next session and presented to the court. If the defendant voluntarily submits his person to the court, he shall likewise be brought before the court. The court shall notify the IV-D agency and conduct a hearing to recall the warrant and shall issue an order for the defendant to do one or more of the actions set forth in clauses (1) to (6), inclusive, of section 34.

Whenever a warrant is recalled or removed, the court shall, without unnecessary delay, enter the recall or removal in the warrant management system which entry shall be electronically transmitted to the criminal justice information system. The court shall also provide to the defendant a notice of recall of warrant.

A law enforcement officer who in the performance of his duties relies in good faith on the warrant appearing in the warrant management system shall not be liable in any criminal prosecution or civil action alleging false arrest, false imprisonment, or malicious prosecution or arrest by false pretense.

The issuing court shall provide notice no later than 30 days after the issuance of the warrant to the defendant. The notice shall contain information on the name and address of the issuing court, the date of the last payment of child support, if any, the amount of the total child support arrearage, a description of the method by which the defendant may clear the warrant and a summary of the consequences the defendant may face for not responding to the warrant. The notice shall be deemed satisfactory if mailed to the address stated on the warrant.

If a warrant remains outstanding for 1 year following the date that the warrant is entered into the warrant management system it shall constitute evidence of willful nonsupport in a criminal action pursuant to chapter 273” G.L. 215 § 34A