Statute of Limitations. In some states, after a certain number of years, you no longer have to pay your unpaid criminal justice debt. How many years this will be depends on your state—the answer is found in laws sometimes called “statutes of limitations” or “statutes of repose” or laws that say that after a certain number of years your criminal justice debt shall be “written off.” Federal court criminal justice debt, on the other hand, can be collected up to twenty years after the debt is imposed or you are released from incarceration on the underlying charge, whichever is later.

Protecting Assets and Income Against Garnishment. While governments can seize part of your wages, your bank account, and other assets to pay your criminal justice debt, there are limits to their ability to do so. As explained in the prior chapter, federal law protects most of your wages, payments for Social Security, Supplemental Security Income (SSI), VA, and certain other federal benefits, from seizure to pay criminal justice debt.

Whether a state court or agency can seize your state public benefits, your bank account, or even your home, car, or other assets is a more complicated question. The assets that state exemption laws protect vary by state, but may include state public benefit payments, tools of your trade, your home and car up to a certain value, and even a certain amount of cash. Nevertheless, in some states these exemption laws do not apply to the collection of criminal justice debt. Your best approach is to find a lawyer to help you understand how much of your income and property can be seized to pay your criminal justice debts and how much is protected from seizure.

Filing for Bankruptcy. Bankruptcy is a powerful tool for dealing with criminal justice debt. Filing bankruptcy can eliminate some of your criminal justice debt entirely and provide an orderly way for paying those criminal justice debts that bankruptcy cannot eliminate.

Bankruptcy can also allow you to take advantage of state programs to expunge or seal your criminal record that may otherwise be unavailable to you due to your outstanding criminal justice debt. A bankruptcy filing can also protect your driver’s license or vehicle registration from being suspended if that suspension is based on your non-payment of traffic fines or other court debt that you can discharge in bankruptcy.

The relief you will receive from criminal justice debt by filing bankruptcy will depend on whether you file under chapter 7 or chapter 13 (see the discussion in Chapter 25 [1] for the difference between the two). The purpose of a chapter 7 bankruptcy will be to eliminate or “discharge” certain debts entirely. A chapter 7 bankruptcy can discharge only certain criminal justice debt, but not most other types. It cannot discharge traffic debts, parking debts, and other fines and civil penalties. Also not dischargeable in a chapter 7 bankruptcy are criminal justice debts flowing from a court order for you to pay restitution. Parents can discharge restitution debts based on the actions of a juvenile.

More complicated is whether debt based on “costs” and surcharges are dischargeable in a chapter 7 bankruptcy, such as costs of prosecution, indigent defense fees, costs of probation, and surcharges assessed to a defendant. Also complicated is whether forfeited bail and bond debt owed either to the state or a bail bondsman is dischargeable in a chapter 7 bankruptcy. You should discuss these issues with a bankruptcy attorney.

A chapter 13 bankruptcy will offer more effective options for dealing with criminal justice debt. When you file a chapter 13 bankruptcy, you submit a plan to repay your creditors all or part of what they are owed. When you have successfully completed your chapter 13 plan, you receive a discharge that typically resolves much of your criminal justice debt.

In a chapter 13 bankruptcy, you can spread out payment for all of your criminal justice debt in installments over the life of your chapter 13 plan, typically from three to five years. In addition, with the exception of punitive fines or restitution entered as part of a sentence in a criminal case, you typically do not have to pay 100% of your criminal justice debts over the life of the plan. Instead you may have to pay only 10 cents or even zero cents on the dollar if your income is low enough and your assets fully exempt. For punitive fines and restitution you have to make full payment, but you can do so in installments over the three to five year length of your chapter 13 plan.

Seeking Legal Advice. If you have low or no income, you may be able to obtain free legal representation on criminal justice debt issues, particularly if you are facing incarceration for non-payment. If you were represented by a lawyer in a criminal case in which the fines, fees, or other debts were imposed, you may want to contact that lawyer. Your lawyer may be able to represent you or at least counsel you about your options for dealing with the debt, or refer you to another lawyer who can. If you were not represented by a lawyer when the debt was imposed, you may want to look into whether legal help is available by contacting the court that imposed the debt or the local public defender’s office.

Legal services offices, pro bono attorneys affiliated with local bar associations, and other civil attorneys may also play
important roles in representing clients in collection-related proceedings—including when incarceration is a potential risk. Attorneys with expertise in debt collection actions and in representing indigent clients may provide a valuable service by defending clients in collection actions or representing them in hearings related to criminal justice non-payment. Additionally, legal services and pro bono attorneys may provide valuable representation in affirmative proceedings to modify a debt obligation or repayment plan.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
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