For criminal justice debtors, bankruptcy can be a powerful tool. It can eliminate the obligation to repay certain criminal justice debts or provide an orderly mechanism for repaying debts that cannot be discharged in bankruptcy. A bankruptcy case can open the door to relief, such as expungement or sealing, that may otherwise be unavailable due to outstanding criminal debt.\footnote{245} Bankruptcy can prevent government entities from withholding drivers' licenses and vehicle registrations based on the nonpayment of dischargeable traffic fines or other court debt.\footnote{246}

The ability of bankruptcy to help with criminal justice debts depends on the debt’s nature and the bankruptcy chapter used. Most individual bankruptcy cases are filed under chapters 7 or 13. Chapter 7 cases are commonly referred to as “liquidations”; chapter 13 cases are often called “reorganizations.”

In a chapter 7 case, a court-appointed trustee examines the debtor’s assets to determine if anything is available to be sold or recovered for the benefit of creditors. In many individual bankruptcy cases, virtually all of the debtor’s assets are “exempt,”\footnote{247} leaving no property available for liquidation and distribution to creditors. At the end of a chapter 7 case, the debtor receives a discharge, which prohibits creditors from taking or continuing action to collect personally from the debtor on account of the discharged debt. Some criminal justice debts cannot be discharged under chapter 7.

Chapter 13 cases work very differently and provide debtors with the opportunity to adjust their financial affairs without liquidating assets. The debtor submits a plan to repay creditors all or part of what they are owed. Upon successful completion of the plan, the debtor receives a discharge. Some criminal debts that are not dischargeable under chapter 7 may be discharged in under chapter 13.

This section focuses on criminal justice debts and bankruptcy. Section 11.6.2, infra, examines bankruptcy’s automatic stay provisions, which provide an immediate stay of actions against the debtor upon the filing of a bankruptcy petition. Section 11.6.3, infra, discusses the dischargeability of a range of criminal justice debts under chapter 7. Finally, § 11.6.4, infra, provides a brief overview of chapter 13 and its broader discharge available for criminal justice debts. For a more comprehensive discussion of bankruptcy, see the National Consumer Law Center’s Consumer Bankruptcy Law and Practice [4].\footnote{248}

Footnotes

245 [252] See, e.g., Iowa Code § 901C.1 (2016) (permitting expungement of dismissed or acquitted cases if certain conditions are satisfied, including payment of all required court costs).


