In a chapter 13 bankruptcy case, the debtor proposes a plan to pay his or her disposable income to designated classes of creditors. These classes typically include secured, unsecured, and certain priority creditors. Debts owed to priority creditors, such as those for child support and certain taxes, must be paid in full under the plan. Most criminal justice debt is not secured and does not fit within any of the statutory priority categories. Instead, criminal justice debts are usually placed in the class of general unsecured creditors, along with credit card debt, medical bills, and other debts for goods and services. These creditors often receive a few cents to the dollar owed—or perhaps nothing at all—from the debtor’s plan payments. If the criminal justice debt is dischargeable in chapter 13, any amount remaining due when the plan payments conclude is discharged. If the debt is nondischargeable in chapter 13, the creditor may proceed to collect the amount remaining due once the chapter 13 case has closed.

Regardless of whether the criminal justice debt is ultimately dischargeable in chapter 13, classifying it with other unsecured debts—where creditors receive *de minimus* monthly payments under the plan—can create major problems for the debtor. A restitution or diversion agreement may require significantly larger monthly payments than the pro rata share the plan provides to each unsecured creditor. A debtor who is complying in good faith with a plan may nevertheless face threats of incarceration or resumption of criminal proceedings because he or she has defaulted on the payment schedule established in the pre-bankruptcy criminal proceeding.

One way to avoid this problem is to place the criminal justice debt in a separate class from other unsecured debts and to pay more to this class so that it receives a higher pro rata share of plan funds than the other unsecured creditors. This option is particularly attractive if the criminal justice debt is nondischargeable in chapter 13. It is to the debtor’s advantage to pay off as much of a nondischargeable debt as possible in chapter 13, while paying less toward the debts that will ultimately be discharged.

**Source:** National Consumer Law Center, Collection Actions [4th ed.], updated at www.nclc.org/library

**Source URL:** https://library.nclc.org/ca/1106040301