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## **Proposals to restore prison threat in maintenance cases:**

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THE MINISTER for Justice will today publish proposals aimed at restoring the sanction of imprisonment for people who refuse to pay maintenance payments due under family law proceedings.

The sanction of imprisonment for civil debt was removed by a High Court ruling last year, where the court found a woman threatened with jail for non-payment of debt to a credit union was denied her constitutional right to fair procedures and personal liberty.

Following the High Court judgment, Dermot Ahern introduced the Enforcement of Court Orders (Amendment) Act, which was designed to protect debtors and impose certain obligations on creditors.

However, these were more appropriate to creditors such as financial institutions or utility companies than to private individuals. According to the Minister, they gave rise to difficulty in some family law cases concerning the payment of maintenance arrears due under court orders.

The proposals will come in an amendment to the Family Law (Maintenance of Spouses and Children) Act 1975, which is part of a new Civil Law (Miscellaneous Provisions) Bill to be published today. The purpose of the amendment is to de-couple family law maintenance debt from civil debt in general.

The proposed amendment is based on the premise that a court has already deliberated in setting an appropriate level of maintenance, based on the debtor's ability to pay.

It states that if the debtor breaches that order without a significant change in his or her circumstances, that breach will constitute contempt of court and may be punished by imprisonment.

If there has been a change in the debtor's circumstances since the order was made, he or she (the orders are most commonly made against fathers) can go to court and make this case, seeking a reduction in the amount due.

As these are civil contempt proceedings, both the creditor and debtor will be entitled, subject to a means test, to civil legal aid under the Civil Legal Aid Act 1995.

The proposed amendment to the 1975 Act states that it is a contempt of court to fail to make a payment due under a previous court order and that a judge of the District Court has the same powers as a High Court judge in relation to contempt of court proceedings.

These powers include the power to impose a term of imprisonment.

The person to whom the maintenance is owed will be able to apply to the District Court seeking to have the person owing the payment brought before the court, and the court will be able to order their arrest if the person fails to appear.

The amendment spells out the steps that must be followed to ensure that fair procedures apply, including explaining the issue in ordinary language and giving the person an opportunity to outline any change in circumstances.