

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 419

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

Civil Actions - Examination in Aid of Enforcement - Procedure After Arrest for
Failure to Appear

This bill requires that an individual, arrested for failure to appear in court to show cause why the individual should not be found in contempt for failure to answer interrogatories or to appear for an examination in aid of enforcement of a money judgment, must be taken immediately before the court that issued the order that resulted in the arrest. If that court is not in session, then the individual must be taken immediately before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the individual's appearance at the next session of the court that issued the order that resulted in the arrest.

If a judicial officer determines that the individual should be released on other than personal recognizance without any additional conditions, the judicial officer must impose on the individual the least onerous condition or combination of conditions that will reasonably ensure the appearance of the individual as required.

The bill applies to any individual arrested for failure to respond to a show cause order for contempt for failure to answer interrogatories or to appear for an examination in aid of enforcement of a money judgment on or after the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures if the bill results in fewer incarcerations in Baltimore City in these cases.

Local Effect: Potential minimal decrease in local expenditures if the bill results in fewer incarcerations in local detention facilities in these cases.

Small Business Effect: None.

Analysis

Current Law: In the circuit courts or the District Court, a judgment creditor may file a request for examination in aid of enforcement of a money judgment no earlier than 30 days after the entry of a money judgment. Upon this request, the court where the money judgment was entered or recorded may issue an order requiring the appearance for examination under oath before a judge or examiner of (1) the judgment debtor or (2) any other person if the court is satisfied by affidavit or other proof that it is probable that the person has property of the judgment debtor, is indebted for a sum certain to the judgment debtor, or has knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The order must specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order must be served upon the judgment debtor or other person in the manner provided in the Maryland Rules. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

The order must be served on the defendant within 30 days of its issuance. According to the District Court, if the order has been properly served on the defendant and the defendant will not cooperate with attempts to discover his/her assets, the judgment creditor can file a request for a Show Cause Order. The order summons the defendant to court to explain why he/she should not be held in contempt. A judgment creditor can only request a Show Cause Order when the defendant has (1) ignored written interrogatories and an order from the judge compelling his/her answers or (2) failed to appear for an oral examination ordered by the court. If the defendant fails to appear in court for the Show Cause hearing, the judgment creditor is authorized to file an Attachment for Contempt. If the judge chooses to issue the attachment, the defendant is taken into custody by the sheriff's office and is brought before the court to explain his/her failure to appear. The defendant may be required to post a bond for his/her release, which is forfeited should the defendant fail to appear at the next hearing.

Background: Though the term “debtors’ prison” is usually associated with Dickensian England, the concept is making a comeback in present day society. According to news reports, debt collectors have used sheriff's deputies and the threat of jail to intimidate people into paying debts. For those who cannot pay, the worsening economy, combined with debt collection lawsuits, have resulted in individuals being incarcerated for contempt of court for failing to respond to court hearings or other court orders.

According to the District Court, during fiscal 2012, 1,830 body attachments were issued and 39 individuals were incarcerated for debts under \$5,000. The majority of the individuals incarcerated were released within 24 hours.

Additional Information

Prior Introductions: None.

Cross File: HB 596 (Delegate Clippinger) - Judiciary.

Information Source(s): Baltimore City, Yahoo! Finance/CBS Money Watch, Judiciary (Administrative Office of the Courts), Public Justice Center, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2013
ncs/kdm Revised - Senate Third Reader - March 21, 2013

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