

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1435
Judiciary

(Delegate Barron)

Civil Actions - Discovery in Aid of Enforcement of Money Judgment - Body Attachment

This bill (1) prohibits a court, absent specified findings, from issuing a body attachment for an individual who failed to appear in court in response to a show cause order to answer interrogatories or to appear for an examination in aid of enforcement of a money judgment; (2) makes conforming changes; and (3) generally prohibits money paid by an individual or on behalf of an individual to obtain the individual's release from custody due to a body attachment from being applied to reduce the amount of the outstanding judgment or otherwise forfeited to the judgment creditor and requires the money to be returned to the individual who posted the money when the individual appears before the court that issued the body attachment.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or District Court operations.

Local Effect: The bill is not expected to materially affect local finances or circuit court operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a court from issuing a body attachment unless the court finds that (1) the individual was served with the show cause order and willfully failed to appear for the show cause hearing; (2) a body attachment is a proportionate response to the

individual's conduct, after consideration of the amount of the judgment and the individual's ability to satisfy the judgment; and (3) the principal amount of the judgment exceeds the monetary limit for a small claims action in the District Court, which is \$5,000; or (4) there are exceptional circumstances that require the issuance of a body attachment.

If the individual or another person on behalf of the individual pays any money to obtain the individual's release on conditions imposed by a judicial officer, the money:

- may not be applied to reduce the amount of the outstanding judgment or otherwise forfeited to the judgment creditor; and
- must be returned to the individual or other person who paid the money on behalf of the individual on the appearance of the individual before the court that issued the body attachment.

Money paid by an individual or another person on behalf of an individual to obtain the individual's release on conditions imposed by a judicial officer may be applied to reduce the amount of the outstanding judgment or otherwise forfeited to the judgment creditor if the court finds that:

- there are exceptional circumstances that require that the money be applied to reduce the amount of the outstanding judgment or otherwise forfeited to the judgment creditor;
- the money belonged to the individual or other person who paid the money on behalf of the individual; and
- the money was not derived from a source that is exempt from execution on a judgment, including Social Security payments.

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. A circuit court or the District Court may not require a judgment creditor that has requested an examination in aid of enforcing a money judgment to show that good cause exists for the examination. However, a court may require a judgment creditor to show that good cause exists for the examination of a person if the court granted a request by the judgment creditor for an examination of the same person within the previous 12 months.

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. The District Court has historically advised that 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.

An individual who is 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.

Additional Information

Prior Introductions: None.

Cross File: SB 725 (Senator Smith, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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md/kdm

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