

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader - Revised**

House Bill 545 (Delegate Ali, *et al.*)  
Environment and Transportation and  
Judiciary

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**Landlord-Tenant Action - Body Attachment - Prohibition (Jared Kushner Act)**

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This bill prohibits a court from issuing a body attachment for a tenant who is a defendant in a landlord-tenant action in which the amount of rent claimed does not exceed \$5,000, exclusive of interest and costs.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:** The District Court has exclusive jurisdiction over a landlord-tenant action in which the amount of rent does not exceed \$5,000.

A creditor who has secured a judgment in court against a debtor often needs additional information about the debtor's assets before being able to collect on the judgment. A judgment creditor has two options to obtain this information: (1) written interrogatories in aid of execution; and (2) oral examination in aid of enforcement of judgement.

### *Written Interrogatories in Aid of Execution*

So long as 30 days have passed since the judgment was entered, a judgment creditor can submit written questions to the defendant about the defendant's finances, assets, etc. The questions must be served on the defendant through first-class mail, and the judgment creditor must provide written notice to the court that the judgment creditor served the interrogatories on the defendant. The defendant has 15 days to respond to the judgment creditor's questions. If the defendant does not respond within 15 days, the judgment creditor may file a Motion Compelling Answers in Aid of Execution, which is a request by the judgment creditor to have a judge order the defendant to answer the creditor's questions. If a court grants the motion, the defendant is served with the order and has 15 days to respond to the creditor's questions.

### *Oral Examination in Aid of Enforcement*

As previously mentioned, instead of using written interrogatories, a judgment creditor may pursue an oral examination in aid of enforcement. Under this method, instead of a written response to written questions, a debtor defendant must appear in court in person to answer questions about the defendant's finances or assets. 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 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 on the defendant within 30 days of its issuance and in the manner provided in the Maryland Rules.

## *Show Cause Orders and Body Attachments*

If a defendant does not respond to interrogatories or fails to appear in court for an oral examination, the judgment creditor can file a request for a show cause order. 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. The order summons the defendant to court to explain why the defendant should not be held in contempt.

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 (“body 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 oral 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.

**Background:** The use of body attachments in debt collection proceedings has been the focus of several recent news reports detailing use of the practice by local landlords against tenants. Proponents of the practice argue that it is an effective last resort method to collect debts owed by a debtor-defendant who has repeatedly failed to appear in court or comply with court orders. Critics of the practice argue that it (1) is the modern-day American equivalent of debtors’ prisons; (2) disproportionately affects low-income individuals; (3) imposes portions of the criminal justice system into a civil matter; and (4) jeopardizes a person’s freedom for factors outside of that person’s control (*e.g.*, improper service of an order to appear in court).

According to the Judiciary, approximately 1,009 body attachments were issued in the District Court during fiscal 2017. However, information is not available on how many of

those attachments were for a tenant-defendant in a landlord-tenant action involving up to \$5,000 of claimed rent.

**Small Business Effect:** The bill may have a meaningful impact on small business landlords if the prohibition on the use of body attachments delays debt collection efforts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 21, 2018  
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