

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 942 (Delegates Rosenberg and Dumais)
Environment and Transportation and
Judiciary

Real Property – Body Attachments – Debt Related to Residential Tenancy

This bill establishes that an individual is entitled to be represented by counsel when arrested on a body attachment in a case of a debt related to a residential tenancy, where the court has entered a judgment in favor of the landlord. If the individual is indigent, the individual is entitled to be represented by the Public Defender or a designee of the Public Defender. The court or judicial officer must make an independent, individualized bond determination regardless of whether the body attachment specifies an amount. The bill makes corresponding changes to the Maryland Public Defender Act.

Fiscal Summary

State Effect: The bill can be implemented with existing budgeted resources, as discussed below. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Current Law: 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.

State Expenditures: The bill can be implemented with existing budgeted resources. The Judiciary advises that a small subset of the 1,009 body attachments processed in the District Court during fiscal 2017 fall into the category of body attachments affected by the bill.

Under the bill, a person who is arrested on a body attachment to which the bill applies and taken before the court or a judicial officer is entitled to be represented by counsel, including, if the person is indigent, by OPD or OPD's designee. As noted above, a person who is arrested on a body attachment is presented to the court if the court is in session or before a judicial officer if the court is not in session. OPD represents indigent defendants at judicial bail review hearings before District Court judges and attorneys from the District Court's Appointed Attorneys Program provide legal representation to indigent defendants at initial appearances before District Court commissioners.

According to the Judiciary, a person arrested on a body attachment is presented to a judge during bail reviews, at which a public defender is available. If the court is not in session, the person is presented to a District Court commissioner, where representation is provided under Maryland Rule 4-213.1, which addresses representation by appointed attorneys at initial appearances before a District Court commissioner. This estimate assumes that an indigent person who is presented before a District Court commissioner under these circumstances and wants legal representation will opt to be represented by a State-funded attorney who is already present, rather than wait for a public defender to arrive during court hours or be contacted when the court is not in session.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510