



MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT WITH AMENDMENT OF SB0657: SMALL CLAIMS –EXAMINATION IN AID
OF ENFORCEMENT-PROHIBITION ON ARREST OR INCARCERATION FOR FAILURE
TO APPEAR

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Chair Smith and distinguished members of the Committee, thank you for the opportunity to testify in support to Senate Bill 657.

My name is Aja’ Mallory and I am the Consumer Staff Attorney at the Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS’ founding in 1981, our statewide panel of over 1,700 volunteer lawyers, has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY20, MVLS volunteer and staff lawyers provided legal services to 4,459 people across the state. Approximately 30% of our cases focus on consumer issues like foreclosure, tax sale, bankruptcy, and debt collection. For the reasons explained below, we respectfully request a favorable report on Senate Bill 0657.

MVLS assist Marylanders facing debt collection throughout the entire state in several ways, including a weekly courthouse clinic in Baltimore City. MVLS staff and volunteer attorneys assist dozens of consumers at our weekly clinics. For many of these clients, we negotiate with the creditors and can help them avoid entry of a judgment in the first place.

Once a creditor has a judgment, they can use the body attachment process to compel payments from a judgment debtor using this civil arrest process. After judgment is granted, a creditor can request that the court order the debtor to appear for an oral exam. If the debtor fails to appear for the oral exam, a creditor can request the court order the debtor to appear again to explain why they failed to appear at the oral exam. If the debtor again fails to appear, the creditor then has the right to request a body attachment. Most debtors miss the oral exam due to work or childcare issues. Many argue that body attachments are not issued for failure to pay a debt, but instead for failure to obey a court order. However, courts do not issue body attachments for all debtors who fail to obey these court orders; body attachments are only issued if a creditor requests it. Only a small number of creditors use this process. Of all judgments entered in district court, only a few thousand have body attachments requested, and only a few hundred judgement debtors are arrested for an outstanding body attachment. Although the number of people arrested for a body attachment is limited, the long-term consequences of a night or a weekend in jail can have a far-reaching impact on employment, housing or even child custody.

If a person has an active body attachment against them, any interaction that this person may have with law enforcement can result in being arrested. My client Justin initially contacted MVLS about the garnishment of his wages and bank accounts. It was only when I pulled his information that I discovered that the creditor had requested a body attachment. Justin had no idea about the consequences of a body attachment. I had to explain to Justin that if he were pulled over for a traffic violation and the police did a warrant check, he could be arrested. He then would be taken to a detention center or police station for processing, which could take between 2 and 24 hours depending on the jurisdiction, and then taken before a commissioner. The commissioner would review criminal history, particularly looking for a history of failure to appear for court hearings and other issues that would show whether the person might be a danger to the community. The commissioner then could decide to release them on their own recognizance, hold the person without bond, refer them to pretrial services (for check-ins), or release them on bond. If the person is held without bond or cannot afford to post the bond, the person would wait to go before a judge on the next business day for a review. If the commissioner's determination occurs on a Friday evening, then the judicial review would not happen until Monday.

My client was in shock. The threat of arrest and the possibility of spending a few hours at a detention center was terrifying to my client. This added to a long list of problems for my client. Most importantly the economic impact on my client. A few hours detained would result in lost wages, possibly a loss in employment, and if a bail were set another debt incurred.

MVLS has been fighting to even the playing field for Marylanders facing economic hardships for decades, and we know that these members of our community face significant financial obstacles when trying to put their lives back on track. Body attachments often do nothing more than push people into further cyclical poverty or create a new range of problems for them. We respectfully request a favorable report on Senate Bill 0657.

Mister Chair and members of the Committee, thank you again for the opportunity to testify.