

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

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TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Brian E. Frosh, Attorney General

RE: [SB0657](#) – Small Claims - Examination in Aid of Enforcement - Prohibition on Arrest
or Incarceration for Failure to Appear – Support

Chairman Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee, the use of body attachments in small claims proceedings has been controversial for many years. Senate Bill 657 will end that practice. It will prohibit the use of body attachments when creditors seek to collect \$5,000 or less.

The use of body attachments to collect civil debt is of questionable constitutionality.¹ It is also an outdated, unfair, and draconian process that hurts people of limited means and has a significant, disparate impact upon people of color. As you'll hear from witnesses supporting SB 657, only a handful of creditors' attorneys still deploy this harmful tool. It is often used to extract assets that desperate, indigent debtors do not have; debtors then try to borrow to stay out of jail, creating a cycle that repeats itself many times. And, ironically, virtually all of the debts in question are exempt from garnishment if the defendant knows to assert the exemption.²

¹ Article III, Section 38 of the Maryland Constitution provides: "No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a spouse or dependent children, or for the support of an illegitimate child or children, or for alimony (either common law or as defined by statute), shall not constitute a debt within the meaning of this section." *Brown v. Brown*, 287 Md. 273, 281–82 (1980).

² See Md. Code Ann., Cts. and Jud. Procs. § 11–504(b)(5) (West 2021) (debtors may exempt *any* property of any kind valued up to \$6,000) (emphasis added); see also *Stebbing v. Shaool*, No. 1471, 2019 WL 3546536, at *3 (Md. Ct. Spec. App. Aug. 5, 2019) (same).

The Attorney General's COVID-19 Access to Justice Task Force concluded in one of its recommendations for legislative action that this practice can and should end before it harms more Marylanders.³

I urge the Judicial Proceedings Committee to favorably report SB 657.

cc: Members of the Judicial Proceedings Committee

³ See Maryland Attorney General Brian E. Frosh's COVID-19 Access to Justice Task Force: Confronting the COVID-19 Access to Justice Crisis (Jan. 2021) 11, 32, https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.