

Maryland Consumer Rights Coalition

# **NO EXIT:** HOW MARYLAND'S DEBT COLLECTION PRACTICES DEEPEN POVERTY & WIDEN THE RACIAL WEALTH GAP

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By Robyn Dorsey & Marceline White

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## ABOUT THE AUTHORS

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**Marceline White** is the Executive Director of the Maryland Consumer Rights Coalition (MCRC). She has written about debt settlement abuses, rent-to-own stores, foreclosure issues, auto fraud, and for-profit schools for MCRC. She has written op-eds for the Baltimore Sun, and been interviewed by CNN, NPR Marketplace, WYPR, WAMU, WTOP, the Washington Post, the Intercept, the Baltimore Sun, and a number of other print, radio, and television media for her consumer expertise. In 2017, Marceline won an award for Consumer Advocate of the Year by the National Association of Consumer Advocates (NACA), for Excellence in Advocacy from the Common Cents Conference as well as a joint award from the Community Development Network (with the CASH Campaign of Maryland ) for their work ending predatory payday loans in Maryland.

Marceline received her Master's in Public Policy and International Affairs from the University of Pittsburgh and a Bachelor's of Journalism from the University of Missouri- Columbia. Marceline is the president of the board of directors of the Consumer Federation of America and serves on the board of directors of the National Community Reinvestment Coalition. She is also active in the arts in Maryland as a poet and essayist.

## ABOUT THE MARYLAND CONSUMER RIGHTS COALITION

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The Maryland Consumer Rights Coalition (MCRC) advances economic rights and financial inclusion through research, education, advocacy, direct service, and organizing. Founded in 2000, MCRC works with its 8,500 supporters and members to expand economic rights and reduce the racial wealth gap at the local, state, and federal level.

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Any errors or mistakes are solely those of the authors.

# EXECUTIVE SUMMARY

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By the end of 2018, consumer debt in the United States is projected to reach \$4 trillion – an all-time high.<sup>1</sup> Today, Americans owe more than 26% of their annual income to consumer debt, which includes non-mortgage related debt such as credit cards, auto loans, and student loans.<sup>2</sup>

In Maryland, the high cost of housing, skyrocketing student loan debt, and medical expenses have increased the debt burden of many, while wages have not kept pace – particularly for working families.

One type of debt burden a consumer may carry is civic debt – debt owed to the State. Civic debt is usually acquired without the consumer intentionally choosing to take on the debt, as is the case with fees for emergency services, bills at State-owned hospitals, and when toll roads are the best or only way to get to work.

For too many Marylanders, the debt burden becomes unmanageable and they fall behind on their payments. Maryland law provides numerous ways for creditors to collect from indebted individuals including body attachments (an arrest warrant for debt) and garnishments. In addition to these tactics, the State also uses fines, fees, and flags on vehicle registration to compel payment of State-owed civic debt. Yet, there are few measures within Maryland that provide methods for repaying a debt in an affordable, sustainable manner that doesn't exacerbate an already fragile financial situation. Payment plans, assistance programs, and legal counsel are rare, and ability-to-repay considerations are non-existent.

Although Maryland has some strong consumer protections in place to curtail abusive and deceptive private debt collection practices, when it comes to civic debt, Maryland has exempted itself from the very protections it requires of private debt collectors.

The concomitant failures to consider either ability-to-repay or affordability options, coupled with outdated, punitive debt-collection practices results in a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

Using a mix of qualitative and quantitative analysis, the Maryland Consumer Rights Coalition's (MCRC) findings reveal the disparate impact of consumer and civic debt and debt collection practices on communities-of-color.

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<sup>1</sup> Konish, 2018

<sup>2</sup> *ibid*

Findings include:

- The existing racial wealth gap contributes to non-white borrowers having more consumer debts in collection, a higher debt load, and more student loan debt than white borrowers. 43% of non-white residents had at least one debt in collection, while only 19% of white borrowers had a debt in collection. 20% of non-white individuals had student loan debt compared to 14% of white residents.
- In 2016, there were 46,719 debt collection cases filed just in Prince George's County, Baltimore County, and Baltimore City.
- Nearly 400 body attachments -- or arrest warrants for debt -- were issued to consumers in Baltimore City and County for debts under \$5,000 during a six-month period. Body attachments were issued in about 14% of the debt-collection cases.
- More debt collection suits are filed in Maryland counties that have large communities-of-color.
- 76,611 Marylanders faced garnishment in 2016: 48,868 had their wages garnished, and 27,744 had a bank account seized.
- Between 2015 and 2017, Maryland's Central Collection Unit (CCU) used the District Court system to collect on 12,102 State-owed debts, totaling just over \$18M.
- Racial demographics are a better predictor than income of where, and for how much, CCU sued Marylanders for debt than economic indicators. Geographic indicators had the strongest relationship with locations in which CCU sued for debt.
- Maryland explicitly exempts itself from the three-year statute of limitations on non-monetary judgment debt, and the twelve-year statute of limitation on monetary judgments.
- The State leverages its unparalleled access to data on residents to monitor indigent debtors' financial situations for years in order to compel payment of State-owed civic debt.

## **Policy Recommendations**

### **Debtors' Prisons:**

- Eliminate the use of body attachments for consumer debts below \$5,000.
- Establish that no one can be arrested when court is not in session and eliminate bail requirements for consumer debt cases. An individual could be picked up, answer questions about their assets, and then released on their own recognizance.
- Require higher service standards in both both oral exam and show cause orders. Service must be personally delivered to the person to be served -- not left with a co-resident or served through certified mail.



### **Debt Collection:**

- Require post-judgment discovery to include a list of all types of exempt income and assets. The discovery form should explain how to claim exemptions.
- Require judgment creditors to pursue all out-of-court post-judgment discovery options before requesting a post-judgment hearing.
- Raise debt exemptions for wage garnishment to a level that keeps a family of four out of poverty; in Maryland, that would be at least 60 times the Maryland minimum wage or 75% of wages, whichever is higher.
- Establish a right to legal counsel for consumer cases – including debt collection and landlord tenant cases.

### **Civic Debt:**

- Establish a waiver of CCU's 17% for using a payment plans.
- Place checks on Maryland's debt collection powers through legislation, regulation, and/or an order from Maryland's Attorney General. Limits should include:
  - A statute of limitations on civic debt;
  - Ending use of confessed clauses in CCU payment agreements;
  - Ending of immediate-suspension administrative flags on vehicle registration;
  - Ending financial incentives program for state-employed debt collection employees; and,
  - Establishing an Ability-to-Repay (ATR) standard for civic debt following the model developed by the San Francisco Fines and Fees Task Force.

## INTRODUCTION

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Each year, the debt burden on American consumers grows increasingly heavy. By the end of 2018, consumer debt is projected to reach \$4 trillion – an all-time high.<sup>3</sup> And with wages remaining stagnant while the costs of higher education, healthcare, and housing continue to rise, that number can only be expected to climb. Typical expenditures are far outpacing earnings for a large portion of Americans, which leads to a perfect storm of deep indebtedness – a storm most cannot emerge from unscathed.<sup>4</sup>

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<sup>3</sup> Konish, 2018

<sup>4</sup> Issa, 2017

There are many flavors of consumer debt that Marylanders carry, but residents also frequently encounter civic debt, or debt owed to a government. This type of debt is usually acquired without the consumer intentionally choosing to take on the debt, as is the case with fees for emergency services, bills owed to State-owned hospitals, and debt owed after a driver mistakenly missed a toll on their way to work.

For too many low-income Marylanders, the cost of repaying civic debt can become unmanageable. When forced to choose between paying a civic fine and the monthly rent, many consumers will have to fall behind on their payments to the government in order to care for their family's more immediate needs. Once this happens, the State can step in and begin compelling the consumer to pay using a number of punitive practices they have at their disposal.

While Maryland law provides some strong consumer protections to curtail abusive and deceptive debt collection practices around consumer debt, the same safeguards do not exist for State-owned debt. Maryland law provides numerous ways for creditors to collect from civic indebted individuals, including the use of body attachments (aka placing a lien on the debtor's body) and garnishments. The State can also use fines, fees, and flags on vehicle registrations in order to urge consumers to pay. The State of Maryland has exempted itself from the very protections it requires of private debt collectors.

Meanwhile, there are few measures currently within Maryland to provide ways for an individual to repay a debt in an affordable, sustainable manner that doesn't exacerbate an already fragile financial situation. Payment plans, assistance programs, and legal counsel are rare, and ability-to-repay considerations are non-existent.

According to data from the Council for Community and Economic Research, Maryland is the state with the seventh highest cost of living in the country.<sup>5</sup> This fact, combined with unchanging wages, leads too many low-income Marylanders into the storm of indebtedness. Once on that path, there are few ways out of it thanks to failures by the State to consider either ability-to-repay or affordability options. At the same time, outdated, punitive practices to collect debts reinforces a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

In this report, using a mix of qualitative, quantitative, and statistical methods, the Maryland Consumer Rights Coalition (MCRC) examines debt and debt collection practices in Maryland; provides a closer look at the role of State-owned debt through a case study of video tolls; compares and contrasts the impact of consumer and civic debt on low-income communities,

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<sup>5</sup> Cohn, 2017

particularly communities-of-color, and recommends policies and programs based on best practices that will provide a fairer and more equitable system for Marylanders.

## POVERTY & CONSUMER DEBT IN MARYLAND

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The cost of living in Maryland has dramatically increased in the past few decades, and our rules to protect working families in financial distress have not kept pace. Between 1990-2016, poverty in Maryland increased by 19.1%.<sup>6</sup> Currently, 576,835 Marylanders are living in poverty across our state.<sup>7</sup> More than 20% of Marylanders are asset-poor, meaning that if they lost their income, they would not have enough money to survive.<sup>8</sup> Black households comprise 34.3% of the asset poor.<sup>9</sup>

While poverty is deepening, housing costs are rising. Today, a person would have to earn \$28.87 per hour to be able to afford a market-rate, two-bedroom home.<sup>10</sup> According to Prosperity Now, 50.5% of renters are cost-burdened.<sup>11</sup>

As poverty has increased, so has indebtedness. Alongside rising housing costs, health care costs have skyrocketed. Over 288,000 Marylanders purchase their own health insurance. CareFirst, Maryland's largest insurer has proposed premium hikes that will result in costs ranging from \$1,030 to \$1,500 per year.<sup>12</sup> These insurance costs, coupled with unexpected medical emergencies, may lead to medical debt – one of the biggest drivers of consumer debt. A report from the Consumer Financial Protection Bureau (CFPB) found that 59% of individuals who had been contacted by a debt collector stated it was due to owing medical debt.<sup>13</sup>

Student loan debt has been an increasing issue in Maryland, just as it has been across the country. In Maryland, 54% of students graduate with debt, and the average debt is \$27,455.<sup>14</sup>

Flat wages combined with rising costs of living means that it is difficult for many low-income Marylanders to survive economically, let alone thrive.

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<sup>6</sup> Maryland Alliance for the Poor, 2018

<sup>7</sup> *ibid*

<sup>8</sup> Prosperity Now, 2018

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

<sup>12</sup> Consumer Health First, 2018

<sup>13</sup> *ibid*

<sup>14</sup> The Institute for College Access and Success, 2017



## DEBT COLLECTION & DISPARATE IMPACT

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When an individual falls behind on their payments, and efforts to obtain the debt through collection agencies fail, the creditor can pursue a monetary judgement for debts under \$5,000 in Maryland's District Court. In 2011, there were more than 130,000 debt collection judgements rendered.<sup>15</sup> In 2016, there were 46,719 debt collection judgements just in Prince George's, Baltimore County, and Baltimore City.<sup>16</sup> While there may be many reasons that these jurisdictions experienced such a large number of collection suits, ProPublica's analysis from three other states found that, even accounting for income, rates of collection lawsuits are twice as high in majority Black communities compared to predominantly white ones.<sup>17</sup>

In Maryland, 43% of non-white residents had at least one debt in collection, while only 19% of white borrowers had a debt in collection.<sup>18</sup> One possible reason for this disparity is the racial wealth gap: in Maryland, the typical non-white household has an average household income of \$83,827, while the typical white household has an average income of \$111,935.<sup>19</sup> This means that Black households have fewer resources to cope with any type of financial emergency than white households.

Student loans drive debt loads higher, and in Maryland, borrowers-of-color are more likely to take out loans for higher education and face a higher rates of default than white borrowers. In Maryland, 20% of non-white individuals had student loan debt compared to 14% of white residents.<sup>20</sup> Additionally, 15% of non-white student loan borrowers have student debt in collections, compared to 9% of white borrowers.

Consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland.

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<sup>15</sup> Hopkins, 2011

<sup>16</sup> Turnbull, 2016

<sup>17</sup> ProPublica, 2015

<sup>18</sup> Urban Institute, 2018

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

## DISPARATE IMPACT & DEBTORS' PRISONS

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In many ways, Maryland's District Courts have become an extension of the debt collection industry. In the state, a lawsuit filed by a creditor for a principal amount that is \$5,000 or below is considered a small claim and is heard in District Court, where there are few or no rules of evidence applied, and few procedural safeguards.

The current process is riddled with problematic procedures that favor creditor attorneys over alleged debtors. First, many individuals never receive notice that they are being sued; notices are sent to outdated addresses, particularly in cases where the alleged debtor is sued by a property manager and may be experiencing housing insecurity as a result. Maryland allows personal service to include service by mail, a sheriff, or a process server to the individual *or* someone residing at the same address. There have been a number of documented cases of “sewer service” in Maryland, when a process server has falsely claimed to have served a summons to an individual. Finally, for many low-income individuals, other concerns including the inability to take a day off of work, find child-care, or get to the court via public transit may prevent alleged debtors from attending a hearing. For those that manage to attend a hearing, the majority have little understanding of their rights, and only a fraction have access to legal counsel.

Unsurprisingly, consumers lose the majority of debt collection cases, resulting in a money judgment they must pay. Once a judgement has been rendered, debt collectors can garnish wages, property, and bank accounts to ensure repayment. To obtain the information needed to garnish wages, bank accounts, or property, an individual owing a judgement must answer the debt collector's questions about their assets. Usually the individual will receive a summons to return to court to answer these questions.

If the individual doesn't answer these questions either in person or in written responses, the judge can order the person to a contempt hearing. If the person fails to appear for the contempt hearing, the court can issue a body attachment, which is an order for arrest. Some Marylanders have had the sheriff show up at their door to arrest them; others have been picked up during a routine traffic stop when their body attachment showed up as the officer was running their tags. The individual is then arrested. Following an arrest, bail for release is often set. If a defendant cannot pay this bail, they can end up languishing in prison for days or weeks until they can arrange to pay the bail bond set in the case.

While this is not a frequent occurrence, it continues to happen in Maryland – resulting in de facto

debtors’ prisons. A defendant may also be held in jail if they are picked up on a body attachment and the District Court or court commissioner is not in session. In that situation, the individual may be held in jail until they can see a commissioner – sitting behind bars for up to three days for a debt.

In 2013, the Maryland General Assembly passed legislation to try to limit the use of debtors’ prisons.<sup>21</sup> To assess the effectiveness of the 2013 legislation in curbing this practice, MCRC partnered with the University of Baltimore Law School to review court dockets in which oral exams and show cause hearings heard in Baltimore City and Baltimore County between June, 2014 and December, 2014.<sup>22</sup> From the cases on the docket sheets, investigators picked a small number to examine more closely.

**Findings:**

The District Court of Maryland gave over 217,000 civil judgments in FY 2014.<sup>23</sup> In the same year, fewer than 55,000 judgments were paid in full.<sup>24</sup> Over 28,000 “aids of enforcement”<sup>25</sup> were requested. Some of these 28,000 aids led to the arrest of indigent Marylanders: 77 in a sample of 2,769. Although not commonplace, arrest in debt collection cases is not an anomaly – it is a way that the District Courts work with debt collection attorneys to compel payment from indigent Marylanders.

**Table 1: Debt Collection Cases Baltimore City and County – 6 months of cases**

	Baltimore City	Baltimore County	Total
Individuals	1,248	1,431	2,679
Body Attachments	175	208	384
Arrests	10	67	77
Turn-Ins	13	0	13

As Table 1 shows, in a six-month period, nearly four hundred body attachments were issued to consumers in Baltimore City and County for debts under \$5,000. Body attachments were issued

<sup>21</sup> Codified at Md. Code, Cts & Jud. Proc. §6-411

<sup>22</sup> White, Turnbull, & Sine 2014

<sup>23</sup> Maryland Courts Administration, 2014

<sup>24</sup> 55,000 Judgments were marked “satisfied.” However, creditors are relied upon to report when they have been paid in full, so some paid judgments may go unreported.

<sup>25</sup> “Aids of enforcement” includes several types of court order meant to help collect money from defendants who lose. They include garnishments of wages and property, orders to seize a debtor’s property and the post-judgment examination procedures described in this report.

in about 14% of the debt-collection cases. When body attachments are issued, the rate of arrest was approximately 20% overall.

**Table 2: Common Features in Cases Reviewed**

	Baltimore City	Baltimore County	All Cases Reviewed
Judgment under \$5,000	71%	74%	73%
Consumer has lawyer	1%	2%	2%
Plaintiff has lawyer	98%	98%	98%
Judgment adds prejudgment interest	49%	63%	56%
Judgment adds attorneys' fees	78%	78%	78%
Small business defendants	3%	2%	3%
Individual plaintiff	6%	4%	5%

Source: White, Turnbull, & Sine 2014

The average underlying debt owed is less than \$4,400. However, the addition of attorneys' fees (78% of the time), interest (56% of the time), and court costs add, on average, one-fifth to the amount of the original debt. Only 2% of consumers had legal representation, while 98% of plaintiffs had a lawyer.

Most of the cases are affidavit judgements, meaning that the consumer did not defend the case. However, 50 of the 2,679 are confessed judgements, which allows a ruling to be entered against the consumer in the event of default, waiving the debtor's right to present any defense in court.<sup>26</sup> Most of the confessed judgements were obtained by a single bail bondsman.

Property plaintiffs represent a large percentage in both the City and County (29% in the City, 40% in the County), while financial plaintiffs were consistently a small percentage (11% in the City, 12% in the County). Altogether there were 645 plaintiffs. While most had only a few defendants, the top 25 plaintiffs accounted for 50% of defendants on the dockets. These high-volume plaintiffs included large bail bonding businesses, property managers and owners, some medical providers, and the Mayor and Council of Baltimore City.<sup>27</sup>

As Table 3 illustrates, certain sectors are far more likely to pursue body attachments to collect their debt. More than half the time someone misses a show cause hearing, a property owner will

<sup>26</sup> A confessed judgment is entered based upon a clause in a contract. Confessed judgment clauses expressly authorize a judgment to be entered against a debtor in the event of breach or default, essentially waiving the debtor's right to present any defense in court. Once a confessed judgment has been entered a defendant has 30 days from receiving notice to move to open, modify, or vacate the judgment.

<sup>27</sup> The Mayor and Council of Baltimore City were one of two public plaintiffs accounting for a small percentage of cases on the dockets. The other plaintiff was the Commissioner of Labor Licensing & Regulation. Together they filed 44 cases, nine against business defendants and obtained three body attachments and one arrest.

request a body attachment. In medical or bail debt, plaintiffs will pursue a body attachment 45% of the time. The financial sector is, by far, the least likely to ask for a body attachment if an individual misses his/her show cause hearing. In court observations, body attachments were granted 98% of the time. Therefore, the plaintiffs are the true determiners of whether or not they will ask the court for an attachment.

**Table 3: Percentage of Missed Show Cause Hearings Turned to a Body Attachment**

Plaintiff	Rate of Conversion to a Body Attachment
Property	52%
Bail Bondsmen	45%
Medical	44%
Financial	29%
Other	28%

Source: White, Turnbull, & Sine 2014

While bail bondsmen and property owners are the most frequent and aggressive in pursuing body attachments, cities and counties in Maryland have used these methods to collect on State-owed, civic debt as well.

Baltimore City and Howard, Montgomery and Prince George’s Counties have all used debtors’ prisons as part of their civic debt collection efforts in recent years.

Howard County requested that 12 consumers be arrested for debts averaging \$758. Prince George’s

County requested arrest warrants for 38 debtors who owed an average of \$2,462.

**Policy is Personal: Debtors’ Prisons**

On a Saturday morning in 2014, 10 minutes after returning home from his night shift, two officers came to Marylander Mondrea Hasty’s door to arrest him. They handcuffed him in front of his children, took him to jail and handcuffed him to a rail, where they left him for an hour. They then took his mugshot, took him to the magistrate, and set a court date for him to appear.

The reason? An \$89.89 vet bill. Hasty states he had paid the bill but the payment was never recorded. He missed his first court hearing, a second summons was sent but went to his old address. He then went to court and explained that he never received a second summons. A new court date was set, but he couldn’t attend. After his arrest, another court date was set and when he appeared, he was told they were going to garnish his wages to collect the debt which had swollen to over \$500 as a result of attorney’s fees.

**Table 4: Body Attachments Sought by Municipal Entities 2015-2017**

Plaintiff	# of Motions for Body Attachment	Total Principal Amount of Debt in Complaints	Average Principal Amount of Debt
Howard County, Maryland	12	\$9,083.64	\$757.97
Mayor and City of Council of Baltimore	6	\$4,980.63	\$830.10
Montgomery County, Maryland	3	\$3,299.77	\$1,099.92
Prince George’s County, Maryland	38	\$93,548.76	\$2,461.81

Source: Judiciary Case Search, 2015-2017

**Alternative Approach: Ending Debtors’ Prisons**

In 2012, Illinois passed The Debtors’ Rights Act of 2012, which significantly limit the use of debtor’s prisons in Illinois. The bill:

- Requires courts to notify borrowers in default about which types of income IL has determined is exempt from garnishment.
- Requires courts to conduct an ability-to-repay examination. In the event that a borrower in default has only exempt income, courts are required to dismiss the case.
- Prohibits courts from issuing bench warrants for arrest unless the borrower was personally served with the hearing notice, and the court believes that the borrower has failed to appear for the purpose of concealing non-exempt assets.
- Requires that bond that is posted by the borrower in default must be returned to the borrower after release, and cannot be transferred to the creditor. The provision prevents creditors from pursuing the arrest of indigent borrowers in order to obtain the bond in lieu of damages.
- Prevents creditors licensed by the Illinois Department of Financial and Professional Regulation from requesting a body attachment, unless a borrower repeatedly fails to appear in court after appropriate notification or has committed fraud to conceal non-exempt assets.
- Requires creditors to keep records of any collection actions that resulted in arrest, as well as maintain a written policy that their collection practices do not include requests for arrest.

The law covers payday lenders, consumer installment lenders, debt collection agencies and any attorney working on behalf of any of these companies.

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<sup>28</sup> Woodstock Institute, 2012



## The Disparate Impact of Debtors' Prisons

Although our analysis was unable to investigate the race and ethnicity of individuals who received body attachments, several factors suggest that there is a disproportionate impact on Black communities. As mentioned above, more debt collection cases are filed in majority Black communities than in majority white ones. In addition, being stopped for a traffic violation will trigger arrest if the driver has a body attachment. Given over-policing of Black communities, Black drivers are more likely to be pulled over and arrested for body attachments than white drivers. The bail bonds industry is one of the most aggressive in seeking body attachments. This, too, is indicative of the disproportionate impact of debtors' prisons on Black residents, especially given the over-criminalization and incarceration of Black residents, particularly Black boys and men.

The debt collection system in Maryland works in concert with the District Court to privilege creditors at the expense of low-income Marylanders. Debtors' prisons, in particular, exemplify the egregious lengths to which the State criminalizes poverty, recreating Dickensian conditions, despite the fact that imprisonment for debt was outlawed by the Maryland constitution.

Debtors' prisons create a two-tiered system of justice: those who can afford to pay a bail or bond do not go to jail, while those who can't afford to pay remain in jail. The practice creates a vicious cycle of poverty wherein the individual cannot work because they are jailed. They may lose their job, which, of course, makes it far more difficult to repay a debt. Jailing someone for a debt serves no constructive purpose: the individual is not violent, nor are they a danger to the community. They are simply poor, which is not supposed to be aailable offense in Maryland.

## GARNISHMENTS

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Once an individual answers questions about assets, the debt collection attorney can garnish wages and/or seize bank accounts as well as property. While we do not have a racial or gender breakdown of debt collection suits, there is a correlation between the number of suits filed per county and the racial composition of the counties. Our research found there are more debt collection suits filed in Maryland counties that have large communities of color. Our findings reinforce a study of Maryland debt collection cases in 2009 which found a similar disparate impact with communities of color over-represented in debt collection cases.<sup>30</sup>

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<sup>29</sup> Madigan, 2012

<sup>30</sup> Holland, Peter

**Table 5: Garnishments Filed by County, 2016**

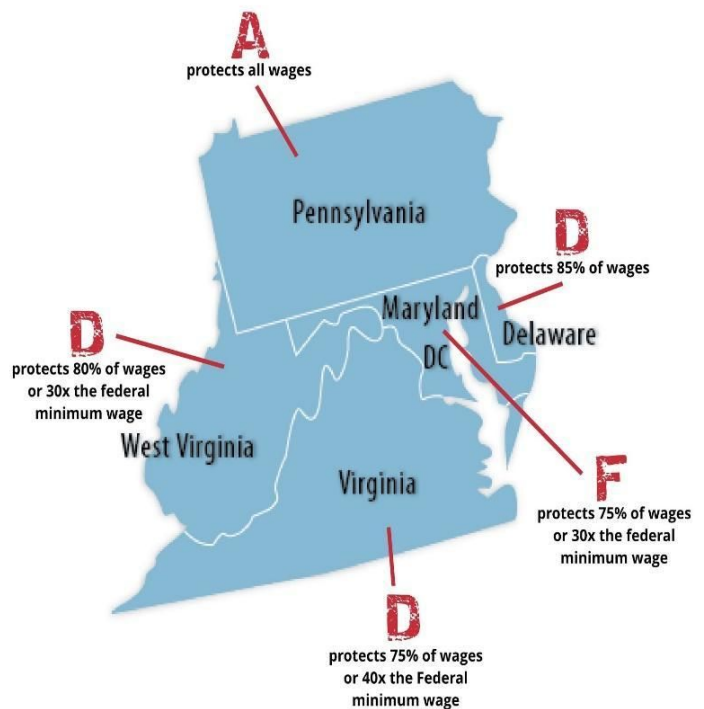
County	Total Garnishments	Wage Garnishments	Property Garnishments
Prince George's	19,059	9,963	9,096
Baltimore County	14,831	10,539	4,292
Baltimore City	12,829	9,888	2,941
Montgomery	7,146	3,228	3,918
Wicomico	3,242	2,938	304
Charles	3,106	1,678	1,428
Harford	3,073	1,954	1,119
Howard	2,527	1,392	1,135
Frederick	2,043	1,223	820
Washington	1,669	1,193	476
Carroll	1,228	762	466
St. Mary's	1,056	657	399
Calvert	910	543	367
Worcester	647	569	78
Cecil	634	399	235
Dorchester	538	402	136
Allegany	518	382	136
Somerset	476	417	59
Caroline	299	223	76
Talbot	289	206	83

County	Total Garnishments	Wage Garnishments	Property Garnishments
Queen Anne's	217	137	80
Garrett	146	87	59
Kent	128	88	41
<b>Total</b>	<b>76,611</b>	<b>48,868</b>	<b>27,744</b>

Source: Judiciary Case Search, 2016

As Table 5 shows, 76,611 Marylanders faced garnishment in 2016: 48,868 were wage garnishments, and 27,744 were property seizures. The amount of wages that are protected from garnishment is set by state statute. Unfortunately, Maryland's current law is one of the worst in the region. According to a report from the National Consumer Law Center, *No Fresh Start*, Maryland receives an 'F' for our wage exemption law. Pennsylvania receives an 'A' grade for leaving all wages exempt for most debts, Delaware receives a 'D' grade for protecting 85% of wages, as does West Virginia for protecting 80% of wages.<sup>31</sup> Virginia also receives a 'D' grade – although Virginia only protects 75% of wages, they include an allowance for 40 times the federal minimum wage.

In contrast, Maryland does the bare minimum, only protecting 75% of wages, or 30 times the federal minimum wage. This ensures that a low-income worker can keep only \$217.50 in wages per week or \$11,310 per year. The 2018 federal poverty guideline for an individual is \$12,140 and for a family of four \$25,100.<sup>32</sup> This level of protection means that Maryland protects so few wages that a low-wage worker can be pushed below the federal poverty guidelines by garnishments. This is significant given that 18% of workers in Maryland are minimum-wage workers.<sup>33</sup>



From National Consumer Law Center

<sup>31</sup> National Consumer Law Center, 2013

<sup>32</sup> <https://www.payingforseniorcare.com/longtermcare/federal-poverty-level.html>

<sup>33</sup> <https://www.nelp.org/wp-content/uploads/Case-for-15-in-Maryland-January-2018.pdf>

For workers and families living paycheck to paycheck, the ability to only protect \$870 per month makes it extremely difficult to be financially stable. Any financial setback can trigger a cascade of missed payments, leading to a vicious cycle of deepening debt and poverty for a person who is actively working and repaying their debt. Increasing the amount of wages Maryland residents can protect from garnishment is essential to ensure debtor's basic needs are met so they can work -- and thereby repay the debt.

As poverty increases throughout the State and hard-working residents struggle to make ends meet, the State's response has been anemic.

Maryland's debt collection practices privilege creditors' need for payment over families' need for financial stability. The State and courts facilitate the use of aggressive debt-collection tactics by property managers, bail bondsmen, financial services, and other creditors. Yet, these practices pale in comparison to the tactics used when the debt is owed to the State.

### **Policy is Personal: Debt Exemptions**

“When I was growing up, my mom was the victim of a financial triple whammy: divorce, illness, and job loss. Those circumstances, coupled with the housing market crash, meant we had debts we could not pay. Debt collectors lined up to garnish our assets and income. We lost our home and many family treasurers. But we lived in Indiana, which has higher debt exemptions than Maryland. Indiana's laws protected our modest savings and our car. So, Mom was able to find work as a nanny, and we moved into an apartment. If we had lived in Maryland, debt collectors could have seized our car, our savings, and most of Mom's wages and we would have been forced to live in a shelter.” – Amber Collins, Baltimore City

MCRC examined the policies and practices of Maryland's Central Collection Unit (CCU) in collecting State-owed, civic debt. To better understand how CCU uses the court system to enforce civic debt, we conducted a quantitative analysis of all cases in which CCU took action in the District Court between 2015-2017. In that time frame, CCU took action on 12,102 lawsuits, with a total of just over \$18M in monetary judgements.

## **CIVIC DEBT: ENFORCEMENT**

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Civic or state-owed debt is any indebtedness to a government entity that an individual may incur. There are a number of ways a resident of Maryland may find themselves owing money to the

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State, including video tolls and associated civil penalties, tuition and fees at State schools, public assistance and food stamp overpayment, fines for lapsed auto-insurance, and court-ordered criminal restitution. Local jurisdictions also issue civic debt, most commonly in the form of jurisdictional tickets for parking and traffic violations.

When a Maryland State agency attempts to collect a civic debt, it begins by issuing written demands for payment at 30-day intervals. If the debt has not been paid after three statements, it can be referred to CCU, the State of Maryland's internal debt collection department. CCU uses government databases to find a consumer's contact information, employer, wages, bank accounts and other garnishable property. CCU then contacts the consumer and demands payment.

#### **Not So Fun Fact:**

In 1992, in order to make CCU self-supporting, the agency began assessing a 17% collection fee on all debts. This had the effect of incentivizing prompt payment from those who could afford to avoid the 17% increase. It also allowed for the department referring the debt to collect 100% of their original bill. CCU has the authority to create an automatic payment plan following a "good faith" down payment for obligors who cannot afford to pay their bill in a lump sum. Other state agencies lack this authority and refer accounts requesting payment plans to CCU. This means that consumers who need a payment plan are charged the 17% CCU collection fee.

#### Sources:

- Chapter 128 of the 1992 Laws of Maryland, codified in Md. Code Ann., State Fin. And Proc. §3- 301, et seq.
- State of Maryland Central Collection Unit Department of Budget and Management, 2006

Harris and Harris, a private debt-collection firm, has a contract with CCU to collect State-owed debt on behalf of Maryland. The

firm receives 7.9% of all monies recovered. CCU reports their collection efforts to credit bureaus, including Transunion and Experian. This reporting negatively impacts a consumer's credit score. If neither CCU's nor Harris and Harris' collection efforts are successful, and the consumer owes at least \$750 to the State of Maryland, then CCU will sue the consumer in District Court to win a legal judgment. This money judgment allows CCU to garnish wages and property to satisfy the debt. CCU can also intercept Maryland State tax reimbursements.

As described in its handbook, CCU has specific considerations it takes into account when pursuing a lawsuit against a debtor:

### Lawsuits

CCU moved to a self-supporting funding status effective June 1, 1992. Therefore, our use of lawsuits, the most expensive collection procedure, must be limited to cases that will bring in money, or are of such a high dollar amount and there is a possibility of collection, that the State's interest must be protected.

\$750 is CCU's minimum lawsuit debt amount, unless the debt is a student loan and the \$200 Federal regulation lawsuit minimum is required or unless there are some other extenuating circumstances. Debts ranging from \$750 to \$5,000 should be referred for lawsuit if there are assets (wages or property to attach) or the debt was a college debt. Debts above \$5,000 should be referred for a lawsuit if there is a possibility of collection (i.e. assets to attach). Example: a \$6,000 hospital debt for a drug program patient, 25 years of age, with earnings of \$15,000/year should be referred for a lawsuit; but a \$6,000 debt for a mental health hospital for a 64 year old debtor on social security and not owning a home should not be referred for a lawsuit. The tools available to you to determine assets are the ESA Wage information; MVA information; Assessments and Taxation Information; Credit Bureau reports; CCU's Statements of Financial Condition; CCU's Monthly Statement of Income and Expenses, etc.

Source: 2006 Delinquent Accounts Handbook

### **Monetary Judgments**

Twenty-nine percent of the judgments won by CCU are affidavit judgments, the typical judgment used in consumer debt. Five percent of judgments are consent judgments – used when a consumer negotiates a settlement during the affidavit judgment process. Thirty-one percent of judgments won by CCU are confessed judgments, in which CCU confesses to owing a debt to the State *on behalf of* a consumer following the failure of a consumer to satisfy a pre-suit agreement with a confessed clause.

CCU has a strong success rate in seeking monetary judgements. Of cases filed between 2015 and 2017, just 14% of defendants had their case dismissed or a trial judgement entered in their favor. CCU won an average judgement of \$1,528.02 in the remaining 86% of cases.

Consumers who defended themselves against the suit received fewer and smaller judgments. Across all judgment types, when consumers were represented by an attorney, the judgments against them were an average of \$365 less than the average principal. Consumers without representation saw no reduction between the average principal and the average judgment. As you can see in Table 6, the rate of attorney representation varies significantly across jurisdictions.



**Table 6: Rate of Attorney Representation by County**

County	Rate of Attorney Representation
Baltimore City	4.22%
Baltimore County	1.48%
Prince George's County	24.68%
Montgomery County	2.64%
Harford County	6.08%
Howard County	34.11%
Carroll County	6.19%

Source: Judiciary Case Search 2015-2017

### **Collecting on a Judgment: Garnishments and TRIP**

After a creditor wins a monetary judgement against a consumer, there are a number of ways to collect the debt including wage garnishment, seizure of funds from a bank account, and seizure of vehicles, homes, and other funds and properties.

As the State's debt collector, CCU has another tactic at its disposal that other collectors do not have: Maryland's Tax Return Interception Program (TRIP). TRIP is a collaboration between CCU and the Comptroller of Maryland that allows CCU to intercept Maryland residents' tax refunds. CCU uses the acronym as a verb, "*We will continue to TRIP the debtor [until the debt is payed]*."<sup>34</sup>

The TRIP program can also be used by agencies to collect debts without being referred to CCU first. The Department of Labor Licensing, and Regulations' website states, "*[A]ny debt of one year old or greater, that has not already been transferred to the Central Collection Unit and is not under current appeal and whose debtor has made little or no effort to repay, will be certified for State income tax refund interception. Any State tax refund payment due to a claimant that has an outstanding debt will be intercepted and applied to that debt in accordance with the agreement stated above. [CCU] has oversight of this process and charges the debtor a ten percent (10%) collection fee of any account certified for this interception.*"

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<sup>34</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006

## Perverse Incentives

The State of Maryland has created a team-based financial incentive program for CCU staff. The *2006 Delinquent Accounts Handbook* explains that, “Incentives are paid if the Unit increases collections over the prior year by a designated percentage. During FY 2006, \$184,970 was paid for incentives.” At that time there were 113 positions at CCU. If the incentive is divided equally among all CCU staff, then each staffer received a bonus of \$1,637. This bonus program is intended to increase the total debt collected annually – regardless of variation in the amount of debt owed to the State year to year. It incentivizes the use of progressively invasive and aggressive debt collection tactics against consumers without regard for the consumer’s ability to repay the debt.

## CONSUMER PROTECTIONS IN MARYLAND’S CIVIC DEBT COLLECTION PROCESS

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Consumer rights advocates have fought for and won essential consumer protections in the debt collection process. The Federal Debt Collections Practices Act (FDCPA), passed in 1978, prohibits false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts. Unfortunately, civic debt is excluded from these protections. CCU and Harris and Harris, on the State of Maryland’s behalf, are legally permitted to use abusive, harassing tactics like calling at unusual times and contacting a consumer at work. The *2006 Delinquent Accounts Handbook* includes this illuminating section, which implies that CCU condones the use of threats in debt collection:

### **Debtor Excuses**

In regard to debtor excuses, put the Burden of Proof or Correction on the debtor. For telephone protests/disputes, set a deadline and inform the debtor that the account is on its ways to more serious collection actions if the dispute is not resolved. If the debtor disputes the debt in writing, we must stop our collection activity until we have answered the correspondence and verified the accuracy of the debt.

CCU is also exempted from state-level protections. Maryland law allows a creditor three years to collect a debt from a consumer before the debt expires.<sup>35</sup> If a creditor sues and wins a monetary judgment before those three years have passed, that monetary judgment is valid for 12 years.<sup>36</sup> Maryland explicitly exempts its own civic debt collection efforts from these limits.<sup>37 38</sup> Between

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<sup>35</sup> MD Cts & Jud Pro Code § 5-101

<sup>36</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

<sup>37</sup> MD Court of Appeals Decision Central Collection Unit, State of Maryland v. Atlantic Container Line, Ltd. 277 Md.626 (1976)

<sup>38</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

2015 and 2017, CCU made collection attempts on 207 judgments that were more than 12 years old, some dating back to 1989.

As the section below from the *2006 Delinquent Accounts Handbook* illustrates, the State will use its powers to seize a debtor’s taxes and continue to monitor a person’s wages. When the individual’s earnings increase, CCU may revive a debt -- a practice that is prohibited for private consumer debt collectors.

**Abatements/Settlements**

All requests for CCU to accept less than the full amount are forwarded to the Abatement Committee. You will be notified of the Abatement Committee’s decision. If an abatement is coded Uneconomical to Pursue (AUP), we will continue to TRIP the debtor and monitor the ESA Wages of the debtor, to determine whether to bring the debt back to the active file – and possibly to file a lawsuit.

Unlike private debt collectors, who are subject to the statute of limitations, CCU can continue to attempt to collect on the debt until it is satisfied or the consumer dies – whichever happens first.

Table 7 reviews the similarities and differences in policies and practices between private consumer debt collection and Maryland’s State-owed debt collection.

**Table 7: Differences in State-owed debt enforcement and private debt enforcement**

	State-owed Debt Enforcement	Private Debt Enforcement
<p>Subject to the consumer protections enumerated in the Fair Debt Collections Practices Act (FDCPA)?</p> <p>FDCPA is a federal law enacted in 1978 to prevent personal bankruptcy, marital instability, loss of employment and invasion of personal privacy. It prohibits false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts.</p>	<p>No.</p> <p>Traffic fines and other criminal and municipal fines and fees, are excluded from the term “debt” within the FDCPA.</p>	<p>Yes.</p>

	State-owed Debt Enforcement	Private Debt Enforcement
Data used to collect debts:	<ul style="list-style-type: none"> <li>● Employment Standards Administration Wage Information;</li> <li>● Unemployment Insurance Administration's Wage Record;</li> <li>● MVA information;</li> <li>● Assessments and Taxation information;</li> <li>● Credit Bureau reports;</li> <li>● CCU's Statements of Financial Condition<sup>39</sup></li> </ul>	<ul style="list-style-type: none"> <li>● Consumer information accessed through data brokers;</li> <li>● Credit Bureau reports</li> </ul>
Use of Confessed Judgments:	Yes.	No.
Body Attachments	De facto permissible – requested in a small number of civic debt collection suits.	De facto permissible – requested in a small number of private debt collection suits.
Wage Garnishments	\$217.50 wages protected per week	\$217.50 wages protected per week
Property Garnishments	\$1000 in home goods protected \$6,000 wild card protected	\$1,000 in home goods protected \$6,000 wild card protected
Vehicle Registration	Vehicle registration may be suspended or flagged for non-renewal via MVA Administrative Flag until civic debt is satisfied or a plan for satisfaction is made and is in good standing. Administrative flags are not discharged by bankruptcy.	No power to impact vehicle registration.

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<sup>39</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006

	State-owed Debt Enforcement	Private Debt Enforcement
Statute of Limitations for Non-Judgment Debt	None <sup>40</sup>	Three years <sup>41</sup>
Statute of Limitations for Judgment Debt	None <sup>42</sup>	Judgments expire after 12 years unless the creditor files a notice of renewal. <sup>43</sup>
What collection tactics may a debt collector use if the obligor is found to be judgment proof due to type of income or amount of income?	<ul style="list-style-type: none"> <li>• Suspension/non-renewal of vehicle registration pending payment of debt</li> <li>• Intercept tax refunds via TRIP program</li> <li>• Monitor the obligor's financial situation using government data; upon improvement, use garnishments to collect civic debt.</li> </ul>	None

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<sup>40</sup> MD Court of Appeals Decision Central Collection Unit, State of Maryland v. Atlantic Container Line, Ltd. 277 Md.626 (1976)

<sup>41</sup> MD Cts & Jud Pro Code § 5-101

<sup>42</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

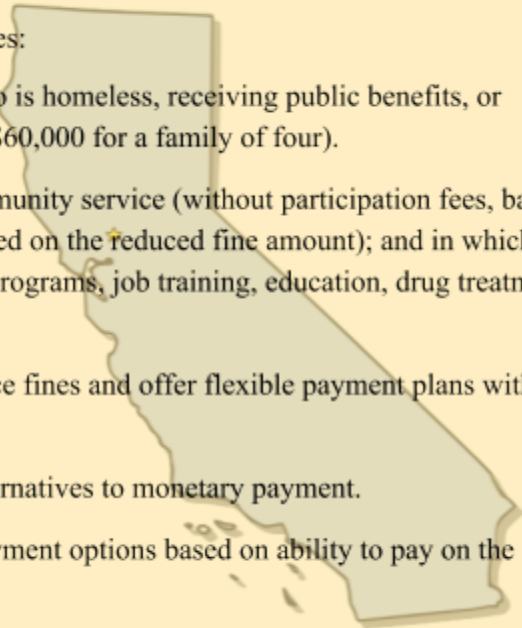
<sup>43</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

### Alternative Approach: Ability to Repay

When possible and appropriate, [municipalities should] base fine and fee amounts on an individual's ability to pay, to ensure consequences do not place an inequitable burden on low-income [residents]. There is much momentum towards this goal. The California Judicial Council recently directed courts throughout California to develop processes to base fines and fees on ability to pay. The California Judicial Council also recently won a Price of Justice grant from the United States Department of Justice to develop and pilot ability to pay tools. Other state court systems, such as Michigan, have moved toward basing fines and fee on ability to pay. When people get a fine or fee that is unrealistic for their income/budget, they are less likely to pay. When the amount is manageable for their income level, they pay, according to discussions with researchers.

Ability to pay processes should include the following attributes:

- Have a presumption of inability to pay for anyone who is homeless, receiving public benefits, or at/below 250% Federal Poverty Line (approximately \$60,000 for a family of four).
- For total inability to pay, offer options including community service (without participation fees, based on an hourly rate at or above minimum wage, and based on the reduced fine amount); and in which service is satisfied by participation in social services programs, job training, education, drug treatment, etc.; or suspension or dismissal of fine.
- For people with some, but limited ability to pay, reduce fines and offer flexible payment plans without a participation fee.
- Allow for online enrollment in payment plans and alternatives to monetary payment.
- Include easy-to-read information about alternative payment options based on ability to pay on the notices of the fee/fine and on relevant websites.
- Do not charge an up-front fee before allowing an ability to pay determination. Make late fees reasonable and part of the ability to pay process.



Excerpted from *San Francisco Fines and Fees Task Force: Initial Findings and Recommendations*

### Disparate Impact of Debt Collection

Our research shows that Maryland's policies and practices for collecting both State-owed civic debt and private consumer debt have a disparate impact on communities of color, can lead to interaction between consumers and the criminal justice system, and perpetuates cycles of poverty.

While there are 24 counties in Maryland (including Baltimore City), between 2015 and 2017, CCU only filed lawsuits against residents of seven counties.



**Table 8: CCU Cases by County, 2015-2017**

County	Cases filed 2015-2017	% of all cases 2015-2017	Average Judgment	% non-Hispanic white people	Median Income	Poverty Rate
Baltimore City	3,001	42.24%	1528.43	28.10%	\$44,262	23.1
Baltimore County	2,002	28.18%	1454.52	61.80%	\$68,989	9.3
Prince George's County	709	9.98%	1646.32	14.80%	\$75,925	9.7
Montgomery County	433	6.09%	1732.94	48.40%	\$100,352	6.9
Harford County	436	6.14%	1448.36	78.70%	\$81,052	7.7
Howard County	345	4.86%	1524.27	58.10%	\$113,800	4.9
Carroll County	179	2.52%	1823.11	90.80%	\$87,060	5.7

Source: Judiciary Case Search, 2015-2017

As Table 8 and the map above show, Baltimore City residents bore the brunt of CCU’s debt collection attempts in District Court, with 42% of all complaints examined being filed against City residents. Carroll County saw the least activity among jurisdictions where cases were filed, with less than 3% of complaints being filed there. The likelihood of a defendant winning a case (as defined by not having a judgment entered against them) varied significantly from county to county. Defendants in Montgomery County won 24% of the time, while defendants in Baltimore County won just 9% of the time.

MCRC tested for correlations between CCU’s District Court activities and garnishments across the state, and geographic factors, economic factors, and racial demographics using the Pearson Correlation Coefficient.

In table 9, we show the results of our calculations, and we have color coded the correlations by relative strength. Gray cells indicate a weak relationship between the factors examined. Light blue and light purple cells indicate a moderate positive and moderate negative relationship, respectively. The dark blue and dark purple cells show a strong relationship.

**Table 9: Correlations in Private and Civic Debt Collection**

Relationship Strength: Strong Positive Moderate Positive Weak Relationship Moderate Negative Strong Negative		CCU's Collection Activities, 2015-2017			All Garnishments, Civic and Private, 2016		
		Number of Cases Filed	Average Principal Amount	Average Judgment Won	All	Property Garnishmen ts	Wage Garnishment s
Geographic Factors	County Population	R = 0.6146	R = 0.7787	R = 0.7328	R = 0.8172	R = 0.8291	R = 0.7592
	# of Toll Facilities in County <sup>44</sup>	R = 0.6905	R = 0.6199	R = 0.5997	R = 0.6283	R = 0.5397	R = 0.6464
Economic Factors	Median Income of County	R = -0.116	R = 0.3392	R = 0.3576	R = 0.055	R = 0.1877	R = -0.0334
	Poverty Rate of County	R = 0.0841	R = -0.1942.	R = -0.2122	R = -0.0616	R = -0.1348	R = -0.0109
	Percent Increase in Poverty 1990-2016	R = 0.108	R = 0.5125	R = 0.5147	R = 0.4266	R = 0.4937	R = 0.3573
Race & Ethnicity	Percent of Population that is non-Hispa nic White	R = -0.5924	R = -0.575	R = -0.5016	R = -0.7716	R = -0.7687	R = -0.7259

<sup>44</sup> Excluding facilities targeting out-of-state travelers and tourists.

## Geographic Factors

As you can see in Table 9, geographic factors had the strongest relationship with both private and State-owed debt collection: the more people who live in a county, the more likely they are to be sued for State-owed debt or garnished by any debt collector. This may, in part, be connected to the use of toll-financed roads in densely populated areas – CCU began collecting delinquent video tolls and associated civil penalties in December, 2015<sup>45</sup>.

## Economic Factors

Surprisingly, economic factors like the poverty rate and median income had no relationship with which communities are experiencing high rates of debt collection activities. The only economic factor that has any relationship to the debt collection activities studied was increases in poverty: CCU's activity has a moderate positive correlation with increases in poverty. CCU is suing for higher amounts in counties that have seen the most growth in poverty rates in the last 25 years. We found no other significant relationships between debt collection and poverty. This suggests that there may be a causative relationship between State-owed debt and increasing rates of poverty in communities of color.

## Race and Ethnicity

Race consistently had a statistically significant relationship with where debt collection activities took place, with communities of color seeing higher levels of debt collection, and for higher principal amounts. In Maryland, debt collection is more closely aligned with racial demographics than economic indicators -- and for both State-owed debts and debts generally, communities-of-color bear the brunt of debt collection efforts.

# CIVIC DEBT: ENFORCEMENT

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In addition to allowing body attachments, poverty-inducing garnishments, surveillance of debtors via State data, and self-exempting from consumer protection laws, Maryland also criminalizes indebtedness through coordinated efforts between CCU and the Motor Vehicle Administration (MVA) to pursue civic debt.

Flagging vehicle registrations for non-renewal or immediate suspension is one of the central tactics used by the State of Maryland to collect civic debt. An administrative flag can be placed on a vehicle's registration for a variety of reasons, including for non-payment of civic debt like parking tickets and video tolls, or when the vehicle owner has an account referred to CCU. When a vehicle has an administrative flag on it, its registration cannot be renewed, and the title may not be sold or transferred.<sup>46</sup>

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<sup>45</sup> Department of Legislative Services, 2017

<sup>46</sup> Maryland Vehicle Administration, 2011

Driving without a valid vehicle registration is a criminal misdemeanor in Maryland. If a vehicle owner continues to drive a car after their registration expires or is suspended due to non-payment of a civic debt, they face a maximum penalty of a \$500 fine and restrictions on their driver's license.

The administrative flag is accompanied by a \$30-\$50 administrative flag fee, which must be paid before the flag is removed. If an administrative flag is not addressed before the vehicle's registration expires, the registration will lapse. The National Highway Traffic Safety Administration (NHTSA) estimates that 75% of drivers with suspended licenses continue to drive<sup>47</sup>. It seems likely a similar number of drivers would continue to drive a vehicle with suspended registration. CCU has satellite locations in MVA offices to facilitate consumers paying State-owed debt in order to renew their vehicle's registration.

#### **Alternative Approach: End License – or Registration – For-Payment System**

“In June 2017, California ended its license-for-payment system. AB 103, which took effect July 1, 2017, bans driver's license suspension for outstanding traffic fines going forward. This policy change came on the heels of coordinated advocacy by Back on the Road California and its affiliated organizations, including litigation brought on behalf of suspended drivers by ACLU of Northern California, Bay Area Legal Aid, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Prisoners with Children, Pillsbury Winthrop Shaw Pittman LLP, and Western Center on Law & Poverty. Litigation remains pending, however, because the parties dispute whether reforms provide relief to the hundreds of thousands of drivers who suffered under the discarded policy.

Governor Jerry Brown wrote, in endorsing reform, that license-for-payment suspension ‘places an undue burden on those who cannot afford to pay. . . . Often, the primary consequence of a driver's license suspension is the inability to legally drive to work or take one's children to school.’”

*Excerpted from: Driven By Dollars: A State by State Analysis of Driver's License Suspension Laws for Failure to Pay Debt*

Using data from the MVA, we estimate that there are 869,109 cars in Maryland with invalid registration as a result of administrative flags. To put that in context: one in every seven cars in Maryland has an invalid registration as a result of an administrative flag, the majority of which stem from non-payment of a civic debt. The geographic distribution of both CCU's debt collection activities and toll roads – two avenues that can lead to administrative flags – suggests that people living in communities of color are more likely to receive administrative flags on their registration.

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<sup>47</sup> National Highway Traffic Safety Administration, 2000



One in every seven cars in Maryland has an invalid registration as a result of an administrative flag.

The State of Maryland’s use of administrative flags on vehicle registration to collect debt creates a vicious cycle in which consumers must work to generate income to satisfy a debt but cannot legally drive to work, nor reach employment through public transit. If a consumer uses their car to get to work despite the suspended or lapsed registration, then they are committing a criminal misdemeanor.

#### **Alternative Approach: Traffic Ticket Amnesty Program**

“In April 2015, member organizations of Back on the Road California released *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*. The report detailed how revenue collection incentives have turned California traffic courts into a two-tiered system that works for people who have money and fails those without. It showed that significantly increased fines and penalties, combined with policies that required full payment of all fines and fees before the validity of a citation could be challenged, resulted in over 4.2 million suspended driver’s licenses simply because people could not afford to pay or fight an infraction ticket.

*Not Just a Ferguson Problem* attracted wide national attention to the ways that citations and license suspensions disparately impact low-income individuals and families in California. In response to the mounting public pressure, California’s Governor Jerry Brown spearheaded the creation of a time-limited Statewide Traffic Ticket Amnesty Program, making it easier for many Californians to seek reduction of their traffic fines and reinstatement of their licenses. The state’s Chief Justice, Tani G. Cantil-Sakauye, also put issues of court access on the forefront of the state’s judicial planning agenda.”

Excerpted from: *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back On The Road

# CASE STUDY: VIDEO TOLLS

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## Background

In the last 15 years, the State of Maryland has radically shifted how it funds the development, operation, and maintenance of transportation at the state and local level. Facing a budget shortfall and the need to fund transportation projects, Governor Ehrlich proposed the *Transportation Trust Fund – Transportation Financing – Increased Revenues Act* in 2004, which raised the cap on toll-serviced transportation bonds from \$1.5 billion to \$2 billion, increased vehicle registration fees, and allowed the MVA to charge higher fees across the board.

## Civic Debt: Electronic-Tolls

Tolls, including video tolls, are an important facet of the transportation funding stream. In recent years as electronic-tolling has grown in popularity, State-owed debt related to electronic-tolls and their associated civil penalties has grown exponentially.

Drivers can pay tolls electronically in two ways: E-ZPass and Video Tolls. Cars traveling in electronic-only toll lanes are scanned for an E-ZPass transponder. If the vehicle has an E-ZPass, then the cost of the toll is deducted from a prepaid account. If the vehicle doesn't have an E-ZPass, or if there are insufficient funds in the E-ZPass account, then the toll equipment uses a photo of the vehicle's license plate to identify and bill the registered owner for the toll.

## Civil Penalties

In order to address egregious non-payment of tolls by a small but significant number of drivers, in 2013 Maryland passed a law creating strict enforcement mechanisms for unpaid tolls. In accordance with the new law, when a vehicle owner fails to pay a video toll within 45 days, they will receive a civil citation and a civil penalty, set at \$50 by the MDTA.<sup>48</sup> If the toll and civil penalty are not paid within 75 days, the MVA places an administrative flag on the vehicle's registration, which must be cleared by paying the video toll, civil penalty, and a \$30 flag fee before an owner can renew the vehicle's registration or sell the vehicle. If a vehicle incurs \$1,000 in unpaid toll violations, the MVA will issue an administrative flag that immediately suspends the vehicle's registration. The 2013 law also permits the MDTA to refer unpaid video tolls and civil penalties to CCU.

## Impact of 2013 Law

In fiscal year 2016, MDTA processed 6.1 million video tolls. Of those tolls, 1.8 million were assessed a civil penalty and referred to CCU for collection. The outstanding balances of video toll transactions referred to CCU in 2016 was \$104.3 million.<sup>49</sup> That figure includes \$12.3

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<sup>48</sup> Department of Legislative Services, 2017

<sup>49</sup> Department of Legislative Services, 2017



million or 11.8% in unpaid tolls and \$92 million or 88.2% in civil penalties.

Recent reporting by the Washington Post found that, according to MDTA data, “[s]ince summer 2014, more than 479,000 people have been referred to the state’s Central Collection Unit, 207,000 have been sent to the MVA to have holds placed on their registration renewal — and of those, more than 22,000 have had their registration suspended because of toll violations.”<sup>50</sup>

### **Flaws in Electronic-Toll Collection**

Drivers who are un- or underbanked have more barriers in using the E-ZPass system. In Maryland, 4.8% of households are unbanked and 23.9% are underbanked.<sup>51</sup> Thirty percent of E-ZPass users do not have a bank account or credit card connected to their account and must make payments manually.<sup>52</sup>

A driver does not receive immediate notification of insufficient funds in an E-ZPass account when driving in electronic-only lanes. A driver on an electronic-only toll road may not even know that they are obligated to pay a toll at all: toll facilities on these roads are not obvious, and roadside signage can be insufficient to explain the process. Older drivers are especially at risk for this mistake.

Written notifications often arrive weeks after the toll was assessed, and sometimes never arrive at all. Regular commuters who are unaware of problems in processing payment may have dozens of unpaid video tolls before they receive the first notice that something is wrong.

### **Draconian Penalties**

The MDTA sets the penalty for late payment of a video toll at \$50, regardless of the amount of the unpaid toll. Civil penalties are assessed per transaction, meaning that two video toll transactions that are part of the same round trip will be assessed separate \$50 penalties. The MDTA can, at its discretion, waive civil penalties on video tolls.

The MDTA cannot arrange a payment plan, so if a vehicle owner cannot pay a debt in one lump sum, they will be referred to the Central Collection Unit (CCU) to arrange a payment plan for an added fee of 17%.

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<sup>50</sup> Lazo April 28, 2018

<sup>51</sup> Prosperity Now, 2018

<sup>52</sup> Lazo, 2018

### Alternative Approach: Day Fines

“Day fines originated in Scandinavia in the 1920s and have proliferated in Europe and South America. A day fine is a proportional fine, like an income tax, that takes into account both the severity of the offense and the offender’s income. Any particular crime has a severity level worth a certain number of days of pay, and then the income of the defendant is calculated to determine the total fine. For example, in Finland, a day fine is equivalent to half of a daily discretionary income, which police may look up in a national database of personal earnings. The result is greater equitability among people of different economic classes and incomes and similar levels of felt hardship regardless of one’s financial station.”

“[C]ourts in the United States have piloted Day Fines that are proportioned to people’s incomes. In some of these pilots, courts saw their overall revenue go up, and their disproportionate impact go down. Since day fines are calculated to be bearable at different income levels, collection rates are much higher than with traditional fines.”

Excerpted from:

- *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of New Debtors' Prisons*
- *San Francisco Fines and Fees Task Force: Initial Findings and Recommendations*

### Reform Efforts in Maryland

In 2018, Senator Manno passed a bill that allows the MDTA to recall accounts of \$300 or more that have been referred to CCU, in order to create a process by which civil penalties for video tolls can be waived.

In May 2018, Governor Hogan announced that E-ZPass transponders are now free for Maryland drivers. This may reduce the total number of video tolls issued by lowering the barrier to participate in the E-ZPass program. However, free transponders will not help un- and underbanked drivers who may not be able to keep an account in good standing.

## CONCLUSION & RECOMMENDATIONS

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Maryland has seen a rapid rise in poverty and cost of living in the past decade. Yet, despite the increased economic security of residents, the State has continued to permit debt collection processes in courts that assist creditors rather than debtors; support policies that increase the cycle of poverty through the use of arrest and egregious wage garnishment; and failed to create policies or programs that benefit low-wage workers and struggling families. Moreover, debt and

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debt collection activities are disproportionately borne by borrowers-of-color, which increases the racial wealth gap. Finally, Maryland has granted itself nearly unchecked power in collecting civic debts. The debt a consumer owes the State can grow exponentially through the debt collection process, with layers of fines added to unpaid fees.

Debt collection actions operate through the court system, through legislation, and through the State. There are a number of promising practices and policies that Maryland should adopt to expand economic security for low-income residents.

## Recommendations

- **Debtors' Prisons**

- **Programs:**

- Provide trainings on body attachments to Judges and Hearing Examiners (who preside over oral examinations in some jurisdictions) to ensure that the relevant rules and legislation are followed.

- **Policy:**

- Eliminate the use of body attachments for consumer debts below \$5,000.
- Establish that no one can be arrested when court is not in session and eliminate bail requirements for consumer debt cases. An individual could be picked up, answer questions about their assets, and then released on their own recognizance.
- Require higher service standards in both both oral exam and show cause orders. Service must be personally delivered to the person to be served -- not left with a co-resident or served through certified mail.

- **Research:**

- Investigate body attachments and arrests per county to assess trends as well as disparate impact.

- **Debt Collection**

- **Policy:**

- Require post-judgment discovery to include a list of all types of exempt income and assets. The discovery form should explain how to claim exemptions.
- Require judgment creditors to pursue all out-of-court post-judgment discovery options before requesting a post-judgment hearing.
- Raise debt exemptions for wage garnishment to a level that keeps a family of four out of poverty; in Maryland, that would be at least 60 times the Maryland minimum wage or 75% of wages, whichever is higher.

- Establish a right to legal counsel for consumer cases – including debt collection and landlord tenant cases.
  - **Research:**
    - Research debt collection cases across the state by county, and consider disparate impact.
- **Civic Debt**
  - **Programs:**
    - Establish an amnesty program for MVA administrative flags similar to California’s traffic ticket amnesty program;
    - Establish wrap-around support services when a consumer is referred to CCU. For example, when an individual goes to MVA to pay their debt in order to remove an administrative flag, they should be provided with financial counseling and benefits check-ups at that time by a state or nonprofit agency;
    - Establish day-fine option for low-income debtors to repay civic debt.
  - **Policy:**
    - Establish a waiver of the 17% fee when a consumer requests a payment plan;
    - Place checks on Maryland’s debt collection powers through legislation, regulation, and/or an order from Maryland’s Attorney General. Limits should include:
      - A statute of limitations on civic debt;
      - Ending use of confessed clauses in CCU payment agreements;
      - Ending of immediate-suspension administrative flags on vehicle registration;
      - Ending financial incentives program for state-employed debt collection employees; and,
      - Establishing an Ability-to-Repay (ATR) standard for civic debt following the model developed by the San Francisco Fines and Fees Task Force.
  - **Education:**
    - “Know Your Rights” education for consumers who are being sued for civic debt.
  - **Research:**
    - Review toll-serviced bond agreements to reveal the terms the State of Maryland has committed to on behalf of its drivers;
    - Investigate the scope and impact of Maryland’s TRIP program.

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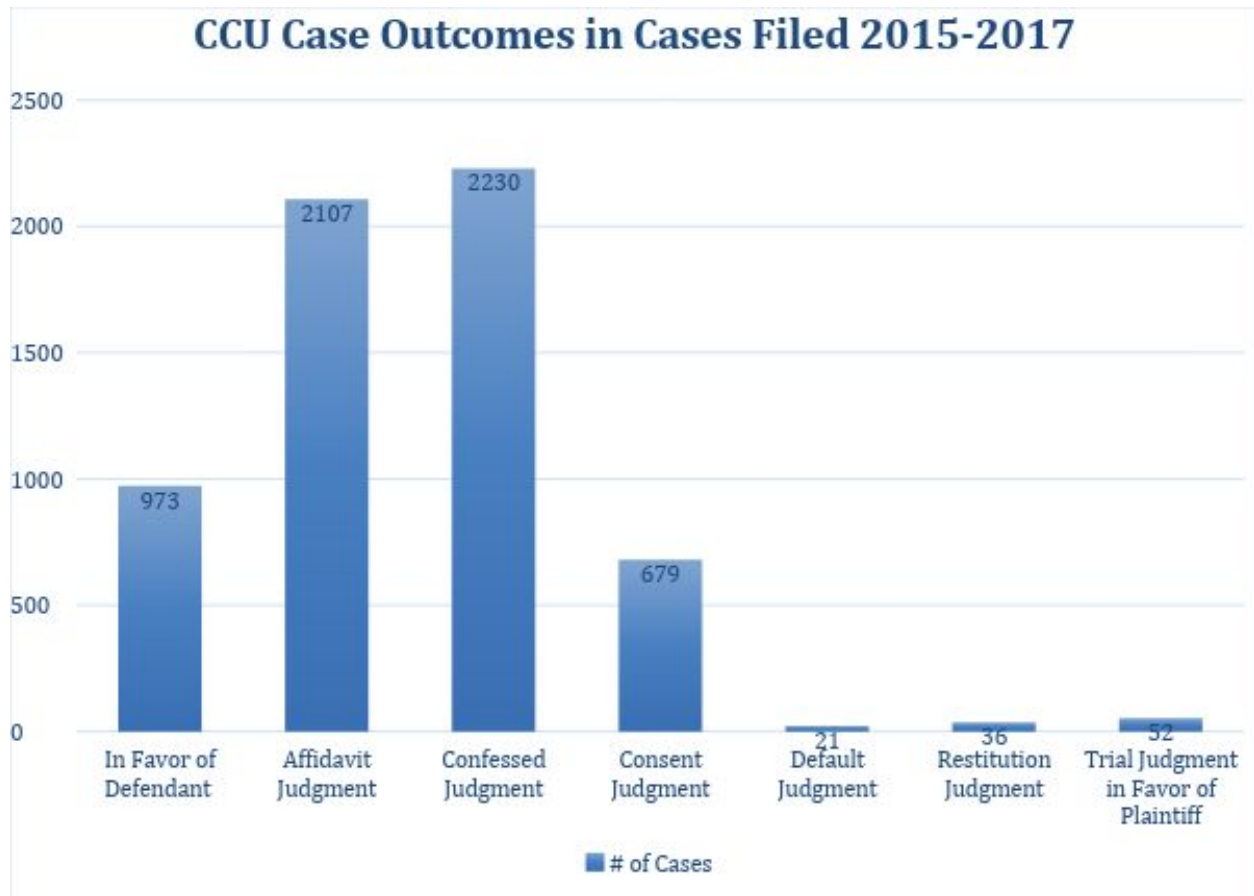
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# APPENDIX A: CCU'S DISTRICT COURT ACTIVITIES, 2015-2017

In order to better understand how CCU uses the court system to enforce civic debt, we conducted a quantitative analysis of all cases in which CCU took action in the District Court between 2015 and 2017. In that time frame, CCU took action on 12,102 lawsuits, with a total of just over \$18M in monetary judgements.

**Table 10: Outcomes of Cases**



**Confessed judgments** are the result of a legal process which allows a creditor’s attorney to file an affidavit with the lawsuit which “effectively confesses, on behalf of the debtor, that the judgement is owed.”<sup>53</sup> In this process, the first notification the consumer will receive from the District Court will be a notice that they have a judgement against them. The debtor then has 30 days to file a motion to open, modify, or vacate the judgment against them. Confessed judgments are not permitted in cases with consumer loans or transactions. Therefore, the confessed judgements are most likely for cases that are not related to consumer transactions or loans. When

<sup>53</sup> Steiner, 2017

CCU used the confessed judgment process, CCU was awarded an average of \$204 in attorney's fees – an order of magnitude larger than the attorney's fees awarded in judgments where the defendant has the opportunity to defend themselves prior to a judgment being entered.

**Affidavit judgments** are the typical legal process used to collect private consumer debts. To win an affidavit judgment, the creditor first files the affidavit in District Court, then the defendant is served with a court summons, a copy of the complaint, and all related documents. The defendant has 15 days to file a Notice of Intention to Defend, which triggers a trial, or negotiate a settlement with the creditor. The terms of that settlement may be filed with the court, and in those instances, it is called a **consent judgment**. If the defendant neither defends themselves or negotiates terms with the creditor, a judge will review the affidavit and documents and will likely enter a default judgment against the defendant. Table 1 shows the process for affidavit judgments, and the outcomes of the affidavits CCU filed between 2015 and 2017.

## APPENDIX B: MVA ADMINISTRATIVE FLAGS DATA

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To better understand the use of administrative flags, we submitted a data request to the MVA for historical information on administrative flags, non-renewal of vehicle registration, and immediate suspension of vehicle registration, by municipality. The MVA advised that they do not collect historical data on administrative flags, and instead provided a point in time report on administrative flags that did not include geographic distinctions.

**Table 11: Point in Time data from Oct. 7, 2017 on Administrative Flags by MVA**

	Source of Flag	Count	% of Total Flags
Jurisdiction related flags		570,839	57%
	Parking	103,933	10%
	Red Light	74,880	8%
	Speed Camera	279,039	28%
	School Bus Camera	629	0.06%
	Tolls	112,358	11%
Immediate-Suspension Flags on Vehicles with Unexpired Registration		104,249	
	Insurance Compliance	24,325	23%
	VEIP (emission controls)	77,882	73%

	Tolls	4,063	4%
Non-renewal Flags on Unexpired Registered Vehicles (excluding suspensions)		215,273	22%
Flags that have resulted in non-renewal of registration		780,469	78%

Based on these figures, we estimate that on October 7, 2017, approximately 869,109 vehicles in Maryland had suspended or expired registration as a result of administrative flags. Flags are primarily used to collect civic debt; 57.33% of flags resulted from non-payment of jurisdictional fines and fees. Non-payment of video tolls resulted in 112,358 non-renewal flags and 4,063 immediate suspension flags.