



*Advocating better skills, jobs, and incomes*

**TESTIMONY IN SUPPORT OF SENATE BILL 657:**

**Small Claims - Examination in Aid of Enforcement - Prohibition on Arrest or Incarceration for Failure to Appear**

TO: Hon. William Smith, Chair, and members of the Senate Judicial Proceedings Committee

FROM: Christopher Dews, Policy Advocate

DATE: March 3, 2021

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. We support Senate Bill 657 as a means to ensure that incarceration or the threat of incarceration is not improperly used to intimidate small claims debtors.

In the face of the COVID-19 Pandemic, many unemployed Marylanders are experiencing financial hardship which negatively impacts their financial stability. Multiple studies have shown that Maryland is in a K-shaped recovery- meaning that those who were already economically stable pre-pandemic are experiencing a strong and profitable recovery while others who were already struggling financially continue to suffer or have gotten worse. Those who are participating in the tech sector, conduct business online, or have the ability to telework have, indeed, experienced economic booms leaving many lower-income essential workers, where employment requires an in-person presence, in financial limbo.

Many adult workers have been laid off, taken pay cuts, and have seen the majority of their small business jobs- retail and restaurants especially- shut down permanently. CNBC reported in September that 60% of small businesses in the country will not reopen leaving those workers stranded and struggling. Above this, access to unemployment insurance during the pandemic has been extremely limited. During the Summer, the General Assembly held a session to address the severe issues with the unemployment insurance system. 1,100 Marylanders showed up to testify, stating strongly how they have had to go deeply in debt to pay both their bills and past debts. Workers from all rungs of the economic ladder – especially those with a criminal record - are finding themselves caught in a downward spiral.

Under Maryland Rule 3-633, a judgment creditor in the District Court may obtain discovery to aid the enforcement of a money judgment by (1) use of interrogatories and (2) examination before a judge or examiner. This essentially allows creditors to issue arrest warrants for debtors if they do not show up to a “show cause” hearing- which is designed to expose all their assets to creditors. According to a 2018 report by the American Civil Liberties Union (ACLU), 1 in 3 Americans has a debt that was referred to a private debt collection agency. During the course of its research, the ACLU found and analyzed more than 1,000

# JOTF JOB OPPORTUNITIES TASK FORCE

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cases in which judges in 2 territories and 26 states, including Maryland, issued arrest warrants for alleged debtors at the request of private debt collectors.

Section 38 of Maryland's Constitution prohibits imprisonment for debt, stating that "no person shall be imprisoned for debt." Maryland case law for the past 80 years establishes that a person cannot be imprisoned for contempt for disobeying an order to pay money based upon a simple contract or debt. However, Maryland workers are finding themselves jailed or threatened with incarceration for failure to pay debts to creditors that they simply cannot pay.

It is well established that possession of a criminal record presents a tremendous barrier to securing and maintaining employment. Many people with a criminal record apply for jobs for which they are well-qualified but are, indeed, disqualified from consideration because of their record. This presents significant barriers for debtors who need a job to be able to pay down the debt owed. Debt collection enforcement policies must be tailored to the debtors' financial situation in order to encourage payment.

Senate Bill 657 seeks to address this by banning body attachments (i.e. arrest warrants) in small claims consumer debt cases where the amount in controversy does not exceed \$5,000. Senate Bill 657 will not only help to level the playing field between unsophisticated consumers and large debt collection firms in small claims courts but will remove the penalty of incarceration for those who simply cannot pay. Jailing debtors for nonpayment of claims under \$5000 is counterproductive and creates additional barriers for debtors. For these reasons, we urge a favorable report of Senate Bill 657.