



Maryland Consumer Rights Coalition

Testimony to the Senate Judicial Proceedings Committee
SB 452: Small Claims-Examination of Aid in Enforcement-Prohibition
on Arrest or Incarceration for Failure to Appear
Position: Favorable

February 22, 2022

The Honorable Will Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401
Cc: Members, Senate Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

MCRC is a statewide coalition of individuals and organizations that advances economic inclusion and financial justice through research, consumer education, direct service, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland. I write today in support of SB 452.

Maryland's Constitution says that "no person shall be imprisoned for debt" and 80 years of state case law make clear that a person cannot be jailed for disobeying an order to pay money based on a simple contract or debt.

In recent years, the debt collection industry – which includes both debt buyers and debt collectors – has greatly expanded. With this growth, there has also been an increase in abusive debt collection practices, including the issuance of body attachments. A body attachment – or a “body lien” – is an order for law enforcement to arrest the person in question and bring him or her in front of a court or commissioner.

Despite the clear prohibition of debtors’ prisons in Maryland, from 2010 to 2014, the Maryland District Courts issued 1,615 body attachments (arrest warrants) in civil cases in FY 2014 – about 134 per month. About 77 individuals were arrested on a body attachment in 2014. Although not commonplace, arrest in debt collection cases is not an anomaly nor a one-time mistake.

More recently, during the COVID-19 pandemic, a Montgomery County woman was arrested and jailed



over a dispute with her homeowners association, despite the fact that she never received notice of the court date that she missed.

Between 2015 and 2017, Prince George's County filed for 41 body attachments in cases where the defendant owed as little as \$329. One Prince George's County resident was arrested and jailed overnight and arrested two more times even though all of his income is protected from garnishment by law.

Ninety percent of these body attachments are requested by less than a dozen debt collection lawyers. The average underlying debt 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.

When a body attachment is issued (and the request for a body attachment is granted more than 95% of the time), it is sent to the Sheriff's Department in the county in which the individual lives, along with a \$40 fee. The Sheriff's Department may then seek out the individual to arrest him or her.

When arrested, defendants may be required to pay bail or a bond which was found to range from \$200 to \$3,000. If an individual misses a second show cause hearing after an arrest, the bail is set higher. In one case, bail was set at \$5,000 for a \$2,800 debt. In another case, bail was set at \$10,000. If a defendant cannot pay this bail, he or she can end up languishing in prison for days or weeks until she or he can arrange to pay the bail bond set in the case.

Arrests for debts that are \$5000 or less disproportionately affect African-American residents in Maryland. 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. Moreover, consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland.

Many body attachments are executed when a driver is pulled over for a traffic violation . Given over-policing of Black communities, Black drivers are more likely to be pulled over and arrested for body attachments than white drivers. Finally, 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.

SB 452-ending debtors prisons-was a recommendation from AG Frosh's COVID-19 Task Force. Moreover, SB 452 is supported by the creditors bar who agree that this practice is outdated and is no



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longer necessary for them to rely upon as technological advances enable them to determine the information needed for repayment. In short, there is widespread support for ending this practice.

These de facto debtors' prisons criminalize poverty and create a two-tiered system of justice: those who can afford to pay do not go to jail, while those who can't afford to pay remain in jail. Jailing someone for an underlying debt serves no constructive purpose: the individual is not violent nor a danger to the community, will be harmed-possibly losing their job if they are incarcerated, thereby making it more difficult to repay a debt, has no need for rehabilitation nor for punishment. The stated goal of the body attachment is to have an individual complete the interrogatory-once they have done that, there is no rational nor humane reason to jail the individual once they've completed the interrogatories.

SB 452 ends, once and for all, this Dickensian practice which criminalizes poverty in Maryland and disproportionately impacts men and women of color. SB 452 affirms the judgment made in Maryland's Constitution: that low-income men and women do not deserve to go to prison because they cannot pay small debts, and Maryland courts should not participate directly in the debt collection process.

For all of these reasons, we strongly support SB 452 and urge a favorable report.

Best,

Marceline White
Executive Director