



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

Feb. 22, 2022

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

Dear Chairman Smith and Committee Members,

I'm a consumer advocate and Executive Director of Consumer Auto, a non-profit group that works to foster safety, transparency, and fair treatment for Maryland drivers and car buyers.

We support **SB 452** because the practice of arresting and imprisoning people as a result of court orders in small debt cases unfairly and rather arbitrarily imposes draconian and outdated punishment for debt on scores of Marylanders – and those punishments fall disproportionately on low-income people and members of our minority communities. Passing this bill would finally put an end to that outdated practice.

As is well-known, the Maryland Constitution holds that “No person shall be imprisoned for debt” and extensive case law supports that principle. Yet in hundreds of debt cases over the last decade or so Marylanders have been arrested under “body attachment” orders after failing to appear to respond to a debt claim. If a sheriff conducts an arrest under such an order, the defendant is often required to post a bond or bail to get out of jail. Those who can't afford to post it – or don't have a friend or family member able to do so – can end up in jail for days.

The practice is arbitrary and unfair for any number of reasons. It imposes a criminal penalty (arrest and incarceration) for what is really an underlying civil dispute over debt – and on a person we usually have no reason to believe is violent or a threat to public safety. And because the underlying debt case is a civil matter, the alleged debtor has no right to legal representation in that matter. In proceedings where a debtor has no lawyer (and debtors rarely have legal counsel for such hearings), debt brokers and attorneys often obtain orders to appear or to garnish assets even when they don't have clear documentation that the defendant really owes the money. Thus the underlying assertion that the individual charged actually owes the debt often itself is not reliable.

At the same time, we know that certain debt attorneys are highly aggressive about pursuing arrest orders in debt cases – and certain judges in certain jurisdictions are unusually willing to grant them. One study found that 90% of body attachments are requested by less than a dozen debt attorneys. And between 2015 and 2017 Prince George's County filed 41 body attachments – in cases where the defendant owed as little as \$329. An earlier study by the Maryland Consumer Rights Coalition found that debt arrest orders were concentrated among certain judges from Baltimore County.



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Once an order is issued, it may be enforced if an officer discovers the warrant after pulling someone over for a routine traffic stop. That means that African-Americans and others more likely to be targeted for alleged traffic violations are also more likely to get taken to jail as a result of a body attachment.

Orders for arrest in debt cases end up rather arbitrarily imposing a draconian, Dickensian punishment (jail time) on a minority of debtors for a relatively small, non-violent offense. And those punishments are more likely to fall on low-income people who can't afford to pay a bond in such a case or to have representation in a debt issue and on minority members more likely to be stopped by police officers.

That creates a two-tiered system of justice for hundreds of lower-income and minority Marylanders. And the whole practice serves little public purpose because, especially given that with modern data technology creditors can certainly obtain the data they may need in a debt case without issuing an order for arrest. And since the debtor is not a violent offender the serious disruption of people's lives and the expense involved in incarcerating that person serves no clear public safety purpose.

As an advocate I've been part of past efforts to curb this abusive practice. Indeed, almost a decade ago, now House Judiciary Committee Chair Luke Clippinger and then state Sen. Brian Frosh led a successful effort to pass legislation that changed the rules for issuing and enforcing body attachments – in a way we hoped would dramatically reduce arrests in debt cases. Yet unfortunately we still see scores of these arrests in parts of our state – and some debt attorneys and judges are only too ready to impose body attachments in debt cases.

SB 452 would simply and clearly put an end the abusive practice of incarcerating Marylanders in debt disputes. It's high time we passed this legislation – and put an end to that 19th Century practice.

We support SB 452 and ask you to give it a FAVORABLE report.

Sincerely,

Franz Schneiderman
Consumer Auto