

## **SB452 - Favorable Testimony of Maryland Volunteer**

Uploaded by: Amy Hennen

Position: FAV



MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE  
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE  
IN SUPPORT SB452: SMALL CLAIMS –EXAMINATION IN AID OF  
ENFORCEMENT-PROHIBITION ON ARREST OR INCARCERATION FOR  
FAILURE TO APPEAR

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Chair Smith and distinguished members of the Committee, thank you for the opportunity to testify in support to Senate Bill 452.

My name is Amy Hennen and I am the Director of Advocacy and Financial Stabilization at the Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers, has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY20, MVLS volunteers and staff lawyers provided legal services to 4,459 people across the state. Approximately 30% of our cases focus on consumer issues like foreclosure, tax sale, bankruptcy, and debt collection. For the reasons explained below, we respectfully request a favorable report on Senate Bill 452.

MVLS assists Marylanders facing debt collection throughout the entire state in several ways, including a weekly courthouse clinic in Baltimore City. MVLS staff and volunteer attorneys meet with dozens of consumers at our weekly clinics. For many of these clients, we negotiate with the creditors and can help them avoid entry of a judgment in the first place.

Once a creditor has a judgment, they can use the body attachment process to compel payments from a judgment debtor using this civil arrest process. After judgment is granted, a creditor can request that the court order the debtor to appear for an oral exam. If the debtor fails to appear for the oral exam, a creditor can request the court order the debtor to appear again to explain why they failed to appear at the oral exam. If the debtor again fails to appear, the creditor then has the right to request a body attachment. Most debtors miss the oral exam due to work or childcare issues. Many argue that body attachments are not issued for failure to pay a debt, but instead for failure to obey a court order. However, courts do not issue body attachments for all debtors who fail to obey these court orders; body attachments are only issued if a creditor requests it. Only a small number of creditors use this process. Of all judgments entered in district court, only a few thousand have body attachments requested, and only a few hundred judgement debtors are arrested for an outstanding body attachment. Although the

number of people arrested for a body attachment is limited, the long-term consequences of a night or a weekend in jail can have a far-reaching impact on employment, housing or even child custody.

If a person has an active body attachment against them, any interaction that this person may have with law enforcement can result in being arrested. My client Justin initially contacted MVLS about the garnishment of his wages and bank accounts. It was only when I pulled his information that I discovered that the creditor had requested a body attachment. Justin had no idea about the consequences of a body attachment. I had to explain to Justin that if he were pulled over for a traffic violation and the police did a warrant check, he could be arrested. He then would be taken to a detention center or police station for processing, which could take between 2 and 24 hours depending on the jurisdiction, and then taken before a commissioner. The commissioner would review criminal history, particularly looking for a history of failure to appear for court hearings and other issues that would show whether the person might be a danger to the community. The commissioner then could decide to release them on their own recognizance, hold the person without bond, refer them to pretrial services (for check-ins), or release them on bond. If the person is held without bond or cannot afford to post the bond, the person would wait to go before a judge on the next business day for a review. If the commissioner's determination occurs on a Friday evening, then the judicial review would not happen until Monday.

My client was in shock. The threat of arrest and the possibility of spending a few hours at a detention center was terrifying to my client. This added to a long list of problems for my client. Most importantly the economic impact on my client. A few hours detained would result in lost wages, possibly a loss in employment, and if a bail was set another debt incurred.

MVLS has been fighting to even the playing field for Marylanders facing economic hardships for decades, and we know that these members of our community face significant financial obstacles when trying to put their lives back on track. Body attachments often do nothing more than push people into further cyclical poverty or create a new range of problems for them. We respectfully request a favorable report on Senate Bill 452.

Mister Chair and members of the Committee, thank you again for the opportunity to testify.

# **SB0452\_FAV\_JOTF.pdf**

Uploaded by: Caleb Jasso

Position: FAV



*Advocating better skills, jobs, and incomes*

**TESTIMONY IN SUPPORT OF SENATE BILL 452:**

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

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

FROM: Caleb Jasso, Policy Advocate

DATE: February 22, 2022

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 452** 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 (still) ongoing COVID-19 Pandemic, many Marylanders are experiencing a financial hardship that has placed them in debt. Maryland is still in the midst of 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 boons leaving many lower-income essential workers, where employment requires an in-person presence, in financial limbo. Couple this with the fact that inflation rates have risen to a 40 year high at around 7% and the cost of housing and vehicles are the most they have ever been in US history. Unfortunately, many Marylanders have turned to debt accumulation to meet their financial needs.

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. UMD Carey Law School did a study examining these issues and found that from Jan. 2015 -Dec. 2020, MD judges issued at least 760 body attachments for creditors against debtors disproportionately targeting lower-income persons of color. The 20 zip codes that had the highest number of body attachments were 81% people of color with a median Senatehold income of \$49k, significantly less than the \$83k Maryland Average.

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

*Advocating better skills, jobs, and incomes*

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 452** 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 452** 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 452**.

**For more information, contact:**

Caleb Jasso / Policy Advocate / [caleb@jotf.org](mailto:caleb@jotf.org) / 626-224-3543

## **SB452.pdf**

Uploaded by: David Schlee

Position: FAV



# MARYLAND-DC CREDITORS BAR ASSOCIATION, INC.

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## Support SB 452

The MD/DC Creditors' Bar Association ("Creditors' Bar") is an association of forty-five-member law firms who practice collections law in the State of Maryland and the District of Columbia. The Creditors' Bar was formed in 2003 for the purposes of collegial support, mentorship, and collaboration to formulate and implement best practices in the field of collections law. The Creditors' Bar **supports Senate Bill 452** as currently drafted.

This bill proposes to eliminate the ability of consumers to be arrested in small claims cases from enforcement in District Court. The current process of allowing body attachments to be placed in civil cases is of great concern for our membership and our clients. Since 2010 the number of Body Attachments have significantly decreased with the Federal and State oversight of collection process. By 2020 all major creditors and Debt Buyers prohibit any process that would end with a possible arrest. For these reasons the use of Post Judgment Interrogatories in aid of enforcement has stopped. Court closures because of the pandemic have caused additional concerns and problems with the process.

While our organization understand the concern with customers not abiding by court orders, we believe those concerns are outweighed by the public policy argument. Additionally, many of clients will not use the post judgment interrogatories process without proper safeguards on body attachments. Without proper measures in place this entire process will severely limited.

For all the above reasons, the MD/DC Creditors' Bar Association supports SB 452 and urges a favorable report.



## **SB0452 - 2.22.22 -- Small Claims - Examination in**

Uploaded by: Donald Fry

Position: FAV



**TESTIMONY PRESENTED TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE  
SENATE BILL 452 – SMALL CLAIMS - EXAMINATION IN AID OF ENFORCEMENT -  
PROHIBITION ON ARREST OR INCARCERATION FOR FAILURE TO APPEAR**

**Sponsor: Senator Smith**

**February 22, 2022**

**DONALD C. FRY  
PRESIDENT & CEO  
GREATER BALTIMORE COMMITTEE**

**Position: Support**

The Greater Baltimore Committee (GBC) supports Senate Bill 452, which prohibits an individual from being arrested or incarcerated for failure to respond to an order to appear in court (1) for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court or (2) to show cause why the individual should not be found in contempt for failure to appear in court for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court.

Under current law, 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 strict rules of evidence applied, and few procedural safeguards.

According to research from the Maryland Consumer Rights Coalition (MCRC), consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland. From the MCRC 2018 publication *No Exit: How Maryland's Debt Collection Practices Deepen Poverty & Widen the Racial Wealth Gap*:

“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 a jailable offense in Maryland.”

Senate Bill 452 is consistent with the Greater Baltimore Committee’s organizational focus on advancing racial equity and social justice by considering the disproportionate impact that legislation may have on small and minority owned businesses, minority populations, and economically disadvantaged residents.

**For these reasons, the Greater Baltimore Committee urges a favorable report on Senate Bill 452.**

*The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 67-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.*

**GREATER BALTIMORE COMMITTEE**

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(410) 727-2820 • [www.gbc.org](http://www.gbc.org)

**testimony2022sb452ltr.pdf**

Uploaded by: Franz Schneiderman

Position: FAV



## **Auto Consumer Alliance**

13900 Laurel Lakes Avenue, Suite 100  
Laurel, MD 20707

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**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.



## **Auto Consumer Alliance**

13900 Laurel Lakes Avenue, Suite 100  
Laurel, MD 20707

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 19<sup>th</sup> Century practice.

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

Sincerely,

Franz Schneiderman  
Consumer Auto

# **SB 452 - Favorable - NACA Testimony.pdf**

Uploaded by: Kathleen Hyland

Position: FAV



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

February 21, 2022

Senator William C. Smith, Jr., Chair  
Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401  
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

The National Association of Consumer Advocates is a nonprofit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information-sharing among consumer advocates across the country and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers. In pursuit of this mission, NACA advocates for debt collection protections for consumers and families.

The recent trend in Maryland, on all sides of this issue, is against body attachments. Creditors' attorneys and consumer advocates have been working together to change the law. Creditors' attorneys disfavor body attachments because the orders are not always properly administered, which has caused negative publicity for debt collectors. They further explained that courts have ordered body attachments without any request because judges are limited by procedural options.

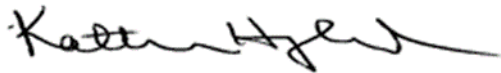
I litigate debt collection violations related to post-judgment enforcement issues in small claims matters. Such cases have involved situations where consumers were never served with the underlying district court lawsuits, matters of mistaken identity, and the illegal garnishment of wages and bank accounts by creditors.

Restraining human liberty in small claims matters is too great of an unchecked power for an already imperfect system.

For additional consideration, in February of 2020, I met with a group of formerly incarcerated women at the “Life After Release” program in Prince George’s County. Upon arrest, many of these women fell behind in their finances and shared a number of the problems they encountered with small claims courts and civil judgments that fell outside of their control. Alarming, they were re-arrested for body attachments the courts issued for small claims judgments. As a direct consequence of the existing body attachment law, these women then ended up back in prison because subsequent arrests for debts violated the terms of their probation. SB 452 would stop this vicious cycle of incarceration, as well as curtail the many other unintended consequences debtors experience from the disparate impacts of this policy.

**It is time to stop the outdated practice of body attachments in Maryland. SB 452 will abolish this practice in small claims matters. For this reason, we strongly urge a favorable report.**

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Hyland".

Kathleen P. Hyland, Esq.  
Maryland State Chair, NACA



# **End Debtors Prisons 2022 Factsheet (4).pdf**

Uploaded by: Marceline White

Position: FAV



## End Debtors' Prisons: Vote YES on HB 349/SB 452

### The Issue

Maryland's Constitution says that "no person shall be imprisoned for debt" and 80 years of state case law makes clear that an individual should not be jailed for a consumer debt.

Yet, in Maryland, from 2010-2014 more than 130 body attachments -a lien on an individual's body-were issued each month. These arrest warrants were issued at the behest of debt collectors to determine what assets an individual may possess that plaintiffs can garnish to pay the judgment owed.

In 2020, in the midst of the COVID-19 pandemic, a Montgomery County woman was arrested and briefly 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.

### Past Legislative Action

In 2013, the General Assembly passed legislation<sup>1</sup> that limited this practice in two ways:

- People arrested must be taken to a) the court that issued the body attachment, if it is in session, or b) to a judicial officer of the District Court (most likely a District Court Commissioner) if the court itself is not in session.
- If the court (or judicial officer) does not release the arrested person on their own recognizance without any conditions, the conditions must be the least onerous to ensure the person's attendance at the next hearing.

Despite recent changes to the law, problems remain. MCRC's research shows that body attachments and arrests continue, and at times, individuals are jailed over a weekend if they are arrested on a Friday and cannot see a court commissioner.

Creditors and consumer advocates agree that the law is unevenly followed and creates more confusion than clarity.

### Problems with Current Law :

- **It's unnecessary. Creditors and consumer advocates agree**-these attachments are a remnant of

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<sup>1</sup> 1 Chapter 622 of 2012, codified at Md. Code, Cts & Jud. Proc. 6-411



another era. Creditors can obtain the information they need on assets through modern technology and do not need to use body attachments to obtain information.

- **Creates a 2 tier-system of justice.** Despite efforts to prohibit setting a bond for release, we are still seeing bail or bond set -this creates a system where 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.
- **Criminalizes poverty.** Creates a vicious cycle of poverty where debt collection attorneys use the court system to help them collect debts – including debts that may legally not be able to be collected upon. For example, our research found that several individuals arrested and jailed had income that was legally protected from garnishment-yet they were arrested multiple times for a debt to a municipality.
- **It serves no constructive purpose.** Jailing someone for a debt serves no constructive purpose: the individual is not violent, nor are they a danger to the community. The individual could however experience real harm due to a body attachment, including losing their job if they are incarcerated. Job loss, of course, makes it far more difficult to repay a debt.
- **Endangers public health.** In the midst of a global health pandemic, it is dangerous and risky to arrest and potentially jail a Maryland resident because of a small consumer debt.
- **Waste of taxpayers money.** Given the many other pressing issues that sheriffs and police must deal with, it is a poor use of their time and taxpayer resources for them to arrest individuals for these small debts allegedly owed to municipalities, HOAs, and bail bondsmen. Jailing these individuals is also a poor use of state resources.

#### The Solution:

Passage of HB 349/SB 452 will end debtors' prisons in Maryland.

#### What HB 349/SB 452 WILL do:

- Eliminate arrest warrants (body attachments) as aids of interrogatories or for show cause (contempt) in interrogatories.
- Ease the burden on the courts time and resources by eliminating these outdated Dickensian procedures.
- Eliminate a process that criminalizes poverty for indigent Maryland residents, particularly those in communities of color.

**Vote YES on HB349 /SB452**

# **MCRC 2022 Testimony End Debtors Prison – SB 452 (**

Uploaded by: Marceline White

Position: FAV



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



Maryland Consumer Rights Coalition

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

# **A Pound of Flesh The Criminalization of Private De**

Uploaded by: Marceline White

Position: FAV



# A Pound of Flesh

*The Criminalization of Private Debt*

**ACLU**

# A Pound of Flesh

## *The Criminalization of Private Debt*

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**ACLU**

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# Executive Summary

An estimated 77 million Americans—one in three adults—have a debt that has been turned over to a private collection agency. Thousands of these debtors are arrested and jailed each year because they owe money. Millions more are threatened with jail. The debts owed can be as small as a few dollars and can involve every kind of consumer debt, from car payments to utility bills to student loans to medical fees.<sup>1</sup> These trends devastate communities across the country as unmanageable debt and household financial crisis become ubiquitous, and they impact Black and Latino communities most harshly due to longstanding racial and ethnic gaps in poverty and wealth.

Debtors' prisons were abolished by Congress in 1833 and are thought to be a relic of the Dickensian past. In reality, private debt collectors—empowered by the courts and prosecutors' offices—are using the criminal justice system to punish debtors and terrorize them into paying even when a debt is in dispute or when a debtor has no ability to pay.

The criminalization of private debt happens when judges, at the request of collection agencies, issue arrest warrants for people who failed to appear in court to deal with unpaid civil debt judgments. In many cases, the debtors were unaware they were sued or had not received notice to show up in court.

Tens of thousands of these warrants are issued annually, but the total number is unknown because states and local courts do not typically track these orders as a category of arrest warrants. In a review of court records, the ACLU examined more than

**1 in 3**  
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collection agency.

1,000 cases in which civil court judges issued arrest warrants for debtors, sometimes to collect amounts as small as \$28. These cases took place in 26 states—Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, and Wisconsin—and Puerto Rico and the Northern Mariana Islands.

Even without arrest warrants, the mere threat of jail can be effective in extracting payment—even if that threat is legally unfounded. In the case of debts involving bounced checks, private collection companies now have contracts with more than 200 district attorneys' offices that allow them to use the prosecutor's seal and signature on repayment demand letters. It's estimated that more than 1 million consumers each year receive such letters

threatening criminal prosecution and jail time if they do not pay up. But review of company practices has documented that letters often falsely misrepresent the threat of prosecution as a means of coercing payments from unknowing consumers.

## How the Court System Is Used to Send Debtors to Jail

When Americans fail to repay financial obligations, creditors usually hire debt collectors to go after the debtors or sell the debts to companies that specialize in collections. More than 6,000 debt collection firms operate in the United States, collecting billions of dollars each year.<sup>2</sup>

These collectors flood small-claims and other state courts with lawsuits seeking repayment. Millions of collection lawsuits are filed each year in state and local courts that have effectively become collectors' courts. The majority of cases on many state court dockets are debt collection suits,<sup>3</sup> and in many state courts, debt purchasers file more suits than any other type of plaintiff.

Debt collection lawyers can file hundreds of suits a day, often with little evidence that the alleged debt is actually owed.<sup>4</sup> Once a lawsuit is filed, the process is stacked against defendants, the overwhelming majority of whom are not represented by an attorney. And collectors have a big advantage in small-claims courts, which provide very limited due process protections to debtors.

Many courts churn through collection lawsuits with astonishing speed and little scrutiny. Over 95 percent of debt collection suits end in favor of the collector, usually because alleged debtors do not mount a defense. In many cases, defendants did not know they had been sued. And, of course, collectors have little incentive to give proper notice to the defendants.

Once a collection company has won a judgment, it has multiple methods to collect the money owed. It can seek to have a defendant's paycheck or bank account garnished, seize their cars or other personal property, or record a lien against their property. Creditors can

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### CASE STUDY

## Arrested for a student loan debt

In September 2015, Gordon Wheeler was arrested by seven or eight U.S. Marshals at his Texas home for failure to appear at the U.S. District Court for the Southern District of Texas. Wheeler was unable to show up in court because he had just had open-heart surgery. "You just coming over here serving me papers saying I got to show up and I just told you I had open-heart surgery two or three weeks ago...so I'm not a well man," he said. The original \$2,500 federal student loan he obtained to pay for trucking school in 1983 had mushroomed into \$12,000 with interest and fees. Wheeler is retired and subsists on Social Security and disability, and says he cannot pay it, noting, "You can't squeeze blood out of a turnip."<sup>5</sup>

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also ask courts to require defendants to be in court for post-judgment proceedings. At these proceedings, often called "judgment debtor examinations," defendants are required to answer questions about their wages, bank account balances, property, and assets. Debt collectors use these responses to take other steps to collect on the judgment.

If the debtor does not appear in court for the judgment debtor exam, creditors can ask the judge to issue a civil warrant for the debtor's arrest. In the cases the ACLU documented, debtors failed to appear at hearings for various reasons, most often because they did not receive notification of the court date or even of the existence of the lawsuit. Some were unable to appear because of work, child care responsibilities, lack of transportation, physical disability, illness, or dementia. We found two cases in which debtors missed hearings because they were terminally ill and died shortly after warrants were issued for their arrest.

## The Role of Civil Court Judges

State court judges have the power to order the debtor's employer to garnish the debtor's wages and authorize a sheriff to seize the debtor's property. In 44 states, judges—including district court civil judges, small-claims court judges, clerk-magistrates, and justices of the peace—are allowed to issue arrest warrants for failure to appear at post-judgment proceedings or for failure to provide information about finances. These warrants, usually called “body attachments” or “capias warrants,”<sup>6</sup> are issued on the charge of contempt of court.<sup>7</sup> In some cases, debtors are threatened with jail for contempt of court if they do not pay or agree to payment plans.

Once arrested, debtors may languish in jail for days until they can arrange to pay the bail. In some cases, people were jailed for as long as two weeks. Judges sometimes set bail at the exact amount of the judgment. And the bail money is often turned over to the debt collector or creditor as payment against the judgment.

Many of those arrested said they had no idea a warrant had been issued for their arrest. They learned of the warrant only when police pulled them over for a broken taillight or traffic violation and the warrant showed up in computer records. Some were arrested at home in the middle of the night or at their workplace. In some cases, people were arrested

when police officers came to their home because of an incident involving another family member or when they were witnesses to a crime and the police discovered the warrant after obtaining their identifying information. In other cases, debtors with warrants issued against them were arrested when law enforcement conducted a sweep of all residents of public housing who had outstanding warrants for any reason.

These arrests impose real costs on the courts and jails in time and resources. But the damage these arrests do to debtors—including those whose debts are disputed—in terms of lost wages, lost jobs, and psychological distress can be enormous. Arrest warrants, even if they don't result in jailing, can cause long-lasting harm because such warrants may be entered into background check databases, with serious consequences for future employment, housing applications, education opportunities, and access to security clearances.

## Prosecutors and Debt Collectors as Business Partners

Local prosecutors have no role in civil debt collection lawsuits. But they have a central role when it comes to money owed due to bounced checks. Every state has criminal laws dealing with bad or bounced checks, and prosecutors are required to review these cases to determine if they are subject to prosecution. Unfortunately, in many places, district attorneys seeking to get these cases off their desks and divert defendants from court have decided to hand over enforcement to private collection companies, even when no crime has been committed. These companies face a conflict of interest when issuing repayment demand letters because they profit when an unwitting recipient pays up in response to a false threat of prosecution.

Private debt collectors have entered into hundreds of partnerships with local district attorneys' offices to get people to pay on bounced check claims, under threat of prosecution. Some collectors with these contracts send letters on the district attorney's

The ACLU has  
found cases in which  
threatening letters  
were sent for bounced  
checks as low as  
**\$2.00**



letterhead to threaten people with criminal prosecution, jail, and fines—even when the prosecutor hasn’t reviewed the case to see if a criminal violation occurred.

The companies collect not only restitution for the unpaid check, but also nearly always tack on a variety of fees, including fees to attend a diversion program run by these same companies, usually a class on financial responsibility for which the check writers may have to pay more than \$200, which may be far more than the value of the bounced check. Some portion of these fees, depending on the contract, is then funneled to the district attorneys’ offices.

Few, if any, of the bounced checks that trigger threatening collection letters qualify for criminal charges. In the vast majority of cases, check writers have inadvertently bounced checks without criminal intent, or the amount of the bounced check was too low to warrant prosecution. The ACLU found cases in which threatening letters were sent for bounced checks as low as \$2, clearly too low to meet the criteria for criminal prosecution. Paul Arons, a lawyer based in Washington state who has been fighting these check collection tactics in the courts since 2001, told the ACLU he has documented over 10,000 checks for under \$10 that triggered letters threatening consumers with jail, including bounced checks for as little as one penny.<sup>8</sup>

In the case of one of the largest check diversion companies, the Consumer Financial Protection Bureau (CFPB) found that less than 1 percent of cases were examined by a prosecutor for possible criminal prosecution.<sup>9</sup> In practice, prosecutors merely review a monthly list of bounced checks and the check writer’s name and address without evaluating why the bank returned the check unpaid or the check writer’s intent.

## A System That Breeds Coercion and Abuse

With little government oversight, debt collectors, backed by arrest warrants and wielding bounced

check demand letters, can frighten people into paying money that may not even be owed. Few tools are as coercive or as effective as the threat of incarceration. For example, one 75-year-old woman subsisting on \$800 monthly Social Security checks went without her medications in order to pay the fees she believed were required to avoid jail time for bouncing a check. And as one lawyer in Texas, who has sought arrests of student loan borrowers who are in arrears, said, “It’s easier to settle when the debtor is under arrest.”<sup>10</sup>

The people who are jailed or threatened with jail often are the most vulnerable Americans, living paycheck to paycheck, one emergency away from financial catastrophe. In the more than 1,000 cases reviewed by the ACLU, many were struggling to recover after the loss of a job, mounting medical bills, the death of a family member, a divorce, or an illness. They included retirees or people with disabilities who are unable to work. Some were subsisting solely on Social Security, unemployment insurance, disability benefits, or veterans’ benefits—income that is legally protected from outstanding debt judgments.

## Key Recommendations

These abusive practices raise grave due process, equal protection, and human rights concerns, yet they remain largely unchecked because there is minimal government oversight and scant protection for debtors under federal and state laws. With a few notable exceptions, regulators rarely intervene to stop these practices. For example, in Illinois, where residents in a third of the counties commonly faced incarceration in debt collection cases, reforms spearheaded by Attorney General Lisa Madigan and enacted by the state Legislature substantially curbed the practice.<sup>11</sup> But there’s much that can be done by state attorneys general, state courts, legislatures, the CFPB, and Congress to protect consumers against these forms of intimidation and threats. A more comprehensive set of recommendations is provided on page 40.

- Legislatures should enact laws that prohibit courts from issuing arrest warrants in debt

collection proceedings. Until arrest warrants are prohibited, at a minimum, legislators should require that defendants be released on their own recognizance upon service of the warrant and not taken into custody or required to pay bail.

- State court rules committees should prohibit judges from issuing arrest warrants for contempt, either for failure to pay or for failure to appear, in debt collection litigation. Court rules committees should also amend rules or issue court administrative directives that provide for more robust due process protections for consumers.
- District attorney offices should terminate their contracts with private check collection companies.
- State attorneys general should take action against check collection companies abusing their contracts with district attorney offices. State attorneys general have the duty to enforce consumer protection laws by bringing civil enforcement actions pursuant to their authority under federal and state consumer protection statutes. By suing check collection companies engaged in unfair and deceptive practices that violate state and federal laws, state attorneys general can compel an end to these practices, provide restitution to affected consumers, and impose civil penalties.
- Pursuant to its rulemaking authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB should promulgate rules that preclude debt collectors from seeking the arrest or jailing of alleged debtors in pursuit of payments toward civil debts. The CFPB should also initiate further enforcement actions against companies operating bad-check enforcement programs for violations of the Fair Debt Collection Practices Act (FDCPA).
- The Conference of Chief Justices and the Conference of State Court Administrators

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#### CASE STUDY

### Elderly couple jailed for a housing debt

In Maryland, Isaac, 83, and his wife, Doris, 78, were jailed because they did not appear at an order to show cause hearing in a district court over \$2,342.76 owed to their homeowners' association plus \$450 in attorney's fees. They had never been served with notice of the show cause hearing, which was scheduled for failure to appear at a post-judgment proceeding for which they also had never been served. The elderly couple was out of the country at the times the process server claimed to have performed service. The server described Isaac as being 41 years old and Doris as his 28-year-old roommate. When the District Court of Maryland in Prince George's County issued a body attachment authorizing their arrest in January 2014, the judge set a cash-only bond in the amount of \$2,900, which meant that Doris and Isaac could not get out of jail until they paid the same amount as the default judgment against them. Doris spent the night alone in a cold jail cell. While in detention, Isaac began vomiting blood and became non-responsive. He was transported to a hospital, where he was kept overnight and received emergency medical treatment.

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should issue a judicial bench card creating guidelines for judges to prevent the abuse of their contempt of court authority in civil debt collection proceedings.



# A Nation of Debtors on the Financial Edge

Predatory debt collection companies are profiting from a nation of debtors, many of whom are trapped in debt and living on the financial edge. The scale of this national financial crisis is staggering. The Urban Institute estimates that 77 million Americans—about 35 percent of all adults—have a debt that has been turned over to a third party for collection.<sup>12</sup> One in five Americans has unpaid medical bills that have gone into collection.<sup>13</sup>

The Consumer Financial Protection Bureau (CFPB) found in January 2017 that about one-third of consumers were contacted by a debt collector about a debt in the previous 12 months.<sup>14</sup> Debt collection companies make more than one billion contacts with consumers to recover debts each year.<sup>15</sup> With record numbers of people in debt, the multi-billion-dollar collection industry has turned huge profits. In 2016, the industry raked in estimated annual revenues of \$11.4 billion.<sup>16</sup> Large debt buyers' profit margins far surpass those of corporations like Walmart.<sup>17</sup>

**1 in 5**  
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But the debts that trap Americans are often not large. Americans with a debt in collections owe just over \$1,300 per person on average.<sup>18</sup> The median amount of non-medical debt in collections is \$366, while the median medical debt is \$207.<sup>19</sup>

Many Americans spiral into indebtedness because they are living in a state of financial peril and are pushed over the edge by a traumatic event like the loss of a job, serious illness, or divorce, exacerbated by snowballing interest rates and fees. When Congress wrote the Fair Debt Collection Practices Act in 1977, it recognized that most overdue debts are not intentional:

One of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are “deadbeats.” In fact, however, there is universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is miniscule.... [T]he vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce.<sup>20</sup>

In fact, huge numbers of working- and middle-class Americans have little or no savings to cover emergency medical bills, car repairs, or other unanticipated expenses.<sup>21</sup> Research by the Pew Charitable Trusts found that one in three American

**56%**  
of Americans say  
their incomes are  
falling behind the  
cost of living.

families had no savings at all, and that 41 percent of households did not have \$2,000 to cover an emergency expense. The lack of savings and financial assets to tide a family over in crisis is an even greater problem among younger people and racial and ethnic minorities, as described in more detail below.

Broad economic forces have also pushed more households to the brink of financial disaster. With the cost of living outpacing real income growth over the past dozen years for most American households, families are bridging the gap with credit cards and other loans.<sup>22</sup> A Pew survey found that 56 percent of Americans say their incomes are falling behind the cost of living.<sup>23</sup> Consumers now depend on credit cards and other loans to pay for basic expenses like medical bills, rent, child care, and transportation. Trapped in this pernicious cycle, millions have found themselves mired in debt they cannot afford to pay back.

For some, these unmanageable debts have led to arrest and jail time after debt collectors take them to court. The ACLU found arrest warrants being issued in nearly every kind of consumer debt or loan—medical bills; federal and private student loans; rent payments and unpaid homeowners' association fees; mortgage foreclosure deficiencies; unpaid heating repair bills, unpaid utilities bills, and balances owed on furniture purchases made on credit; auto loans, car repair bills, auto insurance subrogation claims, and fuel bills; high-interest payday loans and car title loans<sup>24</sup>; small-business commercial

loans and equipment financing; credit card debts; gym fees; revolving debt accounts at retail stores; daycare center fees; online education courses from for-profit colleges; and school textbook fees. Among the medical debts that resulted in arrests were fees owed to radiology offices, surgery centers, women's health care providers, dentists, urgent medical care providers, pediatric clinics, rehabilitation services, pharmacies, addiction service providers, and ambulance services.

Debt in America is ubiquitous. But race and ethnicity profoundly influence who is vulnerable to predatory private debt collection. In 2014, the Pew Research Center found that Black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States.<sup>25</sup> A 2013 Pew Research Center study of federal data found that the median wealth of white households was 13 times the median wealth of Black households, with a difference in net worth of the typical white and Black families at \$131,000—the highest racial wealth gap documented since 1989.<sup>26</sup> The study also found that white households have an average wealth 10 times greater than that of Latino households.<sup>27</sup> These significant racial and ethnic gaps in poverty and wealth result in increased financial insecurity for Black and Latino families.<sup>28</sup>

Because Black and Latino people are more likely to be poor, they are more frequently targeted for risky financial products, such as payday loans.<sup>29</sup> The racial and ethnic wealth gap, in turn, makes it more likely that Black and Latino individuals and families lack the savings and financial assets necessary to tide them over in a crisis with financial consequences, such as job loss or death of a wage-earning family member.

As a result, Black and Latino people are more frequently among those with unmanageable debt burdens.<sup>30</sup> For example, a 2015 Pew Research Center study found that around one-quarter of African-American families would have less than \$5 in savings if they liquidated all their financial assets, while the bottom 25 percent of white households would have \$3,000.<sup>31</sup>

Because of these trends, the impact of predatory practices tends to fall most heavily on minority communities. Some empirical studies suggest that there are marked racial disparities in debt collection lawsuits. A study by ProPublica found that the rate of court judgments from debt collection lawsuits was twice as high in mostly Black communities than it was in mostly white ones, even controlling for income.<sup>32</sup> A study by the New Economy Project found that the 10 New York state zip codes with the highest concentrations of default judgments in debt collection lawsuits are predominantly non-white neighborhoods, and six of these zip codes bearing the brunt of debt collection lawsuits are largely middle-income Black communities.<sup>33</sup>

Because the courts adjudicating debt collection cases generally do not record data on the race of alleged debtors for whom these courts are issuing arrest warrants, the ACLU was unable to obtain data documenting racial disparities in the issuance of arrest warrants. However, based on our research we do know that arrests for civil debt-related warrants often occur when debtors are pulled over or stopped by police for traffic offenses, vehicle equipment violations such as broken taillights, or other minor infractions, or during searches of public housing residents to identify people with open warrants. To the extent that these policing practices disproportionately target Black Americans, the racial disparities in debt collection judgment rates may be amplified.

# The Debt-to-Jail Pipeline

State courts are deeply enmeshed in the debt collection process. At the request of a collection company, a court can enter a judgment against a debtor, authorize a sheriff to seize a debtor's property, and order an employer to garnish the debtor's wages. In 44 states, a court can even issue warrants for the arrest of debtors who fail to appear at post-judgment court proceedings or fail to provide information about their finances. In other words, in most of the country, an unpaid car loan or a utility bill that's in arrears can result in incarceration.

In states that permit arrests in debt matters, courts can issue warrants after creditors or debt collectors have sued for money owed and won a judgment against an alleged debtor.<sup>34</sup> These suits nearly always result in default judgments against the debtors because they rarely defend themselves in court, often because they never received proper notice of the lawsuit. The victorious creditors can ask judges to require the debtors to appear in court for post-judgment proceedings (sometimes called judgment debtor examinations) in which debtors are required to answer questions about their wages, bank account balances, property, and assets.<sup>35</sup> Collection companies use this information to garnish debtors' paychecks, put liens on their property, and take other steps to collect the debt.

When a debtor does not appear for these proceedings, the judge can issue an arrest warrant—known variously as “body attachments,” “capias warrants,” or bench warrants—for contempt of court.<sup>36</sup> Judges can also issue such arrest warrants if the debtor fails to answer written interrogatories about their

In Massachusetts,  
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**1,325**  
warrants for the arrest  
of alleged debtors in  
2016.

finances and assets or turn over documents such as tax returns.

There are tens of thousands of these warrants issued annually, but the total number is unknown, because states and local courts do not typically track these orders as a category of arrest warrants. State and county court data obtained by the ACLU through Freedom of Information Act and open records requests reveals that in 2016, judges signed off on more than 8,500 arrest warrants in debt collection proceedings in the three states and four counties where we were able to obtain data. In 2016, Maryland district court judges issued 852 warrants in debt collection cases.<sup>37</sup> In Nebraska, judges issued 548 warrants in debt collection suits in 2016.<sup>38</sup> In Massachusetts, four small-claims courts issued

1,325 warrants for the arrest of alleged debtors in 2016; the ACLU was unable to obtain data for small-claims courts statewide or for district and circuit courts.<sup>39</sup> Utah district court and justice court judges issued 5,831 civil bench warrants statewide in fiscal year 2016, a 6 percent increase over the previous year, according to state courts system data.<sup>40</sup> As of January 2018, there were 1,339 active warrants in debt collection cases in Vanderburgh County, Indiana, a figure that includes unpaid child support cases because the Vanderburgh County Sheriff's Office tracks these warrants as a single category.

The U.S. Marshals Service could not adequately respond to a Freedom of Information Act request filed by the ACLU seeking information about arrests made in student loan collection cases nationwide because its regional offices do not enter all such warrants into their centralized database. The regional office in Houston reported that its office processed 25 arrest warrants for people who missed court appearances in connection with unpaid federal student loan debts during 2015.<sup>41</sup>

In a review of court records, the ACLU examined more than 1,000 cases in which civil court judges issued arrest warrants for debtors, sometimes to collect amounts as small as \$28. These cases took place in 26 states—Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, and Wisconsin—and Puerto Rico and the Northern Mariana Islands.

In the cases we examined, debtors often failed to appear because they did not receive notice of the court date or even the existence of the lawsuit. Others said that they were unable to pay the judgment and feared that appearing in court or responding to inquiries would result in garnishment of their wages or seizure of their assets, like the car they needed to get to work.

Most of these debtors could not afford to hire a lawyer and had no idea how to defend themselves in court proceedings—nor were they advised by the court

how to do so. Some were unable to appear in court because of work, child care responsibilities, lack of transportation, physical disability, illness, or dementia. We documented two cases in which the debtors missed court hearings because they were terminally ill; both died shortly after warrants were issued for their arrest. One Texas man arrested in connection with an unpaid student loan missed his scheduled hearing because he was recovering from open-heart surgery. In other cases, women missed hearings because they were pregnant and under doctor-ordered bed rest or home recovering from childbirth.<sup>42</sup>

Some collectors summon debtors to court repeatedly and request arrest warrants when defendants miss a hearing.<sup>43</sup> For example, when an unemployed Kansas man fell behind on payments for a debt owed to Nebraska Furniture Mart, the collector repeatedly requested that the judge order him to appear in court, with one request made for a hearing only 10 days after the prior in-court examination.<sup>44</sup> When he missed a hearing after making two court appearances, the judge cited him for contempt of court and ordered that a bench warrant be issued for his arrest.<sup>45</sup> In some cases, debtors who missed multiple hearings were arrested more than once for a single debt in collection.

In some states, debtors can also be jailed when they fall behind on payments promised under court-ordered payment plans. If they fail to keep up with the payment plan, they may be arrested for contempt of court.

Only a fraction of the warrants issued actually result in jailing because local law enforcement often wait to execute the warrants until the individuals show up in a database search triggered by a traffic stop or other contact with law enforcement, and in some cases judges order the person released on their own recognizance or taken directly to court upon service of the warrant. But some debtors languish in jail for weeks until they can arrange to pay the bail set in their cases.

In most places, when warrants are executed, debtors are jailed until they pay cash bail or post a bond.

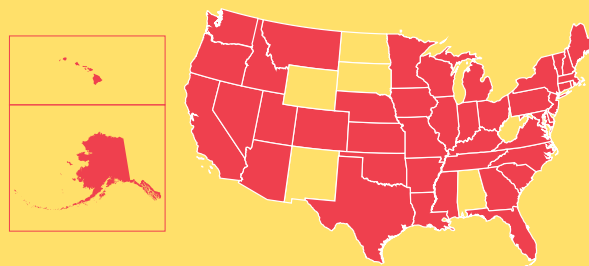
Often the bail money is turned over to the debt collector or creditor as payment against the judgment. Depending on the jurisdiction, the amount debtors have to pay to get out of jail may be set at the exact amount of the judgment, which includes not only the amount of the original debt but also attorney fees and costs, interest, late fees, and other expenses that are arbitrarily determined by the collection company and can far exceed the amount owed.

Bail may be even higher than the judgment amount when courts tack on post-judgment interest, supplemental attorney's fees, and other costs at the debt collectors' request. For instance, the ACLU found cases of medical debt collections in Idaho in which judges set the bond at more than double the amount of the default judgment, which itself was already padded with fees. Judges sometimes require that bail be paid in cash, which means that incarcerated debtors cannot use a bail bondsperson. In other cases, bail may be set at an amount the debtor still cannot afford.

### State and Federal Laws That Allow the Jailing of Debtors

For nearly two centuries, debtors' prisons—institutions where debtors were incarcerated until they paid their debt—have been prohibited in the United States. In 1833, the federal government abolished imprisonment for debt under federal law.<sup>46</sup> The states followed by issuing similar bans on debtors' prisons, and in 1948, Congress prohibited incarceration for debt anywhere that it has been outlawed by state law.<sup>47</sup> In *United States v. Rylander*, the Supreme Court held that courts do not have “any reason to proceed with a civil contempt action” when a defendant is unable to comply with an order requiring payment.<sup>48</sup> State courts have also ruled that holding defendants for failure to pay money judgments violates their state constitutional or statutory prohibitions against debtors' prisons.<sup>49</sup> Since every state, either by constitutional provision or statute,<sup>50</sup> currently prohibits imprisonment for failure to pay civil debts, debtors' prisons should not exist in the United States.<sup>51</sup>

**44**  
Laws in  
states and the federal  
rules of civil and  
bankruptcy procedure  
expressly authorize  
debtors to be arrested  
and incarcerated for  
contempt of court.



Yet courts can get around these prohibitions by using their authority to hold debtors in contempt for failure to comply with post-judgment orders like in-court examinations, discovery orders, or, in some cases, court-ordered installment plans.<sup>52</sup> In other words, debtors are subject to jailing for disobeying court orders concerning proceedings designed to satisfy the money judgment, but not for the original money judgment itself.<sup>53</sup> For debtors, this technical distinction matters little.

While contempt power is “inherent in all courts,”<sup>54</sup> laws in 44 states, the Federal Rules of Civil Procedure, and the Federal Rules of Bankruptcy Procedure expressly authorize debtors to be arrested and incarcerated for contempt of court in such instances: Alaska, Arizona, Arkansas, California, Colorado,



Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin, as well as the District of Columbia and the commonwealths of the Northern Mariana Islands and Puerto Rico. (The federal and state laws authorizing the jailing of debtors are described in Appendix II.)

### **When Judges Reflexively Issue Arrest Warrants for Debtors**

The practice of issuing arrest warrants varies greatly. Some judges or courts routinely issue warrants, some issue warrants occasionally, and others never do. There can be differences among judges in the same county or city. For example, most arrests in federal student loan cases documented by the ACLU in Texas were on warrants issued by a single judge: Judge Lynn Hughes of the U.S. District Court for the Southern District of Texas.<sup>55</sup>

Who gets arrested also depends on the debt collector. The ACLU's research found that the process of issuing arrest warrants is often driven by the creditors' attorneys, debt collectors, or original creditors. Courts will generally order the arrest of a debtor only on the request of the creditor or debt collector, some of whom make it a practice of seeking warrants, while others eschew it. For instance, in most of the Texas federal student loan cases, the arrest warrants were sought and obtained by M. H. "Butch" Cersonsky, a debt collection attorney, and his colleagues at the Houston-based law firm Cersonsky, Rosen & García, P.C., with which the federal Department of Education has long contracted to recover unpaid loans.<sup>56</sup> In a Collections 101 course taught by Cersonsky for the State Bar of Texas in Houston, he even said, "It's easier to settle when the debtor is under arrest."<sup>57</sup> Cersonsky and his colleagues found a willing partner in Judge Hughes.

Some judges reflexively issue warrants at the creditor attorney's request. A justice of the peace in Maricopa County, Arizona, Judge Lenore Driggs, told the ACLU that she and other judges in the jurisdiction issue civil bench warrants whenever they are requested.<sup>58</sup> By way of example, she noted that a debt collector representing debt buyer Roger's Acceptance Corporation of Arizona typically requests warrants for the arrest of debtors, which was confirmed by the ACLU's review of dozens of warrants issued by the Maricopa County Justice Courts.

In Idaho, Medical Recovery Services, LLC, a collection company that specializes in collecting medical debts, is responsible for securing the arrests of more debtors statewide than any other collector, having obtained 345 arrest warrants from 2010 to 2016 that resulted in the jailing of 222 debtors, based on the ACLU's review of court records. In Washington, a single debt collection attorney, James Patrick Hurley, has obtained warrants for the arrest of more than 200 debtors since 2010 and was observed bragging in court about getting the most warrants like it was a competition.

In Maryland, corporate entities affiliated with Kushner Companies, the family real estate business run by senior White House advisor Jared Kushner until January 2017, have obtained warrants for the arrest of 105 former tenants since 2013 that resulted in the jailing of 22 debtors for failing to appear in court over unpaid rent, more than any other landlord in the state over that time, according to an analysis of Maryland District Court data by the Baltimore Sun.<sup>59</sup> And in Massachusetts, debt collection law firms representing debt buyers—third-party debt collection companies that buy debts for pennies on the dollar—are particularly active in securing arrest warrants as compared with other creditors. For instance, a lawsuit brought by consumers in Massachusetts against Midland Funding, a debt buyer, alleged that the collection company aggressively enforced debt judgments—usually default judgments—through arrest warrants.<sup>60</sup> The suit was eventually settled.

In interviews with the ACLU, consumer rights lawyers and court-watchers in states around the country described how they have witnessed judges

rubber-stamp scores of warrants in a single day. For example, Dalié Jiménez, a consumer law professor at the University of Connecticut School of Law, observed a judge in the Boston Municipal Court stamp over 100 warrants for the arrest of debtors in a single day, so many that the stamp broke.<sup>61</sup> This is not an anomaly: In four other Massachusetts small-claims courts where data was available (Cambridge, Pittsfield, Plymouth, and Quincy), arrest warrants were issued in more than a quarter (28.7 percent) of the consumer debt cases filed in 2016.<sup>62</sup>

While waiting for a case to be called in Yakima County, Washington, Scott Kinkley, a lawyer with the Northwest Justice Project, observed the judge sign roughly 30 arrest warrants in about 10 minutes, all to defendants with Latino names, setting bail at the alleged amount owed.<sup>63</sup> He said the judge and the collection attorney had an efficient rhythm:

**Judge: “Next case is # \_\_\_\_\_.  
Is \_\_\_\_\_ present? Okay,  
hearing no answer I am going to sign the  
proposed bench warrant. How much is  
this one?”**

Collection attorney: “\$\_\_\_\_, your Honor.”

Judge: “Order has been signed.”

A court-watcher who observed small-claims proceedings in Dorchester, Massachusetts, similarly reported that the clerk-magistrate would speed through a list of cases, maintaining a “steady rhythm” of ordering either a default judgment or a warrant after the attorney responded for the plaintiff:

In the first couple cases of each section, the Clerk-Magistrate would say “default” or “capias” after the cover attorney responded for the plaintiff followed by a brief silence indicating that the defendant was absent. But after uttering each of those words the first couple times, the Clerk-Magistrate did not even bother to say that much and just moved on to the next case. It seemed as though it was assumed, since the defendant did not respond, that everyone in the room knew

there was a default judgment for the plaintiff or that a capias was being issued without anyone having to say it.”<sup>64</sup>

(It is common practice in small-claims court sessions with a large volume of debt collection cases for one or two “cover attorneys” to answer for all the large debt collection plaintiffs who have cases scheduled on any given day. These attorneys substitute for the plaintiff’s attorney of record on a case when they do not appear, while debtors have no such service to rely upon.)

In some cases, warrants are issued by court staff, not judges. Katherine Rybak, a lawyer with Indiana Legal Services, told the ACLU that in Vanderburgh County Small Claims Court, when a debtor does not show up at an order to show cause hearing, a warrant is issued automatically by court staff even before the judge takes the bench.<sup>65</sup> Until Rybak stopped the practice in 2014 with a letter to the judge, in Dubois County Small Claims Court it was standard practice to issue warrants immediately—without an order from a judge—upon receiving a phone call from the creditor when a debtor missed a payment or was late paying under an agreement made at previous hearing.

## How Courts Use the Threat of Jail to Extract Payment

The ACLU’s research found that some small-claims court judges, justices of the peace, clerk-magistrates, district court civil judges, and court clerks exceed their authority by threatening debtors with jail for contempt of court if they do not pay in full or agree to payment plans.

In Michigan, an officer of the Ionia County District Court demanded payment in full from a man against whom an arrest warrant had been issued in 2017 for missing a debtor’s examination in a lawsuit filed by his landlord for unpaid rent and damages. The judge who issued the warrant had set the bond amount at \$1,708.52, to be paid only in cash. When he told the court clerk he could not pay the bond in full but could pay \$100 a month, she refused to accept an installment plan and informed him and his legal aid attorney that he would be arrested if he did not pay in full.<sup>66</sup> He says



he is unable to pay the bond; the arrest warrant against him will remain active until he does so. He has not yet been arrested because the local court officer agreed not to execute the warrant while his legal aid lawyer tries to resolve the case. He is supporting his family on a small income, working for the apartment complex where he lives and having money taken from each paycheck to cover back rent. He says he lives in fear of being arrested.

In another case, a judge in Perry County, Indiana, threatened Herman Button with jail if he did not agree to pay \$25 a month toward a \$1,865.93 judgment his former landlord obtained for an eight-year-old rent debt. Button was unemployed and living on disability benefits; he appeared in court without a lawyer. The judge threatened him with jail even though he explained that he couldn't possibly make the payments:

The Court: So we're here today for you to explain what you're going to do to pay this off.

Mr. Button: I can't.

The Court: Okay, but you're going to.

Mr. Button: I can't do it.

The Court: Okay, Mr. Button.

Mr. Button: Yes, ma'am.

The Court: For some reason we're not communicating. Alright, you're not hearing me for some reason. I am telling you that, yes, you will. You're going to tell me how you're going to go about doing that. And I'm not going to accept I cannot, and if the next words out of your mouth are I cannot, Mr. Button, then you'll sit with Mr. Glenn at the Sheriff's Department until you find a way that, yes, you can. So what kind of payments can you make to pay this down?

Mr. Button: Five dollars (\$5.00) a month.

The Court: Five dollars (\$5.00) a month is—I'm going to be an old woman before this is ever paid off.

Mr. Button: That's what I can afford, ma'am. I live on Social Security disability. I've got to pay my rent and my lights and my gas.

The Court: I'm going to order you pay twenty-five dollars (\$25.00) a month until this is paid off. I'm going to show that we are to come back March 12, at 1 o'clock, at which time Miss James is going to tell me that she has already received fifty dollars (\$50.00) towards this. Okay.<sup>67</sup>

Button fought back and filed an appeal arguing that he should not be held in contempt and his assets should not be garnished to pay the judgment. The appeals court ruled the trial judge had improperly threatened Button with imprisonment and had failed to consider Button's ability to pay, as there was no evidence that Button could afford \$25 a month.<sup>68</sup>

The ACLU also documented cases in which sheriffs and constables tasked with serving warrants called, wrote, or went to the residences of debtors to personally threaten to jail them if they did not pay, agree to payment plans, or voluntarily surrender themselves at the courthouse. For instance, in Nebraska, a deputy sheriff drove to a woman's home and demanded payment toward a \$3,856.61 debt she originally owed to Wells Fargo. Believing she had to pay up, she borrowed \$30 from her mom, who happened to be visiting at the time. The sheriff's deputy charged \$22.82 to collect the \$30, so only \$7.18 went toward the judgment. Two weeks later, he returned to her home and demanded another \$30 payment, and he told her that he would return to collect payment every two weeks until the debt was satisfied.

In Massachusetts, a form letter sent by two constables in Haverhill and Lowell to consumers against whom warrants had been issued for failure to appear in debt collection cases warned, "It appears you have chosen to be arrested, put in handcuffs in front of your family, friends and/or coworkers and brought before the court." The letter continued, "Ignore this notice, and you will be arrested as soon as you are found; this could be tomorrow morning coming out of your home, at work, or anywhere you

are found. You then run the risk of not going home at the end of the day, but instead going to jail for Contempt of Court.”<sup>69</sup>

## **Abuse of Contempt and the Unlawful Return to Debtors’ Prisons**

The abuse of civil contempt proceedings to extract payments from debtors violates centuries-old federal and state laws prohibiting incarceration for debt.<sup>70</sup> Although courts ostensibly issue arrest warrants to compel alleged debtors to appear in court or comply with a court order to provide financial information, in practice debt collectors request arrest warrants to use them as leverage in debt collection. Creditors and debt collectors are keenly aware that they are most likely to receive payments from debtors when they are under threat of arrest or incarcerated. Courses and articles on the practice of debt collection law even advise lawyers that arrest warrants are an effective way to extract payment.<sup>71</sup> One such article advised, “Body attachments are usually rather effective, as most debtors do not like to be imprisoned and suddenly find funds for bonds.”<sup>72</sup>

While in some cases debtors may cure their contempt by appearing in court and providing the requested financial information, more often debtors may secure their release from jail or have their warrant quashed only if they pay their debt, either in full or a bond amount that satisfies a portion of their debt. This direct connection substantively transforms contempt for failure to comply with a court order into contempt for failure to pay, in violation of state and federal laws prohibiting debtors’ prisons.

As Alan White, a consumer law professor at CUNY School of Law, described it, “If, in effect, people are being incarcerated until they pay bail, and bail is being used to pay their debts, then they’re being incarcerated to pay their debts.”<sup>73</sup> Contempt proceedings become purely pretextual, explained Lisa Madigan, Attorney General of Illinois; if that “gives the lawyers the ability to say [debtors] aren’t being thrown in debtors’ prison, they’re being thrown into prison for contempt of court. To me, that’s disingenuous.”<sup>74</sup>

An Idaho bankruptcy court recognized this reality, concluding that a collection company that sought, drafted, and obtained a bench warrant for a debtor’s failure to turn over tax returns had plainly done so as a tactic to extract payment. In that case the arrest warrant required the debtor to post a bail set at the exact amount of the judgment, payable only in cash and to be handed over to the debt collector. The court ruled:

There was a time in America when debtors were jailed for not paying their debts. In reviewing the facts of this case, it appears perhaps that time has not passed... [I]t is clear that Creditor’s efforts to get Debtor put behind bars were calculated to enforce a money judgment, pursue a “collection motive,” [and] to harass Debtor.... The Court was distraught to learn that, even today, a creditor can persuade a state court to incarcerate a debtor to compel payment of a debt.... The facts show that Creditor initiated the contempt proceedings in state court not to secure the financial information Debtor was ordered to provide, but to coerce him into paying Creditor’s judgment.<sup>75</sup>

In practice, there are several indicators when this use of contempt turns into unlawful imprisonment for debt. First, the bail attached to arrest warrants is often for the alleged amount owed to the creditor. Instead of performing an independent analysis to determine the amount of bail required to ensure compliance with court-ordered proceedings and the debtor’s ability to pay that amount, many courts simply require payment of the full judgment owed. Second, the bonds paid by debtors to get out of jail are often transferred directly to the creditor. While many courts transfer bonds to creditors as a matter of custom, some state laws explicitly require these bonds to be turned over to creditors.<sup>76</sup> Third, the contempt of court finding is often dropped once the creditor receives the bond or if the debtor settles with the creditor.<sup>77</sup>

# For Debtors, the Trauma of Arrest and Jail

Lack of money to pay a small bill, a pile-up of warning letters, damaged credit scores, personal bankruptcy—all create enormous stress for people struggling to make ends meet. But nothing compares with being arrested and taken to jail for being unable to pay a debt.

The collection process carries high public costs in terms of the time and resources required of law enforcement and court staff. But the effects on a debtor subject to an arrest warrant because of a failure to appear at a court hearing can be emotionally and financially devastating. Many have never had contact with law enforcement before their arrest. For those jailed, the psychological distress, lost wages, and other costs can have severe, long-lasting impacts on them and their families.

In interviews with the ACLU, people described the shock and humiliation of being arrested, booked, fingerprinted, photographed for a mug shot, strip-searched, and placed in a holding cell. In some cases, the debtors were arrested at gunpoint. In one case, a man was Tasered and bitten by a police dog in the course of his arrest.<sup>78</sup> Some people could get no explanation from either the arresting officers or the jail staff as to why they had been incarcerated.

In many instances, parents were arrested in front of their children. One single mother was arrested at her Pennsylvania home in the early morning hours while her son, a minor, slept. Despite her pleas, the police did not allow her to tell her son what was happening to her.<sup>79</sup> We found the case of a woman in Ohio, who was arrested while she was home with

her three-week-old baby.<sup>80</sup> In another case, a man in Washington was arrested for missing a hearing about an unpaid auto loan deficiency—the debt remaining after his pickup truck had been repossessed—while home with his six-year-old disabled son. Police handcuffed him and immediately placed him in the squad car, leaving his son alone in the house. For over an hour, he sat in the police car outside his house, watching in horror as his son sobbed and ran, scared and confused, in and out of their home. When his wife arrived home, sheriff's deputies arrested her too and threatened to call Child Protective Services if she could not find someone to watch over their son.

We found cases of arrest warrants issued against elderly debtors, including a woman who was 90 years old. In one instance, a Maryland court issued a

For those jailed, the **psychological distress** and **lost wages** can have severe, long-lasting impacts on them and their families.

warrant for the arrest of a bedridden woman with advanced Alzheimer's disease who was unable to appear in court for an oral debtor's examination; she died before she was arrested on the warrant. In another case, a Massachusetts woman died of ovarian cancer the day after a warrant was issued for her arrest for failure to appear. We found cases of people with disabilities jailed, including a Kansas woman with bipolar disorder who said she was arrested while in the throes of an episode and had to walk miles to get home when she was released.

For some, an arrest had catastrophic consequences. A Utah man committed suicide while jailed for failing to appear in court over an unpaid ambulance bill; he killed himself shortly after he was asked whether he had the money to post bail.<sup>81</sup> An Illinois truck driver was fired from his job for missing work while jailed for six days because he could not afford the \$31,500 bond set at the amount he owed to a bank for equipment financing.<sup>82</sup> An Indiana woman was fired by her employer after she was arrested at work.

Some suffered medical emergencies while incarcerated. For example, an 83-year-old Maryland man jailed over a debt owed to his homeowners' association began vomiting blood and became non-responsive while in detention, requiring emergency medical treatment. A North Carolina man required four days of treatment in the intensive care unit after falling ill while jailed.

Humiliation and trauma in jail are not uncommon. One Indiana woman, a mother of three, was jailed for missing hearings over medical bills for her cancer treatment. She was physically unable to climb the stairs to the women's section of the jail, so she was held in a men's mental health unit with glass walls that exposed her to the male prisoners, even when she used the toilet. She says she was denied medicine and feminine hygiene products, and exposed to lewd and "trauma-inducing" behavior, including one man who wiped his feces on the wall of their shared cell.<sup>83</sup>

In many cases that we documented, debtors said they suffered psychological stress and health effects after their jailing. Many were deeply embarrassed when their employers or their children's teachers learned

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#### CASE STUDY

### Jailed for an insurance debt

Julius Zimmerman was jailed for six days in 2011 in solitary confinement in Dakota County, Minnesota, on a civil warrant obtained by a debt collector. He had filed for bankruptcy and the jailing violated the mandatory stay. The debt was owed to American Family Insurance Group after he was involved in a car accident. Police officers arrested Zimmerman at his home while he was babysitting his girlfriend's children. They completed booking at 1 a.m. on a Friday, and the earliest he could be brought to court was Monday. He says he told the police officers and jail staff that because of his bankruptcy filing, no action could be taken to collect the underlying debt. He didn't have access to a phone for several days and was unable to contact his attorney during that time. He says he suffered fear, humiliation, and embarrassment as a result of his arrest and incarceration.<sup>84</sup> Zimmerman sued the sheriff and 10 jail deputies, alleging they had violated the automatic stay triggered by the bankruptcy filing, but the court ruled it lacked jurisdiction to consider his claim.<sup>85</sup>

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of their arrest. Some reported increased anxiety, difficulty sleeping, stomach problems, panic attacks, recurring nightmares, an inability to travel more than short distances, an inability to remain home by oneself, and exacerbation of medical conditions like Crohn's disease.

Even the issuance of an arrest warrant by itself—without arrest or jailing—can have significant and negative effects. In one case, a man in Indiana with 13 years of experience as a police officer was passed over for a law enforcement job when the prospective employer discovered there was an open arrest warrant for an unpaid school textbook fee. Non-citizens have reported anxiety and fear about potential immigration actions because an arrest warrant had been issued.

# No Notice, No Evidence, No Attorney

The arrest and jailing of debtors is all the more troubling because the underlying debt collection proceedings are deeply unfair. Courts are often complicit in debt collection abuses by operating as mills that exist only to process default judgments, garnishments, and liens, and to seize the property of drowning debtors.<sup>86</sup>

The Fifth and Fourteenth Amendments of the Constitution protect individuals from the deprivation of liberty or property by the government without due process. Although people facing jail for civil contempt are not afforded the same due process rights guaranteed to criminal defendants, their procedural due process rights are infringed upon when there is inadequate notice, automatic default judgments, or deficient evidence.<sup>87</sup>

Millions of debt collection lawsuits are filed each year in local courts that have effectively become collectors' courts. These suits flood small-claims courts, turning them into taxpayer-funded tools of the debt collection industry.<sup>88</sup> Lawyers working for the industry can review

a suit in as little as four seconds, and one lawyer can file hundreds of lawsuits a day, according to a deposition given by a debt collection attorney in New Jersey who worked primarily for debt buyers.<sup>89</sup> According to the Federal Trade Commission (FTC), the majority of cases on many state court dockets on any given day are often debt collection cases.<sup>90</sup> In many states, companies that bought debts from original creditors file more civil lawsuits than any other type of plaintiff.<sup>91</sup>

When judges automatically award default judgments without scrutinizing the merits of debt collectors' claims, these judgments may be for the wrong amount, for debts that are not subject to collection, or against the wrong defendant.<sup>92</sup> The FTC found that "the information received by debt collectors is often inadequate and results in attempts to collect from the wrong consumer or to collect the wrong amount."<sup>93</sup> Collectors sometimes seek to collect debts that have already been settled or paid in full. In other cases, the statute of limitations has expired or the debts were discharged when the debtor filed for bankruptcy. Others attempt to collect from the wrong person or victims of identity theft.<sup>94</sup>

Once a lawsuit is filed, the process is stacked against the defendant, whether the amount is owed or not. Debt proceedings are plagued by substantial due process deficiencies, including failure to serve the defendant with adequate and legal notice of the suit, lack of evidence of the underlying debt, and falsified or improper affidavits such as robo-signed affidavits.<sup>95</sup> Beyond that, debt collectors benefit from expedited judicial process in small-claims courts, which provide limited due process protections to debtors.

**90%**  
of debt cases conclude  
in a default judgment  
against the defendant.



Courts overburdened with cases churn through these collection lawsuits with astonishing speed and minimal scrutiny. The vast majority of them—an estimated 90 percent<sup>96</sup>—conclude in a default judgment against the defendants, in which the debt collector automatically wins because the defendant did not contest the case. Most did not appear in court to defend themselves or respond to the litigation at all.<sup>97</sup>

People sued for debts often do not receive notice of the legal action against them or of subsequent court orders to appear at court proceedings.<sup>98</sup> Consumer rights lawyers around the country have reported that notices are sent to outdated addresses or places where the debtor never lived. This is a particular problem for low-income defendants, who may move frequently because of job loss, eviction, changes in household size, homelessness, and illness. Collection companies have very little incentive to maintain accurate records and provide proper notice because doing so would mean giving the debtor a chance to challenge the action. And because courts rely on plaintiffs (i.e., creditors and debt collectors) for service of process, judges are left unable to adequately evaluate whether defective service is a significant problem in their jurisdiction.<sup>99</sup>

The most vulnerable debtors are often targets of “sewer service”—when a debt collector or process server falsely claims to have served the notice of the complaint or summons for an upcoming proceeding.<sup>100</sup> In one example documented by the ACLU, an 83-year-old man and his 78-year-old wife were jailed for failing to appear at a post-judgment hearing in Maryland. Even though they were out of the country at the time of the alleged notice, the process server reported that they had been successfully notified; the server wrongly described the elderly couple as a 41-year-old man and his 28-year-old roommate.

The Supreme Court requires that notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>101</sup> If plaintiffs know that service will be unsuccessful, then notice is insufficient under the law.<sup>102</sup> When plaintiffs are aware that their first attempt at notice did not reach the party, they are obligated to take additional reasonable steps

Debtors are  
represented by  
lawyers in fewer than  
**2%**  
of collection cases.

to provide notice.<sup>103</sup> Creditors and debt collectors frequently fail to meet these standards, violating the debtors’ due process rights.

Other debtors fail to show up in court because they cannot get time off from work or secure child care. Some are confused by notices, even having received several in the mail. Many are unaware of the consequences of missing the court date. In cases brought by companies that have purchased the debt from the original creditor, the plaintiff’s name on the summons will be unfamiliar to the debtor, creating more confusion. According to consumer rights advocates, some debt collectors repeatedly request trial continuances, postponing the case whenever the debtor shows up in court and then moving for default judgment the one time the debtor fails to appear.

Even when aware of the suit, debtors almost never have lawyers and don’t know how to defend themselves in a legal proceeding. There is no constitutional right to an attorney in collection actions and civil contempt actions, and most debtors cannot afford to hire one. As a result, debtors are represented by lawyers in fewer than 2 percent of collection cases.<sup>104</sup>

Companies that buy debt for pennies on the dollar can win default judgments even though they lack any evidence because the alleged debtors aren’t equipped to mount a competent defense.<sup>105</sup> A study of lawsuits brought by debt buyers in Maryland found that more than 95 percent of these cases end in favor of the collector, yet in 90 percent of cases the collector lacked the requisite proof.<sup>106</sup> An Urban Justice Center study in

New York City in 2007 found that in 99 percent of cases in which default judgments were entered, the evidence supporting those claims was inadmissible and did not meet the state's legal standards.<sup>107</sup>

Even when parties fail to appear, judges are expected to consider, at a minimum, whether the creditors' claims are lawful and appear to have merit.<sup>108</sup> But because many judges don't perform this evaluation, debt collectors often prevail even when they lack evidence to support their claims, or when creditors have marked the evidence as unreliable.<sup>109</sup> Courts also often fail to verify whether debt collectors actually own the debt at issue or are legally entitled to sue.<sup>110</sup> When judges automatically rule in favor of creditors and debt collectors despite deficient evidence, alleged debtors' due process rights are violated.

The default judgments are routinely padded with interest charges and attorneys' fees, so the amounts end up being far more than the original debt. Once a debt collector gets a court judgment, it gains the power to garnish wages, seize property, clean out bank accounts, or put a lien on a home. Four million American workers had wages seized to pay off consumer debts in 2013,<sup>111</sup> and a study by the National Consumer Law Center found that no state provides adequate legal protections to prevent garnishment and property seizures from driving families into poverty.<sup>112</sup> Judgments can remain valid for a decade or longer, and in some states creditors are allowed to continue to charge a high interest rate on the judgment amount until it is paid.

Many cases are settled out of court. Debt collectors will often negotiate agreements in the courtroom hallways, without any oversight or supervision by a judge or court clerk. Some courts even have "judgeless courtrooms"—specially designated rooms in the courthouse that creditors are allowed to use for settlement negotiations. In practice, courthouse negotiations give debt collectors the upper hand in pressuring defendants to give up their right to a hearing or to sign payment agreements for debts that they are not legally obligated to pay or cannot pay.<sup>113</sup>

In some cases, these due process deficiencies result in wrongful arrests. A Maryland woman was arrested on

a warrant issued for failure to appear at a hearing that she had in fact attended. The collector, CACH, LLC, did not appear at the hearing, but nine months later it nonetheless requested that the woman be arrested for missing the hearing. The court issued the warrant and she was arrested a week later, causing her "severe mental anguish."<sup>114</sup> An investigation by the Harford County District Court clerk's office later determined that the warrant had been improperly issued.<sup>115</sup>

In Oregon, an alleged debtor's father was wrongfully arrested by a local sheriff and his deputy on a warrant obtained by Quick Collect, Inc., a collection agency in Portland with an estimated \$1.7 million in annual revenue.<sup>116</sup> Even though the debt was owed by his son, the father was transported to jail, booked, and incarcerated for seven hours. In another case, a woman in Louisiana was jailed for two nights for failure to appear in court over a high-interest payday loan she had already paid in full.<sup>117</sup>

The ACLU also documented numerous cases of arrest and jailing of debtors in violation of the automatic stay on collection actions triggered when they filed for bankruptcy. For instance, a man in Minnesota who had filed for bankruptcy was jailed for six days in 23-hour-a-day solitary confinement on a warrant obtained by a debt collector. He says he told the police officers and jail staff that because of his bankruptcy filing no action could be taken to collect the debt, which he owed to American Family Insurance Group after he was involved in a car accident. Because he was denied access to a phone for several days of his incarceration, he was not able to contact his attorney.

## **Violations of Right to Counsel When Liberty Is at Stake**

Alleged debtors are not guaranteed the right to a lawyer even when they face the possibility of incarceration in cases concerning private debt. The nearly ubiquitous lack of counsel in state and local court debt collection proceedings means there is no check against the well-documented error and abuse that pervades debt collection litigation. Tens of thousands of alleged debtors are under threat of incarceration each year for failure to appear or comply with post-judgment debt collection proceedings.

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## CASE STUDY

### Jailed for unpaid rent



Kristy Sprayberry was jailed in Georgia for a six-year-old debt her landlord claimed she owed after evicting her from her trailer home. In 2009, Sprayberry signed a lease for \$490 a month and fully paid first and last months' rent. Three

weeks later, she was jailed for an unrelated probation violation. During the less than two months she spent incarcerated, her landlord evicted her and threw out all her belongings. The landlord also sued her and obtained a default judgment of about \$3,000, for unpaid rent and cleaning fees for throwing out her furniture. After her release from jail Kristy was unemployed and at times was homeless. She had no idea her former landlord had even sued her to collect a debt.

Five years later, Whiteside Enterprises, LLC, a debt collection company, began attempts to collect the default judgment. Whiteside Enterprises is known in Douglas County, Georgia, for buying up default judgments from old eviction cases and using post-judgment legal procedures to threaten people into paying. It filed a series of interrogatories – forms inquiring about Kristy's finances and assets – but was unable to serve them on her because she had no stable address. She was

trying to rebuild her life and married, but in March 2015 her new husband died suddenly of a seizure. One month later, the collector requested contempt proceedings for her failure to answer the interrogatories, and the Douglas County Magistrate Court issued a warrant for her arrest in June.

In August 2015, Kristy was gathered with her children and extended family attending to her mother, who was terminally ill with lunch cancer. A family argument got heated and a relative called the police. The two police officers responding to the call quickly left without taking action, but 10 minutes later, they returned and arrested Kristy after discovering the open arrest warrant. The officers handcuffed her in front of her children, including her five-year-old daughter. Kristy says the timing made her arrest and incarceration particularly traumatic. "I just knew my mom was going to die while I was in jail," she said. "It was the time when my children needed me the most."

Kristy was first jailed at the Cobb County Jail and then transported to Douglas County Jail the next day, where she was booked and had to fill out the financial statement forms before she was released that evening. Two days later, her mom died.

A year and a half later, in March 2017, the debt collector threatened to have her arrested again. This time, a lawyer who met Kristy through his church helped her avoid incarceration.

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Having counsel would help indigent debtors navigate the law, assert their rights to debtors' exemptions and other protections, and seek remedies to abusive actions by debt collectors, including improper and false claims of service and requests for warrants to coerce payments toward debts. Counsel can help courts avoid erroneous determinations and assist indigent debtors in achieving better outcomes, including vacating improperly reached default judgments and accessing existing legal protections for income for basic needs.

In criminal proceedings, indigent defendants have a Sixth Amendment right to court-appointed lawyers if they face actual or suspended incarceration and cannot afford to pay for a lawyer.<sup>118</sup> Indigent debtors should similarly be afforded the right to appointed counsel when their liberty is at stake—even in civil debt collection or civil post-judgment proceedings. Sound public policy and the basic constitutional principle of fair treatment weigh in favor of appointing counsel to assist indigent debtors in these circumstances.



While the Supreme Court has not specifically ruled on the right to counsel for consumer debtors in civil contempt proceedings, it has ruled that due process favors a right to counsel in civil proceedings in which an individual's liberty is at stake. In *Lassiter v. Department of Social Services*, the Supreme Court recognized a presumption that indigent litigants have a due process right to appointed counsel in cases when they may be deprived of physical liberty.<sup>119</sup> In *Turner v. Rogers*, the Supreme Court carved out an exception in civil contempt cases involving unpaid child support when both parents are not represented by a lawyer, even when it resulted in the incarceration of the non-custodial parent.<sup>120</sup> The Supreme Court recognized, however, that due process did not require the appointment of counsel for the indigent non-custodial parent in this context in part because the custodial parent was herself not represented; appointment of counsel for one parent would therefore create an asymmetry of power between the parents.<sup>121</sup> The Supreme Court explicitly distinguished that type of civil contempt proceeding from "debt-collection" proceedings in which "[t]he government is likely to have counsel or some other competent representative."<sup>122</sup>

The right to an attorney in civil proceedings, when it applies, derives from the due process clauses in the Fifth and Fourteenth Amendments. The Supreme Court uses a three-factor test to decide whether parties have a due process right to counsel in civil proceedings: (1) the nature of the private interest that will be affected, (2) the risk of an erroneous deprivation of that interest without the additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements.<sup>123</sup>

An analysis using this three-part test weighs strongly in favor of a right of indigent debtors to appointed counsel in civil contempt proceedings when the debtor's liberty is at stake. First, the individual's interest of preserving liberty weighs in favor of the right to counsel.<sup>124</sup> Second, the comparative risks of a wrongful deprivation of liberty with and without counsel weigh in favor of a right to counsel in debt

collection proceedings. Due process deficiencies, the frequency of default judgments, and information asymmetry, among other factors, all increase the risk that an unrepresented indigent debtor will be unlawfully incarcerated.

Third, affording counsel to indigent debtors would not implicate any of the countervailing interests that the Supreme Court noted in the child support context.<sup>125</sup> The court explicitly distinguished such child support cases brought by an unrepresented custodial parent from debt collection proceedings.<sup>126</sup> In debt collection proceedings, debtors with lawyers are less likely to be coerced into giving up exempt assets or taking other measures not required by law. Providing lawyers in these proceedings could reduce the government's costs, like jailing and other enforcement actions, and help correct a system currently filled with error and abuse.

Finally, it is important to note that even civil debt collection cases can involve court exercise of criminal contempt authority to incarcerate debtors as punishment for noncompliance with court orders to provide information or otherwise comply with orders to enforce money judgments. It is well established that the Sixth Amendment requires the appointment of counsel in criminal contempt proceedings other than summary proceedings for misconduct in open court.<sup>127</sup> Criminal contempt "is punitive," and it seeks "to vindicate the authority of the court." In contrast, civil contempt "seeks only to coer[ce] the defendant to do what a court had previously ordered him to do."<sup>128</sup> When a debtor is unable to comply with a court order concerning civil debt collection—such as an order to provide responses to interrogatories concerning assets and income without having received actual notice of the order—any subsequent order to incarcerate the person for a fixed term would constitute criminal rather than civil contempt, and the Sixth Amendment would require the appointment of counsel in such circumstances. In at least one federal circuit, sentences that contain elements of both criminal and civil contempt are treated as criminal contempt for purpose of appeal.<sup>129</sup> Appellate courts have recognized that a contempt sentence containing a purge condition can nevertheless constitute criminal contempt.<sup>130</sup>

# Partnerships Between Prosecutors and Check Collection Companies

Some coercive debt collection practices are explicitly sanctioned by local prosecutors. Around the country, private debt collectors contract with county district attorney offices to threaten people with criminal prosecution for bounced checks. Under these partnerships, private companies seeking to enforce collection of bad checks send letters on district attorney letterhead to people who have written bounced checks—effectively masquerading as county district attorneys—to threaten them with prosecution, jail, and fines if they do not pay up. This routinely occurs despite evidence that prosecutors fail to review cases sent to these private companies to ensure that any threats of prosecution are supported by probable cause to believe the individual actually committed a crime, as required by law.

More than 200 district attorneys’ offices nationwide allow private collection companies to use the seal and signature of local prosecutors for these repayment demand letters. Letters sent to consumers have contained the following language, posing as official communications when the cases have not been reviewed by district attorneys:

## **“OFFICIAL NOTICE—IMMEDIATE ATTENTION REQUIRED”**

“You have been accused of violating” a state criminal statute.

A “conviction under this statute is punishable by...imprisonment and/or a fine.”

“The Bad Check Restitution Program...is a pre-charge program designed to allow

people accused of having violated the above referenced statute to avoid the possibility of further action against the accused by the District Attorney’s office.”

“Successful completion of the program requires that you comply with all of the Bad Check Restitution Program requirements including full restitution, all fees and attendance of the Financial Accountability class.”

“Our records indicate that you have failed to respond or fully comply with the [DA’s] Official Notice.”

“Your case has been reviewed and forwarded to the [DA] for consideration of prosecution...due to your failure to complete the requirements of the Bad Check Restitution Program.”

Subsequent letters contained the heading, **“CASE FORWARDED FOR POTENTIAL CRIMINAL PROSECUTION.”**

In interviews with the ACLU and in sworn depositions, consumers said they were bewildered and scared by these collection letters. Most said they were afraid they were going to jail and understood that they had been accused of a crime that would result in incarceration if they did not pay the amounts demanded. They said they believed the letters had been sent by a prosecutor and had no idea they had been sent by a private company. And when they dialed the phone numbers listed on the letters, they mistakenly believed they were talking with an employee of a government agency.

In all cases, the check collection companies demand not only payment for the unpaid check, but also tack on a variety of fees, including fees to attend a diversion program run by these same companies. These programs usually involve taking a class on budgeting and financial responsibility for which check writers must pay anywhere from \$145 to \$235. Some portion of these fees is then funneled to the district attorneys’ offices, depending on the contract, but the bulk of the fees go to the private companies. One company, CorrectiveSolutions, for example, charges California consumers the following fees, even charging consumers for overpaying:

Administrative fee:	\$50
Diversion seminar fee:	\$191 with automatic 3% annual increase
Restitution fee:	\$15 maximum, based on merchant’s bank charge
Credit/debit card fee:	\$10
Payment plan late fee:	\$10
Class rescheduling fee:	\$25
Overpayment refund fee:	\$5

Collecting these fees is the primary or even sole revenue stream for these companies.<sup>131</sup> This profit structure creates an incentive for them to maximize the number of individuals enrolled in the diversion seminars—even when there is no probable cause to believe that a particular individual actually committed a bad check offense or that the district attorney would prosecute the alleged conduct. The potential for abuse is clear: Falsely and aggressively threatening consumers with criminal prosecution can increase the fees and profits these companies collect.

For example, one prominent company offering bad-check diversion programs circulated guidance to its “recovery agents” outlining the tactics to use in phone calls to targets. It advised them to “[e]xplain you are trying to hold their case back from prosecution review, and the only way you can do that is with money.”<sup>132</sup> The same document instructed agents

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CASE STUDY

## Threatened with jail for a \$41 check to Goodwill

A mother of three in Washington wrote a \$41.19 check to Goodwill to buy clothing for her children, but the check bounced because of a banking mix-up. She received a letter that looked like it had been sent by the Kitsap County Prosecuting Attorney and bore the prosecutor’s seal, telling her that she had been accused of a crime and she had to pay the amount of the check plus \$185 in fees within 10 days “to avoid the possibility of criminal charges being filed.”<sup>135</sup> The letter was actually sent by Bounceback, Inc., and there is no evidence that the prosecutor even reviewed any evidence related to the bounced check or that the prosecutor’s office would prosecute her if she did not pay the fees. She ultimately paid the \$41 plus nearly \$220 in fees.

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to “[m]ake sure you add all failure to comply fees. . . . This is not discretionary. This money belongs to the company, and will **DRASTICALLY** change your numbers.”<sup>133</sup>

Few, if any, of the bounced checks that trigger these collection letters qualify for criminal prosecution. One study found that there is only a 0.4 or 1.2 percent chance a consumer would be prosecuted for the bounced checks subject to collection by these companies. In the vast majority of cases, check writers have inadvertently bounced checks without criminal intent, or the amount of the bounced check is too low to warrant prosecution.

The ACLU documented cases in which threatening letters were sent for bounced checks as low as \$2, clearly too low to meet the criteria for criminal prosecution. One internal email from the prosecutor’s office in Kitsap, Washington, showed that checks for \$5 and \$8 were to be referred for collection even though the office never prosecutes for a bounced check less than \$50.<sup>134</sup> Paul Arons, a Washington-based lawyer who has been fighting

these check collection tactics in the courts since 2001, told the ACLU he has documented over 10,000 checks for under \$10 that triggered letters threatening consumers with jail, including bounced checks for as little as one penny.<sup>136</sup>

District attorneys are required by law to review the case files and determine if they are eligible for prosecution, but the threatening letters are usually sent before district or state attorneys have even examined the files. In the case of one of the largest check diversion companies, the Consumer Financial Protection Bureau (CFPB) found that less than 1 percent of cases were reviewed by a prosecutor for possible criminal prosecution.<sup>137</sup> In some cases, prosecutors are allowed 24 hours to review checks before the collection company proceeds. And even then, they may only look at a monthly list of bounced checks with the check writer's name and address, without evaluating the reason the bank returned the check unpaid or the check writer's intent.

Consumer rights lawyers estimate that more than 1 million consumers are targeted nationwide each year through district attorney-debt collector partnerships for collection on bounced checks written to local merchants and national retailers including Best Buy, Costco, CVS Pharmacy, Goodwill Industries, Kroger, Lowe's, Safeway, Staples, Target, Walgreens, and Walmart.<sup>138</sup> These retailers generally do not contract directly with the check collection companies. Instead, major retailers usually contract with check guarantee companies such as Certegy and Telecheck, which pay the merchant the full face value of the bounced check and then attempt to collect the check from the consumer.

The ACLU documented many cases in which consumers had unintentionally written a check against insufficient funds and were subsequently threatened with criminal prosecution and jail (see details in Appendix I). These include the following cases:

- A wheelchair-bound retiree living in a senior living facility on a modest fixed income was threatened with jail for bouncing a check for \$108 at Walmart for household goods.

More than  
**1 million**  
consumers are  
targeted nationwide  
each year through  
the district attorney-  
debt collector  
partnerships.

- A check writer in Los Angeles who inadvertently bounced a check for \$3.87 to Ralphs grocery store ultimately paid \$444.87 to a private check diversion company after she was threatened with criminal prosecution and jail time. Among other fees, she was charged \$225 in missed class fees for a class for which she was also charged \$150.
- A mother of three was threatened with criminal prosecution for bouncing a \$41 check when she bought clothing for her children at Goodwill.
- A single mother was threatened with criminal prosecution and up to one year in jail for inadvertently bouncing a check for \$48 when she purchased groceries at Walmart.
- A 75-year-old woman living on \$800 monthly Social Security checks had to go without her medications to pay the fees she believed were required to avoid jail time for bouncing a check.

These bounced check programs began in the late 1980s<sup>139</sup> and have been subject to numerous lawsuits since 2000.<sup>140</sup> The Federal Trade Commission took enforcement action against one company, Check Investors, Inc., which bought more than 2.2 million checks for pennies on the dollar and collected more than \$10.2 million from 2000 to 2003.<sup>141</sup> After Check



Investors, Inc., was shuttered by court order in 2005 and lawsuits were filed against other companies in this industry in several states, prosecutors and lobbyists for these companies turned to Congress. Congress created a loophole that took effect in 2006 for collection agencies working on behalf of law enforcement, exempting them from the Fair Debt Collection Practices Act, which regulates the actions of third-party debt collectors. Other companies continue to operate despite regulators' and consumers' attempts to challenge these practices. As check-writing has dropped off among consumers in the past decade, some of these companies have also partnered with prosecutors to run misdemeanor and felony diversion programs.<sup>142</sup>

One company, National Corrective Group, Inc., currently has contracts with more than 140 state and local district attorney offices.<sup>143</sup> Doing business as CorrectiveSolutions and formerly known as American Corrective Counseling Services (ACCS), the California-based company reincorporated under a new name in 2009 after declaring bankruptcy following four class-action lawsuits brought against it. Several related entities, Victim Services Inc. and American Justice Solutions, Inc., purchased the company's contracts and assets and took over its operation when the Consumer Financial Protection Bureau (CFPB) was investigating its practices in 2014. The company was valued at over \$31 million and brought in over \$8.8 million in revenue in 2012.<sup>144</sup> The CFPB took enforcement action against the company in 2015, entering into an agreement requiring that CorrectiveSolutions disclose its identity on letters sent to consumers and that prosecutors first review cases before letters are sent to debtors. Although that agreement was reached in March 2015, at year's end, CorrectiveSolutions reported it sent only 10 cases out of 3,175 to the prosecutor's office in Orange County, California, for review in 2015.<sup>145</sup>

The company now prints "Victim Services, Inc." above the formal district attorney letterhead on its letters. As of January 2018 it had contracts in 13 states: Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nevada, New Mexico, and Pennsylvania.<sup>146</sup>

Bounceback, based in Missouri, is another check collection company that, according to its website, has contracts with more than 250 district attorneys' offices in 29 states, including California, Colorado, Florida, Idaho, Illinois, Iowa, Maine, Michigan, New Mexico, New York, Oregon, Virginia, Washington, and West Virginia.<sup>147</sup> Under these contracts, Bounceback sends out letters on district attorney letterhead explaining that the prosecutor has received a complaint for a bounced check, that this can constitute criminal intent, and a warrant for the check writer's arrest can be issued. The letters do not disclose that they are being sent by a private company. The letters explain that the recipient can avoid criminal prosecution by paying the full amount listed in the letter and participating in a financial education program, plus other fees and charges. Bounceback charges \$145 or more for the financial training course, which it operates. This is often the first demand notice the consumer receives about the bounced check.

Diversion Solutions, formerly known as Financial Crimes Services, likewise has contracts with prosecutors and police departments in Wisconsin and Minnesota for its Check Diversion Program. In 2009, it reported receiving around \$1.7 million in annual payments through its 140 various diversion programs in those two states.<sup>148</sup> In 2010, the Minnesota attorney general filed suit against Financial Crimes Services, leading the Ramsey District Court to issue an injunction, and in 2013 the state Commerce Department issued a cease-and-desist order against Check Diversion Program for operating without a debt collector's license.<sup>149</sup>

### **How Prosecutors Profit From Contracts With Check Collection Companies**

Under these contracts, prosecutor's offices generally receive half of the administrative fees, while the check collection company receives the other half plus the full cost of the mandatory financial education course.<sup>150</sup> For example, as of November 2015, the district attorney's office in Orange County, California, had received \$2.54 million in total

revenue from its check collection program operated by CorrectiveSolutions.<sup>151</sup>

Revenues the district attorney's offices receive from these schemes are dropping as fewer people write checks. For instance, revenue generated for the Kent County, Michigan, prosecutor in 2016 was less than one-fourth of what it drew four years earlier.<sup>152</sup> The proposal that Bounceback submitted to the San Diego County District Attorney before it was awarded a contract in 2011 estimated that the program would generate \$1.3 million over five years in addition to the amount it would recover in restitution, but the prosecutor's office reported it actually received \$90,142 under its contract with Bounceback over a three-year period from 2012 to 2014.<sup>153</sup>

Our research found that as of January 2018, prosecutors in the following 200 counties and 17 sheriffs' and police departments had contracts with check collection companies. Some prosecutors have recently terminated their contracts, including Carroll County, Indiana; Sierra County, California; and Pierce and Spokane Counties, Washington. In 2013, the Oregon Legislature prohibited public agencies from allowing debt collectors to use their seal or letterhead, which prompted some prosecutors in that state to terminate their contracts. Also in 2013, several prosecutors in Massachusetts ended their programs after the Boston Globe reported on them. Because the district attorneys' offices and the companies do not generally publicize these contracts, there may be other prosecutors' offices with such contracts that are not listed here.

## PROSECUTORS CONTRACTING WITH BOUNCEBACK

**California:** Mendocino, San Diego, Siskiyou, Sutter, and Yuba Counties

**Colorado:** 6th Judicial District (Archuleta, La Plata, and San Juan Counties), 13th Judicial District (Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma Counties), and 20th Judicial District (Boulder County)

**Idaho:** Ada and Kootenai Counties

**Illinois:** Boone, Kankakee, Logan, McLean, and Mercer Counties

**Indiana:** Greene County

**Iowa:** Pottawattamie County

**Maine:** Cumberland and Kennebec Counties

**Massachusetts:** Northwestern District (Hampshire and Franklin Counties and town of Athol)

**Michigan:** Clare, Marquette, Montcalm, Shiawassee, and Washtenaw Counties

**New Mexico:** 5th Judicial District (Chaves, Eddy, and Lea Counties)

**New York:** Albany, Allegany, Monroe, Onondaga, St. Lawrence, Warren, and Washington Counties

**Virginia:** Chesterfield, Henrico, Loudoun, Orange, and Richmond Counties, and Hampton

**Washington:** Adams, Kitsap, Mason, Thurston, Walla Walla, and Yakima Counties

**West Virginia:** Cabell and Kanawha Counties

**Wisconsin:** Columbia, La Crosse, and Monroe Counties

## PROSECUTORS CONTRACTING WITH VICTIM SERVICES, INC.

**Arizona:** Pinal County

**California:** Colusa, Glenn, Imperial, Los Angeles, Madera, Marin, Mariposa, Nevada, Orange, Placer, Riverside, San Bernardino, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Siskiyou, Sonoma, Tulare, and Tuolumne Counties

**Colorado:** Denver, 14th Judicial District (Grand, Moffat, and Routt Counties), 17th Judicial District (Adams and Broomfield Counties), 18th Judicial District (Arapahoe, Douglas, Elbert, and Lincoln Counties), and 21st Judicial District (Mesa County)

**Florida:** Broward County, Miami-Dade County, 12th Judicial Circuit (DeSoto, Manatee, and Sarasota Counties), and 15th Judicial Circuit (Palm Beach County)

**Illinois:** Christian, Clinton, Cook, DeKalb, Edgar, Effingham, Jersey, Kendall, LaSalle, Macon, Madison, Moultrie, Putnam, Rock Island, Sangamon, St. Clair, Vermilion, Will, and Winnebago Counties

**Indiana:** Allen, Boone, Delaware, Gibson, Hendricks, Lake, Marion, Noble, Porter, Vanderburgh, and Vigo Counties

**Iowa:** Dallas, Dubuque, Jefferson, Polk, and Warren Counties

**Maryland:** Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, Kent, Prince George's, and Wicomico Counties

**Michigan:** Barry, Bay, Genesee, Isabella, Kent, Livingston, Macomb, Midland, Saginaw, and Wayne Counties

**Minnesota:** Wright County

**Nevada:** Carson City and Lyon Counties

**New Mexico:** 2nd Judicial District (Bernalillo County), 7th Judicial District (Catron, Sierra, Socorro, and Torrance Counties), 9th Judicial District (Curry and Roosevelt Counties), and 13th Judicial District (Cibola, Sandoval, and Valencia Counties)

**Pennsylvania:** Allegheny, Armstrong, Berks, Blair, Bradford, Butler, Delaware, Huntingdon, Lackawanna, Lancaster, Lawrence, Lehigh, McKean, Monroe, Montgomery, Northampton, Somerset, and York Counties

## PROSECUTORS, SHERIFFS, AND POLICE CONTRACTING WITH CHECK DIVERSION PROGRAM

**Minnesota District Attorney offices:** Adams, Alexandria, Chisholm, Oneida, Pine, Polk, and Todd

**Minnesota sheriff and police departments:** Carlton County Sheriff's Office and Burnsville, Cottage Grove, Grand Rapids, Hastings, Henning, Inver Grove Heights, Menahga, Minneapolis, Orono, Plymouth, Red Wing, Roseville, St. Paul, Virginia, Wadena, and Waseca Police Departments

**Wisconsin District Attorney offices:** Adams, Chippewa, Franklin, Kenosha, Lincoln, Milwaukee, and Winnebago Counties

According to the American Bar Association Standing Committee on Ethics and Professional Responsibility, these programs violate basic standards of professional conduct for prosecutors. In an opinion issued in November 2014, the ABA declared that prosecutors violate ethical rules when they provide letterhead to a debt collection company to threaten prosecution when no lawyer from the prosecutor's office has reviewed the case file to determine whether a crime has been committed. Without meaningful review, these letters, the ABA found, are deceptive and "misuse the criminal justice system by deploying the apparent authority of a prosecutor to intimidate an individual."<sup>154</sup>

Check collection companies' partnerships with prosecutors' offices also raise serious due process concerns under the U.S. Constitution. In effect, a private party is permitted to use the prestige and power of prosecutors' offices to coerce individuals into surrendering property or putting their liberty in jeopardy. By lending its authority to a private entity seeking to extract these payments, the state actors who authorize the programs may violate the due process rights of collection targets.<sup>155</sup>

# Abusive Practices in a Poorly Regulated Industry

Arrest and jailing are the most extreme tactics, but other abusive practices used by debt collectors—including harassment and deceit—are more widespread and equally effective. The Federal Trade Commission (FTC) now receives more consumer complaints about debt collectors than about any other single industry.<sup>156</sup> The agency received 897,655 complaints about debt collection in 2015, more than triple the number of complaints it received the previous year.<sup>157</sup> The Consumer Financial Protection Bureau (CFPB) received 88,000 debt collection complaints in 2016.<sup>158</sup> In a national survey of consumer experiences with debt collectors, the CFPB found that one in four consumers contacted by debt collectors felt threatened.<sup>159</sup>

These abusive practices remain largely unchecked because there is minimal government oversight and scant protection from federal and state laws. The primary consumer protection law is the federal Fair Debt Collection Practices Act (FDCPA),<sup>160</sup> but that 1977 law was last amended more than a decade ago. In 2009, the FTC urged Congress to improve consumer protections and to update the law to reflect changes in technology and the evolving industry.<sup>161</sup> That same year, the Government Accountability Office also issued a report to Congress finding that the FDCPA did not adequately address these challenges.<sup>162</sup> To date, Congress has failed to heed these and other calls to amend the FDCPA to better protect consumers.

The FDCPA solely governs the practices of debt collectors. It does not govern the conduct of original creditors, who are exempt from its provisions, nor does it cover check collection companies working in

The FTC received  
**897,655**  
complaints about debt  
collection in 2015.

conjunction with law enforcement. It also does not control how courts should safeguard the rights of consumers sued by debt collectors, a responsibility that falls to state legislatures and court systems, which have largely failed to take action to protect consumers.

Policymakers and regulators rarely intervene to stop abusive practices. The FTC filed 115 actions against debt collection companies in 2015, up from only six in 2013.<sup>163</sup> While the CFPB has played a vital role in regulating debt collectors, it monitors only about 2 percent of debt collection companies. And that limited protection may soon disappear: President Donald Trump has said that he wants to repeal or dismantle nearly all of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the law that created the CFPB. If Dodd-Frank is repealed, the CFPB may be eliminated, or at a minimum defunded and defanged. In February 2017, a panel of the Court of Appeals for the District of Columbia Circuit ruled against the CFPB's independent leadership. On January 31, 2018, the full court reversed this ruling and rejected the constitutional challenge to the



structure of the CFPB, siding against the Trump administration, which filed a brief against the CFPB. The court's divided decision may be reviewed by the Supreme Court.

Monitoring collection agencies falls almost entirely on the overburdened offices of state attorneys general. They are tasked with enforcing state laws that prohibit individuals and companies that collect debts from engaging in unfair and deceptive acts and practices. But those offices are often overmatched by debt collectors' lawyers and their lobbyists. Bills that place tighter restrictions on debt collection practices are often killed or watered down in state legislatures. The industry has also been vocal in trying to weaken the CFPB.<sup>164</sup>

Without meaningful regulation and enforcement, the use of arrest warrants is rampant and underlies a range of coercive and abusive collection practices. Even when debt collectors cannot possibly secure criminal prosecution or jailing for an unpaid debt, some have falsely threatened debtors with such sanctions anyway, especially when collecting payday loans. And even before bringing collection actions, some have pretended to have legal authority or falsely threatened debtors with criminal prosecution if they do not pay the debt.

For instance, one debt collection company in Pennsylvania, Unicredit America, Inc., hired employees to dress as sheriff's deputies to deliver fake subpoenas, falsely decorated its office to look like a courtroom, and held fake legal proceedings to convince debtors that they were being criminally prosecuted, in an attempt to scare them into paying.<sup>165</sup> Collectors working for a California-based company, Broadway Global Master Inc., posed as law enforcement officers from fake government agencies with names like the "Federal Crime Unit of the Department of Justice." The FTC sued Broadway Global Master Inc. for tricking people into paying debts they did not owe. Under a settlement agreement reached in 2015, the company was banned from the collection business and ordered to pay more than \$4.3 million, of which the company paid only \$608,500 due to inability to pay.<sup>166</sup>

Such examples abound. One Texas-based collection agency, Goldman Schwartz, was shut down by the FTC for its abusive tactics, including telling consumers "we can take you to jail" or "we'll send the sheriff's department to your job and take care of this the hard way."<sup>167</sup> Collectors with Audubon Financial Group, another collection company in Texas, impersonated law enforcement, identifying themselves as a "law enforcement debt agency."<sup>168</sup> Collectors working for payday lenders in South Dakota were using false titles designed to sound like law enforcement agencies.<sup>169</sup> Employees of a Georgia-based firm, Williams, Scott & Associates, claimed to be detectives or investigators for local law enforcement agencies and threatened debtors who took out payday loans with immediate arrest and imprisonment if they didn't pay.<sup>170</sup> West Asset Management Inc., a Nebraska-based company with collectors in 13 states, settled a lawsuit brought by the FTC for abusive practices, including threatening to arrest people who owed money.<sup>171</sup>

Millions of consumers were targeted by Northern Resolution Group LLC and Enhanced Acquisitions LLC (later Delray Capital LLC), which purchased tens of millions of dollars of consumer debt for pennies on the dollar and engaged in illegal collection practices, including impersonating law enforcement and court officials and threatening borrowers with arrest if they didn't pay up.<sup>172</sup> The CFPB and the New York attorney general sued this network of companies in November 2016, alleging that they had violated the FDCPA and the Dodd-Frank law, which prohibits unfair and deceptive acts or practices in the consumer financial marketplace. The suit is moving forward, and the plaintiffs recently asked a judge to force the defendants to turn over documents.

In 2015, the FTC and the New York Attorney General sued Vantage Point Services LLC—a Buffalo-based company—and two of its affiliates for pressuring debtors into paying \$45 million by threatening arrest and criminal prosecution. Based on thousands of audio recordings, dozens of telephone scripts used by collectors, hundreds of consumer complaints, and corporate documents, the suit alleged the companies' employees told debtors that they were working

## Jailed for four days for a credit card debt

Helen Brown<sup>173</sup> was jailed for four days after she was found in civil contempt for failing to answer interrogatories sought by a collection agency. The Court of Common Pleas of Dauphin County, Pennsylvania, ordered her to pay \$250 in attorney's fees and issued a bench warrant directing the sheriff to arrest her. In the early morning hours of February 17, 2013, she was arrested, handcuffed, and taken away from her home. A single mother, she told the police that her 15-year-old son was sleeping in the house, and despite her pleas, the police did not allow her to tell her son what was happening to her. Brown was jailed for four days in Dauphin County Prison. None of the prison guards or officials could tell her why the warrant had been issued against her, and she was not allowed to use a telephone for the first 48 hours of her incarceration. She was housed in a large common area of the jail with 10-15 other prisoners, some of whom were yelling and two of whom were showing withdrawal symptoms. Fearful for her safety, anxious about the whereabouts of her son, and deeply worried she would lose her job, she did not eat or use the bathroom. She was subjected to 15-minute bed checks by a

guard, disrupting her sleep, and she suffered multiple insect bites and bruises.

A Pennsylvania-based collection company, Commonwealth Financial Systems, Inc., had obtained a default judgment for \$23,307 against Brown and pursued collection even though the collection agency knew she had filed for bankruptcy. She worked as a bar and table server at a veterans' organization for \$9 an hour. She missed 40 hours of work while in jail, plus an additional 20 hours of work because her employer couldn't schedule her for work when her whereabouts were unknown. She suffered embarrassment about her arrest when meeting with teachers at her son's school and when she explained to her son and her employer what happened to her. Her elderly mother received an anonymous mailing of a list of prison detainees, which included her name. She continued to suffer anxiety, difficulty sleeping, and stomach problems after her incarceration, but because she did not have health insurance she was unable to seek medical treatment. A court later awarded her \$10,000 in damages for emotional distress caused by her incarceration.<sup>176</sup>

for or on behalf of district attorney's offices or the "Financial Crimes Division," and that if they didn't pay, uniformed officers would come to arrest them.<sup>174</sup>

The ACLU found numerous other cases in which alleged debtors were subjected to abusive collection practices, including the following examples:

- Oxford Management Services, Inc., was sued by a woman in Huntsville, Texas, for repeatedly calling her while her husband was in Iraq, threatening her with jail and loss of custody of her children if she did not pay a debt that she had previously arranged to pay with a home equity loan.<sup>175</sup> The debt collection company agreed to pay her \$17,500 under a settlement agreement.<sup>177</sup>
- A 78-year-old woman in Dayton, Ohio, reported that she received multiple phone calls from a debt collector claiming to be with a prosecutor's office, falsely claiming that a prosecutor had issued a warrant for her arrest due to unpaid medical bills.<sup>178</sup>
- A single mother in Detroit, Michigan, who had struggled to pay her car loan after she lost her job and was no longer able to pay when her unemployment checks ran out, complained to the CFPB that she was contacted by a debt

collector who claimed to be a detective and told her that they were coming to arrest her and that she was going to jail for car-napping.<sup>179</sup>

- An Arizona couple who fell behind on the auto loan for the family's only vehicle, which they both used to get to work and to take their children to school, received numerous threatening calls from their auto lender. Even though they had filed for bankruptcy, the debt collector threatened to proceed with criminal charges, to send law enforcement officials to their home, and to have the husband arrested. A court later awarded the couple \$3,000 each for emotional distress and \$480 in lost wages.<sup>180</sup>
- A Texas couple sued a debt-buying company for threatening them with jail time in an attempt to collect an old credit card debt the collector knew had been discharged when the couple filed for bankruptcy. The couple presented 23 threatening voicemails as evidence in their lawsuit, including several in which the company's collectors misrepresented themselves as various legal authorities. The court awarded them \$17,000 in actual damages and attorneys' fees.<sup>181</sup>
- A Georgia woman sued a debt collector for repeatedly threatening to put her in jail if she did not make immediate payments toward an \$800 loan the company claimed her daughter owed. She testified that she was so afraid of incarceration that she borrowed money to make biweekly payments, even when her power was turned off because she didn't have the money to pay her utility bill. When she missed a payment, the collector claimed to have contacted the local Sheriff and demanded she pay \$1,200. The court awarded her \$26,600 in damages and attorneys' fees.<sup>182</sup>

In some instances, collectors have called debtors and falsely claimed that a warrant for their arrest has been issued and could be recalled if they immediately make a payment.<sup>183</sup> In other cases, collectors have sent fake arrest warrants to coerce people to pay.<sup>184</sup> In the most extreme cases, people have reported that

debt collectors threatened to kill their dog or have their children taken away by child welfare services if they did not pay.<sup>185</sup> In one case, an elderly woman subsisting on Social Security benefits was told that if she did not pay the funeral expenses for her husband, the collection firm would get a court order to dig up her husband's body and repossess the casket.<sup>186</sup> These threats and tactics are all plainly illegal under the FDCPA.

## **Violations of Federal and State Consumer Protection Laws**

The exploitative and abusive practices of many creditors and debt collectors described in this report violate several federal and state statutes, including exemption statutes, consumer protection laws, and in extreme cases, criminal extortion statutes.

Even when debtors are not arrested and jailed, the threat of a warrant being issued is often enough to coerce them into paying even when they are subsisting on Social Security or disability benefits or other income that is legally shielded from collection. In many cases, debtors took out high-interest payday loans, borrowed from friends or relatives, surrendered public benefits, or went without food or medication to avoid the threat of jail.

While laws exempting certain assets from collection differ from state to state, they generally protect Social Security payments, pension income, veterans' benefits, child support and alimony, unemployment compensation, worker's compensation, disability benefits, and certain percentages of wages.<sup>187</sup> Debtors who survive solely on income that is exempt from attachment are not required to make payments until their financial situations change.<sup>188</sup> Exemption laws exist to prevent debtors from becoming solely reliant on taxpayer support for basic subsistence.<sup>189</sup> For low-income debtors with salaries, wage garnishment may be unavailable because federal and state laws protect much of the disposable income of the poorest earners.

Creditors and debt buyers often request debtor's examinations and arrest warrants automatically, regardless of a debtor's financial circumstances, and judges often issue warrants without first evaluating

whether the debtor has any non-exempt assets to pay the judgment.<sup>190</sup> For instance, according to a lawsuit filed by the Attorney General of Massachusetts, one of the largest debt collection law firms in Massachusetts arranged for a sheriff or constable to serve consumers with civil arrest warrants even when the firm was aware they subsisted only on exempt income like disability payments. The firm, Lustig, Glaser & Wilson, P.C., told consumers that they could “avoid the need for the further involvement of the Constable or Sheriff” if they would make voluntary payment arrangements. In one case, the firm obtained a civil arrest warrant against a 90-year-old woman. The state’s suit argued that the firm, which filed 100,000 lawsuits over four years, sought arrest warrants “in order to frighten and harass consumers, and to coerce consumers into making payments from Social Security benefits, and other exempt income.”<sup>191</sup> Under a consent judgment reached in July 2017, the firm agreed to pay \$1 million in restitution and to stop seeking warrants when it has reason to believe a consumer has only exempt income or assets.<sup>192</sup>

Many debtors are unaware of exemption laws, a significant problem because debtors must affirmatively claim exemption rights.<sup>193</sup> But deficiencies in notice and the lack of access to counsel leave most debtors without a way to learn about these rights. This makes it imperative that judges review payment plans, including out-of-court settlements, to ensure that debtors are not coerced into forfeiting exempt assets. Further, creditors and debt collectors should be held accountable each time they unlawfully receive payments from exempt sources.

Many of the practices documented in this report clearly violate the FDCPA and similar state statutes. Under the FDCPA, debt collectors may not engage “in any conduct the natural consequence of which is to harass, oppress, or abuse.”<sup>194</sup> Debt collectors may not “use any false, deceptive, or misleading misrepresentation.”<sup>195</sup> They may not represent or imply that nonpayment of any debt will result in arrest or imprisonment unless such action is lawful and the collector intends to do it.<sup>196</sup> Debt collectors are prohibited from misrepresenting themselves as being affiliated with the U.S. or any state including by

use of a “badge, uniform or facsimile thereof;” falsely representing or implying that “nonpayment of any debt will result in the arrest or imprisonment of any person” or that the “consumer committed any crime;” or using written communication that “is falsely represented to be a documented authorized, issued, or approved by any court, official or agency of the United States or any State.”<sup>197</sup> When debt collectors pose as law enforcement, send documents as if they are from the court, threaten criminal charges, and wrongly assert their power to send debtors to jail, they violate the law.

Check collection companies’ partnerships with prosecutor’s offices also likely violate the FDCPA except insofar as the private companies fall within the limited statutory exemption for certain entities operating “a pretrial diversion program for alleged bad check offenders.”<sup>198</sup> However, the companies operating these programs should qualify for the statutory exemption only if they are subject to meaningful oversight by a prosecutor’s office on each individual bad check case. To the extent that communications from private companies create the false or misleading impression that they emanate from a prosecutor’s office or other state agency, they violate the law.<sup>199</sup> Similarly, to the extent that such communications falsely represent that they have been sent by an attorney, or that nonpayment of the debt will result in arrest or imprisonment, they also violate the law.<sup>200</sup>

While prohibiting a wide range of abuses, the FDCPA only applies to debt collectors and excludes original creditors that collect their own debts.<sup>201</sup> Given such restrictions, more stringent state consumer protection laws act as critical tools to hold creditors accountable. For example, California, Iowa, and Texas define debt collectors to include creditors.<sup>202</sup> Other state laws are less explicit, but many state courts have interpreted such statutes as applying to creditors.<sup>203</sup> Some states have laws that prohibit creditors and debt collectors from threatening to have debtors arrested unless permitted by law.<sup>204</sup> The FDCPA recognizes that certain states afford greater protections to consumers and explicitly affirms that persons are not exempt from such state requirements

as long as they are consistent with the FDCPA.<sup>205</sup> Although some states have broader statutes, consumers in other places without expansive laws may lack basic protections from abusive creditors.<sup>206</sup>

In the most egregious cases, the abuses may constitute criminal coercion or extortion.<sup>207</sup> While each state's laws are different, many statutes prohibit the extortion of money or property by a number of means, including by threatening to accuse a person of committing a criminal offense or by subjecting them to humiliation, hatred, or ridicule.<sup>208</sup> As shown in this report, creditors and debt collectors sometimes intimidate debtors by threatening to press charges or have them thrown in jail. When creditors or debt collectors extract payments through such practices, their actions may constitute a crime when criminal intent can be proven.<sup>209</sup>



# Breaches of Fundamental Human Rights

The abuse of contempt proceedings and the subsequent incarceration of debtors implicate a range of fundamental human rights. Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992,<sup>210</sup> recognizes the right to liberty and prohibits arbitrary detention.<sup>211</sup>

The Human Rights Committee, the treaty body that monitors the implementation of the ICCPR, broadly interprets arbitrariness to include elements of “inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”<sup>212</sup> Without adequate protections for debtors, their incarceration may constitute arbitrary detention in violation of the ICCPR.

Moreover, Article 14 of the ICCPR states that all persons are equal before courts and tribunals, and it entitles all individuals to a “fair and public hearing by a competent, independent, and impartial tribunal established by law.”<sup>213</sup> As this report describes, the systemic deficiencies in state court debt litigation—lack of judicial scrutiny, the proliferation of automatic default judgments, deficient evidence, and the incarceration of debtors as a result of pervasive abuses of the contempt process—all raise significant concerns about the fairness and competency of these court proceedings.

Further, the guarantee of equality before the courts in the civil context requires that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”<sup>214</sup> The Human Rights Committee recognized that legal assistance, which often determines whether an individual can

meaningfully participate in the proceedings, remains essential for the right to a fair trial. The Committee encourages states to provide free legal aid in civil cases where individuals are unable to afford it.<sup>215</sup> Access to legal counsel would provide an important check against the abuse of contempt proceedings and protect debtors from unlawful coercion by creditors and debt collectors.

The right to counsel for incarcerated individuals, regardless of whether the incarceration is a result of a civil or criminal process, is enshrined in additional human rights instruments and may constitute customary international law. For example, Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, passed by the U.N. General Assembly in 1998, states that a “detained person shall be entitled to have the assistance of a legal counsel.”<sup>216</sup> Principle 9 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court states that any “persons deprived of their liberty shall have the right to legal assistance by counsel.”<sup>217</sup> Arrest warrants issued against debtors and their subsequent incarceration most often occur without assistance of counsel, in violation of these standards.

The United States has signed but not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>218</sup> and so while it is not fully bound by the treaty, it is required to refrain from acts that would defeat the object and purpose of it.<sup>219</sup> The ICESCR provides for the right to an adequate standard of living, including adequate food,

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## CASE STUDY

### Jailed for a medical debt



Denise Zencka, a cancer survivor and mother of three, was arrested in Indiana in January 2013 for outstanding medical bills for her cancer treatment. Diagnosed with thyroid cancer and unable to work for four months due to

the cancer treatment, she was staying with her parents in Florida as she was recovering from the treatment. While she was out of state during that period, she was unaware of and unable to attend small-claims court hearings in Lake County, Indiana, to recover medical bills for her cancer treatment that she was unable to repay. Three arrest warrants for civil contempt were issued against her for failure to appear. Even though Zencka had filed for bankruptcy, officers of the Lake County Sheriff's Department came to her home in Crown Point, Indiana, to arrest her. Still dressed in her pajamas, she was arrested in front of her eight-year-old autistic son, four-year-old son, and 12-year-old daughter. She was incarcerated overnight. She was initially held in a large holding cell with several men before she was told to climb stairs to a holding cell for women. She says her blood pressure rose to a high level, which concerned her given her history of seizures and strokes. Because Zencka was unable to climb the stairs to the women's section, she was held in a men's mental health unit of the jail with glass walls that allowed the male prisoners to see everything she did, including use the toilet. She says she was verbally abused, denied medicine, denied feminine hygiene products, and exposed to lewd and "trauma-inducing" behavior, including one man who wiped his feces on the wall of their shared cell.<sup>221</sup>

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clothing, housing, medical care, and the continuous improvement of living conditions.<sup>220</sup> This minimum protection is often violated by creditors and debt

collectors who use the threat of incarceration and abuse the justice system to secure arrest warrants to extract payments from debtors. Such behavior uniquely affects indigent defendants, who may be forced to subsist below an adequate standard of living. In a 2016 ruling, the Constitutional Court of South Africa found that the lack of judicial oversight of post-judgment collection actions to extract payments violates debtors' rights and poses a threat to "the livelihood and dignity of low-income earners, a distinctly vulnerable group in our society," and that "taking away the basic income that indigent debtors rely on for subsistence, without court supervision, rubs right up against the right to dignity (which underlies all the socio-economic rights of housing, food and health care)."<sup>222</sup>

Creditors and debt collectors should also respect human rights. Specifically, the U.N. Guiding Principles on Business and Human Rights calls on businesses to avoid causing adverse human rights impacts, prevent and mitigate such impacts, and cooperate with remediation processes when human rights abuses occur.<sup>223</sup> Under such principles, creditors and debt collectors are obligated to refrain from coercive practices. These Guiding Principles also require states to enforce laws that require businesses to respect human rights and to encourage and require, when appropriate, that businesses report how they are addressing their human rights impacts.<sup>224</sup> This obligation also applies to federal and state judicial systems, which must work to ensure that creditors and debt collectors do not abuse the contempt process to unlawfully extract payments from debtors.

Lastly, as this report describes, the incarceration of debtors disproportionately affects communities of color.<sup>225</sup> Many human rights instruments, including the Universal Declaration of Human Rights, ICCPR, ICESCR, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), require that rights be recognized "without distinction of any kind," including by race.<sup>226</sup> The disparate impact of abusive private debt collection practices on communities of color represents a violation of the international standard of non-discrimination, which explicitly recognizes evidence of disparate impact as indicative of discrimination.

# Recommendations

The ACLU makes the following recommendations to preserve the integrity of the courts and protect alleged debtors against the unconstitutional and abusive debt collection practices documented in this report.

## Arrest Warrants—Recommended Reforms

### **Prohibit the issuance of arrest warrants in debt collection cases.**

*(Recommendation for state legislatures and state and local courts)*

- Prohibit courts from issuing any “body attachment,” “capias warrant,” “writ of attachment,” or warrant for contempt, failure to appear, or failure to comply for the arrest of a debtor in debt collection cases.

### **Enact federal legislation prohibiting the use of arrest warrants in debt collection cases.**

*(Recommendation for the U.S. Congress)*

- Amend the Fair Debt Collection Practices Act (FDCPA) to prohibit debt collectors from using or seeking warrants for the arrest of alleged debtors.

### **In the absence of a complete ban on the issuance of arrest warrants in debt collection cases, strictly limit the use of arrest warrants for judgment debtors.**

*(Recommendations for state legislatures and state and local courts)*

- Issue an order giving the judgment debtor 90 days to 1) appear at the court or 2) provide the post-judgment discovery if the judgment debtor fails to appear for the post-judgment hearing or comply with the court-ordered discovery order.
  - Explain in the order that the court may issue a warrant if the judgment debtor does not comply.
  - Require the order to be served by certified mail or in hand.
- Issue a warrant at the end of the 90-day period only if the judgment creditor 1) submits proof that notice was actually received by the consumer and 2) submits a proffer of evidence that the judgment debtor has non-exempt income or assets.
- Defendants should not be taken into custody pursuant to any new or pre-existing warrant. Instead, release judgment debtors on their own recognizance, with no conditions, upon service of the warrant or hold the post-judgment hearing the same day they are taken into custody.



- Clarify that the warrant is fully satisfied once the judgment debtor provides information about income and assets.
- Require that the warrant expire 180 days after it is issued.
- State and local courts should codify the aforementioned protections by issuing a judicial bench card that creates guidelines for judges to prevent the abuse of contempt of court authority in civil debt collection proceedings.

**States that permit judgment debtors to be held overnight for a post-judgment hearing must adopt additional protections.**

*(Recommendations for state legislatures and state and local courts)*

- Set bail the same day that the individual is taken into custody.
- Set bail based on an individual's ability to pay.
- Set bail at the minimum required to secure attendance at the hearing (including \$0), not the amount of the debt.
- Prohibit money bonds from being turned over to judgment creditors.
- Prohibit requirements that judgment debtors post bail in cash.
- Provide court-appointed counsel to indigent defendants in post-judgment proceedings at which a warrant may be issued that may result in their incarceration.

**Decrease the likelihood that consumers need to appear in court post-judgment.**

*(Recommendations for state legislatures and state and local courts)*

- Develop robust options for discovery of income and assets outside of court, such as standardized forms that can be filled out by mail, phone, or online.

- Require any post-judgment discovery to include a list of all types of income and assets that are exempt. This form should explain how to claim these exemptions.
- Require judgment creditors to pursue all out-of-court post-judgment discovery options before requesting a post-judgment hearing.

**Provide effective notice of the post-judgment hearing and alternative means of appearance.**

*(Recommendations for state legislatures and state and local courts)*

- Require service of the notice of the post-judgment hearing by certified mail or in hand.
- Require the notice to include a list of all types of income and assets that are exempt. This form should explain how to claim these exemptions.
- Provide alternatives such as telephonic or video appearances to allow people to attend the hearing without physically appearing in court.

**Ensure due process protections at post-judgment hearings.**

*(Recommendations for state legislatures and state and local courts)*

- Require the court to engage in a colloquy to review any settlement agreement and confirm that it does not require payment from exempt income or assets.
- Require that post-judgment proceedings be conducted entirely in the judge's presence and memorialized through court reporting and/or audio recording.
- Prohibit the court from scheduling any further post-judgment hearings unless the judgment creditor provides evidence that there may be additional income or assets.

### **Prohibit courts from issuing orders to pay.**

*(Recommendation for state legislatures and state and local courts)*

- Prohibit courts from ordering a judgment debtor to pay or imprisoning an individual who fails to comply with an order to pay.<sup>227</sup>

### **Take enforcement action to curb the abusive use of warrants in debt collection cases.**

*(Recommendations for state attorneys general, the Consumer Financial Protection Bureau, and the Federal Trade Commission)*

- Bring enforcement actions against creditors and debt collectors who use warrants to frighten consumers or to coerce them into making payments from exempt income, or who falsely claim to have legal authority to jail consumers in order to coerce payments.
- Enter into consent or remediation agreements with creditors and debt collectors, to ensure they do not use warrants in collection cases.
- Investigate whether the use of post-judgment warrants has a disparate impact on particular communities.

### **Issue regulations or advisory opinions to curb the abusive use of warrants in debt collection cases.**

*(Recommendations for state attorneys general, the Consumer Financial Protection Bureau, and the U.S. Department of Education)*

- Issue regulations or advisory opinions clarifying that using a warrant to coerce payment or frighten alleged debtors violates state and federal consumer laws.
- Publish know-your-rights information for consumers regarding their rights under federal and state law when threatened or served with a warrant in debt collection cases.
- Ensure that all contracts with attorneys collecting unpaid federal student loans

stipulate that they will not seek or threaten to seek warrants for the arrest of debtors.

## **Bad-Check Enforcement Programs—Recommended Reforms**

### **End bad-check enforcement programs run by private check collection companies.**

*(Recommendations for district attorney offices and state legislatures)*

- District attorney offices should terminate contracts with private companies for the administration of bad-check enforcement programs.
- State legislatures should pass legislation prohibiting district attorney offices and other public agencies from contracting with private companies to operate check diversion programs.

### **In the absence of a complete ban on bad-check enforcement programs run by private companies, enhance consumer protections.**

*(Recommendations for state legislatures and district attorney offices)*

- Prohibit district attorney offices and other public agencies from allowing private debt collectors to use their seal or letterhead.
- Prohibit referral if the balance is less than the minimum dollar threshold for prosecution under state law.
- Require individual review by the district attorney for each account that goes to the check diversion program and set up a mechanism to audit this internal review.
  - Require that for a debt to be referred, the district attorney must first confirm that 1) the consumer received at least two notices of the unpaid check, 2) the district attorney's office would otherwise prosecute

this case but for the check diversion program, 3) there is no evidence that the consumer stopped payment for a reason that is legal under federal law U.C.C. § 4-403, and 4) the consumer is not listed in any government databases as receiving government benefits.

- Require standard language in letters that can be set by regulation.
- Limit the fees that private collectors can charge to no more than the amount of the not-sufficient-funds (NSF) checks fee set by state law.
- Require any money generated by bad-check enforcement programs beyond restitution be paid to a legal services fund to represent individuals with consumer debts.
- Prohibit requirements for diversion seminars or require free online alternatives.
- Adopt transparent reporting requirements for district attorney offices, including the number and details of cases referred for private collection, the terms of its diversion program agreements, and revenue generated for the government and the company.

### **Take enforcement action and issue regulations to curb private companies' misuse of bad-check enforcement programs.**

*(Recommendations for the Consumer Financial Protection Bureau and state attorneys general)*

- Issue regulations or advisory opinions to clarify which actions by bad-check enforcement programs violate federal and state consumer protection laws.
- Bring enforcement actions against debt collectors operating bad-check enforcement programs outside the limited exemption embodied in 15 U.S.C. § 1692p(a).

## **Other Due Process Deficiencies in Debt Collection—Recommended Reforms**

### **Ensure due process protections for defendants in debt collection lawsuits to reduce default judgments.**

*(Recommendations for state and local courts)*

- Amend court rules to increase judicial scrutiny over applications for default judgment by requiring debt buyers to produce documentation that the lawsuit was brought prior to expiration of the statute of limitations and to disclose if the debt is time-barred.
- Modify rules to permit entry of default judgment against a defendant only after the defendant has received timely and actual notice of the summons and subsequently fails to appear at a trial setting.
- Require plaintiffs filing petitions to collect consumer debt to provide evidence of the debt, e.g., documentation of all assignments demonstrating the plaintiff's right to collect the debt from the consumer.
- Chief justices or presiding judges of higher courts should exercise their administrative oversight authority to more closely supervise local or municipal courts, to determine whether they are complying with existing law and court rules in the adjudication of debt collection lawsuits, and to recommend best practices.
- State bar associations and legal aid offices should create projects that provide same-day legal assistance in the courthouse for consumers in civil debt collection cases. At a minimum, they should provide legal advice for pro se litigants and offer limited assistance representation at their court appearances.

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# Appendix I: Case Studies

## Case Studies: Arrest Warrants and Jailing in Debt Collection Cases

### Medical Debts

The ACLU documented the arrests of people in connection with post-judgment proceedings to collect debts to ambulance services, pharmacies, addiction service providers, radiology offices, surgery centers, women's health care providers, urgent medical care providers, pediatric clinics, rehabilitation services, doctors, and dental offices. We documented numerous cases of arrest warrants and jailing for medical debts in Maryland, Nebraska, and Idaho, as well as some cases in Arkansas, Indiana, Kansas, Tennessee, Utah, and Washington. For instance, in Maryland we documented hundreds of cases in which people were jailed for medical debts of under \$1,000, including cases in which people were arrested in cases involving debts of \$217.50 and \$230 owed to an addiction service provider.

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In **Nebraska**, Ms. R,<sup>228</sup> a single mother who works as a waitress, was arrested in her home in front of her children one evening for failure to appear in court over a \$176.50 medical debt. When she asked law enforcement officers at the time of her arrest and when she was booked at the county jail what she was being arrested for, they told her they didn't know. She had been summoned to court for a "debtor's exam" to answer questions about her income and assets, but she had not received notice of the hearing (called an "Order in Aid of Execution"). In Nebraska, debtors often are not aware that they have been ordered to appear in court, as the law does not require personal

service or proof of actual notice of the order to attend the debtor's exam; rather it requires only an attempt to serve the order at the person's last known residence or place of employment. In Ms. R's case, the order to appear in court was left with a colleague at the restaurant where she worked and it was never given to her, and there was no proof of service in the court file. An arrest warrant was issued against her for contempt of court for failure to appear. She was searched, forced to change out of her clothing and into a jail uniform, and placed in a locked jail cell with plywood covering the window. Because she did not have the money to pay bail, she was jailed for two hours until her father could arrive with the \$100 to bail her out.

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Ms. W<sup>229</sup> of Lawrence, **Kansas**, was arrested three times on civil bench warrants for contempt for failure to appear at a hearing to provide information about her income and assets. She owed a medical debt to Stormont Vail Healthcare Inc. in Topeka for a hospital stay while she was uninsured, and the creditor was seeking to collect on a judgment for \$5,236.59. Each time Ms. W did not appear in court, the Shawnee County District Court issued a bench warrant for her arrest at the request of the creditor. She was arrested in October 2013 and required to post a \$150 cash bond. She had previously been arrested by the Shawnee County Sheriff on bench warrants in July and August 2012, and after each arrest she was required to pay cash bonds of \$50 and \$100. In all three cases, the cash bonds she paid were forfeited to the creditor.



Ms. W worked as an outreach and enrollment specialist at the Heartland Community Health Center in Lawrence, Kansas, helping people enroll in and navigate the Affordable Care Act (ACA). She was working to pay off the medical debt and support her family while trying to help others without adequate medical insurance avoid similar troubles. When a local press outlet discovered the existence of an outstanding arrest warrant, the ensuing local and national press coverage tarred her. Journalists incorrectly suggested the warrant was criminal rather than civil in nature, and some media outlets and political pundits used the existence of the warrant against Ms. W to argue that ACA navigators posed a risk of identity theft. A state senator subsequently introduced new legislation to place more stringent restrictions and regulations governing ACA navigators. Ms W. had in fact passed a background check and was unaware of the warrant until the media coverage, and she hastened to satisfy the warrant by appearing in court and paying the bond. Ms. W's employer defended her, issuing a statement that said, "We support her commitment of helping the uninsured to obtain coverage that could help prevent the difficult circumstances she has experienced first-hand."

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Rex Iverson got a knock on his door early one Saturday morning in January 2016. A deputy sheriff was there to serve Iverson with a \$350 bench warrant issued by a **Utah** justice court shortly after Christmas. Iverson was arrested and jailed at Box Elder County Jail. Jail officials asked Iverson whether he had the money to post bail; because he did not, they took him to a holding cell to wait while the booking process was completed. Later that afternoon, Iverson was found unresponsive, alone in the holding cell. He was declared dead shortly afterward. A police investigation later determined that Iverson, who was 45 years old, had killed himself with strychnine poison rather than stay in jail.<sup>230</sup>

Iverson had committed no crime. He was incarcerated for failing to appear in court over an unpaid bill for a ride to the hospital on Christmas Eve two years earlier that cost him more than \$2,000.<sup>231</sup> Iverson had no means to pay the medical debt, even

after he was sued in small-claims court and had a default judgment entered against him. The creditor's attempt to garnish his wages failed because he was unemployed. He did not show up after the court issued a notice to appear at a hearing regarding the unpaid debt, and a Tremonton Justice Court judge issued a bench warrant for his arrest. Iverson had struggled financially since the death of both his parents in a car crash, and though he had previously worked as a welder and a heavy equipment operator, he was out of work and living in his parents' home at the time of his arrest. The court did not appoint an attorney to represent Iverson.

In the two years before Iverson's death, 13 people had been jailed on civil bench warrants in the northern Utah county jail where Iverson was held. The county has fewer than 50,000 people, and that court handled only 410 civil cases during the previous year.<sup>232</sup> Statewide, in 2016, Utah district court and justice court judges issued 5,831 bench warrants in civil cases, a 6 percent increase over the previous year, according to state courts system data.<sup>233</sup>

## Student Loans and Other Education Debts

The ACLU documented cases of arrest warrants issued to collect unpaid federal and private student loans, online for-profit education course fees, school textbook fees, and two cases in which parents were arrested in cases to collect preschool fees. We found arrest warrants issued by federal judges for contempt of court—either for failure to appear at a judgment debtor exam or for failure to comply with a court order compelling discovery responses—in student loan collection cases in California, Florida, Minnesota, and Texas. The Department of Education had sued and obtained judgments against these alleged debtors for defaulted student loans. We also documented cases in which judges threatened to issue arrest warrants in federal student loan collection cases in California, Connecticut, and Tennessee.

According to the U.S. Marshals Service in Houston, its office processed 25 arrest warrants for people who missed court appearances in connection with unpaid federal student loan debts during 2015.<sup>234</sup>

Over the last 10 years, there have been an estimated 225 arrests in student loan cases in the U.S. District Court for the Southern District of Texas alone.<sup>235</sup> The U.S. Marshals Service did not adequately respond to a Freedom of Information Act request filed by the ACLU seeking information about arrests made in student loan collection cases nationwide, but we have documented cases of arrests made in 2015 and 2016 in California and Texas. In 2003, U.S. marshals in Minnesota conducted “Operation Anaconda Squeeze” to arrest student loan debtors who failed to appear in court; in that operation, 10 warrants were issued for the arrest of student loan debtors who failed to appear at a debtor’s examination, four of whom were arrested. At the time, U.S. Attorney Robert Small told the Minnesota Chronicle, “We don’t do it very often. The bottom line is that the threat of arrests is an effective tool.”<sup>236</sup>

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In **Texas**, Paul Aker was arrested in February 2016 by seven armed U.S. marshals at his Houston home for an unpaid \$1,500 student loan he had borrowed 29 years earlier.<sup>237</sup> Aker says he received no certified mail or notices about the debt or the court case brought by a private debt collection attorney seeking to collect the debt on behalf of the federal government. After his arrest, he had to sign the repayment plan for the student loan and was ordered to pay more than twice the amount of the original loan, including interest, court fees, and \$1,258.60 as reimbursement to the marshals for his arrest.<sup>238</sup>

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Tracie Mozie was arrested in **Texas** for failing to appear in court over a federal student loan she took out in 1986 to pay for truck driving school. Her mom had applied for a \$1,500 loan on Mozie’s behalf, which grew to more than \$13,000 with interest and fees. Because Mozie is unemployed and subsists only on disability benefits totaling \$700 a month, she has been unable to repay the loan. She had no idea that she had been sued to collect the debt. She initially was served at an incorrect address and when she did receive notice of a post-judgment proceeding in the case, she did not understand why she was summoned to court. She missed a December 2014 court date, and at the collection attorney’s request, a federal judge

issued a warrant for her arrest. Mozie says she didn’t know that a warrant had been issued until she was arrested.

Three armed U.S. marshals knocked on her apartment door while she was sleeping. Her boyfriend opened the door and two marshals entered her bedroom with their weapons drawn. Mozie, who uses a prosthetic leg due to a congenital birth defect, was lying in bed and not wearing her prosthesis. She said, “They had a warrant for my arrest and I asked them for what, he didn’t say what it was for. He said, ‘He’ll tell you later.’”<sup>239</sup> After she put on her prosthetic leg and got dressed, the U.S. marshals handcuffed her and put shackles on her feet and waist, then walked her outside in front of her neighbors. “Where was I running to?” she asks. “I was so embarrassed.” Mozie was jailed overnight at the courthouse jail in downtown Houston, where she also was photographed and fingerprinted. She was brought before a federal judge the following day, who found that she had no ability to make payments on the judgment. She continues to be afraid of being arrested again: “I’m scared someone is going to come to my door and get me again. I just want this to be over.”<sup>240</sup>

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We also documented cases in Indiana, Maryland, and Massachusetts in which debt collectors obtained arrest warrants for debtors with private student loans. In these cases, we have no documentation of an arrest having been made. For instance, in **Maryland**, the Baltimore City District Court issued a body attachment in August 2014 for the arrest of a man who allegedly owed \$23,860.84 in student loan debt owed to SLM Private Credit Student Loan Trust. The student loan lender, which is associated with Sallie Mae, had obtained a default judgment against the man and requested and obtained the body attachment after he missed an oral examination and repeated show cause hearings.

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In **Massachusetts**, Mr. W<sup>241</sup> surrendered himself to court on a capias warrant for an alleged student loan debt. In 2011, he had a contract with a for-profit company offering education courses for college credit by mail. The company sold educational tutorials that



it promoted as providing students with the necessary prerequisites to enroll in a program from which they ultimately could obtain a license, and it charged thousands of dollars in upfront costs financed by long-term personal loans. Mr. W took out a private loan through the company to cover the \$4,000 program cost. He received one book from the company. When he called to complain that the book was useless and to ask for the rest of the materials, he was assured that he would receive more materials in the mail. After receiving nothing further, Mr. W thought he had been scammed and refused to pay anything further on the loan. The educational company then sold the loan to a debt collector who sued Mr. W to collect on the debt. Mr. W had received several harassing phone calls and letters from the debt collector and had stopped opening mail he did not recognize. In January 2016, he received a call from the local sheriff's office telling him to come to court the next day because he had a small-claims case for which a warrant had been issued against him. Mr. W met an attorney from Greater Boston Legal Services while he was in small-claims court for the warrant, and the attorney helped him to secure an order from the court vacating the default judgment, defend against the lawsuit, and obtain a settlement in his favor. The company has since been shuttered after being sued by two state attorneys general and the Federal Trade Commission.

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An **Indiana** court issued an arrest warrant in a case to collect an unpaid school textbook rental fee. Mr. K's<sup>242</sup> son had transferred to a school in Warrick County in southern Indiana during the school year and had to share school textbooks with another student because they did not have textbooks for him. The Warrick County School Corporation sent him a bill for \$101 for the use of the rented books for the year. He says that he and his wife both worked 60 or more hours a week at that point and were busy and stressed out, and they forgot about the book fee and did not pay it. He also believed he should not have to pay the fee since their son was having to share the books and did not have books of his own. They eventually moved from Warrick to Vanderburgh County and were completely unaware that the Warrick County School Corporation had sued them

for the unpaid textbook rental fee. According to Mr. K, they were never served with papers, called, or contacted in any way. The Warrick County School Corporation obtained a default judgment of \$301 plus court costs of \$102, so the total Mr. K owed was \$403—far more than the original \$101 bill. Bench warrants were issued by Warrick County Superior Court for Mr. K and his wife on February 20, 2014, for failure to appear at proceedings supplemental to execution, and a cash-only bond on the warrant was set at \$210 each.

Mr. K remained unaware of the lawsuit and the bench warrants until he applied for a law enforcement job. He had worked as a police officer for 13 years in Tennessee and applied for a part-time position with a local law enforcement agency. "I was prime for the position and was told that they wanted me. I was excited to get back on the job. When they went to do my background check, they advised me that I had a writ warrant for my arrest," Mr. K said. "I was passed up for the job, naturally. Because of this stupid law, I missed out on getting back into a law enforcement officer position." Outraged, he added, "I understand that when people owe money for a legitimate bill, they should pay it, and if not be held accountable for it. Isn't that what judgments and garnishments are for?" Mr. K ultimately paid the fee to clear the warrant because he "had no other choice but to pay it."

## Housing Debts

We documented cases of arrest warrants and jailing for unpaid rent, rent owed due to broken leases, fees assessed for alleged damage to rental property, unpaid homeowners' association fees, and unpaid mortgage foreclosure deficiencies.

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Mr. B<sup>243</sup> was arrested in **Maryland** and jailed twice for back rent the landlord said he owed. At age 21, Mr. B got his first apartment of his own, but he fell behind on his rent payments after he lost his full-time job a few months later and his mother became very ill. He sometimes had to pay the rent late, and he had to pay large late fees some months. But he says he thought he was keeping up with what he owed. In 2008, while he was still living in the apartment, a friend called

saying that he had seen Mr. B's name on a docket at the courthouse in Towson, Maryland. According to Mr. B, he had never received any papers telling him to appear in court and this was the first he had heard about the case brought against him to collect back rent. He went to the courthouse to find out what he needed to do, and he was arrested and detained for about a day before he was released without a bond. Four years later, in April 2012, he was surprised to learn that he had again been ordered to appear in court over rent the debt collector said he still owed. He went to the courthouse in Essex to try to resolve the situation. He said, "When I told the clerk about the issue, this time I was immediately handcuffed and shackled and put under arrest. The police drove me, in handcuffs, in a squad car to the police station where I was booked and put into the system."

The booking process took hours, and Mr. B said, "It was very humiliating—especially because I was trying to do the right thing and get the situation resolved." After he was booked, the police drove him back to the courthouse in Essex, where he was jailed and put in a holding cell. After several hours in the cell, he was taken before a judge, who set bail at \$2,500. Mr. B was jailed at Baltimore County Jail for about a day and a half. It took his mother, whom Mr. B describes as "an older woman who's sick and doesn't have much money," more than a day to post a bond of \$250. When Mr. B appeared in court again, the judge ordered that the \$250 bond be handed over to the debt collector. "Being arrested and shackled made me feel like an animal in a cage. And it was really unfair because I turned myself in to the court to try to do the right thing and find a way to resolve the situation. They didn't have to arrest me that way," Mr. B said. "The experience put a huge strain on me for many months. The whole thing has been very painful and unfair for me and my mother and only made it harder for me to find work and pay my bills."

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Ms. C,<sup>244</sup> a disabled **Indiana** woman with three children, was sentenced to 30 days in jail for failing to obey a court order to pay \$110 on a housing debt. The small-claims court had ordered her to pay \$10 a month on a \$445 debt owed to her landlord, Grace Whitney Properties, but she was unable to make

a number of the monthly payments. When Ms. C was unable to make payments, the creditor filed for contempt against Ms. C at least 12 times, and she appeared for numerous hearings on the matter in the Vanderburgh County Small Claims Court. The creditor asked for a writ of attachment to be issued for Ms. C's arrest, and the court complied. Even though Ms. C told the court she was disabled, had no money, and her only source of income was Social Security disability benefits, which was legally exempt from collection, the small-claims court ordered Ms. C to serve 30 days in jail. The magistrate informed Ms. C that she could "purge herself of contempt" and get out of jail if she paid the \$110. Because she could not pay, deputies handcuffed Ms. C, who was crying, took her out of the courtroom, patted her down in the hallway, and were going to take her to jail. A woman in the courtroom who had never met Ms. C was so horrified by the situation that she gave her \$100 to prevent her from being jailed. The Indiana Court of Appeals ruled the procedure violated the Indiana's Constitution's provision that "there shall be no imprisonment for debt."<sup>245</sup>

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A warrant was issued for the arrest of a **Washington** man for failure to appear in court over the amount he still owed to his mortgage lender, Zions First National Bank, after his home had been seized in foreclosure. The lender had sold the home in a trustee sale for less than the outstanding balance on the mortgage. The bank sought payment for the mortgage foreclosure deficiency judgment of \$92,607.10 plus interest, attorneys' fees and other costs. He missed a single scheduled hearing for supplemental examination to provide information about his income and assets. In March 2014, the Lewis County Superior Court issued a bench warrant directing the sheriff to arrest him for failure to appear and set bail at \$3,000. He only avoided arrest because the warrant was quashed after he filed for bankruptcy.<sup>246</sup>

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A warrant was issued for the arrest of Ms. B,<sup>247</sup> a **Maryland** woman who missed a court hearing that she had asked to be rescheduled because she was taking her sick child to the hospital. A property management company sued Ms. B, a former tenant

who had left the property three years earlier. The company claimed she owed them almost \$2,200 in various charges, including rent, water bills, late fees, court costs, post office charges, and clearing out the property. The company did not provide any documentation of these charges other than a letter it had mailed to the former tenant at the apartment she had already vacated. The court awarded a default judgment in September 2013 and only one month later the creditor asked for an oral examination of Ms. B in court, at which she was to bring “All papers relating to assets, income, expenditures, property, credits and business transactions since [January 2012], including bank books, checking accounts, income tax returns, auto purchase, television, furniture, real estate purchases, etc.” Ms. B did not appear in court and the creditor asked for a hearing to show cause why she should not be held in contempt. In the meantime, the creditor garnished Ms. B’s wages, but she lost her job two months later.

On the morning of the April 2014 hearing, Ms. B called the court and asked to postpone. The court file says “On the way to hospital / Univ. of MD w/ sick child [illegible] Pediatrics / Request new date to come in.” She also told the court that she had not received service on anything, which the file reflects as well. The court denied her request and instead issued a body attachment ordering her arrest in June 2014.

## Household Debts

In cases documented by the ACLU, arrest warrants were issued and debtors were jailed in post-judgment collection actions on household debts such as unpaid utility bills, heating repairs, and furniture purchases.

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James Davis was jailed for money he owed on a line of credit extended to him by Nebraska Furniture Mart in **Kansas**. He bought a bed, mattress, and computer on the account, but he later lost his job and his financial situation deteriorated. He fell behind in payments, and the store sold the debt to a collection agent, the law firm Evans & Mullinix, which sued Davis and won a judgment for \$1,987 plus \$827.90 in interest and attorney fees. Davis later got a job and worked to make payments on the debt, but he

lost that job as well and fell behind again. The debt collector sought and obtained from the Wyandotte County District Court an Order for Hearing in Aid of Execution requiring Davis to appear in court for an Examination of Judgment Debtor. Davis repeatedly appeared in court for these hearings to examine his ability to pay, and the collector requested a hearing only 10 days after the prior in-court examination. Davis was unemployed, had no assets to satisfy the judgment, and was subsisting on unemployment benefits that Nebraska Furniture Mart had already garnished even though they were exempt from collection; the collector had no reason to believe his financial circumstances had changed.

When Davis eventually missed a hearing, the judge cited him for contempt of court and ordered that a bench warrant be issued for his arrest. The collector sent Davis a letter notifying him of the judge’s order authorizing an arrest warrant and, “as a courtesy,” giving him the opportunity to set up a payment plan to pay the balance of the debt. Davis agreed to a new payment plan and struggled to make the monthly \$100 payments for the next three months, but he missed one payment and was 10 days late in making another payment. Four days after Davis made the late payment, the collection lawyer filed an order asking the court to issue the bench warrant and provided a draft warrant. The judge signed the warrant the same day. Davis was jailed when the collection agent had the warrant processed. Two Wyandotte County sheriff’s deputies knocked on his door at 9:30 p.m. as he was watching the State of the Union in January 2011. They arrested him, handcuffed and shackled him, and took him to jail. He was jailed for several hours until, with the help of his girlfriend, he was able to pay the cash bond of \$250 to secure his release. The judge ordered the \$250 bond handed over to Nebraska Furniture Mart.

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In **Massachusetts**, Iheanyi Daniel Okoroafor, a 73-year-old retired mental health case manager, was ordered jailed in 2014 when he appeared in small-claims court over a \$508 debt for a furnace repair. Okoroafor had paid \$350 of the bill for repairs to his boiler, and the unpaid portion of the repair bill totaled \$459.65; court costs increased the debt to

\$508. Okoroafor said the repair was improperly done and had not fixed the problem with his furnace. The heating contractor sued Okoroafor and obtained a default judgment against him for \$508.27; Okoroafor says he was never notified of the April 2013 hearing.

At the June 2014 hearing in Belchertown District Court, he also told the judge that he did not have the funds to make the payments or hire an attorney, as his main source of income is a \$2,000 monthly state pension. Okoroafor explained that after paying monthly bills, including medical bills for his wife who suffers from dementia and tithing of 10 percent of his income to his church, he is “left almost without anything.” Three months earlier, he began visiting a food bank once a week because he could not afford to buy enough food. He was behind on utility bills, and a bank had foreclosed on and taken a rental property he owned.

Okoroafor thought he would have a chance to explain why he did not pay the bill, but the judge concluded that Okoroafor could pay the debt, ruled him in contempt of court for failing to do so, and ordered him jailed for 30 days or until he paid the full amount owed. As Okoroafor was taken away in handcuffs, he begged the judge not to incarcerate him so he could see his hospitalized wife, pleading, “My wife is in the hospital. I need to go and see her.” He was held at Hampshire County Jail for 12 hours before his daughter paid his debt to secure his release at about 2:00 a.m. the next day. The judge erred in ruling that Okoroafor could pay, as state pension income is exempted from debtor judgments under state law:

**Judge: Have you paid the amount owed?**

Mr. Okoroafor: No, I don't even have the money.

Judge: Have you retained a lawyer?

Mr. Okoroafor: I tried to. I came to the DA's office to get help with representation and they said they don't do any civil matters. That the only thing they do is criminal. And I went to the Clerk's office and they said the same – that they don't help people with small claims cases....

Judge: Are you employed?

Mr. Okoroafor: No, I am retired.

Judge: What is your source of income?

Mr. Okoroafor: My pension, that's all...from the Commonwealth of Massachusetts....

Judge: Do you own your own home?

Mr. Okoroafor: Yes, but it is shaky now.... My wife is in the hospital right now as we speak.... Other expenses I have is to pay my tithe in my church...10% of what I get.

Judge: Do you have a mortgage?

Mr. Okoroafor: Yes I have a mortgage...I pay \$1,100 [a month].

Judge: Do you have any other sources of income?

Mr. Okoroafor: My wife gets Social Security.

Judge: You have ignored an order of the court.... This court has made an order for you to pay the money.

Mr. Okoroafor: And I didn't have the ability to pay that money.

Judge: Why?

Mr. Okoroafor: Because of my expenses, which I have enumerated. I pay, my wife has been, her health has been in jeopardy for a long time and is always in the hospital, in and out.... The medicine, the medication we pay.

Judge: How much?

Mr. Okoroafor: On a monthly basis I would say \$200.... The other evidence that I have is that, after paying all my bills like my electric bill, my cable bill, and sewage bill, I am left almost without anything.... I was not served with any invitation to come to a hearing.... I have done everything that I could. And I have evidence to prove that they have not sent me any hearing notice....

Judge: Your response to that denial cannot be, “I refuse to pay,” sir. You will be taken into custody for 30 days or until you pay



the amount owed to this person. Take the defendant into custody.

[Sound of handcuffs.]

Judge: I find by clear and convincing evidence that he has an ability to pay.... I find that he willfully refuses to pay. He will be held in custody unless and until he removes the contempt by paying the money owed to the plaintiff in this case.

Mr. Okoroafor: My wife is in the hospital. I need to go and see her.

Bailiff: It's not going to happen unless you pay.

In **Nebraska**, Ms. W,<sup>248</sup> 62, was arrested for failure to appear in court over a \$1,800 debt owed to Heartland Construction for home repairs. Police came to her apartment at 5:30 a.m. in April 2017 to arrest her on a warrant. The sheriff was doing a sweep of outstanding warrants for public housing tenants, and an outstanding warrant issued for her arrest 15 years earlier came up. The warrant had been issued in June 2002 for failing to appear at a debtor's exam. She lives in public housing, has no car, and her only income is Social Security Disability benefits (SSDI). The officers let her leave her apartment and walk outside before handcuffing her. She was transported to the jail, where she was booked, fingerprinted, and photographed for a mug shot. Bond was set at 10 percent of the debt. She says she was incarcerated for almost five hours before a friend bailed her out.

### **Credit Card and Other Consumer Debts**

In **Tennessee**, Mr. B<sup>249</sup> was Tasered three times and bitten by a dog when he was arrested in October 2013 in connection with a credit card debt owed to Discover Bank. Mr. B had received collection calls about the debt years earlier, but he says he reached an agreement with Discover and considered the matter resolved long ago. His wife later testified that she had opened the account and used the card without his knowledge and did not tell him about the civil lawsuit

that was subsequently filed to collect the debt. A civil warrant was issued for his arrest. After attempting to serve the arrest warrant 22 times over about a month, a Knox County sheriff's deputy thought he saw Mr. B walking on the driveway of his mother's house, where he had a workshop for his optical lens business. The deputy called in a captain, sergeant, three deputies, a K-9, and a helicopter as backup. The defendant's mother testified that five police cruisers were in her driveway, three additional cruisers were next door, and there were other unmarked cars parked in her backyard. The sergeant arrived and asked Mr. B's mother for permission to enter, but she refused. Even though they had no search warrant, she later testified that the captain said that if she had probable cause, she could go in and make an arrest for "evasion of service, obstruction of justice."

Several police officers entered the home and searched her entire house. Not finding Mr. B, the officers set up a full perimeter around the house. Mr. B says that after the deputies made threatening statements to his mother, he hid in the basement crawl space. He recalls the sergeant came downstairs and said, "I'm going to get you, you little shit." The deputies sent in a police dog. Mr. B says the dog bit his feet and hands, latched on to his arm, and dragged him three feet. Two deputies Tasered him three times in his leg, chest, and arm, leaving him unable to breathe. Photos of his injuries show four lacerations on his upper arm and two large lacerations, puncture wounds, and other abrasions on his ankles. In response to a civil suit subsequently filed by Mr. B, the police claimed he refused to show his hands and two officers then used their Tasers. He was convicted of misdemeanor obstructing and preventing service of process and arrest and sentenced to six months' probation and 10 days in jail, but the appeals court vacated the convictions because his conduct amounted only to avoiding civil process servers.<sup>250</sup>

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A **Nebraska** woman who is unable to work due to a disability had an arrest warrant issued against her for a \$1,500 debt to a local store. After her husband lost his job—and their sole source of income—in a downsizing at the medical center where he worked,

they struggled to make ends meet and they lost their home in a foreclosure. She and her husband begged the store to agree to a partial payment plan, but the store put a lien on their home and pursued her arrest. Her Legal Aid of Nebraska lawyer got the arrest warrant squashed when the store's attorney did not appear in a subsequent court hearing.

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After being pulled over for a traffic violation in 2012, a pregnant woman in **Colorado** was arrested and jailed on an outstanding arrest warrant for contempt of court. The warrant was issued for failure to enter interrogatories in a proceeding to collect a default judgment for unpaid credit card debt. Her bond was set at \$5,806—the exact amount of the default judgment against her plus interest. After she spent the night in jail, she was presented before a court and released on a personal recognizance bond.

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In **Illinois**, Vivian Joy was jailed in 2011 after being stopped for driving with a broken taillight. There was an outstanding warrant for Joy's arrest because she had not appeared in court after Champaign Heights Finance Corp. obtained a \$2,200 default judgment against her. Joy said she did not know about the lawsuit or the judge's order. She was handcuffed in front of her children and jailed until she posted a \$120 bond. She said she could not afford to pay the judgment because she is unemployed.

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In **Massachusetts**, a capias warrant was issued for the arrest of Ms. L<sup>251</sup> for failure to appear in court over a credit card debt she did not owe. She had not received the notice to appear in court for a payment review hearing in a small-claims debt collection case brought by a debt buyer. Because she had missed the court date, the court entered a default judgment against her. She received a notice from the sheriff's office at her home informing her of the warrant for her arrest and ordering her to turn herself in to the civil court during the next small-claims session. When she arrived in court on the morning of the session, she was met by a constable from the sheriff's office. After gathering some information from her, he turned her over to the debt collection attorney, who produced a copy of the court's agreement for judgment form for

her to sign. Because a default judgment was already in place, the attorney had indicated on the form that Ms. L had no ability to pay and asked Ms. L to sign. Ms. L, a Vietnamese immigrant with little English proficiency, tried to explain that it was not her credit card, but she signed the document anyway. Ms. L had missed the prior court dates because she had been hospitalized due to serious medical problems, and she was out of work due to her poor health. She was limping and complaining of severe pain when she met a Greater Boston Legal Services attorney who was providing free legal services at the courthouse that day. The attorney helped her to file a motion to vacate the default judgment. If Ms. L had left after signing that she had no ability to pay and had not contested the debt that day, it would have made it more difficult for her to convince a clerk later on that it was not her debt. Ms. L won the motion, and ultimately the debt buyer plaintiff dismissed the case.

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Michael Flanagan was jailed in **Nebraska** over a \$326 overdraft debt he owed to a credit union. He was never served notice of the hearing at which the court granted default judgment against him. When he missed a subsequent debtor's exam scheduled on a Friday in February 2017 because he was sick and forgot about the court date, the court issued a warrant for his arrest and set bail at \$202. On the following Monday, Flanagan realized he had missed the hearing, called the courthouse to try to reschedule and learned of the warrant. Afraid he could be arrested at any moment, he recalls, "It made my skin crawl that there's a warrant for my arrest. There's a document out there that says 'seize him'! I just couldn't handle it."

Flanagan contacted the debt collector, who refused to reschedule the hearing and told him he would have to pay the debt in order to avoid jail. He had been unemployed for six months and was living on food stamps and "the grace of friends." Flanagan said it was "unbelievably stressful knowing that I had to pay \$202 that I can't find the money for. I didn't even have something I could sell. I had nothing—no income, no savings, not even pocket change." He borrowed the bail money and spent a week making calls in a futile attempt to find a way to clear the warrant without

being arrested. He tried paying the bail to the county and the sheriff's office, but both refused to accept his payment. Officials at the Lancaster County Sheriff's office and the Department of Corrections told Flanagan that his only options were to wait to be arrested or to show up at the jail to be arrested. He turned himself in to the jail and was handcuffed, arrested, booked, and held while his bail payment was processed. As part of the booking process he was strip-searched and photographed for a mugshot. After several hours in jail, he was released.

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In the **Commonwealth of the Northern Mariana Islands**, Mr. M<sup>252</sup> was sentenced to 10 days in jail for failing to make court-ordered payments toward a debt he owed on a consumer line of credit from a bank. The bank, Pacific Financial Consumer Corporation, obtained a default judgment for \$8,176 that included a payment plan of \$60 a month. Mr. M failed to make any payments for eight months and was ordered to appear at a hearing to show cause why he should not be held in contempt of court and jailed. At the March 2005 hearing he appeared without a lawyer and testified that he had not made payments because he was unemployed for the first nine months after the court had issued the judgment and had only recently found a job that paid \$3.50 an hour, a net income of \$248 every two weeks. He said he could not afford the payment plan because he supported his girlfriend and their four minor children. The trial court ruled that he had the ability to comply with the court-ordered payments, found him in contempt, and sentenced him to 10 days in jail. The sentence was suspended on the condition that he pay \$30 per month until the debt was paid in full. Mr. M appealed the order and the Supreme Court of the Commonwealth of the Northern Mariana Islands ruled that the trial court had failed to advise Mr. M of his right to a lawyer and vacated the contempt order.<sup>253</sup>

## Auto Debts

Courts have issued arrest warrants for various auto and transportation debts, including debts for car repairs, towing services, auto loans, unpaid car rental fees, fuel expenses, and subrogation claims owed to auto insurance companies.

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Ms. R<sup>254</sup> was arrested by sheriff deputies at her **Ohio** home while caring for her three-week-old baby. She had not appeared in Bowling Green Municipal Court for a debtor's exam in connection with a judgment entered against her in a lawsuit by Dr. Auto Care for car repairs.<sup>255</sup> Even though Ms. R had filed for bankruptcy and therefore the proceedings should have been automatically stayed, the creditor sought the bench warrant from the court. The court granted the request, issuing the warrant for contempt of court for Ms. R's failure to appear at the debtor's exam. When Ms. R appeared in court following her arrest, the creditor's attorney demanded payment, asked Ms. R to propose a payment arrangement, and scheduled her for a second debtor's exam to be held just nine days later. Ms. R sued the creditor for violating the automatic stay imposed by her bankruptcy filing.

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A **Washington** couple, Michael Gray and Nicole Hart, were arrested and jailed overnight for missing a hearing in a case to collect an auto loan deficiency they owed to Zions First National Bank. When they defaulted on the auto loan, the bank repossessed their pickup truck and filed a lawsuit against them for the balance they owed on the loan, \$3,650.90, which ballooned to \$5,090.29 with interest and fees. After nearly a full year of having their wages garnished to pay down the debt, the couple filed for bankruptcy, primarily because they were unable to pay back this debt and feared further garnishment. They missed a March 2016 supplemental proceeding—a debt examination for the purposes of collecting the judgment—and the Cowlitz County Superior Court issued bench warrants for their arrest two weeks later, setting bail at \$1,000 each. The warrants and the judge's order granting the bench warrants were not served on the couple, and the debt collector did not even notify the couple that they had applied for and obtained the warrants. Instead, two months later, in May 2016, five sheriff's deputies came to their house one evening after 7:00 p.m. When Gray opened the door, the deputies immediately pulled him out of the house, handcuffed him on his lawn, and placed him in the back of a squad car while they waited for his wife to return home so that they could arrest her as well. For over an hour, Gray sat helpless in a police



car outside his house, watching as his six-year-old disabled son cried and ran in and out of their home. When Hart arrived home, she was also arrested, and the deputies informed her that they would have to call Child Protective Services if she could not find someone to watch their young son. Eventually their older son, himself a minor, came home to watch the six-year-old.

Gray endured a humiliating strip-search and Hart underwent an invasive pat-down and search that required the removal of her false teeth and underwire bra. Both spent a night in jail before posting bail. The entire time Gray and Hart were in jail, they had no idea why they were there. The deputies never informed them, and it was only just prior to their arraignment hearing the next morning (which they were forced to attend without lawyers) that they discovered the arrest was associated with the debt owed to the bank. Gray and Hart had to tell their employers that they would have to miss work. Hart, a clerk at the local Target, had to tell her employer that she had been arrested. Once back at work a few days later, Hart was required as part of her job duties to serve several of the sheriff's deputies and correctional officers who had participated in her arrest and incarceration. According to a lawsuit she filed against the bank and the collection company, each time she had to assist these law enforcement officers, she had to relive the experience of being jailed, and these instances have caused her to have an emotional meltdown on the job.<sup>256</sup>

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In **Indiana**, Mr. S,<sup>257</sup> the owner of a concrete company, was jailed in September 2009 for failure to appear at a post-judgment proceeding for \$4,024.88 he owed on an auto loan for his pickup truck. The loan was owed to a subsidiary of American International Group, the financial institution that received \$122.8 billion in federal bailouts. He was arrested in front of his four young children, strip-searched, sprayed for lice, and jailed for two nights. He was released only after agreeing to pay \$1,500 to the loan company. He says he did not know he had been sued.

## Payday and Other High-Interest Loans

In **Missouri**, Ms. S<sup>258</sup> was jailed for three days for failure to appear in a case to collect involving a high-interest \$425 payday loan. The creditor, Sunshine Title and Check Advance, sued and obtained a judgment against her, and then requested an "examination of judgment debtor." Ms. S, the single mother of a toddler, did not show up for the examination, a court hearing at which a judge would determine what assets the creditor could seize to pay the debt. The payday lender asked for a body attachment order to arrest Ms. S. The St. Louis County circuit judge issued a body attachment, setting bail at \$1,250. Two weeks later, when Ms. S learned that the St. Louis County police were looking for her, she and her mother went to the police station, where she was arrested. By then, the \$425 debt had ballooned to \$855 with interest and legal fees. Ms. S was required to post bail in cash and could not pay through a bondsperson. Her mother had to borrow the money to post the \$1,250 bond to secure her release, which was subsequently paid over to the payday lender. "I had to get out or I'd lose my job," Ms. S., who works as a clerk, said. Of her three days in the city jail, she said, "It was horrible...They tell you when to wake up and they tell you to go to sleep. The beds are hard."

A few months later, Ms. S filed for bankruptcy. Her bankruptcy petition revealed that she survived in part on child support payments, an exempt source of income that the payday lender couldn't have garnished. The petition also revealed that she did not own a home and did not have any assets the payday company could have seized by law. Her vehicle was subject to a car title loan and even her daughter's bedroom furniture was purchased on credit and was subject to repossession by the lender.<sup>259</sup>

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Ms. E<sup>260</sup> was mistakenly jailed for two nights for failure to appear in court over a high-interest payday loan in **Louisiana**. In May 2013, Ms. E was arrested by sheriff's deputies when she visited a prisoner at Caddo Correctional Center in Shreveport and the law enforcement officers there claimed she had an outstanding warrant from 2008. However, she had

already paid the debt in full and the warrant had been recalled a year and a half before her arrest. The night after her arrest, she was transferred to Shreveport City Jail because the warrant originated from Shreveport City Court. After two nights in jail, she was booked with contempt of court and released on bond. She was provided with a summons to appear in court. She retained counsel and arrived at the scheduled time, only to discover that she was not on the court's docket. Eventually, the court uncovered minutes from a civil case filed in 2006 that indicated that a warrant had been issued following Ms. E's failure to appear at judgment debtor exam. Ms. E owed \$485.23 to Advantage Finance Corporation, a payday lender. She had already paid back \$122.70 toward the principal, but the lender had sued her and her husband in 2006 and obtained a default judgment against them for the remaining debt and for attorney fees fixed at \$200. After Ms. E and her husband failed to appear at a judgment debtor rule hearing, the court issued a bench warrant for her arrest and set bond at \$200. Throughout 2007 and 2008, the creditor's lawyers filed a number of letters into the record to reset the bench warrant, and by October 2011 she had paid the debt in full and the creditor's attorney recalled the bench warrant. It appears the warrant database had not been properly updated, leading to her arrest in 2013.<sup>261</sup>

A **Maryland** woman was ordered arrested only a year after taking out a high-interest check loan. The lender, Mariner Finance LLC, sends out valid checks in the mail offering quick cash. By signing the back of the check and cashing it, the consumer accepts the loan and all the conditions outlined in the accompanying letter, including a high interest rate just below the legal maximum in Maryland. The finance company sued her because she did not make payments on the loan. After getting a default judgment for \$1,250, it sent her written interrogatories asking about her income and assets and when she did not answer, a hearing was held to show cause why she should not be held in contempt. She missed that hearing. In July 2014, only 13 months after she signed the check, the court issued a warrant—called a body attachment—ordering police to arrest her.

## Case Studies: Abuses by Check Collection Companies in Partnerships With Prosecutors

The ACLU documented cases of elderly retirees on fixed incomes, people with disabilities subsisting on disability benefits, struggling single parents, and college students who had unintentionally written a check against insufficient funds and received threatening letters purporting to be from prosecutors but that were sent by private check collection companies. The cases we documented in California, Florida, Illinois, Pennsylvania, and Washington include the following:

Ms. P,<sup>262</sup> a wheelchair-bound retiree living on a modest fixed income in a senior living facility in **Washington**, bounced a check for \$108.10 that she wrote to the local Walmart store for household goods. She received a threatening letter on the letterhead of the Clallam County Prosecuting Attorney demanding she pay \$321.85 and take a financial training course in order to avoid criminal prosecution.<sup>263</sup> "When I first received the letter that I thought came from the prosecutor, I was frightened about having to go to court, and worried that police would come to arrest me," said Ms. P. "When I later learned that the letter was from a debt collector, not the prosecutor, I was very disappointed in our county officials."<sup>264</sup> The letter she received said, in part:

### **WARNING OF CRIMINAL CHARGES**

The Prosecuting Attorney's Office has received a complaint against you for issuing a worthless check(s).... Under Washington Statutes, this can constitute criminal intent and a Warrant for your arrest can be issued.

### **It is still possible to avoid a CRIMINAL CONVICTION**

Ms. C,<sup>265</sup> a disabled retiree living in **Washington** on a modest fixed income with her son and his wife, inadvertently bounced an \$80.43 check to her local Safeway store for household goods. Ms. C received a letter purporting to be from the Grant County

Prosecuting Attorney, threatening to criminally prosecute her if she did not pay \$211.43 and complete a financial training course. Unaware that the letter had actually been sent by Bounceback, Inc., she paid the \$211.43. Ms. C goes to doctors' appointments at least five times a month because of her disabilities and was unable to attend the scheduled financial training class. According to a lawsuit she filed against the company, Bounceback nonetheless charged her \$145 for the class but never bothered to reschedule it.

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An elderly **Pennsylvania** woman who wrote a check for \$27 to Kmart that bounced was told she would have to pay fees of \$72 to avoid prosecution, plus another \$170 for a required financial accountability class.<sup>266</sup>

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An elderly man in **Pennsylvania**, was sent a threatening letter signed by the Beaver County District Attorney over a bounced check for \$10, alleging that he had engaged in "criminal activity" by "issuing a fraudulent check." His granddaughter who was handling his finances received the letter, though it was addressed her grandfather. A \$10 check she had written for one of her grandfather's prescriptions had bounced because her grandfather's nursing home had taken an unexpected payment from his checking account on the same day. She had already repaid the \$10 and the pharmacy's \$35 returned-check fee when she received the letter on the prosecutor's letterhead. A subsequent letter sent weeks later bore the heading, "Warning of Criminal Charges."<sup>267</sup>

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A physically disabled single mother in **California** who also supports her elderly father, wrote a check for \$165.87 to the local Safeway market for groceries for her family. The check did not initially clear, even though she had overdraft protection for the account, but it cleared 13 days later when it was redeposited. Nonetheless, she received a letter on Placer County District Attorney letterhead accusing her of committing a crime punishable by up to a year in jail and informing her she could avoid jail only if she attended a financial accountability class and paid a total of \$407.12, including \$190 for the class and

other fees. Even though she had paid the check and provided written proof that the check had cleared, she received two more threatening letters on the official letterhead of the DA's office and bearing the district attorney's signature.<sup>268</sup>

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A **Pennsylvania** woman wrote checks for \$23.31 and \$36 that bounced because her employer had mailed her paycheck rather than deposit it directly in her bank account. She received a threatening letter that purported to be from the district attorney, demanding \$319.91 to avoid criminal prosecution. In reality, the letter was from National Corrective Group, Inc. She could not afford to pay the full amount demanded; she called the private company, believing she was speaking with someone from the district attorney's office, and arranged to pay in two installments.<sup>269</sup>

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A **Florida** man who bounced a \$14 check at a drug store, received a letter and voicemail purporting to be from the state's attorney, demanding more than \$200 in fees to avoid prosecution, including a \$160 fee for a financial management class.<sup>270</sup> He ultimately paid \$295 in order to avoid criminal prosecution.

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A college student in **California** who bounced a \$92 check she had written to her school bookstore, received a letter telling her she had committed a crime and faced up to a year in jail and a \$2,500 fine unless she paid the \$92 plus \$215 in fees and scheduled a financial accountability class within 10 days. Scared and unaware she had bounced the check until she received the threatening letter with the seal of the Santa Barbara County's District Attorney, she paid the fees and took the five-hour class in order to avoid prosecution. She had no idea that she was dealing with a private company and that the district attorney's office explicitly did not prosecute bounced checks under \$100 as a matter of policy.<sup>271</sup>

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An elderly retiree in **Illinois** who bounced a \$46.49 check at a supermarket where she had been a customer since 1971, received a letter purporting to be from the Cook's County district attorney

threatening her with criminal prosecution and jail if she did not pay \$271.49.<sup>272</sup>

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An elderly woman in **California** with significant medical problems and a small monthly income who bounced checks for \$11.13 to a grocery store and \$26.62 to a tobacco store, was threatened with prosecution if she did not pay up, plus fees and \$125 for a financial accountability class. Believing she faced arrest and jail if she did not comply, she paid \$262.95 in restitution and fees. Her physical and medical conditions made it difficult for her to attend the hours-long class, and she was instructed by the check collection company that she could complete a home study course only if she produced a doctor's note. She had to travel to her doctor and pay for a note excusing her from attending the class in person.<sup>273</sup>

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Ms. O,<sup>274</sup> a single mother in **California** living on disability benefits, bounced a check for \$91 at a grocery store. She received a letter purporting to be from the district attorney and demanding \$333.51, including \$175 for a financial accountability class, to avoid criminal prosecution and up to one year in jail. In reality the letter was from National Corrective Group, Inc. Ms. O had accidentally bounced the check and tried to pay the grocery store a few days later when she realized she had overdrawn her account. The grocery store had already sent the debt into collections and was unable to accept payment under the terms of the check diversion agreement with National Corrective Group, Inc. Unable to work because of a leg injury and unable to afford the surgery to repair her injury without health insurance, Ms. O could not afford the financial accountability class and offered to repay the \$91 and a \$50 fee, but she continued to receive the threatening letters.<sup>275</sup>

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Ms. S,<sup>276</sup> a California woman who was pregnant with her sixth child and unable to work because of her pregnancy, was threatened with criminal prosecution for two bounced checks. Ms. S had a checking account with overdraft protection, and although she tried to keep accurate track of her account, she sometimes made mistakes. She overdrew the account when she made an ATM withdrawal, and she began getting

overdraft charges of \$20 every time she wrote a check, used her debit card, or made an ATM withdrawal. She says this had a snowball effect, leaving the checking account continually overdrawn, even though she made deposits. In one month the overdraft protection charges alone totaled \$560, and she said these constant charges made it difficult to catch up on her family's bills. That month she wrote a check to FoodMaxx in Ukiah, California, for \$83.41 and a check to Walmart for \$69.26, both to purchase food and other things for her family. The bank rejected these checks because there was not enough money in her checking account to cover the checks when her bank received them.

Four months later, she began receiving letters from the "Check Restitution/Prosecution Program" of the Mendocino County District Attorney, the Mendocino County Sheriff, and the Mendocino County Chief of Police. The letters stated that she had been accused of a crime, specifically "a violation of Penal Code Section 476a (Passing a worthless check)," that she was being criminally investigated, and that to stop the criminal investigation she had to pay the check amount, a bank charge of \$5 (for the Foodmaxx check) and \$10 (for the Walmart check), a \$35 administrative fee for each check, and an \$85 diversion fee. A subsequent letter she received stated:

**FINAL NOTICE PRIOR TO REFERRAL  
FOR  
POSSIBLE ARREST WARRANT**

She said, "I concluded that I would be arrested and prosecuted if I did not do what I was being told to do in the letters. I was in a panic. I had never been in trouble with the law before. I did not know that I had committed a crime, but I assumed that I must be in a lot of trouble if I was getting a letter from the district attorney stating that I could be arrested."<sup>277</sup>

Ms. S called the phone number listed on the letters and spoke with a woman whom she thought was in the district attorney's office, who reinforced the urgency of her situation. "I was so scared that I said that I would try to pay, even though we did not have

enough money to pay the checks and the fees being demanded,” she said. She continued to receive letters from the “district attorney,” but her family’s financial situation continued to worsen. Ms. S said “there was nothing I could do but just hope that I would not be arrested.”

While driving in Ukiah with her children, Ms. S was pulled over by a police officer. “I was terrified,” she said. “I thought I was going to be arrested for the checks in the letters, and that my children were going to see me get handcuffed and taken away. I was giving my children instructions on calling their father to come pick them up.” When she spoke with the officer she found out that she was just being warned for not coming to a complete stop at an intersection.

During this period, her family’s financial stability was in a downward spiral. Her husband had been laid off from a good-paying job, and he was not able to find steady employment that paid the same wages and benefits. Although he continued to work, he was periodically laid off, and he was not able to earn as much money as they needed to support their family. They borrowed money from family members to pay bills, but they had fallen so far behind that it was impossible to catch up. They had debts they could not repay, including thousands of dollars in unpaid medical bills.

Finally, she and her husband consulted a bankruptcy attorney who informed them that the letters were from a private company, not from the district attorney, and that the real district attorney had not investigated Ms. S or considered filing charges against her. Even after declaring bankruptcy, she received a letter from the “District Attorney Restitution/Prosecution Program.” The letter stated that unless the checks had been dishonored by the bank as a result of receiving notice of their bankruptcy, she still had to pay to avoid “criminal sanctions.”



# Appendix II: Federal and State Laws Authorizing the Arrest and Jailing of Debtors

While contempt power is “inherent in all courts,”<sup>278</sup> federal and state law expressly authorizes debtors to be arrested and incarcerated for contempt of court in certain instances.

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Under **federal law**, Federal Rules of Civil Procedure 37(b) and 45(g) allow federal courts to hold individuals in contempt for failing to cooperate with discovery or obey subpoenas,<sup>279</sup> and Rule 70(e) allows contempt to be used against disobedient parties in enforcing a judgment.<sup>280</sup> Federal bankruptcy courts also possess contempt power<sup>281</sup> and can order the marshal or other authority to bring the debtor before the court.<sup>282</sup> In certain situations, this includes placing the debtor into custody to ensure compliance with court proceedings.<sup>283</sup>

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In **Alaska**, a judgment creditor may obtain discovery from a judgment debtor using proceedings supplementary to and in aid of execution.<sup>284</sup> Under Alaska discovery rules, a party that fails to appear or submit an interrogatory may be held in contempt of court.<sup>285</sup> In situations of contempt, judges can order the accused party to show cause or shall issue an arrest warrant.<sup>286</sup>

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In **Arizona**, a judgment creditor can request at any time an “order for appearance of debtor,” whereby the court will issue a subpoena compelling the judgment debtor to appear for deposition upon oral examination to answer questions about their property.<sup>287</sup> Compliance “may be enforced by the court by the power to punish for contempt.”<sup>288</sup> In cases of warrants issued for failure to appear at a judgment debtor exam, bonds are typically set at

\$250 or the amount of the judgment, depending on the court.

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In **Arkansas**, a judgment creditor may obtain discovery from the judgment debtor pursuant to Arkansas’ discovery proceedings.<sup>289</sup> Failure to comply with discovery orders, including failure to appear or failure to serve answers or objections to interrogatories, may be considered a contempt of court. Further, the court can require the disobedient party “to pay the reasonable expenses, including attorney’s fees, caused by the failure,” unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.”<sup>290</sup>

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In **California**, a debtor may be held in contempt for failure to appear for a judgment debtor examination. If the failure to appear was without good cause, the debtor may have to pay attorney’s fees in addition to the judgment amount.<sup>291</sup> Following the contempt order, superior court judges may issue civil bench warrants. Debtors are expected to go to the court to contest the warrant and pay bail.<sup>292</sup>

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In **Colorado**, if the judgment debtor fails to appear, the court issues a bench warrant commanding the local sheriff to arrest and bring the judgment debtor before the court.<sup>293</sup>

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In **Connecticut**, a judgment creditor may obtain discovery from the judgment debtor, starting with interrogatories. If the judgment debtor does not reply to an interrogatory within 30 days, the judgment

creditor may move for supplemental discovery orders, including an order for compliance and an order for examination. These orders contain a notice that failure to comply may subject the debtor to contempt of court.<sup>294</sup>

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In **Delaware**, in aid of judgment or execution, judgment creditors may take discovery by deposition, interrogatories and requests for production.<sup>295</sup> Failure to comply with such discovery may lead to the judgment debtor being held in contempt of court.<sup>296</sup> The penalty for civil contempt in Delaware includes a fine not exceeding \$100 or imprisonment not exceeding 170 days.<sup>297</sup>

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In **Florida**, judgment creditors may request the court order the judgment debtor to fill out a disclosure form or comply with other forms of discovery.<sup>298</sup> Failure to appear or comply with an order may be considered a contempt of the court.<sup>299</sup>

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In **Georgia**, in aid of the judgment or execution, a judgment creditor may examine any person, including via depositions or interrogatories, and may compel the production of documents.<sup>300</sup> If the debtor fails to comply, the court may make such orders as are just and the debtor must pay reasonable expenses, including attorney's fees, in addition to the judgment debt.<sup>301</sup>

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In **Hawaii**, judgment creditors, in proceedings on and in aid of execution, may obtain discovery pursuant to the Hawaii Rules of Civil Procedure.<sup>302</sup> These rules include contempt in cases where parties fail to obey a discovery order.<sup>303</sup> Further, if a court suspects that a debtor has disposed of or otherwise concealed property, the court may compel attendance for examination and may punish a "willful hindrance to, or obstruction or disobedience of, any order of the court as contempt."<sup>304</sup> A warrant of commitment may be issued against contemnors who refuse to comply with discovery proceedings.<sup>305</sup>

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In **Idaho**, the court requires creditors to use writs of attachment to seize non-exempt assets or garnish a debtor's wages or bank account.<sup>306</sup> When such

efforts are unsuccessful, the creditor can pursue in personam remedies starting with a debtor's exam. Failure to appear at the debtor's exam may result in the court issuing a writ of bodily attachment.<sup>307</sup> Some judges have recently started requiring creditors to file a motion to compel before issuing the writ of bodily attachment.

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In **Illinois**, judgment creditors are entitled to prosecute "supplementary proceedings" and to have a judgment debtor examined in court for purposes of discovering property and assets, with arrest and imprisonment as punishments for failure to appear.<sup>308</sup> Illinois' 2012 Debtors' Rights Act requires courts to send two notifications to debtors before issuing an arrest warrant. Prior to its enactment, some county courts issued warrants immediately upon a debtor's failure to appear, while others required a rule to show cause served on the debtor before warrants could be issued.<sup>309</sup>

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In **Indiana**, debtors can be ordered to appear before the court to answer as to non-exempt property subject to execution or proceedings supplemental to execution.<sup>310</sup> Failure to appear may result in contempt. In such cases, courts can issue writs of attachment, which direct the sheriff to take the debtors into custody.<sup>311</sup> Incarcerated debtors must be brought before the court that issued the writ within 48 hours, excluding weekends and holidays.<sup>312</sup> Courts usually set a cash-only bond in these cases.

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In **Iowa**, debtors that had been served with notice but fail to appear in proceedings auxiliary to execution or fail to make full answers to interrogatories are guilty of contempt and "may be arrested and imprisoned until the debtor complies with the requirements of the law in this respect."<sup>313</sup>

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In **Kansas**, the court may issue a bench warrant for contempt of court if a debtor fails to appear for a proceeding in aid of execution of a judgment against them.<sup>314</sup>

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In **Kentucky**, after an execution of fieri facias (a judgment), supplemental proceedings may include



“full and explicit discoveries” which are enforced by a process of contempt.<sup>315</sup> Such supplemental proceedings include examinations, and in cases where debtors fail to appear, courts “may as in cases of contempt punish a disobedience.”<sup>316</sup>

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In **Louisiana**, the judgment creditor in aid of execution of the judgment may examine the judgment debtor and their “books, papers or documents.”<sup>317</sup> If a judgment debtor refuses to appear for an examination or refuses to answer a question held pertinent by the court, the judgment debtor may be punished for contempt.<sup>318</sup>

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In **Maine**, if a judgment debtor fails to appear at a disclosure hearing, the judgment creditor decides the next steps. The creditor can state that it is unaware of infirmity, disability, or good cause preventing the appearance of the debtor and request that the court issue a civil order of arrest. Alternatively, the creditor can request that the court issue an order of appearance for further disclosure proceedings or file a motion for contempt for failure to appear. If the debtor fails to appear at the contempt hearing, the court issues a civil order of arrest.<sup>319</sup> When a debtor is arrested pursuant to such a civil order, the debtor is taken to court for the disclosure hearing. If the hearing cannot be held that day, the individual is released on a personal recognizance bond. It is a crime under Maine law to fail to appear at a disclosure or contempt hearing after being released upon personal recognizance.<sup>320</sup>

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In **Maryland**, creditors may obtain discovery to aid in enforcement of a money judgment by use of interrogatories or by examination before a judge. Creditors may obtain additional examinations once a year, or upon a showing of good cause.<sup>321</sup> If a debtor fails to appear at an oral examination, the creditor can file for a show case hearing. If the debtor fails to appear at this hearing, the creditor may request the court issue an attachment for contempt, which directs a peace officer to place the debtor under arrest and deliver the debtor under bond.<sup>322</sup>

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In **Massachusetts**, courts issue capias warrants for debtors who fail to appear at payment hearings. If a debtor who has made an out-of-court agreement with the creditor or debt collector has stopped paying and fails to appear for a payment review hearing, then the court may issue a capias warrant for the debtor’s arrest. A capias warrant is issued after a judgment has been obtained in a civil suit and the creditor then files an action for Supplementary Process where a sheriff serves a “summons to judgment debtor” to appear at court and the debtor fails to appear on the appointed date. In such cases, the creditor must give the capias to a sheriff or constable with a fee of \$300 to have the debtor arrested; this fee can later be recovered from the defendant in court. This contempt of court is punishable by fine or by imprisonment in the common jail for not more than 30 days.<sup>323</sup> The debtor is to be discharged from custody upon payment in full to the creditor, including the costs of the proceedings, or upon agreement of a payment plan bond for the amount due to be paid within 60 days or within a time allowed by the court.<sup>324</sup>

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In **Michigan**, if a debtor fails to appear at a debtor’s exam, some courts will issue a bench warrant, while others will require the defendant to appear at a show cause hearing. If the debtor fails to appear at this hearing, the court will issue a bench warrant for contempt of court. Some judges set the bond at the amount of the judgment or more, while other judges set the bond at \$500.<sup>325</sup>

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In **Minnesota**, judgment creditors can request that the court order the judgment debtor to fill out a court form about the nature, amount, identity, and locations of all the debtor’s assets, liabilities, and personal earnings. Failure to complete the form and mail it to the creditor within 10 days may result in a citation for civil contempt of court. Cash bail posted as a result of the citation may be ordered payable to the creditor to satisfy the judgment.<sup>326</sup> In cases of consumer debt for personal, family, or household purposes, contempt for failure to comply with the disclosure requirement is set at \$50 and must be returned to the judgment debtor.<sup>327</sup>

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In **Mississippi**, a judgment creditor can examine the judgment debtor, his books, papers or documents to aid in the satisfaction a judgment of more than \$100.<sup>328</sup> Further, judgment creditors may utilize discovery procedures as set forth in the Mississippi Rules of Civil Procedure.<sup>329</sup> According to these Rules, individuals who fail to appear or fail to serve answers to interrogatories may be held in contempt.<sup>330</sup> In cases of contempt, the state courts have the power to fine contemnors up to \$100 or incarcerate them for no longer than 30 days.<sup>331</sup>

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In **Missouri**, judgment creditors may petition the court to enter an order requiring the judgment debtor to appear and be examined under oath concerning their means to satisfy the judgment.<sup>332</sup> Failure to appear at the examination may result in contempt.<sup>333</sup>

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In **Montana**, judgment creditors are entitled, at any time, to order from a judge that judgment debtors appear inside the county where they reside and answer regarding their property.<sup>334</sup> Judgment debtors that fail to comply with discovery proceedings may be held in contempt.<sup>335</sup> A court may issue a warrant of commitment against a contemnor, which may include incarceration, a fine of no more than \$500, or both, until the contemnor has performed the act.<sup>336</sup> A person arrested for a contempt not committed in the immediate view of a judge does have the opportunity to be heard at a hearing.<sup>337</sup> Additionally, if a debtor is deemed to be unjustly refusing to apply property towards the satisfaction of the judgment, they may be arrested and committed to prison.<sup>338</sup>

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In **Nebraska**, a judgment creditor is entitled at any time to an order requiring the judgment debtor to appear and answer questions about their finances.<sup>339</sup> A judge may preemptively issue a warrant for the arrest and jailing of the debtor if “there is danger of the debtor leaving the state or concealing himself to avoid examination.”<sup>340</sup>

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In **Nevada**, a judgment creditor is entitled at any time to an order requiring the judgment debtor to

appear at an examination. If a debtor fails to appear, the court can hold that person in contempt and issue a bench warrant.<sup>341</sup>

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In **New Hampshire**, according to the court rules, judgment creditors can obtain discovery in aid of the judgment or its execution.<sup>342</sup> Additionally, following the court’s rendition of a judgment, the court can order the defendant to make periodic payments as the court deems appropriate. Failure to make such periodic payments constitutes civil contempt, absence good cause.<sup>343</sup> Courts can issue attachments for contempt at any time upon evidence of a debtor’s violation of an order and parties may be arrested upon order of the court.<sup>344</sup>

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In **New Jersey**, in aid of judgment or execution, a judgment creditor may examine the judgment debtor pursuant to discovery procedures.<sup>345</sup> If a judgment debtor fails to obey an order for discovery, the judgment debtor can file proceedings supported by an affidavit or certification directing that if the judgment debtor fails to appear in court or return the required answers, he shall be arrested and confined to the county jail until he complies.<sup>346</sup> If the judgment debtor fails to comply, the court will issue an arrest warrant.<sup>347</sup> If the warrant for arrest is not executed within 24 months, the warrant shall be deemed to have expired.<sup>348</sup>

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In **New York**, judgment debtors may be served with subpoenas requiring attendance at depositions, the production of books or papers, or the completion of information subpoenas. Judgment creditors are allowed to submit requests for information subpoenas only if they have a reasonable belief that the debtor has information that will assist the creditor in collecting the judgment. Permission by the court is required before creditors can compel debtors to appear at a deposition for a second time in the same year.<sup>349</sup> Failure to comply with a subpoena is punishable by contempt of court, and the court may issue a warrant directing the sheriff to bring the individual to court.<sup>350</sup>

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In **North Carolina**, judgment debtors who fail to appear at hearings are directed to appear at a show cause hearing. Failure to appear at this hearing may result in civil contempt.<sup>351</sup>

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In **Ohio**, failure to comply with a debtor examination, known as proceedings in aid of execution, may be punished as contempt of court.<sup>352</sup>

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In **Oklahoma**, a judgment creditor can request at any time that the court order the judgment debtor to appear and answer questions about their property, income, or liabilities. A judgment creditor's attorney at any time may also serve interrogatories, requests for admissions, or requests for production of documents from the judgment debtor. If the debtor fails to appear, the judge may authorize either a contempt citation or bench warrant. The debtor is required to pay the cost of service and attorney's fees, up to \$300 per calendar year.<sup>353</sup> If a bench warrant or body attachment is issued, the bond made by the debtor is disbursed to the creditor, not the state.<sup>354</sup>

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In **Oregon**, a judgment creditor at any time can file a motion to obtain an order requiring the judgment debtor to appear before the court to answer questions about the debtor's property.<sup>355</sup> A judgment creditor may also at any time serve written interrogatories on a debtor regarding that person's financial affairs. Failure to answer the interrogatories results in contempt of court.<sup>356</sup>

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In **Pennsylvania**, a creditor at any time may take testimony via oral examination or written interrogatories from the debtor. All reasonable expenses in connection with this discovery may be charged to the debtor.<sup>357</sup> Failure to appear at such a hearing may result in the court issuing a bench warrant for the arrest of the debtor.<sup>358</sup>

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In **Rhode Island**, court clerks begin supplementary proceedings in aid of execution of the judgment by issuing citations that require debtors to appear. At these citation hearings, judgment creditors make inquiries into judgment debtors' financial ability,

including assets, income, and other circumstances. A judge may issue a civil body attachment against a judgment debtor who fails to appear.<sup>359</sup>

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In **South Carolina**, judgment creditors can use proceedings supplementary to and in aid of a judgment, including examination of the debtor, in the manner provided in the South Carolina Rules of Civil Procedure.<sup>360</sup> A court may hold a judgment debtor in contempt following failure to attend such an examination or answer an interrogatory.<sup>361</sup> Civil contempt may result in the commitment of the individual, although in cases of the inability to perform the act in question or the inability to endure imprisonment, the court may discharge the individual from incarceration.<sup>362</sup> Additionally, if a judge is satisfied that a judgment debtor may leave the state or that he is unjustly refusing to apply property to the judgment, he may issue an arrest warrant.<sup>363</sup> Although South Carolina limits arrests in civil actions,<sup>364</sup> these limitations do not apply to proceedings for contempt.<sup>365</sup>

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In **Tennessee**, judgment creditors may utilize discovery in aid of execution.<sup>366</sup> A debtor who fails to comply with discovery may have to pay reasonable expenses in addition to the judgment debt, and arrest is an available remedy for securing satisfaction of the judgment.<sup>367</sup>

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In **Texas**, courts can utilize contempt proceedings to enforce an order for debtors to turn over property to satisfy a judgment.<sup>368</sup>

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In **Utah**, the court may conduct hearings as necessary to identify and apply property toward the satisfaction of the judgment or order.<sup>369</sup> The court may issue bench warrants for debtors who fail to appear at such hearings. In Washington County in Utah, bail is typically set at \$250-\$500 dollars, and jailing for contempt can be up to 30 days.<sup>370</sup>

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In **Vermont**, judgment creditors that won judgments in small claims court may file a motion to hold judgment debtors that fail to comply with payment orders following a financial disclosure hearing in civil

contempt.<sup>37136</sup> If a judgment debtor fails to appear at the hearing on the motion for civil contempt, they may be held in contempt.<sup>37237</sup> Civil contemnors may be incarcerated.<sup>37338</sup>

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In **Virginia**, execution creditors may request that debtors appear before the court to answer interrogatories.<sup>374</sup> If the debtor fails to appear or answer, the court may issue a capias directing the sheriff to deliver that person to the court. The individual may be incarcerated until answers are given or the conveyance demanded is made.<sup>375</sup>

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In **Washington**, a judge may order the sheriff to arrest a judgment debtor who fails to appear at a scheduled examination. The debtor may be jailed until bond is posted or the debtor is brought to court.<sup>376</sup>

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In **Wisconsin**, judgment debtors are required to execute disclosure statements with financial information to the judgment creditor.<sup>377</sup> Debtors may also be examined under oath and compelled to answer as to property.<sup>378</sup> Failure to appear or comply, except in cases involving consumer credit transactions,<sup>379</sup> may result in the court issuing civil body attachments against debtors.<sup>380</sup> Manitowoc County in Wisconsin allows plaintiffs to seek the issuance of bench warrants against judgment debtors who fail to appear for supplemental examinations or fail to submit disclosure statements.<sup>381</sup>

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In the **Commonwealth of the Northern Mariana Islands**, a judgment creditor may utilize proceedings supplementary to and in aid of execution of a judgment.<sup>382</sup> After an oral or other examination, the court makes an order in aid of judgment “as is just.”<sup>383</sup> This often occurs in the form of court-ordered installment plans. A debtor who fails to appear or answer a question after being directed to do so by the court may be considered in contempt of court.<sup>384</sup> If a debtor fails to comply with an order in aid of judgment and after notice to show cause, the debtor is committed to jail until the debtor complies with the order or serves for a period as fixed by the court, but not more than six months.<sup>385</sup>

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In the **Commonwealth of Puerto Rico**, judgment creditors may initiate supplementary procedures, including oral examination and written interrogatories, against the judgment debtor.<sup>386</sup> The court may compel enforcement with such proceedings by its power of civil contempt.<sup>387</sup>

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In **Washington, D.C.**, a judgment creditor can initiate proceedings supplementary to and in aid of a judgment, including oral examination and the production of papers, records, or other documents. If the judgment debtor fails to appear, the judgment creditor may request that a bench warrant be issued for the person’s arrest.<sup>388</sup>

# Appendix III: Documents

## Indiana warrant in case to collect ambulance fee

STATE OF INDIANA

COUNTY OF GIBSON

SS:

IN THE GIBSON SUPERIOR COURT

ANNUAL TERM

CAUSE NO. [REDACTED]

Gibson County Ambulance Service,  
Plaintiff,

vs.

[REDACTED],  
Defendant

### WRIT OF ATTACHMENT

Comes now the Plaintiff, and it appearing to the Court by the record herein, said Defendant was ordered to appear in this Court on August 8, 2017 at 1:30 p.m. and that the Defendant, having been three times audibly called in open Court, did not appear, in violation of this Court's order.

The Court, being duly advised in the premises, now ORDERS the Sheriff of Gibson County to attach the body of the above said Defendant and hold him for the pleasure of this Court on its next available business day. Bond is hereby set in the amount of \$500.00.

October 4, 2017  
Dated: \_\_\_\_\_

*Robert Krieg*<sup>WM</sup>

ROBERT KRIEG, JUDGE  
GIBSON SUPERIOR COURT

Sheriff Serve: [REDACTED]

Evansville, IN 47711

## Kansas sample bench warrant form

(Revised 7/05)

File Stamp Date \_\_\_\_\_  
Case Number \_\_\_\_\_

Prepared by:  
Filer's name, SC#  
Filer's address  
Filer's phone number  
{Filer's fax phone number}  
{Filer's e-mail address}  
Attorney for Plaintiff

In The District Court of \_\_\_\_\_ County, Kansas

Plaintiff's name                      Plaintiff

vs.

Case No. \_\_\_\_\_

Defendant's name                      Defendant  
Defendant's address

Pursuant to Chapter 61 of  
Kansas Statutes Annotated

### BENCH WARRANT

To the Sheriff of \_\_\_\_\_ County, or any other law enforcement officer in the state of Kansas:

You are hereby commanded to arrest and bring before this Court the person, \_\_\_\_\_, judgment debtor herein. Said person is to be brought before this Court for failure to appear as directed by this Court on \_\_\_\_\_, \_\_\_\_\_, and to show cause, if any, why \_\_\_\_\_ should not be found in contempt of court. Bond for the release of \_\_\_\_\_ pending appearance before this Court is set at \$\_\_\_\_\_.

Identifiers:

\_\_\_\_\_  
Judge of the District Court

### WARRANT RETURN

Received this writ on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_.m. and on \_\_\_\_\_, \_\_\_\_\_, executed the same by arresting the within named \_\_\_\_\_ and \_\_\_\_\_

(1) holding him/her in custody under the same; whereupon he/she entered into a recognizance for his/her own appearance as required by law, to answer to the within named charge which recognizance is herewith returned;


(2) have committed him/her to the jail of \_\_\_\_\_ County.


\_\_\_\_\_  
Sheriff

\_\_\_\_\_  
Deputy





**Massachusetts capias arrest notice from sheriff**

  
*The Commonwealth of Massachusetts  
Middlesex Sheriff's Office  
Enforcement Unit  
P.O. Box 410180  
271 Cambridge Street  
Cambridge, Massachusetts 02141*

  
*The Commonwealth of Massachusetts  
Middlesex Sheriff's Office  
Civil Division*  
**STEPHEN HICKEY**  
DEPUTY SHERIFF

Sheriff Peter J. Koutoujian  
P.O. Box 410180  
271 Cambridge Street  
Cambridge, MA 02141



Phone: (617) 682-4893  
Fax: (617) 868-7244  
www.msocivilpro.com

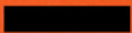
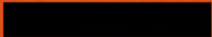
  
Somerville, MA 

Tuesday, March 11, 2014

## CAPIAS FOR ARREST NOTICE

THE SOMERVILLE DISTRICT COURT HAS ISSUED A WARRANT FOR YOUR ARREST

**Plaintiff:**   
**vs**  
**Defendant:** 

**Warrant #**  **Court Number:** 

**\*\*\* YOU NEED TO REPORT TO DEPUTY SHERIFF HICKEY ON THE MAIN FLOOR  
AT THE MARBLE TABLE\*\*\***

**SOMERVILLE DISTRICT COURT:  
175 FELLSWAY, SOMERVILLE, MA  
ON THURSDAY, 3/20/2014 AT 8:30 A.M.**

**MATTER REQUIRES YOUR IMMEDIATE ATTENTION.**

**BECAUSE YOU HAVE FAILED TO ANSWER FOR THE ALLEGED CONTEMPT OF COURT, YOU MAY NOW SUBJECT  
YOURSELF TO ARREST WITHOUT FURTHER NOTICE.**

**YOUR FAILURE TO APPEAR ON THIS DAY MAY RESULT IN YOU BEING ARRESTED IN ACCORDANCE  
WITH THE WARRANT AND BEING HELD IN CUSTODY UNTIL FINAL ADJUDICATION. PLEASE BE  
ADVISED THAT THERE IS NO BAIL IN A CONTEMPT OF COURT CIVIL ARREST.**

**THE COMMONWEALTH OF MASSACHUSETTS GENERAL LAWS, CHAPTER 224, SECTION 18, PROVIDES THAT THE COURT MAY ISSUE WARRANTS FOR YOUR  
ARREST AND OTHER PROCESS TO SECURE YOUR ATTENDANCE TO ANSWER FOR ANY CONTEMPT UNDER THIS CHAPTER. A  
PERSON MAY BE DETAINED AT THE COUNTY JAIL UNTIL THE NEXT SITTING OF THE COURT. THIS CHAPTER ALSO  
PROVIDES A PUNISHMENT FOR CONTEMPT OF COURT BY IMPRISONMENT IN THE COUNTY JAIL OR HOUSE OF  
CORRECTIONS FOR UP TO THIRTY DAYS AND/OR A FINE!**

**DEPUTY SHERIFF HICKEY  
MIDDLESEX SHERIFF'S OFFICE  
ENFORCEMENT UNIT  
(617) 682-4893**



**Massachusetts capias arrest warrant letter from constable**

***Commonwealth of Massachusetts***

Haverhill and Lowell Office of the Constables

Gerald A. Sewell and Christian G. Sewell

Haverhill and Lowell Ma.

264 Broadway Haverhill, Ma. 01832

978-372-2634

Dear [REDACTED]

As you know I hold a **Capias**, a *Civil Warrant* for your arrest.

Nowhere in the fifty United States can a person go to jail for owing money, but in all fifty States you will go to jail for not obeying an order of the court. It is called "Contempt of Court". Don't keep digging yourself deeper in trouble with the law by thumbing your nose at it.

Life is nothing more than a series of choices. It appears you have chosen to be arrested, put in handcuffs in front of your family, friends and/or co-workers and brought before the court. The court will then deem that you do not want to be seen as a responsible member of the community, thus you will be dealt with that way.

You will be arrested at your home, place of work, or any other place you are found.

You are hereby forewarned that there is no bail in a *Civil Contempt of Court* arrest.

Further, the plaintiff may request an *Order of Execution* whereas any property you have interest in or may have interest in now or any time in the next twenty years may be taken from you, sold, and the money paid to your creditor.

You may someday want to buy a car or a house. A judgment against you lasts for twenty years. Why would you want to have this over your head for all that time when you can end it now?

You have pushed it this far already, don't let this be the first time you try a pair of these cuffs.

I am a man that believes in second chances, heaven knows I have had a few myself.

Do not let your next choice be to go to jail for something as trivial as this.

Contact me at the phone number at the top of this page. Lets get this put behind you!

Gerald A. Sewell

*Gerald A. Sewell*  
Constable/Process Server/Skip Tracer

**Bring this letter with you to Lowell Court, 3/22/2016 at 1:00 P.M.**

### Why has the Court issued a Warrant for your Arrest?

1. It is not because you owe money. You can't be arrested or go to jail for owing money anywhere in America.
2. Someone went to Court and said you owe them money and asked the Court to hear the matter.
3. The Court then asked you to come before the court and explain your side of the story.
4. For some reason (maybe you didn't get the notice) you did not go to court as requested to answer the complaint. If you had gone to court it would be over by now, and you would not be dealing with a warrant for your arrest and receiving this letter.
5. A warrant was then issued to bring you before the Court for Contempt, either voluntarily or by force, if necessary, because the Court feels you believe they are beneath your consideration, and you aren't taking the Law seriously.
6. You can go to Jail for Contempt of Court, and when you get out you will still have a Judgment against you, and you will still owe the money.
7. Notice that Capias Arrest Warrants have an expiration date. Civil warrants are renewed once a year. They are renewed by the plaintiff at the end of every year. Further adding to your debt.

### What should you do now? You have two choices.

- A. Call me and come to Court voluntarily. You will go home that night, with the warrant gone and nobody looking for you.
- B. Ignore this notice, and you will be arrested as soon as you are found; this could be tomorrow morning coming out of your home, at work, or anywhere you are found. You then run the risk of not going home at the end of the day, but instead going to jail for Contempt of Court.

Not to mention that word will get around that you have been trying to outrun a Warrant for your arrest.

Your image as a responsible adult is being damaged. Interest is piling up. The Judgment against you is good for twenty years. The Warrant against you is renewed every year, keeping it on the top of the list and the expenses of chasing you are added to your bill. Wouldn't you someday like to go for a loan, or buy a car or a house? Does it make any sense to let this hang over your head, letting it follow you around for the next twenty years?

Give yourself some peace of mind. Call me, let's clear this matter up. Do away with this warrant. (Just Coming to Court will erase this Warrant) and put it behind you!

**Sample warrant of arrest letter from Superior Court of California Marin County**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

**INSTRUCTIONS FOR COMPLETING A  
BODY ATTACHMENT AND WARRANT OF ARREST LETTER**

If a copy of the Warrant of Arrest Letter is not returned to the Court  
a *minimum* of 3 days preceding the hearing date,  
the case will go off calendar subject to issuance of a new order of examination.

Warrant of Arrest Letter *FORMAT ONLY* Below:

Today's Date

Judgment Creditor's Name and Address

Judgment Debtor's Name and Address

Re: Failure to Appear for Order of Examination  
Action No. (*YOUR CASE NUMBER*)

\_\_\_\_\_. vs. \_\_\_\_\_  
(*PLAINTIFF'S NAME*) (*DEFENDANT'S NAME*)

Dear (*JUDGMENT DEBTOR'S NAME*):

A body attachment and warrant for your arrest was demanded by the judgment creditor because of your failure to appear in court on \_\_\_\_\_ for a judgment debtor's examination. Our records indicate that the order of examination was served on you on the \_\_\_\_\_ day of \_\_\_\_\_.

To allow you a further opportunity to comply with the order, the examination is continued to \_\_\_\_\_ at 9:00 AM, and you are directed to then and there appear. Please report to the court floor at the Marin County Superior Court, 3501 Civic Center Drive, San Rafael, CA 94901. Please check the bulletin board located in the lobby on the court floor to ascertain the proper courtroom.

If you fail to appear at the above indicated time and place, it will be ordered that you be arrested and brought before this court to show cause why you should not be punished for contempt in disobeying the court's order.

\_\_\_\_\_  
(*JUDGMENT CREDITOR'S SIGNATURE*)

cc: Marin County Superior Court  
Civil Division  
P.O. Box 4988  
San Rafael, CA 94913-4988



161 Granite Avenue  
Dorchester, MA 02124

## Suffolk County Constable's Office Civil Process Division



Office: (617) 265-0111  
Fax: (866) 670-2399

### CIVIL WARRANT FINAL NOTICE

COURTHOUSE: [REDACTED]  
DOCKET: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please be advised the previous notice sent from our office was done as a courtesy by this office. Ignoring the previous notice could result in your **PHYSICAL ARREST** and detainment until your case can be heard.

This letter is intended to provide you with a **FINAL** opportunity to willfully surrender at **Chelsea District Court**.

**You Must Contact This Office Immediately to  
Schedule a Surrender Date (617) 265-0111**

### **FAILURE TO COMPLY MAY RESULT IN YOUR PHYSICAL APPREHENSION**

Upon surrender you are required to check-in with the Officer at the Courthouse. Check-in with the Officer at the Courthouse is the only acceptable procedure to ensure the Capias is properly resolved.

Cell Phones Are Not Allowed Inside the Courthouse

CC

Reference #: [REDACTED]

[www.sccoboston.com](http://www.sccoboston.com) • [scco@sccoboston.com](mailto:scco@sccoboston.com)



Onondaga County District Attorney / Bounceback letter

1-234 P0008/0004 F-528

OFFICE OF THE DISTRICT ATTORNEY

Check Enforcement Program  
505 South State Street - 4th Floor  
Syracuse, NY 13202



DISTRICT ATTORNEY  
WILLIAM J. FITZPATRICK  
COUNTY OF ONONDAGA

1-888-711-0103

September 1, 2016

**NOTICE OF BAD CHECK(S)**

A CRIMINAL CHARGE OF "Issuing a Bad Check" MAY BE FILED  
AGAINST YOU UNDER NEW YORK CRIMINAL CODE

This office has received a complaint against you for issuing a bad check(s). This complaint could result in a criminal charge being filed against you under the New York Penal Law Section 190.05. We are referring your case to a Diversion Program. The Diversion Program allows you to avoid prosecution by paying your check(s) and the fees before the case goes to prosecution. You have the right to decide whether or not you will participate in the Diversion Program.

It is also a requirement of the Diversion Program that you complete a training class. We will send you information regarding the training class as soon as you have met your financial obligations.

Your payment must be made by MONEY ORDER, CASHIER'S CHECK, CREDIT or DEBIT CARD. There is a \$6.00 convenience fee for debit or credit card payments.

Failure to make payment in full within TEN (10) DAYS from the date of this notice may be used as evidence in possible criminal prosecution. If you have any questions about this matter, call (888) 711-0103.

MAIL TO: OFFICE OF THE DISTRICT ATTORNEY  
CHECK ENFORCEMENT PROGRAM  
505 South State Street - 4th Floor  
Syracuse, NY 13202

**PAY ONLINE AT :**

[www.hotchecks.net](http://www.hotchecks.net)

User Name : ODG5344

Password : 69498

Victim

PETSMART 1580 / CERTEQ  
FINANCIAL TRAINING

Check No.

7281  
7281

Check Amount

100.48

Diversion Fee

40.00  
125.00

Victim Fee

25.00

Case No.

ODG-8633  
MODG-6228

Make one MONEY ORDER or CASHIER'S CHECK payable to:

**Check Enforcement Program**

Pay by credit or debit card online at [www.hotchecks.net](http://www.hotchecks.net)

For:

**\$ 290.48**

CW# 5344

NLP

**Onondaga County District Attorney / Bounceback letter (continued)**

10-00-10-20-01 FROM		1-204 P0004/0004 F-028
<b>NOTICE OF BAD CHECK</b>		
<b>IMPORTANT ADDITIONAL INFORMATION</b>		
<b>PAY ONLINE</b>		
<b>-OR-</b>		
<b>MAIL PAYMENT TO:</b>	<b>Onondaga County Check Enforcement Program 505 South State Street - 4th Floor Syracuse, NY 13202</b>	
<b>IF YOU BELIEVE YOU HAVE RECEIVED THIS NOTIFICATION IN ERROR:</b>		
<ol style="list-style-type: none"><li>1. Review your records carefully. The Check Enforcement Program is in possession of evidence that your check was dishonored by the banking institution. While it is possible that an error has occurred, it is unlikely.</li><li>2. Contact the Check Enforcement Program, toll free, at: (888) 711-0103 to explain any error you believe has occurred. Ask to speak with a Case Investigator. The Investigator will answer your questions as well as explain what is required, <b>WHAT DOCUMENTATION YOU MUST PROVIDE THE PROGRAM</b>, and what the sequence of events will be in pursuing your case.</li><li>3. Be prepared to send necessary documentation that supports your contention. To dispute this notice you are required to notify the Check Enforcement Program in writing no later than 10 days after receiving this notice. If you believe your checks have been stolen or that you are the victim of forgery, fraud or identity theft, you will be asked to supply a Police Report, Bank Records or similar verifiable, written proof. <b>THE CHECK ENFORCEMENT PROGRAM WILL NOT DISMISS A CHECK CASE WITHOUT PROPER DOCUMENTATION.</b></li><li>4. Mail the required documentation immediately. Your case can be released for review and possible prosecution if documentation is not received within the time period indicated by the Case Investigator when you call.</li></ol>		
<b>IF YOU BELIEVE YOU WERE NOT PROPERLY NOTIFIED ABOUT A DISHONORED CHECK:</b> The Check Enforcement Program accepts only checks with DOCUMENTED notification by the victims to the check writer. In addition to notification by the victim, banks routinely send customers a notice if a check has been dishonored. Checks that are dishonored because of Insufficient Funds or Non-sufficient funds appear on your monthly banking statement. <b>CHECK YOUR RECORDS CAREFULLY BEFORE CONTACTING THE CHECK ENFORCEMENT PROGRAM OR CONSULTING AN ATTORNEY.</b>		
<b>IF YOU HAVE ALREADY PAID THE MERCHANT OR PARTY FILING THE COMPLAINT:</b> If you have paid the victim or the party filing the Complaint, you must MAIL DOCUMENTATION that the payment was received by the victim or filing party BEFORE the date of this notice. Upon receiving your documentation, the Check Enforcement Program will contact you with regard to what action will be taken to resolve the case.		
<b>IF YOU WISH TO CONTEST THIS ACTION:</b> If you prefer to contest this action you are urged to consult an attorney. Contact the Check Enforcement Program to inform us of your intention to appear in court.		
<b>THE EDUCATIONAL REQUIREMENT</b> ALL check writers whose checks have been referred to the Check Enforcement Program MUST complete the Educational Requirement to discharge the case as part of this diversion program. You will receive additional information about this requirement after the required restitution and fees have been received. You may complete the requirement at home but the Answer Book MUST be returned to the Check Enforcement Program within thirty (30) days.		
<b>FAILURE TO COMPLETE THE EDUCATIONAL REQUIREMENT CAN CAUSE YOUR CASE DIVERSION TO BE REVOKED.</b>		
<b>To contact the Check Enforcement Program, call, toll free: (888) 711-0103</b>		
CW# 5344		NI



**Yakima County District Attorney / Bounceback letter**

**Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**



**Joseph A. Brusie  
PROSECUTING ATTORNEY**

**JOHN SAMUEL DOE SR  
DBA: DOE'S TREE SERVICE  
1234 ELM  
APT 1000  
YAKIMA, WA 98901**

**February 20, 2017**

**\*\*\*\*\*NOTICE OF BAD CHECK(S)\*\*\*\*\***

The Yakima County Prosecuting Attorney's Office has received a complaint against you for issuing a worthless check(s). This complaint may result in a criminal charge of "unlawful issuance of a bank check" being filed against you under the Washington Criminal Code. When a merchant in Yakima County files a bad check with our office, we can proceed directly to prosecution. However as a service to both you and the merchant, we are offering you a chance to enter into a Diversion Program.

The Diversion Program gives you an opportunity to pay your check(s) and the fees before the case is forwarded to prosecution. It is also a requirement of the Diversion Program that you complete a training class. We will send you additional information regarding the training class as soon as you have met your financial obligations in the program.

Failure to make payment in full with TEN (10) DAYS from the date of this notice may be used as evidence in a possible criminal prosecution.

To clear this matter immediately, you must send FULL PAYMENT (indicated below). Payment must be a CASHIER'S CHECK, MONEY ORDER, CREDIT or DEBIT CARD. There is a \$6.00 convenience fee for credit or debit card payments. Mailed payments should be made payable to Yakima County Check Enforcement Program, 128 North Second Street, Washington, 98901. DO NOT MAKE RESTITUTION TO THE MERCHANT. If you have questions please call 1-800-420-2135.

**PAY ONLINE AT :  
[www.hotchecks.net](http://www.hotchecks.net)**

**User Name : YAK123456  
Password : 64153**

<u>Victim</u>	<u>Check No.</u>	<u>Case No.</u>	<u>Check Date</u>	<u>Check Amt.</u>	<u>Victim Fee</u>	<u>Program Fees</u>
MERCHANT SUPPLY INC	1969333	YAK-91287	December 22, 2016	100.00		40.00
FINANCIAL TRAINING	1969333	YAK-M-1	December 22, 2016			145.00
MISC INVOICE	1969333	YAK-M-2	December 22, 2016			25.00

Make MONEY ORDER or CASHIER'S CHECK payable to:

**YAKIMA COUNTY  
CHECK ENFORCEMENT PROGRAM**

**For:  
\$ 310.00**

Pay by credit or debit card online at [www.hotchecks.net](http://www.hotchecks.net)

CW# 123456

BMS

**Yakima County District Attorney / Bounceback letter (continued)**

**NOTICE OF BAD CHECK**

**IMPORTANT ADDITIONAL INFORMATION**

**PAY ONLINE**

**-OR-**

**MAIL PAYMENT TO:** Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901

**IF YOU BELIEVE YOU HAVE RECEIVED THIS NOTIFICATION IN ERROR:**

1. Review your records carefully. The Check Enforcement Program is in possession of evidence that your check was dishonored by the banking institution. While it is possible that an error has occurred, it is unlikely.
2. Contact the Check Enforcement Program, toll free, at: (800) 420-2135 to explain any error you believe has occurred. Ask to speak with a Case Investigator. The Investigator will answer your questions as well as explain what is required, WHAT DOCUMENTATION YOU MUST PROVIDE THE PROGRAM, and what the sequence of events will be in pursuing your case.
3. Be prepared to send necessary documentation that supports your contention. To dispute this notice you are required to notify the Check Enforcement Program in writing no later than 10 days after receiving this notice. If you believe your checks have been stolen or that you are the victim of forgery, fraud or identity theft, you will be asked to supply a Police Report, Bank Records or similar verifiable, written proof. THE CHECK ENFORCEMENT PROGRAM WILL NOT DISMISS A CHECK CASE WITHOUT PROPER DOCUMENTATION.
4. Mail the required documentation immediately. Your case can be released for review and possible prosecution if documentation is not received within the time period indicated by the Case Investigator when you call.

**IF YOU BELIEVE YOU WERE NOT PROPERLY NOTIFIED ABOUT A DISHONORED CHECK:**

The Check Enforcement Program accepts only checks with DOCUMENTED notification by the victims to the check writer. In addition to notification by the victim, banks routinely send customers a notice if a check has been dishonored. Checks that are dishonored because of Insufficient Funds or Non-sufficient funds appear on your monthly banking statement. CHECK YOUR RECORDS CAREFULLY BEFORE CONTACTING THE CHECK ENFORCEMENT PROGRAM OR CONSULTING AN ATTORNEY.

**IF YOU HAVE ALREADY PAID THE MERCHANT OR PARTY FILING THE COMPLAINT:**

If you have paid the victim or the party filing the Complaint, you must MAIL DOCUMENTATION that the payment was received by the victim or filing party BEFORE the date of this notice. Upon receiving your documentation, the Check Enforcement Program will contact you with regard to what action will be taken to resolve the case.

**IF YOU WISH TO CONTEST THIS ACTION:**

If you prefer to contest this action you are urged to consult an attorney. Contact the Check Enforcement Program to inform us of your intention to appear in court.

**THE EDUCATIONAL REQUIREMENT**

ALL check writers whose checks have been referred to the Check Enforcement Program MUST complete the Educational Requirement to discharge the case as part of this diversion program. You will receive additional information about this requirement after the required restitution and fees have been received.

**FAILURE TO COMPLETE THE EDUCATIONAL REQUIREMENT CAN CAUSE YOUR CASE DIVERSION TO BE REVOKED.**

**To contact the Check Enforcement Program, call, toll free: (800) 420-2135**

CW# 123456

BMS

**Yakima County District Attorney / Bounceback letter (continued)**

**Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**



**Joseph A. Brusic  
PROSECUTING ATTORNEY**

**JOHN SAMUEL DOE SR  
DBA: DOE'S TREE SERVICE  
1234 ELM  
APT 1000  
YAKIMA, WA 98901**

**February 20, 2017**

**\*\*\*\*\*WARNING OF POTENTIAL CRIMINAL CHARGES\*\*\*\*\***

You have not responded to our NOTICE regarding the worthless check(s) below. You can still avoid possible prosecution by IMMEDIATELY paying the check amounts and the fees.

In Washington, a person writing a worthless check due to Insufficient Funds or Closed or No Account with the bank may be guilty of a criminal offense. If the check(s) is not taken care of, a CRIMINAL COMPLAINT and a SUMMONS may be issued commanding you to appear in court and a CRIMINAL RECORD may result.

**PAY THE TOTAL LISTED BELOW NOW  
TO AVOID THE POSSIBILITY OF CRIMINAL PROSECUTION.**

DO NOT PAY THE MERCHANT.

**MAIL TO: Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**

**PAY ONLINE AT :  
www.hotchecks.net  
User Name : YAK123456  
Password : 64153**

You cannot make payment in person. Your payment must be made by MONEY ORDER, CASHIER'S CHECK, CREDIT or DEBIT CARD. There is a \$6.00 convenience fee for credit or debit card payments. Be sure to put the reference number(s) of this notice on the money order or enclose a copy of this letter to ensure that your payment is properly credited to your case. No partial payments are accepted.

Additionally, you are required to complete an Offender Education Program. Details will be mailed to you under separate cover. If you have questions please call 1-800-420-2135.

IF YOU HAVE ALREADY MADE ARRANGEMENTS OR PAID, PLEASE DISREGARD THIS NOTICE.

<u>Victim</u>	<u>Check No.</u>	<u>Case No.</u>	<u>Check Amt.</u>	<u>Service Fee</u>	<u>Program Fee</u>
MERCHANT SUPPLY INC	1969333	YAK-91287	100.00		40.00
FINANCIAL TRAINING	1969333	YAK-M-1			145.00
MISC INVOICE	1969333	YAK-M-2			25.00

Make MONEY ORDER or CASHIER'S CHECK payable to:

**CHECK ENFORCEMENT PROGRAM**

Pay by credit or debit card online at [www.hotchecks.net](http://www.hotchecks.net)

For:

**\$ 310.00**

CW# 123456

BMS

**Yakima County District Attorney / Bounceback letter (continued)**

**Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**



**Joseph A. Brusic**  
PROSECUTING ATTORNEY

**JOHN SAMUEL DOE, SR  
DOE'S TREE SERVICE  
1234 ELM  
APT 1000  
YAKIMA, WA 98901**

**February 20, 2017**

The Yakima County Prosecuting Attorney's Office has received a complaint against you for issuing a bad check(s) in accordance with the Washington Criminal Code.

We have contacted you by mail allowing you to defer possible criminal charges by entering into a Diversion Program which offers you the opportunity to pay your check(s) and fees before the case is forwarded to prosecution. As of this date, you have not made full restitution.

Recently we received official notification from Federal Bankruptcy Court regarding the mentioned check(s). We are now forwarding the case to the Prosecuting Attorney for review.

If you have any questions, please call the Prosecuting Attorney's office at: (509) 574-1210.

Check Writer - JOHN SAMUEL DOE SR  
Check Number - 1969333  
Check Amount - 100.00  
Merchant - MERCHANT SUPPLY INC

Sincerely,

**Program Administrator**

**MPN# WA\_YAK-444**

**BMS**

**Yakima County District Attorney / Bounceback letter (continued)**

**Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**



**Joseph A. Brusie  
PROSECUTING ATTORNEY**

**JOHN SAMUEL DOE SR  
DBA: DOE'S TREE SERVICE  
1234 ELM  
APT 1000  
YAKIMA, WA 98901**

February 20, 2017

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## **Final Notice**

### **Immediate Response Required**

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**BE ADVISED**

Listed below are the bad checks that you have outstanding with this office. You must pay the total by 03/22/2017. If payment in full is not received by this date, the cases will immediately be forwarded to the Prosecuting Attorney's office.

Mail your full payment to the address listed below or pay online. There is a \$6.00 convenience fee for credit or debit card payments. If you have questions call (800) 420-2135.

There will be no further attempts to contact you.

**MAIL TO: Yakima County Prosecuting Attorney's  
Check Enforcement Program  
128 North Second Street  
Yakima, WA 98901**

**PAY ONLINE AT :  
[www.hotchecks.net](http://www.hotchecks.net)**

**User Name : YAK123456  
Password : 64153**

<u>Victim</u>	<u>Check No.</u>	<u>Case No.</u>	<u>Check Date</u>	<u>Check Amt.</u>	<u>Victim Fee</u>	<u>Program Fe</u>
MERCHANT SUPPLY INC	1969333	YAK-91287	12/22/2016	100.00		40.00
FINANCIAL TRAINING	1969333	YAK-M-1	12/22/2016			145.00
MISC INVOICE	1969333	YAK-M-2	12/22/2016			25.00

Make MONEY ORDER or CASHIER'S CHECK payable to:

**CHECK ENFORCEMENT PROGRAM**

Pay by credit or debit card online at [www.hotchecks.net](http://www.hotchecks.net)

For:

**\$ 310.00**

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**Program Administrator**

CW# 123456

BMS

# Endnotes

1. Jailing for unpaid child support; income taxes; or fines, fees, and restitution imposed for criminal offenses or civil infractions, including traffic tickets, are outside the scope of this report. “Fees” include courts costs, state and local assessments, and surcharges intended to help fund the justice system, such as fees for jail booking, diversion programs, public defender applications, drug and DNA testing, bail investigation, public defender recoupment, jail per-diems, and probation. *See, e.g.,* AMERICAN CIVIL LIBERTIES UNION (ACLU), IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTORS’ PRISONS (2010), *available at* [https://www.aclu.org/sites/default/files/field\\_document/InForAPenny\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf); ALICIA BANNON, MITALI NAGRECHA, REBEKAH DILLER, CRIMINAL JUSTICE DEPT: A BARRIER TO REENTRY (2010), *available at* <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>; *Guilty and Charged Investigative Series*, NATIONAL PUBLIC RADIO (May 2014), *available at* <http://www.npr.org/series/313986316/guilty-and-charged>; ALEXANDRA BASTIEN, POLICY LINK, ENDING THE DEBT TRAP: STRATEGIES TO STOP THE ABUSE OF COURT-IMPOSED FINES AND FEES (March 28, 2017), *available at* <http://www.policylink.org/sites/default/files/ending-the-debt-trap-03-28-17.pdf>; Eli Hager, *Debtors’ Prisons, Then and Now: FAQ*, Marshall Project (February 24, 2015), *available at* <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq#.oXAE7D3Se>.
2. CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER EXPERIENCES WITH DEBT COLLECTION: FINDINGS FROM THE CFPB’S SURVEY OF CONSUMER VIEWS ON DEBT (2017), *available at* [http://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf); Press Release, Consumer Financial Protection Bureau, “CFPB Survey Finds Over One-In-Four Consumers Contacted by Debt Collectors Feel Threatened” (Jan. 12, 2017), *available at* <https://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/>.
3. FED. TRADE COMM’N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 5 (July 2010), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting-debtcollectionreport.pdf>.
4. Paul Kiel, *So Sue Them: What We’ve Learned About the Debt Collection Lawsuit Machine*, PROPUBLICA, May 5, 2016, *available at* <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine>.
5. Jorge Ramos, Rob Wile, Dan Lieberman, *One Texas Judge is Responsible for Most of the Student Debt-Related Arrests in America*, Fusion, Apr. 14, 2016, *available at* <http://fusion.net/story/291271/student-debt-arrests-houston/>.
6. *Capias* is Latin for “bring me the body.” Historically, under common law a writ of *capias ad satisfaciendum* required the local sheriff to arrest a judgment debtor and keep them imprisoned until the debt was paid. DAVID G. EPSTEIN & JONATHAN M. LANDERS, DEBTORS AND CREDITORS: CASES AND MATERIALS 96 (1978).
7. Outside the scope of this report is jailing for civil or criminal contempt for unpaid child support. *E.g.,* Turner v. Rogers, 564 U.S. 431 (2011); Tina Griego, *Locking Up Parents For Not Paying Child Support Can Be a Modern-Day “Debtor’s Prison,”* WASHINGTON POST, September 26, 2014, [https://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/?utm\\_term=.852ed81d555c](https://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/?utm_term=.852ed81d555c); Frances Robles, Shaila Dewan, *Skip Child Support. Go to Jail. Lose Job. Repeat*, NEW YORK TIMES, April 20, 2015, <https://www.nytimes.com/2015/04/20/us/skip-child-support-go-to-jail-lose-job-repeat.html>; CARMEN SOLOMON-FEARS, ALISON M. SMITH, CARLA BERRY, CONGRESSIONAL RESEARCH SERVICES (2012), *available at* <http://www.ncsea.org/documents/CRS-Report-on-CSE-and-Incarceration-for-Non-Payment-March-6-2012.pdf>. Also outside the scope of this report is jailing for civil contempt of court in civil suits that are not debt collection actions, such as divorce proceedings or fraud cases. In such cases, imprisonment can continue for years; we documented six cases in which defendants were jailed for over a year and as long as 14 years for not turning over assets owed under civil judgments, usually for unpaid alimony, unpaid legal fees, or for refusal to turn over assets: Manuel Osete was jailed for nearly three years in Arizona when he failed to turn over more than \$800,000 in assets during a divorce proceeding, Pennsylvania lawyer H. Beatty Chadwick was jailed for 14 years for refusing to turn over \$2.5 million to an ex-wife, Florida options trader Steven Jay Lawrence was jailed for six years when he refused to turn over \$7 million in an offshore trust he created after incurring personal debts of \$20 million, Tim Blixseth was jailed for over a year in Colorado, Martin Armstrong spent seven years in prison when he failed to produce \$15 in gold and antiquities, and Warren Matthei was incarcerated on a writ of *capias* for 10 years in New Jersey for unpaid legal fees.
8. ACLU interview with Paul Arons, April 12, 2017.
9. Compl., Consumer Financial Protection Bureau v. National Corrective Group, Inc. (D. Md. March 30, 2015), *available at*



- [http://files.consumerfinance.gov/f/201503\\_cfpb\\_complaint-national-corrective-group.pdf](http://files.consumerfinance.gov/f/201503_cfpb_complaint-national-corrective-group.pdf).
10. State Bar of Texas Collections 101 Course, "Post-Judgment Discovery and Strategies," April 30, 2014, *available at* <http://www.texasbarcle.com/Materials/Events/12844/161970.pdf>.
  11. *See* 2012 Debtors' Rights Act; Press Release, Illinois Attorney General, "Madigan: New Laws Ban Sending Debtors to Prison for Debts, Protect Consumers from High Costs of Refund Anticipation Loans" (July 25, 2012), *available at* [http://www.illinoisattorneygeneral.gov/pressroom/2012\\_07/20120725.html](http://www.illinoisattorneygeneral.gov/pressroom/2012_07/20120725.html); Press Release, Illinois Attorney General, "Madigan: Legislature Passes Debtors' Rights Act" (May 30, 2012), *available at* [http://www.illinoisattorneygeneral.gov/pressroom/2012\\_05/20120530c.html](http://www.illinoisattorneygeneral.gov/pressroom/2012_05/20120530c.html); Press Release, Illinois Attorney General, "Madigan: House Passes Debtors' Rights Act" (March 29, 2012), *available at* [http://www.ag.state.il.us/pressroom/2012\\_03/20120329c.html](http://www.ag.state.il.us/pressroom/2012_03/20120329c.html); *see also* Press Release, Illinois Attorney General, "Madigan: New Laws Ban Sending Debtors to Prison for Debts, Protect Consumer from High Costs of Refund Anticipation Loans" (July 25, 2012), *available at* [http://illinoisattorneygeneral.gov/pressroom/2012\\_07/20120725.html](http://illinoisattorneygeneral.gov/pressroom/2012_07/20120725.html); *Illinois Debtors Thrown in Jail: Lisa Madigan Working to Stop Debt Collector Arrest Warrants*, HUFFPOST, December 13, 2011, [http://www.huffingtonpost.com/2011/12/12/illinois-debtors-thrown-in-jail\\_1144093.html](http://www.huffingtonpost.com/2011/12/12/illinois-debtors-thrown-in-jail_1144093.html). Information about current practices in Illinois based on ACLU interviews and correspondence with Allen Schwartz, Executive Director of Coordinated Advice & Referral Program for Legal Services (CARPLS); Michelle Weinberg, Legal Assistance Foundation of Metropolitan Chicago (LAF); and John Roska, Land of Lincoln Legal Assistance.
  12. CAROLINE RATCLIFFE, BRETT THEODOS, SIGNE-MARY MCKERNAN, ET AL., URBAN INSTITUTE, *DEBT IN AMERICA* (2014), *available at* <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413190-Debt-in-America.PDF>; Stu Kantor, *1 in 3 Americans with a Credit File Has Debt Reported in Collections*, URBAN INSTITUTE (July 29, 2014), *available at* <http://www.urban.org/1-3-americans-credit-file-has-debt-reported-collections>; Jeanne Sahadi, *1 in 3 U.S. Adults Have "Debt in Collections"*, CNN Money, Aug. 7, 2014, *available at* <http://money.cnn.com/2014/07/29/pf/debt-collections/>.
  13. CONSUMER FINANCIAL PROTECTION BUREAU, CFPB SPOTLIGHTS CONCERNS WITH MEDICAL DEBT COLLECTION AND REPORTING (Dec. 11, 2014), *available at* <http://www.consumerfinance.gov/about-us/newsroom/cfpb-spotlights-concerns-with-medical-debt-collection-and-reporting/>. *See also* Michael Karpman, Kyle J. Caswell, *Past-Due Medical Debt Among Nonelderly Adults*, URBAN INSTITUTE (March 2017), *available at* [http://www.urban.org/sites/default/files/publication/88586/past\\_due\\_medical\\_debt.pdf](http://www.urban.org/sites/default/files/publication/88586/past_due_medical_debt.pdf).
  14. CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER EXPERIENCES WITH DEBT COLLECTION: FINDINGS FROM THE CFPB'S SURVEY OF CONSUMER VIEWS ON DEBT (2017), *available at* [http://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf).
  15. ACA International and Ernst & Young, *An Analysis of the Consumer Financial Protection Bureau's Current Debt Collection Complaints*, November 2013.
  16. IBIS WORLD, *DEBT COLLECTION AGENCIES IN THE US* (December 2016), *available at* <https://www.ibisworld.com/>
  17. For 2016, Portfolio Recovery Associates (PRA Group) reported a net profit margin of 10.25 percent and Encore Capital Group Inc. reported a net profit margin of 7.67 percent, while Walmart reported a net profit margin of 2.81 percent for that year. *See* Wall Street Journal, "PRA Group Inc., Overview: Financials," *available at* <http://quotes.wsj.com/PRAA/financials>; <http://quotes.wsj.com/ECPG/financials>; Wall Street Journal, "Walmart Stores Inc., Overview: Financials," *available at* <http://quotes.wsj.com/WMT/financials>. *See also* Encore Capital Group, Form 10-K, 2016 (filed Feb. 23, 2017), *available at* <http://investors.encorecapital.com/phoenix.zhtml?c=115920&p=irol-reportsannual>; PRA Group Inc., Form 10-K, 2016 (filed March 1, 2017), *available at* <http://ir.pragroup.com/static-files/9bdaef5f-5aaa-4f4a-ae4a-9d1ca345dc57>.
  18. Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit (February 2017) at 18, *available at* [https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC\\_2016Q4.pdf](https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2016Q4.pdf).
  19. CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS (Dec. 2014), *available at* [http://files.consumerfinance.gov/f/201412\\_cfpb\\_reports\\_consumer-credit-medical-and-non-medical-collections.pdf](http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf).
  20. Senate Report No. 95-382 on the Fair Debt Collection Practices Act, Report of the Committee on Banking, Housing and Urban Affairs U.S. Senate Aug. 2, 1977.
  21. Nael Gabler, *The Secret Shame of Middle-Class Americans*, ATLANTIC, May 2016, *available at* <http://www.theatlantic.com/magazine/archive/2016/05/my-secret-shame/476415/>; FEDERAL RESERVE, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2013 (2014) at 18, *available at* <https://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf>; THE PEW CHARITABLE TRUSTS, WHAT RESOURCES DO FAMILIES HAVE FOR FINANCIAL EMERGENCIES? (Nov. 18, 2015), *available at* <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/emergency-savings-what-resources-do-families-have-for-financial-emergencies>; FEDERAL RESERVE, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2013 (July 2014) at 18, *available at* <https://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf>; Allison Ross, *Financial Security Index: Saving for a Rainy Day*, BANKRATE, June 23, 2014, *available at* <http://www.bankrate.com/finance/consumer-index/saving-for-a-rainy-day.aspx>; Dan Mangan, *Oh, My Aching Debt! Medical Bills Top Emergency Savings*, CNBC, Sept. 4, 2014, *available at* <http://www.cnbc.com/2014/09/03/medical-bills-top-emergency-savings-for-many-survey.html>.
  22. Paul Ausick, *Americans' Debt Total: \$12.35 Trillion*, YAHOO FINANCE, Dec. 15, 2016, *available at* <http://finance.yahoo.com/news/americans-debt-total-12-35-142053810.html>. For minimum-wage earners, the real value of their wages has increased only 21 percent since 1990, while the cost of living has increased 67 percent during the same period; *see* Dave Gilson, *Overworked*

- America: 12 Charts That Will Make Your Blood Boil*, MOTHER JONES, July/August 2011, available at <http://www.motherjones.com/politics/2011/05/speedup-americans-working-harder-charts/>. Research by the Economic Policy Institute found that minimum wage workers earn far less than they need to make ends meet, no matter where they live in the United States; see Elise Gould, Tanyell Cooke, Will Kimball, *What Families Need to Get By*, ECONOMIC POLICY INSTITUTE, Aug. 26, 2015, available at <http://www.epi.org/publication/what-families-need-to-get-by-epis-2015-family-budget-calculator/>; Fred Imbert, *Cost of Living Is Increasingly Out of Reach for Low-Wage Workers*, CNBC, Aug. 31, 2015, available at <https://www.cnbc.com/2015/08/31/cost-of-living-is-increasingly-out-of-reach-for-low-wage-workers.html>. Research by the Center for American Progress found that for the middle class, real incomes have been stagnant or declining while the cost of living has risen dramatically at the same time; see Jennifer Erickson, “The Middle-Class Squeeze,” CENTER FOR AMERICAN PROGRESS (September 24, 2014), available at <https://www.americanprogress.org/issues/economy/reports/2014/09/24/96903/the-middle-class-squeeze/>. Research by EPI also found that since 1979, low-wage workers’ hourly wages have decreased 5 percent and middle-wage workers’ wages have increased only 6 percent, while those with a very high wage saw a 41 percent increase. See Elise Gould, *2014 Continues a 35-Year Trend of Broad-Based Wage Stagnation*, ECONOMIC POLICY INSTITUTE, Feb. 19, 2015, available at <http://www.epi.org/publication/stagnant-wages-in-2014/>; Josh Bivens, Elise Gould, Lawrence Mishel, et al., *Raising America’s Pay*, ECONOMIC POLICY INSTITUTE, June 4, 2014, available at <http://www.epi.org/publication/raising-americas-pay/>; Drew Desilver, *For Most Workers, Real Wages Have Barely Budged for Decades*, PEW RESEARCH CENTER, Oct. 9, 2014, available at <http://www.pewresearch.org/fact-tank/2014/10/09/for-most-workers-real-wages-have-barely-budged-for-decades/>.
23. PEW RESEARCH CENTER, *Views of Job Market Tick Up, No Rise in Economic Optimism*, Sept. 4, 2014, available at <http://www.people-press.org/2014/09/04/views-of-job-market-tick-up-no-rise-in-economic-optimism/>.
  24. Car title loans—sometimes also called car title pawns—are predatory short-term loans issued to cash-strapped borrowers who offer the titles of their vehicles as collateral, and they usually carry high interest rates in the triple digits. When consumers are unable to repay the loans, they lose their cars, often their biggest or sole asset. For more information, see e.g., PEW CHARITABLE TRUSTS, *AUTO TITLE LOANS* (March 2015), available at <http://www.pewtrusts.org/~media/assets/2015/03/autotitleloansreport.pdf>; Fred Schulte, *Lawmakers Protect Title Loan Firms While Borrowers Pay Sky-High Interest Rates*, CENTER FOR PUBLIC INTEGRITY, Dec. 9, 2015, available at <https://www.publicintegrity.org/2015/12/09/18916/lawmakers-protect-title-loan-firms-while-borrowers-pay-sky-high-interest-rates>.
  25. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, PEW RESEARCH CENTER, June 27, 2016, available at <http://www.pewsocialtrends.org/2016/06/27/1-demographic-trends-and-economic-well-being/#fn-21776-11>.
  26. The racial wealth gap is calculated as the difference between the net worth (assets minus debts) of a typical white household and a typical Black household. The gap in white and Black household wealth is a longstanding problem and has been widening in recent years. See Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RESEARCH CENTER, Dec. 12, 2014, available at <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession>.
  27. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, PEW RESEARCH CENTER, June 27, 2016, available at <http://www.pewsocialtrends.org/2016/06/27/1-demographic-trends-and-economic-well-being/#fn-21776-11>.
  28. See, e.g., PEW CHARITABLE TRUSTS, *WHAT RESOURCES DO FAMILIES HAVE FOR FINANCIAL EMERGENCIES?* (Nov. 18, 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/emergency-savings-what-resources-do-families-have-for-financial-emergencies>.
  29. For instance, the FDIC has found that payday borrowers are disproportionately Latino or African-American. Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households: Appendices*, at 83-84 (Oct. 2014), available at <https://www.fdic.gov/householdsurvey/2013appendix.pdf>.
  30. See, e.g., Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RESEARCH CENTER, Dec. 12, 2014, available at <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>; Paul Kiel, *What Small Debts Matter So Much to Black Lives*, ProPublica, Dec. 31, 2015, available at <https://www.propublica.org/article/why-small-debts-matter-so-much-to-black-lives>; *Code Switch: Black, Latino Two-Parent Families Have Half the Wealth of White Single Parents*, National Public Radio, Feb. 8, 2017, available at <http://www.npr.org/sections/codeswitch/2017/02/08/514105689/black-latino-two-parent-families-have-half-the-wealth-of-white-single-parents>; AMY TRAUB, DEMOS, *THE ASSET VALUE OF WHITENESS* (2017), available at <http://iasp.brandeis.edu/pdfs/2017/AssetValue.pdf>.
  31. PEW CHARITABLE TRUSTS, *WHAT RESOURCES DO FAMILIES HAVE FOR FINANCIAL EMERGENCIES?* (Nov. 18, 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/emergency-savings-what-resources-do-families-have-for-financial-emergencies>.
  32. Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, ProPublica, Oct. 8, 2015, available at <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>; Paul Kiel & Annie Waldman, *The Burden of Debt on Black America*, ATLANTIC, Oct. 9, 2015, available at <https://www.theatlantic.com/business/archive/2015/10/debt-black-families/409756/>.
  33. NEW ECONOMIC PROJECT, *THE DEBT COLLECTION RACKET IN NEW YORK* (June 2013), available at <http://www.neweconomynyc.org/wp-content/uploads/2014/08/DebtCollectionRacketUpdated.pdf>.
  34. Once a judgment has been entered, many courts refer to the creditors and debtors as judgment creditors and judgment debtors.
  35. Depending on the jurisdiction, these proceedings are called “judgment debtor examinations,” “citations to discover assets,” “supplementary proceedings,” “orders for examination,” “disclosure hearings,” or “proceedings in aid of execution.” See, e.g., Lea Shepard, *Creditors’ Contempt*, 2011 BYU L. REV. 1509, 1518 (2011).

36. To be clear, debtors are not incarcerated for failure to pay a debt, but rather they are incarcerated for contempt of court. In these cases, the judge writes a warrant for arrest on the charge of contempt of court for a debtor's failure to appear in court, for failure to supply information to the court and/or the creditor, or for disobeying a court order. Depending on the jurisdiction, the arrest warrants are known as "body attachments," "capias warrants," "writs of bodily attachment," or simply bench warrants. In some cases, judges may first order the debtor to appear at a contempt hearing, sometimes called an order to show cause hearing, and issue the arrest warrant if they fail to appear for that hearing.
37. These 852 body attachments were issued in contract cases. In addition, courts issued 43 body attachments in non-contract cases.
38. Data provided by the Nebraska State Court Administrator's Office in response to an open records request filed by the ACLU.
39. Data collected by Erika Rickard, Associate Director of Field Research at Harvard Law School's Access to Justice Lab, in September 2017 using the Massachusetts Trial Court Electronic Case Access at <http://www.masscourts.org/>.
40. In FY 2016, 1,886 civil bench warrants were issued by Utah justice court judges, and 3,945 warrants were issued by district court judges. In 2015, 3,872 civil bench warrants were issued by Utah district court judges and 1,610 by justice court judges. Mark Shenefelt, *Utah Courts Increase Use of Civil Bench Warrants to Compel Debt Payments*, STANDARD EXAMINER, Mar. 26, 2017, available at <http://www.standard.net/Courts/2017/03/26/Utah-courts-increase-use-of-civil-bench-warrants-to-compel-debt-payments-jails-Tremonton-Box-Elder>; Mark Shenefelt, *Box Elder Jail Inmate's Death Raises Concerns For Justice System, Not Foul Play*, STANDARD EXAMINER, Feb. 23, 2016, available at <http://www.standard.net/Courts/2016/02/22/Box-Elder-jail-death-sparks-attention-to-civil-bench-warrants.html>.
41. Katie Rogers, *Viral Student Loan Nightmare Is Not What It Seems, Authorities Say*, NEW YORK TIMES, Feb. 16, 2016, available at [https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?\\_r=2](https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?_r=2); Rob Wile, *U.S. Marshals May Have Arrest Warrants For Hundreds Who Haven't Paid Their Student Loans*, SPLINTER, Feb. 18, 2016, available at <http://fusion.net/u-s-marshals-may-have-arrest-warrants-for-hundreds-who-1793854803>.
42. See, e.g., *United States v. Wheeler*, S.D. Texas, 4:98-cv-2690; In re Gabriellova, 527 S.W.3d 290 (Tex. App. 2016).
43. In most jurisdictions, creditors are not required to provide evidence that a debtor's circumstances have changed before requesting additional hearings, even though multiple debtor's examinations or written interrogatories are unlikely to lead to the discovery of additional non-exempt assets. Instead, many state laws explicitly allow creditors to not only request that debtors appear "at any time," but also to enforce compliance with such proceedings via the court's contempt power. Creola Johnson, *Prosecuting Creditors and Protecting Consumers: Cracking Down on Creditors that Extort via Debt Criminalization Practices*, 80 LAW & CONTEMP. PROBS. 211, 228 (2017). See, e.g., ARIZ. REV. STAT. ANN. § 12-1631 ("... the judgment creditor, at any time may: [h]ave an order from the court requiring the judgment debtor to appear and answer concerning his property..."); NEB. REV. STAT. ANN. § 25-1565 ("At any time after the entry of judgment against the judgment debtor... the judgment creditor is entitled to an order... requiring the debtor to appear and answer concerning his or her property..."); OKLA. STAT. tit. 12, § 842 ("At any time after a final judgment ... on application of the judgment creditor, a judge ... shall order the judgment debtor to appear ... to answer concerning the judgment debtor's property."); OR. REV. STAT. ANN. § 18.265 ("At any time after a judgment is entered, a judgment creditor may upon motion obtain an order requiring the judgment debtor to appear before the court..."); PA. R. CIV. P. 3117 ("Plaintiff at any time after judgment ... may ... take ... oral examination or written interrogatories.");
44. *Davis v. Neb. Furniture Mart, Inc.*, No. 11-2559-JAR, 2013 WL 3854462 (D. Kan. July 24, 2013).
45. *Id.*
46. Charles Jordan Tabb, *The History of Bankruptcy Law in the United States*, 3 AM. BANKR. INST. L. REV. 5, 16 (1995).
47. 28 U.S.C. § 2007 (stating in § 2007(a) that "A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the US in any State wherein imprisonment for debt has been abolished...").
48. 460 U.S. 752, 757 (1983). This is derived from Federal Rule of Civil Procedure 69(a)(1), which states that a "money judgment is enforced by a writ of execution..." as opposed to via contempt proceedings. The first sentence in Fed. R. Civ. P. 69(a)(1) continues, "unless the court directs otherwise." This is read narrowly and does not include contempt proceedings. *Suffler v. Heritage Bank*, 750 F.2d 1141, 1147 (9th Cir. 1983). See also *Hilao v. Estate of Marcos*, 95 F.3d 848, 854 (9th Cir. 1996); *In re Wallace*, 490 B.R. 898, 906-07 (B.A.P. 9th Cir. 2013); *In re Valentine*, 2014 WL 1347229, No. 12-20740-TLM, at \*5 (Bankr. D. Idaho Apr. 3, 2014); *Combs v. Ryan's Coal Co., Inc.*, 785 F.2d 970, 980 (11th Cir. 1986); *Aetna Cas. & Sur. Co. v. Markarian*, 114 F.3d 346, 349 (1st Cir. 1997). This report focuses on private, household, and consumer debts. The incarceration of indigent defendants unable to pay criminal justice debt like fines, fees, and costs is outside the scope of this report. In such cases, a trio of Supreme Court cases has limited debtor's prisons by prohibiting states from discriminating based on indigence when considering incarceration for failure to pay such debt. See *Bearden v. Georgia*, 461 U.S. 660 (1983); *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971). The ACLU continues to expose and challenge the arrest and jailing of poor people for failure to pay legal debts. See, e.g., AMERICAN CIVIL LIBERTIES UNION (ACLU), IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010), available at [https://www.aclu.org/sites/default/files/field\\_document/InForAPenny\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf).
49. See, e.g., *In re Adam*, 100 P.3d 77, 88 (Haw. Ct. App. 2004) (holding that contempt of court in Hawaii is not a remedy used to enforce a judgment); *Papatheofanis v. Allen*, 215 P.3d 778 (N.M. Ct. App. 2009) (holding that New Mexico's courts cannot use civil contempt to enforce a civil money judgment).
50. Forty-one states ban imprisonment for debt by constitutional provision, some of which include exceptions in cases of fraud or other circumstances. The other nine states prohibit imprisonment for debt by statute. See Christopher D. Hampson, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 HARV. L. REV. 1024, 1035 n.95, n.99 (2016) (listing the constitutional provisions and state statutes).



51. Richard E. James, *Putting Fear Back into the Law and Debtors Back into Prison: Reforming the Debtors' Prison System*, 42 WASHBURN L. J. 143, 149 (2002).
52. Instead of using contempt authority, both the federal government and the states use writs of execution—where local law enforcement seize non-exempt assets to cover the judgment—or in personam remedies—such as debtor's examinations—to attempt to collect money judgments. Federal Rule of Civil Procedure 69(a) (1) states that "[t]he procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(1). Some states require creditors to first attempt execution of the judgment via writs of execution, where local law enforcement seize non-exempt assets to cover the judgment, before they allow creditors to initiate in personam remedies. Given that many debtors lack non-exempt assets to cover their debt, most debt collectors view this requirement as a procedural hurdle that must be surpassed before in personam remedies can be pursued. Other states allow creditors and debt collectors to immediately utilize in personam remedies. *See* Lea Shepard, *Creditors' Contempt*, 2011 BYU L. REV. 1509, 1529-30 (2011). For example, in Idaho, the court written instructions for judgment debtor examinations state that creditors must first attempt collection via a writ of execution. The instructions recognize that this is merely a procedural hurdle, as "[t]ypically, the Sheriff does not receive payment or find assets." *CAO CuPi 10-5 Instructions for Judgment Debtor Examinations*, COURT ASSISTANCE OFFICE, STATE OF IDAHO JUDICIAL BRANCH, <https://courtsselfhelp.idaho.gov/other-misc-civil#> (found under Enforcing Civil Judgments).
53. Courts differentiate the failure to pay money judgments, where contempt is unavailable, from debtors' failure to comply with such proceedings, where contempt is available and regularly used. In such instances, debtors are held in contempt not for the inability to pay the money judgment, but for refusing to comply with court orders designed to satisfy the money judgment. Some courts have also differentiated between the failure to comply with turnover orders or installment plans, where debtors are expected to give up certain assets or make payments, from the failure to pay money judgments. Despite their similarity to failure to pay, courts have upheld the use of contempt and incarceration in such cases, viewing them as proceedings supplementary to the money judgment as opposed to a failure to pay the money judgment itself. *See* Abbasi, Inc. v. First National Bank, No. CV-09-00354 JP/LFG, 2010 WL 11493333, at \*3 (D.N.M. Sept. 9, 2010) (reviewing 10th Circuit precedent along similar lines).
54. *Ex parte Robinson*, 86 U.S. 505, 510 (1874).
55. *See* Rob Wile, Dan Lieberman, *One Texas Judge Is Responsible for Most of the Student Debt-Related Arrests in America*, FUSION TV, Apr. 14, 2016, available at <http://fusion.net/story/291271/student-debt-arrests-houston/>.
56. Cersonsky was quoted as telling a reporter in 2012 that his five-attorney law firm had collected as much as \$1 million from student loan debtors in one year alone. John Hechinger, *Teacher's Wages Garnished As U.S. Goes After Loan Default*, BLOOMBERG, Jul. 2, 2012, available at <https://www.bloomberg.com/news/articles/2012-07-02/teacher-s-wages-garnished-as-u-s-goes-after-loan-default>.
57. M. H. "Butch" Cersonsky, State Bar of Texas Collections 101 Course, "Post-Judgment Discovery and Strategies," April 30, 2014, available at <http://www.texasbarcle.com/Materials/Events/12844/161970.pdf>.
58. ACLU interview with Judge Lenore Driggs, April 27, 2017.
59. Doug Donovan, *Jared Kushner's Firm Seeks Arrest of Maryland Tenants to Collect Debt*, BALTIMORE SUN, Aug. 16, 2017, available at <http://www.baltimoresun.com/news/maryland/investigations/bs-md-kushner-arrests-20170812-story.html>.
60. *Gomes v. Midland Funding, LLC* 839 F. Supp. 2d 417 (2012).
61. ACLU interview with Dalié Jiménez, June 8, 2017.
62. Data collected by Erika Rickard, Associate Director of Field Research at Harvard Law School's Access to Justice Lab, in September 2017 using the Massachusetts Trial Court Electronic Case Access at <http://www.masscourts.org/>. Cases were categorized broadly as "consumer debt" by (1) plaintiff name, including debt buyers, banks, utilities, fuel, medical debt, and student debt, and (2) defendant name, indicating that defendant is an individual and not a business or other entity. Court divisions were randomly selected from the District Court location and are not necessarily representative of the state as a whole.
63. ACLU email correspondence with Scott Kinkley, June 22, 2017.
64. Liz Dedrick, Northeastern University School of Law, *A Report on the Initial Impact of Recent Changes to the Massachusetts Uniform Small Claims Rules*, Feb. 25, 2011 (on file with the ACLU).
65. ACLU interview with Katherine Rybak, June 8, 2017.
66. ACLU interview with Katie Johnson, May 10, 2017.
67. *Button v. James*, 909 N.E.2d 1007 (Ind. Ct. App. 2009).
68. *Id.*
69. See letter in Appendix III of this report.
70. In 1833, the federal government ended incarceration for debt. A 1948 statute, 28 U.S.C. § 2007, prohibits incarceration for debt anywhere where it is outlawed by state law. As each state bars imprisonment for debt either in its constitution or by statute, debtors' prisons have theoretically been eliminated in the United States. *See* Charles Jordan Tabb, *The History of Bankruptcy Law in the United States*, 3 AM. BANKR. INST. L. REV. 5, 16 (1995); Christopher D. Hampson, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 HARV. L. REV. 1024, (2016).
71. *See, e.g.*, Ronald S. Canter, Collection of Contract Debts, MD. INST. FOR CONTINUING PROF'L EDUC. LAW, INC. (2012); Edward C. Dolan, *Collection of Contract Debts*, in PRACTICE MANUAL FOR THE MARYLAND LAWYER S-35, S-36 (3d ed.2002) ("[B]ody attachments are usually rather effective, as most debtors do not like to be imprisoned and suddenly find funds."); Karen I. Englehardt, *Guide to Collection Procedures in Federal Court*, 16 CHIC. BAR ASS'N REC. 34, 36–37 (2002) ("If the witness does not attend that hearing, you should ask the court to enter a body attachment, the process where the U.S. Marshal's Service will arrest and bring the witness to the Judge."); M.H. "Butch" Cersonsky, *Post-Judgment Discovery and Strategies*, TEXAS BAR CONTINUING LEGAL EDUCATION (2014), available at <http://www.texasbarcle.com/Materials/Events/12844/161970.pdf> (stating "It's easier to settle when the debtor is under arrest.").

72. Ronald S. Canter, *Collection of Contract Debts*, MD. INST. FOR CONTINUING PROF'L EDUC. LAW, INC. (2012).
73. Chris Serres, *Debtors and the New Breed of Collectors: Is Jailing Debtors the Same as Debtors' Jail?*, STAR TRIBUNE, Jun. 6, 2010, at A9.
74. Kelly M. Greco & Stephanie R. Hammer, *No More "Debtors' Prison": Greater Notice, Protections for Judgment Debtors*, 101 ILL. B. J. 134 (2013).
75. *In re Daniels*, 316 B.R. 342 (Bankr. D. Idaho 2004).
76. *See, e.g.*, MINN. STAT. § 550.011 ("Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully."); OKL. STAT. tit. 12, § 68 (When the "person arrested, pursuant to the authority of such process, makes a bond for his appearance... the bond made shall be disbursed ... to the party in the suit who has procured the bench warrant... rather than to the State of Oklahoma.").
77. Lea Shepard, *Creditors' Contempt*, 2011 BYU L. REV. 1509, 1535 (2011).
78. *E.g.*, *State v. Burgess*, No. E2015-02213-CCA-R3-CD, 2017 WL2117029 (Tenn. Crim. App. May 15, 2017); *Daviscourt v. Columbia State Bank*, No. 05-cv-00687, 2006 WL 2781593 (D. Colo. Nov. 9, 2006).
79. *Iskric v Commonwealth Fin Sys (In re Iskric)*, 496 BR 355, 364 (Bankr. MD Pa, 2013). *In Re Iskric*, Bankruptcy No. 1-12-bk-03839-RNO. Adversary No. 1-13-ap-00076-RNO, 496 B.R. 355 (2013).
80. *Rains v. Dr. Auto Care LLC*, Case No. 10-34826 (Bankr N.D. Ohio March 24, 2011).
81. Mariah Noble, *Utah Man Jailed for Unpaid Bill Killed Himself with Poison Rather Than Stay in Jail, Police Say*, SALT LAKE TRIBUNE, Nov. 18, 2016, available at <http://www.sltrib.com/news/4596028-155/utah-man-took-fatal-dose-of;MarkShenefelt,ManWhoDiedinBoxElderJailWasThereForNotPayingDebt>, STANDARD EXAMINER, Feb. 15, 2016, available at <http://www.standard.net/Courts/2016/02/14/Man-who-died-in-Box-Elder-jail-was-there-for-not-paying-a-debt>.
82. *In re Butler*, No. 07-81047, 2011 WL 806078 (Bankr. C.D. Ill. Mar. 11, 2011).
83. *Zencka v. Lake Cnty.*, Cause No. 2:14-CV-371 (N.D. Ind. May 24, 2016).
84. *Compl.*, *Zimmerman v. Bellows*, No. 0:12-cv-02811-RHK-SER (D. Minn. Nov. 2, 2012), available at <http://www.hansenlawoffice.com/MNDebtorsprison/Complaint%20-%20filed.pdf>.
85. *Mem. Op. Order, Zimmerman v. Bellows*, 988 F. Supp. 2d 1026, 1030 (D. Minn. 2013), available at <https://casetext.com/case/zimmerman-v-bellows>.
86. HUMAN RIGHTS WATCH, RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 50-51 (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf).
87. *See Jayne S. Ressler, Civil Contempt Confinement and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: An Examination of Debtor Incarceration in the Modern Age*, 37 RUTGERS L.J. 355 (2006) (arguing for more robust due process protections for defendants subject to incarceration for civil contempt).
88. *See, e.g.*, NATIONAL CONSUMER LAW CENTER, THE DEBT MACHINE: HOW THE COLLECTION INDUSTRY HOUNDS CONSUMERS AND OVERWHELMS THE COURTS (July 2010), available at [https://www.nclc.org/images/pdf/debt\\_collection/debt-machine.pdf](https://www.nclc.org/images/pdf/debt_collection/debt-machine.pdf).
89. Paul Kiel, *So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine*, PROPUBLICA, May 5, 2016, available at <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine>.
90. FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 5 (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting-debtcollectionreport.pdf>.
91. HUMAN RIGHTS WATCH, RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 2, 12-15 (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf); *see also* Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA, Oct. 8, 2015, available at <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>.
92. Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. ON LEGIS. 41 (2015).
93. FED. TRADE COMM'N, COLLECTING CONSUMER DEBTS: THE CHALLENGES OF CHANGE, A WORKSHOP REPORT, at 24 (Feb. 2009), available at <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwrr.pdf>.
94. *See, e.g.*, Kathy M. Kristof, *When Debt Collectors Go After the Wrong Person*, LOS ANGELES TIMES, Dec. 19, 2010, available at <http://articles.latimes.com/2010/dec/19/business/la-fi-perfin-20101219>.
95. *See, e.g.*, APPLESEED, DUE PROCESS AND CONSUMER DEBT: ELIMINATING BARRIERS TO JUSTICE IN CONSUMER CREDIT CASES (2010), available at <http://www.appleseednetwork.org/wp-content/uploads/2012/05/Due-Process-and-Consumer-Debt.pdf>; Testimony of April Kuehnhoff, Staff Attorney at the National Consumer Law Center on behalf of its low-income clients, before the Massachusetts Legislature Joint Financial Services Committee, in support of S.146/H.804, An Act Relative to Family Financial Protection (October 27, 2015), available at [https://www.nclc.org/images/pdf/debt\\_collection/testimony-act-family-prot-2015.pdf](https://www.nclc.org/images/pdf/debt_collection/testimony-act-family-prot-2015.pdf); FED. TRADE COMM'N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY, (2013), available at <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>; FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 5 (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting-debtcollectionreport.pdf>; Dalié Jiménez, *Dirty Debts Sold Dirt*

- Cheap*, 52 *Harv. J. on Legis.* 41 (2015); Peter Holland, *Junk Justice: A Statistical Study of 4,400 Lawsuits Filed by Debt Buyers*, 26 *LOY. CONSUMER L. REV.* 179, 206-10 (2014); NEW ECONOMY PROJECT, LEGAL AID SOCIETY, MFY LEGAL SERVICES, & URBAN JUSTICE CENTER, *DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 1* (May 2010), available at [https://www.neweconomy.nyc.org/wp-content/uploads/2014/08/DEBT\\_DECEPTION\\_FINAL\\_WEB-new-logo.pdf](https://www.neweconomy.nyc.org/wp-content/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf); HUMAN RIGHTS WATCH, *RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR* (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf).
96. An FTC roundtable workshop elicited estimates that close to 90 percent of debt collection lawsuits resulted in default judgments in their jurisdictions. FED. TRADE COMM’N, *REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 7* (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>. See also, e.g., *McCullough v. Johnson, Rodenburg & Lauinger*, L.L.C., 637 F.3d 939 (9th Cir. 2011) (estimating that 90 percent of collection lawsuits result in a default); NEW ECONOMY PROJECT, LEGAL AID SOCIETY, MFY LEGAL SERVICES, & URBAN JUSTICE CENTER, *DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 6* (May 2010) (finding that 94.3 percent of cases in a sample of New York City collection lawsuits resulted in a default judgment or a settlement); *Dignity Faces a Steamroller: Small-Claims Proceedings Ignore Rights, Tilt to Collectors*, BOSTON GLOBE, July 31, 2006 (finding an 80 percent default rate in Massachusetts collection lawsuits); URBAN JUSTICE CENTER, *DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR 1* (Oct. 2007), available at [https://cdp.urbanjustice.org/sites/default/files/CDP\\_Debt\\_Weight.pdf](https://cdp.urbanjustice.org/sites/default/files/CDP_Debt_Weight.pdf) (finding 80 percent of debt collection actions in New York resulted in default judgments); MFY Legal Services, *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York* (2008) (finding a default rate of 90 percent among New York City debtors sued by the seven largest debt collection firms), available at [http://mobilizationforjustice.org/wp-content/uploads/reports/Justice\\_Disserved.pdf](http://mobilizationforjustice.org/wp-content/uploads/reports/Justice_Disserved.pdf).
  97. FED. TRADE COMM’N, *REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 7* (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>; HUMAN RIGHTS WATCH, *RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 33* (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf).
  98. Consumer advocates have extensively documented the considerable deficiencies in serving defendants in debt collection litigation. See NEW ECONOMY PROJECT, LEGAL AID SOCIETY, MFY LEGAL SERVICES, & URBAN JUSTICE CENTER, *DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 9* (May 2010) (determining that 71 percent of collection suit defendants who called a New York City legal hotline “were either not served or served improperly, and more than half received no notice of the lawsuit at all”); MFY Legal Services, Inc., *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York*, 1, 11 (2008) (estimating that “nine out [of] ten New Yorkers who are sued in the Civil Court of the City of New York are being denied their right to be heard because of possibly illegal process serving practices” based on study of 91 debt collection lawsuits); Appleseed, *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases*, 12 (2010) (“Consumer debt litigants, court personnel, and judges all confirm that the number of default judgments entered because the defendant was not actually served is unacceptably high.”). Some defendants receive notice of debt collection litigation only after the entry of default judgment against them and the garnishment of their wages or bank accounts. See FED. TRADE COMM’N, *REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 9* n.23 (July 2010).
  99. HUMAN RIGHTS WATCH, *RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 38* (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf).
  100. See, e.g., *Monique Sykes et al. vs. Mel Harris & Associates, LLC et al.*, 13-2742-cv (2d Cir. 2015); Martha Neil, *\$59M Settlement in “Sewer Service” Debt-Collection Suit; 190,000 Default Judgment May Be Vacated*, ABA JOURNAL, Nov. 16, 2015, available at [http://www.abajournal.com/news/article/59m\\_settlement\\_in\\_sewer\\_service\\_debt\\_collection\\_suit\\_115k\\_default\\_judgments](http://www.abajournal.com/news/article/59m_settlement_in_sewer_service_debt_collection_suit_115k_default_judgments); Ray Rivera, *Suit Claims Fraud by New York Debt Collectors*, NEW YORK TIMES, Dec. 30, 2009, available at <http://www.nytimes.com/2009/12/31/nyregion/31debt.html>.
  101. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (holding also that the means employed “must be such as one, desirous of actually informing the absentee, might actually reasonably adopt to accomplish it.” *Id.* at 315).
  102. *Greene v. Lindsey*, 456 U.S. 444, 453-54 (1982).
  103. *Jones v. Flowers*, 547 U.S. 220, 225 (2006).
  104. Studies have shown that less than 2 percent of Maryland debtors and less than 1 percent of individuals sued by debt buyers in New York City had legal representation. Peter Holland, *Junk Justice: A Statistical Study of 4,400 Lawsuits Filed by Debt Buyers*, 26 *LOY. CONSUMER L. REV.* 179, 206-10 (2014); NEW ECONOMY PROJECT, LEGAL AID SOCIETY, MFY LEGAL SERVICES, & URBAN JUSTICE CENTER, *DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 1* (May 2010). See also URBAN JUSTICE CENTER, *DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR* (Oct. 2007), available at [https://cdp.urbanjustice.org/sites/default/files/CDP\\_Debt\\_Weight.pdf](https://cdp.urbanjustice.org/sites/default/files/CDP_Debt_Weight.pdf).
  105. HUMAN RIGHTS WATCH, *RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 40-44* (2016), available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0116\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf); Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 *Harv. J. on Legis.* 41 (2015); Peter Holland, *Junk Justice: A Statistical Study of 4,400 Lawsuits Filed by Debt Buyers*, 26 *LOY. CONSUMER L. REV.* 179, 206-10 (2014).
  106. Peter Holland, *Junk Justice: A Statistical Study of 4,400 Lawsuits Filed by Debt Buyers*, 26 *LOY. CONSUMER L. REV.* 179, 206-10 (2014).
  107. URBAN JUSTICE CENTER, *DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR* (Oct. 2007),



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  112. The NCLC report found that no state in the United States meets five basic standards to prevent garnishment and property seizures from reducing families to below a living wage, seizing their sole used car or the family's home, and denying them minimal funds to pay such essential costs as rent, utilities, and commuting expenses. National Consumer Law Center, "No Fresh Start: How States Let Debt Collectors Push Families into Poverty," October 2013, <https://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf>. According to research by ProPublica, more than half of states allow creditors to take one-fourth of their paycheck with no limit on garnishment once that paycheck is deposited in their bank account (student loan debts are governed by different laws capping seizures at 15 percent of disposable income). Paul Kiel, *Unseen Toll: Wages of Millions Seized to Pay Past Debts*, PROPUBLICA, Sept. 15, 2014, available at <https://www.propublica.org/article/unseen-toll-wages-of-millions-seized-to-pay-past-debts>.
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  114. *Keller-Bee v. State*, 448 Md. 300 (2016).
  115. *Id.*; *State v. Keller-Bee*, 224 Md.App. 1, 3 (2015).
  116. *Goodall v. Quick Collect, Inc.*, No. 6:15-cv-01887-MC, 2016 WL 5923422 (D. Or. Oct. 11, 2016). See QUICK COLLECT, <http://www.quickcollectinc.com/>; *Quick Collect Inc.*, BUZZFILE, <http://www.buzzfile.com/business/Qci-503-252-0083>.
  117. *Easter v. Caldwell*, No. 14-0967, 2015 WL 1281022 (W.D. La. Mar. 20, 2015).
  118. *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (actual incarceration); *Scott v. Illinois*, 440 U.S. 367 (1979) (actual incarceration); *Alabama v. Shelton*, 535 U.S. 654 (2002) (suspended incarceration).
  119. *Lassiter v. Dep't Soc. Servs.*, 452 U.S. 18, 32-33 (1981) (holding that there is not a categorical right to counsel in proceedings regarding the termination of parental rights because the Court only recognized an indigent's right to appointed counsel where the litigant could lose her physical liberty if she lost the litigation).
  120. The Supreme Court found that there was no due process right to counsel in a contempt proceeding regarding the alleged nonpayment of child support, even though the decision resulted in the party's incarceration. While a cursory comparison may give the appearance that this case is similar to those described in this report, as both involve contempt proceedings and debt, the court's analysis focused on the countervailing interests specific to the child support context. As the cases covered in this report focus on private consumer debt, these countervailing interests are inapplicable. *Turner v. Rogers*, 564 U.S. at 445, 447 (distinguishing "debt collection proceedings" from civil contempt proceedings brought by uncounseled custodial parents against noncustodial parents for unpaid child support in which there is no due process right to appointed counsel).
  121. *Turner*, 564 U.S. at 447.
  122. *Id.* at 449.
  123. *Mathews v. Eldridge*, 324 U.S. 319, 335 (1976); see *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (applying the *Mathews* balancing test to the right to counsel in the civil child custody context); *Lassiter v. Dep't Soc. Servs.*, 452 U.S. 18, 27-31 (1981) (applying the *Mathews* test to a civil proceeding about the termination of parental rights).
  124. In *Turner v. Rogers*, the Supreme Court recognized incarceration as a weighty private interest. 564 U.S. 431, 445 (2011). Further, the Court has long recognized that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
  125. In analyzing the right to counsel in civil contempt proceedings for unpaid child support, the Supreme Court weighed heavily the interest of the custodial parent in need of child support who was also not represented by an attorney, and found that a right to counsel for the noncustodial parent facing incarceration would unduly slow child support payments to those immediately in need and make the proceedings less fair overall by appointing counsel only to the noncustodial parent. *Turner*, 564 U.S. at 447 (applying the balancing test set forth in *Mathews*, 424 U.S. 319, outlining countervailing interests including "an asymmetry of representation that would alter significantly the nature of the proceeding," "unduly slow payment to those immediately in need," or "mak[ing] the proceedings less fair overall," and concluding that there is no due process right to appointed counsel for indigent non-custodial parents charged with child support nonpayment in proceedings brought by uncounseled custodial parents).
  126. *Id.* at 449 (strongly suggesting that due process affords a right to counsel in "debt-collection proceedings" in which "[t]he government is likely to have counsel or some other competent representative").
  127. See *United Mine Workers of America v. Bagwell*, 512 U.S. 821, 828 (1994) (citing *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911)); *Turner*, 564 U.S. at 441 (citing *U.S. v. Dixon*, 509 U.S. 688, 696 (1993) and *Cooke v. U.S.*, 267 U.S. 517,

- 537 (1925)). Cases involving private debt collection frequently involve contempt charges that concern alleged misconduct that takes place outside of court, such as alleged failure to complete interrogatories or to respond to requests for documents. The essential elements of the alleged misconduct—the ability to provide information or documents—are not facts observed in open court, and therefore summary proceedings do not apply. *See United Mine Workers*, 512 U.S. at 833 (prohibiting summary adjudication of indirect contempt); *F.T.C. v. Trudeau*, 606 F.3d 382, 386 (7th Cir. 2010) (same).
128. *Turner*, 564 U.S. at 441 (internal quotation marks and citations omitted).
129. *See Lamar Financial Corp. v. Adams*, 918 F.2d 564, 567 (5th Cir. 1990) (holding that “a contempt order contain[ing] both a punitive and a coercive dimension” is considered criminal contempt for purposes of appellate review).
130. In *United States v. North*, 621 F.2d 1255 (3rd Cir. 1980), the Third Circuit discussed a federal court’s imposition of a “hybrid criminal contempt sentence,” which combined a fixed prison sentence with a purge condition. *Id.* at 1263–64 (discussing *In re Reina*, 170 F. Supp. 592 (S.D.N.Y.), *aff’d sub nom. United States v. Reina*, 273 F.2d 234 (2d Cir. 1959) (per curiam), *aff’d*, 364 U.S. 507 (1960)). The court noted that both the Second Circuit and the U.S. Supreme Court implicitly affirmed the sentence on appeal, although the latter declined to squarely address whether a hybrid criminal contempt sanction was valid. *Id.* at 1264; *see also United States v. Liddy*, 510 F.2d 669, 676 n.29 (D.C. Cir. 1974) (noting that the U.S. Supreme Court’s decision in *Reina* “affirmed” and “impliedly approved the District Court’s ‘hybrid’ sentencing technique,” but noting that the technique may have been cast in doubt by a companion case).
131. *See, e.g., Consulting and Administrative Support Agreement between American Corrective Counseling Services, Inc. and the State’s Attorney of Prince George’s County, MD, Schedule I, Prince George County 00273* (“ACCS is to be compensated solely from the proceeds of the Seminar Fees charged to Participants, plus the incidental expenses charged to Participants for scheduling the Seminars, monitoring restitution and seminar payment arrangements, and any other incidental costs authorized by law and the State’s Attorney.”), *available at* [https://www.aclu.org/sites/default/files/assets/aclu\\_and\\_brennan\\_center\\_comment\\_to\\_cfbp\\_0.pdf](https://www.aclu.org/sites/default/files/assets/aclu_and_brennan_center_comment_to_cfbp_0.pdf) at App. 2; *see also Decl. of Michael L. Wilhelms, In re SCH Corp.*, No. 09-10198 (Bankr. Del. 2009), ¶ 10 (stating that the “primary compensation for [ACCS’s] services stems from the fees paid by Participants to enroll in the Debtors’ seminars.”), *available at* [https://www.aclu.org/sites/default/files/assets/aclu\\_and\\_brennan\\_center\\_comment\\_to\\_cfbp\\_0.pdf](https://www.aclu.org/sites/default/files/assets/aclu_and_brennan_center_comment_to_cfbp_0.pdf) at App. 5, Washington County 00101.
132. *Attention New Recovery Agent: Tips for Success*, *available at* [https://www.aclu.org/sites/default/files/assets/aclu\\_and\\_brennan\\_center\\_comment\\_to\\_cfbp\\_0.pdf](https://www.aclu.org/sites/default/files/assets/aclu_and_brennan_center_comment_to_cfbp_0.pdf) at App. 6, Washington County 00141.
133. *Id.* (emphasis in original).
134. *Class Cert. Ex. 3, Cavnar v. Bounceback*, No. 2:14-CV-235-RMP (E.D. Wash. June 29, 2015).
135. *Compl., Cavnar v. Bounceback*, No. 2:14-CV-235-RMP (E.D. Wash. July 18, 2014).
136. ACLU interview with Paul Arons, April 12, 2017.
137. *Compl., Consumer Financial Protection Bureau v. National Corrective Group, Inc.* (D. Md. March 30, 2015), *available at* [http://files.consumerfinance.gov/f/201503\\_cfbp\\_complaint-national-corrective-group.pdf](http://files.consumerfinance.gov/f/201503_cfbp_complaint-national-corrective-group.pdf).
138. Jessica Silver-Greenberg, *In Prosecutors, Debt Collectors Find a Partner*, *NEW YORK TIMES*, Sept. 15, 2012, *available at* <http://www.nytimes.com/2012/09/16/business/in-prosecutors-debt-collectors-find-a-partner.html>. Other estimates put the figure at 2 million consumers. *See, e.g., Mosi Secret, Bounced Checks: How Local District Attorneys Get a Cut of the Debt Collection Business*, *PROPUBICA*, March 2, 2009, *available at* <https://www.propublica.org/article/bounced-checks-how-local-das-get-a-cut-of-the-debt-collection-business>.
139. American Corrective Counseling Services (ACCS) launched in 1987. *See Mem., Shouse v. Nat’l Corrective Grp., Inc.*, 2011 WL 1376403 (M.D. Pa. Apr. 12, 2011).
140. *See, e.g., Landfried v. Spokane Cnty.*, 2011 WL 1584328 (E.D. Wash. Apr. 27, 2011); *Del Campo v. Am. Correctives Servs. Inc.*, 718 F. Supp. 2d 1116 (N.D. Cal. 2010); *Schwarm v. Craighead*, 552 F. Supp. 2d 1056 (E.D. Cal. 2008); *Hamilton v. Am. Corrective Counseling Servs. Inc.*, 2006 WL 3332828 (N.D. Ind. Nov. 14, 2006); *Del Campo v. Kennedy*, 491 F. Supp. 2d 891 (N.D. Cal. 2006); *Gradisher v. Cnty. of Muskegon*, 255 F. Supp. 2d 720 (W.D. Mich. 2003); *Liles v. Am. Corrective Counseling Servs., Inc.*, 131 F. Supp. 2d 1114 (S.D. Iowa 2001).
141. *Federal Trade Commission v. Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007), *available at* <http://www2.ca3.uscourts.gov/opinarch/053558p.pdf>.
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184. E.g., Leon Bayer, *Fake Arrest Warrant for Unpaid Debt*, NOLO BLOG, Aug. 29, 2014, available at <http://blog.nolo.com/bankruptcy/2014/08/29/fake-arrest-warrant-for-unpaid-debt/>; see sample false arrest warrants at [http://blog.nolo.com/bankruptcy/files/2014/08/Scam\\_Arrest\\_Warrant.pdf](http://blog.nolo.com/bankruptcy/files/2014/08/Scam_Arrest_Warrant.pdf).
185. See, e.g., FED. TRADE COMM’N, Goldman Schwartz Inc., Case Page (last updated Jun. 30, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3096-x130029/goldman-schwartz-inc>; FED. TRADE COMM’N, Forensic Case Management Services Inc. d/b/a Rumson, Bolling, & Associates, Case Page (last updated Jan. 17, 2013), available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3035/forensic-case-management-services-inc-dba-rumson-bolling>.
186. See Matthew W. Ludwig, *Abuse, Harassment, and Deception: How the FDCA Is Failing America’s Elderly Debtors*, 1 Elder L.J. 135, 152, 156 (2008) (citing Senate hearings on the FDCA and quoting testimony regarding egregious abuses, including the story of an elderly woman who was told that if she did not pay the funeral expenses for her husband, the collector would get a court order to dig up her husband’s body and repossess the casket). See also Federal Trade Commission v. Forensic Case Management Services, Inc. dba Rumson, Bolling & Associates, No. 2:11-cv-07484-RGK (C.D. Ca.), available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3035/forensic-case-management-services-inc-dba-rumson-bolling> (FTC action that alleged a debt collection firm threatened to desecrate the bodies of deceased relatives, including allegedly threatening to dig up a debtors’ deceased children and hang the body from a tree or drop them outside their door if the funeral bill remained unpaid).



187. For a summary of each state's exemption laws, see JONATHAN SHELDON, CAROLYN CARTER & CHI CHI WU, COLLECTION ACTIONS: DEFENDING CONSUMERS AND THEIR ASSETS 421-54 (2008).
188. JONATHAN SHELDON, CAROLYN CARTER & CHI CHI WU, COLLECTION ACTIONS: DEFENDING CONSUMERS AND THEIR ASSETS 421-54 (2008).
189. Lea Shepard, *Creditors' Contempt*, 2011 BYU L. REV. 1509, 1538 (2011).
190. *Id.* at 1531.
191. Compl., Commw. Mass. v. Lustig, Glaser & Wilson, P.C., No. 15-3852-BLS (Mass. Superior Ct. Dec. 21, 2015), available at <http://www.mass.gov/ago/docs/consumer/lustig-glaser-wilson-complaint.pdf>; Press Release, Massachusetts Attorney General, "AG Healey Sues Major Debt Collection Law Firm Over Widespread Consumer Abuses" (Dec. 23, 2015), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-12-23-debt-collection-lawsuit.html>; see also Deirdre Fernandes, *AG Sues Law Firm, Alleging Deceit*, BOSTON GLOBE, available at [http://epaper.bostonglobe.com/BostonGlobe/article\\_popover.aspx?guid=b7d0dce5-cdf4-4e5c-be89-b49192a0f927&source=prev](http://epaper.bostonglobe.com/BostonGlobe/article_popover.aspx?guid=b7d0dce5-cdf4-4e5c-be89-b49192a0f927&source=prev).
192. Consent Judgment, Commw. Mass. v. Lustig, Glaser & Wilson, P.C., No. 15-3852-BLS (Mass. Superior Ct. July 19, 2017), available at <http://www.mass.gov/ago/docs/consumer/016-2017-07-20-lustig-final-judgment-by-consent.pdf>; see also Press Release, Massachusetts Attorney General, "AG Secures \$1 Million for Consumers Exploited by Largest Debt Collection Law Firm in Massachusetts" (July 27, 2017), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-07-27-1-million-for-consumers-exploited-debt-collection.html>.
193. Lea Shepard, *Creditors' Contempt*, 2011 BYU L. REV. 1509, 1537 (2011).
194. 15 U.S.C. § 1692(d).
195. 15 U.S.C. § 1692(e). To bring a claim under the FDCPA, plaintiffs must show that (1) they have been the object of a collection activity arising from consumer debt, (2) the defendant is a debt collector pursuant to the FDCPA definition, and (3) that the defendant engaged in an act or omission that is prohibited by the FDCPA. For cases applying this three-part standard, see, e.g., *Latimore v. Gateway Retrieval, LLC*, No. 1:12-CV-00386, 2013 WL 791258, at \*5 (N.D. Ga. Feb. 1, 2013); *Kaplan v. Assetcare, Inc.*, 88 F. Supp. 2d 1355, 1360-61 (S.D. Fla. 2000); *Sibley v. Firstcollect, Inc.*, 913 F. Supp. 2d 469, 470 (M.D. La. 1995). See 15 U.S.C. § 1692p(a)(2)(A).
196. 15 U.S.C. § 1692e(4) (2006) (prohibiting debt collectors from making "[t]he representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action").
197. 15 U.S.C. § 1692p(a)(2)(A).
198. See 15 U.S.C. § 1692p(a)(2)(A).
199. Specifically, they violate 15 U.S.C. § 1692e(1) or (9).
200. Specifically, they violate 15 U.S.C. § 1692e(3)-(5).
201. 15 U.S.C. § 1692(a). Further, the FDCPA exempts "pretrial diversion program[s] for alleged bad check offenders." 15 U.S.C. § 1692(p)(a)(2)(A).
202. CAL. CIV. CODE § 1788.2(c); IOWA CODE ANN. § 537.7102(5); TEX. FIN. CODE § 392.301(a)(6).
203. See, e.g., *Thomas v. Firestone Tire & Rubber Co.*, 266 S.E.2d 905 (W. Va. 1980) (holding that the West Virginia Consumer Credit and Protection Act applies to creditors); *Liggins v. May Co.*, 373 N.E.2d 404, 406 (Ohio C.P. 1977) (holding that the Ohio Consumer Sales Practices Act applies to both debt collectors and creditors). See generally HOWARD J. ALPERIN & ROLAND F. CHASE, CONSUMER LAW SALES PRACTICES AND CREDIT REGULATION § 675 (2016) (reviewing state law and concluding that most courts interpreting such state statutes have held that they are applicable to both debt collection companies and the original creditors).
204. See, e.g., CAL. CIV. CODE § 1788.10(e) (prohibiting a "threat to any person that nonpayment of the consumer debt may result in the arrest of the debtor or the seizure, garnishment, attachment or sale of any property..., unless such action is in fact contemplated by the debt collector and permitted by law."); IOWA CODE ANN. § 537.7103(1)(e) (prohibiting the making of a "false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person"); TEX. FIN. CODE § 392.301(a)(5) (Under Texas law, "debt collector[s] may not use threats, coercion, or attempts to coerce" that involve "threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings."); WASH. REVISED CODE ANN. § 19.16.250(13) (banning several collection practices, including attempting to collect from the debtor by using "threats of criminal prosecution").
205. 15 U.S.C. § 1692(n).
206. See, e.g., WASH. REV. CODE ADD. § 19.16.100(5).
207. See generally Creola Johnson, *Prosecuting Creditors and Protecting Consumers: Cracking Down on Creditors that Extort via Debt Criminalization Practices*, 80 LAW & CONTEMP. PROBS. 211 (2017).
208. See, e.g., CAL. PENAL CODE § 519 ("Fear, such as will constitute extortion, may be induced by a threat... [t]o accuse ... of any crime"); MD. CODE ANN., CRIM. LAW § 3-705 ("A person, with the intent to unlawfully extort money, may not ... accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute"); 18 PA. STAT. AND CONS. STAT. ANN. § 2906 ("A person is guilty of criminal coercion, if, with intent unlawfully to restrict freedom of action of another.... he threatens to ... accuse anyone of a criminal offense [or] expose any secret tending to subject any person to hatred, contempt or ridicule"); TEX. PENAL CODE ANN. § 1.07(a)(9) ("Coercion" means a threat, however communicated ... to accuse a person of any offense [or] to expose a person to hatred, contempt, or ridicule").
209. Creditors and debt collectors who repeatedly request debtor's examinations with the sole purpose of attaining bench warrants may also be committing the crime of extortion. Creditors and debt collectors may respond to such allegations by claiming that the civil contempt process is legal, and thus they lacked the requisite intent associated with the crime of extortion. While such arguments may be difficult to overcome, using the civil contempt process with the purpose of coercing payments from



defendants who otherwise would not be required to pay may constitute criminal coercion or extortion.

210. *International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en).
211. *International Covenant on Civil and Political Rights* art. 9, *entry into force* Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR]. See also the Universal Declaration of Human Rights (UDHR), G.A. Res. 217 (III) A, art. 3, Universal Declaration of Human Rights (Dec. 10, 1948).
212. Human Rights Committee General Comment 35, U.N. Doc. CCPR/C/GC/35, at ¶ 12 (Dec. 16, 2014).
213. ICCPR at art. 14.
214. Human Rights Committee General Comment 32, U.N. Doc. CCPR/C/GC/32, at ¶ 13 (Aug. 23, 2007).
215. *Id.* at ¶ 10.
216. G.A. Res. 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at principle 17 (Dec. 9, 1988).
217. Rep. of the Working Group on Arbitrary Detention, Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, U.N. Doc. WGAD/CRP.1/2015, at principle 9 (May 4, 2015).
218. *International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS TREATY COLLECTION, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en).
219. Vienna Convention on the Law of Treaties, art. 18, *entered into force* Jan. 27, 1980, 1155 U.N.T.S. 331.
220. *International Covenant on Economic, Social and Cultural Rights*, art. 11, *entry into force* Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR] (“The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living...”; G.A. Res. 217 (III) A, art. 25, Universal Declaration of Human Rights (Dec. 10, 1948). (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...”)).
221. *Zencka v. Lake Cnty.*, Cause No. 2:14-CV-371 (N.D. Ind. May 24, 2016).
222. *University of Stellenbosch Legal Aid Clinic (Clinic) & Others v Minister of Justice and Correctional Services & Others*; *Association of Debt Recovery Agents NPC v Clinic & Others*; *Mavava Trading 279 (Pty) Ltd & Others v Clinic & Others* [2016] ZACC 32.
223. U.N. Guiding Principles on Business and Human Rights, U.N. Doc A/HRC/17/31, at ¶¶ 13, 22 (June 16, 2011).
224. *Id.* at ¶ 3.
225. See, e.g., Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA

(Oct. 5, 2015) (finding that the rate of court judgments from debt collection lawsuits was twice as high in mostly Black communities as it was in mostly white communities, even controlling for income).

226. See ICCPR at art. 2; ICESCR at art. 2; G.A. Res. 217 (III) A at art. 25; *International Convention on the Elimination of All Forms of Racial Discrimination*, *entry into force* Jan. 4, 1979, 660 U.N.T.S. 195.
227. Some states allow courts to order a debtor to make payments on a debt and then hold the debtor in contempt for failing to do so, while other jurisdictions properly recognize that this practice amounts to unlawful imprisonment for debt. See, e.g., 735 Ill. Comp. Stat. § 5/2-1402(c)(2) (allowing court to order a debtor to make installment payments out of non-exempt income); Mass. Gen. Laws ch. 224, § 16 (allowing court to order debtor to make payments if it finds that debtor is financially able and providing that noncompliance can be punished as contempt); N.J. Stat. Ann. § 2A:17-64 (West) (allowing court to order debtor to pay judgment in installments from non-exempt income); N.Y. C.P.L.R. § 5226 (allowing court to order debtor to make installment payments).
228. Pseudonym used to protect the individual’s identity.
229. Pseudonym used to protect the individual’s identity.
230. Mariah Noble, *Utah Man Jailed for Unpaid Bill Killed Himself with Poison Rather than Stay in Jail, Policy Say*, SALT LAKE TRIBUNE, Nov. 18, 2016, available at <http://www.sltrib.com/news/4596028-155/utah-man-took-fatal-dose-of>.
231. William N. Grigg, *Utah Man Dies in Police Custody – After Being Arrested for Unpaid Medical Bills*, FREE THOUGHT BLOG, Feb. 21, 2016, available at <http://thefreethoughtproject.com/warrant-issued-illegitimate-court/>; Mark Shenefelt, *Box Elder Jail Inmate’s Death Raises Concerns for Justice System, Not Foul Play*, STANDARD EXAMINER, Feb. 23, 2016, available at <http://www.standard.net/Courts/2016/02/14/Man-who-died-in-Box-Elder-jail-was-there-for-not-paying-a-debt>.
232. Mark Shenefelt, *Box Elder Jail Inmate’s Death Raises Concerns for Justice System, Not Foul Play*, STANDARD EXAMINER, Feb. 23, 2016, available at <http://www.standard.net/Courts/2016/02/14/Man-who-died-in-Box-Elder-jail-was-there-for-not-paying-a-debt>.
233. In FY 2016, 1,886 civil bench warrants were issued by Utah justice court judges, and 3,945 warrants were issued by district court judges. In 2015, 3,872 civil bench warrants were issued by Utah district court judges and 1,610 by justice court judges. Mark Shenefelt, *Utah Courts Increase Use of Civil Bench Warrants to Compel Debt Payments*, STANDARD EXAMINER, Mar. 26, 2017, available at <http://www.standard.net/Courts/2017/03/26/Utah-courts-increase-use-of-civil-bench-warrants-to-compel-debt-payments-jails-Tremonton-Box-Elder>; Mark Shenefelt, *Box Elder Jail Inmate’s Death Raises Concerns for Justice System, Not Foul Play*, STANDARD EXAMINER, Feb. 23, 2016, available at <http://www.standard.net/Courts/2016/02/22/Box-Elder-jail-death-sparks-attention-to-civil-bench-warrants.html>.
234. Katie Rogers, *Viral Student Loan Nightmare Is Not What it Seems, Authorities Say*, NEW YORK TIMES, Feb. 16, 2016, available at [https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?\\_r=2](https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?_r=2); Rob Wile, *U.S. Marshals May Have Arrest Warrants for Hundreds*

- Who Haven't Paid Their Student Loans*, SPLINTER, Feb. 18, 2016, available at <http://fusion.net/u-s-marshals-may-have-arrest-warrants-for-hundreds-who-1793854803>.
235. Jorge Ramos, Rob Wile, Dan Lieberman, *One Texas Judge Is Responsible for Most of the Student Debt-Related Arrests in America*, FUSION, Apr. 14, 2016, available at <http://fusion.net/story/291271/student-debt-arrests-houston>.
  236. Michael Parks, *Operation Anaconda Squeeze Leads to Arrests of Debtors in Minnesota*, STUDENT LIFE BLOG (Feb. 21, 2003), available at <http://www.studlife.com/archives/News/2003/02/21/OperationAnacondaSqueezeleadstoarrestsofdebtorsinMinnesota>.
  237. See *U.S. v. Winford P. Aker*, Case 4:06-cv-03788 (S.D. Tex.).
  238. Katie Rogers, *Viral Student Loan Nightmare Is Not What it Seems, Authorities Say*, NEW YORK TIMES, Feb. 16, 2016, available at [https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?\\_r=1](https://www.nytimes.com/2016/02/17/us/viral-student-loan-nightmare-is-not-what-it-seems-authorities-say.html?_r=1); Noah Feldman, *Shirking Your Student Loan Shouldn't End in Handcuffs*, BLOOMBERG, Feb. 18, 2016, available at <https://www.bloomberg.com/view/articles/2016-02-18/shirking-your-student-loan-shouldn-t-end-in-handcuffs>.
  239. Jorge Ramos, Rob Wile, Dan Lieberman, *One Texas Judge Is Responsible for Most of the Student Debt-Related Arrests in America*, FUSION, Apr. 14, 2016, available at <http://fusion.net/story/291271/student-debt-arrests-houston/>.
  240. ACLU interview with Tracie Mozie.
  241. Pseudonym used to protect the individual's identity.
  242. Pseudonym used to protect the individual's identity.
  243. Pseudonym used to protect the individual's identity.
  244. Pseudonym used to protect the individual's identity.
  245. [Name redacted to preserve anonymity] v. Grace Whitney Properties, Ind. Ct. App., Case No. 82A04-1003-SC-177, Nov. 2010.
  246. *Zions First National Bank v. [Name redacted to protect identity]*, No. 13-2-01488-1 (Sup. Ct. Wash. Lewis Cty. 2014).
  247. Pseudonym used to protect the individual's identity.
  248. Pseudonym used to protect the individual's identity.
  249. Pseudonym used to protect the individual's identity.
  250. *State v. [Name redacted to preserve anonymity]*, No. E2015-02213-CCA-R3-CD, 2017 WL2117029 (Tenn. Crim. App. May 15, 2017).
  251. Pseudonym used to protect the individual's identity.
  252. Pseudonym used to protect the individual's identity.
  253. *Pac. Fin. Corp. v. [Name redacted to preserve anonymity]*, No. 05-0009-GA, 2008 WL 5381895 (N. Mar. I. Dec. 19, 2008).
  254. Pseudonym used to protect the individual's identity.
  255. [Name redacted to preserve anonymity] v. Dr. Auto Care LLC, Case No. 10-34826 (Bankr N.D. Ohio March 24, 2011).
  256. *In re Gray*, 567 B.R. 841 (Bankr. W.D. Wash. 2017).
  257. Pseudonym used to protect the individual's identity.
  258. Pseudonym used to protect the individual's identity.
  259. [Name redacted to preserve anonymity], Petition, Case No. 12-50325, (Bankr. E.D. Mo. Oct. 25, 2012).
  260. Pseudonym used to protect the individual's identity.
  261. [Name redacted to preserve anonymity] v. Caldwell, No. 14-0967, 2015 WL 1281022 (W.D. La. Mar. 20, 2015).
  262. Pseudonym used to protect the individual's identity.
  263. *Compl., Cavnar v. Bounceback*, No. 2:14-CV-235-RMP (E.D. Wash. July 18, 2014).
  264. TERRELL MARSHALL LAW GROUP PLLC, *Bounceback, Inc. Sued for Allegedly Using Seal and Letterhead of Washington Prosecutors to Collect Debts*, Case Page, available at <http://terrellmarshall.com/bounceback-inc-sued-for-allegedly-using-seal-and-letterhead-of-washington-prosecutors-to-collect-debts/>.
  265. Pseudonym used to protect the individual's identity.
  266. *Del Campo v. Am. Correctives Servs. Inc.*, 718 F. Supp. 2d 1116 (N.D. Cal. 2010); Dan Nephin, *Calif. Debt Firm Settles Pa. Class-Action Suit*, SAN DIEGO UNION-TRIBUNE, Nov. 3, 2009, available at <http://www.sandiegouniontribune.com/sdut-calif-debt-firm-settles-pa-class-action-suit-2009nov03-story.html>.
  267. *Am. Compl., Smith et al. v. Levine Leichtman Capital Partners, Inc. et al.*, No. 3:10-cv-00010, No. 3:10-cv-00010, 2010 WL 3500442 (N.D. Cal. Dec. 31, 2009); Jeff Gelles, *Lawsuits Were Stymied, But CFPB Finally Puts Halt to Rent-a-D.A. Scheme*, THE INQUIRER, Apr. 5, 2015, available at [http://www.philly.com/philly/business/20150405\\_Lawsuits\\_were\\_stymied\\_but\\_CFPB\\_finally\\_puts\\_halt\\_to\\_rent-a-D\\_A\\_scheme.html](http://www.philly.com/philly/business/20150405_Lawsuits_were_stymied_but_CFPB_finally_puts_halt_to_rent-a-D_A_scheme.html).
  268. *Am. Compl., Breazeale et al., v. Victim Services, Inc., d/b/a CorrectiveSolutions, National Corrective Group, Inc. d/b/a CorrectiveSolutions, and Mats Jonsson*, No. 14-05266 (N.D. Cal. Feb. 6, 2015), available at <http://terrellmarshall.com/wp-content/uploads/2016/08/Complaint.pdf>; *Compl., Breazeale et al. v. Victim Services, Inc., d/b/a CorrectiveSolutions, National Corrective Group, Inc. d/b/a CorrectiveSolutions, and Mats Jonsson*, No. 3:14-cv-05266, 2014 WL 6997607 (N.D. Cal. Dec. 1, 2014), available at <http://guptawessler.com/wp-content/uploads/2014/12/Filed-Complaint-with-Exhibits.pdf>.
  269. [Name redacted to preserve anonymity] v. Nat'l Corrective Grp., Inc., No. 3:10-CV-0175 (M.D. Pa.); Joe McDonald, *DA's "Bad Check" Collection Program Lands Jarbola in Federal Court Lawsuit*, THE TIMES TRIBUNE, Sept. 3, 2010, available at <http://thetimes-tribune.com/news/da-s-bad-check-collection-program-lands-jarbola-in-federal-court-lawsuit-1.989106>.
  270. *Am. Compl., Smith et al. v. Levine Leichtman Capital Partners, Inc. et al.*, No. 3:10-cv-00010, No. 3:10-cv-00010, 2010 WL 3500442 (N.D. Cal. Dec. 31, 2009); Mosi Secret, *Bounced Checks; How Local District Attorneys Get a Cut of the Debt Collection Business*, PROPUBLICA, Mar. 2, 2009, available at <https://www.propublica.org/article/bounced-checks-how-local-das-get-a-cut-of-the-debt-collection-business>; Drew Griffin & David Fitzpatrick, *Bounced-check Collection Deals Draw Fire*, CNN, Mar. 2, 2009,

available at [http://www.cnn.com/2009/US/03/02/siu.bad\\_checks/index.html?\\_s=pm:us](http://www.cnn.com/2009/US/03/02/siu.bad_checks/index.html?_s=pm:us).

271. Am. Compl., Smith et al. v. Levine Leichtman Capital Partners, Inc. et al., No. 3:10-cv-00010, No. 3:10-cv-00010, 2010 WL 3500442 (N.D.Cal. Dec. 31, 2009); Mosi Secret, *Bounced Checks; How Local District Attorneys Get a Cut of the Debt Collection Business*, PROPUBLICA, Mar. 2, 2009, available at <https://www.propublica.org/article/bounced-checks-how-local-das-get-a-cut-of-the-debt-collection-business>.
272. *Id.*
273. Am. Compl., Smith et al. v. Levine Leichtman Capital Partners, Inc. et al., No. 3:10-cv-00010, 2010 WL 3500442 (N.D.Cal. Dec. 31, 2009), available at <http://www.checkrestitution.com/documents/NCGComplaint010410.pdf>.
274. Pseudonym used to protect the individual's identity.
275. Denise Grollmus, *How Debt Collectors Get Away with Terrorizing Consumers—With the Blessing of Public Officials*, LA WEEKLY, Jan. 24, 2013, available at <http://www.laweekly.com/news/how-debt-collectors-get-away-with-terrorizing-consumers-with-the-blessing-of-public-officials-2612718>.
276. Pseudonym used to protect the individual's identity.
277. Declaration in support of plaintiff's motion for summary judgment, [name redacted to preserve anonymity] et al. v. Henry Craighead, No. 2:05-cv-01304-WBS-GGH (E.D. Cal. April 23, 2007).
278. *Ex parte Robinson*, 86 U.S. 505, 510 (1874).
279. FED. R. CIV. P. 37(b), 45(g).
280. FED. R. CIV. P. 70(e). Before holding a party in civil contempt, the Ninth Circuit, for example, requires that the moving party show by clear and convincing evidence that the contemnor has violated a specific and definite order of the court. The contemnor must then demonstrate that they took every reasonable step to comply and articulate why compliance was impossible. If they fail to meet this burden, then the court will uphold the contempt finding. *See Go-Video, Inc. v. Motion Picture Ass'n of Am.*, 10 F.3d 693, 695 (9th Cir. 1993); *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976); *Vertex Distributing v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982); *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983).
281. Congress and the Supreme Court have not resolved whether the use of contempt authority by non-Article III bankruptcy courts raises constitutional concerns. However, bankruptcy courts have exercised their contempt power under statutory authority and the court's inherent powers. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994). Section 105 of the Bankruptcy Code allows bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision as including the power to impose sanctions for contempt. *See, e.g., In re Hardy*, 97 F.3d 1384, 189-90 (11th Cir. 1996); *In re Walters*, 868 F.2d 665, 669 (4th Cir. 1989); *In re Hercules Enterprises, Inc.*, 387 F.3d 1024, 1027 (9th Cir. 2004); *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003). Further, bankruptcy courts have contempt authority pursuant to their inherent power. *See, e.g., In re Mroz*, 65 F.3d 1567, 1574075 (11th Cir. 1995).
282. FED. R. BANKR. P. 2005.
283. *See In re TAAF, LLC*, No. 10-00171-8-RDD, 2010 WL 964240 (Bankr. E.D.N.C. Mar. 10, 2010) (exercising authority under this rule to incarcerate a debtor for over 30 days). *See also In re R&D Contractors, Inc.*, No. 09-68035-JB, 2009 WL 6498517 (Bankr. N.D. Ga Dec. 1, 2009); *In re Butler Innovative Solutions, Inc.*, No. 08-00065, 2008 WL 5100185 (Bankr. D.D.C. July 25, 2008); *In re Continuum Care Services, Inc.*, 374 B.R. 692 (Bankr. S.D. Fla. 2007).
284. 1 ALASKA R. CIV. P. 69.
285. 2 ALASKA R. CIV. P. 37(d).
286. 3 ALASKA R. CIV. P. 90.
287. ARIZ. REV. STAT. ANN. § 12-1631.
288. ARIZ. REV. STAT. ANN. § 12-1556.
289. ARK. R. CIV. P. 69.
290. ARK. R. CIV. P. 37.
291. CAL. CIV. CODE §§ 708.170, 491.160(a), 1993(a); *Order to Produce Statement of Assets and to Appear for Examination*, THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/documents/sc134.pdf>.
292. *Order to Appear for Examination*, THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/documents/ej125.pdf>.
293. COLO. R. CIV. P. 69(e)(2).
294. CONN. GEN. STAT. § 13-20.
295. 4 DEL. R. CIV. P. 69.
296. 5 DEL. R. CIV. P. 37(d).
297. 6 DEL. CODE ANN. tit. 10, § 9506.
298. FLA. R. CIV. P. 1.560.
299. FLA. STAT. ANN. § 56.29(7); FLA. R. CIV. P. 1.380.
300. GA. CODE ANN. § 9-11-69.
301. GA. CODE ANN. § 9-11-37(d)(1).
302. 7 HAW. R. CIV. P. 69.
303. 8 HAW. R. CIV. P. 37(d).
304. 9 HAW. REV. STAT. ANN. § 654-4.
305. 10 HAW. REV. STAT. ANN. § 710-1077(6).
306. IDAHO CODE ANN. § 11-104.
307. Some courts require creditors to first file motions to compel before issuing the body attachment order. *CAO CuPi 10-5 Instructions for Judgment Debtor Examinations*, COURT ASSISTANCE OFFICE, STATE OF IDAHO JUDICIAL BRANCH, available at <https://courtsselfhelp.idaho.gov/other-misc-civil#> (found under Enforcing Civil Judgments).
308. 735 ILL. COMP. STAT. ANN. 5/2-1402.

309. Kelly M. Greco & Stephanie R. Hammer, *No More “Debtors’ Prison”: Greater Notice, Protections for Judgment Debtors*, 101 ILL. B. J. 134 (2013).
310. IND. R. TRIAL P. 69(E).
311. IND. CODE ANN. § 34-47-4-2.
312. IND. R. TRIAL P. 64(A).
313. 11 IOWA CODE ANN. § 630.11.
314. KAN. STAT. ANN. § 60-2419.
315. 12 KY. REV. STAT. ANN. § 426.382.
316. 13 KY. REV. STAT. ANN. § 425.316.
317. LA. CODE CIV. PROC. ANN. art. 2451.
318. LA. CODE CIV. PROC. ANN. art. 2456.
319. ME. REV. STAT. ANN. tit. 14, §§ 3134, 3136.
320. ME. REV. STAT. ANN. tit. 14, § 3135.
321. MD. CODE. ANN., CIV. § 3-633.
322. *Id.* See also Ramsay v. Sawyer Prop. Mgmt., 948 F.Supp.2d 525 (D. Md. 2013) (detailing the contempt process under Maryland state law for judgment debtors).
323. MASS. GEN. LAWS ANN. ch. 224, § 18.
324. MASS. GEN. LAWS ANN. ch. 224, § 21.
325. MICH. COMP. LAWS ANN. § 600.6110; MICH. COMP. LAWS ANN. § 2.621(A).
326. MINN. STAT. ANN. § 550.011.
327. MINN. STAT. ANN. § 588.04.
328. 14 MISS. CODE ANN. § 13-1-261.
329. 15 *Id.*
330. 16 MISS. R. CIV. P. 37(d).
331. 17 MISS. CODE ANN. § 9-1-17.
332. MO. R. CIV. P. 76.27.
333. MO. R. CIV. P. 76.28.
334. 18 MONT. CODE ANN. § 25-14-101.
335. 19 MONT. R. CIV. P. 37(d).
336. 20 MONT. CODE ANN. § 3-1-520.
337. 21 MONT. CODE ANN. § 3-1-518.
338. 22 MONT. CODE ANN. § 25-13-102; see also MONT. CODE ANN. § 25-14-301 – 25-14-312.
339. NEB. REV. STAT. ANN. § 25-1565.
340. NEB. REV. STAT. ANN. § 25-1566.
341. NEV. REV. STAT. ANN. § 21.270.
342. 23 N.H. SUP. CT. CIV. R. 52(a).
343. 24 N.H. REV. STAT. ANN. § 524:6-a.
344. 25 N.H. SUP. CT. CIV. R. 52(b).
345. 26 N.J. STAT. ANN. § 4:59-1(f).
346. 27 N.J. STAT. ANN. § 6:-7(2)(e)(3).
347. 28 N.J. STAT. ANN. § 6:-7(2)(g).
348. 29 N.J. STAT. ANN. § 6:-7(2)(i); N.J. Stat. Ann. § 4:59-1(f).
349. N.Y. C.P.L.R. 5224.
350. N.Y. C.P.L.R. 2308.
351. N.C. GEN. STAT. ANN. § 5A-21.
352. OHIO REV. CODE ANN. § 2333.19. See, e.g., *Collecting on Judgment*, GARFIELD HEIGHTS MUNICIPAL COURT, <https://www.ghmc.org/small-claims/collecting-on-judgment/debtors-exam>; *General Provisions*, MUSKINGUM COUNTY COURT, available at <http://www.muskingumcountycourt.org/pdf/courtRules.pdf>.
353. OKLA. STAT. tit. 12, § 842.
354. OKLA. STAT. tit. 12, § 68.
355. OR. REV. STAT. ANN. § 18.265.
356. OR. REV. STAT. ANN. § 18.270.
357. PA. R. CIV. P. 3117.
358. PA. R. CIV. P. 1910.13-1.
359. R.I. R. CIV. P. 69.
360. 30 S.C. R. CIV. P. 69.
361. 31 S.C. R. CIV. P. 37(d).
362. 32 S.C. CODE ANN. § 15-39-490.
363. 33 S.C. CODE ANN. § 15-39-320.
364. 34 S.C. CODE ANN. § 15-17-20.
365. 35 S.C. CODE ANN. § 15-17-10.
366. TENN. R. CIV. P. 69.03.
367. TENN. R. CIV. P. 37.02, 64.
368. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002.
369. UTAH R. CIV. P. 64.
370. *Supplemental Proceeding*, WASHINGTON CITY JUSTICE COURT, available at <http://new.washingtoncity.org/court/forms/SUPPLEMENTALPROCEEDING.pdf>.





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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

June, 2018

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## ABOUT THE AUTHORS

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**Robyn Dorsey** is the Policy Research & Reinvestment Manager at the Maryland Consumer Rights Coalition where she oversees the organization's Community Reinvestment Act work. Prior to coming to MCRC, Robyn was a Regional Organizer at NCRC where she provided technical support in leveraging the Community Reinvestment Act to organizations from Maryland to Maine. She has a Masters of Social Work in Social Action and Community Development from the University of Maryland. Robyn is a proud resident of Highlandtown, Baltimore and serves on the board of the Highlandtown Community Association.

**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 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 2010, 22% of Americans annual income went to their consumer debts.<sup>3</sup>

Although multiple factors contribute to rising consumer debt, one key driver is student loan debt, which recently topped 1.5 trillion, making it the second highest source of consumer debt after mortgages.<sup>4</sup> Medical expenses and housing costs have risen faster than income – wages remain stagnant and for many workers, particularly low-income workers, this creates a perfect storm of deep indebtedness – a storm most cannot emerge from unscathed.<sup>5</sup>

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

Another 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 low-income 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 and garnishments. To collect State-owed debt, Maryland uses fines, fees, and flags on vehicle registration to compel consumers to pay. Yet, there are few measures within Maryland to provide methods 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.

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

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<sup>1</sup> Konish, 2018

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> Friedman, 2018

<sup>5</sup> Issa, 2017



The concomitant failures to consider either ability-to-repay or affordability options, coupled with outdated, punitive practices to collect debts 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 debt and debt collection on communities-of-color for both consumer and civic debt.

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 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 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 were wages garnishments, 27,744 were bank account seizures in 2016.
- 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 has access to consumer data through tax filings, property records, employment and wage records, and financial records. This data allows Maryland to track the financial lives of debtors who have limited income and assets. When a debtor's financial situation improves, Maryland revives collection efforts and begins garnishing wages and assets.

## Policy Recommendations

### Debtors' Prisons:

- Eliminate the use of body attachments for consumer debts below \$5,000.
- At a minimum, 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.
- Establish that a body attachment may only be issued if both oral exam and show cause orders were delivered to the person to be served not left with a co-resident or served through certified mail.

### Debt Collection:

- Require any post-judgment discovery to include a list of all types of income and assets that are exempt. This form should explain how to claim these 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 – especially in debt collection and landlord tenant cases.

### Civic Debt:

- 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 using;
  - 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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By the end of 2018, consumer debt is projected to reach \$4 trillion – an all-time high.<sup>6</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>7</sup> In 2010, 22% of Americans annual income went to their consumer debts.<sup>8</sup>

Although multiple factors contribute to rising consumer debt, one key driver is student loan debt, which recently topped 1.5 trillion: the second highest source of consumer debt after mortgages.<sup>9</sup> Medical expenses and housing costs have risen faster than income. Meanwhile, wages remain stagnant and for many workers, particularly low-income workers, which creates a perfect storm of deep indebtedness – a storm most cannot emerge from unscathed.<sup>10</sup>

Another type of debt burden consumer may carry is civic debt – debt owed to a government. 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 low-income Marylanders, the debt burden becomes unmanageable and they fall behind in their payments. Maryland law provides numerous ways for creditors to collect from indebted individuals including body attachments and garnishments. To collect State-owed debt, Maryland uses fines, fees, and flags on vehicle registration to compel consumers to pay. Yet, there are few measures 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.

Although Maryland has some strong consumer protections in place to curtail abusive and deceptive debt collection practices, when it comes to civic debt – debt owed to the state – 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 practices to collect debts results in a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

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<sup>6</sup> Konish, 2018

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> Friedman, 2018

<sup>10</sup> Issa, 2017

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-owed debt through a case study of video tolls; compares and contrasts the impact of consumer and civic debt on low-income communities, 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>11</sup> Currently, 576,835 Marylanders are living in poverty across our state.<sup>12</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>13</sup> Black households comprise 34.3% of the asset poor.<sup>14</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.<sup>15</sup> According to Prosperity Now, 50.5% of renters are cost-burdened.<sup>16</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>17</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>18</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>19</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>11</sup> Maryland Alliance for the Poor, 2018

<sup>12</sup> *ibid*

<sup>13</sup> Prosperity Now, 2018

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> Consumer Health First, 2018

<sup>18</sup> *ibid*

<sup>19</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>20</sup> In 2016, there were 46,719 debt collection judgements in Prince George's, Baltimore County, and Baltimore City alone.<sup>21</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>22</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>23</sup> One possible reason for this difference 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>24</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>25</sup> Additionally, 15% of non-white student loan borrowers has student debt in collections, compared to 9% of white borrowers.

For a number of reasons, consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland.

## 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

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<sup>20</sup> Hopkins, 2011

<sup>21</sup> Turnbull, 2016

<sup>22</sup> ProPublica, 2015

<sup>23</sup> Urban Institute, 2018

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*



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, by 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 do 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. Upon arrest, an amount of bail the person must pay to be released is 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 in jail for 1-3 days, just because they owe a debt.

In 2013, the Maryland General Assembly passed legislation to try to limit the practice.<sup>26</sup> To assess

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<sup>26</sup> Codified at Md. Code, Cts & Jud. Proc. §6-411

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 are heard in Baltimore City and Baltimore County between June, 2014 and December, 2014.<sup>27</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>28</sup> In the same year, fewer than 55,000 judgments were paid in full.<sup>29</sup> Over 28,000 “aids of enforcement”<sup>30</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 payments 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 in about 14% of the debt-collection cases. When body attachments are issued, the rate of arrest was approximately 20 percent overall.

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<sup>27</sup> White, Turnbull, & Sine 2014

<sup>28</sup> Maryland Courts Administration, 2014

<sup>29</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>30</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.

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

	Baltimore City	Baltimore County	Total
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>31</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>32</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 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

<sup>31</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>32</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.

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%

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 debtor's 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? A \$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**

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

Source: Judiciary Case Search, 2015-2017

#### **Alternative Approach: Ending Debtors' Prisons**

In 2012, Illinois passed The Debtors' Rights Act of 2012, which significantly limits, the use of debtor's prisons in Illinois (Madigan, 2012). The bill:

- Required courts to notify borrowers in default that what types of income IL has determined is exempt from garnishment..
- Required 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.

<sup>33</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 and were arrested or jailed, 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. Given over-policing of Black communities, Black drivers are more likely to be pulled over and then 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 debtor's prison 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 small claims courts 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 a jailable offense.

## GARNISHMENTS

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Once an individual answers questions about assets, the debt collection attorney can garnish wages, 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 suits filed per county and the racial composition of the counties. Our research found that 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>34</sup>

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<sup>34</sup> Holland, Peter

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

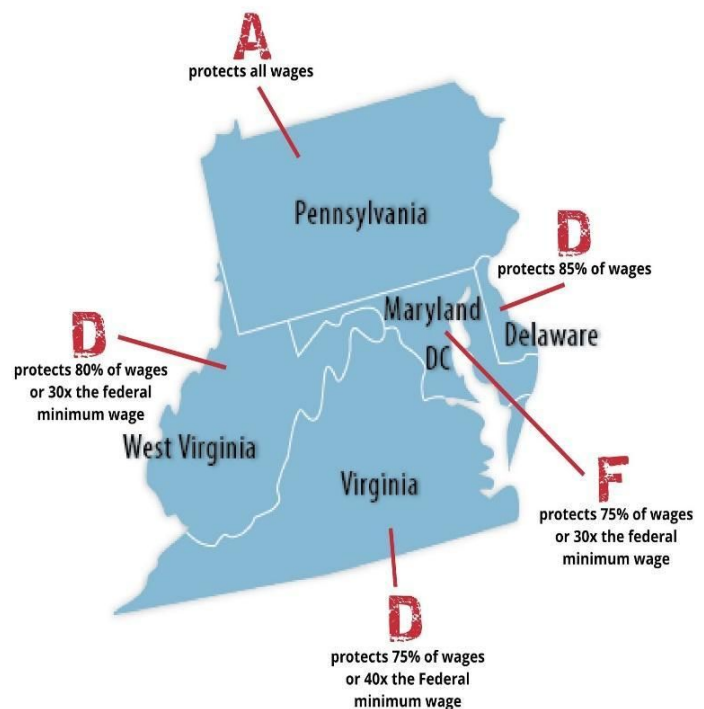
<b>County</b>	<b>Total Garnishments</b>	<b>Wage Garnishments</b>	<b>Property Garnishments</b>
Prince George's	19,059	9,963	9,096
Baltimore County	14,831	10,539	4,292
Baltimore City	12,829	9,888	2,941
Montgomery	7,146	3,228	3,918
Wicomico	3,242	2,938	304
Charles	3,106	1,678	1,428
Harford	3,073	1,954	1,119
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

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 wages garnishments, 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>35</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>36</sup> This level of protection means that Maryland protects so few wages that an low-wage worker can be pushed below the federal poverty guidelines for repaying their debt. This is significant given that 18% of workers in Maryland are minimum-wage workers.<sup>37</sup>



From National Consumer Law Center

<sup>35</sup> National Consumer Law Center, 2013

<sup>36</sup> <https://www.payingforseniorcare.com/longtermcare/federal-poverty-level.html>

<sup>37</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 increase their financial stability. More likely, any other financial setback may cause them to fall behind on other 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 Maryland residents can protect from garnishment is necessary to allow an individual to continue to meet their basic needs and go to work – and thereby repay the debt they may owe.

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. In many ways, the State and courts operate in ways that assist property managers, bail bondsmen, financial services,

and other creditors in pursuing aggressive collection tactics and collecting debt through judgements from Maryland residents. 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**

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 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. Some civic debt is considered consumer debt by law and consumer protections would apply, while other civic debt is not – so those debtors do not have the same protections.

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 the State. The firm receives 7.9% of all monies recovered. CCU reports these collection efforts to credit bureaus, including Transunion and Experian. This reporting negatively impacts a consumer's credit score. If neither CCU 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 once it has a judgment against a consumer.



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. Affidavit judgment defendants who filed an intent to defend had their cases dropped by CCU 93% of the time, but only 22% of consumers filed an intent to defend. Sixty percent of affidavit-judgment defendants did not defend themselves, and 95% of those had affidavit judgments entered against them. 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%

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

After CCU 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 a collector for the State, 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>38</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

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<sup>38</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006

*percent (10%) collection fee of any account certified for this interception.”*

### 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>39</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>40</sup>

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<sup>39</sup> MD Cts & Jud Pro Code § 5-101

<sup>40</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

Maryland explicitly exempts its own civic debt collection efforts from these limits.<sup>41 42</sup> Between 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-owned debt collection.

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

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

<sup>41</sup> MD Court of Appeals Decision Central Collection Unit, State of Maryland v. Atlantic Container Line, Ltd. 277 Md.626 (1976)

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

false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts.		
<b>Data used to collect debts:</b>	<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>43</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Consumer information accessed through data brokers;</li> <li>• Credit Bureau reports</li> </ul>
<b>Use of Confessed Judgments:</b>	Yes.	No.
<b>Body Attachments</b>	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.
<b>Wage Garnishments</b>	\$217.50 wages protected per week	\$217.50 wages protected per week
<b>Property Garnishments</b>	\$1000 in home goods protected \$6,000 wild card protected	\$1,000 in home goods protected \$6,000 wild card protected
<b>Vehicle Registration</b>	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>43</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006



<b>Statute of Limitations for Non-Judgment Debt</b>	None <sup>44</sup>	Three years <sup>45</sup>
<b>Statute of Limitations for Judgment Debt</b>	None <sup>46</sup>	Judgments expire after 12 years unless the creditor files a notice of renewal. <sup>47</sup>
<b>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?</b>	<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>44</sup> MD Court of Appeals Decision Central Collection Unit, State of Maryland v. Atlantic Container Line, Ltd. 277 Md.626 (1976)

<sup>45</sup> MD Cts & Jud Pro Code § 5-101

<sup>46</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

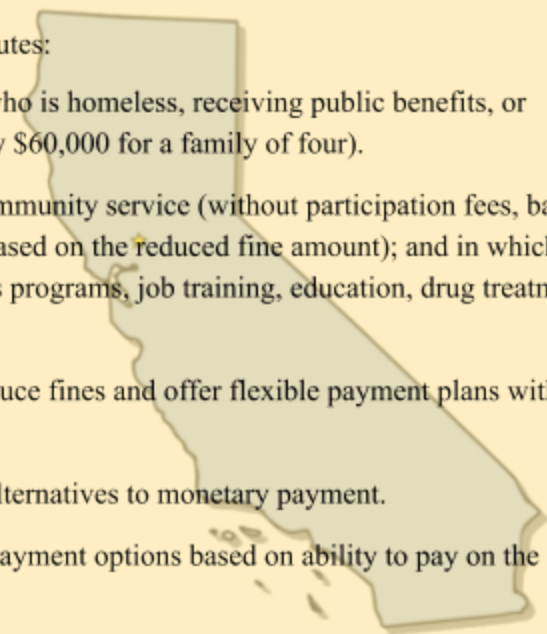
<sup>47</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

### **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**

<b>County</b>	<b>Cases filed 2015-2017</b>	<b>% of all cases 2015-2017</b>	<b>Average Judgment</b>	<b>% non-Hispa nic white people</b>	<b>Median Income</b>	<b>Poverty Rate</b>
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 42.88% of all complaints examined being filed against City residents. Carroll County saw the least activity among jurisdictions where cases were filed, with just 2.67% 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 23.99% of the time, while defendants in Baltimore County won just 9.46% 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. The data tested is in Appendix B: Correlation Methodology.

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

Relationship Strength: Moderate Positive Strong 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
Geograph ic 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>48</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>48</sup> Excluding facilities targeting out-of-state travelers and tourists.

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.

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.

Debt collection is more closely aligned with racial demographics than economic indicators. 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, pursuing garnishments, surveilling debtors via State data, and self-exempting from consumer protection laws, Maryland also pursues civic debt through a coordinated effort between CCU and the Motor Vehicle Administration (MVA) to criminalize indebtedness.

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, it's registration cannot be renewed, and the title may not be sold or transferred.<sup>49</sup>

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.

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<sup>49</sup> Maryland Vehicle Administration, 2011



In most cases, an administrative flag is accompanied by a \$30 administrative flag fee, which also 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. It seems likely a similar number of drivers would continue to drive a vehicle with suspended registration.<sup>50</sup> CCU has satellite locations in MVA offices to facilitate consumers paying civic 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.

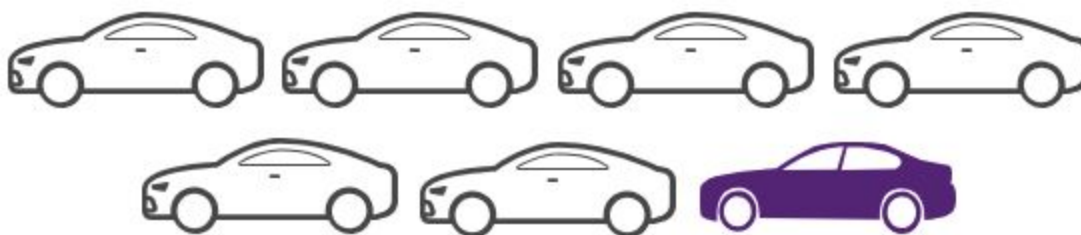
Governor Jerry Brown wrote, in endorsing reform, that license-for-payment suspension ‘places an undue burden on those who cannot afford to pay. . . . Often, the primary consequence of a driver's license suspension is the inability to legally drive to work or take one's children to school.’”

*Source: 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>50</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."

Source: *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-owned 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>51</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>52</sup> That figure includes \$12.3

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<sup>51</sup> Department of Legislative Services, 2017

<sup>52</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>53</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>54</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>55</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>53</sup> Lazo April 28, 2018

<sup>54</sup> Prosperity Now, 2018

<sup>55</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.”

#### Sources:

- *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

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;
    - At a minimum, 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;
    - Establish that a body attachment may only be issued if both oral exam and show cause orders were 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 any post-judgment discovery to include a list of all types of income and assets that are exempt. This form should explain how to claim these 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 right to legal counsel for consumer cases – especially 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 work-program option for low-income debtors to repay civic debt (find examples).
  - **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 using;
      - 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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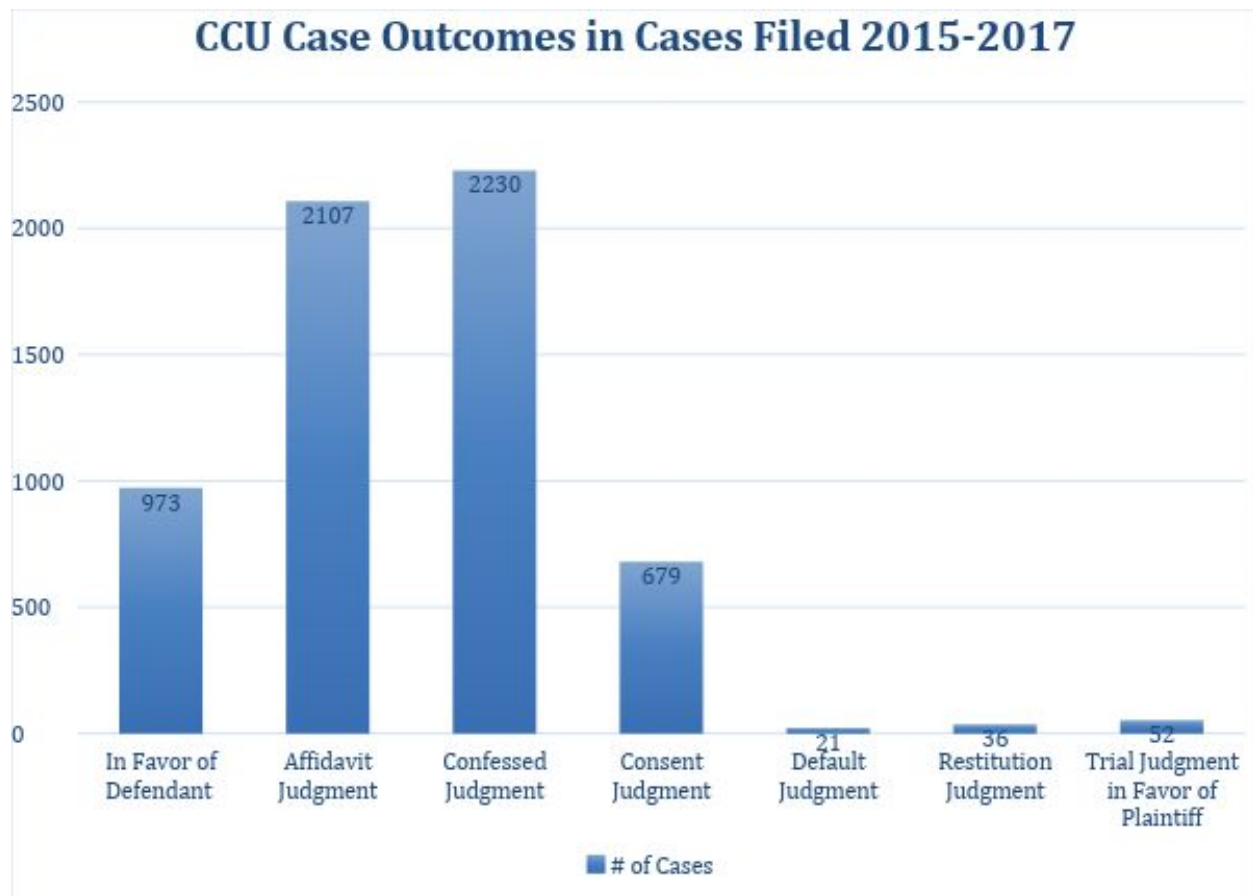
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## APPENDIX A: CCU'S DISTRICT COURT ACTIVITIES, 2015-2017

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 1: 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>56</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>56</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 2: Point in Time data from Oct. 7, 2017 on Administrative Flags by MVA**

	Source of Flag	Count	% of Total Flags
<b>Jurisdiction related flags</b>		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%
<b>Immediate-Suspension Flags on Vehicles with Unexpired Registration</b>		104,249	
	Insurance Compliance	24,325	23%
	VEIP (emission controls)	77,882	73%

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

**Table 3: MCRC Analysis of Registration Status of Vehicles with Administrative Flags**

	Count	Percent of Vehicles with Valid Registration
Estimate of vehicles with <b>expired registration</b> due to administrative flag <sup>57</sup>	764,860	15%
Vehicles with un-expired, <b>suspended registration</b>	104,249	2%
Vehicles with <b>invalid registration</b> as a result of flags	869,109	17%
Vehicles with <b>valid registration</b>	5,104,050	100%

Our analysis shows that on October 7, 2017, 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.

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<sup>57</sup> Based on estimate that 2% of flags are duplicative.

## **CLC Letter to Support sb 452.pdf**

Uploaded by: Phillip Robinson

Position: FAV

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Phone (301 ) 448-1304  
[www.marylandconsumer.com](http://www.marylandconsumer.com)

To: Senate Judicial Proceedings Committee  
From: Phillip Robinson  
Date: February 18, 2022  
Subject: **STATEMENT IN SUPPORT OF SB 452**

## **ON BEHALF OF MY CLIENTS WHO ARE PARTIES TO LITIGATION IN ALL OF MARYLAND'S COURTS, I URGE THE COMMITTEE TO SUPPORT SB 452.**

As an attorney who represents your constituents statewide on consumer matters, I support this legislation because in the context of a matter arising from a judgment on a consumer claim Maryland's Constitution bars debtors from being jailed in relation to their debts.

No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a spouse or dependent children, or for the support of an illegitimate child or children, or for alimony (either common law or as defined by statute), shall not constitute a debt within the meaning of this section.

MD. CONST. ART. III, § 38.

The practice addressed by this bill is consistent with MD. CONST. ART. III, § 38 is when judges can issue arrest warrants for alleged debtors at the request of debt collectors. While the Courts may wish to issue contempt remedies for debtors who fail to follow its Orders, those contempt remedies cannot include Orders to arrest or imprison debtors without running afoul of MD. CONST. ART. III, § 38.

Certain limited collectors utilize and request the state courts to issue arrest warrants for judgment debtors. In the past I have had clients subjected to this unconstitutional practice. For example, a debtor from a judgment entered in Charles County related to his former property was subjected to one of this orders and arrest warrant in his new home state of West Virginia. The debt collector sought and obtained an order to have the debtor arrested in West Virginia and held over the course of the weekend to have him transferred back to Maryland. The debt collector took these actions even though it had agreed to a settlement waving its purported right to collect. Had I not been involved in that settlement, the debt collector would have had this debtor hauled back to Maryland after being retained in West Virginia on false pretenses over the course of a weekend without the right to do so.

**FOR THESE REASONS, I ASK THAT THE COMMITTEE VOTE FAVORABLE ON SB 452.**

# **CASH\_Support\_SB 452.pdf**

Uploaded by: Robin McKinney

Position: FAV



**SB 452- Small Claims- Examination in Aid of Enforcement-Prohibition on Arrest or Incarceration for Failure to Appear**  
**February 22, 2022**  
**SUPPORT**

Chair Smith, Vice-Chair and members of the committee, thank you for the opportunity to provide testimony in support of Senate Bill 452. This bill will prohibit an individual from being arrested or incarcerated for failure to respond to certain orders to appear in court relating to an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

This bill aims to protect consumers in Maryland from predatory debt collectors who are using the power of our state's courts and jails to strong-arm consumers, specifically our most vulnerable populations of consumers. Many people have been arrested for failing to pay the debt and failing to appear in court. The Constitution of Maryland says no person shall be imprisoned for debt<sup>1</sup>. However, in 2012, 39 Marylanders were arrested and incarcerated for failing to pay judgements issued against them in small claims court<sup>2</sup>. Additionally, in 2014 there were 77 Marylanders arrested and incarcerated for failing to pay judgements issued against them in small claims court. This means that Debtors Prisons are being used to punish low-income communities across Maryland.

Most of the time, people who owe money to creditors simply lack the funds to pay. Since they lack the funds to pay their debt, they most likely also lack the funds to post bail. This means that low-income people are sitting in jail due to having a low income. People are going through hard times, especially during this pandemic. Many people are living on a fixed income, sick, and/or jobless. **Imprisoning people due to debt will decrease their ability to be accountable for their debt.** Imprisonment leads to job lost, homelessness, and has a severe effect on financial security. These factors will make paying back debt significantly more difficult.

COVID-19 has changed the financial capability of many people in Maryland. The threat or action of jailing low-income people during this time further decreases their financial capability and adds another layer of stress to their situation. SB 452 will help low-income people in Maryland preserve their ability to focus on their debt.

**For these reasons, we encourage you to return a favorable report on SB 452.**

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<sup>1</sup> <https://msa.maryland.gov/msa/mdmanual/43const/html/03art3.html>

<sup>2</sup> <https://www.baltimoresun.com/business/bs-xpm-2013-03-25-bs-bz-debt-jail-20130325-story.html>



# **SB 452 - Body Attachments - OAG Support.pdf**

Uploaded by: Steven M. Sakamoto-Wengel

Position: FAV



**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

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410-576-6556

WRITER'S DIRECT DIAL NO.  
410-576-6307

February 22, 2022

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

**FROM:** Steven M. Sakamoto-Wengel  
Consumer Protection Counsel for Regulation, Legislation and Policy

**RE:** Senate Bill 452– Small Claims - Examination in Aid of Enforcement  
- Prohibition on Arrest or Incarceration for Failure to Appear –  
**Support**

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The Office of the Attorney General supports Senate Bill 452, which would prohibit a debtor from being incarcerated for failing to respond to discovery in aid of execution of judgment or a court order enforcing that judgment in small claims cases. The use of body attachments to collect civil debt is not only of questionable constitutionality,<sup>1</sup> but it is also an outdated, unfair, and draconian process that hurts people of limited means and has a significant disparate impact upon people of color.

In Maryland, from 2010-2014 more than 130 body attachments-a lien on an individual's body-were issued each month. These arrest warrants were issued at the behest of debt collectors to determine what assets an individual may possess that creditors can garnish to pay the judgment owed. Only a handful of creditors' attorneys still deploy this harmful tool, often to extract assets that desperate, indigent debtors do not have, try to borrow to stay out of jail, or could be claimed as exempt from garnishment.

The Attorney General's Access to Justice Task Force concluded in one of its recommendations for legislative action, this practice can and should end before it harms more Marylanders.<sup>2</sup> If a low-wage worker is arrested and jailed, they often

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

<sup>2</sup> *See MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE*,

lose their job, deepening their financial struggles and making it that much harder to repay debts. Accordingly, the Office of the Attorney General respectfully urges the Judicial Proceedings Committee to favorably report Senate Bill 452.

**sb452.pdf**

Uploaded by: Sara Elalamy

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Joseph M. Getty  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 452  
Small Claims – Examination in Aid of Enforcement – Prohibition  
on Arrest or Incarceration for Failure to Appear  
**DATE:** February 20, 2022  
(2/22)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 452. This bill would prohibit the arrest or incarceration of any individual for a failure to respond to an order to appear in court for enforcement of a money judgment or to show cause for contempt in a small claims action in District Court.

The Judiciary agrees that there should be a uniform procedure to enforce District Court orders in small claims actions. However, the method contemplated in Senate Bill 452 effectively eliminates the ability of the court to enforce its orders. By not allowing the arrest of an individual for failure to respond to a court order, that individual is essentially free to disregard the orders of the court, with no repercussion. This bill would conceivably result in more persons failing to appear after a money judgment is entered against them in a small claims action. If an individual knows that they cannot be arrested and brought to court to enforce the judgment, there is no incentive to appear. Further, there is no consequence for that failure to appear if the person cannot be forcibly brought to court to show cause why the individual should not be held in contempt.

Finally, body attachments for contempt are not commonly used in the District Court. In FY20, there were only 8 body attachments issues and only 30 issued in FY21.

cc. Hon. William Smith  
Judicial Council  
Legislative Committee  
Kelley O'Connor