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TO: The Honorable Luke Clippinger
Chair, Judiciary 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 –
Favorable With Amendments

The Office of the Attorney General supports Senate Bill 452, sponsored by Senator Smith, with an amendment restoring the bill to its original form as passed by this Committee and the House in House Bill 349. As introduced, SB 452 would have prohibited 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 The use of body attachments to collect civil debt is not only of questionable constitutionality,¹ but it is also an outdated, unfair, and draconian process that hurts people of limited means and has a significant disparate impact upon people of color.

Although the Office believes that the amendments adopted in the Senate, which would prohibit the District Court from ordering an individual to appear for an examination in aid of enforcement in a small claims action, represent a good faith effort to address the problem of body attachments in small claims actions, the amended bill could still result in individuals being incarcerated for small claims debts. While SB 452 as amended would bar an examination in aid of enforcement, if a judgment debtor fails to respond to interrogatories in aid of enforcement, which are still permitted, the judgment debtor could still be subject to a body attachment. Senate Bill 452, as introduced, represents the most effective means of preventing this unjust result.

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 or that could be claimed as exempt from garnishment.

¹ 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).

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.² If a low-wage worker is arrested and jailed, they often 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 Judiciary Committee to amend Senate Bill 452 by striking the amendments added in the Senate.

cc: The Honorable William C. Smith, Jr.
Members, Judiciary Committee

² See MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS 11, 32 (Jan. 2021), https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.