

SB0594 Prohibiting Debtors' Prisons FAV.pdf

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Position: FAV



SB0594

District Court - Small Claims - Enforcement of Money Judgments

Position: Favorable

Bill Sponsor: William C. Smith, Chair

Committee: Senate Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Aileen Alex, Executive Committee

Position: FAVORABLE

I am submitting this testimony in favor of SB0594 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Debtors prisons - a vestige of the 19th century - live on in the Free State despite the Maryland Constitution's explicit proscription: No person shall be imprisoned for debt. Sec. 38. Judges are empowered to imprison those found to owe monies if they fail to answer interrogatories or respond to subpoenas to appear at a deposition. The ostensible reason for this authority is to facilitate the collection of debt. But:

- Creditors can obtain information on assets held by debtors through modern technology and do not need to rely on so-called "body attachments."
- Permitting the imprisonment of debtors exacerbates our two-tiered justice system which incarcerates the poor and struggling as criminal behavior by wealthy defendants is pursued less vigorously.
- Locking up debtors weakens and can even destroy families and ironically reduces the likelihood that the creditor will ever be made whole.

The Maryland Legislative Coalition supports policies that end the criminalization of poverty. We ask that the Committee issue a favorable report on SB0594.

SB594 FAV JOTF - District Court - Small Claims - E

Uploaded by: Ioana Stoica

Position: FAV



Advocating better skills, jobs, and incomes

TESTIMONY IN SUPPORT OF SENATE BILL 594:

District Court - Small Claims - Enforcement of Money Judgments

TO: Senator Will Smith, Chair, and members of the Senate Judicial Proceedings Committee

FROM: Ioana Stoica, Policy Advocate

DATE: February 27, 2023

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 594 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 40 year highs 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.

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

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

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 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 594 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. For these reasons, **we urge a favorable report of Senate Bill 594.**

For more information, contact:

Ioana Stoica / Policy Advocate / ioana@jotf.org / 240-643-0059

Economic Action Maryland SB594 Testimony Ending D

Uploaded by: Marceline White

Position: FAV



Testimony to the Senate Judicial Proceedings Committee
SB 594: District Court-Small Claims-Enforcement of Money Judgments
Position: Favorable

February 28, 2023

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

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a people-centered movement to expand economic rights, housing justice, and community reinvestment for working families, low-income communities, and communities of color. Economic Action Maryland provides direct assistance today while passing legislation and regulations to create systemic change in the future.

We are here today in strong support of SB 594.

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.

HB 127/SB 594 -ending debtors prisons-was a recommendation from AG Frosh's COVID-19 Task Force. Moreover, HB 127/SB 594 is supported by the creditors bar who agree that this practice is outdated and is no 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 594 ends, once and for all, this Dickensian practice which criminalizes poverty in Maryland and disproportionately impacts men and women of color. SB 594 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 594 and urge a favorable report.

Best,

Marceline White
Executive Director

(2.28) SB 594- District Court - Small Claims - Enf

Uploaded by: Robin McKinney

Position: FAV



SB 594- District Court - Small Claims - Enforcement of Money Judgments

Senate Judicial Proceedings Committee

February 28th, 2023

SUPPORT

Chair Clippinger, Vice-Chair and members of the committee, thank you for the opportunity to submit testimony in support of Senate Bill 594. 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. However, in 2012, 39 Marylanders were arrested and incarcerated for failing to pay judgements issued against them in small claims court. 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 in the midst of 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 594 will help low-income people in Maryland preserve their ability to focus on their debt.

For these reasons, we encourage a favorable report on SB 594.

Creating Assets, Savings and Hope

SB0594_OAG_Body Attachment_FAV.pdf

Uploaded by: Steven M. Sakamoto-Wengel

Position: FAV

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February 28, 2023

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 594 – District Court – Small Claims – Enforcement of Money
Judgments – SUPPORT

The Office of the Attorney General supports Senate Bill 594, sponsored by Senators Smith, Waldstreicher, Guzzone, Kagan, Augustine, Rosapepe, Hettleman, and Brooks, which would prohibit the district court in a small claims action from (1) ordering that a debtor appear for an examination or (2) ordering a debtor to answer interrogatories in aid of enforcement of a judgment, ultimately preventing consumers from being incarcerated for failing to either appear or respond. Representatives of the debt collection industry have stated that they no longer rely on oral examinations or interrogatories in aid of enforcement. Instead, the overwhelming majority of creditors employ modern technologies such as skip-tracing and searching consumer databases.

Senate Bill 594 is consistent with the bill that passed the General Assembly last session, only to be vetoed by the Governor. The Office believes that the approach taken by Senate Bill 594 is a reasonable method of eliminating the use of body attachments in debt collection without impacting the authority of the courts or the ability of creditors to collect debts. 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. In Maryland, from 2010-2014, more than 130 body

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).

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.

Limiting posttrial discovery and enforcement methods is consistent with existing Maryland law. Certain legislative exceptions have already been made to limit pretrial and trial procedures for small claims in the district court. In Maryland, a small claims action is even called a “special proceeding” and pretrial discovery is not available.² Before and during a trial, the rules of evidence do not generally apply.³ Senate Bill 594 would be entirely consistent with Maryland’s legislative history of special treatment for small claim actions by providing necessary changes to posttrial procedures and abolishing body attachments.

The Attorney General’s Access to Justice Task Force concluded in one of its recommendations for legislative action, the use of body attachments to collect debts can and should end before it harms more Marylanders.⁴ 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 to favorably report on Senate Bill 594.

cc: The Honorable Guy Guzzone
The Honorable Cheryl C. Kagan
The Honorable Malcolm Augustine
The Honorable Jim Rosapepe
The Honorable Shelly Hettleman
The Honorable Benjamin Brooks
Members, Judicial Proceedings Committee

² MD. RULE 3-701(e) states that no pretrial discovery shall be permitted in a small claim action.

³ MD. RULE 3-701(f) limits the application of Title 5. “Evidence” to small claim proceedings, except as otherwise required by law.

⁴ 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.

sb594.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 594
District Court - Small Claims – Examination of Money Judgments
DATE: February 7, 2023
(2/28)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 594. This bill would prohibit the court from ordering an individual to appear for enforcement of a money judgment or to answer interrogatories 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 594 effectively eliminates the ability of the court to enforce its orders and removes any enforcement mechanism for small claim actions. Small claims are handled less formally than other cases and many of our citizens, including self-represented litigants, access the courts through these proceedings to litigate their civil disputes. After the court decides the case, and a litigant prevails, a judgment is entered. However, it is important to note that the court does not collect on that judgment. If the court rules in favor of a litigant, that litigant must then take further steps to collect on the judgment. This bill would remove the ability of litigants to effectuate such collection efforts, essentially leaving them with an unenforceable judgment rather than making them whole for their loss.

cc. Hon. William Smith, Jr.
Judicial Council
Legislative Committee
Kelley O'Connor

SB0594-JPR_MACo_LOI.pdf

Uploaded by: Sarah Sample

Position: INFO



Senate Bill 594

District Court – Small Claims – Enforcement of Money Judgments

MACo Position: **LETTER OF
INFORMATION**

Date: February 28, 2023

To: Judicial Proceedings Committee

From: Sarah Sample

The Maryland Association of Counties (MACo) takes **NO POSITION** on SB 594 but raises the following issues for the committee’s consideration as “letter of information.”

The major intent of this bill seems to be the prohibition of body-attachment warrants in the execution of a money judgment. The act of using someone’s physical body in place of a lien is surely a draconian practice which many states have already abolished. Unfortunately, the language of SB 594 results in a particularly broad prohibition of all the major tools counties use to collect unpaid property taxes. These are efforts that are exhausted and often found to be effective well before getting to the very end of the collection spectrum, where a body-attachment warrant would, in very limited circumstances, be requested.

When a defendant does not voluntarily pay a judgment, the in-person interview is the remaining avenue for gathering payment information. When counties can order the appearance of an individual, there is an opportunity to discuss the assets and wages available for collection of the debt. In some instances, a defendant might say they are out of work currently but are actively looking for a job and will be able to pay once they have established new revenue. This is an acceptable – and common – outcome in some of these deliberations. Additionally, as the law currently stands, vulnerable individuals who are deemed indigent and unable to pay are not even eligible for collection or detention.

Under these circumstances, most cases end well before a warrant would even be considered. This bill as written eliminates the tools in place that aid a defendant and keeps them from ever getting to the point of potential detention. Additionally, it hampers the ability of local governments to fund the programs and services that community members rely on through the regular application and payment of taxes.

MACo appreciates the opportunity to provide background and context for SB 594 and stands ready to provide additional information, if needed.

Simply put, without these tools, the county would be left waiting for payment someday with no other mechanism to hold a defendant accountable. The defendant would therefore have no incentive to pay the judgment or be cooperative because there are no repercussions, and the county would be left with a judgment that is completely unenforceable. Uncollectible taxes translate to unwanted outcomes for county residents – either abridged public services, or increased tax burdens on those who fulfill their obligations.

MACo can see that the elimination of debtor's prison is a likely and worthwhile policy outcome but would advise that a more narrow approach to the problem is preferable, rather than abandoning the requirement that people be held accountable for their known tax liabilities.