



Arrests for Small Debt: Case Studies from Baltimore City and County

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.

Yet, despite this clear prohibition, arrests related to debt continue to take place. In 2014, 28,000 writs of enforcement were requested which resulted in the arrest of 77 indigent Marylanders (from a sample of 2,769). Although not commonplace, arrest in debt collection cases is not an anomaly or one-time mistake. Ninety percent of the writs of attachment issued are requested by less than a dozen debt collection lawyers.

In 2012, Maryland courts issued more than 1,800 writs of attachment in debt cases and at least 39 Marylanders spent one to 14 days in prison for debt-related issues. In Baltimore County alone, 27 people were arrested in debt cases in 2012.

Of those arrested, 67 were released on their own recognizance and nine posted bail in cash or bond. Some of the consumers were arrested multiple times. In one case, a consumer was held for six days when he was unable to pay the \$8,484 bail the court demanded.

How could this happen in the 21st Century?

Creditors and debt buyers regularly use Maryland's courts to collect small debts. Once they've won a judgment – often with little evidence that the alleged debt is really owed – creditors frequently ask the courts to require consumers to come to court to answer questions about their assets or answer written questions which are sent to the individual. Creditors use these responses to garnish consumers' paychecks, put liens on their property, and take other steps to collect the debt.

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 writ of attachment, which is an order for arrest. Often, the judge sets an amount of bail that the person must pay to be released after arrest. Once arrested, a person may languish in jail for days or weeks until s/he can arrange to pay the bail bond set in the case.

Since those stuck in jail for small debt-related claims remain in jail because they can't afford to pay the bail or bond for release, today's version of debtor's prison, like its 19th-Century cousin, criminalizes poverty by creating 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. Sometimes when the person does pay for release, the bond is turned over to the plaintiff as a payment against the judgement. This incentivizes the use of body attachments as a collection method, rather than as a means to force defendants to appear in court.

To address this unfair system, the Maryland General Assembly passed legislation in 2013¹ that changed the procedure for people arrested on body attachments in two important ways:

- People arrested must be taken to either 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; and
- If the court (or judicial officer) does not release the arrested person on his/her own recognizance without any conditions, the conditions must be the least onerous to ensure the person's attendance at the next hearing.

Study Methodology

To assess the effectiveness of the 2013 law and determine the need for any additional educational, programmatic, or policy interventions, investigators reviewed dockets in which oral exams and show cause hearings are heard in Baltimore City and Baltimore County between June, 2014 and December, 2014. Graduate students also observed dockets for four months in both Baltimore City and County. From the cases on the docket sheets, investigators picked a small number to examine more closely. While the study focuses on Baltimore City and Baltimore County, similar research was done (over a shorter time period) in Prince George's County and that research is included in this policy brief as well.

The Arrest Process

When a body attachment is issued, 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;
- come into contact with the individual for an unrelated reason, such as at a traffic stop;
- be called by another law enforcement department which has stopped the individual; or,
- contact the defendant some other way.

When an individual is arrested, the body attachment order requires that the person is taken before a judicial officer for the bail to be set. The form to issue the body attachment allows the judge to decide who sets the bail: the judge issuing the attachment; another judicial officer of the same

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



court; or a judicial officer in another county. The issuing judge can also set the bail amount in the attachment.

When the individual is arrested and taken to the judicial officer, the judicial officer can release the individual on his/her own recognizance, or set bail. Observations in the court show that some judges set substantial bail when they issue the body attachment while others issue the bail in the exact amount of the debt. In one case, the judge asked what the amount of the judgement was before setting a \$5,200 bond. The debt owed was \$5,200.

New Hearings

After the individual has been arrested and bailed, a new show cause hearing is set. At this hearing, the debt collection attorneys can ask the individual about his/her assets, which is the ultimate purpose of this entire process.

Findings

Table 1. Summary of Debt Collection Cases Baltimore City and County: Six months worth 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 ²	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.

² Turn-ins refer to when an individual receives notice of the body attachment and went to court to deal with it. In this case, the individual is not formally arrested, the body attachment is recalled, and a new hearing date is set.



Table 2: Common Features

	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%

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. Most of the cases are affidavit judgements, meaning that the consumer did not defend the case. These judgments happen after a judge reviews the documents filed by the debt collection attorneys and finds them sufficient to enter a judgement. 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. Most of the confessed judgements were obtained by a single bail bondsman.

Plaintiffs

We classified plaintiffs into eight categories: property-related plaintiffs (HOAs, condo associations, property management companies, and landlords); bail bondsmen; finance companies (including banks, credit unions, debt collectors, and finance companies); medical providers (including dentists and pharmacies); individuals; public bodies; other businesses (a wide variety of businesses were represented, including car leasing companies, mechanics, building contractors, and marketing services), and unknown entities whose business we were unable to determine. These different sectors provide some insight into the nature of the underlying debts. 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).



Plaintiffs in different sectors seem to use the docket differently. Property-related plaintiffs were more aggressive than other types of plaintiff: they were the most likely to have show cause hearings scheduled (71%), and to have body attachments issued (18%). Bail bondsmen were also fairly aggressive, in the 63% of the cases reviewed, bail bondsmen filed show cause hearing and in 21% they got a body attachment.

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.³

Table 3: Major Plaintiffs by Category

Plaintiffs	2013 Debt Collection Filings	2013 Show Cause Filings
Big Boyz Bail Bonds	1,827	86
HK Insurance Services	350	54
Sawyer Property Management	62	4
East Coast Bail Bonds	1,000	64
Henderson Webb	955	3

Table 4: Amount of Debt by Type of Plaintiff

Sector	Defendants	% of Total Cases Reviewed (Oral Exam or Contempt Hearing)	Average Debt
Property	929	35%	\$3,837
Bail	648	24%	\$3,152
Finance	314	12%	\$7,104
Medical	218	8%	\$2,438

³ 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.



The average debt owed in the finance sector is nearly double that of the property sector, and is more than double the average debt owed to bail bondsmen or medical providers. Despite having lower average debts, property owners and bail bondsmen have two to three times as high a percentage of the filings as the financial sector.

As Table 5 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 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 5: 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%

Rate of Arrest

Just as the rate of conversion from hearing to body attachment varies by plaintiff, so does the rate of arrest between Baltimore City and Baltimore County. Baltimore County accounted for 60% of the arrests, while Baltimore City accounted for 9%. When arrested, defendants are required to pay bail which ranged 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. Sometimes the court will restrict the way the individual may post bail. In these instances, the judge may require that the individual pay cash or that the bail may only be paid by the individual (not a bail bondsman).

The most egregious uses of the court system to collect debt were in Prince George's County. In 2013, a judge set a \$5,000 bond on a body attachment against at least one – but possibly several – defendants who owed an original debt less than \$1,000. The total judgment was less than



\$2,000.⁴ In 2014, another Prince George's County judge set a \$2,400 bond, cash-only, for a debt less than \$1,000.⁵ Also in 2014, a cash-only bond was set for more than double the original debt of less than \$400.⁶

The worst cases in Frederick County took place in 2015, with judges setting bonds for more than the original debt, but less than the judgment amount. This practice was not uniform. In other Frederick cases, judges set bonds of \$50 - \$200, sometimes just a small percentage of the original debt.⁷

Conclusion

Body attachments are issued against individuals by the court on behalf of debt collectors. The body attachments lead to the arrest of individuals in twenty percent of the cases reviewed. The bonds are prohibitively high for low-income consumers, who then spend time in jail because they cannot afford to pay the bond. Issuing body attachments and carrying out arrests is a long, laborious process that takes the time of the court, the Sheriff's department, and many others to carry out. This time is costly and may be better used elsewhere.

Policy Recommendations:

1. Update the Maryland rules and court forms relating to body attachments so that they comply with recent legislation.
2. Enact legislation to authorize an alternative method of obtaining information from defendants: a standard form affidavit, rather than forcing defendants to answer complicated written questions from plaintiffs' attorneys or attending hearings.
3. Establish an Ability to Repay (ATR) standard for plaintiffs. This may include a rebuttable presumptions that people who are indigent, either because their income is below a certain threshold or because they receive public benefits, are judgment-proof and the debt cannot be collected.
4. Enact legislation requiring plaintiffs to show the necessity of a body attachment before one is issued, and end the practice of forfeiting bail bonds given by defendants to plaintiffs. This will reduce unnecessary arrests and remove one financial incentive for

⁴ 0502-0022424-2012

⁵ 0502-0022229-2012

⁶ 0502-0029820-2012

⁷ 1101-0001033-2013 (\$50); 110100033102013 (\$150); 1101-0000506-2013 (\$150); 1101-0001970-2012 (\$150).



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plaintiffs to have defendants arrested. Arrest should not operate as a debt-collection device.

5. Conduct further research across all Maryland counties to determine how practices differ across the state.
6. Offer training to Judges and Hearing Examiners (who preside over oral examinations in some jurisdictions) to ensure that the relevant rules and legislation are followed.