



# Consumer groups fear that debtors' prisons are making a resurgence

## Debtors can be arrested for ignoring court orders in small claims cases

March 25, 2013 | By Eileen Ambrose, The Baltimore Sun

When a warrant for his arrest arrived at his mother's house, Bryan Bookman went to the district court in Essex to clear up the matter.

"That's when I was handcuffed and shackled, right on the spot, like I was a common criminal," said Bookman, who didn't have the money to post bail and spent the night in the Baltimore County Jail in Towson.

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His crime? Failure to show up in court for a small claims case.

Debtors' prison, where people are incarcerated for owing money, seems like something out of another century. But consumer advocates say Bookman experienced a modern-day version in Maryland. When people with even small judgments against them fail to show up in court as ordered, the creditor can ask the judge to issue a so-called "body attachment" that allows the defendant to be arrested.

In the fiscal year ended June 30, 1,830 body attachments were issued by Maryland courts handling small claims of up to \$5,000, according to the Maryland Consumer Rights Coalition. And 39 defendants were incarcerated, including one person who spent 14 days in jail, the group reported.

"It's a de facto debtors' prison," said Marceline White, the coalition's executive director.

Most states permit body attachments and use them in a similar way to pursue consumers for small debts, she added.

But creditors and others say consumers aren't arrested for unpaid bills but for repeatedly ignoring court orders. Debtors easily can avoid arrest just by showing up in court, they say.

In Maryland, the process works like this:

A creditor wins a judgment against a consumer to collect on a debt. The creditor then asks the judge to bring the defendant into court to answer questions about available assets or employment so wages can be garnished. If the consumer fails to show up, the court may issue another summons to determine why the person shouldn't be held in contempt. And if the defendant is a no-show again, the creditor can ask the judge to issue a body attachment.

When defendants are arrested, a judge or commissioner might release them or set a bond. Defendants too poor to pay the bond end up in jail.

"People who owe money to creditors — guess what — they don't have money," said Peter Holland, who runs the Consumer Protection Clinic at the University of Maryland School of Law. "They have fallen on hard times. They are elderly. They are living on a fixed income. They are sick. They are jobless. Is it any surprise they are spending a night in jail because they don't make bail?"

Maryland lawmakers recently considered legislation that would prevent people from being arrested for failing to appear in court in small claims cases. The Maryland Bankers Association, the Maryland-DC Creditors Bar Association Inc. and the state judiciary all opposed it.

"No one is incarcerated for failure to pay a debt," said Kathleen Murphy, president of the bankers group. But "what we

can't support is taking away the court's right to exercise some remedy when the judgment debtor ignores an order to appear."

The Maryland Judiciary also submitted testimony, saying: "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."

And Del. Luiz Simmons, a Montgomery County Democrat, showed little sympathy for defendants during a hearing on the legislation last month.

When he was a young lawyer, Simmons said, his mother-in-law hired him to collect on some of the hundreds of bad checks she received from customers at her dry cleaning business.

"People gave them for her dry cleaning and tailoring, knowing full well that it was very expensive to go to court" to collect, he said.

When a case reaches the stage of a body attachment, it means the defendant refused to show up twice, he said. "They have flouted the court."

Faced with stiff opposition, the legislation failed to progress in the legislature. But a related bill has broad support. This would require that a consumer arrested on a body attachment be immediately taken before a judge or commissioner. A hearing on that bill will be held Wednesday.

Consumer advocates say no one is suggesting people should ignore court orders.

But in some cases, consumers might not be aware they have a court date because they moved and didn't receive the notice, advocates said. Sometimes consumers are pursued by debt collectors for money they don't owe or no longer recognize because the debt has been sold and resold so many times, advocates said.

Or, defendants often are confused by court notices, particularly if they aren't proficient in English.

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