



**Support Senate Bill 418/House Bill 597
Senate Bill 419/House Bill 596
Ban Body Attachments in Small Claims Court
Process of Evidence in Small Claims Court**

Bryan B. of Essex, Maryland lost his job and got behind on his rent. He tried to keep up with the late payments but ended up getting arrested and detained twice for the debt. He was first detained in the Spring of 2008, after getting a call from a friend who had been at the Essex courthouse and seen his name on the docket. Bryan had never received a notice to go to court. Four years later, he learned that a court had ordered him to appear for an old debt on the same apartment. On April 18, 2012, he went to the courthouse in Essex to try to resolve the issue. When he informed the clerk why he was there, he was handcuffed, booked, and jailed in Essex. Bail was set at \$2,500. It took Brian's mother a day and a half to raise the \$250 bond to release Brian. The \$250 bond was turned over to the people suing Bryan.

The Problem:

How could something like this happen? Today, debt collectors use Maryland's judicial process in small claims courts to imprison working Marylanders like Bryan for failing to pay small debts. Relying on Maryland rule 3-633(b), creditors fill out court forms requiring a consumer who allegedly owes a debt to appear for an oral exam to declare his or her assets. The debt collectors use the answers to these questions to garnish a consumer's wages, place a lien on any property the consumer owns, or try to collect the debt another way. If a consumer doesn't show up for the court hearing, the debt collector can ask the judge to issue an order telling the consumer to appear in court or be cited for contempt. If the consumer does not show up, the debt collector can go to court and ask a judge to arrest a consumer and set a bond for release.

Scope of the Problem

In Fiscal Year 2012, 1,830 Marylanders were arrested and detained for failing to follow court orders related to debts under \$5,000. Of the 1830 arrested, 39 were jailed for between one and 14 days. Those arrested on a Friday afternoon sometimes had to stay in jail all weekend because there was no one in small claims court who could help them at that time. **The 39 that were jailed were imprisoned because they were too poor to immediately post their bond.**

Problems with the Process

- **The only people who are being jailed are Marylanders who are too poor to post a bond.** The others who were arrested either set up a court date to declare their assets or paid a bond and were released. It is only those who are cannot afford to pay a bond that are jailed. To make matters worse, often when a family member or friend has scraped together enough money to post the bond, the bond is forfeited to the debt collector. **We do not want a two-tiered system of justice in Maryland -- one for the poor, another for those with more wealth, but that is what is happening today.**
- **The system itself is flawed.** Debt buyers and debt collectors purchase old debts from banks and credit card companies. There are numerous examples of people being accused of debts they don't

owe, of people never receiving a summons to appear in court because the process server never delivered the papers, or, of people having paid off their debt -- only to have it resurface years later (called zombie debt).

The process is confusing for consumers. The typical consumer in a small claims debt collection case is unrepresented by an attorney and unsophisticated in the law. Often the consumer is sued by a third-party debt collector and the individual may not recognize the debt either because the firm suing is unfamiliar, the debt is very old, or the amount of the debt has grown and changed because of the large interest charges, fees, and penalties that have been added to the original debt.

Debt collection is a highly profitable business in Maryland and across the country. Third-party debt collectors and debt buyers purchase loans from others for pennies on the dollar (a 2013 Federal Trade Commission report found the average to be four cents on the dollar¹) and try to collect 100 pennies on the dollar or more. The loans are often sold to debt buyers on large spreadsheets, the same way mortgages were bundled and sold. Debt collectors aggressively pursue consumers because the profit margin is so high, even though they often have very little information about the debt or evidence that the consumer still owes the money.

In Maryland and nationally, consumer complaints about debt collectors and debt buyers are on the rise. The FTC receives more complaints about debt collectors and buyers than about any other industry. In Maryland the Commissioner of Financial Regulation's office received 500 to 600 complaints a year regarding consumer debt collection agencies from 2007 through 2011. **In 2012, the number of complaints climbed to more than 750.**

The Solution

No one disputes that people shouldn't pay their debts. And, everyone agrees that people should respond to court orders. Yet jailing people who can't afford to pay a bond is unreasonable, a waste of our counties' counties money, and very similar to debtors prisons which were abolished in the United States in 1833. Indeed, the Maryland Constitution prohibits imprisonment for debt, stating that "no person shall be imprisoned for debt."² 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.³

Bill SB 418/HB 597 stops the state from putting people in prison over small debts by banning the use of body attachments for small claims.

Bill SB419/HB 596 strikes a reasonable balance between respecting the court process and protecting individuals' rights. HB 596/SB 419 will require that if a consumer is arrested related to small debt claims, the individual will be processed immediately so that no one will languish in jail over a weekend because a court officer was unavailable.

¹ "The Structure and Practices of the Debt Buying Industry," Federal Trade Commission, Jan. 2013, Executive Summary.

² Maryland Constitution, Article III, § 38

³ *Yake v. Yake*, 170 Md. 75, 183 A. 555, 557 (1936), *Dickey v. Dickey*, 154 Md. 675, 141 A. 387, 390 (1928).