



Testimony to the House Judiciary Committee
HB 597 – Small Claims– Examination in Aid of Enforcement -- Prohibition on Arrest or
Incarceration for Failure to Appear
Position: Favorable

February 20, 2013
The Honorable Joseph F. Vallario, Jr.
House Judiciary Committee
Room 101, House Office Building
Annapolis, MD 21401
cc: Members, Judiciary Committee

Honorable Chair Vallario and Members of the Judiciary Committee:

The Maryland Consumer Rights Coalition (MCRC) is a statewide coalition of individuals and organizations that advances fairness and justice for Maryland consumers through research, education, and advocacy. Our members include consumer advocates, practitioners, and low-income and working families throughout Maryland.

MCRC is writing in strong support of HB 597.

Maryland Law and Debt

The Maryland Constitution prohibits imprisonment for debt, stating that “no person shall be imprisoned for debt.”¹ 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.² Courts in other states and the District of Columbia have issued similar rulings, stating in *In re Estate of Bonham*, 817 A.2d 192, 195 (D.C. 2003) that “contempt in general, and imprisonment in particular, are not appropriate means to enforce a money judgment.”

The Problem

Although it is clear that Maryland law prohibits imprisonment for debt, large debt buyers are using Maryland court rule 3-633 (b) to circumvent the intent of our state constitution and 80 years of state case law.

How the Process Works:

Debt buyers purchase credit card or other debt from credit card companies and begin collection efforts. Creditors then fill out court forms requiring a consumer who allegedly owes a debt to appear for an oral exam. Should a consumer fail to appear at a hearing, a creditor can request that

¹ Md. Constitution, Article III, § 38

² *Yake v. Yake*, 170 Md. 75, 183 A. 555, 557 (1936), *Dickey v. Dickey*, 154 Md. 675, 141 A. 387, 390 (1928).

the court issue an “attachment for contempt” that allows a consumer to be arrested and a judge to set a bond for his or her release.

Part of the problem, of course, is that there are clear asymmetries between the struggling consumers who receive these orders and attorneys representing debt collectors. The typical consumer in small claims court (where cases involve disputes over less than \$5,000) is unrepresented by an attorney and knows little about the law. Moreover, in many body attachment cases there were problems with the delivery of a summons or a consumer did not recognize the debt. In many cases we have reviewed, consumers held in contempt in small claims court never received their summons. In other cases, consumers failed to recognize the debt they were notified about either because the firm suing them is unfamiliar, the debt is very old, or the debt amount has grown and changed because of compounding interest rates, fees, and penalties.

There is also a troubling contradiction between the informality of small claims courts and the threat or reality of prison for indigent Marylanders. Debt collectors file numerous cases in small claims court because the rules of evidence are more relaxed.. Given the informal nature of many of the proceedings, and the small size of the claims, imprisonment seems to be a disproportionate response to a failure to appear in a small claims case.

We’re also concerned that when a consumer is jailed and the judge sets a bond for his or her release, the bond is often almost automatically forfeited to the debt collector when it is finally posted. There have even been cases in Maryland where a consumer who was judgment-proof paid a bond to be released from jail, and that bond then went to the debt collector.

The Scope of the Problem

In 2012, there were 1,830 body attachments issued by Maryland courts and 39 Marylanders arrested and incarcerated under those orders. Twenty-seven individuals from Baltimore County were jailed, seven from Charles County, two from Caroline County, and one each from Wicomico County, Baltimore City, and Montgomery County. In Baltimore County, where 27 people were incarcerated under body attachments in fiscal year 2012, the detention costs were \$77.53/night. Several Baltimore County residents were jailed for more than a week. Altogether, Baltimore County spent more than \$2,900 to jail county residents for small debts last year.

HB 597 will ban body attachments in small claims consumer debt cases. These cases include any debt collection case where the amount in controversy does not exceed \$5,000.

This bill does not increase costs for the state or for Maryland counties and may end up saving counties money by reducing the costs for jailing Maryland consumers for contempt. Moreover, HB 597 will help to level the playing field between inexperienced and under-resourced consumers and large debt collection firms in small claims courts.

MCRC strongly supports HB 597 and urges a favorable report.

Sincerely,
Marceline White
Executive Director