

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1050

(Senator Smith, *et al.*)

Judicial Proceedings

Judiciary

Civil Actions - Body Attachment - Procedures

This bill alters procedures for an individual taken into custody on a body attachment and brought before a judicial officer for failure to appear in court.

Fiscal Summary

State Effect: The bill can be implemented with existing budgeted resources.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires an individual taken into custody on a body attachment and brought before a judicial officer for failure to appear in court (1) to show cause why the individual should not be found in contempt for failure to answer interrogatories or (2) for an oral examination in aid of enforcement of a money judgment, to be given the opportunity to make, under penalty of perjury, a complete declaration of the individual's income and assets on a form provided by the judicial officer.

If the individual makes such a declaration, the judicial officer must (1) release the individual on personal recognizance without any additional conditions; (2) advise the individual that the individual must appear before the court at a future date for an examination in aid of enforcement (and that if the individual fails to appear for the examination, that the individual may be held in contempt of court); and (3) provide a copy of the declaration to the judgment creditor.

If the individual refuses to make such a declaration, the judicial officer must (1) release the individual on personal recognizance without any additional conditions, if the judicial officer determines that additional conditions are not necessary to ensure the future appearance of the individual or (2) impose the least onerous condition(s) on the individual to reasonably ensure the individual's future appearance in court.

Current Law: A creditor who has secured a judgment in court against a debtor often needs additional information about the debtor's assets before being able to collect on the judgment. A judgment creditor has two options to obtain this information: (1) written interrogatories in aid of execution; and (2) oral examination in aid of enforcement of judgement.

Written Interrogatories in Aid of Execution

So long as 30 days have passed since the judgment was entered, a judgment creditor can submit written questions to the defendant about the defendant's finances, assets, etc. The questions must be served on the defendant through first-class mail, and the judgment creditor must provide written notice to the court that the judgment creditor served the interrogatories on the defendant. The defendant has 15 days to respond to the judgment creditor's questions. If the defendant does not respond within 15 days, the judgment creditor may file a Motion Compelling Answers in Aid of Execution, which is a request by the judgment creditor to have a judge order the defendant to answer the creditor's questions. If a court grants the motion, the defendant is served with the order and has 15 days to respond to the creditor's questions.

Oral Examination in Aid of Enforcement

As previously mentioned, instead of using written interrogatories, a judgment creditor may pursue an oral examination in aid of enforcement. Under this method, instead of a written response to written questions, a debtor defendant must appear in court in person to answer questions about the defendant's finances or assets. A judgment creditor may file a request for examination in aid of enforcement of a money judgment no earlier than 30 days after the entry of a money judgment. A court may not require a judgment creditor that has requested an examination in aid of enforcing a money judgment to show that good cause exists for the examination. However, a court may require a judgment creditor to show that good cause exists for the examination of a person if the court granted a request by the judgment creditor for an examination of the same person within the previous 12 months.

Upon this request, the court where the money judgment was entered or recorded may issue an order requiring the appearance for examination under oath before a judge or examiner of (1) the judgment debtor or (2) any other person if the court is satisfied by affidavit or other proof that it is probable that the person has property of the judgment debtor, is

indebted for a sum certain to the judgment debtor, or has knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

The order must specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order must be served on the defendant within 30 days of its issuance and in the manner provided in the Maryland Rules.

Show Cause Orders and Body Attachments

If a defendant does not respond to interrogatories or fails to appear in court for an oral examination, the judgment creditor can file a request for a show cause order. A judgment creditor can only request a show cause order when the defendant has (1) ignored written interrogatories and an order from the judge compelling his/her answers or (2) failed to appear for an oral examination ordered by the court. The order summons the defendant to court to explain why the defendant should not be held in contempt.

If the defendant fails to appear in court for the show cause hearing, the judgment creditor is authorized to file an attachment for contempt. If the judge chooses to issue the attachment (“body attachment”), the defendant is taken into custody by the sheriff’s office and is brought before the court to explain his/her failure to appear. The defendant may be required to post a bond for his/her release, which is forfeited should the defendant fail to appear at the next hearing.

An individual who is arrested for failure to appear in court to show cause why the individual should not be found in contempt for failure to answer interrogatories or to appear for an oral examination in aid of enforcement of a money judgment must be taken immediately before the court that issued the order that resulted in the arrest. If that court is not in session, then the individual must be taken immediately before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the individual’s appearance at the next session of the court that issued the order that resulted in the arrest.

If a judicial officer determines that the individual should be released on other than personal recognizance without any additional conditions, the judicial officer must impose on the individual the least onerous condition or combination of conditions that will reasonably ensure the appearance of the individual as required.

Background: The use of body attachments in debt collection proceedings has been the focus of several recent news reports detailing use of the practice by local landlords against tenants. Proponents of the practice argue that it is an effective last resort method to collect debts owed by a debtor-defendant who has repeatedly failed to appear in court or comply with court orders. Critics of the practice argue that it (1) is the modern-day American

equivalent of debtors' prisons; (2) disproportionately affects low-income individuals; (3) imposes portions of the criminal justice system into a civil matter; and (4) jeopardizes a person's freedom for factors outside of that person's control (e.g., improper service of an order to appear in court).

According to the Judiciary, approximately 1,009 body attachments were issued in the District Court during fiscal 2017.

Small Business Impact: The bill may have a meaningful impact on small business judgment creditors if it creates efficiencies in obtaining information from debtors for debt collection purposes.

Additional Information

Prior Introductions: None.

Cross File: HB 1081 (Delegate Barron, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; *The Baltimore Sun*; Department of Legislative Services

Fiscal Note History: mm/kdm First Reader - February 19, 2018
Third Reader - March 27, 2018
Revised - Amendment(s) - March 27, 2018
Revised - Updated Information - March 27, 2018

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510