

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 657

(The President)(By Request - Office of the Attorney
General)

Judicial Proceedings

**Small Claims - Examination in Aid of Enforcement - Prohibition on Arrest or
Incarceration for Failure to Appear**

This bill prohibits an individual from being arrested or incarcerated for failure to respond to an order to appear in court (1) for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court or (2) to show cause why the individual should not be found in contempt for failure to appear in court for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court.

The bill applies to any order to appear or any show cause order for contempt for failure to appear in court for an examination in aid of enforcement of a money judgment entered in a small claim action in the District Court on or after the bill's October 1, 2021 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures if the bill results in fewer incarcerations in Baltimore City for contempt of court in these cases.

Local Effect: Potential minimal decrease in local expenditures if the bill results in fewer incarcerations in local detention facilities for contempt of court in these cases.

Small Business Effect: None.

Analysis

Current Law: In the circuit courts or the District Court, 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. Upon this request, the court where the money judgment was entered or recorded must 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 who may have 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 and the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court. While the order must be served upon the judgment debtor or other person in the manner provided in the Maryland Rules, a body attachment may not be issued for a failure to appear absent a determination by the court that the person to whom the order was directed was personally served in accordance with the Rules or that the person has been evading service willfully, as shown by a particularized affidavit based on personal knowledge of a person with firsthand knowledge. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

The order must be served on the defendant within 30 days of its issuance. If the order has been properly served on the defendant and the defendant will not cooperate with attempts to discover his/her assets, the judgment creditor can file a request for a Show Cause Order. The order summons the defendant to court to explain why he/she should not be held in contempt. A judgment creditor may 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. If the defendant fails to appear in court for the Show Cause hearing, the judge may issue a body attachment, so long as the plaintiff provides proof of proper service on the defendant or willful evasion of service by the defendant. If the judge chooses to issue the 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. If the court that issued the order is not in session, the defendant must be brought before a judicial officer of the District Court to determine appropriate conditions of release. If a judicial officer determines that the defendant should be released on other than personal recognizance without any additional conditions, the judicial officer must impose the least onerous conditions that will reasonably ensure the defendant's appearance in court as required.

Under Maryland Rule 3-633, a judgment creditor in the District Court may obtain discovery to aid the enforcement of a money judgment by (1) use of interrogatories and (2) examination before a judge or examiner. With respect to subsequent examinations of a

judgment debtor or other person by the same judgment creditor, the court must order a subsequent appearance of the person on request of the judgment creditor if more than one year has passed since the most recent examination of the person. If less than one year has passed, the court may require a showing of good cause before ordering the person to appear.

The District Court has exclusive jurisdiction over a small claims action, which is a civil action for money in which the amount in controversy does not exceed \$5,000, exclusive of interest, costs, and attorney's fees. Pretrial discovery is not permitted in a small claims action and the rules of evidence do not apply. The court must conduct the trial of a small claims action in an informal manner.

Background: Though the term “debtors’ prison” is usually associated with Dickensian England, the concept is making a comeback in present day society. According to news reports, debt collectors have used sheriff’s deputies and the threat of jail to intimidate people into paying debts. For those who cannot pay, the worsening economy, combined with debt collection lawsuits, have resulted in individuals being incarcerated for contempt of court for failing to respond to court hearings or other court orders.

According to a 2018 report by the American Civil Liberties Union (ACLU), 1 in 3 Americans has a debt that was referred to a private debt collection agency. During the course of its research, the ACLU found and analyzed more than 1,000 cases in which judges in 2 territories and 26 states, including Maryland, issued arrest warrants for alleged debtors at the request of private debt collectors.

Additional Information

Prior Introductions: HB 597 of 2013 received a hearing in the House Judiciary Committee, but was withdrawn. Its cross file, SB 418, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 848 (The Speaker)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Harford, Montgomery, and Wicomico counties; Judiciary (Administrative Office of the Courts); NBC News; American Civil Liberties Union; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2021
an/jkb Revised - Clarification - February 9, 2021

Analysis by: Amy A. Devadas

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