

**TESTIMONY *IN SUPPORT* OF HOUSE BILL 848
SMALL CLAIMS – EXAMINATION IN AID OF ENFORCEMENT –
PROHIBITION ON ARREST OR INCARCERATION FOR
FAILURE TO APPEAR**

TO: Hon. Luke Clippinger, Chair, and members of the House
Judiciary Committee

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I am the Francis & Harriet Iglehart Professor of Law and Co-Director of the Clinical Law Program at the University of Maryland Francis King Carey School of Law. I have spent the entirety of my career representing individuals engulfed in the criminal justice system as well as in other systems that feed into the criminal justice system; teaching courses that explore and expose some of the myriad laws, policies, and practices that criminalize individuals, families, and communities of color; working on legislative and policy matters that aim to ease criminalization and punishment; and producing scholarship that details the ravages of racialized criminalization and presses for meaningful change.

Debt collection is one system (or process) in Maryland that feeds into the criminal justice system. Indeed, “[i]n many ways, Maryland’s district courts have become an extension of the debt collection industry[,]”¹ as these courts hear the small claims (up to \$5000) that House Bill 848 addresses.² These debts, and many others, are a constant, everyday strain that dominate the lives of individuals and families in Maryland. Debts (and court judgments that result in debt) bring on additional hardships. As examples, these debts

¹ ROBYN DORSEY & MARCELINE WHITE, MARYLAND CONSUMER RIGHTS COALITION, NO EXIT: HOW MARYLAND’S DEBT COLLECTION PRACTICES DEEPEN POVERTY & WIDEN THE RACIAL WEALTH GAP 9 (June 2018).

² *Id.*

make it more difficult for individuals and families to pay rent, to pay for other necessities, and to satisfy payday loans.³ These debts especially burden individuals and families who are poor and of color. The COVID-19 pandemic has worsened these burdens. As the Maryland Attorney General’s COVID-19 Access to Justice Task Force details, “[b]ecause of longstanding structural barriers and racism, Black and Hispanic communities are . . . more likely to face eviction, debt collection, and health disparities, which in turn make them more vulnerable to and exacerbate the collateral consequences of COVID-19.”⁴

To make matters even worse, individuals and families in Maryland, as elsewhere, are at-risk of criminalization because of their inability to pay their debts. One pathway to criminalization opens when a debtor does not appear in court and a body attachment is issued, which ultimately leads to arrest. Debtors have been arrested in these instances even though there were any number of reasons why they did not appear in court, from not actually receiving the court notice, to not understanding the court notice, to fearing they would be incarcerated as soon as they entered the court.⁵

House Bill 848 is an important and necessary step toward decriminalizing debt in Maryland. By prohibiting arrest or incarceration of an individual who does not respond to a court appearance order for an examination related to enforcement of a small claim court judgement, this bill understands the importance of alternative measures to address this circumstance. Quite simply, arrest and incarceration in this context bring more hardships and trauma - short-term and long-term - to individuals and families who cannot afford to pay these judgements. More broadly, arrest and incarceration exacerbate the racial disproportionately that is a sad and unjust hallmark of Maryland’s criminal justice system.

The history of the last three decades has taught us that we cannot arrest or incarcerate our way out of issues and problems. That history bears directly on House Bill 848. It is way past time for decision-makers and stakeholders in Maryland to examine thoroughly the various systems and institutions that have isolated, confined, and marginalized individuals and families of color,

³ THE JOBS OPPORTUNITY TASK FORCE, THE CRIMINALIZATION OF POVERTY: HOW TO BREAK THE CYCLE THROUGH POLICY REFORM IN MARYLAND 28 (January 2018) (hereafter JOBS OPPORTUNITY TASK FORCE)

⁴ MARYLAND ATTORNEY GENERAL BRIAN E. FROSH’S COVID-19 ACCESS TO JUSTICE TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS 7 (January 2021).

⁵ JOBS OPPORTUNITY TASK FORCE, *supra* note 3, at 28.

from the racial wealth gap to our racialized criminal justice system. House Bill 848 serves as an important reminder and mandate that we need to find a better way.

For these reasons, I ask the Committee to give House Bill 848 a favorable report.

This written testimony is submitted on behalf of Professor Michael Pinard and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.