



2005 Market Street, Suite 2800 P 215.575.9050  
Philadelphia, PA 19103-7077 F 215.575.4939

901 E Street NW, 10th Floor P 202.552.2000  
Washington, DC 20004 F 202.552.2299  
[pewtrusts.org](http://pewtrusts.org)

Chairman Phil Mendelson  
DC Council  
1350 Pennsylvania Avenue NW # 504  
Washington, DC 20004

**Testimony for Committee of the Whole Hearing on B24-0357 - Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021**  
**11/29/2021**

Chairman Mendelson, and members of the committee, we appreciate the opportunity provided by the Committee of the Whole to submit public testimony on B24-0357 - Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2021.

My name is Erika Rickard; I direct a project at The Pew Charitable Trusts focused on modernizing our nation’s civil legal system. My team works to support efforts to deliver more efficient, equitable, and open civil courts. Our particular focus is on the recent rise of debt collection litigation, and how it has transformed the business of state courts,<sup>1</sup> while also posing serious implications for the financial security<sup>2</sup> of millions of Americans.

Over the past 5 years, more than 30,000 small claims lawsuits have been filed in DC Superior Court’s Civil Division, the majority of which are collections cases. Our testimony today serves to help inform your deliberations on the bill by (1) breaking it down according to our debt claims policy framework and (2) providing examples of practices from other states to use as benchmarks.

## **The rise of debt collection in courts**

Debt collection lawsuits are governed by a patchwork of state or district laws and civil court rules, which often lack provisions tailored to the domination of local civil court dockets by debt collectors. Debt collection lawsuits have grown as a share of civil dockets over the past 30 years and have become the single most common type of civil court case in the nation.<sup>3</sup> In DC, debt claims have been on the rise, as evidenced by the 65% spike in small claims lawsuits filed from 2016 to 2019.

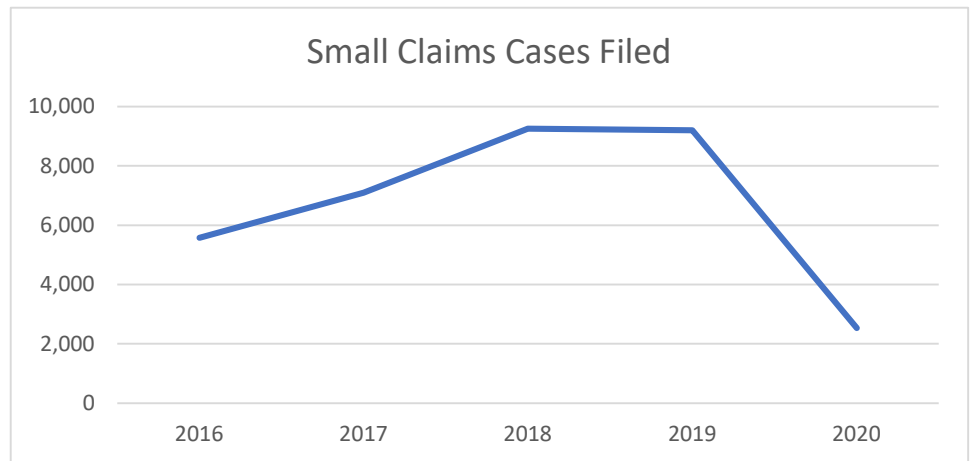
---

<sup>1</sup> The Pew Charitable Trusts, “How Debt Collectors Are Transforming the Business of State Courts” (2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

<sup>2</sup> The Aspen Institute, “A Financial Security Threat in the Courtroom: How Federal and State Policymakers Can Make Debt Collection Litigation Safer and Fairer for Everyone” (2021), <https://www.aspeninstitute.org/publications/how-unpaid-bills-end-up-in-court/>.

<sup>3</sup> P. Hannaford-Agor, S.E. Graves, and S.S. Miller, “The Landscape of Civil Litigation in State Courts” (National Center for State Courts, 2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

However, the policies that govern debt claims today were designed for a context where it was assumed that both sides of a lawsuit would be represented by attorneys that would appear in court to argue the case in front of a judge, who would then make a decision based on those legal and factual arguments.



Source: District of Columbia Courts – Annual Reports

This is no longer the case. From 1993 to 2013, the number of debt collection suits more than doubled nationwide, from less than 1.7 million to about 4 million, and consumed a growing share of civil dockets, rising from an estimated 1 in 9 civil cases to 1 in 4.<sup>4</sup> Over 90% of the defendants in these cases are not represented by attorneys, compared to the only 1% of plaintiffs, an estimated 40% of which are just a handful of large national debt buying corporations. Additionally, studies across the country point to an alarming trend where most of these cases end in a default judgment, which means that the courts found in favor of the plaintiff without the defendant ever engaging with the lawsuit or a reasoned, neutral decision based on the merits of the case. These default judgments can exact heavy tolls on consumers, as they are routinely ordered to pay attorney’s fees and post-judgment interest, which together can exceed the original amount owed. A judgment also gives debt collectors the ability to use extraordinary collection measures such as wage garnishment, bank account seizures, and even arrest warrants, to compel the consumer to pay with the court’s blessing.<sup>5</sup>

## How will B24-0357 affect debt claims policy in DC?

The DC Council has undertaken standout efforts to reform debt collection litigation through temporary and emergency amendments during the pandemic, which B24-0357 would make permanent. These amendments help to ensure that both defendants and plaintiffs can meaningfully engage in their collections lawsuit and destabilizing financial consequences to the consumer are curtailed. In absence of the emergency amendments, debt collection litigation in DC is primarily governed by Superior Court rules for the small claims division. In 2019, the Superior Court enacted a rule that outlined particular pleading and service requirements for consumer collection lawsuits that ensure consumers receive and understand notice of their lawsuits.<sup>6</sup>

The temporary measures served to modernize DC’s debt collection policy landscape. Without them, gaps exist surrounding a lack of clear requirements for proof of debt documentation to be provided to both the court and the consumer. These requirements would increase the ability for consumers to understand and identify the debt claim and for courts to ensure the debt is valid before issuing a

<sup>4</sup> The Pew Charitable Trusts, “How Debt Collectors Are Transforming the Business of State Courts.”

<sup>5</sup> Ibid.

<sup>6</sup> D.C. SCR-SC Rule 19.

judgment for the plaintiff. Following our debt claims policy analysis framework, we've broken down some of the District's court rules and statutes by stage of a debt collection lawsuit to show how B24-0357 would affect the pre-pandemic policy landscape:

Debt Collection Lawsuit Stage	Pre-pandemic DC Policy	B24-0357 Additions
1. Plaintiff files a lawsuit	<ul style="list-style-type: none"> <li>The statute of limitations to file a contact claims is 3 years</li> </ul>	<ul style="list-style-type: none"> <li>Codifies the statute of limitations for debt claims specifically at 3 years and explicitly prohibits expired claims for being brought where the debt collector should reasonably know they are expired</li> </ul>
2. Consumer is notified of the lawsuit	<ul style="list-style-type: none"> <li>As of 2019, court rule requires plaintiffs to obtain proof of service within 90 days and indicate the original owner of a debt on the notice</li> </ul>	<ul style="list-style-type: none"> <li>Requires that the debt collector disclose documentation proving the amount and ownership of the debt to the consumer when notice of the lawsuit is served</li> </ul>
3. Consumer takes action on the lawsuit	<ul style="list-style-type: none"> <li>Consumers are not required to respond to a lawsuit in DC, just appear at a scheduled hearing or mediation</li> </ul>	<p><i>Not addressed</i></p>
4. Case is resolved (most commonly by default judgment)	<ul style="list-style-type: none"> <li>Default judgment is entered if the defendant does not appear at the hearing- no specific proof of debt or review requirements for consumer debts.</li> <li>Post-judgment interest can be set up to 2%</li> </ul>	<ul style="list-style-type: none"> <li>Provides that a consumer default judgment must be entered on the basis of authenticated business records proving the defendant used the account, the debt collector owns the account, and the amount of debt claimed</li> <li>Sets reasonable plaintiff attorney's fees at a maximum of 15% of the amount in dispute</li> </ul>
5. Plaintiff can take action to enforce the judgment by wage garnishment, execution, etc.	<ul style="list-style-type: none"> <li>Plaintiff can apply for a writ of attachment and must serve the defendant with a notice explaining exemptions</li> <li>\$1,000 in property and up to 25% in excess of 40x the minimum wage may be garnished</li> <li>Bench warrants may be issued if the defendant fails to respond to interrogatories about their property and assets</li> </ul>	<ul style="list-style-type: none"> <li>Limits ability of court to issue bench warrants for consumer debts</li> <li>Prohibits imprisonment for a consumer debt</li> </ul>

We have previously documented the concerning lack of available court data<sup>7</sup> and robust research that describe the prevalence and impact of debt claims lawsuits on courts, collectors/creditors, and consumers. As we strive to learn more, here's a deeper dive into what we know about each debt collection lawsuit element within our policy framework. We provide benchmarks from other states based on our analysis of the debt collection policy landscape in 25 states, including states that have recently reformed how debt claims are adjudicated.

### **1. Plaintiff files a lawsuit**

The first stage of a consumer debt collection lawsuit is initiated when a plaintiff (creditor or collector) files a lawsuit claiming an amount owed by a consumer. Turning to the courts is considered a last resort method to collect a debt but national trends show it is an increasingly used for large companies, particularly debt buyers, to collect small household debts from individuals. B24-0357 limits protections and proposed filing requirements to third party debt buyers. Other leading reform states including New York, Maryland, Massachusetts, and Texas have extended their tailored debt collection litigation reforms to cover original creditors as well.

The national average statute of limitations for debt collection lawsuits is 6 years from the charge-off date. DC is currently on par with New York and Maryland in establishing a 3-year limitations period. B24-0357 also follows suit with Massachusetts, New York, Illinois, Washington, and Connecticut in requiring debt buyers to submit a sworn statement when initiating the lawsuit that the claim is within the statute of limitations. These actions limit the prevalence of “zombie debts” going to court.

### **2. Consumer is notified of the lawsuit**

For the lawsuit to proceed, the plaintiff is responsible for ensuring the consumer is notified that a lawsuit has been filed against them by serving court papers. States vary on how this is handled—some require a sheriff to conduct service while others permit service by mail. DC requires that notice of the lawsuit be personally served by a competent adult or served by the court clerk via registered mail. Additionally, in 2019, the Superior Court enacted special requirements for pleadings for consumer debt claims, where a debt buyer plaintiff must include the name of the original owner on the lawsuit notice, so that a consumer can identify where the debt may be from.

B24-0357 addresses this lawsuit stage by requiring that documentation supporting the debt, such as account statement or an original contract, be provided to the defendant with notice of the lawsuit. This allows consumers to meaningfully engage and understand the nature of the claim against them. in B24-0357 also requires that plaintiff “undertake a reasonable investigation to verify the defendant’s current address.” DC Courts could look to states such as Massachusetts, where court rules spell out address verification requirements based on returned mail and municipal records.

### **3. Consumer responds to the lawsuit**

People sued for debts rarely have representation, which means that most consumers have to figure out how to take action in response to a lawsuit on their own. DC is similar to states including Illinois,

---

<sup>7</sup> E. Rickard and Q. Naqui, “Effects of Debt Lawsuits on Civil Courts—and Consumers—Obscured by Lack of Data” (The Pew Charitable Trusts, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/06/05/effects-of-debt-lawsuits-on-civil-courts-and-consumers-observed-by-lack-of-data>.

Pennsylvania, and Maryland, where the consumer is not required to file and serve and answer form in order to respond to the lawsuit. Additionally, DC Superior Court’s small claims statement of claim and notice form include a plain language notice to the defendant outlining next steps, explaining implications of a lawsuit, and providing contact information for legal assistance.

B24-0357 does not further address this lawsuit stage but could be addressed by increased access to legal help or technology tools that simplify the court process for defendants without lawyers.

#### **4. Case is resolved**

Most debt collection lawsuits end in a default judgment, which means the defendant did not respond to the lawsuit or show up to their court date. In this situation, the case is often resolved not based on the merits of the case but based on who is in the room. Over the past decade, courts have resolved more than 70 percent of debt collection lawsuits with default judgments for the plaintiff nationwide.<sup>8</sup> A 2015 study in Boston Municipal Court, for example, found that only 7.5% of debt claims defendants showed up to court.<sup>9</sup> From 2013- 2018 in Philadelphia Municipal Court, plaintiffs won 98% of all small claims cases, 46% of which were by default.<sup>10</sup> Amounts claimed by plaintiffs are often further inflated after going to court due to additions of court fees, attorney’s fees, and post-judgment interest. This is on top of any fees or interest that were owed on the original debt before charge-off.

B24-0357 fills policy gaps at this stage by limiting the attorney’s fees a plaintiff can be awarded to 15% of the amount claimed. This prevents judgments where attorney’s fees exceed the debt itself.

Additionally, the Act would require authenticated documentation of the debt exists and be reviewed by the court before a default judgment can be entered. This documentation would ensure that the amount is correct, that the plaintiff is the owner of the debt, and that the defendant used the account in question. If passed, B24-0357’s proof of debt provisions would be the strongest nationally by requiring the last 24 periodic statements for credit card debt.

#### **5. Plaintiff can take action to enforce the judgment**

Once a debt buyer or original creditor has judgment against a consumer, they have the ability to pursue what are often called extraordinary collection measures. In DC this entails filing for a writ of attachment resulting in a court-ordered garnishment or seizure of a consumer’s wages and property, including funds in a bank account. As part of this process, the plaintiff may request information, known as interrogatories, from the defendant about their assets and employment status. If the defendant does not respond to requests for this information or show up to scheduled hearings, the court can issue a bench warrant to permit the defendant to be arrested and brought to court to answer interrogatories. While used sparingly, current policies relating to arrest and imprisonment for civil lawsuits do not account for the particulars of modern debt collection.

---

<sup>8</sup> Ibid.

<sup>9</sup> D.J. Greiner and A. Matthews, “The Problem of Default, Part I” (Harvard University, 2015).

<sup>10</sup> “How Philadelphia Municipal Court’s Civil Division Works” (The Pew Charitable Trusts, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/02/how-philadelphia-municipal-courts-civil-division-works>.

B24-0357 modernizes current laws by setting specific requirements on when and how bench warrants can be issued for consumer debts.

## Next Steps in DC

The District of Columbia is continuing to take critical steps forward in their effort to address how both debt collectors and corporate landlords have transformed court dockets and grapple with the civil justice implications of the COVID-19 pandemic. Household debt has already surpassed \$15 trillion nationwide,<sup>11</sup> and in DC specifically, 26% of all residents and 36% of communities of color have some household debt in collections, with the median amount being \$1,592.<sup>12</sup> As these debts wind up in DC Superior Court, it is incumbent on policymakers to modernize the court-user experience, particularly for the majority of litigants who navigate their financial, housing, and family issues without the help of a lawyer. Our research has noted how the pandemic has increased state legislative interest in civil legal issues though a focus on updating eviction laws,<sup>13</sup> but policymaker attention towards debt collection lawsuits, despite their prevalence, remains scarce. If B24-0357 passes, DC would join ranks with New York<sup>14</sup> and California,<sup>15</sup> as one of the few jurisdictions this year to substantially modernize debt collection litigation laws and legislate to make state civil courts more equitable, efficient, and open.

In making permanent the emergency unjust debt collection prevention provisions, our analysis demonstrates that DC is positioned to address gaps in its current debt claims policy landscape and establish itself as a national leader in using targeted policy to minimize the destabilizing consequences of a debt going to court.

Once again, we appreciate the opportunity to submit testimony and offer our continued assistance to further explore any of the recommendations covered in this analysis.

Sincerely,

### **Erika J. Rickard, Esq.**

Project Director, Civil Legal System Modernization  
The Pew Charitable Trusts  
901 E Street, NW, Washington, DC 20004  
p: 202-302-8205 | e: [erickard@pewtrusts.org](mailto:erickard@pewtrusts.org) | [www.pewtrusts.org/modernlegal](http://www.pewtrusts.org/modernlegal)

---

<sup>11</sup> Center for Microeconomic Data, “Household Debt and Credit Report (Q3 2021): New Extensions of Credit Help Drive Total Debt to over \$15 Trillion,” Federal Reserve Bank of New York, accessed November 24, 2021, <https://www.newyorkfed.org/microeconomics/hhdc.html>.

<sup>12</sup> The Urban Institute, “Debt in America: An Interactive Map” (March 2021), [https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct\\_debt\\_collections&state=25](https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=25).

<sup>13</sup> E. Rickard and N. Khwaja, “State Policymakers Are Working to Change How Courts Handle Eviction Cases” (The Pew Charitable Trusts, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases>.

<sup>14</sup> New York Department of Financial Services, “Governor Hochul Signs Consumer Protection Legislative Package,” news release, November 8, 2021, [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr20211108](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20211108).

<sup>15</sup> Office of Governor Gavin Newsom, “Governor Newsom Signs Consumer Financial Protection Legislation to Combat Predatory Practices and Increase Transparency,” news release, October 4, 2021, <https://www.gov.ca.gov/2021/10/04/governor-newsom-signs-consumer-financial-protection-legislation-to-combat-predatory-practices-and-increase-transparency/>.