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Chair  
Senate Committee on Financial Services  
24 Beacon St Room 520  
Boston, MA 02133

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## Testimony for Joint Committee Hearing on H.1168/S.663: An Act Relative to Fairness in Debt Collection 10/19/2021

Chairmen Crighton, Murphy, and members of the committee, we appreciate the opportunity provided by the Joint Financial Services Committee to submit public testimony on H.1168/S.663: An Act Relative to Fairness in Debt Collection.

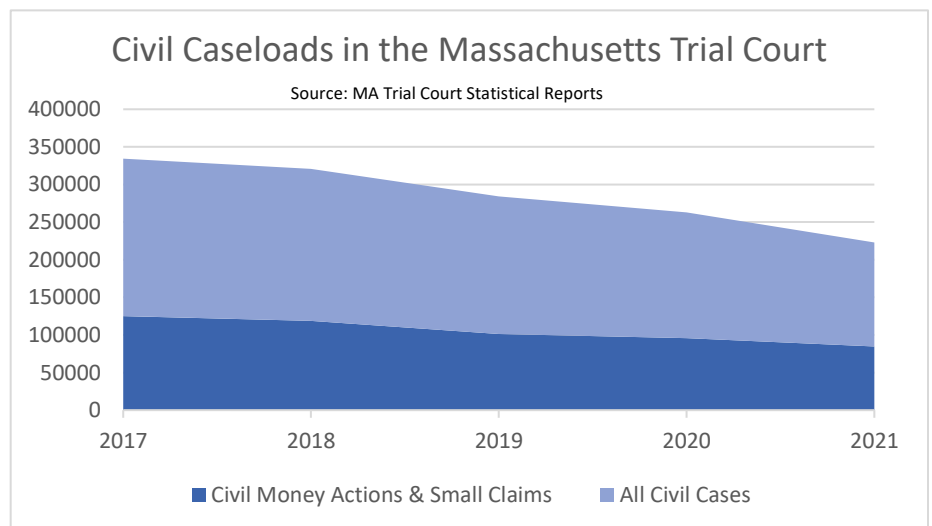
My name is Erika Rickard; I direct a project at The Pew Charitable focused on modernizing our nation’s civil legal system. My team works to support efforts to deliver more efficient, equitable, and open civil courts. Our particular focus is on the recent rise of debt collection litigation, and how it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

Over the past 5 years, more than 600,000 debt claims have been filed with the Massachusetts Trial Court. Our neutral testimony today serves to help inform your deliberations on the bill by (1) breaking down the bill according to our debt claims policy framework and 2) providing examples of practices from other states to use as a benchmark.

### The rise of debt collection in courts

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.

In the Commonwealth, civil actions and small claims made up over 55% of the civil docket for the last 5 years. While the Trial Court does not make specific data available on the type of money action (if it’s brought by a debt buyer, original creditor, government agency, or individual), we know from previous research that 43% of small claims in the Commonwealth were brought by just 9 debt buyer companies.



## How will H.1168/S.663 affect debt claims policy in Massachusetts?

Massachusetts is a standout state in enacting policy to reform debt litigation in both civil and small claims court to ensure that both consumer and creditors can meaningfully engage in the case, particularly in the pre-judgment stages of a debt collection lawsuit. In 2019, the Trial Court enacted rules that strengthen proof of debt requirements that plaintiffs must satisfy and modernized court processes to increase the chances that a consumer receives and understands notice of their debt collection lawsuit. In 2010, the legislature updated the exemption criteria for personal property subject to so that debtors can retain a living wage, homestead, and basic household goods while facing garnishments. The National Consumer Law Center considers Massachusetts one of the “best states” for protecting families from being reduced to poverty due to wage and property seizures.

However, debt collection policy has several elements and the Commonwealth’s landscape still has areas that could be modernized. Gaps exist surrounding lack of clear procedures for consumers to obtain exemptions and protections to limit the economic instability caused by the court’s involvement with a consumer debt claim. Following our debt claims policy analysis framework, we’ve broken down some of the Commonwealth’s court rules and statutes by stage of a debt collection lawsuit to show how H.1168/S.663 would affect the current policy landscape:

Debt Collection Lawsuit Stage	Current Massachusetts Policy	H.1168/S.663 Additions
1. Plaintiff files a lawsuit	<ul style="list-style-type: none"> <li>The statute of limitations to file a consumer debt lawsuit is 6 years.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces the statute of limitations to 4 years.</li> </ul>
2. Consumer is notified of the lawsuit	<ul style="list-style-type: none"> <li>As of 2019, court rule requires plaintiffs to verify the defendant’s address using mail or municipal records.</li> </ul>	Not addressed
3. Consumer responds to the lawsuit	<ul style="list-style-type: none"> <li>Consumer has 20 days to respond to a civil lawsuit</li> <li>No consumer-specific answer form</li> </ul>	Not addressed
4. Case is resolved (most commonly by default judgment)	<ul style="list-style-type: none"> <li>2019 court rules require detailed and specific proof of the debt’s account, amount, and ownership before a default judgment can be entered</li> <li>Post-judgment interest can be set up to 12%</li> </ul>	<ul style="list-style-type: none"> <li>Limits post-judgment interest to 6% regardless of contract rate</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 must apply for supplement process to enforce a judgment which includes summons for a hearing where ability to pay is assessed by the court</li> <li>Arrest warrants to secure attendance of debtors or plaintiffs is permissible</li> </ul>	<ul style="list-style-type: none"> <li>Requires creditors to notify consumers at least 30 days prior to supplementary process proceeding and provide a financial affidavit to review exempt income</li> <li>Creates a financial hardship exemption criterion</li> <li>Prohibits imprisonment or arrest warrants for a consumer debt</li> <li>Prohibits employers from retaliating or discriminating against employees for having a wage garnishment order</li> </ul>

We have previously documented the concerning [lack of available court data](#) and robust research that describe the prevalence and impact of debt claims lawsuits on courts, 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:

### 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. Depending on the amount, a plaintiff files a debt claim as a small claims or civil lawsuit in District Court. 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.

What’s happening
<p><b>Debt claims lawsuits are on the rise.</b> From 1993 to 2013, the number of debt collection suits more than <a href="#">doubled nationwide</a>, 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.</p>
<p><b>Debt buyers are driving civil court dockets in Massachusetts.</b> The Commonwealth doesn’t publicly report detailed debt claims caseload data, but we know that in 2015, 9 debt buyers represented 43% of civil and small claims cases filed.</p>
How H.1168/S.663 addresses this
<p><b>Reduces the statute of limitations</b> on a consumer debt claim from 6 to 4 years. This would reduce the number of claims that could be legally collected through the courts and put the Commonwealth on par with states including Texas and California.</p>

### 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 through a process known as service of process and states vary on how this is handled– some require a sheriff to conduct service while others permit service by mail. Massachusetts requires a sheriff serve the defendant notice of a civil lawsuit. Additionally, in 2019, the Trial Court enacted special requirements for service of consumer debt claims, where the plaintiff must use municipal records or certified mail to verify the consumer’s address at least three months prior to the lawsuit being initiated.

H.1168/S.663 does not address this lawsuit stage as it has been modernized recently by court rule.

### 3. Consumer responds to the lawsuit

People sued for debts rarely have representation, which means that most consumers have to figure out how to respond to a lawsuit on their own. [Research on debt collection lawsuits](#) from 2010 to 2019 has shown that less than 10 percent of defendants have counsel, compared with nearly all plaintiffs. In small claims court, consumer must appear in court on a set date but in a civil lawsuit, the consumer must respond by submitting a written answer within 20 days of receiving notice of the lawsuit.

H.1168/S.663 does not 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. A 2015 [study](#) in Boston Municipal Court found that only 7.5% of debt claims defendants showed up to court. In 2019, the Commonwealth updated its civil and small claims court rules to outline [specific requirements](#) for proof and documentation of consumer debts that must be met before a default judgment can be entered.

What's happening
<b>Amounts claimed by plaintiffs are often further inflated after going to court</b> due to additions of court fees, attorney's fees, and post-judgment interest. This is on top of any fees interest that were owed on the original debt before charge-off.
How H.1168/S.663 addresses this
<b>Reduces the post-judgment interest rate from 12% to 6%.</b> Massachusetts currently has one of the highest post-judgment interest rates in the country. This reduction will put the Commonwealth on par with states such as Illinois (5%) and Minnesota (4%).
<b>Sets reasonable plaintiff's attorney's fees</b> limited to 15% of the amount claimed. This would prohibit attorneys from claiming the same fee for an \$800 claim as at \$6000 one.

#### 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 Massachusetts this is called supplementary process and it includes court-ordered garnishment or seizure of a consumer's wages and property, including funds in a bank account. A plaintiff can generally initiate supplement process by obtaining an additional court order after claiming that the consumer failed to pay on a judgment.

What's happening
<b>States have statutory exemptions from garnishment but often don't outline a simple process for the consumer to assert them.</b> The majority of states have <a href="#">some statutory exemptions</a> which vary by state. Massachusetts has stronger exemptions than most states that protect up to \$2,500 in a bank account and enough wages so the consumer's income doesn't fall below the poverty level. However, the Commonwealth does not have a clear or simplified court process for defendants to be given notice of garnishment and claim exemptions, and the court to holistically review a defendant's ability to pay a debt.
<b>Garnishments disproportionately affect racial minorities and median income households.</b> A <a href="#">national study</a> conducted by ADP revealed that in 2013, 5% of Americans making between \$25,000 and \$40,000 had their wages garnished to pay off a consumer debt. Additionally, a <a href="#">detailed analysis</a> of debt claims in the metropolitan areas of Newark, NJ, Chicago, IL, and St. Louis, MO revealed that from 2008-2012, debt buyers were up to 20% more likely to seek wage garnishments against defendants in majority black neighborhoods.

<p><b>Civil arrest warrants, also known as “debtor’s prisons,” can be issued for private household debts.</b> A <a href="#">2018 report by the ACLU</a> found that almost all states, including Massachusetts have civil procedure provisions that would allow for a warrant to be issued for consumer debt non-payment. While this practice is uncommon, it does occur in the Commonwealth and can be used to coerce payments from debtors even if their income is exempt from collection.</p>
<p><b>How H.1168/S.663 addresses this</b></p>
<p><b>Requires plaintiffs to notify</b> consumers at least 30 days prior to a supplementary process proceeding and provide them with a financial affidavit to assert exempt income. If income is exempt based on the consumer’s affidavit, the proceeding should terminate, and the consumer won’t be need to go to court.</p>
<p><b>Allows the court to consider financial hardships</b> as a factor when determining a defendant’s ability to pay a debt via supplementary process.</p>
<p><b>Prohibits imprisonment or arrest warrants being issued for a consumer debt.</b> <a href="#">Almost all states</a> have civil procedure provisions that would allow this practice, while Maryland passed legislation to outlaw it in their state last year.</p>
<p><b>Prohibits employers from retaliating against employees for having a wage garnishment order</b> and also discriminating against potential employees for having a garnishment. This limits the collateral domino affect a debt collection lawsuit might have on a consumer’s economic stability. Several states, including the Commonwealth, protect against retaliation for child support related wage garnishments but few extend this protection to consumer debtors. Protecting consumer debtors from wage garnishment retaliation would put Massachusetts on par with states including Wisconsin and Colorado.</p>

## Next Steps in Massachusetts

The Commonwealth is continuing to take critical steps forward in their effort to address how debt collectors have transformed court dockets and grapple with the civil justice implications of the COVID-19 pandemic. Household debt has already surpassed [\\$14 trillion](#) nationwide, and in Massachusetts specifically, 19% of all residents and 35% of communities of color have some [household debt in collections](#), with the median amount being \$1,564. As these debts wind up in courts across the Commonwealth, 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. By targeting supplementary process and post-judgment actions, our analysis demonstrates that Massachusetts is positioned to address gaps in the current debt claims policy landscape and further establish the Commonwealth as a leading state in using 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,

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