



May 30, 2012

MADIGAN: LEGISLATURE PASSES DEBTORS' RIGHTS ACT

Bill Would Ban Sending Debtors to Prison for Unpaid Debts

Springfield — Attorney General Lisa Madigan today applauded state lawmakers for supporting the Debtors' Rights Act of 2012, a measure that would protect poor people from being jailed over unpaid debts.

House Bill 5434 would prevent creditors from abusing the court system to put debtors in jail to collect on a debt they are clearly unable to pay. Over the last year, Madigan has learned that residents in roughly a third of Illinois' counties commonly face incarceration when they fail to appear in court over a previously entered judgment to pay a debt. In many of these cases, notices of court hearings were mailed to addresses that were no longer valid, leaving many debtors unaware of the hearings. In spite of the failure to notify the debtors, courts have frequently issued warrants for their arrests.

"Long ago, our society recognized that it was immoral to send a poor person to debtor's prison. Yet this practice has reappeared in Illinois through creditors' abuse of the courts," Madigan said. "This legislation will ensure that people who have the means will pay their debts, while also preventing poor older and unemployed persons from being illegally and unfairly incarcerated."

Compounding the problem, Madigan said, is that many victims of these practices are living solely on income that is legally protected from being used to pay outstanding debt judgments, including Social Security, unemployment insurance or veterans' benefits.

Madigan's legislation would also ban abusive and burdensome "pay or appear" orders that are routinely entered against debtors in some Illinois counties. These orders – which usually remain in effect for three years – require debtors to make a monthly payment or appear in court each month to explain why they are unable to pay, even if their financial circumstances have not improved. Madigan said if a debtor misses just one payment and court hearing, they can end up in jail. Debtors who have been victim to this practice typically owe outstanding medical bills, credit card debts or payday loans.

The legislation would amend the Code of Civil Procedure to codify and clarify practices followed by attorneys, creditors and courts across Illinois to ensure that courts make a finding of a consumer's ability to pay before entering a payment order. The legislation also would prohibit payment orders that rely on legally protected income and prevent arrest warrants from being issued unless the debtor was personally served with a hearing notice.

"The fact that impoverished debtors can still go to jail in several Illinois counties casts a shadow on our entire state," said state Rep. Ann Williams, the House sponsor of the bill. "As lawmakers, we have a duty to protect the due process rights of Illinois residents and to preserve the integrity of our legal system. This legislation serves both of those vitally important purposes."

According to court documents obtained by Madigan's office, one Illinois court entered a "pay or appear" order against a mentally disabled man living on legally protected disability benefits that provided him with \$690 a month. Even though the man informed the court of his circumstances, he was still ordered to either pay \$100 a month or appear in court once a month for a three-year period.

"The Attorney General's bill, which I am pleased to shepherd through the Senate, balances the rights of creditors to collect a just debt with fairness to those who may be forced into debt by economic loss or medical tragedy," said Sen. William Haine, Senate bill sponsor.

[Return to May 2012 Press Releases](#)



[© 2020 Illinois Attorney General](#)

[Home](#) • [Privacy Policy](#) • [Contact Us](#)