



Payday lenders use courts to create modern debtors' prison



AUGUST 19, 2012 12:15 AM • BY JIM GALLAGHER • JIMGALLAGHER@POST-DISPATCH.COM > 314-340-8390

Wakita Shaw's troubles started with a \$425 payday loan, the kind of high-interest, short-term debt that seldom ends well for the borrower.

But most of them don't end up in jail. So Shaw was surprised in May of last year to hear that the St. Louis County police were looking for her. She and her mother went to the police station.

They arrested her on the spot.

They told her the bail was \$1,250. "And I couldn't use a bail bondsman to get out," Shaw recalled.

The Bill of Rights in the Missouri constitution declares that "no person shall be imprisoned for debt, except for nonpayment of fines and penalties imposed by law." Still, people do go to jail over private debt. It's a regular occurrence in metro St. Louis, on both sides of the Mississippi River.

Here's how it happens: A creditor gets a civil judgment against the debtor. Then

the creditor's lawyer calls the debtor to an "examination" in civil court, where they are asked about bank accounts and other assets the creditor might seize.

If the debtor doesn't show, the creditor asks the court for a "body attachment." That's an order to arrest the debtor and hold him or her until a court hearing, or until the debtor posts bond.

The practice draws fire from legal aid attorneys and some politicians. They call it modern-day debtors prison, a way to squeeze money out of people with little legal knowledge.

Debtors are sometimes summoned to court repeatedly, increasing chances that they'll miss a date and be arrested. Critics note that judges often set the debtor's release bond at the amount of the debt and turn the bond money over to the creditor -- essentially turning publicly financed police and court employees into private debt collectors for predatory lenders.

"You wouldn't want to be spending taxpayer money to collect \$400 and \$500 debts. Don't the county police have something better to do?" asks Rob Swearingen, attorney for Legal Services.

Creditors' lawyers say body attachments are necessary to get debtors to obey the courts. To avoid jail, they simply have to show up when told.

In Illinois, Gov. Pat Quinn's administration and Attorney General Lisa Madigan have joined the chorus of critics. The result was a new law, signed by Quinn last month, restricting body attachments for civil debt.

In Missouri, the practice goes on with little public opposition.

Shaw, 27, lives in Hazelwood and works as a clerk. Her memory of the legal process is vague.

"My mom gave me the court documents. I just didn't remember to go," she said. "After a few months, I forgot about the debt all together."

Court records show that Shaw was sued in 2010 by Sunshine Title and Check Loan Company. Sunshine got a judgment against her, and she was summoned to an examination in April of last year, but didn't appear. Circuit Judge Dale Hood of St. Louis County issued a body attachment. By the time she was jailed two weeks later, interest and legal fees on grown the \$425 debt to \$855.

She recalls spending three days in the city jail.

"It was horrible," she said. "They tell you when to wake up and they tell you to go to sleep. The beds are hard," she said. "I had to get out or I'd lose my job."

Her mother had to borrow the \$1,250 her bond. "I think it's horrible for them to arrest me over something so small," Shaw said.

No one knows how many people go to jail over debt in St. Louis. Courts keep no count of body attachments for debt.

Legal Services of Eastern Missouri, which represents poor people for free in civil cases, checked records for civil debt cases filed by a single St. Louis creditors' attorney, Mitchell Jacobs in 2011 and this year. His law firm summoned 55 debtors for examinations and requested 23 body attachment orders, ending in seven arrests.

Illinois attorney general Lisa Madigan called the practice unfair. "It is outrageous to think, in this day and age, that creditors are manipulating the courts, even threatening jail time, to extract whatever they could from people who could least afford to pay," Madigan said.

Creditors' lawyers see things differently. Jacobs, who represents payday shops and other lenders, says he has sympathy for debtors. "Most are good people who just don't have the money to pay," he says.

But sympathy has limits. "If they've had notice and they fail to appear, then they get what they deserve," he said.

Although creditors attorneys request body attachments, it's the judges who issue them, he noted. "It's the judge saying, 'You didn't show up when we told you to, and I don't like it.'"

It's not a free service for creditors, he notes. In Missouri, they pay the courts \$90 in advance for each body attachment, whether it results in an arrest or not.

But an arrest often gets the debt paid. A review of several debt cases found lawyers suggesting bonds in the amount of the debt as they request body attachments, and judges setting those bond amounts.

Once the debtor bails himself out, the bond money often ends up in the hands of creditors. In Missouri, debtors sometimes sign documents prepared by the creditor's lawyer, releasing their bond money to creditors.

Wakita Shaw hired a lawyer after her arrest, fearing that she might face criminal charges over the debt. A court document shows the lawyer agreeing to release the bond to the Sunshine Title.

Although borrowers provide post-dated checks to payday loan shops, they actually can't be charged with criminal check kiting, says Swearingen, as long as they don't stop payment on the check or close the bank account.

Sometimes, the bond goes to the creditor without the defendant's permission. One bond release document reviewed by the Post-Dispatch had the word "absent"

written above the defendant's name. Paul Fox, administrator of the St. Louis County courts, said the debtor apparently failed to show up for another hearing and her bond was forfeited. The creditor, Sunshine Title got \$800 of the bond money.

Judge Hood, who presided over both the Lewis and Shaw cases, declined an interview request. "He will have no further statement since the court talks by its orders and judgments," said Fox, who functions as the court's spokesman.

Swearingen, the legal aid lawyer, complains that one trip to the courthouse often isn't enough for a debtor facing an examination. Creditors attorney's get continuances, demanding repeated appearances.

"They were dragging them back to court again and again, waiting for them to fail, so they could get a body attachment against them," said Swearingen.

Shaw said that happened to her once at court. "They said the lawyer was busy with another case, so they were giving me a new court date."

Lawyers and court observers say that judges differ in their approaches to body attachments in private debt cases. Some issue them liberally, and others don't. They also differ on how they treat arrested debtors.

Angela Townsend, 29, of north St. Louis County found that out when she was jailed for not appearing in court on a \$588 debt to Ardmore Finance Company.

"I felt like I was a criminal. I had to ride in the back of a paddy wagon, handcuffed," she said. "That was pain and suffering for me, because I don't have a record."

After a night in jail, she was brought before Judge Thomas Clark in St. Louis City Circuit Court. He let her go without posting any bond, but told her to come

back the next day with \$50 to pay toward her debt and answer questions from Ardmore's lawyer.

The new law in Illinois forbids body attachments in private debt cases if the defendant doesn't appear for an examination hearing. Instead, the judge may issue a second summons, threatening a contempt of court action. Only if the defendant skips again can an arrest be ordered.

Debtors can't be repeatedly summoned for examinations unless the creditor has evidence that the debtor's circumstances have changed. And bond money can no longer be routinely turned over to creditors.

The law also changed the practice of summoning debtors by mail. Now the summons must be given to them personally, or to someone at their home. Missouri requires service to the person or someone in the household over age 14.

As for Wakita Shaw, she's learned a lesson. "I will never, never, never get a payday loan again. This was so traumatic. You better pay, because they will come and get you."

[Top of Page](#) [Home](#) [Full Site](#)

○ Copyright 2012, stltoday.com, 900 N. Tucker Blvd. St. Louis, MO