

**Testimony of Jennifer Lavallee
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**Before the Committee on the Judiciary & Public Safety
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 22-0572
“Wage Garnishment Fairness Amendment Act of 2017”**

June 7, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony to express our strong support for Bill 22-0572, the Wage Garnishment Fairness Amendment Act of 2017. The District’s current garnishment law hurts low- and moderate-income workers. This bill would create a more fair system for wage garnishment. Specifically, it would replace the current wage garnishment calculation with a more practical and straightforward one tied to the District’s minimum wage, thereby making garnishment limits more protective of low- and moderate-wage workers’ earnings. The bill would also add a basic but important requirement that judgment debtors receive written notice when a garnishment order is served on their employer.

THE DISTRICT’S WAGE GARNISHMENT LAW IS OUTDATED AND INADEQUATE

Wage garnishment is a procedure used by creditors to collect on civil money judgments, often obtained in debt collection actions involving credit card debt, housing-related debt, medical bills, and consumer loans. When a creditor serves a writ of garnishment on a debtor’s employer, the employer is required to turn over a portion of the employee’s wages every pay period to pay the creditor until the judgment is satisfied. Based on data from a large-scale ADP study of U.S. garnishment trends, it was estimated that approximately 4 million workers nationwide had their wages garnished for a consumer debt in the year 2013.² Recently-updated garnishment data from 2016 confirms that consumer loans and other types of consumer debt continue to be a primary source of general garnishments (*i.e.* garnishments other than those for child support, taxes, and bankruptcy, which are governed by separate laws).³

¹ The Legal Aid Society of the District of Columbia is D.C.’s oldest and largest general civil legal services organization. Since 1932, Legal Aid lawyers have been making justice real in individual and systemic ways for persons living in poverty in the District. A substantial component of Legal Aid’s Consumer Law practice involves representing low-income defendants in debt collection actions, including consumers with cases on the high-volume small claims debt collection calendar, many of whom are impacted by garnishment or the threat of garnishment.

² Paul Kiel, *Unseen Toll: Wages of Millions Seized to Pay Past Debts*, (Pro Publica Sept. 15, 2014), available at <https://www.propublica.org/article/unseen-toll-wages-of-millions-seized-to-pay-past-debts>

³ ADP Research Institute, *The U.S. Wage Garnishment Landscape: Through the Lens of the Employer*

Wage garnishment is not the only means of collection for judgment creditors. Judgment creditors may also seize funds in bank accounts or other assets to satisfy outstanding judgments. But low-income workers often have little to no savings or other assets available, making wage garnishment a primary means of collecting money from those who earn the least. According to ADP's analysis of aggregated payroll data over a span of three years, the highest rates of wage garnishment (for debts outside of the child support, tax, and bankruptcy contexts) have been reported among those earning between \$15,000 and \$40,000 annually.⁴

Current D.C. law places limits on the amount that can be garnished from a person's pay,⁵ but the law is severely outdated and fails to adequately protect low- and moderate-wage workers. D.C.'s garnishment law protects only the minimum amount set by Title III of the federal Consumer Credit Protection Act, 15 U.S.C. 1671 et seq. In short, it protects only those who make less than 30 times the *federal* minimum wage⁶—*i.e.*, \$217.50—in a given week. Those who make more than that are subject to garnishment. The garnishable amount is calculated as the lesser of: (1) the difference between the worker's weekly pay and \$217.50, or (2) 25% of the worker's disposable wages (generally defined as income after required withholdings), leaving some of the District's lowest-income workers with as little as \$11,310 in disposable wages per year—or less than \$1,000 per month—to pay for housing, food, medical costs, and other basic necessities of life. This is the case whether the worker is attempting to make ends meet as a household of one or as a single parent supporting a household of four.

At a time when more than 40 percent of U.S. adults report struggling to make ends meet,⁷ it is critical that legal limitations on wage garnishment be modernized to ensure that the interests of debt collectors do not take priority over the needs of low- and moderate-income workers to afford to pay their basic expenses. The National Consumer Law Center, the leading policy analysis and advocacy organization on consumer law matters, gives D.C. an “F” for its

(2017), available at: <https://www.adp.com/tools-and-resources/adp-research-institute/research-and-trends/research-item-detail.aspx?id=04a8aaf8-564d-4937-94f0-da5fffb1a682>.

⁴ ADP Research Institute, *Garnishment: The Untold Story* (2014), Garnishment Rates by Wages, p. 12, available at <https://www.adp.com/tools-and-resources/adp-research-institute/insights/~media/RI/pdf/Garnishment-whitepaper.ashx>

⁵ The D.C. Code provision that is the subject of the proposed amendment governs the amount that can be garnished pursuant to an ordinary money judgment; it is wholly separate from the rules governing garnishment for the collection of child support, taxes, and other government debts.

⁶ The federal minimum wage is \$7.25 per hour and has not changed since 2009.

⁷ Consumer Financial Protection Bureau, *Financial well-being in America* (report presenting the first results from the National Financial Well-Being Survey), September 2017, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpbs-first-national-survey-financial-well-being-shows-more-40-percent-us-adults-struggle-make-ends-meet/>

garnishment protection law.⁸ Approximately thirty other states have local garnishment laws that are more protective of consumers than the current law in the District.⁹

DISTRICT WORKERS HAVE AN URGENT NEED FOR GARNISHMENT REFORM

The inadequacies of the current law have very real and negative consequences for workers here in the District. In Legal Aid’s experience assisting low-income consumers with debt collection matters in D.C. Superior Court, active garnishment or the threat of garnishment is a primary problem facing the working poor.

Overwhelmingly, those consumers who have the ability to pay their debts do so voluntarily by entering into payment plans and other types of settlement agreements before judgment is ever entered. But those who lack the resources to pay, or to obtain legal help to defend a case, are likely to end up with a judgment. And unfortunately, when a person’s wages are being garnished because of a judgment, little can be done to alleviate the problem short of filing for bankruptcy. When workers come to court seeking help lowering their garnishment amounts and explaining the extreme hardship that garnishment is causing them, they learn the harsh reality that the amounts being taken from each paycheck are set by D.C. law and that even the court does not have the power to change those calculations.

Similarly concerning is that D.C.’s current law does not include any requirement that debtors be provided notice of a garnishment, meaning that workers often do not even know their wages will be garnished until after they have received a reduced paycheck. In fact, in some cases, that reduced paycheck may actually be a person’s first real-life notice that the underlying court case even exists.¹⁰ This element of surprise can wreak havoc on workers’ finances, with devastating consequences for lower wage workers in particular.

⁸ Carolyn Carter and Robert J. Hobbs, National Consumer Law Center, *No Fresh Start: How States Let Debt Collectors Push Families Into Poverty*, Appendix A – State Protection of Wages, available online at <https://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf>

⁹ *See id.*

¹⁰ For example, if a debt collector plaintiff never provided proper notice of a court case, a default judgment may be entered without the defendant ever knowing about it until, in some cases years later, the judgment creditor takes action to collect through garnishment. At that point, the debtor must take prompt action to learn about the underlying case and seek emergency redress from the court to try to vacate the default judgment, halt any garnishment, and recover any already-garnished funds. Even with the help of a lawyer, this process can take weeks to months to get resolved, during which time the consumer may fall behind on rent or utilities, suffer from food insecurity, forego necessary medical care, and incur more debt.

Defaults in debt collection cases are a substantial concern nationally as well as in the District. See NPR, *Millions Of Americans’ Wages Seized Over Credit Card And Medical Debt*, available online at <http://www.npr.org/2014/09/15/347957729/when-consumer-debts-go-unpaid-paychecks-can-take-a-big-hit> (“The most common outcome of a debt collection lawsuit ... is a judgment by default.”). The default rate for debt collection actions in D.C is likewise significant: in 2016, based on an informal analysis of collections calendar dockets and case dispositions, an estimated almost 42% of D.C. Superior Court defendants with cases on the small claims debt collection calendar had a default or default judgment entered against them at their initial hearing.

Consider the experiences of these two Legal Aid clients:¹¹

Wanda Clark: No denying her hardship, but no granting her relief

Ms. Clark is a 34-year-old single mother living in Ward 7. She supports three children with her employment income of less than \$2,700 per month from her full-time job with the D.C. government. When the amount of her paychecks suddenly plummeted due to a garnishment order, she went to court to file a motion asking the court to stop the garnishment and explaining that she simply could not make ends meet with the amount of her wages that were being taken each pay period.

There was no legal path for the court to grant Ms. Clark the relief she so desperately needed. The garnishment order was based on a consent judgment she had entered into in a small claims debt collection case ten years earlier, for a debt she didn't even think she should owe. The amount of the garnishment was set by D.C. law. With the help of a Legal Aid attorney, she was eventually able to negotiate a reduced garnishment amount to alleviate some of the hardship, but only because the plaintiff was willing to do so voluntarily. The reduced garnishment still left her with less than \$2,500 per month to try to pay for housing, food, and other basic living expenses for her family of four.

Charlese Wilson: When Garnishment Reveals a Decade-Old Case

Ms. Wilson is a low-income resident of Ward 5, working full-time in a leasing office. Back in 2007, she financed the purchase of a car. Shortly thereafter, her brother was arrested in the car and the vehicle was impounded. Ms. Wilson stopped receiving bills, and she eventually stopped making payments. The financing company then sued her in a debt collection action – but the process server used an incorrect address and never actually gave her the court papers. Knowing nothing about the case, Ms. Wilson failed to appear in court, and a default judgment was entered against her.

Nearly ten years went by without her having any knowledge that the case even existed. But one day, her employer told her that her wages would be garnished. Even though she took home less than \$2,000 per month from her job, approximately a quarter of each paycheck was going to be sent to the judgment creditor instead of being available for her to pay her rent, utilities, and other necessary expenses.

Confused, worried, and desperate not to lose her income, she sought help from Legal Aid. Her attorney was ultimately successful in getting the default judgment vacated for improper service of process, and the case was dismissed. But the case took three months to resolve in litigation. If her employer had not given her the advance notice of the garnishment, and if she or her attorney had not been able to

¹¹ Clients names changed for confidentiality.

take such prompt action, she would have been struggling to make ends meet with a dramatically reduced income that whole time.

BILL 22-0572 IS A COMMON-SENSE SOLUTION THAT WILL IMPROVE GARNISHMENT FAIRNESS

The Wage Garnishment Fairness Amendment Act provides a practical and effective way to address the urgent garnishment problems faced by Ms. Clark, Ms. Wilson, and countless other low- and moderate-wage workers in the District. The bill would strengthen the existing, insufficient limitations on the amount of a worker's wages that can be taken through the garnishment process and would ensure that workers are provided notice when their wages will be garnished. Importantly, it would not affect the District's separate laws pertaining to garnishment for the collection of child support, nor would it affect the collection of federal debts or back taxes.

If passed, the proposed legislation would put D.C. on the progressive side of a growing trend to modernize consumer garnishment protections. Legislation in several other states, including Massachusetts, Nevada, and California, has been introduced or passed to similarly increase the level of protection available to consumers subject to a garnishment order.

Alignment with the District's Minimum Wage

One of the primary ways in which the proposed amendment would modernize and improve the law, consistent with the more protective laws in several other states, is by tying the garnishment calculation to the local rather than the federal minimum wage. The federal minimum wage has remained at \$7.25 since 2009. The D.C. minimum wage, on the other hand, is currently \$12.50 per hour and is scheduled to increase to \$15 by 2020. Thereafter, it will increase automatically with inflation. The substantial difference between the federal and D.C. minimum wage, and the automatic adjustment of the D.C. minimum wage going forward, presents a key opportunity for garnishment reform.

Modernized Garnishment Protections

The proposed legislation would amend and simplify the garnishment calculation to protect more wages for low- and moderate-income workers in D.C. Specifically, the amendment would fully protect the wages of workers making less than 60 times the District's minimum wage per week (translating to \$39,000 per year). For those earning above that threshold, garnishment would be limited to 25% of the individual's marginal income earned above that amount.¹² This straightforward structure results in fairer garnishment calculations that provide the most protection to low- and moderate-wage workers, while allowing for gradually increasing percentages of garnishment from debtors at higher income levels.

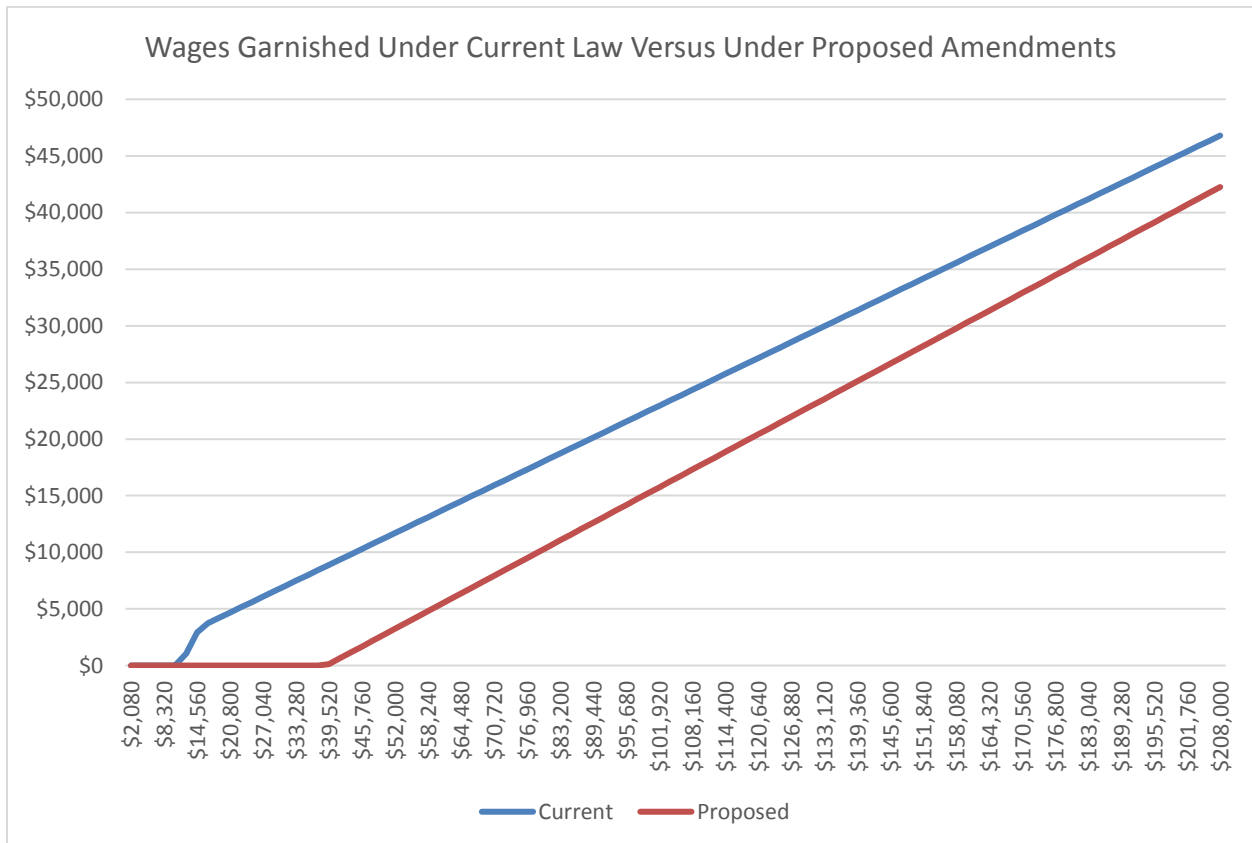
¹² The proposed amendment would also retain the garnishment cap of 25% of disposable wages currently in place under federal law, which would not impact low- and moderate-wage earners.

To illustrate, a single mother of two children working full time at a minimum wage job in D.C. would earn \$26,000 per year. Under D.C.’s current law, a garnishment order would result in approximately 23% of her gross wages being garnished, effectively pushing her family below the poverty line. Under the proposed amendment, her wages would be fully protected.

The graph and chart below show the differences between garnishment amounts under the current and proposed D.C. law, at various income levels.

Percent of Gross Income Garnished			
Hourly Wage	Annual Wage (full-time hours)	Current Law	Proposed
\$5	\$10,400	0%	0%
\$11	\$22,880	23%	0%
\$20	\$41,600	23%	2%
\$30	\$62,400	23%	9%
\$40	\$83,200	23%	13%
\$50	\$104,000	23%	16%
\$60	\$124,800	23%	17%

(For purposes of this chart, disposable income is assumed to be 90% of gross.)



Notice Requirement

Finally, the proposed amendment would build in a basic notice requirement that is lacking in the current law and urgently needed as an issue of fundamental fairness. Under the proposed legislation, a judgment creditor would be required to send a copy of the writ of garnishment to the debtor informing them of the garnishment at the same time that they serve the writ on the employer, similar to the notice requirements in many other states including Maryland and Virginia. This requirement is straightforward and easy to implement while providing critical notice to workers who must act quickly to plan for a sudden drop in take-home pay. The notice would also provide workers a modest but critical amount of additional time and information necessary to seek legal assistance in the event that the garnishment is based on a default judgment or other circumstances requiring legal intervention.

WAGE GARNISHMENT REFORM WILL HELP MAKE THE DISTRICT A MORE JUST PLACE FOR WORKERS

This time two years ago, the Council unanimously approved legislation raising the minimum wage. In doing this, the Council recognized that, given the District's high cost of living, more needed to be done to ensure low-wage workers could earn enough to support themselves and their families.

Passing garnishment reform through the current proposed amendments is a natural next step and is necessary to prevent garnishment from undermining some of the core reasoning behind the District's decision. Amending the law to allow low- and moderate-wage workers to keep more of the money they earn will help to close the wealth gap, enable D.C. workers to afford basic necessities, and help combat the collateral consequences of excessive garnishment. Further, given the close tie between garnishment and judgments obtained in debt collection lawsuits, garnishment has important civil rights and racial justice implications as well. As a 2016 *Pro Publica* report concluded, "Black communities are hit much harder by debt collection lawsuits than white ones, even in places where black households and white households have similar incomes."¹³

As the Council continues to grapple with gross economic inequality, racial injustice, and the disparate impacts of various policies on District residents' ability to take care of their families and achieve lasting economic mobility, updating and modernizing wage garnishment protections is an important step the right direction.

The Garnishment Fairness Amendment Act contains exactly the types of reforms needed to bring relief to low- and moderate-wage workers in D.C. trying to earn a basic living. We urge the Council to move it forward with the urgency and support that it deserves.

¹³ Paul Kiel, *So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine*

(Pro Publica May 5, 2016), available online at <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine>