

Is jailing debtors the same as debtors jail?

Some legal experts say the practice violates state constitutional bans on debtors prisons.

Herman Button listened in stunned silence as a judge in Perry County, Ind., threatened him with jail time unless he agreed to pay \$25 a month toward an eight-year-old housing debt.

Unemployed and living on a disability check, Button decided to fight back after the January 2009 hearing. He and an attorney from Indiana Legal Services appealed, citing the Indiana Constitution's Bill of Rights, which says "there shall be no imprisonment for debt, except in case of fraud."

To Button's surprise, a state Appeals Court judge agreed. "I'm no lawyer, but I knew we abolished debtors prisons in this country a very long time ago," said Button, 50, who now lives in Hawesville, Ky.

The Button case highlights a potential pitfall for creditors that use the law enforcement system to collect old debts. Most state constitutions, including Minnesota's, have clauses dating to the 1850s that expressly prohibit the jailing of people for their debts. As legal actions against debtors intensify, attorneys are taking a fresh look at these clauses.

"We have created a de facto debtors prison system in the United States that is largely unconstitutional," said Judith Fox, a law professor at Notre Dame Law School. "In some parts of the country, people are so fearful of arrest they are scrambling to pay money they might not even owe."

In states such as Indiana and Illinois, people are being locked up for not making court-ordered payments. Known as "pay or stay," it can mean days in jail and multiple arrests for the same debt. Some legal experts say the practice is unconstitutional because the arrest is directly linked to the failure to pay a debt.

In Minnesota, the issue is less clear because warrants to arrest debtors are issued for disobeying court orders, such as not filling out a financial disclosure form and missing a required hearing, not for failure to pay debt. So long as someone fulfills the court order, they can avoid incarceration.

"It looks on the surface like debtors prison," said William G. Ross, a law professor at Samford University's Cumberland School of Law in Birmingham, Ala. "But it's really not, because the person isn't being punished for the debt, but for failing to appear."

In Illinois, the issue is more straightforward.

Jack Hinton of Kenney, Ill., was sentenced to jail indefinitely in January after he fell behind on a court order that he pay \$150 a month on a debt of \$6,440.

According to a court transcript, Hinton, then a self-employed roofing contractor, said he broke his neck and back in a fall from a roof and filed for disability. The judge got upset after learning that Hinton used \$1,000 for other bills rather than his court-ordered payments. Hinton was ordered to the county jail indefinitely until he could come up with \$300.

After three hours in a holding cell, his wife got him released by borrowing \$300 on a credit card. He is considering a challenge to the ruling on constitutional grounds. "I couldn't pay, and I was stuck in jail until I did," he said. "How is that any different from debtors prison?"

In Button's case, the judge threatened him with jail if he didn't pay \$25 a month toward a \$1,865 judgment. After Button twice said, "I can't," Judge Lucy Goffinet responded, "I'm not going to accept, 'I cannot,' and if the next words out of your mouth are 'I cannot,' Mr. Button, then you'll set ... at the Sheriff's Department until you find a way that, yes, you can," according to the transcript.

Alan White, a law professor at Valparaiso University in Indiana, says even the threat of jail for debts is unconstitutional. He also questioned the practice -- common in Minnesota and elsewhere-- of bail being set at the amount of the debt.

"If, in effect, people are being incarcerated until they pay bail, and bail is being used to pay their debts, then they're being incarcerated to pay their debts," he said.

Chris Serres • 612-673-4308

In jail for being in debt

You committed no crime, but an officer is knocking on your door. More Minnesotans are surprised to find themselves being locked up over debts.

As a sheriff's deputy dumped the contents of Joy Uhlmeier's purse into a sealed bag, she begged to know why she had just been arrested while driving home to Richfield after an Easter visit with her elderly mother.

No one had an answer. Uhlmeier spent a sleepless night in a frigid Anoka County holding cell, her hands tucked under her armpits for warmth. Then, handcuffed in a squad car, she was taken to downtown Minneapolis for booking. Finally, after 16 hours in limbo, jail officials fingerprinted Uhlmeier and explained her offense -- missing a court hearing over an unpaid debt. "They have no right to do this to me," said the 57-year-old patient care advocate, her voice as soft as a whisper. "Not for a stupid credit card."

It's not a crime to owe money, and debtors' prisons were abolished in the United States in the 19th century. But people are routinely being thrown in jail for failing to pay debts. In Minnesota, which has some of the most creditor-friendly laws in the country, the use of arrest warrants against debtors has jumped 60 percent over the past four years, with 845 cases in 2009, a Star Tribune analysis of state court data has found.

Not every warrant results in an arrest, but in Minnesota many debtors spend up to 48 hours in cells with criminals. **Consumer attorneys say such arrests are increasing in many states, including Arkansas, Arizona and Washington,** driven by a bad economy, high consumer debt and a growing industry that buys bad debts and employs every means available to collect.

Whether a debtor is locked up depends largely on where the person lives, because enforcement is inconsistent from state to state, and even county to county.

In Illinois and southwest Indiana, some judges jail debtors for missing court-ordered debt payments. In extreme cases, people stay in jail until they raise a minimum payment. In January, a judge sentenced a Kenney, Ill., man "to indefinite incarceration" until he came up with \$300 toward a lumber yard debt.

"The law enforcement system has unwittingly become a tool of the debt collectors," said Michael Kinkley, an attorney in Spokane, Wash., who has represented arrested debtors. "The debt collectors are abusing the system and intimidating people, and law enforcement is going along with it."

How often are debtors arrested across the country? No one can say. No national statistics are kept, and the practice is largely unnoticed outside legal circles. "My suspicion is the debt collection industry does not want the world to know these arrests are happening, because the practice would be widely condemned," said Robert Hobbs, deputy director of the National Consumer Law Center in Boston.

Debt collectors defend the practice, saying phone calls, letters and legal actions aren't always enough to get people to pay.

"Admittedly, it's a harsh sanction," said Steven Rosso, a partner in the Como Law Firm of St. Paul, which does collections work. "But sometimes, it's the only sanction we have."

Taxpayers foot the bill for arresting and jailing debtors. In many cases, Minnesota judges set bail at the amount owed.

In Minnesota, judges have issued arrest warrants for people who owe as little as \$85 -- less than half the cost of housing an inmate overnight. Debtors targeted for arrest owed a median of \$3,512 in 2009, up from \$2,201 five years ago.

Those jailed for debts may be the least able to pay.

"It's just one more blow for people who are already struggling," said Beverly Yang, a Land of Lincoln Legal Assistance Foundation staff attorney who has represented three Illinois debtors arrested in the past two months. "They don't like being in court. They don't have cars. And if they had money to pay these collectors, they would."

The collection machine

The laws allowing for the arrest of someone for an unpaid debt are not new.

What is new is the rise of well-funded, aggressive and centralized collection firms, in many cases run by attorneys, that buy up unpaid debt and use the courts to collect.

Three debt buyers -- Unifund CCR Partners, Portfolio Recovery Associates Inc. and Debt Equities LLC -- accounted for 15 percent of all debt-related arrest warrants issued in Minnesota since 2005, court data show. The debt buyers also file tens of thousands of other collection actions in the state, seeking court orders to make people pay.

The debts -- often five or six years old -- are purchased from companies like cellphone providers and credit card issuers, and cost a few cents on the dollar. Using automated dialing equipment and teams of lawyers, the debt-buyer firms try to collect the debt, plus interest and fees. A firm aims to collect at least twice what it paid for the debt to cover costs. Anything beyond that is profit.

Portfolio Recovery Associates of Norfolk, Va., a publicly traded debt buyer with the biggest profits and market capitalization, earned \$44 million last year on \$281 million in revenue -- a 16 percent net margin. Encore Capital Group, another large debt buyer based in San Diego, had a margin last year of 10 percent. By comparison, Wal-Mart's profit margin was 3.5 percent.

Todd Lansky, chief operating officer at Resurgence Financial LLC, a Northbrook, Ill.-based debt buyer, said firms like his operate within the law, which says people who ignore court orders can be arrested for contempt. By the time a warrant is issued, a debtor may have been contacted up to 12 times, he said.

"This is a last-ditch effort to say, 'Look, just show up in court,'" he said.

Go to court -- or jail

At 9:30 a.m. on a recent weekday morning, about a dozen people stood in line at the Hennepin County Government Center in Minneapolis.

Nearly all of them had received court judgments for not paying a delinquent debt. One by one, they stepped forward to fill out a two-page financial disclosure form that gives creditors the information they need to garnish money from their paychecks or bank accounts.

This process happens several times a week in Hennepin County. Those who fail to appear can be held in contempt and an arrest warrant is issued if a collector seeks one. Arrested debtors aren't officially charged with a crime, but their cases are heard in the same courtroom as drug users.

Greg Williams, who is unemployed and living on state benefits, said he made the trip downtown on the advice of his girlfriend who knew someone who had been arrested for missing such a hearing.

"I was surprised that the police would waste time on my petty debts," said Williams, 45, of Minneapolis, who had a \$5,773 judgment from a credit card debt. "Don't they have real criminals to catch?"

Few debtors realize they can land in jail simply for ignoring debt-collection legal matters. Debtors also may not recognize the names of companies seeking to collect old debts. Some people are contacted by three or four firms as delinquent debts are bought and sold multiple times after the original creditor writes off the account.

"They may think it's a mistake. They may think it's a scam. They may not realize how important it is to respond," said Mary Spector, a law professor at Southern Methodist University's Dedman School of Law in Dallas.

A year ago, Legal Aid attorneys proposed a change in state law that would have required law enforcement officials to let debtors fill out financial disclosure forms when they are apprehended rather than book them into jail. No legislator introduced the measure.

Joy Uhlmeier, who was arrested on her way home from spending Easter with her mother, said she defaulted on a \$6,200 Chase credit card after a costly divorce in 2006. The firm seeking payment was Resurgence Financial, the Illinois debt buyer. Uhlmeier said she didn't recognize the name and ignored the notices.

Uhlmeier walked free after her nephew posted \$2,500 bail. It took another \$187 to retrieve her car from the city impound lot. Her 86-year-old mother later asked why she didn't call home after leaving Duluth. Not wanting to tell the truth, Uhlmeier said her car broke down and her cell phone died.

"The really maddening part of the whole experience was the complete lack of information," she said. "I kept thinking, 'If there was a warrant out for my arrest, then why in the world wasn't I told about it?'"

Jailed for \$250

One afternoon last spring, Deborah Poplawski, 38, of Minneapolis was digging in her purse for coins to feed a downtown parking meter when she saw the flashing lights of a Minneapolis police squad car behind her. Poplawski, a restaurant cook, assumed she had parked illegally. Instead, she was headed to jail over a \$250 credit card debt.

Less than a month earlier, she learned by chance from an employment counselor that she had an outstanding warrant. Debt Equities, a Golden Valley debt buyer, had sued her, but she says nobody served her with court documents. Thanks to interest and fees, Poplawski was now on the hook for \$1,138.

Though she knew of the warrant and unpaid debt, "I wasn't equating the warrant with going to jail, because there wasn't criminal activity associated with it," she said. "I just thought it was a civil thing."

She spent nearly 25 hours at the Hennepin County jail.

A year later, she still gets angry recounting the experience. A male inmate groped her behind in a crowded elevator, she said. Poplawski also was ordered to change into the standard jail uniform -- gray-white underwear and orange pants, shirt and socks -- in a cubicle the size of a telephone booth. She slept in a room with 12 to 16 women and a toilet with no privacy. One woman offered her drugs, she said.

The next day, Poplawski appeared before a Hennepin County district judge. He told her to fill out the form listing her assets and bank account, and released her. Several weeks later, Debt Equities used this information to seize funds from her bank account. The firm didn't return repeated calls seeking a comment.

"We hear every day about how there's no money for public services," Poplawski said. "But it seems like the collectors have found a way to get the police to do their work."

Threat depends on location

A lot depends on where a debtor lives or is arrested, as Jamie Rodriguez, 41, a bartender from Brooklyn Park, discovered two years ago.

Deputies showed up at his house one evening while he was playing with his 5-year-old daughter, Nicole. They live in Hennepin County, where the Sheriff's Office has enough staff to seek out people with warrants for civil violations.

If Rodriguez lived in neighboring Wright County, he could have simply handed the officers a check or cash for the amount owed. If he lived in Dakota County, it's likely no deputy would have shown up because the Sheriff's Office there says it lacks the staff to pursue civil debt cases.

Knowing that his daughter and wife were watching from the window, Rodriguez politely asked the deputies to drive him around the block, out of sight of his family, before they handcuffed him. The deputies agreed.

"No little girl should have to see her daddy arrested," said Rodriguez, who spent a night in jail.

"If you talk to 15 different counties, you'll find 15 different approaches to handling civil warrants," said Sgt. Robert Shingledecker of the Dakota County Sheriff's Office. "Everything is based on manpower."

Local police also can enforce debt-related warrants, but small towns and some suburbs often don't have enough officers.

The Star Tribune's comparison of warrant and booking data suggests that at least 1 in 6 Minnesota debtors at risk for arrest actually lands in jail, typically for eight hours. The exact number of such arrests isn't known because the government doesn't consistently track what happens to debtor warrants.

"There are no standards here," said Gail Hillebrand, a senior attorney with the Consumers Union in San Francisco. "A borrower who lives on one side of the river can be arrested while another one goes free. It breeds disrespect for the law."

Haekyung Nielsen, 27, of Bloomington, said police showed up at her house on a civil warrant two weeks after she gave birth through Caesarean section. A debt buyer had sent her court papers for an old credit-card debt while she was in the hospital; Nielsen said she did not have time to respond.

Her baby boy, Tyler, lay in the crib as she begged the officer not to take her away.

"Thank God, the police had mercy and left me and my baby alone," said Nielsen, who later paid the debt. "But to send someone to arrest me two weeks after a massive surgery that takes most women eight weeks to recover from was just unbelievable."

The second surprise

Many debtors, like Robert Vee, 36, of Brooklyn Park, get a second surprise after being arrested -- their bail is exactly the amount of money owed.

Hennepin County automatically sets bail at the judgment amount or \$2,500, whichever is less. This policy was adopted four years ago in response to the high volume of debtor default cases, say court officials.

Some judges say the practice distorts the purpose of bail, which is to make sure people show up in court.

"It's certainly an efficient way to collect debts, but it's also highly distasteful," said Hennepin County District Judge Jack Nordby. "The amount of bail should have nothing to do with the amount of the debt."

Judge Robert Blaeser, chief of the county court's civil division, said linking bail to debt streamlines the process because judges needn't spend time setting bail.

"It's arbitrary," he conceded. "The bigger question is: Should you be allowed to get an order from a court for someone to be arrested because they owe money? You've got to remember there are people who have the money but just won't pay a single penny."

If friends or family post a debtor's bail, they can expect to kiss the money goodbye, because it often ends up with creditors, who routinely ask judges for the bail payment.

Vee, a highway construction worker, was arrested one afternoon in February while driving his teenage daughter from school to their home in Brooklyn Park. As he was being cuffed, Vee said his daughter, who has severe asthma, started hyperventilating from the stress.

"All I kept thinking about was whether she was all right and if she was using her [asthma] inhaler," he said.

From the Hennepin County jail, he made a collect call to his landlord, who promised to bring the bail. It was \$1,875.06, the exact amount of a credit card debt.

Later, Vee was reunited with his distraught daughter at home. "We hugged for a long time, and she was bawling her eyes out," he said.

He still has unpaid medical and credit card bills and owes about \$40,000 on an old second mortgage. The sight of a squad car in his rearview mirror is all it takes to set off a fresh wave of anxiety.

"The question always crosses my mind: 'Are the cops going to arrest me again?'" he said. "So long as I've got unpaid bills, the threat is there."

cserres@startribune.com • 612-673-4308 ghowatt@startribune.com • 612-673-7192