



HRW: Rubber-stamp justice punishes the poor

New report outlines how debt-buying practices push the poor further into poverty and abuse the court system

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by [Natasja Sheriff](#)

Human Rights Watch said that U.S. courts are failing to protect the rights of poor families caught up in debt buyer lawsuits.

A report released on Thursday by Human Rights Watch (HRW), a New York-based rights group, said the system instead paves the way for the debt-buying industry to abuse the court system while pushing disadvantaged families deeper into hardship.

"I don't have money for my baby's diapers. My lights and gas is off right now. My paycheck is about \$300 a week, and sometimes I only bring home \$220," one woman in Detroit told HRW researchers. "I can't afford [the garnishment] out of my check. I barely even get anything to begin with."

The garnishment — the extraction of funds from paychecks to pay obligations — was approved in a court judgment against her. She told HRW that she was not aware of the judgment and that the wage garnishment was causing her family real hardship.

In Arizona a person told the group, "I'm barely making it. If they garnish my wages, I couldn't even afford to buy groceries. We struggle with that as it is." The judgment against her amounted to \$2,164.

Debt buyers purchase bad debts from creditors, often for pennies on the dollar. Frequently resorting to lawsuits to recoup the debts, debt buyers file hundreds of thousands of lawsuits each year.

The debt-buying industry is worth billions of dollars annually. In 2013 and 2014, one of the country's largest debt-buying firms, Encore Capital, purchased accounts with a value of close to \$100 billion.

On average, the company collects about \$1 billion from U.S. consumers each year, according to the HRW report.

Judgement without evidence

Previous reports showed that the burden of debt-buying lawsuits falls disproportionately on low-income households, often in [black](#) and Latino neighborhoods.

A 2010 [report](#) by the New Economy Project, cited in the HRW report, found that 95 percent of default judgments brought by debt buyers in New York City civil courts from January 2006 to July 2008 were against people from low- or moderate-income neighborhoods.

Debt-buying practices have come under scrutiny recently, with a number of [high profile law suits](#) leading to massive settlements.

But according to HRW, many of the problems lie not with the debt-buying companies but with the courts adjudicating these cases.

"We're not arguing that debt buyers shouldn't be entitled to collect legitimate debts or use the courts to do that," said Chris Albin-Lackey, the report's author. "The point is that there have been so many very profound problems with litigation that debt buyers have brought across the country that courts really need to be treating them with some reasonable degree of vigilance."

More than 100 people were interviewed for the report, including people sued by debt buyers, judges, attorneys, representatives of the debt buyer industry, policymakers and other court personnel. Researchers observed court proceedings in Michigan, Arizona, New York, Maryland and Pennsylvania.

One of the issues raised in the report was the provision of legal advice for unrepresented debtors.

"In Arizona, we have a lot of unrepresented litigants, and it's actually an issue that our whole justice system is focused on," said Heather Murphy, the communications director for the Arizona Supreme Court. "We're really doing all we can to try to assist self-represented litigants, without treading over into giving legal advice."

She said that improving access to justice is goal No. 1 in the state's five-year strategic agenda, Advancing Justice Together, which includes pilot programs to bring legal resource centers to community libraries.

HRW found that a lot of courts are not scrutinizing lawsuits brought by debt buyers, allowing judgments to be passed down without any evidence or documentation against alleged debtors, often without the debtors present.

Many of the courts are essentially rubber-stamping the cases that come before them, said Albin-Lackey.

"If the courts are going to hand down a default judgment to a debt buyer, they should require the plaintiff to submit some kind of credible evidence in support of their claim as well as some evidence that they have actually served notice to the person being sued, so that the defendant's failure to appear is not a result of not being served at all."

According to the report, instances of errors in debt buyer lawsuits across the country are rife, with debt buyers winning judgments filed against the wrong people, for wrong amounts, beyond the statute of limitations or on the basis of false evidence.

In November 2015, for example, MFY Legal Services, the New Economy Project and the Emery Celli Brinckerhoff and Abady law firm [won a class action suit](#) against debt collectors accused of sewer service, or failing to serve notice to debtors of a complaint and then filing a false affidavit that notice was served.

When debtors failed to show up in court, a default judgment was passed against them, leading to wage garnishment and bank account freezes that affected tens of thousands of New Yorkers.

Devastating impact

Part of the problem lies with the original creditors, which are permitted to sell huge portfolios of debt to debt buyers without documentation to prove the debt exists, the amount has been correctly calculated or charged to the correct person.

Efforts are underway at the federal level to introduce more effective regulation of the debt-buying industry, but those efforts can have only a limited impact, according to Albin-Lackey.

Because these cases are heard at state or local courts, "the federal government really has no authority of any kind to change or improve or regulate the way these courts handle these cases, so a huge share of the responsibility lies with state legislatures and state court systems themselves to take steps to grapple with these problems in ways the federal government just can't," he said.

In the majority of cases, alleged debtors have no legal advice or representation, often entering into negotiations with debt buyer attorneys on the advice of the court, without any legal supervision.

Some courts have responded by providing access to pro bono legal services so that debtors have at least some knowledge of their rights and how to handle their case before appearing in court, particularly when they have a valid defense.

The impact of a debt-buying lawsuit on low-income households can be devastating, says Ariana Lindermayer, a consumer rights attorney with MFY Legal Services in New York. "Generally our clients are financially distressed," she said.

"Situations like this can have a snowball effect, so when their bank account is frozen or they're losing a certain percentage of their wages, that can cause them to miss rent payments and incur bounced check fees," she added.

In 2014, New York state announced [reforms](#) to help address some of the problems in consumer debt lawsuits, including steps to ensure debt buyers provide documentation to support their claims in court as well as measures to assist consumers who face lawsuits without representation.

New York has made a lot of progress and taken many meaningful steps to try to remedy the problem, but that is not going to fix everything, said Lindermayer. "Even in New York City, we routinely hear from people who are not served correctly and see evidence of sewer service," she said.

DBA International, a nonprofit trade association representing debt buyer companies, and Encore Capital, one of the country's largest debt-buying companies, did not respond to a request for comment before time of publication.

HRW is calling for changes to legislation and court practices to ensure that debt buyers provide evidence that cases against debtors are accurate.

It is also calling for an end to "judgeless courtrooms" and the practice of encouraging debtors to negotiate with debt buyer attorneys in courthouse hallways and for support for programs providing legal advice to low-income defendants.

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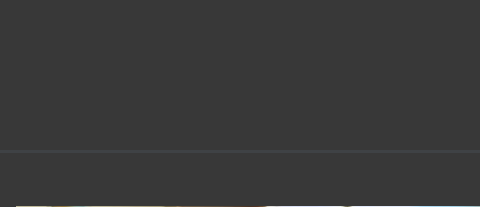
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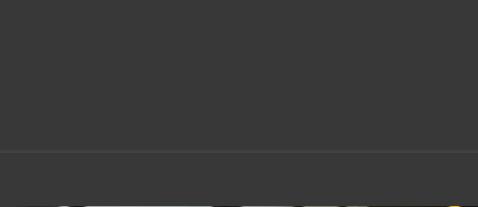
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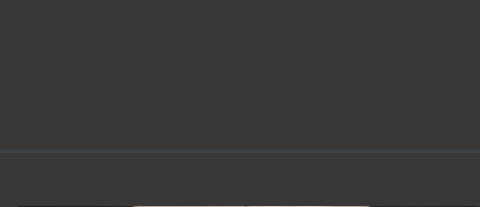
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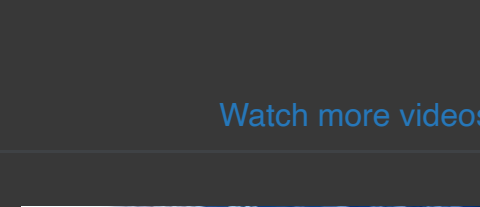
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