

State Laws Governing Debt Collection Lawsuits

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Introduction

Americans are deeply in debt — household debt has continued to increase throughout 2023, with many adults facing increasing balances of consumer debt such as credit card debt, student loans, mortgages, auto loans, and medical debt.¹ Debt collectors are increasingly using the court system to collect consumer debts: the number of debt collection lawsuits has increased dramatically over the past few decades and now accounts for about a quarter of all civil cases.^{2,3} Debt and debt collection judgments can have severe and far-reaching consequences, including wage garnishment, bank account seizure, and inability to secure housing, employment, or medical care.^{4,5} Further, debt has a disproportionate impact on Black, Indigenous, and Latinx communities, contributing to the perpetuation of intergenerational and structural inequity.^{2,6-8}

Debt collection lawsuits are overwhelmingly skewed in favor of plaintiffs suing to recover the debt. Most lawsuits are initiated by a few big debt collector agencies and debt buyers.^{9,10} These plaintiffs are almost always represented by lawyers familiar with the debt collection process, yet more than 90% of defendants do not have a lawyer to represent them.² This imbalance can greatly disadvantage defendants, who are often unfamiliar with laws governing their claims, and who may unknowingly forfeit valid defenses or be tricked or coerced into unfair negotiations and settlements.^{4,11,12} Further, many defendants do not respond to debt collection lawsuits, and some defendants never even realize they had been sued until after judgment has been entered against them, resulting in wage garnishment or seizure of their property.⁴ In several jurisdictions where data is available, more than 70% of debt collection lawsuits end in default judgment — meaning that the plaintiff has won the case because the defendant did not participate² — and more than 95% of debt claims are resolved in favor of the plaintiffs collecting the debt.⁵

Recognizing these dramatic and alarming trends, legal experts and consumer advocates have called for changes to the laws governing debt collection lawsuits to help protect defendants and increase fairness. Several jurisdictions have begun to enact such reforms. Nevertheless, laws governing the debt collection lawsuit process vary widely across the United States, and even within a single state depending on the type of debt, court venue, or amount in controversy. To better understand the legal landscape governing debt collection lawsuits, the Center for Public Health Law Research at Temple University Beasley School of Law (CPHLR) conducted a legal assessment of state statutes, regulations, and court rules governing debt collection lawsuits. This policy brief summarizes key findings of the CPHLR study and provides research and policy recommendations based upon those findings and available evidence evaluating the impact of those laws.

Legal Landscape

The CPHLR dataset provides an overview of the entire lawsuit process in all 50 states and the District of Columbia as of January 1, 2023.¹³ It includes requirements concerning notice, service, answer, judgment, and post-judgment enforcement. It captures laws that are specific to debt collection lawsuits as well as laws governing civil proceedings generally (including, but not limited to, debt claims). The dataset primarily focuses on lawsuits involving lower dollar amounts heard in small claims or limited jurisdiction courts, but also identifies where key differences exist in the litigation process between courts. Please see

the research protocol published with the dataset for more specific information on the coding scheme and inclusion criteria.¹⁴

Every jurisdiction studied has generally applicable civil procedure laws and rules that are not specific to debt collection lawsuits but govern those suits because they apply to civil proceedings generally. Additionally, 41 states and the District of Columbia had laws within the scope of the dataset that specifically govern debt collection lawsuits as of January 1, 2023. However, these laws vary in breadth and depth greatly — 10 states have debt-specific laws that govern just one distinct aspect of debt collection lawsuits, 10 states have debt-specific laws that govern two distinct aspects of debt collection lawsuits, and 21 states and the District of Columbia have debt-specific laws that govern three or more distinct aspects of debt collection lawsuits. For example, New York has laws specific to consumer debt collection lawsuits that govern statutes of limitation, venue, notice, default judgment, and post-judgment enforcement.¹⁵

The types of debt that debt-lawsuit-specific laws apply to also varies considerably. Some states have laws that apply to consumer debt claims generally, while others have laws that apply more specifically to, for example, credit card, medical, payday lender, or small loan debt claims. Twenty-one states and the District of Columbia have laws that apply to debt lawsuits brought by a third party, such as debt buyers, assignees, or collection agencies. Yet even within those laws there is wide variation, with some applying to any claim brought by a third party, while others are further limited to only consumer debt claims brought by a debt buyer, for example.¹⁶

Figure 1. Requirements to Establish Accuracy and Validity of Debt Claims

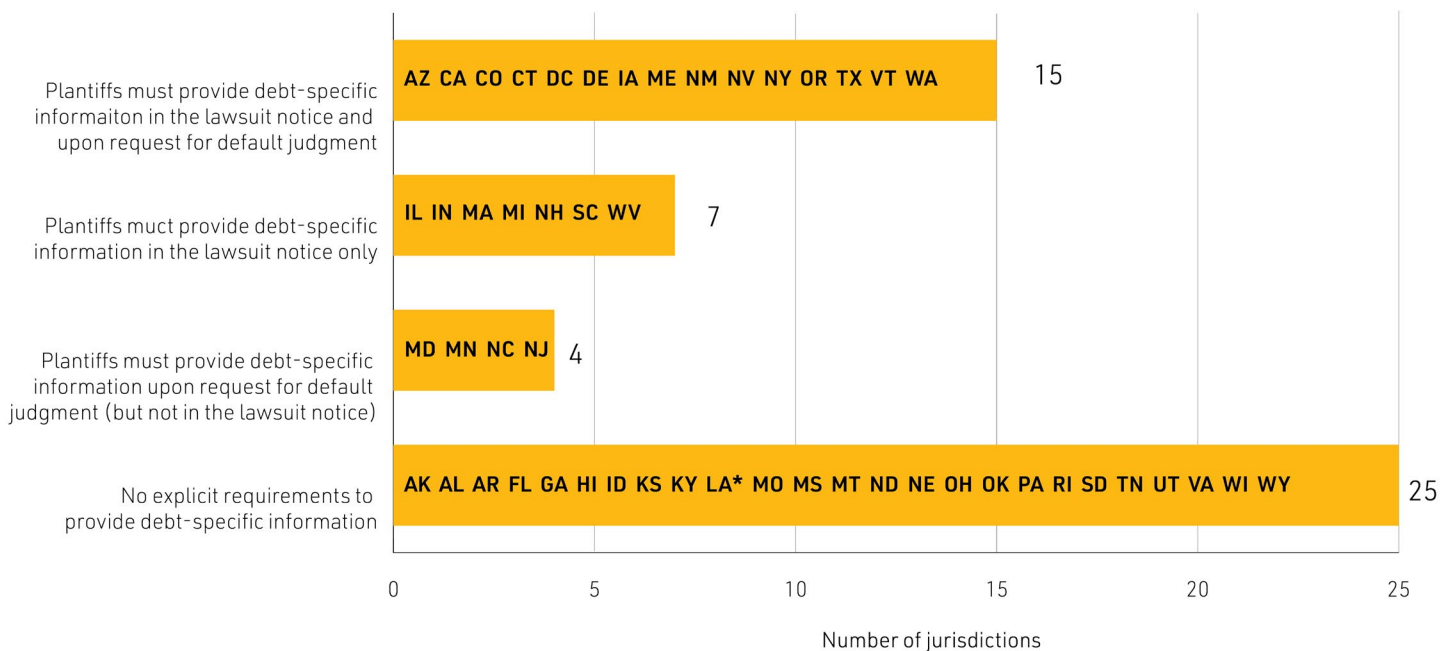


Figure 1. As of January 1, 2023, half of the states and the District of Columbia require certain plaintiffs to provide the court with debt-specific information to establish the accuracy and validity of their claims. Note: the lack of any explicit debt-specific requirement does not necessarily mean that a plaintiff may obtain judgment automatically—plaintiffs may still be subject to generally-applicable default judgment and evidentiary requirements. Source: CPHLR’s 50-state policy analysis.

*Although Louisiana has a law requiring the plaintiff to submit “proof” to the court upon request for default judgment in actions based on an open account or promissory note, the law does not specify what information or evidence needs to be submitted.

Just more than half of jurisdictions have taken steps to address the imbalance of power and outcomes in debt collection lawsuits by enacting laws and rules that require certain plaintiffs (often just debt buyers or plaintiffs bringing consumer debt claims) to provide specific documentation to support the accuracy and validity of debt claims. In total, 25 states and the District of Columbia require debt-specific information to be provided to the court at some point in the lawsuit process, regardless of whether the defendant has answered the claim or requests such information: 14 states and the District of Columbia require debt-specific information to be provided at both the notice stage and the default judgment stage, seven states require debt-specific information at the notice stage only, and four states require debt-specific information upon request for default judgment but not at the notice stage (Figure 1). Twenty-one states and the District of Columbia require at least some of the debt-specific information to be sworn or affirmed under penalty of perjury (typically by providing the information in an affidavit).

The documentation or proof that a plaintiff is required to provide varies dramatically among these jurisdictions. The requirements can include information that supports the amount of the debt or claim (such as information about payments and fees or a more detailed itemization of all charges), shows the plaintiff is entitled to bring the claim (such as documentation showing the chain of ownership of the debt), and shows the defendant owes the claim (such as the account number, a monthly statement, or the original written agreement between the defendant and the original creditor). These requirements also vary based on the court in which the claims are brought, with some laws applying only to a small claims or limited jurisdiction courts.

Even beyond these documentation requirements, the laws and rules that apply to a debt collection lawsuit can vary significantly depending on the court in which the claim is brought. Lawsuits brought as small claims actions are typically subject to less formal and more relaxed rules, which may be easier for unrepresented defendants to navigate — but may also make it easier for debt collectors to obtain default judgments. The CPHLR study shows that there is great variance as to whether and when a plaintiff may choose which court in which to file the lawsuit. Several states deter consumer debt collectors from filing in small claims court through various restrictions: 16 states prohibit third parties (such as debt buyers or assignees) from filing in small claims court, 12 states prohibit plaintiffs from being represented by a lawyer in small claims court, and eight states impose a limit on the number of filings a single plaintiff can bring in small claims court per week, month, or year (Figure 2). On the other hand, seven states and the District of Columbia require all civil claims (including debt claims) under a specified amount to be filed as small claims.

Figure 2. Small Debt Claims Restrictions



Figure 2. As of January 1, 2023, 19 states imposed one or more of these restrictions on debt collection plaintiffs' ability to file lawsuits in small claims courts. Source: CPHLR's 50-state policy analysis

Evidence

Although several jurisdictions have begun to implement debt collection lawsuit reforms, research studying the effects of those reforms is sparse and mixed. One study found that in California, reforms that required plaintiffs to provide the court with certain evidence supporting the debt claim were correlated with a decrease in default judgments.^{17, 18} Those reforms also may have led to an initial reduction in overall debt collection filings, but debt collectors adapted to the new requirements and the number of filings eventually bounced back.¹⁷ Another study in New York City found that one of the state's reforms — requiring the court to mail an additional notice about the debt collection lawsuit process to the defendant after service of the summons and complaint — led to an increase in defendants appearing in court and defending against the claims.¹⁹ In Minnesota, researchers found that most debt buyers complied with at least some of the state's new documentation requirements, yet courts found it difficult to review the documentation.²⁰ Additionally, the researchers found that some debt buyers did not comply with the requirements but still received default judgments in their favor.²⁰ These studies indicate that debt collection lawsuit reforms show promise in improving outcomes for defendants and mitigating the imbalance of power between plaintiffs and defendants; but overall, the existing research on these reforms is limited.

However, there is significant evidence that the current civil legal systems across the nation are skewed in favor of debt collection plaintiffs, and that generally applicable, non-debt-specific, civil procedure laws and rules contribute to that imbalance. For example, at least one study has found that civil procedure laws allowing plaintiffs to choose the court in which to initiate a suit can have a significant impact on the outcomes of debt collection cases: in Minnesota, defendants were more likely to answer the lawsuit in small claims court than in a general jurisdiction court, resulting in a still high but significantly lower rate of default judgments. This disparity may have been due to greater complexity in the general jurisdiction court's civil procedure rules and high answer fees.²⁰ Additionally, service laws likely have a great impact on debt collection lawsuit outcomes. Multiple studies have demonstrated that defendants are often unaware that a debt collection lawsuit has even been filed against them: some plaintiffs intentionally falsify service affidavits (called “sewer service”),^{4, 19, 21} and one study found that personal service to the defendant was achieved in only 6% of cases.²² These examples highlight how debt collection lawsuit injustices intersect with and are compounded by issues with civil legal systems generally.

Policy Recommendations

Given the persistent imbalance in debt collection lawsuit outcomes, policymakers and courts should continue to enact, implement, and evaluate reforms to improve the civil legal system both generally and specifically for debt litigation. These reforms can improve informed decision-making for consumers on whether and how to participate in their lawsuit, increase engagement throughout the litigation process, and ensure adequate judicial review of these lawsuits. Individual states such as Michigan,²¹ Minnesota,²⁰ Utah,²³ and others have analyzed their court data and conducted interviews with legal stakeholders to identify data-informed solutions. Additionally, policymakers and courts can use national resources as a starting point. Building upon the available evidence and recent reforms that have been enacted in several jurisdictions, the Uniform Law Commission has developed a Uniform Consumer Debt Default Judgments Act.²⁴ The act requires plaintiffs to provide detailed information in the lawsuit complaint establishing the amount of the debt, ownership of the debt, and that the defendant owes the debt. A court may not enter default judgment unless the complaint (or an amended complaint) complies with those requirements and the plaintiff has provided notice to the defendant about the repercussions of a default judgment. Notably, the act applies to all plaintiffs suing to collect consumer debt — it is not limited to claims brought by a debt buyer or other third party. These recommended requirements align with those of several other legal experts and consumer advocates and are a good first step in reforming the debt collection lawsuit process.^{2, 4, 7, 19, 22, 25}

Policymakers and court officials can also see how their state's policies rank, identify areas for reform, and prioritize next steps by utilizing the National Center for Access to Justice's new index of debt litigation policies.²⁶ In addition, policymakers, policy analysts, and researchers can use the CPHLR dataset to conduct policy landscape analyses and state comparisons. Policymakers and court officials should also

work toward better implementation and enforcement of these legal reforms, since at least one study has indicated that not all plaintiffs are fulfilling debt claim evidentiary requirements.²⁰ Policymakers should also consider other efforts to improve the civil legal system more generally, especially by revisiting service of process requirements, the use of plain language in court documents, and expanding accessibility of the courts overall. Further, legal reforms must be rigorously evaluated to determine their impact on debt collection lawsuit outcomes.

Research Agenda

The dataset discussed in this brief provides a baseline for further study and comprehensive, comparative research on the effects of laws governing debt collection lawsuits. Currently available research tends to focus on general effects of reforms and overall outcomes within a single jurisdiction — there is a dearth of studies comparing the legal landscape, and resulting outcomes, across jurisdictions. Additionally, the little research available on the outcomes of legal reforms tends to focus on the impact of those reforms more broadly — rather than pinpointing exactly which pieces of those reforms were more (or less) effective.

Given the wide variation of these laws across jurisdictions and even across different court systems within a single jurisdiction, a full-scale legal epidemiological study using policy surveillance data can result in more robust comparative evaluations of the law's effect across jurisdictions and over time. Such research can better measure the outcomes of specific provisions of laws and court rules, demonstrating with precision which reforms are effectively combatting the severe imbalance of power in debt collection lawsuits — and which are failing to make a difference for consumer defendants facing these lawsuits.

Further, future research should examine whether and how these legal reforms are affecting currently-existing disparities in outcomes — are these reforms reaching populations most negatively impacted by debt? Or are they perpetuating existing disparities? Policymakers and court officials have shown a willingness to engage with these reforms, so it is crucial that any future proposed reforms are supported by data.

Conclusion

Debt collection lawsuits account for a significant portion of civil litigation in the United States, yet there is a deep imbalance of power in these cases. Several states have implemented laws and rules aiming to make the process fairer, but most stages of debt collection lawsuits remain governed by general civil litigation rules. Evidence suggests that certain legal reforms may help improve the system, but ultimately the current legal landscape fails to adequately protect debt collection defendants. As more jurisdictions consider policy changes, future research studying the impact of specific provisions of laws that govern these lawsuits across jurisdictions can lead to a better understanding of their effects and result in better, evidence-based policy responses.

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