Debt, identity theft, and consumer finance are some of the most common legal issues facing Americans and are dominating civil courts (2014 Civil Legal Needs Study Update Committee, 2015; Rickard, Pew Charitable Trusts, 2020). Approximately one-third of Americans have debt currently in collection, and existing wage gaps exacerbate the legal implications of debt in low-income households and communities of color (LaVoice & Vamossey, 2019). While common, more than 75 percent of those facing consumer finance issues do not seek legal help. Studies show that when alleged debtors receive legal representation, they are less likely to experience a default judgement and can avoid long-term financial and psychological consequences (Holland, 2014; Kiel & Waldman, 2015).

Page 1 of this research brief provides some research highlights; pages 2-3 a narrative overview; page 4 a featured federal resource; page 5 other helpful resources; and pages 6-17 summaries of the curated studies. All endnotes are to sources not included in our summaries section.

RESEARCH HIGHLIGHTS:

- “Over 95 percent of debt collection suits end in favor of the collector, usually because alleged debtors do not mount a defense. In many cases, defendants did not know they had been sued. And, of course, collectors have little incentive to give proper notice to the defendants” (American Civil Liberties Union, 2018).

- “Defendants with legal representation often fare reasonably well against debt buyers in court. Legal aid and consumer rights attorneys across several states told Human Rights Watch that they win the overwhelming majority of the cases they defend against debt buyers. Some attorneys reported that if they advanced a vigorous defense, debt buyers often simply dropped the case” (Human Rights Watch, 2016).

- “Slightly more than one-third of the survey participants reported one or more problems as a result of not paying the money they owed. … To address a debt problem, approximately 5.0% sold their personal property or took out a payday loan” (DC Consortium of Legal Services Providers, 2015).

- “99 percent of domestic violence survivors report that they were subjected to economic abuse at some point during their relationship. Identity theft and other forms of financial exploitation are common within families and between intimate partners because close relationships often provide easy access to confidential information” (Dranoff, 2014).

- “Of the 85% of people who did not file a response, debt buyers obtained a judgment by affidavit, consent, default, or trial 73% of the time, and recovered 82% of the amount sought in the complaints. Defendants who filed a response had better outcomes than those who did not file a response, but the outcomes were poor overall. Of the 13% of defendants who proceeded pro se (by filing a response called a Notice of Intention to Defend), debt buyers obtained judgment by affidavit, consent, default, or trial 47% of the time, and recovered 62% of the amount sought in the complaints” (Holland, 2014).
Approximately one-third of Americans have debt currently in collection with an average amount of $1,450. It is thus not surprising that some of the most common legal issues Americans face include being harassed by creditors or collection agencies, bankruptcy, and being the target of unfair or deceptive lending practices (2014 Civil Legal Needs Study Update Committee, 2015). Using 2013 credit bureau data from TransUnion to see how many Americans were at least 30 days late on a non-mortgage bill payment, the Urban Institute found that 5.3 percent of Americans are at least 30 days late on a non-mortgage bill payment, with an average amount of $2,258. People with two types of delinquent debt—debt in collections and debt past due—owe an average of $9,123 and $4,641, respectively.

Studies find that certain populations are more vulnerable to consumer finance issues, such as identity theft and fraud, elder abuse, student loans, criminal justice, housing, medical debt and employment. One population is particularly vulnerable to identity theft—domestic violence survivors, who often experience financial abuse and if they leave, their abuser may take their identity and rack up debt on credit cards (Dranoff, 2014). Further, identity theft is often concentrated in lower- and moderate-income households: 43 percent of households who had experienced identity theft had household incomes less than $75,000. In addition to consumer finance more generally, debt collection lawsuits are disproportionately brought against people of color (Kiel & Waldman, 2015).

Debt is also geographically concentrated, and In Louisiana, the state with the highest proportion of individuals in debt, 46 percent of residents have debt that has gone into collections. The DC Consortium of Legal Services Providers writes that that 6.1 percent of DC households reported debt as their most serious problem (DC Consortium of Legal Services Providers, 2015). It is also often caused by other underlying issues: The National Consumer Law Center writes, “A single episode of unemployment, illness, disability, divorce or other financial difficulty may trigger forceful collection activity” (2016).

The majority of consumer debt in collection is not due to voluntary overspending, but moments of unanticipated vulnerability and desperation, such as unemployment, illness, or divorce. Of debt in debt collection, the majority is medical debt. In 2014, national credit reports showed that medical debt accounted for more than 50 percent of debt collections and that almost one-fifth of consumers with a credit report had a delinquent medical bill in collection. This is consistent with the Federal Reserve’s report that nearly half of Americans would not have sufficient savings to cover an unexpected expense of $400 without incurring a debt.

The largest players in the debt collection world—debt buyers—are among the heaviest users of our nation’s court systems (Human Rights Watch, 2016). This industry is highly concentrated: in 2009, 10 debt buyers accounted for approximately 80 percent of all debts purchased in the United States. Default rates are high; in one study in Boston Municipal Court, researchers found a default rate of 92.5 percent (Federal Trade Commission, 2010).

After a judgment (whether by default or not) against the alleged debtor, plaintiffs and courts engage in a range of post-disposition actions to obtain the judgment owed, including wage garnishment and civil arrest warrants. One in 14 workers in the United States have some of their wages garnished due to a court order. The top court order is child support, but the second most common form of wage garnishment by court order is debt. Court judgments may have high interest rates, meaning that when parties agree to a payment plan, that plan may result in the consumer never actually paying off the underlying principal debt. The stress of dealing with debt collection and unsecured debt is associated with poor health outcomes, including depression and suicidal ideation.
DATA AND STUDIES SHOW LEGAL AID HELPS:

The National Center for State Courts has estimated that debt collection cases comprise 37 percent of the civil docket nationally.\textsuperscript{11} This may be an underestimate: Massachusetts courts, like other states, see a high number of suits from debt collectors. The Boston Globe reviewed civil lawsuits filed in the state between 2004 and 2013 and found that of 1.9 million lawsuits filed, almost two-thirds were filed by professional debt collectors.\textsuperscript{12} Court processes are generally passive and do not involve neutral review to ensure that the debt is valid – debt collectors do not have to prove that they own the debt at issue. Informal rules in court proceedings, as in small claims sessions, can exacerbate existing power imbalances and create opportunities for the abuse of power.\textsuperscript{13}

A 2020 Pew study of court records found that national debt collection lawsuits are dominating national courts, and in some states, the volume of debt claims more than doubled between 2014 and 2018 (Rickard, 2020). Despite the common experience of issues related to consumer finance, more than 75 percent of individuals with debt do not seek legal help (2014 Civil Legal Needs Study Update Committee, 2015). Not having a lawyer can significantly negatively impact individuals. In fact, less than 10 percent of defendants in debt collection lawsuits have legal representation, in comparison to nearly all plaintiffs who win in an overwhelming majority of cases (Rickard, 2020). This two-tiered system has disproportionate effects on marginalized communities: In some cities, the rate of default judgments in mostly Black communities doubles that in predominantly white ones. Because collectors often lack supporting evidence for erroneous debt claims, defendants who have access to pro se advice and legal representation are more likely to challenge unsubstantiated cases against them, reach a settlement, and even win their case (Kiel & Waldman, 2015; Holland, 2014).\textsuperscript{14} The Human Rights Watch (2016) study on debt-buying in the US found that most alleged debtors self-represented if they attended court. However, when the alleged debtors had access to legal aid and representation, they were more successful in fighting the claim and having the case dismissed.

Legal aid services can help resolve debts and provide advice. As other JGP research summaries show, when legal aid can address family law issues, help modify child support payments, or reduce barriers to employment, legal aid can help individuals avoid or mitigate the effects of debt.

Studies also show that when individuals have access to a lawyer and legal aid, they are less likely to experience a default judgment and are more likely to be dismissed without prejudice. More specifically, one study analysed 507 cases in Dallas County Courts (Spector, 2011). It found that 344 (~77 percent) of the defendants did not appear in court. Further, a dismissal without prejudice occurred in 51.25 percent of cases in which a defendant was served and jumped to 61.77 percent when the defendant appeared. It increased to 75 percent when an attorney was present. A default judgment occurred in 39.46 percent of cases.

In addition, under the law, a person cannot be jailed for failing to pay a debt if there is no ability to pay. However, consumers without legal assistance are unlikely to know how to fully protect themselves – see case studies from ACLU’s \textit{Pound of Flesh} report (2018).

However, many legal aid organizations report challenges to work on debt defense work. The ability to work on consumer finance issues is related to the resources an organization has: The National Consumer Law Center found that 94 percent of legal aid organizations reported that a lack of funding and staff was a challenge to debt defense work (2016). Another opportunity is fee-shifting through the federal Fair Debt Collection Practices Act and state statutes that can permit consumer attorneys to do debt defense work and bring affirmative cases on a contingency basis.
FEATURED FEDERAL RESOURCES:
U.S. Department of Justice, Office for Victims of Crime Vision 21 Report

Vision 21: Transforming Victim Services (TVS) outlines a comprehensive and systematic approach to change how we meet victims’ needs. TVS grew out of a series of meetings that were sponsored by OVC. The discussion and research focused on the role of victim assistance, how to better serve victims, addressing issues in the field, and identify emerging issues in the field.

This report dedicates an entire chapter to meeting the holistic legal needs of crime victims. The TVS statement reads: “Every state will establish wraparound legal networks that will help ensure that crime victims’ rights are enforced and that victims of crime receive the broad range of legal services needed to help rebuild their lives in the aftermath of crime” (p. 9). This chapter summarized efforts made within the last decade to secure crime victims’ rights, the difficulties victims face in navigating the justice system, and ways that legal networks can better address crime victims’ needs.

Highlights:

- “A staggering 42 percent of victims never report serious violent crime to law enforcement. We need to know why. Stakeholders described a maze of overlapping, complex legal issues facing victims; for example, a single victimization can involve immigration status, civil legal assistance, administrative law remedies, and rights enforcement” (p. vi).
- “Victims of crime all too often face a perplexing maze of coexisting, overlapping, and complex legal issues after their victimization. They must navigate multiple systems (i.e., the criminal, civil, and administrative justice systems), each with its own requirements and processes. One case of victimization may produce myriad legal issues for the victim, including orders of protection, victims’ rights enforcement, compensation, employment, housing, home foreclosure, spousal support, and child custody, visitation, and dependency” (p. 12).
- “Serving crime victims in indigenous communities presents a special challenge to all members of the victim service community, particularly providers of legal services. American Indian and Alaska Native populations suffer significantly higher crime rates than the rest of the Nation—a fact that underscores the urgency of finding ways to deliver services more successfully or, in the case of legal assistance, to deliver services at all” (p. 12).
- “Compounding the lack of legal representation for crime victims is the absence of a single point of entry through which victims of all types of crime may access services to address the wide range of legal needs they may have as the result of their victimization” (p. 14).
- “A coordinated, collaborative, and holistic legal response has the potential to serve victims far better through an inherent capacity to provide the type of legal assistance needed at any given time. A network approach would also ensure that victims are connected to community legal resources that can help them address their administrative, civil, and other legal issues” (p. 14).

Federal Trade Commission (FTC), Consumer Sentinel Network Data Report (January 2020)

The FTC hears from consumers across the country about their experiences in the marketplace. You can report fraud to the FTC at ReportFraud.ftc.gov. The reports go into the Consumer Sentinel Network, which aims to make federal, state, and local law enforcement agencies more effective by making consumer reports available to participating agencies through the FTC. In 2019, the Consumer Sentinel Network received 3.2 million consumer reports. This data was aggregated with reports from federal, state, local, and international law enforcement agencies, as well as other organizations, like the Better Business Bureau and Publishers Clearing House, and summarized in the Consumer Sentinel Network Data report. The report includes information on fraud, identity theft and consumer issues, sorted into 29 categories.

Key findings:

- "Younger people (33%) reported losing money to fraud more often than older people (13%)…But when people aged 70+ had a loss, the median loss was much higher." (p. 5)
- The top three categories of consumer reports were: Identity Theft (20%); Imposter Scams (20%); Telephone & Mobile Services (5%). (p. 5)
- Between 2014 and 2019, the number of fraud, identity theft and other reports increased by 22 percent from 2.5 million to 3.2 million. (p. 6)
- Debt collection complaints were among the top 10 categories reported in 2019, at 4% of total reports. (p. 7)
- Of nearly 1.7 million fraud reports, 388,588 reports (23%) had a financial loss, totaling $1.9 billion, or a median loss of $320. (p. 10)


To access updated statistics on fraud, identity theft, and other consumer protection problems reported in your state and metro area, go to FTC’s Explore Data page.
HELPFUL RESOURCES:

- The Urban Institute has an interactive map that uses credit bureau data and the Census Bureau’s American Community Survey (ACS) to break down medical, student, auto, and consumer debt by state and demography.\(^\text{15}\)
- The FTC has a collection of interactive maps and other dashboards (the “Consumer Sentinel Network”) that show the types of fraud, identity theft, debt collection, and other consumer protection problems reported by states and large metropolitan areas.\(^\text{16}\) The FTC also has an Explore Data page with updated statistics on fraud, identity theft, and other consumer protection problems reported in your state and metro area.
- The FTC also has a resource that can help someone obtain an Identity Theft Report to submit to their creditors credit bureaus, as well as a personalized identity theft recovery plan which includes instructions and templates to letters to send to creditors.\(^\text{17}\)
- The Consumer Financial Protection Bureau has a page about how to find an attorney and a state-by-state listing of free legal aid programs among other resources.\(^\text{18}\)
- Legal Services Corporation has collected client success stories here.\(^\text{19}\)
- For more information about civil legal aid messaging, communications, and story-telling, go to the Voices for Civil Justice and All Rise for Civil Justice websites.\(^\text{20}\)
- The National Legal Aid & Defender Association’s LegalAidResearch website is a comprehensive repository of legal aid related research covering an array of topics, including consumer issues.\(^\text{21}\)
- The National Center for State Courts (NCSC) reports 2018 data on state court civil caseloads and other national trends in the State Court Caseload Digest.
- Fines & Fees Justice Center is the national center for advocacy, information, and collaboration regarding fines and fees in the justice system that devastate the lives of millions of people who cannot immediately pay. The outstanding debt can lead to additional fees, license suspensions, loss of voting rights and, far too frequently, arrest and jail. Their Clearinghouse is a library of information about efforts to reform fines and fees in the legal system.

Endnotes

1. Hannah Hassani and Signe-Mary McKernan, 71 million US adults have debt in collections, Urban Institute (July 19, 2018), available at https://www.urban.org/urban-wire/71-million-us-adults-have-debt-collections
3. Supra note 1
5. Supra note 2.
15. Urban Institute, Debt in America: An Interactive Map (December 17, 2019), available at https://apps.urban.org/features/debt-interactive-map?type=overall&variable=pct_debt_collections
SUMMARIES OF KEY STUDIES


This study examined debt collection lawsuits and trends. While the available data point to gaps in state-level collection and reporting of debt claims, they also illustrate striking trends and challenges in the civil legal system.

Methodology:
The study analyzed debt collection lawsuit trends and identified common characteristics using a three-step approach. The research methodology consisted of: a literature review of about 70 peer-reviewed and gray studies; semi-structured interviews with state and local court experts; and data collected from the National Center for State Courts (NCSC) and state court statistical reports from 50 U.S. states and the District of Columbia.

Highlights:
- “Fewer people are using the courts for civil cases. Civil caseloads dropped more than 18 percent from 2009 to 2017. Although no research to date has identified the factors that led to this decline, previous Pew research shows lack of civil legal problems is not one of them: In 2018 alone, more than half of all U.S. households experienced one or more legal issues that could have gone to court, including 1 in 8 with a legal problem related to debt.” (pg. 1)
- “Debt claims grew to dominate state civil court dockets in recent decades. From 1993 to 2013, the number of debt collection suits more than doubled nationwide, from less than 1.7 million to about 4 million, and consumed a growing share of civil dockets, rising from an estimated 1 in 9 civil cases to 1 in 4. In a handful of states, the available data extend to 2018, and those figures suggest that the growth of debt collections as a share of civil dockets has continued to outpace most other categories of cases.” (pg. 1)
- “People sued for debts rarely have legal representation, but those who do tend to have better outcomes. Research on debt collection lawsuits from 2010 to 2019 has shown that less than 10 percent of defendants have counsel, compared with nearly all plaintiffs. According to studies in multiple jurisdictions, consumers with legal representation in a debt claim are more likely to win their case outright or reach a mutually agreed settlement with the plaintiff.” (pg. 2)
- “Debt lawsuits frequently end in default judgment, indicating that many people do not respond when sued for a debt. Over the past decade in the jurisdictions for which data are available, courts have resolved more than 70 percent of debt collection lawsuits with default judgments for the plaintiff. Unlike most court rulings, these judgments are issued, as the name indicates, by default and without consideration of the facts of the complaint—and instead are issued in cases where the defendant does not show up to court or respond to the suit.” (pg. 2)
- “Default judgments exact heavy tolls on consumers. Courts routinely order consumers to pay accrued interest as well as court fees, which together can exceed the original amount owed. Other harmful consequences can include garnishment of wages or bank accounts, seizure of personal property, and even incarceration.” (pg. 2)
This study uses a novel data set to document differences in debt collection between predominantly Black and non-Black neighborhoods in Missouri. It also aims to identify the ways in which differences in debt collection cases are neighborhood-level differences in income and credit score distributions, default rates, lending institutions, and the debtors’ likelihood to contest the debt in court.

**Methodology:** The authors combined multiple data sources, including: debt collection court cases filed in Missouri from 2004 to 2013; Experian credit report data; and local data to identify the number of lending institutions and online credit markets as a proxy for a neighborhood’s financial well-being. The authors also used debt collection judgment data from New Jersey and Cook County, Illinois.

**Highlights:**
- “The distinct set of disadvantages experienced by black Americans increases their likelihood of experiencing negative financial shocks and limits their ability to mitigate the impact of such shocks. This ultimately makes them more likely to enter into default and have unpaid balances sent to collections.” (p. 1)
- “We find that the judgment rate is 85% higher in majority black neighborhoods than in majority non-black neighborhoods. Over half of this baseline judgment gap can be explained by differences in incomes, credit scores, default rates, and housing values across black and non-black neighborhoods; however, even after controlling for these differences, majority black neighborhoods have approximately 40% more judgments than non-black neighborhoods.” (p. 2)
- “This figure documents a negative relationship between the judgment rate and median income, with the judgment rate decreasing as median income increases. However, even looking at neighborhoods with similar income levels, we see higher judgment rates for majority black neighborhoods.” (p. 15)
- “...[R]acial bias is evident...with majority black neighborhood having higher judgment rates than non-black neighborhoods with similar median credit scores, suggesting that differences in credit scores may not be the primary mechanism driving the racial disparity in debt collection cases.” (p. 15)
- Supplemental data from New Jersey and Cook County, Illinois “shows that judgments per 100 people are larger in majority black neighborhoods compared to majority non-black neighborhoods, while median income and median credit score tend to be lower. These results suggest that judgments are 30% higher in majority black neighborhoods compared to majority white ones.” (p. 25)

This report presents 2016 data on identity theft, the most recent year for which this data is available. The report includes the number of those who experienced identity theft, the amount of financial loss and other consequences, how many were reported to credit card companies, credit bureaus, and the police, how much distress those who experienced identity theft reported, the lifetime rates of identity theft, and what actions individuals can take to prevent identity theft. The BJS finds that 10 percent of Americans experienced identity theft within the last year; and of them, 12 percent experienced out-of-pocket losses and 10 percent experienced “severe emotional distress” as a result (p. 1).

**Methodology:**
Data used for the report was obtained from the National Crime Victimization Survey (NCVS), conducted annually by the Bureau of Justice Statistics (BJS). The NCVS collects data from a nationally representative sample of persons age 12 or older, and participants are interviewed (in person or by phone) on their experiences of victimization every six months for a 3.5-year period. Participants are
asked about the frequency, characteristics, and consequences of nonfatal crimes they have been victim to. The 2019 Bureau of Justice Statistics report analyzed information offered by individuals ages 16 and older who indicated they were victims of identity theft in 2016.

**Highlights:**

- “In 2016, 10% of persons age 16 or older had been victims of identity theft during the prior 12 months” (p. 1).
- “For 85% of identity-theft victims, the most recent incident involved the misuse of attempted misuse of only one type of existing account, such as a credit card or bank account” (p. 1).
- “One percent of persons age 16 or older experience the opening of a new account or other misuse of personal information apart from misuse of an existing account” (p. 1).
- “An estimated 12% of identity-theft victims had out-of-pocket losses of $1 or more; 88% either had no out-of-pocket losses or had losses of less than $1” (p. 1).
- “In addition to direct financial loss, 5% of all identity-theft victims reported indirect losses associated with their most recent incident of identity theft. Victims who experienced an indirect loss of at least $1 had an average indirect loss of $250, with a median of $20” (p. 1).
- “More than half (55%) of identity-theft victims who resolved associated financial or credit problems did so in one day or less” (p. 1).
- “About 10% of identity-theft victims said they experienced severe emotional distress as a result of the incident” (p. 1).
- “An estimated 7% of identity-theft victims reported the crime to the police” (p. 1).


The report contains statistics about consumer fraud experienced by older Americans; the types of fraud targeted toward older consumers; the types of fraud where older consumers are more likely to report losing money; and average monetary loss. It also contains information about the FTC’s Every Community Initiative, the primary program leading the agency’s efforts to protect older consumers. The FTC coordinates with law enforcement agencies to track and stop scams being committed against older consumers, and partners with organizations across the US to run educational community outreach programming.

**Methodology:**

Using information from the Consumer Sentinel Network about reports filed by older adults in 2017, the FTC identified patterns and trends to characterize fraud affecting older consumers.

**Highlights:**

- “Sentinel report data suggest that older adults are good at reporting frauds they encounter. In 2017, older adults were more likely to report fraud to Sentinel than younger people, and in those reports, indicated less frequently that they had lost money. … While consumers ages 20-59 more frequently report losing money in their complaints, older adults reported much higher dollar losses, individually, than younger consumers” (p. 4)
- “In 2017, the largest individual losses to fraud were reported by older consumers. … Consumers ages 80 and older report the largest median losses of $1,100, over twice the median loss amount reported by each of the age groups under age 60” (p. 6)
- “Telephone scammers are a tremendous problem for consumers of all ages. People ages 60 and older who reported a fraud loss reported that the phone was the top method of contact by the
scammers. In addition, the 2017 Sentinel data shows that seniors reported far greater median losses to phone scammers than their younger counterparts” (p. 9).

- “[S]eniors most often reported paying money to a fraud with a credit card, wire transfer, or gift card/reload (“Prepaid Card”)” (p. 9).
- Recently-filed consumer protection cases involve a range of matters including false business opportunities, veteran charity scams, mortgage relief assistance scams, misleading dietary supplement advertisements, aggressive debt collection, credit schemes, and data privacy (p. 12).


Devesh Raval, an Economist from the Consumer Protection division of the FTC, conducted a study on rates of consumer victimization in heavily minority areas compared to non-minority areas. Using entry and exit models, he finds that the consumer victimization rate for African Americans is about 3.5 times as large for areas that are 100 percent black compared to 0 percent black. Zip codes with a 25-50 percent share of Hispanic residents have a victimization rate about 50 percent higher as compared to areas that are 0 percent Hispanic. While the victimization rates of both groups are higher than those of predominantly white communities, African Americans and Hispanics tend to file fewer complaints overall. Raval proposes this may be due to a lower general trust in others, rather than mistrust of government or lacking information. Interactions between victimization, complaints, education, income, and debt were also identified.

Methodology:
This data from this study originated from the 2008-2012 American Community Survey, the 2000-2016 General Social Survey, and complaints filed to the Consumer Sentinel Network. Rather than using complaint rates directly (as these typically do not account for the factor of self-selection), Raval created an implied victimization rate by multiplying community complaint rate weights by complaints filed in Sentinel and identified differences between communities using exit models. Raval also controls for demographic characteristics to more directly capture the differences between communities' propensities to complain.

Highlights:
- Areas with a greater concentration of African Americans and Hispanics file consumer complaints at a lower rate compared to their rate of victimization. “I find that the complaint rate falls by 61% relative to the victim rate as the percentage of black residents rises from 0% to 100%, and by 43 as percentage of Hispanic residents rises from 0% to 100%” (p. 3).
- Raval did not find that mistrust of government or differences in information available (for example, checking bank statements or knowing how to file a complaint) acted as potential explanations of these differences (p. 21).
- A low level of evidence was found for differences in social trust. Quantitative and qualitative findings indicate that minority groups have lower levels of trust in the general population compared to whites. “The lack of trust […] could lead minorities to feel that victimization is ‘normal’ and so their own fault for being too trusted, rather than abnormal and work correcting by complaining to the authorities” (p. 27).
- Some models included income, debt, and levels of education to determine whether there was interaction between these factors and complaint rates. “I find that the complaint rate falls relative to the victimization rate as the percentage of minority residents rises for both low income, low education, and low credit score areas, as well as for high income, high education, and high credit score areas” (p. 31).

In a review of over 1,000 cases, the ACLU reports on how private debt is criminalized. This criminalization happens when judges issue bench warrants for people who did not appear in court to deal with unpaid debt. Many of those who failed to appear were unaware that they were sued and received no notice to appear in court. They often find out about the warrant when they are pulled over for a traffic violation.

**Methodology:**
The ACLU reviewed court records for over 1,000 cases in 26 states and territories. In the appendix, they also feature federal- and state-specific laws regarding debts and debt collection practices.

**Highlights:**
- “Over 95 percent of debt collection suits end in favor of the collector, usually because alleged debtors do not mount a defense. In many cases, defendants did not know they had been sued. And, of course, collectors have little incentive to give proper notice to the defendants” (p. 5).
- “Arrest warrants, even if they don’t result in jailing, can cause long-lasting harm because such warrants may be entered into background check databases, with serious consequences for future employment, housing applications, education opportunities, and access to security clearances.” (p. 6).
- “In 44 states, a court can even issue warrants for the arrest of debtors who fail to appear at post-judgment court proceedings or fail to provide information about their finances. In other words, in most of the country, an unpaid car loan or a utility bill that’s in arrears can result in incarceration” (p. 12).
- “State and county court data obtained by the ACLU through Freedom of Information Act and open records requests reveals that in 2016, judges signed off on more than 8,500 arrest warrants in debt collection proceedings in the three states and four counties where we were able to obtain data” (p. 12).
- “Most of these debtors could not afford to hire a lawyer and had no idea how to defend themselves in court proceedings—nor were they advised by the court how to do so. Some were unable to appear in court because of work, child care responsibilities, lack of transportation, physical disability, illness, or dementia. We documented two cases in which the debtors missed court hearings because they were terminally ill; both died shortly after warrants were issued for their arrest” (p. 13).
- “Courts overburdened with cases churn through these collection lawsuits with astonishing speed and minimal scrutiny. The vast majority of them—an estimated 90 percent—conclude in a default judgment against the defendants, in which the debt collector automatically wins because the defendant did not contest the case. Most did not appear in court to defend themselves or respond to the litigation at all” (p. 22).
- “Having counsel would help indigent debtors navigate the law, assert their rights to debtors’ exemptions and other protections, and seek remedies to abusive actions by debt collectors, including improper and false claims of service and requests for warrants to coerce payments toward debts. Counsel can help courts avoid erroneous determinations and assist indigent debtors in achieving better outcomes, including vacating improperly reached default judgments and accessing existing legal protections for income for basic needs” (p. 24).
The FTC compiled this report to address the higher likelihood of African American and Latino consumers to become fraud victims compared to non-Hispanic whites. The report summarizes the issues disproportionately faced by these groups, including affinity fraud, income-related fraud, and debt-related fraud. It also outlines the FTC’s plan to reduce fraud in these groups: bringing more cases against fraudulent entities, increasing the capacity of investigative resources, developing partnerships between consumer agencies and law enforcement to detect scams, and making consumer education resources widely available in both English and Spanish.

Methodology:
A number of previous reports published by the FTC have found that African American and Hispanic consumers are more likely to experience consumer fraud compared to non-Hispanic whites. This report compiles and analyzes those findings to create and implement a strategic plan to better protect African American and Hispanic communities.

Highlights:
- “As a starting point, the FTC’s most recent Fraud Survey provided insight into the prevalence of certain types of consumer fraud as well as the relationship between certain consumer characteristics, including demographics, and the likelihood of having been a victim of the surveyed frauds. Both African American and Hispanic consumers were more likely than non-Hispanic whites to report having been victims of the surveyed frauds. African Americans were almost twice as likely to have experienced one or more of the surveyed frauds as were non-Hispanic whites.”
- “Raising awareness of fraud in African American and Latino communities is the first step in prevention. Individuals must be able to recognize a scheme as potentially fraudulent to avoid personal financial loss, and law enforcement must be able to identify and respond to such schemes” (p. 3).
- “To prevent fraud in African American and Latino communities, the FTC’s strategy is to expose fraud by encouraging individuals to talk about and report fraud. Critical to this endeavor is engaging more partners across the country to serve as trusted sources who can share information about frauds targeting their communities” (p. 3).
- “… the FTC’s Legal Services Collaboration and its Common Ground conferences have brought together local legal services providers, consumer advocates, law enforcers, and other interested groups to discuss fraud and other consumer issues, raise awareness, and collaborate on how to work together to fight fraud. Partnering with organizations and groups that already have credibility and relationships with African American and Latino communities also provides an effective way to encourage consumers and stakeholders in these communities to file complaints” (p. 8).


This article looks at the debt-buying practice, where large corporations purchase debt for as little as pennies and then use the court system (of which they are one of the heaviest individual users of the
state court systems in the US), to win court judgements against alleged debtors. They found that debt buying corporations charge an upwards of 25 percent compound interest and wait to file until the statute is almost up for maximum returns. In comparison, most alleged debtors self-represent. When the alleged debtors have access to legal aid and representation, this research shows they are more successful in fighting the claim. This study was conducted by Human Rights Watch, an international non-governmental organization that conducts research and advocacy on human rights.

Methodology:
Researchers at the Human Rights Watch conducted 100 interviews with litigants, public officials, independent experts, and other stakeholders in 12 US states. They also observed court proceedings in 24 courts in five states.

Highlights:
- “Leading debt buyers collect about half of their revenue by suing alleged debtors in court. Encore and one of its leading competitors, Portfolio Recovery Associates, collected a combined total of more than $1 billion through hundreds of thousands of lawsuits in 2014” (p. 2).
- “In New York State, Encore filed more lawsuits than any other civil plaintiff that year, with Portfolio coming in third. Eight of New York’s 20 most litigious plaintiffs were debt buyers in 2014, and they accounted for 47 percent of the 142,506 cases filed by that group” (p. 2).
- “Encore Capital alone has often filed between 245,000 and 470,000 new lawsuits against consumers in a single year” (p. 13). In Arizona’s Maricopa County, there were more than 21,000 new lawsuits within 12 months, constituting more than 15 percent of all civil case filings. They earn almost a 300 percent return on debt litigation (p. 17).
- “When defendants do attempt to defend themselves in court, they are badly outclassed by their opponents. The plaintiffs are often large corporations represented by top-tier collections attorneys. By contrast, hardly any of the defendants in debt buyer lawsuits have legal representation and many are largely unaware of their rights” (p. 4).
- “The limited available evidence seems to indicate that defendants with legal representation often fare reasonably well against debt buyers in court. Legal aid and consumer rights attorneys across several states told Human Rights Watch that they win the overwhelming majority of the cases they defend against debt buyers. Some attorneys reported that if they advanced a vigorous defense, debt buyers often simply dropped the case” (p. 63).


The National Consumer Law Center sent a survey to 64 legal aid organizations in the U.S. in 2015. From the responses, they found that 94 percent of them listed lack of funding and staff as a challenge to debt defense work. They found that on average, in 2015, each organization handled 382 non-mortgage cases, 158 mortgage cases, and 139 bankruptcy cases. However, the median was lower for each of these categories: 150 for non-mortgage cases, 24 for mortgage cases, and 21 for bankruptcy cases, showing that there are outliers of organizations that handle a lot of these cases and other organizations that handle very little. They found that 72 percent of these organizations had five or fewer staff attorneys working on debt defense work.

Methodology:
The National Consumer Law Center surveyed 64 legal aid organizations throughout the US.

Highlights:
• “94% of organizations handled credit card issues in 2015, 90% handled medical debt, 89% handled debts arising from consumer loans, 87% handled student loans, 87% handled vehicle loans or leases, and 83% handled mortgage debts” (p. 9).

• Two of these organizations highlight other services legal aid can provide besides representation:
  − “CARPLS in Cook County, Illinois runs a Collection Advice Desk located inside the courtroom to provide advice and referrals to pro se consumers and creditors who appear on the daily post-judgment collection call. Self-help services include a variety of standard collection defenses that clients present orally in court during their hearing. The defenses are written on color-coded cards that clients read from while presenting their defense to the court (the color of the card also signals to the judge what defense the client is presenting). CARPLS attorneys also assist with written motions. The Desk assists with about 2,400 cases per year and refers out approximately 60 more complex cases for direct representation by partner organizations. CARPLS attorneys also screen cases for FDCPA claims, which are referred to a private attorney panel for representation” (p. 15).
  − “Texas Rio Grande Legal Aid, Inc. has a project to assist domestic violence survivors with economic advocacy as a result of damaged credit and coerced debt. Abusers will often damage the survivor's credit without the survivor's knowledge or by fraud or duress. This project includes a range of activities, such as providing education programs for domestic violence survivors and social workers, disputing debts, and representing clients in litigation” (p. 18).


The Social & Economic Sciences Research Center at Washington State University found, both in 2003 and 2014 (when they conducted the survey), more than 70 percent of low-income households had experienced a civil legal problem within the last year and more than 75 percent did not or were not able to seek help. They found that in both studies, the biggest barrier to seeking legal help was that they didn’t know their problems were legal in nature. They found that the per capita instance of legal problems increased from 3.3 to 9.3 from 2003 to 2014. In 2014, the highest percentage of problems were health care, consumer-finance, and employment. This study was conducted at the request of the Washington State Office of Civil Legal Aid and then overseen by a committee at the Washington State Supreme Court.

Methodology:
They conducted a random probability survey throughout the state using the mail, web, and telephone survey methods of low- and lowest-income adults.

Highlights:
• 37.6 percent of those surveyed experienced at least one consumer problem, which was related to consumer, financial services, or credit. This increased from 2003, when it was 27.0 percent. Outside of health problems, which increased from 18.8 to 43.4 percent from 2003 to 2014, this was the largest percent increase (p. 19).
• For all those surveyed, the legal issues related to consumer, financial services and credit are as follows: 21.4 percent were harassed by creditors or collection agencies, 10.9 percent bankruptcy, 9.9 percent target of unfair or deceptive lending practices, 9.5 percent unable to open a bank account, 9.3 percent problems financing of with repossession of a used car, 8.9 percent wages were garnished, 8.7 percent problems with restoring credit because of identity theft, 7.1 percent
problems with terms for repayment or interest rates, 6.7 percent problems related to LFO’s, 6.7 percent problems with companies that offer debt reduction services, 5.4 percent target of deceptive mortgage lending practices, and 3.8 percent had to buy extra financial products to get a mortgage.


Kiel and Waldman, two investigative journalists, found that debt in collections is concentrated in neighborhoods that are majority black. They also find that the average balance for which an individual was sued varied by race—those in white neighborhoods were sued for higher amounts—suggesting that white residents are better able to resolve smaller debts than their black neighbors.

**Methodology:**
They analyzed court judgements in Chicago, St. Louis, and Newark between 2008 and 2012, looking at suits that resulted in judgements against defendants. They grouped the suits by census tracts, and then analyzed the judgements based on racial composition of those tracts.

**Highlights:**
- “Our analysis of five years of court judgments from three metropolitan areas — St. Louis, Chicago and Newark — showed that even accounting for income, the rate of judgments was twice as high in mostly black neighborhoods as it was in mostly white ones” (n.p.).
- “Today, the typical black household has a net worth of $11,000, while that of a typical white household is $141,900. As a result, while the budget is often tight for any low- or middle-income household, black households are less likely to have resources to draw on when they need it” (n.p.).
- “In the Newark area, for instance, when a company sued a resident of a middle-income white neighborhood, the average balance was $3,466; in a black neighborhood, the average was $2,628. This suggests white consumers are, in general, better able to resolve smaller debts” (n.p.).
- “Most Chapter 13 filers default and thus retain their debts. But there’s evidence that black debtors are often steered to Chapter 13 plans even though filing through Chapter 7, which is less costly and can provide near-immediate relief, would be the better choice. A 2012 study found blacks were twice as likely to file under Chapter 13 as other filers” (n.p.).
- “These costly debts hit black communities in St. Louis at a rate about five times higher than mostly white neighborhoods, ProPublica found. High-cost installment lenders and subprime auto lenders obtained more than 8,200 judgments against residents of mostly black neighborhoods from 2008 through 2012. The lenders have seized at least $9.5 million from debtors through those cases” (n.p.).


The DC Consortium of Legal Service Providers conducted community surveys throughout Washington DC to identify the unmet needs (both legal and not) of individuals living in the district. The Consortium reports that 6.1 percent of those surveyed reported debt as their most serious problem and 1 percent reported consumer issues as their most serious problem. This study was funded by the Public Welfare Foundation, a non-profit that provides grants to organizations working on justice-related issues
Methodology:
This was a three-phase study: first, they designed the focus group and survey; second, they conducted a focus group pre-test; and third, they conducted community surveys in Washington DC. They conducted a non-random stratified sample. They surveyed 590 individuals.

Highlights:
- “Slightly more than one-third of the survey participants reported one or more problems as a result of not paying the money they owed. The most common among these were receiving calls from debt collectors (31.8%), the threat of utilities being shut off (17.8%), and being denied credit (10.3%). To address a debt problem, approximately 5.0% sold their personal property or took out a payday loan” (p. 23).
- After employment, housing, and neighborhoods, debt was a top problem for immigrants, with 16.5 percent of immigrants saying that it was a top problem for them (p. 27).
- “People age 25 or younger experienced a higher rate of consumer problems than did other survey participants, and most of those problems related to cell phones” (p. 36).
- Only 11.32 percent of the participants had attempted to find a lawyer, and approximately 60 percent of that group was successful in finding one. “The majority of those who sought but did not find a lawyer said that cost kept them from finding one. Perceived cost may have deterred others from even looking—80.2% of the people who answered the question agreed or strongly agreed that “lawyers are not affordable for people with low incomes.” Among those who did find a lawyer, approximately two-thirds received free legal services” (p. 30).
- Of those who had a lawyer, 62.1 percent said that their lawyer did not speak their language nor use an interpreter.


In 2012, identity theft was the first among all categories of consumer complaints to the FTC. Half of those complaints involved government benefits or document fraud. In 2010, 43 percent of households experiencing identity theft had annual incomes below $75,000. Dranoff directs the South Brooklyn Legal Services’ Workers’ Rights and Benefits Unit, which works on economic justice, employment law, low-income tax advocacy, pension benefits counseling, unemployment benefits, child care, and education. She writes that domestic violence survivors are particularly vulnerable to identity theft as financial abuse often coincides with other forms of abuse. This article was produced, in part, under award # 2010–VF–GX–K030, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

Methodology:
She presents a case study of the South Brooklyn Legal Services and similar programs that have seen increases in identity theft matters and other consumer-finance related issues.

Highlights:
- “99 percent of domestic violence survivors report that they were subjected to economic abuse at some point during their relationship. Identity theft and other forms of financial exploitation are common within families and between intimate partners because close relationships often provide easy access to confidential information through credit card bills, Social Security mailings, medical documents and more” (p. 3).
• “We also worked with a domestic violence survivor who, while fighting cancer, found herself saddled with overwhelming tax and consumer debts accumulated years before by her estranged husband. He had used her name and previously good credit to open a restaurant, amassing debts that resulted in a restraint on her bank account. SBLS [South Brooklyn Legal Services] was able to refer the tax collection matter to pro bono counsel, who resolved the debts with the IRS, and provided referral and pro se advice on the related consumer matters” (p. 3).


Peter Holland, the director and clinical instructor of University of Maryland’s Consumer Protection Clinic, made several findings: 1) the vast majority of customers lose the majority of cases by default; 2) consumers had no lawyer in 98 percent of cases; 3) those who self-represented fared poorly in court and out of court settlements; 4) more than 99 percent of judgements were obtained without a trial; and 5) the vast majority do not result in a voluntary settlement. When individuals had legal representation, they fared much better.

Methodology:
Holland analyzed the outcomes of 4400 lawsuits filed by debt buyers in Maryland collection courts in 2009-2010.

Highlights:
• He drew 4,400 cases from all 26 District Court jurisdictions in the state. The average principal amount was $2,993.17. The average awarded amount was $3,323.76.
• “85% of the 2,947 consumers served with a complaint did not file a written response; 13% filed a response by themselves; and 2% had a lawyer at the time of or after a response was filed” (p. 208).
• “925 of the 4,400 cases sampled were dismissed when the defendant was never served. In 702 of these cases, the court record reflects that the dismissal was due to lack of prosecution or lack of jurisdiction. In other words, according to the data sample, 24% of all cases filed were never served” (p. 210).
• “Of the 2,947 cases that were served and reached final outcome, 2,498 people (85% of the total) did not file a response; 397 people (13%) filed a pro se response; and 52 people (2%) had a lawyer who entered an appearance in the case” (p. 210).
• “Of the 85% of people who did not file a response, debt buyers obtained a judgment by affidavit, consent, default, or trial 73% of the time, and recovered 82% of the amount sought in the complaints. Defendants who filed a response had better outcomes than those who did not file a response, but the outcomes were poor overall. Of the 13% of defendants who proceeded pro se (by filing a response called a Notice of Intention to Defend), debt buyers obtained judgment by affidavit, consent, default, or trial 47% of the time, and recovered 62% of the amount sought in the complaints” (p. 210).
• Of those who had a lawyer, “debt buyers obtained an affidavit, consent, or default judgment only 15% of the time, and recovered only 21% of the principal amount sought in the complaints” (p. 211).

This study analyzed key consumer protection and consumer credit concerns involved in the debt buying industry. The researchers found that debt is purchased for very low cost-to-debt ratios (costing about 4.0 cents per dollar of debt), that there are significant information gaps when purchasing debt, a very low rate of disputes among consumers (3.2 percent), and great variation in cost depending on both the age of the debt and the consumer, as well as the type of debt being sold.

**Methodology:**
The FTC acquired data on nearly 5,000 debt buyer portfolios and 90 million consumer accounts. They used this data to analyze buying practices of nine of the largest debt buyers in 2008.

**Highlights:**
- Debt buyers, on average, paid just 4.0 cents per dollar of debt, older debt sold for significant lower prices than newer debt, and the price of debt from before 1993 was almost nothing. Age of the consumer and type of debt also factored into price paid for dollar (p. ii).
- Debt buyers rarely receive dispute histories, which often includes information which would help consumers to verify whether the amount of their debts is correct. Buyers’ access to account documents is limited, as is resale of purchased debt, and availability of documents is not guaranteed at time of sale (p. ii-iii).
- Accurate information about debts is not guaranteed at time of sale; the portfolios are typically sold “as-is.” Debt buyers generally do not know how old the debts they are collecting are (p. iii).
- Consumers disputed 3.2 percent of debts, and about half of disputed debts were reported as verified. Only about 2.9 percent of disputed debts were resold (p. iv).


This study investigates the protections in place for consumers when confronted with debt buyers. Spector found that 25.11 percent of all the cases in Dallas County Courts-at-Law were cases of debt buyers against consumers. She found that when customers made even minimal effort to protect themselves, it helped considerably. The allegations of the debt buyers “generally fail to meet procedural and evidentiary standards used to prove the claims alleged” (p. 263). Having an attorney increases the likelihood of dismissal, but less than 10 percent of defendants retained counsel. Spector is the Associate Dean for Clinics, and the director of the civil/consumer clinic at SMU Dedman School of Law.

**Methodology:**
Spector analyzed 507 cases in Dallas County courts, which was obtained through cluster sampling.

**Highlights:**
- “Consumer advocates claim that attorneys representing debt buyers in court rarely produce more than summary information and yet still obtain judgements that are enforceable by garnishing wages, bank accounts, and other non-exempt property. Reportedly, debt buyers regularly obtain judgments on the basis of form pleadings that, on their face, fail to comply with applicable procedural, substantive, or evidentiary rules” (p. 259-260).
- Of the 507 cases, 446 were served. Of them, 344 (77.13 percent) of the defendants did not appear in court (p. 288). 102 appeared in court. Of those who appeared, 43.14 percent of them...
retained counsel (44 out of 102), but of all the defendants who were served, this percentage dropped to 9.87 percent (44 out of 446).

- A dismissal without prejudice occurred in 51.25 percent of cases in which a defendant was served and jumped to 61.77 percent when the defendant appeared. It increased to 75 percent when an attorney was present. A default judgement occurred in 39.46 percent of cases.
- Here is a table breaking down the judgements and how they differ (p. 297):

<table>
<thead>
<tr>
<th>Type of Appearance</th>
<th>None</th>
<th>Pro Se</th>
<th>With Attorney</th>
<th>All Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissal without Prejudice by Court or Plaintiff / Nonsuit</td>
<td>170</td>
<td>27</td>
<td>32</td>
<td>229</td>
</tr>
<tr>
<td>Default Judgment</td>
<td>166</td>
<td>9</td>
<td>1</td>
<td>176</td>
</tr>
<tr>
<td>Agreed Judgment</td>
<td>7</td>
<td>13</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>Dismissal with Prejudice</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Closed for Bankruptcy</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Affirmative Recovery for Defendant</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>344</td>
<td>58</td>
<td>44</td>
<td>446</td>
</tr>
</tbody>
</table>

Table 14: Outcomes and Appearance in Served Cases


The Federal Trade Commission presents recommendations, which they gathered through public roundtables the year prior. The FTC recommends that states should adopt measures to increase the likelihood that consumers defend in litigation. The FTC also identifies legal aid attorneys as a key player in helping consumers defend themselves.

**Methodology:**
The FTC convened a public workshop in 2007 and had public roundtables in Chicago, San Francisco, and Washington, DC in 2009. These roundtables brought together representatives from the debt collection industry, consumer advocates, judges, attorneys, and others.

**Highlights:**
- "Based on its extensive analysis, the Federal Trade Commission ("FTC" or "Commission"), the nation’s consumer protection agency, concludes that neither litigation nor arbitration currently provides adequate protection for consumers” (p. i).
- “States should consider adopting measures to make it more likely that consumers will defend in litigation. Very few consumers defend or otherwise participate in debt collection litigation, resulting in courts entering default judgment against them. States should take steps to ensure that: (1) consumers receive adequate notice when actions have been commenced; and (2) the costs to consumers of participating in such actions are not prohibitively high” (p. iii).
- “There was a broad consensus among roundtable panelists that relatively few consumers who are sued for alleged unpaid debts actually participate in the lawsuits. Although no empirical data were presented or submitted, panelists from throughout the country estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent” (p. 7).
• “Roundtable panelists and commenters differed widely on why there is such a high default rate in debt collection litigation. In general, industry representatives asserted that most debtors who default do so because they owe the debt and therefore recognize that disputing it would be futile. Consumer advocates, on the other hand, generally attributed the low participation rate to debtors not receiving notice of the action or to procedural hurdles that make it difficult and expensive for debtors to defend” (p. 7).

• “If lack of understanding and fear about the litigation process is deterring some consumers from appearing in court, then jurisdiction-specific consumer education materials explaining the debt collection litigation process in clear and concise terms could encourage participation. In addition, if counsel assisted consumers in connection with debt collection litigation, it might demystify the process and help consumers understand their rights and assert defenses. In some jurisdictions, pro bono attorneys, legal services attorneys, or students from law school clinics appear in court to offer such assistance. State and local courts, bar associations, law schools, and others should consider measures to increase the availability of counsel to assist consumers in debt collection litigation” (p. 13).