

**Testimony of Rebekah Diller
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Before the Maryland House of Delegates Judiciary Committee
Regarding HB 1222: "Correctional Services - Division of Parole and Probation -
Supervision Fee"
March 16, 2010**

The Brennan Center for Justice at New York University School of Law thanks the Judiciary Committee for holding this hearing on House Bill 1222, Correctional Services - Division of Parole and Probation - Supervision Fee, a bill that is desperately needed to promote the successful reentry of persons on parole who face dire financial circumstances. With minimal fiscal impact, the bill would fix an exemption system that the Legislature created in 1991 when it instituted the practice of charging parolees a \$40 monthly supervision fee.

As part of its Access to Justice Project, one of the few national initiatives dedicated to helping ensure that low-income families and communities are able to secure effective access to the courts and other public institutions, the Brennan Center has conducted a range of research and advocacy related to states' growing use of "legal financial obligations" – fees, surcharges, and other costs levied against persons convicted of crimes – to raise revenue. Last year, the Brennan Center published a report titled "Maryland's Parole Supervision Fee: A Barrier to Reentry,"¹ which relied on Division of Probation and Parole ("DPP") data to look in-depth at the operation of Maryland's parole supervision fee. This testimony draws upon and incorporates by reference that report, which has been distributed to members of the committee.

History of the Parole Supervision Fee

The statute creating the parole supervision fee was implemented in 1991 amid a national wave of new supervision fees designed to raise revenue for the states. The legislative history of the law reveals, however, that the Legislature recognized explicitly that many parolees would not be in a position financially to pay the fee. The General Assembly predicted at the time of the

¹ The report is available at <http://www.brennancenter.org/page/-/publications/MD.Fees.Fines.pdf>. The report was based upon an examination of data obtained from the Maryland Division of Parole and Probation ("DPP") for all 7,524 parole supervision cases that were closed by the DPP between July 1, 2006 and June 30, 2007. The report also drew on interviews with 20 people reentering society after having been incarcerated, interviews with 20 reentry service providers and public defenders, and a focus group of supervision agents drawn from DPP district offices from across the state. The participants in the focus group were speaking for themselves and not as conveyers of official DPP policy.

fee's adoption that only 60 percent of persons on parole would be employed and that only 25 percent of that group – or 15 percent of the total parolee population – could actually pay the fee.²

Accordingly, the Legislature created exemptions for individuals unable to afford payment for one of the following reasons:

- 1) the supervisee is unable, despite diligent attempts, to find a job that enables him or her to afford the fee;
- 2) the supervisee is enrolled in school or a job training program;
- 3) the supervisee has a disability that limits employment;
- 4) the supervisee is responsible for the support of dependents and paying the fee would constitute an undue hardship; or
- 5) “other extenuating circumstances” exist.³

The Exemption System is Broken

Our report demonstrated that most persons on parole were unable to pay the fee and would likely qualify for an exemption. The data we obtained from the Division of Parole and Probation (“DPP”) indicate that while almost half of parole cases involved people who had graduated from high school or obtained a GED, very few had gone beyond that level of educational attainment to acquire the skills required to qualify for a job with good pay and benefits in today’s economy. Of the parole cases we analyzed, 42 percent had dropped out prior to completing high school. Only one-quarter of parolees in Maryland were employed full-time when parole began. Unfortunately, unemployment rates were little changed by the time the parole term ended, at which point only one-third of parolees had full-time employment.⁴

Many parolees face other extenuating financial circumstances that would likely render them eligible for an exemption. Many have additional financial obligations, most notably child support, which can continue to accrue during incarceration and total tens of thousands of dollars.⁵ Many parolees also participate in treatment on an “out-patient” or residential/halfway house basis or in other programs – many of which charge extra fees for services – as a condition of their parole. For those enrolled in residential programs, there may be extended periods of time when employment is not permitted and thus the parolee cannot earn money.

Yet very few parolees who are eligible for an exemption actually obtain one. Our report found that 89 percent of parolees who were listed in DPP’s records as unemployed were still

² William R. Miles, Supervising Analyst, Department of Fiscal Services, Division of Fiscal Research, Maryland General Assembly, FISCAL NOTE REVISED HB 198 2 (1991).

³ MD. CODE ANN. CORR. SERVS. § 7-702(d).

⁴ It is important to note that these rates applied to persons whose parole cases closed between July 1, 2006 and June 30, 2007, before the economic downturn hit. The unemployment rates may well be worse today given the recession.

⁵ A 2005 University of Maryland study found that there were 17,214 child support cases in Maryland with incarcerated parents or previously incarcerated parents. The average arrears owed for each incarcerated parent was \$15,933 and average arrears for parolees was \$13,472. See Pamela C. Ovwigbo, Catherine E. Born and Correne Saunders, Intersection of Incarceration and Child Support: A Snapshot of Maryland’s Caseload, University of Maryland School of Social Work, July 2005.

required to pay the fee. For those listed in DPP's records as students, another exemption ground, 75 percent were required to pay the fee.

The problem lies in the convoluted mechanism for obtaining exemptions. Currently, the exclusive authority to grant exemptions rests with the Parole Commission, a body with which parolees have little ongoing contact, rather than DPP, whose agents collect the fees and meet regularly with parolees. DPP agents also already have authority to grant exemptions to a different fee – for drug and alcohol testing – based on the exact same criteria as the supervision fee exemption.

The Parole Commission imposes the fee routinely up-front, without conducting evaluations of whether parolees should receive exemptions. Once parole begins, the Parole Commission is, as an operational matter, unable to know the individual's ongoing financial situation. To obtain a formal exemption, a parolee would have to seek legal help or proceed *pro se* in front of the commission. Right now, DPP parole agents, who do maintain regular contact with the individual, are largely cut out of the process. Nonetheless, parole agents with whom we spoke described an informal practice in which some agents assist individuals with requests to the Parole Commission for exemptions. When we interviewed a member of the Parole Commission for our report, he told us that he could not recall ever seeing an application for a fee exemption presented directly by a parolee or parolee's lawyer.

Result: Parolees Are Burdened With Debt That The State Is Unlikely To Collect

When exemptions are not sought and granted, as is overwhelmingly the case, the fees accrue. On average, parolees are ordered to pay \$743 in supervision fees over the course of their parole terms. Individuals who cannot pay receive dunning letters from the DPP. However, as a result of widespread inability to pay the fee, only 17 percent of the supervision fees assessed are collected by the end of parole. Nine out of 10 individuals have outstanding supervision fee debt when parole ends.

At the end of a parole term, in 75 percent of the cases the debt is transferred from the DPP to the state's Central Collection Unit ("CCU"). The CCU continues the dunning process – in some cases, seeking civil judgments that mar credit reports – and adds a one-time 17 percent surcharge onto the underlying debt. Parole Supervision Agents, reentry service providers and individuals on parole agree that the strain of owing money that cannot be paid and the repeated receipt of threatening letters undermine efforts to reenter society successfully. Many of these unintended consequences would be avoided if those eligible for exemptions were able to receive them up-front.

Conclusion

For all of these reasons, the Brennan Center strongly urges the Legislature to pass House Bill 1222 and ensure that longstanding exemptions to the parole fee are properly administered. With minimal fiscal impact, the state can lift a major burden that interferes with successful reentry by parolees.