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Before the Maryland House of Delegates Judiciary Committee  
In Support of HB 749: Correctional Services – Division of Parole and Probation – Supervision Fee  
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The Brennan Center for Justice at New York University School of Law thanks the Judiciary Committee for holding this hearing on House Bill 749, Correctional Services - Division of Parole and Probation - Supervision Fee, a bill that is very much needed to promote the successful reentry of persons on parole who face dire financial circumstances. When the Legislature instituted a $40 monthly fee for persons on parole in 1991, it intended to exempt those who could not pay. However, the system for granting exemptions has not worked. As a result, those who are unable to pay emerge from parole with substantial debt and the state wastes scarce resources trying to collect debt that is uncollectible. This bill would be a significant step toward fixing the exemption system that the Legislature originally intended to implement.

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. In 2009, the Brennan Center published a report titled “Maryland’s Parole Supervision Fee: A Barrier to Reentry,” which relied on Division of Probation and Parole (“DPP”) data to look in-depth at the operation of Maryland’s parole supervision fee.¹ This testimony draws upon and incorporates by reference that report, which is available in its entirety at http://www.brennancenter.org/page/-/publications/MD.Fees.Fines.pdf.

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

¹ 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.
be in a financial position to pay the fee. The General Assembly predicted at the time of the 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. 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 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.

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. Ovwigho, 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.
The problem lies in the convoluted mechanism for obtaining exemptions and the lack of awareness that they even exist. 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. The Parole Commission imposes the fee routinely up-front, without conducting evaluations of whether parolees should receive exemptions. To obtain a formal exemption, a parolee would have to seek legal help (which is generally not available) or proceed *pro se* in front of the commission.

Yet most persons on parole are not even aware that the exemptions exist, much less of the system for applying for one. If a person on parole asks his supervision agent about the exemption, DPP policy forbids the agent from assisting the parolee with an application. Instead, DPP policy instructs the agent to advise the parolee to consult with legal counsel regarding obtaining an exemption from the Parole Commission. A person who is unable to pay a $40 fee is certainly not going to be able to hire a lawyer to apply for an exemption. 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 749 and ensure that persons on parole are made aware of the opportunity for an exemption and the process by which to apply for one. More will need to be done upon its passage to ensure that the process for obtaining exemptions becomes truly accessible. However, the bill marks an important first step toward fixing the broken exemption system and removing a major barrier toward successful reintegration into society.