

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 249 (Senator Miller)
 Judicial Proceedings

Criminal Procedure - Supervised Probation - Exemptions from Program and Supervision Fees

This bill specifically allows a court, in addition to the Division of Parole and Probation (DPP), to exempt a supervisee in the Drunk Driver Monitor Program (DDMP) from paying the additional monthly program fee of \$45, as applicable from fiscal 2006 through 2010. In addition, the bill clarifies that the monthly probation supervision fee applicable for all probation supervisees, including those in DDMP, remains at \$40 during that period and that a court continues to be authorized to grant an exemption from that fee, in whole or in part.

Fiscal Summary

State Effect: Assuming that exemptions to the \$40 monthly probation supervision fee would be granted at the same rate as they have been granted to date, this bill should not have a significant fiscal impact on supervision revenues to the general fund. However, if exemptions to the additional \$45 monthly DDMP fee are granted by the courts at the same rate as exemptions from the monthly probation supervision fee, annual special fund program revenues are estimated to decrease by approximately \$3.5 million through FY 2010. The extent to which such DDMP shortfalls would be met with deficiency adjustments by the Governor is unknown.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
SF Revenue	(\$3,530,500)	(\$3,530,500)	(\$3,530,500)	(-)	(-)
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	(\$3,530,500)	(\$3,530,500)	(\$3,530,500)	(-)	(-)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Legislation adopted in 1991 mandated the imposition of monthly supervision fees for offenders supervised by DPP. Until 2005, the monthly fees of \$40 for parolees and mandatory supervision releases and \$25 for probationers had remained unchanged since their inception. Chapter 444 of 2005 (Budget Reconciliation and Financing Act of 2005) increased the supervision fee charged to probationers to \$40 per month for five years, making the monthly fee consistent for all supervisees. The supervision fees collected are paid into the general fund. Probationers already under supervision continue to pay the \$25 monthly fee.

Chapter 444 of 2005 also required a new monthly program fee of \$45 for all supervisees placed in DDMP, for fiscal 2006 through 2010 only, in addition to the \$40 DPP monthly supervision fee that all probationers pay, with the aim of making the program fully fee-supported. The DDMP program fees are paid into the Drinking Driver Monitor Program Fund. The Governor was encouraged, with budget bill language, to provide a deficiency appropriation if the revenues generated from the new fee were not adequate to cover operating expenses.

Although DPP is authorized under Chapter 444 to grant exemptions to the new DDMP monthly program fee, current law does not permit the court to provide such exemptions. DPP rarely grants an exemption to the additional \$45 monthly fee.

Background: At the time of the enactment of Chapter 444, the increase from \$25 to \$40 for all supervisees was expected to provide additional general fund revenue of \$709,635 in fiscal 2006 (due to application of the higher fee only on probationers assigned by the court after July 1, 2005) and \$1,310,400 thereafter through fiscal 2010.

However, in response to a request from the budget committees during the 2005 session, the Office of Legislative Audits studied and reported on supervision fee collection rates and, in part, found the actual collection rate for these probationers outside of DDMP was 33.5%, and that participants in DDMP pay fees at a rate of 63.9%. This reduced the additional general fund revenue projections from the \$15 increase in fees to \$475,455 in fiscal 2006 and \$877,968 annually from fiscal 2007 through 2010.

HB 514 of 2006, an identical bill, passed both houses of the General Assembly. However, the Governor vetoed the bill raising the following issues.

The Governor avowed that a supervisee unable to pay the fee should not be “subject to a violation of probation proceeding that could result in the imposition of a jail sentence.” The veto message went on to state that, because the fee is not imposed by a court, “a supervisee cannot be violated simply for not paying the program fee.” The Department of Public Safety and Correctional Services (DPSCS) would be instructed to clarify any confusion on this matter with its employees.

The Governor also concluded that DPP, responsible for collecting the fee, “is not exercising its discretion” to grant exemptions, under one of five grounds provided under the current provisions of Correctional Services Article, Section 6-115(d). The veto message stated that the Governor has “instructed the division to review its practices and procedures” for full compliance with this discretionary authority for fee waivers.

The Governor concluded that HB 514 would “simply allow an offender to have two chances to have an exemption from the required fee” and would “undoubtedly result in an additional shortfall of funds for this program ... to the possible detriment of public safety.”

State Fiscal Effect: In fiscal 2006, an estimated 14,000 individuals were sentenced to DDMP, and DPP sought and received a deficiency appropriation of \$1,022,742 because \$45 program fee collections for the year were \$6,556,184 and actual program expenditures totaled \$7,578,926. In fiscal 2007, the program currently has close to a \$2.3 million revenue shortfall. The bill only affects special fund revenues of DDMP.

According to DPP, the courts waived the \$40 DDMP probation supervision fee in approximately 46% of cases. Because DPP continues to rarely grant exemptions to the \$45 monthly program fee, if it were waived by the courts in the same percentage of cases as the \$40 monthly probation supervision fee, DPP estimates that program revenues would decrease by \$3,530,520 annually through fiscal 2010, and threaten the self-sufficiency of the program. Potential annual shortfalls and deficiencies after fiscal 2010, without the additional \$45 monthly program fee, cannot be readily estimated. In any case, if enacted, this bill could delay or prevent this program from being self sustaining.

In addition, DPP reports that, even with the \$15 increase in monthly fees for all supervisees, actual revenues from the fees imposed decreased, rather than increased, in fiscal 2006. Overall supervision fee collections totaled \$5,200,260 in fiscal 2006, a decrease of \$1,279,043 from the fiscal 2005 total of \$6,479,303. The decrease was likely attributable to an unexpected, significant decrease of 9,154 supervisees, from 121,330 in fiscal 2005 to 112,176 in fiscal 2006.

Additional Comments: DPP also opines that, if program fees are exempted, the incentive for the supervisee to pursue employment could be diminished. DPP further advises that a supervisee's nonpayment of the program fee would not result in a revocation of their probation because the fee itself is not a part of the criminal sentence. When a case is closed the division refers all unpaid fees to the Department of Budget and Management's Central Collection Unit allowing former supervisees the opportunity to repay taxpayers over a longer period of time.

Additional Information

Prior Introductions: HB 514 of 2006, an identical bill, passed the House and Senate but was vetoed by the Governor.

Cross File: HB 12 (Delegates Anderson and Vaughn) – Judiciary.

Information Source(s): Judiciary (Maryland District Court), Department of Public Safety and Correctional Services (Division of Parole and Probation), Montgomery County, Department of Legislative Services

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