

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1102
Judiciary

(Delegate Norman, *et al.*)

Criminal Procedure - Court Costs - Payment for Foreign Language Interpreter

This bill requires a court, unless the court orders otherwise, to assess the costs for the services and expenses of a qualified foreign language interpreter on a defendant found guilty of a crime, if one was provided to the defendant during the prosecution of the case. The costs for the foreign language interpreter include compensation for services and reimbursement for actual and necessary services.

Fiscal Summary

State Effect: Minimal decrease in State expenditures to the extent that guilty criminal defendants have to pay for foreign language interpreter services. Any increase in District Court proceedings resulting from a guilty defendant's inability to pay for foreign language interpreter services can be handled with existing resources.

Local Effect: Any increase in circuit court proceedings resulting from a guilty defendant's inability to pay can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: A person who is found guilty of a crime is liable for the costs of the person's prosecution. If a party or witness is deaf or cannot readily understand or communicate the spoken English language, any party may apply to the court for the appointment of a qualified interpreter. As far as practicable, the application should be made on a court approved form and submitted not less than five days before the proceeding for which the interpreter is requested. If a party or witness is deaf and applies

for an interpreter, the court is required to appoint a qualified interpreter for the applicant. Interpreters appointed by the court to assist in these instances are allowed reasonable compensation, as determined by the court. The court is required to determine whether a spoken language interpreter is needed by an examination of a party or witness on the record using questions relating to identification, active vocabulary in vernacular English, and the court proceedings. The court must appoint an interpreter if it determines that: (1) a party does not understand English well enough to participate fully in the proceedings and to assist counsel; or (2) the party or witness does not speak English well enough to be understood by the counsel, the court, and the jury. (See Maryland Rule 16-819)

The court has the discretion to tax, as part of the costs of the case, amounts paid to an interpreter for services and expenses. Otherwise, the costs for the interpreter must be paid by the county where the proceedings were initiated. The court's decision must be in compliance with the Americans with Disabilities Act (ADA). The ADA requires that courts be accessible to individuals with disabilities and provide reasonable accommodations to qualified persons. This includes providing qualified interpreters and auxiliary aids to individuals who are deaf or hearing impaired.

Pursuant to Chapter 771 of 1998, the State budget for the Judiciary, beginning in fiscal 2000, must include an authorization to the Administrative Office of the Courts (AOC) in the total amount necessary to provide interpreter services as required under federal or State law in a circuit court proceeding.

Background: Under the U.S. Constitution, criminal defendants are guaranteed the right to due process and the right to be present at trial. While the U.S. Supreme Court has never directly addressed the right to an interpreter in a civil or criminal case, some courts have interpreted due process rights to include legal presence and *linguistic presence*. The reasoning behind this extension is that a defendant who does not understand the nature of the charges against him/her, the judicial proceedings, and testimony at trial has been in effect denied his/her constitutional rights to due process, including the right to confront his/her accusers and participate in his/her defense.

AOC currently pays for all interpreter services in District Court and circuit court cases. In fiscal 2008, the Judiciary spent approximately \$3.1 million on all interpreter services, including District Court cases, civil cases, and interpreter services for the deaf and hearing impaired.

State and Local Expenditures: The bill creates a presumption that defendants found guilty in criminal cases pay for any foreign language interpreter services provided during the prosecution of the case, unless a court orders otherwise. The extent to which judges will order a guilty defendant not to pay for foreign language interpreter services cannot

be reliably determined at this time although it is anticipated that courts may continue to exempt guilty defendants from paying for interpreter services to avoid post-conviction challenges.

The Judiciary advises that it currently processes interpreter requests after a trial and after all costs are totaled and documentation is submitted to the designated court. Computer reprogramming costs may be incurred to implement the bill's changes. However, if other legislation is passed requiring computer reprogramming changes, economies of scale may be realized, thereby reducing the costs associated with this bill and other legislation affecting the Judiciary.

The State currently pays for interpreters provided in circuit courts. However, if defendants who do not have adequate resources are ordered by the court to pay for foreign language interpreter services, it may result in an increase in requests for modifications of sentences or waiver of payment and more violations for failing to pay fines and costs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Washington and Worcester counties, National Association of Judiciary Interpreters and Translators, Department of Legislative Services

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