

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 589
Judiciary

(Delegate Norman, *et al.*)

Criminal Procedure - Court Costs - Payment for Foreign Language Interpreter

This bill requires a court 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, unless (1) the court orders otherwise; or (2) the defendant was represented by the Office of the Public Defender (OPD). The costs for the foreign language interpreter include compensation for services and reimbursement for actual and necessary services.

Fiscal Summary

State Effect: Potential decrease in federal fund revenues of approximately \$4.2 million annually due to possible violations of federal regulations accompanied by a potential significant increase in general fund expenditures to replace lost federal funds. Minimal decrease in State expenditures to the extent that guilty criminal defendants 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 for foreign language interpreter services 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.

Chapter 771 of 1998 requires that the State budget for the Judiciary, beginning in fiscal 2000, 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 2009, 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 Revenues: Federal fund revenues for the Judiciary may decrease by \$4.2 million in fiscal 2011 if the U.S. Department of Justice determines that the bill's provisions are in violation of federal regulations implementing Title VI of the Civil Rights Act of 1964. This figure represents the Judiciary's fiscal 2010 federal fund appropriation and assumes that future federal fund revenues remain consistent.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin. Under the regulations implementing Title VI, recipients of federal funding have a responsibility to ensure that persons with limited English proficiency (LEP) have meaningful access to their programs and activities. Executive Order 13166, reprinted as 65 FR 51021 (August 16, 2000) required each federal agency that extends federal financial assistance to issue guidelines clarifying this requirement to funding recipients. The U.S. Department of Justice, which provides federal funding to State courts, issued a four-factor analysis for funding recipients to consider when determining under what circumstances language assistance might be required to ensure meaningful access to programs or activities. The factors are: (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and (4) the resources available to the recipient and the costs.

In 2008, the Indiana Supreme Court ruled that (1) defendants who are not indigent are not entitled to receive publicly funded defense interpreters (interpreters who translate English proceedings for LEP defendants); and (2) courts should continue to provide, regardless of a defendant's financial status, publicly funded proceedings interpreters who translate non-English testimony for the entire courtroom.

In response to the ruling, the Civil Rights Division of the U.S. Department of Justice issued a letter to the Indiana Supreme Court on February 4, 2009 reminding the court that pursuant to Title VI, "...a court system that receives federal financial assistance should not permit assessment of interpreter costs to a litigant if a party or the party's witness is LEP."

State Expenditures: State general fund expenditures may increase significantly to accommodate the loss of federal funding, since the funding at risk includes all federal funding provided for judicial programs in Maryland.

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 or the defendant is represented by OPD. 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 all interpreters provided in circuit courts. It is assumed that a defendant who does not have adequate resources will be represented by OPD. However, if non-OPD defendants who do not have adequate resources are ordered by the court to pay for foreign language interpreter services, the bill 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: HB 1102 of 2009, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Brennan Center for Justice, U.S. Department of Justice, Indiana Supreme Court, Department of Legislative Services

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