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FISCAL AND POLICY NOTE

House Bill 703
Judiciary

(Delegate Norman, *et al.*)

Courts - Foreign Language Interpreters - Assessment of Costs

This bill requires a court to conduct an assessment at the conclusion of the proceeding to determine whether a party who was appointed a foreign language interpreter should be responsible for the costs for the services and expenses of the interpreter. A court is not required to make an assessment if the party who was appointed a foreign language interpreter was a criminal defendant who was represented by the Office of the Public Defender. In conducting its assessment, the court must consider (1) the nature, extent, and liquidity of the party's assets; (2) the party's disposable net income; (3) the nature of the case; and (4) the length and complexity of the proceedings. A court may not require a party whose assets and net annual income are less than 100% of the federal poverty guidelines to pay for the services and expenses of a foreign language interpreter.

Fiscal Summary

State Effect: General fund expenditures increase by \$448,500 in FY 2013 for computer reprogramming costs. Potential decrease in federal fund revenues of approximately \$3.6 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 parties pay for foreign language interpreter services, partially offset by a minimal increase in expenditures to conduct the mandatory assessments of a party's ability to pay for interpreter services.

Local Effect: Potential minimal increase in local expenditures for circuit courts to conduct the mandatory assessments of a party's ability to pay for interpreter services.

Small Business Effect: None.

Analysis

Current Law: 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.

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 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.

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."

In August 2010, the Civil Rights Division of the U.S. Department of Justice issued a letter to Chief Justices and State Court Administrators that intended to provide greater clarity regarding the requirements for courts receiving federal financial assistance to provide meaningful access to LEP individuals. The letter stated that the federal requirement to provide language assistance to LEP individuals applies regardless of conflicting state or local laws, or court rules. The letter specifically mentioned, as an item of concern, the fact that some courts require or authorize charging the costs associated with the interpreter to one or more of the parties in the case. The letter specifies that even if indigent parties are exempt, the common impact "is either to subject some individuals to a surcharge based upon a party's or witness' English language proficiency, or to discourage parties from requesting or using a competent interpreter." The letter stated that when meaningful access requires interpretation, it is expected that the courts will provide interpreters at no cost to the persons involved.

State Revenues: Federal fund revenues for the Judiciary may decrease by \$3.6 million in fiscal 2013 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 2012 federal fund appropriation and assumes that future federal fund revenues remain constant.

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 Judiciary advises that it processes interpreter requests after a trial and after all costs are totaled and documentation is submitted to the designated court. Computer reprogramming costs of \$448,500 in fiscal 2013 only will be incurred to implement the bill's requirements.

General fund expenditures for interpreter services will decrease if parties are ordered to pay for the costs of foreign language interpreter services. The extent to which judges will order a party to pay for foreign language interpreter services cannot be reliably determined at this time, although it is anticipated that courts may continue to exempt many parties from paying for interpreter services.

AOC pays for all interpreter services in District Court and circuit court cases. In fiscal 2009 (the latest year for which information is readily available), 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Office of the Public Defender; U.S. Department of Justice; Department of Legislative Services

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