

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Health and Government Operations Committee
FROM: Legislative Committee
Suzanne Pelz
410-260-1523
RE: House Bill 535
Maryland Sign Language Interpreter Act
DATE: January 27, 2021
(2/24)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 535. This bill creates the State Board of Sign Language Interpreters in the Department of Labor, Licensing, and Regulation. The Board will regulate individuals who provide sign language interpretation services in the State, including those who interpret in a “legal setting,” defined to include court proceedings, attorney-client conferences, investigations by law enforcement, depositions, witness interviews, real estate settlements and administrative hearings.

The bill will have a significant operational impact on the Judiciary. The Maryland Judiciary operates a large Court Interpreter Program, providing in-person interpreters for court events and services throughout the State. In Fiscal Year 2020, the Program provided in-person interpreters for 12,805 events. In Fiscal Year 2020, 10% (1,285) of those assignments were for American Sign Language (ASL) services. The use of court interpreters decreased during Fiscal Year 2020 as a result of the COVID-19 health emergency. Fiscal Year 2019 represents a more typical year. During Fiscal Year the Program provided in-person interpreters for 15,558 court events, of which 8.5% (1,336) were for ASL services.

The Program maintains a Maryland Court Interpreter Registry of those eligible to serve in the Maryland courts. Maryland Rule 1-333 requires that courts assign an interpreter from the registry when possible. The court may appoint a non-registry interpreter only if a registry interpreter is not available. The Maryland Court Interpreter Program requires new ASL interpreters be certified by the Registry of Interpreters for the Deaf (RID). (Some ASL interpreters on the Registry hold a certification from the National Association of the Deaf although that organization no longer provides certification. Maryland Rule 1-333 permits ASL interpreters to have either certification).

Additional information about court language services is available in the recent report, [Language Services in the Maryland Courts – FY2020](#).

The bill may reduce the pool of certified sign language interpreters allowed to serve in court proceedings and for court services, which may increase the cost of providing the service. The bill as drafted would require the Judiciary to assign only ASL interpreters licensed by the Board. The Board will not be providing testing or certification itself, but will determine the licensing requirements for interpreters in a legal setting. The bill provides for a provisional license for those who do not meet the full qualifications, but provisional licensees are precluded from serving in a legal setting under the bill.

Most of the ASL interpreters on the Judiciary's Registry have a National Interpreter Certification (NIC) from the RID. Some may have older certificates which are no longer issued (Certificate of Interpretation (CI) or Certificate of Transliteration (CT)). In the past, RID issued a legal specialty certification (SC:L) but that was put on moratorium in 2016. As a result, there is a shortage of interpreters who currently hold a legal specialty certification. There are few, if any organizations certifying that ASL interpreters have expertise in a legal setting.

Some courts experience difficulty securing ASL interpreters on a timely basis when needed. This is especially true in rural jurisdictions and for District Court commissioners after hours. A reduction in the pool may lead to additional postponements or require key services to be rescheduled, resulting in delays in bringing cases to disposition. A reduced pool of ASL interpreters may also result in an increase in the hourly rate the Judiciary must pay to secure ASL services. The Judiciary typically pays \$65 – \$75 for ASL services. Because it is unclear how many interpreters will be licensed and available to serve in a legal setting, it is impossible to estimate the operational and fiscal impact of a reduction in the pool.

In addition, the Maryland Judiciary has several mechanisms in place to ensure quality assurance of all court interpreters including ASL interpreters.

Handbook and Code of Conduct. Interpreter policies are outlined in the Maryland Court Interpreter Handbook and all interpreters on the Maryland Court Interpreter Registry are required to provide a signed acknowledgement that they have received an understand the policies in the Handbook, including the Maryland Code of Conduct for Court Interpreters.

Complaint Protocol and Forms. The Maryland Judiciary provides a complaint procedure and forms the public and judges and court staff can use to report a concern about a Registry interpreter. That information is available on the Judiciary's website. All complaints are fully investigated by staff and reviewed by a subcommittee of the Maryland Judicial Court Access & Community Relations Committee.

Grievance Procedure. In addition, deaf and hard of hearing individuals concerned about the quality of an accommodation provided by the Maryland courts can submit a grievance

through the Office of Fair Practices. The procedure and forms are available on the Judiciary website. The Court Interpreter Program receives very few complaints about sign language interpreters. The program last received a complaint about a sign language interpreter in 2018.

Accommodations Page and Court Accessibility Toolkit. The Judiciary provides a public web page to aid individuals seeking an [accommodation](#). In addition, the Judiciary maintains a comprehensive [Court Accessibility Toolkit](#) to aid judges, magistrates, and court staff in responding effectively to the needs of persons with disabilities. Several resources directly address how courts can provide appropriate accommodations for persons who are deaf or hard of hearing.

Further, this bill may restrict the Judiciary's use of interpreters in a Video Remote Interpreting Setting and Video Relay Settings, applications which have become increasingly important during the COVID-19 health emergency. The bill defines "video remote interpreting setting" and "video relay settings." It provides that the licensing requirement of the bill does not apply to interpreters in a video remote interpreting setting or vide relay setting. The current version of the bill requires licensing in a legal setting, but that definition does not exclude interpreting in a remote setting. It is not clear whether the licensing requirement would apply to the Judiciary's use of remote video remote interpreting in a legal setting.

The Maryland Judiciary uses video remote interpreting in two contexts. The Judiciary currently provides remote ASL services, using a state contract with an ASL provider. It appears this may be what is referred to as a "video relay service." This is often used for interactions with court staff, commissioners, or outside the courtroom setting. The Judiciary has also pivoted during the COVID-19 health emergency to make extensive use of video technology to facilitate remote court proceedings. Maryland court interpreters regularly participate in these proceedings. When those interpreters are providing ASL service, this would fall under the definition of "video remote interpreting" as defined in the act.

If all legal settings require ASL interpreters be licensed by the state, the bill will have a significant operational and fiscal impact on the Judiciary. It may preclude the use of the existing remote ASL contract. Remote ASL is used to permit court staff to speak with deaf or hard of hearing individuals who seek assistance at the court. Requiring remote providers to have a Maryland license will reduce the number of vendors available to provide the service, which may increase the cost of the service. In the alternative, it may eliminate the Judiciary's ability to use the service, and may require that deaf and hard of hearing individuals return to the court at a later time when an in-person interpreter can be scheduled. It would also limit the ability of the court to use its current pool of Registry interpreters for remote court proceedings.

The bill would also restrict access to justice by making it more difficult for individuals to secure qualified ASL interpreters in order to meet with counsel or participate in a broad range of legal proceedings. The bill has broad applicability and would apply to meetings

between attorneys and their clients. ASL services are expensive and special licensing requirements will reduce the number of individuals who can provide the service in those contexts and increase the cost. Requiring special certification for those types of meetings may impede or delay individuals from seeking the assistance of counsel or from getting legal help from a hotline or legal service provider.

In addition, the court enforcement provisions would interfere with existing court processes and standards. Section 22-405 of the bill provides that a party who receives sign language services from an individual in violation of the title, may bring an action seeking an injunction to prohibit the individual from providing sign language interpretation services. The bill sets standards and penalties under this provision. These provisions of the bill would override established procedures and standards for injunctions delineated in Title 15, Chapter 500 of the Maryland Rules.

The bill would also create additional standards for ASL interpreters already provided by the Americans with Disabilities Act (ADA) and corresponding federal regulations. Title II of the Act addresses government services and requires that communications with “applicants, participants, members of the public, and companions” with disabilities be as effective as communications with others. (28 C.F.R. § 35.160(a)(1)). Federal regulations require that public entities “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities. . . an equal opportunity to participate in, and enjoy the benefits of a service, program or activity of a public entity.” (28 C.F.R. § 35.160). These auxiliary aids and services may include, where necessary interpreters, written materials, qualified readers, large print materials, as well as equipment or devices that must be acquired or modified.

Finally, this bill would impede judicial independence. The Judiciary administers the judicial system and sets standards for professionals serving in the Maryland courts. The bill grants authority for regulating ASL interpreters serving in a court setting to an Executive Branch agency which would erode the separation of powers. The Judiciary has a strong interpreter program which has adopted and uses examinations and standards developed by the Council of Language Access Coordinators of the National Center for State Courts. If the State were to assume authority for regulating ASL interpreters, it may, at some point in the future, impose regulations for foreign language interpreters on the courts, which would be a further erosion of the separation of powers.

cc. Hon. Gabriel Acevero
Judicial Council
Legislative Committee
Kelley O'Connor