

# State Court Administration

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## Memo

(Updated 1.21.2016)

**From: John Goerd, Deputy State Court Administrator**

**RE: Explanation and Fiscal Impact of the Judicial Branch Bill on Court Interpreters**

### **A. First goal: Streamline the payment of court interpreters**

Currently, one of four state agencies pays oral language interpreters, depending on the case type and economic status of the person needing an interpreter: (1) the State Public Defender (SPD) pays interpreters who work on behalf of indigent parties with limited-English proficiency (LEP) who are represented by assigned counsel in criminal and juvenile cases, (2) local public defender field offices pay interpreters who work on behalf of indigent parties represented by public defenders in criminal and juvenile cases; (3) counties pay all sign language interpreters in court proceedings and oral language interpreters who assist LEP persons who are the subjects of mental health commitment proceedings, and (4) the state court administrator (SCA) pays interpreters appointed for LEP parties in all other cases. This complex arrangement causes confusion among interpreters, court staff, and judges and leads to delays in payment processing. The proposed amendments would streamline the payment of court interpreters by authorizing the SCA to pay all oral language court interpreters from judicial branch revolving fund established for payment of jury, witness, and court interpreter fees (see Code 602.1302(3)).<sup>1</sup>

### **B. Second goal: Provide equal access to justice in compliance with the Civil Rights Act of 1964<sup>2</sup>**

Although court interpreters are paid by the state, Iowa Code sections 815.9 and 622A.3 require the courts to charge oral language interpreter fees (but not sign language interpreter fees) back to the LEP parties who need the interpreters in almost all cases. This imposes a financial burden on LEP parties that is not imposed on English-speaking parties. Sometimes, when LEP parties learn they will have to pay the interpreter's fees, LEP parties decline appointment of an interpreter. This situation seriously impairs the courts' ability to provide due process and equal justice for all persons.<sup>3</sup>

Since 2002, the U.S. Department of Justice (USDOJ) has interpreted Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*), which prohibits discrimination based on national origin (and race or ethnicity), to mean that all organizations that receive federal funds (including the Iowa courts) must provide competent interpreter services to limited English proficient (LEP) participants in their programs.<sup>4</sup> According to USDOJ, because court decisions can have very serious consequences for litigants -- including imprisonment, imposition of financial damages, loss of child custody and support, and loss of immigration status -- courts are expected to provide interpreter services free of cost to LEP participants,<sup>5</sup> without regard to the type of case or economic status of the LEP person. In addition, any recipient of federal funds (including the Iowa Judicial Branch) that fails to comply with the USDOJ requirements [see endnote 2] could lose its federal funding.<sup>6</sup>

The proposed bill will direct the SCA to pay oral language court interpreters in all types of court proceedings and pre-disposition court-ordered programs (e.g., mediation, Children in the Middle class for parents in a dissolution of marriage case), regardless of case type or economic status of the LEP participant and *without charging interpreter fees back to the LEP party or parties.*

### **C. Fiscal impact of the proposed amendments**

*Total fiscal impact of this bill on the state general fund: **\$271,090** (a \$151,746 reduction in state revenue from no longer collecting court interpreter fees from LEP parties; a \$50,960 increase in costs to pay for interpreters in pre-disposition court-order programs; and a \$68,400 increase in costs to pay for one new full-time judicial branch employee to manage court interpreter fee claims).*

**1. \$151,746 decline in state revenue from no longer collecting court interpreter fees from LEP parties:** In FY18, the following amounts of court interpreter fees were paid and collected by the SPD and local public defender offices and by SCA:

<u>Office</u>	<u>Amount Paid</u>	<u>Amount collected</u>	<u>% collected</u>
SPD and local PD offices	\$447,300	\$44,730	10%
State Court Admin.	\$254,800	\$107,016	42%
<b>Total</b>	<b>\$702,100</b>	<b>\$151,746</b>	<b>22%</b>

If this bill is adopted, the state general fund would incur a loss of approximately \$151,746 because the courts would no longer charge court interpreter fees to, or collect interpreter fees from, LEP parties. The other interpreter fees paid, but not collected, by the state are already being absorbed by the state.

**2. \$50,960 in new state funding to pay interpreters for LEP parties participating in pre-disposition court-ordered programs:** To comply with the USDOJ’s guidelines for recipients of federal funding, the Iowa courts should also cover the interpreter costs for LEP parties who participate in pre-disposition court-ordered programs (e.g., mediation, “Children in the Middle” class for parents in a marriage dissolution case). The state currently does not pay for interpreters in these programs, so it is difficult to estimate how much these interpreter fees will cost the state. We estimate that these costs would be about **20%** of the costs paid for interpreters in civil legal proceedings by SCA (\$254,800 X .2 = \$50,960).

**3. \$68,400 to fund one full-time employee in state court administration to manage court interpreter compensation for all oral language court interpreters:** Currently, the SPD, local public defender field offices, and the SCA’s office devote substantial staff time to managing court interpreter fee claims. The SCA will need one new staff position to manage all the court interpreter fee claims under this bill.

#### Endnotes

<sup>1</sup> The amendments to 622A direct the state court administrator to pay *all* oral language interpreters – including those currently paid by the State Public Defender (SPD) and local public defender field offices, from the judicial branch’s “jury, witness, and interpreter fund” established in Code 602.1302(3). The legislature would also need to provide additional funding to that fund -- an amount equal to the amount spent by the SPD and local public defender offices during the past year on court interpreter fees (\$447,300).

<sup>2</sup> The proposed amendments require revisions to Chapter 622A (Interpreters in legal proceedings), 815.9 (Expenses incurred by the State Public Defender), 242.141 (Expenses in juvenile proceedings), and 602.1302 (state funding of the jury, witness, and interpreter fund).

<sup>3</sup> **Note:** Executive Branch administrative agencies provide interpreters for LEP parties in administrative law proceedings, but they do not charge interpreter fees back to the LEP parties. Schools do not charge interpreter fees to LEP parents who need to talk with administrators or teachers. The Department of Human Services (DHS) pays for interpreters for DHS social workers who need them to communicate with LEP parents and youth in need of social services, but DHS does not charge the interpreter fees to LEP persons who need services.

<sup>4</sup> See: *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41, 455 (2002). Also see: Letter from Assistant U.S. Attorney General Perez to Chief Justices of all state Supreme Courts (2010).

<sup>5</sup> USDOJ considers the charging of interpreter costs to LEP participants in court proceedings to be a barrier to equal access to justice: financial costs imposed on LEP participants (i.e., people from other nations) that are not imposed on American (English-speaking) participants, contrary to the intent of the Civil Rights Act. The District of Columbia and 10 states, including *Minnesota and Wisconsin*, fully comply with the USDOJ requirement to cover the costs for all interpreters in all cases free of cost to the LEP participants.

<sup>6</sup> While the USDOJ asserts the right to terminate federal funding for violation of its Guidance on interpreter services, it has not terminated federal funding to any state or local court where violations have been found. Instead, the USDOJ requires the courts to develop a plan and reasonable timeline for compliance. This has occurred in: Colorado, North Carolina, Maine, and Rhode Island.