



National Association of Judiciary Interpreters & Translators
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Senate Committee on State Affairs
The Honorable Joan Huffman
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May 14, 2019

Dear Senator Huffman:

I am the Chair of the Advocacy Committee of NAJIT (National Association of Judiciary Interpreters & Translators). NAJIT's mission is to promote excellence in the field of legal interpreting and translating. Our members play a critical role in assuring due process, equal protection, and equal access for limited English proficient (LEP) individuals who interact with the judicial system.

We are writing to express our grave concern regarding the proposed SB 2176 and HB 3627 and to provide a historical and legal framework that explain the reasons for that grave concern. The category of examination results that is being proposed for interpreters working in courts of record originated in 1987 in New Jersey. The Administrative Office of the New Jersey Courts (AOC) had just developed its first credentialing exam for court interpreters. When the exam was administered to persons who had applied for a full-time court interpreter position in the Superior Court, only one of 22 candidates passed the exam—she was not interested in becoming a staff interpreter. She just wanted the credential. The passing score was 70% or higher in each of the three sections of the test. Since the county had a high volume of interpreted proceedings and urgently needed to employ someone as soon as possible, out of necessity the AOC developed a fallback category called “Critical Range” (since renamed Conditionally Approved) with test scores similar to the 60-69% range.

However, the AOC allowed the county to hire a candidate in that range on a probationary, trainee basis with the following expectations: the employee would be retested within 6-18 months and could be retained only upon showing progress or passing the test, taking courses in translation and interpretation through a newly established tuition reimbursement program, and a clear presumption that the employee would work on a provisional, probationary basis. Over time, the AOC developed the policy that both staff and contract interpreters at the Conditionally Approved level may be hired in Superior Court ONLY when no Journeyman (70-79% range) or Master (80% or higher in each section of the exam) interpreter can be hired.¹ The Conditionally Approved level became the official standard for hiring interpreters in the state's Municipal Courts.²

Much of New Jersey's 3-tier model was adopted as the national standard by the National Center for State Courts (NCSC). First, any state that wishes to use the NCSC's certification exams must use the following cut-off scores for passing the exam: 70% in the consecutive and simultaneous sections, plus an average of

¹ For New Jersey's Superior Courts: Re contract interpreters, see Language Access Plan, New Jersey Judiciary (January 10, 2017), §1.3 (https://www.njcourts.gov/attorneys/assets/directives/dir_01_17.pdf?c=mtf); Re staff interpreters, see Court Interpreter Band Specification (March 29, 2006), see especially provisions for the Level 1 position, Conditionally Approved/Trainee (<https://www.njcourts.gov/public/assets/langSrvcs/jobspecs.pdf?c=mkR>).

² See the requirements section of the job specification for Court Interpreter Spanish & English (8/17/2010) (<https://info.csc.state.nj.us/jobspec/07959.htm>).



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70% in the sight with a score of at least 65% in each subsection of the sight section of the exam. If Texas were to use the conditionally approved level for passing the exam, Texas would not be in compliance with this policy and, accordingly, at risk of losing its ability to use the battery of NCSC's tests for its court interpreter certification examination program.³

Second, the NCSC recommends that state judiciaries use the following three tiers for languages for which court interpreter certification exams are available: Conditionally Approved, Journeyman, and Master (80%+ in each section of the exam). Hence the national standard for qualifying court interpreters has three tiers.⁴ Were Texas to continue with its two-tier structure, it would be out of sync with the recommended model for state courts.

Third, New Jersey's model creates the presumption, at least in Superior Court, that the ultimate goal is to use Master interpreters in all cases. However, until there is a sufficient supply of Master interpreters, a mix of Journeyman and Master interpreters is used. Even so, the state's policy requires that assignments for contract interpreters be rotated among both Journeyman and Master interpreters.⁵ Furthermore, the job specifications for staff court interpreters create certain presumptions for the case types that may be interpreted by each level, with the most serious cases being served by Master interpreters. For example, Conditionally Approved interpreters may interpret only in "proceedings of limited legal significance or limited linguistic complexity" while Master interpreters "interpret complex legal proceedings,"⁶ later specified as "high-profile and complex trials, as well as trials involving crimes of the first-degree."⁷

The testing models originating in New Jersey and developed further by the NCSC are all based in the Federal Court Interpreter Certification Examination. That exam was developed by the Administrative Office of the United States Courts after the passage of the Court Interpreter Act of 1978. A very robust and unprecedented program of research and development was undertaken to develop the parameters for that exam. Extensive research with the federal bar and bench led to the conclusion that the integrity of the judicial process would be preserved in interpreter matters only if the exam validly and reliably measured performance and required a cut-off score of 80%. That is the foundation of the national movement toward a cut score of 80% as the minimum acceptable score for certifying court interpreters.

We suspect that the challenge Texas faces is a lack of qualified interpreters to meet the state's demands. This is a conundrum many if not most state judiciaries face—there just isn't an adequate supply of qualified linguists who are ready to take court interpreter certification exams and commence working in the field. There are many factors that contribute to this problem of supply and demand: lack of training, unattractive compensation, unsupportive working conditions, and much more.

³ See §1.3, "Fixed Testing Elements That May Not Be Changed," in *State Court Interpreter Testing: Desk Reference Manual* (January 30, 2018);

<https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Language%20Access/Resources%20for%20Program%20Managers/FINAL%20NCSC%20State%20Court%20Interpreter%20Testing%20Desk%20Reference%20Manual%20-%20rev%20January%2030%202018.ashx>.

⁴ *Ibid.*, §1.4.A., "Recommended Interpreter Credentialing Levels."

⁵ *Language Access Plan*, §1.3.3.

⁶ Court Interpreter Band Specification, *supra* n. x, at 1.

⁷ *Ibid.* at 3.



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We encourage Texas to pursue a path that sets appropriate standards for interpreters and allow basic license interpreters to work only when demand exceeds supply and as a last resort—even in proceedings for courts that are not courts of record. We hope Texas will become a leader in the field by maintaining appropriate standards and taking the necessary steps to increase supply of this valuable resource.

We are ready, willing and able to discuss this further with you as you deliberate these important issues that affect language access.

Sincerely,
Sandro Tomasi, Advocacy Committee Chair

cc: NAJIT Board of Directors
Joan Huffman, Senator
Brian Hughes, Senator
Wroe Jackson, Chief of Staff
Will Temple, Legislative Aide for the State Affairs Committee