

Date of Hearing: April 4, 2006

ASSEMBLY COMMITTEE ON JUDICIARY
Dave Jones, Chair
AB 2302 (Judiciary) – As Amended: March 29, 2006

SUBJECT: EVIDENCE: COURT INTERPRETERS

KEY ISSUE: SHOULD PARTIES IN CIVIL MATTERS WHO NEED ASSISTANCE WITH ENGLISH HAVE THE SAME ACCESS TO A COURT INTERPRETER AS IS CURRENTLY PROVIDED FOR PARTIES IN CRIMINAL PROCEEDINGS AND THOSE IN CIVIL PROCEEDINGS WHO ARE DEAF OR HARD OF HEARING?

SYNOPSIS

This Committee bill has bipartisan support and no opposition. Because court proceedings are required to be conducted solely in English, court interpreters are often needed so that the court can communicate with the parties, and the parties can communicate with the court. This bill is designed to expand the availability of court interpreters for parties needing help with English in family law, domestic violence and other civil matters. Supporters state that doing so will protect the fair and efficient administration of justice, encourage trust and confidence in the judicial system and promote respect for the rule of law and compliance with court orders.

SUMMARY: Provides for court interpreters when needed for those parties in family, domestic violence and other civil matters who require assistance with English. Specifically, this bill provides that in civil actions in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as specified, shall be present to interpret the proceedings in a language that the party understands, except that a court may issue *ex parte* orders in certain family law matters without the presence of an interpreter, and may issue an order when the necessity for the order outweighs the necessity for an interpreter.

EXISTING LAW:

- 1) Requires that every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other. (Code of Civil Procedure section 185.)
- 2) Provides that a person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. (Cal. Const., Art. I, section 14.)
- 3) Requires appointment of a qualified interpreter in all civil proceedings where a party or witness is an individual who is deaf or hearing impaired. (Evidence Code section 754.)
- 4) Provides for the appointment of an interpreter in certain cases involving domestic violence, parental rights, and dissolution of marriage involving a protective order, subject to the availability of federal funding. (Evidence Code section 755.)

- 5) Requires appointment of an interpreter whenever a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court and jury. (Evidence Code section 752.)
- 6) Requires appointment of a translator whenever the written characters in a writing offered in evidence are incapable of being deciphered or understood directly. (Evidence Code section 753.)
- 7) Requires appointment of an interpreter in adjudicative proceedings before state agencies, boards and commissions when a party or the party's witness does not proficiently speak or understand English. (Government Code section 11435.15.)
- 8) Provides pursuant to federal law that no person shall on the ground of race, color, or national origin be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance, including conduct that has a disproportionate effect on persons of limited English proficiency. (42 U.S.C. section 2000(d).) State law is to the same effect. (Government Code section 11135.)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS: The author states, "Nearly seven million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents, cannot communicate with judges, clerks or other court staff, and cannot understand or participate meaningfully in court proceedings – much less effectively present their cases – without a qualified interpreter. People with limited English proficiency are also often members of groups whose cultural traits or economic circumstances make them more likely to be subjected to legal problems, in part because perpetrators recognize their victims' limited ability to access judicial protection. For Californians who are not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of parties in family court and other cases who do not have access to legal services and therefore have no choice but to represent themselves in court – a virtually impossible task for people who are unable to understand the proceedings."

The author adds, "Court interpreters should be available to all Californians who need them, just as they are for persons who are deaf or hard of hearing, in order to protect the fair and efficient administration of justice, allow parties to be understood by the court when they are not represented by lawyers, encourage trust and confidence in the judicial system and promote respect for the rule of law and compliance with court orders."

Critical Issues At Stake For Parties In Civil Cases Requiring Interpreter Services. Governor Schwarzenegger recently commented: "For non-English speaking defendants and witnesses in criminal cases, existing law provides for interpreters. No such requirement exists for non-English speaking civil litigants. These litigants are generally unable to use professional interpreters unless they can pay for the costs of the interpreter services. The issues at stake in child custody, child support, and other civil cases can be equally critical, and involve the well-being and safety of parents and children. Therefore, it is essential to provide interpreters for civil cases, including family law and domestic violence cases. This will enable litigants to have meaningful access to the courts." Governor's Budget Summary, Judicial Branch, available at <ftp://ftpgovbud.dof.ca.gov/pub/BudgetSummary/JudicialBranch.pdf>.

It should be noted that existing law does require a court interpreter in civil cases for parties who are deaf or have a hearing impairment that prevents them from speaking or understanding English. However, the law does not provide a court interpreter for other parties who are not proficient in English, such as those who speak another language. While existing law does require an interpreter for *witnesses* who speak a language other than English, there is no specific requirement that an interpreter be provided for the *parties* in the case. One statute provides for interpreters in certain cases involving domestic violence, parental rights, and dissolution of marriage involving a protective order. However, compliance with this law expressly depends on federal funding, which the Judicial Council advises is not available.

Interpreter Services Advance Fair and Efficient Administration of Justice And Limit Demands On Government Assistance Programs. In support of the bill, the Judicial Council states that expanding interpreter services provided in civil matters is critical to ensuring meaningful access to justice for all Californians. "Lack of interpreter services jeopardizes the court's ability to identify the crucial issues that guide the determination in a case. These problems are exacerbated by the fact that many of these litigants are also lacking any legal representation. Lack of interpreters has enormous consequences for litigants: in domestic violence cases, respondents do not understand the orders entered against them and all too often violate them; single parents are unable to obtain adequate child support awards and must go on public assistance; and extended family members are unable to obtain guardianships, which would allow them to care for children who otherwise are placed into foster care or juvenile hall."

In January 2000 the Judicial Council implemented a Family Law Interpreter Pilot Program (FLIPP) in seven counties. The program provided interpreters in specified child custody, domestic violence, marital dissolution and other proceedings where a party requiring English assistance could not afford to pay an interpreter. This program found an acute need for interpretation in these proceedings, and broad agreement among judicial officers that interpreter services were a fundamental factor contributing to the quality of justice in their courts. Among other improvements, the program reduced the amount of courtroom time for hearings, ensured non-English-speaking litigants appeared more consistently at subsequent hearings, substantially reduced the number of delays, improved the ability of litigants to understand orders, impacted compliance with orders, and reduced the backlog of cases. As one judicial officer put it, "Having interpreters equates to having a bailiff or a record of the proceedings, it is just that basic. The service needs to be provided."

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Bar Association
Alameda County Network of Mental Health Clients
American Civil Liberties Union
Asian American for Civil Rights & Equality
Asian American Bar Association of the Greater Bay Area
Asian Pacific American Legal Center of Southern California
Asian Law Alliance
Asian Pacific American Bar Association of Los Angeles County
Attorney General Bill Lockyer

California Commission on Access to Justice
California Court Interpreters Association
California Judges Association
California Rural Legal Assistance Foundation
Child Care Law Center
Center for Asian American Advocacy
Hmong Women's Heritage Association
Judicial Council of California
Law Center for Families
Lambda Letters Project
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Aid Society
Legal Aid Association of California
Mexican American Legal Defense and Educational Fund
National Senior Citizens Law Center
National Association of Judiciary Interpreters & Translators
Public Interest Law Project
State Bar of California
Ventura County Asian American Bar Association
WorkSafe
4 individuals

Opposition

None on file

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