

SENATE BILL REPORT

SHB 1186

As of February 5, 2018

Title: An act relating to the provision of and reimbursement for certain court interpreter services.

Brief Description: Concerning the provision of and reimbursement for certain court interpreter services.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Santos, Goodman, Jinkins, Kilduff and Senn; by request of Board For Judicial Administration).

Brief History: Passed House: 3/02/17, 52-46; 1/11/18, 52-46.

Committee Activity: Law & Justice: 2/01/18.

Brief Summary of First Substitute Bill

- Directs a court or presiding officer to appoint an interpreter to assist a non-English-speaking person when the person is a required participant at any stage of a legal proceeding.
- Allows appointment of an unregistered interpreter for a non-English speaking person if the Administrative Office of the Court's (AOC) registered interpreter list shows no interpreter for the person's language.
- Requires courts to track their interpreter cost and usage data for non-English speaking persons and provide the data to the AOC.
- Requires the AOC to reimburse a court for one-half of the interpreter fees when a judge appoints an interpreter in a court proceeding to assist a non-English speaking person or a hearing impaired person, subject to appropriation.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Language Assistance for Persons With Limited English Proficiency (LEP) in Legal Proceedings Under Federal Law. Title VI of the federal Civil Rights Act and other federal laws prohibit discrimination based on national origin when state and local

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governments provide services. These laws apply to state courts and government agencies receiving federal funding. When a court conducts civil and criminal cases, or a government agency conducts administrative hearings, any person who has LEP and is a litigant, witness, or interested party must be assisted by a competent interpreter. The U.S. Department of Justice (DOJ) Civil Rights Division's Federal Coordination and Compliance Section enforces compliance and provides state and local government agencies with compliance guidance.

Communications Assistance for Persons With Hearing and Speech Disabilities in Legal Proceedings Under Federal Law. Title II of the Americans with Disabilities Act and other federal laws require local and state governments to give persons with disabilities an equal opportunity to benefit from all the programs and services they offer. State courts and administrative agency tribunals must provide qualified sign language interpreters, or other assistance needed to ensure effective communication with hearing impaired persons during legal proceedings. The DOJ Civil Rights Division's Disability Rights Section enforces compliance and provides state and local agencies with compliance guidance.

Current Washington Law Requiring Interpreters for Non-English Speakers During Legal Proceedings. Washington requires an appointing authority to provide a qualified interpreter for non-English-speaking persons during legal proceedings. An appointing authority is a presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or its political subdivisions.

The appointing authority must provide an interpreter if the person is a party, or is compelled to appear by a subpoena or summons in a civil, criminal, or administrative legal proceeding. A legal proceeding is a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any of its political subdivisions.

For purposes of appointing an interpreter, Washington law defines a non-English speaking person as any person who cannot readily speak or understand the English language. Hearing-impaired persons are excluded from this definition because chapter 2.42 RCW covers them.

Appointed interpreters are entitled to a reasonable fee for the services provided and reimbursement for their actual, reasonable expenses. If an appointing authority initiates the legal proceedings, it pays the interpreter's costs. In other legal proceedings, the non-English-speaking person pays the interpreter unless the person qualifies as indigent under the appointing authority's rules. For indigent non-English speaking persons, the government entity conducting the legal proceedings pays for the interpreter. Subject to appropriation, when the appointing authority is a court and the interpreter's appointment is for a judicial proceeding, the AOC reimburses the court for up to one-half of the interpreter's cost.

Current Washington Law Requiring Interpreters for Hearing Impaired Persons During Legal Proceedings. A separate statute governs appointment of interpreters for persons who are hearing impaired in legal proceedings. A qualified interpreter must be provided if a hearing-impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision of the state. By definition, an impaired person is a person who, because of a hearing or speech impairment, cannot readily understand or

communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing.

For purposes of interpreters appointed for hearing-impaired persons, an appointing authority means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision. Subject to appropriation, the AOC must reimburse up to one-half of the cost of an appointed interpreter for a hearing-impaired person when the appointing authority is a court and the appointment is for a court proceeding.

The AOC issued a Limited English Proficiency (LEP) Plan in 2008 to assist the courts to comply with state and federal language assistance requirements. In 2011 and 2012, the DOJ Civil Rights Division initiated a review after receiving complaints of national origin discrimination in connection with the King County superior court's language access plan. Similar complaints against Washington's Department of Labor and Industries prompted a similar DOJ review. These DOJ reviews were resolved in 2015.

Since the AOC's 2008 LEP Plan, the DOJ provided additional policy guidance for states regarding language access for LEP persons in judicial and quasi-judicial settings. Subsequently, the AOC, the Washington supreme court Interpreter Commission, the NW Justice Project, and Seattle University School of Law began a joint project to update the 2008 LEP Plan. In June 2017, the AOC released its newly updated model Language Access Plan and Deskbook. Prior to release, DOJ's Civil Rights Division reviewed the draft and provided comments.

Summary of Bill: At any stage of a legal proceeding, whenever a non-English-speaking person is compelled to appear and participate, or is a party to the proceeding, the appointing authority must appoint an AOC-registered or AOC-certified interpreter to assist them. The court or governmental body conducting or initiating the legal proceeding pays the interpreter appointed to assist a non-English-speaking person.

For non-English speaking persons, if the appointing authority is a judicial officer in a court proceeding, the AOC must reimburse the court for one-half of the interpreter's fee, subject to appropriation. The courts must track interpreter costs and usage data for non-English speaking persons. The courts must provide the data to the AOC at least annually.

When a qualified interpreter is appointed for a hearing impaired person by a judicial officer in a court proceeding, the AOC must reimburse the appointing authority for one-half of the payment to the interpreter, subject to appropriation.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony: PRO: The initial state interpreter law passed in 1989. Equal justice under the law is a bipartisan issue. Non English-speakers cannot be fully protected in legal proceedings without language assistance. Consider what it would be like if you were in a room before judges who would decide a very important matter for you, for example custody of your children, and you could not understand what they were telling you and they did not understand what you were saying. The Board for Judicial Administration has requested this legislation for a number of years. It is important for individuals who come to the courts in search of a remedy, not just in criminal cases, but also in civil cases. This bill aligns Washington's statutes with federal guidance on compliance with civil rights laws. The volume of cases in which LEP persons need language assistance continues to grow.

Persons Testifying: PRO: Representative Sharon Tomiko Santos, Prime Sponsor; Brady Horenstein, Board for Judicial Administration; Bob Lichtenberg, Administrative Office of the Courts.

Persons Signed In To Testify But Not Testifying: No one.