

SENATE BILL REPORT

ESSB 5984

As Passed Senate, February 19, 2020

Title: An act relating to language understanding of documents used in dissolution proceedings.

Brief Description: Concerning language understanding of documents used in dissolution proceedings.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wellman, Rivers, Hasegawa, Padden, Cleveland, Walsh, Hunt, Brown, Zeiger, Randall, Takko, Lovelett, Nguyen, Kuderer, Das and Wilson, C.).

Brief History:

Committee Activity: Law & Justice: 1/23/20, 1/30/20 [DPS].

Floor Activity:

Passed Senate: 2/19/20, 48-0.

Brief Summary of Engrossed First Substitute Bill

- Requires a qualified, certified, or registered interpreter to certify that a court order has been interpreted in the party's language, or in sign language for a party who relies on sign language, when the party requested an interpreter or the court knows, or has reason to know, the party has limited English proficiency or is deaf or hard of hearing.
- Requires courts to provide an interpreter at no cost to a party to an action under RCW 26.09 who has limited English proficiency or relies on sign language when requested with reasonable advance notice.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5984 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: According to the National Association of Judiciary Interpreters and Translators, translators work with the written word, converting text from a source language into a target language while conveying the text's style, tone, intent, and accounting for culture and dialect. A translated document should read as if it was written in the target language for the target audience. Interpreting is the process of fully understanding, analyzing, and processing a spoken message and then faithfully rendering it into another language. For persons who are deaf or hard of hearing, a sign language or manual communication is often necessary to ensure a party who relies on sign language or manual interpretation fully understands the spoken information in court proceedings.

Federal and Washington state law require persons with limited English language proficiency (LEP), or persons who are deaf or hard of hearing and rely on sign language, be provided with competent interpreters in all court cases and proceedings. Courts receiving federal financial assistance, directly or indirectly, must provide interpreter services to all LEP persons at no cost. Each Washington trial court, municipal court, and courts of limited jurisdiction must develop a written language assistance plan for interpreter services for non-English-speaking and deaf or hard of hearing persons accessing the court system in civil and criminal matters.

Federal anti-discrimination provisions of the 1964 Civil Rights Act—Title VI—require federal funding recipients to translate vital information to ensure LEP, hard of hearing or deaf persons have meaningful access to federally-funded programs and activities. A document is considered vital depending on the importance of the program or service. In 2017, Washington Administrative Office of the Courts (AOC) issued a newly revised model language access plan (LAP). This model plan provides direction for translation services based on a translation protocol adopted by the AOC's Interpreter Commission. According to the Model LAP, court forms, notices, and applications should be translated when a local jurisdiction has a significant number of LEP persons who speak a language. If the number of LEP persons who speak a particular language in a local jurisdiction is small, providing an interpreter to orally translate documents is sufficient. This process is called sight interpretation and involves reading a source-language text out loud in the target language. For document translations, the state's language assistance plan law requires procedures for evaluating the need for translation of written materials, prioritizing those translation needs, and translating the highest priority materials. The translations procedures take into account the frequency of use of forms by the language group, and the cost of orally interpreting the forms.

Summary of Engrossed First Substitute Bill: In all domestic relations proceedings under RCW 26.09, a qualified, certified, or registered interpreter must certify that a court order has been interpreted in the language of a party, or in sign language for deaf or hard of hearing persons who rely on sign language, when the party asks for an interpreter, or the court knows or has reason to know, the party has limited English proficiency or relies on sign language. The court must provide an interpreter at no cost to a party when the party requests interpreter services with reasonable advance notice.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is not prescriptive to the courts; it allows the courts to formulate the solution to the problem. The issue was brought to my attention by the Japanese consul general in Seattle. Parties in a dissolution who have limited English proficiency may not know what they are signing or the effect untranslated documents may have on their legal rights. An unknowing party may sign away important property rights or parenting rights. A person may be proficient conversational English, but that does not mean a they understand legal documents written in English rather than their primary language. I know of one person who speaks English very well, but cannot read or write English. This person could easily be mistaken for someone who is proficient in English, but that would not be true as to an untranslated legal document, court form, or other vital notice. Those of us who help members of the immigrant community who are facing dissolution or other court matters such as domestic violence see the effect that untranslated documents have on our clients. A person who unknowingly gives up their rights in a dissolution can easily fall into poverty after dissolution. We have seen clients lose their homes and become homeless. Everyone deserves equal access to justice and the state owes a duty to provide equal access to justice. Washington is the third most linguistically diverse state in the country with over 160 languages.

CON: A party understanding their rights in court is a critical component of equal access to justice. This bill's language is new and we have concerns about the wording. We are also concerned that the bill imposes a duty on the judge in a dissolution to make an independent assessment that a party comprehends the substance of documents. The situations where this might occur vary. It might be an ex parte order presented to a commissioner where it would be very difficult to know if a party understood the documents. It might be a hearing in which the party is before the judge and further inquiry can, and does, occur. There are laws requiring interpreters, so it is an issue of immense importance to the courts. There is a significant difference between interpreting language and making an independent assessment of someone's comprehension. This bill places the burden on the judge and on the interpreter who is appointed to translate, not to analyze a party's level of understanding.

Persons Testifying: PRO: Senator Lisa Wellman, Prime Sponsor; Naoko Inoue Shatz, International Families Justice Coalition; Linda Inagawa, IFJC International Families Justice Coalition.

CON: Judge Sean O'Donnell, Superior Court Judges' Association.

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