



Legislative Fiscal Bureau

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May 2, 2007

Joint Committee on Finance

Paper #205

Court Interpreters (Circuit Courts)

Bill Agency

[LFB 2007-09 Budget Summary: Page 82, #3]

CURRENT LAW

Under current law, in criminal, delinquency, protective services, Chapter 48 (children's code) and Chapter 51 (alcohol, drug abuse, developmental disabilities and mental health act) proceedings, if a court determines that a person has limited English proficiency and that an interpreter is necessary, the court must advise the person that he or she has the right to a qualified interpreter and further, if the person cannot afford one, an interpreter will be provided at the public's expense. The court may appoint an interpreter in other court proceedings.

In all court proceedings, counties pay the expenses for interpreters to indigent persons. The state reimburses counties for interpreter costs associated with the above identified court proceedings at the rate of \$40 per hour for certified interpreters and \$30 per hour for qualified interpreters. Base level funding is \$827,100 GPR.

GOVERNOR

Provide \$233,500 GPR in 2007-08 and \$298,000 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services for the following purposes: (a) \$43,900 in 2007-08 and \$82,400 in 2008-09 for projected increased use of interpreters under current law; and (b) \$189,600 in 2007-08 and \$251,600 in 2008-09 to reimburse counties for interpreters in all cases, regardless of indigence. Total funding for court interpreter reimbursement would be \$1,060,600 GPR in 2007-08 and \$1,125,100 GPR in 2008-09.

Modify statutory language to specify that, in all criminal and civil proceedings, if a court

determines that the person has limited English proficiency and that an interpreter is necessary, the court must advise the person of their right to a qualified interpreter at the public's expense. Specify that the modification would first apply to actions commenced on the effective date of the bill.

DISCUSSION POINTS

1. In reviewing the proposal under the bill, there are two related issues to consider associated with the use of court interpreters: (a) a person's right to a court interpreter; and (b) state reimbursement to counties for costs associated with court interpreters. These issues are discussed in more detail below.

Right to a Qualified Interpreter

2. Under current law, the following definitions are used in connection with court interpreters:

a. *Court proceeding* means any proceeding before a court of record.

b. *Limited English proficiency* is the inability to adequately hear, understand, or communicate effectively in English due to either: (1) use of a language other than English; or (2) a speech impairment, hearing loss, deafness, deaf-blindness, or other disability.

c. *Qualified interpreter* means a person who is able to do all of the following: (1) readily communicate with a person who has limited English proficiency; (2) orally transfer the meaning of statements to and from English and the language spoken by a person who has limited English proficiency in the context of a court proceeding; and (3) readily and accurately interpret for a person who has limited English proficiency, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.

3. In specific court proceedings, if the court determines that a party, witness, or other person affected by the proceedings has limited English proficiency and an interpreter is necessary, the court must advise the person that he or she has a right to a qualified interpreter, who will be provided at public expense if the person cannot afford an interpreter. The court proceedings in which a court is required to inform a person of his or her right to an interpreter include: (a) criminal proceedings; (b) delinquency proceedings; (c) protective service proceedings; (d) proceedings under Chapter 48 (children's code); and (e) proceedings under Chapter 51 (alcohol, drug abuse, developmental disabilities, and mental health act). In addition, the court must appoint a qualified interpreter if a person with limited English proficiency is part of a jury panel (this only applies to individuals with hearing impairments) and may appoint more than one interpreter when necessary.

4. The court may authorize the use of interpreters in other court proceedings and actions. Additionally, an interpreter may be provided in the following circumstances: (a) if a person

with limited English proficiency request assistance of the clerk of circuit courts regarding a legal proceeding, the clerk may provide the assistance of a qualified interpreter to respond to the person's inquiry; and (b) with approval of the court, interpreter services outside the courtroom that are related to the court proceedings, including court-ordered psychiatric or medical exams or mediation. The court may accept a waiver of the right to a qualified interpreter from a person with limited English proficiency at any point in a court proceeding, if the court advises the person of the nature and effect of the waiver, and determines on the record that the waiver has been made knowingly, intelligently, and voluntarily.

5. In 2000, a federal executive order was issued entitled "Improving Access to Services for Persons with Limited English Proficiency." According to the federal Department of Justice, the executive order "requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them" The executive order also "requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries."

6. In June, 2002, the federal Department of Justice issued a "Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," which provides recommendations to agencies receiving federal funds on how to determine whether or not they are providing meaningful access to LEP persons for free interpreter services. The final guidance states that, "[a]t a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions, during which the LEP individual must and/or may be present." The guidance indicates that agencies found to be noncompliant of Title VI or its regulations may lose federal funding.

7. The federal Department of Justice sent a letter to all state court administrators in December, 2003, to advise state court systems about the 2002 final guidance. The letter states: "the provision of reasonable and appropriate language assistance may be necessary to ensure full access to your courts, and to preserve the importance and value of the judicial process." The letter indicates that it is intended to apply not only to criminal cases, but also cases such as family law matters, judicial diversion programs, matters affecting driving privileges, immigration status and self-litigated (prose) legal matters. However, the letter also notes that the final guidance "is mindful that all recipients, including courts, are asked to make increasingly difficult decisions on how to allocate scarce resources. For this reason, our guidance [identifies] costs considerations as a factor to consider when identifying when and at what level of expertise language assistance should be provided."

8. The three most frequently required languages for which court interpreter services are needed in Wisconsin are Spanish, Hmong, and American Sign Language. According to 2005 estimates from the U.S. Bureau of the Census, Wisconsin's Hispanic population comprised 4.5% of the state's total population (an increase from 3.6% in 2000 and 1.9% in 1990), and Wisconsin's Asian population comprised of 2.0% of the state's total (an increase from 1.7% in 2000 and 1.1% in

1990). The 2000 Census estimated that 368,712 people in Wisconsin (7.3%) speak a language other than English at home, of which 148,910 (3.0%) reported speaking English less than "very well." In addition, an estimated 1% of the population is deaf, and an additional 6.6% is hard of hearing.

State Reimbursement of Interpreter Costs

9. In all court proceedings counties are required to pay the necessary expenses for qualified interpreters to indigent persons, except for costs for interpreters assisting the State Public Defender preparing for court proceedings (the Public Defender pays these costs). The Director of State Courts reimburses counties up to four times each year for actual expenses paid for interpreters required by circuit courts in specific types of cases (as identified previously) to assist indigent persons with limited English proficiency. The state reimbursement rate is: (a) \$40 for the first hour and \$20 for each additional 0.5 hour for qualified interpreters certified under the requirements and procedures approved by the Supreme Court; and (b) \$30 for the first hour and \$15 for each additional 0.5 hour for qualified interpreters without certification. In addition, the state reimburses for travel mileage at 20 cents per mile. Base funding for state reimbursement of court interpreter costs is \$827,100 GPR.

10. Counties may appoint interpreters in other situations at their own expense. Counties also incur interpreter costs under the Americans with Disabilities Act, which provides that if a court system has an obligation to provide qualified interpreters, the court has the corresponding responsibility to pay for the services of the interpreters. In addition, counties pay any difference between the state hourly reimbursement rate and actual hourly rate paid to secure interpreter services.

Senate Bill 40

11. Senate Bill 40 would provide \$233,500 GPR in 2007-08 and \$298,000 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services, and modify statutory language to provide state reimbursement for interpreters in all criminal and civil cases, regardless on indigence. The modification would first apply to actions on the effective date of the bill. Base funding for court interpreter reimbursement is \$827,100 GPR.

12. Under the bill, increase funding would be provided for the following purposes:

	<u>2007-08</u>	<u>2008-09</u>
Increased Use of Interpreters	\$37,300	\$71,900
Higher Reimbursement Rates for Certified Interpreters	6,600	10,500
Reimburse Counties in All Types of Cases	59,000	66,900
Reimburse Counties for Interpreters Provided to Non-indigents	<u>130,600</u>	<u>148,700</u>
Total	\$233,500	\$298,000

13. The above funding amounts were determined based on the following assumptions:

- The projected increased use of interpreters under current law assumes a 4.0% increase annually, based on the average percentage increases in the state's Hispanic and Asian populations.
- Funding for higher reimbursement rates for certified interpreters assumes that five additional interpreters will become certified annually and work an average of 15 hours per week. Certified interpreters are reimbursed at \$10 more per hour than qualified interpreters are reimbursed.
- Funding to reimburse counties for interpreters in all types of cases assumes that, based on county survey data, the additional cases account for 14.3% of all cases. Further, funding in 2007-08 assumes a one-month delay to implement the expanded use of interpreters in all cases.
- Funding to reimburse counties for interpreters provided to non-indigent persons assumes that non-indigent interpreter cases account for 16.3% of all cases. As with funding for interpreters in all cases, funding in 2007-08 for non-indigent persons assumes a one-month implementation period.

14. It should be noted that the following modifications should be made to the above funding calculations:

- a. Based on the assumption of a 4.0% average increase, funding for increased use of interpreters on the bill should be \$33,100 GPR in 2007-08 and \$67,500 GPR in 2008-09.
- b. For the estimated increased funding for higher reimbursement rates for certified interpreters, the amounts of 6,600 and 10,500 are actually the estimated additional *hours* for the higher reimbursement rates. Estimated funding should equal the additional hours multiplied by the difference in the reimbursement rates for qualified interpreters (\$30 per hour) versus certified interpreters (\$40 per hour), which is \$10 per hour. As a result, funding for higher reimbursement rates for certified interpreters should be \$66,000 in 2007-08 and \$105,000 in 2008-09.
- c. Since the funding calculations for state reimbursement in all types of cases and for non-indigent persons in 2007-09 were based on percentages of increased funding under current law, these calculations are also affected by the above calculations. In addition, the calculated percentage increases for reimbursement in all types of cases and for non-indigent persons were applied incorrectly in determining costs, further affecting these calculations.

15. Applying the above modifications, funding under the bill would be modified to provide \$312,000 GPR in 2007-08 and \$478,900 GPR in 2008-09, as follows:

	<u>2007-08</u>	<u>2008-09</u>
Increased Use of Interpreters	\$33,100	\$67,500
Higher Reimbursement Rates for Certified Interpreters	66,000	105,000
Reimburse Counties in All Types of Cases	99,300	142,900
Reimburse Counties for Interpreters Provided to Non-indigents	<u>113,600</u>	<u>163,500</u>
Total	\$312,000	\$478,900
Change to Bill	\$78,500	\$180,900

16. According to the Director of State Courts Office, the statutory modification providing court interpreters in all court proceedings, regardless of indigence, are necessary because:

"Civil cases impact significant economic and family interests and deserve the same level of accessibility and accuracy. Family cases can be complex, requiring parties to negotiate property settlements and shared custody arrangements, and comply with child support and domestic violence restraining orders. Many civil cases have criminal implications if a party fails to understand and comply with a court order..."

17. Given the state's current fiscal concerns, the Committee may wish to modify statutory language to provide state reimbursement for court interpreters costs in all court proceedings, but only for indigent persons with limited English proficiency. Under this alternative, funding would include: (a) \$33,100 GPR in 2007-08 and \$67,500 GPR in 2008-09 for projected increase use of interpreters under current law; (b) \$66,000 GPR in 2007-08 and \$105,000 GPR in 2008-09 for higher reimbursement rates for certified (rather than qualified) interpreters under current law; and (c) \$99,300 GPR in 2007-08 and \$142,900 GPR in 2008-09 to reimburse counties for interpreters in all types of cases.

18. Alternatively, the Committee may wish to retain current law regarding the types of court proceedings for which the state reimburses interpreter costs, but modify statutory language to allow state reimbursement for interpreter costs associated with all persons with limited English proficiency, regardless of indigence. As a result, funding would be: (a) \$33,100 GPR in 2007-08 and \$67,500 GPR in 2008-09 for projected increase use of interpreters under current law; (b) \$66,000 GPR in 2007-08 and \$105,000 GPR in 2008-09 for higher reimbursement rates for certified (rather than qualified) interpreters under current law; and (c) \$113,600 GPR in 2007-08 and \$163,500 GPR in 2008-09 to reimburse counties for interpreters provided to non-indigents.

19. If the statutory language changes are removed, increased funding for the current program (\$99,100 GPR in 2007-08 and \$172,500 GPR in 2008-09) could be provided to support the estimated annual increase in interpreter services and higher reimbursement rates for certified interpreters.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide \$233,500 GPR in 2007-08 and \$298,000 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services. Modify statutory language to specify that, in all criminal and civil proceedings, if a court determines that the person has limited English proficiency and that an interpreter is necessary, the court must advise the person of their right to a qualified interpreter at the public's expense. Specify that the modification would first apply to actions commenced on the effective date of the bill.

ALT 1	Change to Bill Funding	Change to Base Funding
GPR	\$0	\$531,500

2. Provide \$312,000 GPR in 2007-08 and \$478,900 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services. Modify statutory language to specify that, in all criminal and civil proceedings, if a court determines that the person has limited English proficiency and that an interpreter is necessary, the court must advise the person of their right to a qualified interpreter at the public's expense. Specify that the modification would first apply to actions commenced on the effective date of the bill. *[This alternative retains the Governor's statutory language changes, but modifies the funding amounts due to recalculations.]*

ALT 2	Change to Bill Funding	Change to Base Funding
GPR	\$259,400	\$790,900

3. Maintain current law. Provide \$99,100 GPR in 2007-08 and \$172,500 GPR in 2008-09 to support the estimated increase in interpreter costs under current law. Delete the modification and funding associated with statutory language to provide interpreters in civil cases and regardless of indigence.

ALT 3	Change to Bill Funding	Change to Base Funding
GPR	- \$259,900	\$271,600

4. Provide \$99,100 GPR in 2007-08 and \$172,500 GPR in 2006-07 to support the estimated increase in interpreter costs under current law. In addition, approve either of the following provisions:

a. Modify statutory language to specify that, in all criminal and civil proceedings, if a court determines that the person has limited English proficiency and that an interpreter is necessary,

the court must advise the person of their right to a qualified interpreter and that, if the person cannot afford one, an interpreter would be provided at the public's expense. Provide \$99,300 GPR in 2007-08 and \$142,900 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services for indigent persons in all court proceedings.

ALT 4a	Change to Bill Funding	Change to Base Funding
GPR	- \$17,700	\$513,800

b. Modify statutory language to specify that, in court proceedings specified under current law, if a court determines that the person has limited English proficiency and that an interpreter is necessary, the court must advise the person of their right to a qualified interpreter at the public's expense. Provide \$113,600 GPR in 2007-08 and \$163,500 GPR in 2008-09 to increase state reimbursement to counties for court interpreter services for all persons with limited English proficiency, regardless of indigence.

ALT 4b	Change to Bill Funding	Change to Base Funding
GPR	\$17,200	\$548,700

5. Delete provision.

ALT 5	Change to Bill Funding	Change to Base Funding
GPR	- \$531,500	\$0

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