

Introduced by Senator Escutia

February 21, 2002

An act to amend Sections 754 and 755 of the Evidence Code, and to amend Section 68562 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1780, as introduced, Escutia. Courts: domestic violence: interpreters.

The California Constitution provides that a person unable to understand English who is charged with a crime has the right to an interpreter throughout the proceedings. Existing statutory law provides that in any civil or criminal action, as specified, a sign language interpreter shall be appointed at county expense for an individual who is deaf or hearing impaired.

Existing law also provides that in any action or proceeding under specified provisions of the Family Code relating to domestic violence, in which a party does not proficiently speak or understand the English language, and in which that party is present, a foreign language interpreter shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney, except that a court may issue prescribed orders ex parte without an interpreter. Existing law also provides that the court shall not commence proceedings until the foreign language interpreter is present, except as provided. Existing law specifies that the fees of these interpreters shall be paid by the parties, except that these fees shall be waived for parties who need an interpreter and appear in forma pauperis. Existing law requires the Judicial Council to apply for certain federal and other funds other than state funds, and authorizes



local public entities to apply for certain federal and other funds, in connection therewith.

This bill would require the appointment in domestic violence proceedings, as specified, and in other settings mandated by the court, of an interpreter for a person who is deaf or hearing impaired as well as the appointment of a foreign language interpreter for a person not proficient in English; would require certified or registered sign language interpreters in these proceedings; and would limit the services of foreign language interpreters to certified or registered interpreters. The bill would provide for the waiver of fees for an interpreter for a party who is not proficient in English in domestic violence proceedings, and for a party who has the gross annual income of his or her immediate family at or below 200% of the current official federal poverty line, as specified. This bill would also require the Judicial Council to establish additional domestic violence training requirements for interpreters, as specified, and to conduct a public education and notification program. The bill would require the Judicial Council, in coordination with its Court Interpreter Advisory Panel, to report to the Legislature regarding the effectiveness of this bill no later than January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 754 of the Evidence Code is amended
2 to read:

3 754. (a) As used in this section, “individual who is deaf or
4 hearing impaired” means an individual with a hearing loss so great
5 as to prevent his or her understanding language spoken in a normal
6 tone, but does not include an individual who is hearing impaired
7 provided with, and able to fully participate in the proceedings
8 through the use of, an assistive listening system or computer-aided
9 transcription equipment provided pursuant to Section 54.8 of the
10 Civil Code.

11 (b) In any civil or criminal action, including, but not limited to,
12 any action involving a traffic or other infraction, any small claims
13 court proceeding, any juvenile court proceeding, any family court
14 proceeding or service, or any proceeding to determine the mental
15 competency of a person, in any court-ordered or court-provided
16 alternative dispute resolution, including mediation and arbitration,



1 or any administrative hearing, where a party or witness is an
2 individual who is deaf or hearing impaired and the individual who
3 is deaf or hearing impaired is present and participating, the
4 proceedings shall be interpreted in a language that the individual
5 who is deaf or hearing impaired understands by a qualified
6 interpreter appointed by the court or other appointing authority, or
7 as agreed upon.

8 (c) For purposes of this section, “appointing authority” means
9 a court, department, board, commission, agency, licensing or
10 legislative body, or other body for proceedings requiring a
11 qualified interpreter.

12 (d) For the purposes of this section, “interpreter” includes, but
13 is not limited to, an oral interpreter, a sign language interpreter, or
14 a deaf-blind interpreter, depending upon the needs of the
15 individual who is deaf or hearing impaired.

16 (e) For purposes of this section, “intermediary interpreter”
17 means an individual who is deaf or hearing impaired, or a hearing
18 individual who is able to assist in providing an accurate
19 interpretation between spoken English and sign language or
20 between variants of sign language or between American Sign
21 Language and ~~other foreign~~ languages *other than English* by
22 acting as an intermediary between the individual who is deaf or
23 hearing impaired and the qualified interpreter.

24 (f) For purposes of this section, “qualified interpreter” means
25 an interpreter who has been certified *or registered* as competent to
26 interpret court proceedings by a testing organization, agency, or
27 educational institution approved by the Judicial Council as
28 qualified to administer tests to court interpreters for individuals
29 who are deaf or hearing impaired.

30 (g) In the event that the appointed interpreter is not familiar
31 with the use of particular signs by the individual who is deaf or
32 hearing impaired or his or her particular variant of sign language,
33 the court or other appointing authority shall, in consultation with
34 the individual who is deaf or hearing impaired or his or her
35 representative, appoint an intermediary interpreter.

36 (h) Prior to July 1, 1992, the Judicial Council shall conduct a
37 study to establish the guidelines pursuant to which it shall
38 determine which testing organizations, agencies, or educational
39 institutions will be approved to administer tests for certification of
40 court interpreters for individuals who are deaf or hearing impaired.

1 It is the intent of the Legislature that the study obtain the widest
2 possible input from the public, including, but not limited to,
3 educational institutions, the judiciary, linguists, members of the
4 State Bar, court interpreters, members of professional interpreting
5 organizations, and members of the deaf and hearing-impaired
6 communities. After obtaining public comment and completing its
7 study, the Judicial Council shall publish these guidelines. By
8 January 1, 1997, the Judicial Council shall approve one or more
9 entities to administer testing for court interpreters for individuals
10 who are deaf or hearing impaired. Testing entities may include
11 educational institutions, testing organizations, joint powers
12 agencies, or public agencies.

13 Commencing July 1, 1997, court interpreters for individuals
14 who are deaf or hearing impaired shall meet the qualifications
15 specified in subdivision (f).

16 (i) Persons appointed to serve as interpreters under this section
17 shall be paid, in addition to actual travel costs, the prevailing rate
18 paid to persons employed by the court to provide other interpreter
19 services unless ~~such~~ that service is considered to be a part of the
20 person's regular duties as an employee of the state, county, or other
21 political subdivision of the state. Payment of the interpreter's fee
22 shall be a charge against the county, or other political subdivision
23 of the state, in which that action is pending. Payment of the
24 interpreter's fee in administrative proceedings shall be a charge
25 against the appointing board or authority.

26 (j) Whenever a peace officer or any other person having a law
27 enforcement or prosecutorial function in any criminal or
28 quasi-criminal investigation or proceeding questions or otherwise
29 interviews an alleged victim or witness who demonstrates or
30 alleges deafness or hearing impairment, a good faith effort to
31 secure the services of an interpreter shall be made, without any
32 unnecessary delay unless either the individual who is deaf or
33 hearing impaired affirmatively indicates that he or she does not
34 need or cannot use an interpreter, or an interpreter is not otherwise
35 required by Title II of the Americans with Disabilities Act of 1990
36 (Public Law 101-336) and federal regulations adopted thereunder.

37 (k) No statement, written or oral, made by an individual who
38 the court finds is deaf or hearing impaired in reply to a question of
39 a peace officer, or any other person having a law enforcement or
40 prosecutorial function in any criminal or quasi-criminal



investigation or proceeding, may be used against that individual who is deaf or hearing impaired unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes special findings that either the individual could not have used an interpreter or an interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder and that the statement was made knowingly, voluntarily, and intelligently.

(l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be given to first obtaining a qualified interpreter.

(m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for individuals who are deaf or hearing impaired participating as parties or witnesses in a trial or hearing.

(n) In any action or proceeding in which an individual who is deaf or hearing impaired is a participant, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the participating individual who is deaf or hearing impaired.

(o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to subdivision (f).

SEC. 2. Section 755 of the Evidence Code is amended to read:

755. (a) In any action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, ~~in which a party~~ *or in other settings mandated by the court, including mediation with Family Court Services and for family law facilitator meetings when the mediator or facilitator does not speak the language of a party, in which a party is deaf or hearing impaired or does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section a sign language interpreter qualified pursuant to Section 754 or an interpreter of languages other than English*

1 *qualified pursuant to Section 68561 of the Government Code, as*
2 *appropriate, shall be present to interpret the proceedings in sign*
3 *language or a language that the party understands, respectively,*
4 *and to assist communication between the party and his or her*
5 *attorney. Notwithstanding this requirement, a court may issue an*
6 *ex parte order pursuant to Sections 2045 and 7710 of, and Article*
7 *4 The first priority for providing interpreters shall be in courtroom*
8 *proceedings. Interpreters shall be assigned for mediation with*
9 *Family Court Services and for family law facilitator meetings only*
10 *if it does not result in a shortage of interpreters for courtroom*
11 *proceedings.*

12 *(b) (1) The fees of interpreters for parties who are deaf or*
13 *hearing impaired shall be paid pursuant to subdivision (i) of*
14 *Section 754.*

15 *(2) The fees of interpreters for all other parties shall be paid*
16 *pursuant to Chapter 13 (commencing with Section 6320) of*
17 *Chapter 2 of Part 4 of Division 10 of the Family Code, without the*
18 *presence of an interpreter. The interpreter selected shall be*
19 *certified pursuant to Article 4 (commencing with Section 68560)*
20 *of Chapter 2 77000) of Title 8 of the Government Code, unless the*
21 *court in its discretion appoints an interpreter who is not certified.*

22 *(b) The fees of interpreters utilized under this section shall be*
23 *paid as provided in subdivision (b) of Section 68092 of the*
24 *Government Code. However, the fees of an interpreter shall be*
25 *waived for a party who needs an interpreter and appears in forma*
26 *pauperis either of the following:*

27 *(A) A party who does not proficiently speak or understand the*
28 *English language in any action or proceeding brought under*
29 *Division 10 (commencing with Section 6200) of the Family Code*
30 *or in any proceeding which contains allegations of domestic*
31 *violence.*

32 *(B) Any party for whom the gross annual income of his or her*
33 *immediate family, as calculated pursuant to Section 68511.3 of the*
34 *Government Code 1382a of Title 42 of the United States Code, is*
35 *at or below 200 percent of the current official poverty line*
36 *established by the United States Director of the Office of*
37 *Management and Budget, as annually revised by the Secretary of*
38 *Health and Human Services. The Judicial Council shall amend*
39 *subdivision (i) of California Rule of Court 985 Rule 985 of the*

1 *California Rules of Court* and revise its forms accordingly ~~by July~~
2 ~~4, 1996.~~

3 (c) In any civil action in which an interpreter is required under
4 this section, the court shall not commence proceedings until the
5 appointed interpreter is present and situated near the party and his
6 or her attorney. However, this section shall not prohibit the court
7 from doing any of the following:

8 (1) Issuing an order when the necessity for the order outweighs
9 the necessity for an interpreter.

10 (2) Extending the duration of a previously issued temporary
11 order if an interpreter is not readily available.

12 (3) Issuing a permanent order where a party who requires an
13 interpreter fails to make appropriate arrangements for an
14 interpreter after receiving proper notice of the hearing with
15 information about obtaining an interpreter

16 (d) This section does not prohibit the presence of any other
17 person, *such as a support person authorized under Section 6303*
18 *of the Family Code*, to assist a party.

19 ~~(e) A local public entity may, and the~~ The Judicial Council
20 shall, apply to the appropriate state agency that receives federal
21 funds authorized pursuant to the federal Violence Against Women
22 Act (P.L. 103-322) for these federal funds or for funds from
23 sources other than the state to implement this section. ~~A local~~
24 ~~public entity and the Judicial Council shall comply with the~~
25 ~~requirements of this section only to the extent that any of these~~
26 ~~funds are made available.~~

27 (f) The Judicial Council shall draft rules and modify forms
28 necessary to implement this section, including those for the
29 petition for a temporary restraining order and related forms, to
30 inform both parties of their right to an interpreter pursuant to this
31 section.

32 SEC. 3. Section 68562 of the Government Code is amended
33 to read:

34 68562. (a) The Judicial Council shall designate the
35 languages for which certification programs shall be established
36 under subdivision (b). The language designations shall be based on
37 (1) the courts' needs as determined by the language and interpreter
38 use and need studies under Section 68563, (2) the language needs
39 of non-English-speaking persons in the courts, and (3) other
40 information the Judicial Council deems relevant.

(b) By July 1, 1996, the Judicial Council shall approve one or more entities to certify Spanish language interpreters and interpreters for as many other languages designated under subdivision (a) as practicable by that date. The Judicial Council may give provisional approval to an entity to examine interpreters and establish a list of recommended court interpreters pending final approval of one or more certification entities. Certification entities may include educational institutions, testing organizations, joint powers agencies, or public agencies.

The Judicial Council shall adopt and publish guidelines, standards, and procedures to determine which certification entities will be approved to test and certify interpreters.

(c) The Judicial Council shall develop and implement procedures to administer the list of recommended court interpreters previously established by the State Personnel Board and the list established by an entity provisionally approved under subdivision (b).

The Judicial Council shall develop procedures and standards for certifying without reexamination interpreters on the list of recommended court interpreters (1) previously established by the State Personnel Board, or (2) established by an entity provisionally approved under subdivision (b). Certification of these interpreters shall be based on criteria determined by the Judicial Council, such as recent interpreting experience, performance in court or at administrative hearings, training, and continuing education.

(d) The Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. The Judicial Council shall adopt standards of professional conduct for court interpreters.

(e) The Judicial Council shall adopt programs for interpreter recruiting, training, and continuing education and evaluation to ensure that an adequate number of interpreters is available and that they interpret competently.

(f) The Judicial Council shall establish guidelines for fees or shall set and charge fees for applications to take the court interpreter examinations, for renewal of certifications, for certification of interpreters on the list of recommended court interpreters, for maintaining interpreters on the recommended list until January 1, 1996, and for other functions and services provided under this article. All fees and other revenues received

1 by the Judicial Council under this article shall be transferred
2 promptly to the Controller, and shall be placed in the Court
3 Interpreters' Fund, which is hereby created, the moneys in which
4 shall be available to carry out the purposes of this article upon
5 appropriation by the Legislature.

6 (g) Each superior and municipal court may adopt local rules to
7 impose additional requirements, standards, examinations, and
8 programs as necessary for equity or to recognize local conditions.

9 (h) *The Judicial Council shall require minimum training*
10 *standards for interpreters of three hours of instruction and*
11 *coursework in the dynamics of domestic violence within the first*
12 *year of certification or registration, and three hours of continuing*
13 *education credits on a biannual basis. The three hours continuing*
14 *education credits shall be part of, and not in addition to, the*
15 *existing 30-hour biannual continuing education requirement. The*
16 *initial training and continuing education shall include an*
17 *overview of domestic violence and family law terminology and*
18 *proceedings, development of skills for working with victims of*
19 *violence and traumatized individuals, and training in the*
20 *dynamics of domestic violence. None of the initial three hours, and*
21 *no more than one hour of the continuing education requirement,*
22 *may be fulfilled by self-study coursework. Training and*
23 *coursework offered pursuant to this subdivision shall be developed*
24 *and conducted in partnership with the Judicial Council Court*
25 *Interpreter's Advisory Panel and nonprofit community based*
26 *organizations whose primary purpose is to serve survivors of*
27 *domestic violence. Training pursuant to this subdivision shall be*
28 *approved for Court Interpreter Minimum Continuing Education*
29 *through the Judicial Council Court Interpreter's Advisory Panel.*
30 *Community-based organizations offering this training shall be*
31 *compensated with a materials fee. All training required pursuant*
32 *to this subdivision shall apply to interpreters for the deaf as*
33 *described in Sections 750 to 755, inclusive, of the Evidence Code*
34 *as well as to interpreters of other languages.*

35 (i) *The Judicial Council shall conduct a public education and*
36 *notification program regarding this section and Sections 750 to*
37 *755, inclusive, of the Evidence Code, to assure a high degree of*
38 *publicity with respect to these provisions. This public education*
39 *program shall include, but is not limited to, the following:*

1 (1) Each court and family law facilitator's office shall post in
2 a conspicuous place a notice, 8.5 by 11 inches or larger, advising
3 parties in multiple languages, including, but not limited to,
4 English, Spanish, Tagalog, Arabic, Cantonese, Vietnamese,
5 Japanese, and Korean, of their right to an interpreter, including
6 information regarding interpreter fees and costs and the right to
7 waiver of these fees and costs. This notice shall read substantially
8 as follows:

9 *"If you are deaf or unable to speak English fluently, you are*
10 *entitled to an interpreter for your court proceeding. Interpreters*
11 *are available at no cost for all persons eligible to receive a fee*
12 *waiver with respect to the cost of court filings. Waiver of the fees*
13 *and costs of an interpreter may also be available for others who*
14 *cannot afford to pay for an interpreter."*

15 (2) Outreach shall be performed by the Judicial Council
16 concerning the availability of interpreters and the availability of
17 waiver for associated costs and fees for court filings.

18 SEC. 4. In coordination with its Court Interpreter Advisory
19 Panel, the Judicial Council shall evaluate the effectiveness of the
20 requirements imposed by this act and report thereon to the
21 Legislature no later than January 1, 2007.