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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2589

**Introduced by Assembly Member Cardenas
(Coauthors: Assembly Members Gallegos, *Honda*,
Longville, Lowenthal, Mazzoni, and Washington)**

February 25, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2589, as amended, Cardenas. 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 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 *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 sign language interpreters in these proceedings; and would limit the services of foreign language interpreters to certified interpreters. 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 act no later than January 1, 2005.

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. (a) The act shall be known and may be
2 cited as the “Language Access Act.”



1 (b) The purpose of this act is to ensure that deaf and
2 non-English speaking victims of domestic violence have
3 access to the courts and to domestic violence services.

4 SEC. 2. Section 754 of the Evidence Code is amended
5 to read:

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

15 ~~(b) Except as provided in Section 755, in~~ *In* any civil
16 or criminal action, including, but not limited to, any
17 action involving a traffic or other infraction, any small
18 claims court proceeding, any juvenile court proceeding,
19 any family court proceeding or service, or any proceeding
20 to determine the mental competency of a person, in any
21 court-ordered or court-provided alternative dispute
22 resolution, including mediation and arbitration, or any
23 administrative hearing, where a party or witness is an
24 individual who is deaf or hearing impaired and the
25 individual who is deaf or hearing impaired is present and
26 participating, the proceedings shall be interpreted in a
27 language that the individual who is deaf or hearing
28 impaired understands by a qualified interpreter
29 appointed by the court or other appointing authority, or
30 as agreed upon.

31 (c) For purposes of this section, “appointing
32 authority” means a court, department, board,
33 commission, agency, licensing or legislative body, or
34 other body for proceedings requiring a qualified
35 interpreter.

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



1 (e) For purposes of this section, “intermediary
2 interpreter” means an individual who is deaf or hearing
3 impaired, or a hearing individual who is able to assist in
4 providing an accurate interpretation between spoken
5 English and sign language or between variants of sign
6 language or between American Sign Language and
7 languages other than English by acting as an
8 intermediary between the individual who is deaf or
9 hearing impaired and the qualified interpreter.

10 (f) For purposes of this section, “qualified interpreter”
11 means an interpreter who has been certified as
12 competent to interpret court proceedings by a testing
13 organization, agency, or educational institution approved
14 by the Judicial Council as qualified to administer tests to
15 court interpreters for individuals who are deaf or hearing
16 impaired.

17 (g) In the event that the appointed interpreter is not
18 familiar with the use of particular signs by the individual
19 who is deaf or hearing impaired or his or her particular
20 variant of sign language, the court or other appointing
21 authority shall, in consultation with the individual who is
22 deaf or hearing impaired or his or her representative,
23 appoint an intermediary interpreter.

24 (h) Prior to July 1, 1992, the Judicial Council shall
25 conduct a study to establish the guidelines pursuant to
26 which it shall determine which testing organizations,
27 agencies, or educational institutions will be approved to
28 administer tests for certification of court interpreters for
29 individuals who are deaf or hearing impaired. It is the
30 intent of the Legislature that the study obtain the widest
31 possible input from the public, including, but not limited
32 to, educational institutions, the judiciary, linguists,
33 members of the State Bar, court interpreters, members
34 of professional interpreting organizations, and members
35 of the deaf and hearing-impaired communities. After
36 obtaining public comment and completing its study, the
37 Judicial Council shall publish these guidelines. By January
38 1, 1997, the Judicial Council shall approve one or more
39 entities to administer testing for court interpreters for
40 individuals who are deaf or hearing impaired. Testing



1 entities may include educational institutions, testing
2 organizations, joint powers agencies, or public agencies.

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

6 (i) Persons appointed to serve as interpreters under
7 this section shall be paid, in addition to actual travel costs,
8 the prevailing rate paid to persons employed by the court
9 to provide other interpreter services unless such service
10 is considered to be a part of the person's regular duties as
11 an employee of the state, county, or other political
12 subdivision of the state. ~~Except as provided in Section 755,~~
13 ~~payment~~—*Payment* of the interpreter's fee shall be a
14 charge against the county, or other political subdivision
15 of the state, in which that action is pending. Payment of
16 the interpreter's fee in administrative proceedings shall
17 be a charge against the appointing board or authority.

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

31 (k) No statement, written or oral, made by an
32 individual who the court finds is deaf or hearing impaired
33 in reply to a question of a peace officer, or any other
34 person having a law enforcement or prosecutorial
35 function in any criminal or quasi-criminal investigation or
36 proceeding, may be used against that individual who is
37 deaf or hearing impaired unless the question was
38 accurately interpreted and the statement was made
39 knowingly, voluntarily, and intelligently and was
40 accurately interpreted, or the court makes special



1 findings that either the individual could not have used an
2 interpreter or an interpreter was not otherwise required
3 by Title II of the Americans with Disabilities Act of 1990
4 (Public Law 101-336) and federal regulations adopted
5 thereunder and that the statement was made knowingly,
6 voluntarily, and intelligently.

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

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

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

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

25 SEC. 3. Section 755 of the Evidence Code is amended
26 to read:

27 755. (a) In any action or proceeding under Division
28 10 (commencing with Section 6200) of the Family Code,
29 and in any action or proceeding under the Uniform
30 Parentage Act (Part 3 (commencing with Section 7600)
31 of Division 12 of the Family Code) or for dissolution or
32 nullity of marriage or legal separation of the parties in
33 which a protective order has been granted or is being
34 sought pursuant to Section 6221 of the Family Code, or *in*
35 *other settings mandated by the court, including*
36 *mediation with Family Court services or supervised*
37 *visitation when the mediator or supervisor does not speak*
38 *the language of a party*, in which a party is deaf or hearing
39 impaired or does not proficiently speak or understand the
40 English language, and that party is present, a sign



1 language interpreter qualified pursuant to Section 754 of
2 this code or an interpreter of languages other than
3 English qualified pursuant to Section 68561 of the
4 Government Code, as appropriate, shall be present to
5 interpret the proceedings in sign language or a language
6 that the party understands, respectively, and to assist
7 communication between the party and his or her
8 attorney.

9 ~~(b) The fees of interpreters utilized under this section~~
10 *(1) The fees of interpreters for parties who are deaf or*
11 *hearing impaired shall be paid pursuant to subdivision (i)*
12 *of Section 754.*

13 *(2) The fees of interpreters for all other parties shall be*
14 *paid as provided in subdivision (b) of Section 68092 of the*
15 *Government Code. However, the fees of an interpreter*
16 *shall be waived for a party who ~~needs an interpreter and~~*
17 *does not proficiently speak or understand the English*
18 *language in any action or proceeding brought under*
19 *Division 10 (commencing with Section 6200) of the*
20 *Family Code and for any party who appears in forma*
21 *pauperis pursuant to Section 68511.3 of the Government*
22 *Code or for any other party pursuant to order of the*
23 *court. The Judicial Council shall amend subdivision (i) of*
24 *Rule 985 of the California Rules of Court and revise its*
25 *forms accordingly.*

26 (c) In any civil action in which an interpreter is
27 required under this section, the court shall not commence
28 proceedings until the appointed interpreter is present
29 and situated near the party and his or her attorney.
30 However, this section shall not prohibit the court from
31 doing any of the following:

32 (1) Issuing an order when the necessity for the order
33 outweighs the necessity for an interpreter.

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

36 (3) Issuing a permanent order where a party who
37 requires an interpreter fails to make appropriate
38 arrangements for an interpreter after receiving proper
39 notice of the hearing with information about obtaining an
40 interpreter.



1 (d) This section does not prohibit the presence of any
2 other person to assist a party.

3 (e) The Judicial Council shall apply to the appropriate
4 state agency that receives federal funds authorized
5 pursuant to the federal Violence Against Women Act
6 (P.L. 103-322) for these federal funds or for funds from
7 sources other than the state to implement this section.

8 (f) The Judicial Council shall draft rules and modify
9 forms necessary to implement this section, including
10 those for the petition for a temporary restraining order
11 and related forms, to inform both parties of their right to
12 an interpreter pursuant to this section.

13 SEC. 4. Section 68562 of the Government Code is
14 amended to read:

15 68562. (a) The Judicial Council shall designate the
16 languages for which certification programs shall be
17 established under subdivision (b). The language
18 designations shall be based on (1) the courts' needs as
19 determined by the language and interpreter use and
20 need studies under Section 68563, (2) the language needs
21 of non-English-speaking persons in the courts, and (3)
22 other information the Judicial Council deems relevant.

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

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

37 (c) The Judicial Council shall develop and implement
38 procedures to administer the list of recommended court
39 interpreters previously established by the State



1 Personnel Board and the list established by an entity
2 provisionally approved under subdivision (b).

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

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

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

24 (f) The Judicial Council shall establish guidelines for
25 fees or shall set and charge fees for applications to take the
26 court interpreter examinations, for renewal of
27 certifications, for certification of interpreters on the list
28 of recommended court interpreters, for maintaining
29 interpreters on the recommended list until January 1,
30 1996, and for other functions and services provided under
31 this article. All fees and other revenues received by the
32 Judicial Council under this article shall be transferred
33 promptly to the Controller, and shall be placed in the
34 Court Interpreters' Fund, which is hereby created, the
35 moneys in which shall be available to carry out the
36 purposes of this article upon appropriation by the
37 Legislature.

38 (g) Each superior and municipal court may adopt local
39 rules to impose additional requirements, standards,



1 examinations, and programs as necessary for equity or to
2 recognize local conditions.

3 (h) The Judicial Council shall develop a statewide rule
4 of court requiring minimum training standards for
5 interpreters of ~~eight~~ *six* hours of instruction and
6 coursework in the dynamics of domestic violence within
7 the first year of certification or registration, and ~~eight~~
8 *three* hours of continuing education *credits* on a biannual
9 basis. The initial training and continuing education shall
10 include ~~training in the dynamics of power and control,~~
11 ~~the nature of violence, gender roles and socialization, the~~
12 ~~effect of violence on children and others, and legislative~~
13 ~~updates.~~ *an overview of domestic violence and family law*
14 *terminology and proceedings, development of skills for*
15 *working with victims of violence and traumatized*
16 *individuals, and training in the dynamics of domestic*
17 *violence.* None of the initial eight hours, and no more than
18 two hours of the continuing education requirement, may
19 be fulfilled by self-study coursework. Training and
20 coursework offered pursuant to this subdivision shall be
21 developed and conducted in partnership with *the Judicial*
22 *Council Court Interpreter's Advisory Panel and*
23 nonprofit community based organizations whose primary
24 purpose is to serve survivors of domestic violence.
25 *Training pursuant to this subdivision shall be approved*
26 *for Court Interpreter Minimum Continuing Education*
27 *through the Judicial Council Court Interpreter's*
28 *Advisory Panel.* Community-based organizations
29 offering this training shall be compensated with a
30 materials fee. All training offered pursuant to this
31 subdivision shall apply to interpreters for the deaf as
32 described in Sections 750 to 755, inclusive, of the
33 Evidence Code as well as to interpreters of other
34 languages. ~~Training required pursuant to this subdivision~~
35 ~~shall be in addition to the current required training~~
36 ~~received by interpreters.~~

37 (i) The Judicial Council shall conduct a public
38 education and notification program regarding this
39 section and Sections 750 to 755, inclusive, of the Evidence
40 Code, to assure a high degree of publicity with respect to



1 these provisions. This public education program shall
2 include, but is not limited to, the following:

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

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

19 (2) Outreach shall be performed by the Judicial
20 Council concerning the availability of interpreters and
21 the availability of waiver for associated costs and fees for
22 court filings.

23 SEC. 5. In coordination with its Court Interpreter
24 Advisory Panel, the Judicial Council shall evaluate the
25 effectiveness of the requirements imposed by this act and
26 report thereon to the Legislature no later than January 1,
27 2005.

