

2001 ASSEMBLY BILL 444

June 12, 2001 – Introduced by Representatives McCORMICK, KRAWCZYK, WALKER, ALBERS, MUSSER, RILEY, SYKORA, SHILLING, PETTIS, STASKUNAS, UNDERHEIM, TURNER, BALOW, YOUNG and CULLEN, cosponsored by Senators GEORGE, ROESSLER, HANSEN, ROSENZWEIG, BURKE and PLACHE. Referred to Committee on Judiciary.

1 **AN ACT to renumber and amend** 885.37 (1); **to amend** 48.375 (7) (d) 1m., 814.67
2 (1) (b) 2., 885.37 (title), 885.37 (2), 885.37 (3) (b), 885.37 (3m), 885.37 (4) (a)
3 (intro.), 885.37 (4) (b), 885.37 (5) (a) and 905.015; and **to create** 48.315 (1) (h),
4 885.37 (1g), 885.37 (6) to (10) and 938.315 (1) (h) of the statutes; **relating to:**
5 fees paid to court interpreters.

Analysis by the Legislative Reference Bureau

Under current law, if a court knows that a person charged with a crime, a parent or child subject to juvenile court proceedings, a person subject to mental health or protective service proceedings, or a witness to one of those proceedings, is unable to communicate and understand English because of a language difficulty or a disability, the court is required to tell the person that he or she has the right to an interpreter. If the person cannot afford to pay for an interpreter, current law requires the court to provide an interpreter at the public's expense. Current law allows courts to authorize the use of interpreters in other court proceedings. Administrative agencies are also authorized under current law to use interpreters in contested cases.

Currently, the expenses of furnishing an interpreter in the supreme court, court of appeals, or circuit court is paid by the director of state courts. If the state public defender needs an interpreter to assist in preparing an indigent for a court proceeding, current law requires the state public defender to pay the expenses. In municipal court and before administrative agencies, the unit of government involved is required to pay the interpreter expenses. Current law limits the amount of fees

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for interpreters before a municipal court or an agency to \$10 per 0.5 day or higher fees established by the unit of government.

Under current law, fees paid to interpreters in circuit court, the court of appeals, the supreme court, and assisting the state public defender in representing an indigent in preparing for court proceedings are set at \$35 per 0.5 day. This bill increases the amount for fees paid to interpreters in circuit court, the court of appeals, and the supreme court to \$35 per hour and provides funding for a project position in the director of state courts office to train and test court interpreters.

Under the bill, a qualified interpreter must be able to readily communicate with the person, transfer the meaning of statements to and from English in the court-related proceedings, and accurately interpret, in a manner that conserves the meaning, tone, and style of the original statement. The bill also allows the clerk of court to provide a qualified interpreter to assist a person with limited English proficiency when that person asks the court for assistance regarding a legal proceeding, such as how to bring an action to obtain a domestic abuse injunction.

The bill allows a person with limited English proficiency to waive the appointment of an interpreter if the court determines on the record that the waiver has been made knowingly, intelligently, and voluntarily, and allows the person to retract that waiver at any time during the court proceedings for good cause.

The bill requires the supreme court to adopt policies and procedures for the recruitment, training, testing, and retention of qualified interpreters, and requests that the supreme court cooperate with the technical college system in the training and testing of those interpreters.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.315 (1) (h) of the statutes is created to read:

2 48.315 (1) (h) Any period of delay resulting from the need to appoint a qualified
3 interpreter.

4 **SECTION 2.** 48.375 (7) (d) 1m. of the statutes is amended to read:

5 48.375 (7) (d) 1m. Except as provided under s. 48.315 (1) (b), (c) ~~and~~, (f), and
6 (h), if the court fails to comply with the time limits specified under subd. 1. without
7 the prior consent of the minor and the minor's counsel, if any, or the member of the
8 clergy who filed the petition on behalf of the minor, if any, the minor and the minor's

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1 counsel, if any, or the member of the clergy, if any, shall select a temporary reserve
2 judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and
3 issue an order granting or denying the petition and the chief judge of the judicial
4 administrative district in which the court is located shall assign the temporary
5 reserve judge selected by the minor and the minor's counsel, if any, or the member
6 of the clergy, if any, to make the determination and issue the order. A temporary
7 reserve judge assigned under this subdivision to make a determination under par.
8 (c) and issue an order granting or denying a petition shall make the determination
9 and issue the order within 2 calendar days after the assignment, unless the minor
10 and her counsel, if any, or the member of the clergy who filed the petition on behalf
11 of the minor, if any, consent to an extension of that time period. The order shall be
12 effective immediately. The court shall prepare and file with the clerk of court
13 findings of fact, conclusions of law and a final order granting or denying the petition,
14 and shall notify the minor of the court's order, as provided under subd. 1.

15 **SECTION 3.** 814.67 (1) (b) 2. of the statutes is amended to read:

16 814.67 (1) (b) 2. For interpreters, \$35 per ~~one-half day~~ hour.

17 **SECTION 4.** 885.37 (title) of the statutes is amended to read:

18 **885.37 (title) Interpreters for persons with language difficulties or**
19 **hearing or speaking impairments limited English proficiency.**

20 **SECTION 5.** 885.37 (1) of the statutes is renumbered 885.37 (1m), and 885.37
21 (1m) (b), as renumbered, is amended to read:

22 885.37 (1m) (b) If a court has notice that a person who fits any of the criteria
23 under par. (a) has ~~a language difficulty because of the inability to speak or~~
24 ~~understand English, has a hearing impairment, is unable to speak or has a speech~~
25 ~~defect the court shall make a factual determination of whether the language~~

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1 ~~difficulty or the hearing or speaking impairment is sufficient to prevent the~~
2 ~~individual from communicating with his or her attorney, reasonably understanding~~
3 ~~the English testimony or reasonably being understood in English. If the court~~
4 ~~determines that, limited English proficiency and that an interpreter is necessary, the~~
5 court shall advise the person that he or she has a right to a qualified interpreter and
6 that, if the person cannot afford one, an interpreter will be provided for him or her
7 at the public's expense. ~~Any waiver of the right to an interpreter is effective only if~~
8 ~~made voluntarily in person, in open court and on the record.~~

9 **SECTION 6.** 885.37 (1g) of the statutes is created to read:

10 **885.37 (1g)** In this section:

11 (a) "Limited English proficiency" means any of the following:

- 12 1. The inability, because of the use of a language other than English, to
13 adequately understand or communicate effectively in English in a court proceeding.
- 14 2. The inability, due to a speech impairment, hearing loss, deafness,
15 deaf-blindness, or other disability, to adequately hear, understand, or communicate
16 effectively in English in a court proceeding.

17 (b) "Qualified interpreter" means a person who is able to do all of the following:

- 18 1. Readily communicate with a person who has limited English proficiency.
- 19 2. Orally transfer the meaning of statements to and from English and the
20 language spoken by a person who has limited English proficiency in the context of
21 a court proceeding.
- 22 3. Readily and accurately interpret for a person who has limited English
23 proficiency, without omissions or additions, in a manner that conserves the meaning,
24 tone, and style of the original statement, including dialect, slang, and specialized
25 vocabulary.

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1 **SECTION 7.** 885.37 (2) of the statutes is amended to read:

2 885.37 **(2)** A court may authorize the use of an interpreter in actions or
3 proceedings in addition to those specified in sub. (1) (1m).

4 **SECTION 8.** 885.37 (3) (b) of the statutes is amended to read:

5 885.37 **(3)** (b) In any administrative contested case proceeding before a state,
6 county, or municipal agency, if the agency conducting the proceeding has notice that
7 a party to the proceeding has ~~a language difficulty because of the inability to speak~~
8 ~~or understand English, has a hearing impairment, is unable to speak or has a speech~~
9 ~~defect, the agency shall make a factual determination of whether the language~~
10 ~~difficulty or hearing or speaking impairment is sufficient to prevent the party from~~
11 ~~communicating with others, reasonably understanding the English testimony or~~
12 ~~reasonably being understood in English. If the agency determines limited English~~
13 ~~proficiency and that an interpreter is necessary, the agency shall advise the party~~
14 ~~that he or she has a right to a qualified interpreter. After considering the party's~~
15 ~~ability to pay and the other needs of the party, the agency may provide for an~~
16 ~~interpreter for the party at the public's expense. Any waiver of the right to an~~
17 ~~interpreter is effective only if made at the administrative contested case proceeding.~~

18 **SECTION 9.** 885.37 (3m) of the statutes is amended to read:

19 885.37 **(3m)** Any agency may authorize the use of an a qualified interpreter in
20 a contested case proceeding for a person who is not a party but who has a substantial
21 interest in the proceeding.

22 **SECTION 10.** 885.37 (4) (a) (intro.) of the statutes is amended to read:

23 885.37 **(4)** (a) (intro.) The necessary expense of furnishing an a qualified
24 interpreter for an indigent person under sub. (1) (1m) or (2) shall be paid as follows:

25 **SECTION 11.** 885.37 (4) (b) of the statutes is amended to read:

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1 885.37 (4) (b) The necessary expense of furnishing an a qualified interpreter
2 for an indigent party under sub. (3) shall be paid by the unit of government for which
3 the proceeding is held.

4 **SECTION 12.** 885.37 (5) (a) of the statutes is amended to read:

5 885.37 (5) (a) If a court under sub. (1) (1m) or (2) or an agency under sub. (3)
6 decides to appoint an interpreter, the court or agency shall follow the applicable
7 procedure under par. (b) or (c).

8 **SECTION 13.** 885.37 (6) to (10) of the statutes are created to read:

9 885.37 (6) (a) If a person with limited English proficiency requests the
10 assistance of the clerk of circuit courts regarding a legal proceeding, the clerk may
11 provide the assistance of a qualified interpreter to respond to the person's inquiry.

12 (b) A qualified interpreter appointed under this section may, with the approval
13 of the court, provide interpreter services outside the court room that are related to
14 the court proceedings, including during court-ordered psychiatric or medical exams
15 or mediation.

16 (7) (a) A person with limited English proficiency may waive the right to a
17 qualified interpreter at any point in the court proceeding if the court advises the
18 person of the nature and effect of the waiver and determines on the record that the
19 waiver has been made knowingly, intelligently, and voluntarily.

20 (b) At any point in the court proceeding, for good cause, the person with limited
21 English proficiency may retract his or her waiver and request that a qualified
22 interpreter be appointed.

23 (c) Any party to a court proceeding may object to the use of any qualified
24 interpreter for good cause. The court may remove a qualified interpreter for good
25 cause.

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1 **(8)** Every qualified interpreter, before commencing his or her duties in a court
2 proceeding, shall take a sworn oath that he or she will make a true and impartial
3 interpretation. The supreme court may approve a uniform oath for qualified
4 interpreters.

5 **(9)** The delay resulting from the need to locate and appoint a qualified
6 interpreter may constitute good cause for the court to toll the time limitations in the
7 court proceeding.

8 **(10)** The supreme court shall establish the procedures and policies for the
9 recruitment, training, and testing of persons to act as qualified interpreters in a
10 court proceeding and for the coordination, discipline, and retention of those
11 interpreters.

12 **SECTION 14.** 905.015 of the statutes is amended to read:

13 **905.015 Interpreters for persons with language difficulties, limited**
14 **English proficiency, or hearing or speaking impairments.** If an interpreter
15 for a person with a language difficulty, limited English proficiency, as defined in s.
16 885.37 (1g) (a). or a hearing or speaking impairment interprets as an aid to a
17 communication which is privileged by statute, rules adopted by the supreme court,
18 or the U.S. or state constitution, the interpreter may be prevented from disclosing
19 the communication by any person who has a right to claim the privilege. The
20 interpreter may claim the privilege but only on behalf of the person who has the
21 right. The authority of the interpreter to do so is presumed in the absence of evidence
22 to the contrary.

23 **SECTION 15.** 938.315 (1) (h) of the statutes is created to read:

24 **938.315 (1) (h)** Any period of delay resulting from the need to appoint a
25 qualified interpreter.

ASSEMBLY BILL 444**SECTION 16****SECTION 16. Nonstatutory provisions; supreme court.**

(1) COURT INTERPRETER TRAINING. The supreme court is requested to cooperate with the technical college system board in the development and implementation of a curriculum and testing program for training qualified interpreters.

SECTION 17. Appropriation changes; director of state courts.

(1) COURT INTERPRETER FEES. In the schedule under section 20.005 (3) of the statutes for the appropriation to the director of state courts under section 20.625 (1) (c) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$311,200 for fiscal year 2001–02 and the dollar amount is increased by \$311,200 for fiscal year 2002–03 to provide increased fees to court interpreters.

SECTION 18. Appropriation changes; supreme court.

(1) COURT INTERPRETER PROGRAM. In the schedule under section 20.005 (3) of the statutes for the appropriation to the supreme court under section 20.680 (2) (a) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$100,000 for fiscal year 2001–02 and the dollar amount is increased by \$100,000 for fiscal year 2002–03 to increase the authorized FTE positions for the supreme court by 1.0 GPR project position for a 2–year period beginning on the effective date of this subsection, for the purpose of allowing the director of state courts to provide testing and training of court interpreters.

SECTION 19. Initial applicability.

(1) This act first applies to interpreters used or appointed on the effective date of this subsection.

SECTION 20. Effective date.

