



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

---

May 7, 2003

Joint Committee on Finance

Paper #211

### **Court Interpreters (Circuit Courts)**

[LFB 2003-05 Budget Summary: Page 96, #3]

---

#### **CURRENT LAW**

Under current law, the state provides reimbursement to counties for interpreter services for indigent persons in criminal, delinquency, protective, services, Chapter 48 (children's code) and Chapter 51 (alcohol, drug abuse, development disabilities and mental health act) proceedings at the rate of \$40 per hour for certified interpreters and \$30 per hour for qualified interpreters, with base level funding of \$595,000 GPR.

#### **GOVERNOR**

Provide \$357,000 GPR in 2003-04 and \$565,300 GPR in 2004-05 to increase state reimbursement to counties for court interpreter services (foreign language interpreters and interpreters for the hearing impaired). Funding would be divided as follows: (a) \$59,500 GPR in 2003-04 and \$119,000 GPR in 2004-05 for projected increased use of interpreters under current law; and (b) \$297,500 GPR in 2003-04 and \$446,300 GPR in 2004-05 for the requested statutory change to provide interpreters in civil cases and regardless of indigence. Total court interpreter reimbursement funding would be \$952,000 GPR in 2003-04 and \$1,160,300 GPR in 2004-05.

Modify statutory language to specify that a court, in all criminal and civil proceedings, must provide an interpreter for a party or witness who has limited English proficiency, regardless of indigence. Specify that the modification would first apply to actions commenced on the effective date of the bill.

## DISCUSSION POINTS

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

a. "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.

b. "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.

2. 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 and, if the person cannot afford one, an interpreter will be provided at public expense in the following proceedings: (a) criminal proceedings; (b) delinquency proceedings; (c) protective service proceedings; (d) proceedings under Chapter 48 (Children's Code); and (e) proceedings under Chapter 51 (Mental Health).

3. Under current law, 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). In addition, interpreters may be used in the following circumstances: (a) if a person with limited English proficiency requests 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; (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; and (c) in other actions or proceedings authorized by the court. The court may accept a waiver of the right to a qualified interpreter from a person with limited English proficiency, 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.

4. 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 in 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 type of cases to assist indigent persons with limited English proficiency. Under 2001 Act 16, the reimbursement rate increased from \$35 per half day to: (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.

5. 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.

6. In August, 2000, Federal Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency," was issued. 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."

7. In June, 2002, the federal Department of Justice issued a "Final Guidance to Federal Financial 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.

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 the U.S. Bureau of the Census, Census 2000, Wisconsin's population includes 3.6% persons of Hispanic or Latino descent and 0.6% persons of Hmong descent. The Hmong population has increased by 106% since 1990 (an average of 7.5% annually), while the Hispanic population has increased by 107% (an average of 7.5% annually). Over the same period, Wisconsin's total population increased by 9.6% (an average of 0.9% annually). The Census 2000 estimates that 368,712 people in Wisconsin (7.3%) speak a language other than English at home, of which 148,910 (3%) report to speaking English less than "very well." An estimated 1% of the population is deaf, and an additional 6.6% is hard of hearing.

9. Senate Bill 44 modifies statutory language to provide interpreters in all criminal and civil cases, regardless of indigence. It should be noted, however, that if the Committee wishes to expand the applicability of the program as proposed under SB 44, a technical correction is necessary to remove all references of indigence from current statutory language related to court interpreters.

10. Under the bill, funding for the projected increased use of interpreters under current

law (\$59,500 GPR in 2003-04 and \$119,000 GPR in 2004-05) reflects an assumed 10% annual increase. However, given that Spanish and Hmong are the most frequently used languages, and that the Hispanic and Hmong populations have increased at an annual rate of 7.5%, use of the lower growth rate may be more appropriate. Increasing funding by 7.5% annually for interpreters costs under current law would provide \$44,900 GPR in 2003-04 and \$93,200 GPR in 2004-05.

11. As a result of statutory language changes to provide interpreters in civil cases, regardless of indigence, SB 44 provides \$297,500 GPR in 2003-04 and \$446,300 GPR in 2004-05. These costs reflect a 50% increase from the adjusted base in 2003-04 and a 75% increase in 2004-05. The Director of State Courts Office estimates that, over time, court interpreter costs will approximately double compared to base funding, because: (a) the number of additional court proceedings covered by the modified statutory language would increase the number of current cases; (b) costs for non-indigent LEP persons would be reimbursed; (c) increased judicial awareness will increase the use of the court interpreter program; and (d) other states in which similar changes have been made have experienced cost increases of approximately 100%.

12. The Court has had difficulty collecting specific data on the type and number of cases involving LEP individuals. However, based on limited information from counties, the Director of State Courts Office estimates that: (a) approximately 90% of LEP persons involved in proceedings currently covered by statute are indigent; (b) LEP persons are involved in criminal, juvenile, and traffic cases more often than the general population; (c) LEP persons are involved in general civil matters less often than the general population; and (d) LEP individuals are increasingly involved in domestic violence restraining orders and family proceedings.

13. Because information regarding the type and number of cases involving LEP persons is limited, it is difficult to estimate how much of the funding for the requested statutory language change is associated with indigence and how much is associated with civil cases. Based on the Director of State Courts' assumptions, however, funding could be divided as follows: (a) \$179,800 GPR in 2003-04 and \$293,600 GPR in 2004-05 associated with providing interpreters to indigent LEP persons in all other court proceedings not currently covered by statute; (b) \$72,700 GPR in 2003-04 and \$79,300 GPR in 2004-05 associated with providing interpreters to non-indigent LEP persons in court proceedings currently covered by statute; and (c) \$45,000 GPR in 2003-04 and \$73,400 GPR in 2004-05 associated with providing interpreters to non-indigent LEP persons in court proceedings not currently covered by statute.

14. Given the limited information available on the use of the courts by LEP persons and the state's current fiscal concerns, the Committee may wish to modify statutory language to provide funding for court interpreters for all LEP persons in court proceedings currently covered by statute regardless of indigence. As a result, increased funding for court interpreters would be: (a) \$44,900 GPR in 2003-04 and \$93,200 GPR in 2004-05 for projected increased use of interpreters under current law; and (b) based on the Court's assumptions, \$72,700 GPR in 2003-04 and \$79,300 GPR in 2004-05 for statutory modification to provide interpreters to LEP persons in currently authorized proceedings regardless of indigence.

15. Alternatively, the Committee may wish to modify statutory language to provide funding for court interpreters in all court proceedings but only for indigent LEP persons. Under this alternative, funding would be: (a) \$44,900 GPR in 2003-04 and \$93,200 GPR in 2004-05 for projected increased use of interpreters under current law; and (b) \$179,800 GPR in 2003-04 and \$293,600 GPR in 2004-05 for statutory modification to provide interpreters to indigent LEP persons in all criminal and civil proceedings.

16. If the statutory language changes are removed, increased funding for the current program (\$44,900 GPR in 2003-04 and \$93,200 GPR in 2004-05) could be provided to support the estimated annual increase in interpreter services.

**ALTERNATIVES**

1. Approve the Governor's recommendation to provide \$357,000 GPR in 2003-04 and \$565,300 GPR in 2004-05 to increase state reimbursement to counties for court interpreter services (foreign language interpreters and interpreters for the hearing impaired). Modify statutory language, as technically corrected, to specify that a court, in all criminal and civil proceedings, must provide an interpreter for a party or witness who has limited English proficiency, regardless of indigence. Specify that the modification would first apply to actions commenced on the effective date of the bill.

2. Reestimate costs associated with the current court interprets program and provide \$342,400 GPR in 2003-04 and \$539,500 GPR in 2004-05 to increase state reimbursement to counties for court interpreter services. Modify statutory language, as technically corrected, to specify that a court, in all criminal and civil proceedings, must provide an interpreter for a party or witness who has limited English proficiency, regardless of indigence. Specify that the modification would first apply to actions commenced on the effective date of the bill. [This alternative would approve the Governor's recommendation, but reestimate cost increases associated with the current program.]

<b><u>Alternative 2</u></b>	<b><u>GPR</u></b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$40,400

3. Provide \$224,700 GPR in 2003-04 and \$386,800 GPR in 2004-05 for state reimbursement to counties for court interpreter services for indigent LEP persons in all cases. Modify statutory language to specify that if the court, in all criminal and civil proceedings, determines that the 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 that, if the person cannot afford one, an interpreter will be provided at the public's expense.

<b><u>Alternative 3</u></b>	<b><u>GPR</u></b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$310,800

4. Provide \$117,600 GPR in 2003-04 and \$172,500 GPR in 2004-05 for state reimbursement to counties for court interpreter services for all LEP persons for cases included under current law without regard to indigence. Modify statutory language to specify that in criminal proceedings and in proceedings under Chapter 48 (Children's Code), 51 (Mental Health), 55 (protective service proceeding), or 938 (juvenile proceeding), if the court determines that the 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 at the public's expense.

<b><u>Alternative 4</u></b>	<b><u>GPR</u></b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$632,200

5. Provide \$44,900 GPR in 2003-04 and \$93,200 GPR in 2004-05 for projected increased use of interpreters under current law. Delete the modification and funding associated with the statutory language which would to provide interpreters in civil cases and regardless of indigence.

<b><u>Alternative 5</u></b>	<b><u>GPR</u></b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$784,200

6. Maintain current law.

<b><u>Alternative 6</u></b>	<b><u>GPR</u></b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$922,300

Prepared by: Chris Carmichael