



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #200

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

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#### **CURRENT LAW**

Under current law, in criminal, delinquency, protective services, Chapter 48 (children's code) and Chapter 51 (alcohol, drug abuse, development 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 that, 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 \$688,200 GPR.

#### **GOVERNOR**

Provide \$403,600 GPR in 2005-06 and \$536,900 GPR in 2006-07 to increase state reimbursement to counties for court interpreter services (foreign language interpreters and interpreters for the hearing impaired) for the following purposes: (a) projected increased use of interpreters under current law; (b) higher reimbursement rates for certified (rather than qualified) interpreters under current law; (c) to reimburse counties for interpreters in all types of court proceedings; and (d) to reimburse counties for interpreters provided to non-indigents. Total funding for court interpreter reimbursement would be \$1,091,800 GPR in 2005-06 and \$1,225,100 GPR in 2006-07.

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 (Mental Health). 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 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; 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 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."

6. 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.

7. The federal Department of Justice sent a letter to all state court administrators in December, 2003, to advise state court systems about the June, 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 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.

### **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 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 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 \$688,200 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.

11. The Director of State Courts Office collected information from 15 counties on their practices for assigning court interpreters, the number and types of cases in which court interpreters were used, and costs associated with the use of court interpreters for the calendar year 2003. The counties from which information was collected were Brown, Chippewa, Dane, Door, Jefferson, Kenosha, Manitowoc, Marathon, Milwaukee, Outagamie, Racine, Rock, Walworth, Waukesha, and Winnebago. Court cases were divided into five categories: (a) criminal cases, including felony, misdemeanor and criminal traffic; (b) juvenile cases; (c) cases under the children's code, including protective service cases, paternity, and termination of parental rights; (d) mental health cases; and (e) 'other' cases, including family, civil, small claims, traffic forfeitures, ordinance violations, and intake. From the calendar year 2003 county data, the Director of State Courts Office found the following:

- Costs for the 15 counties totaled \$795,100 in calendar year 2003, for which \$528,300 was reimbursed by the state. Of the total costs, 97% were for hourly interpreter reimbursement and 3% were for travel reimbursement. Costs for these counties represented 83.6% of court interpreter costs for all counties.

- Based on counties' reported data, 11% of court interpreter costs are estimated to be associated with cases involving non-indigent persons. Additionally, costs for certified interpreters

(rather than qualified interpreters) are estimated to account for 40.2% of the hourly reimbursement costs.

- Court interpreters were used most often in criminal cases (80.7%), followed by "other" cases (7.2%), juvenile cases (6.4%), cases under the children's code (4.0%), then mental health cases (0.7%). Of the criminal cases, the majority of cases involved traffic offenses.

- While court interpreters are only required to be appointed in specific cases, four counties appoint court interpreters in all cases: Dane, Marathon, Outagamie, and Walworth. Based on 2003 case data for these four counties, the Director of State Courts estimates that 87% involved cases in which courts were required to appoint a court interpreter, and 13% were cases where the courts elected to appoint interpreters.

**Assembly Bill 100**

12. Assembly Bill 100 would provide \$403,600 GPR in 2005-06 and \$536,900 GPR in 2006-07 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 of indigence. The modification would first apply to actions commenced on the effective date of the bill. Base funding for court interpreter reimbursement is \$688,200 GPR.

13. Under the bill, increased funding would be provided for the following purposes:

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	185,500	192,700
Reimburse Counties in All Types of Cases	90,200	128,400
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>76,300</u>	<u>108,700</u>
 TOTAL	 \$403,600	 \$536,900

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

- The projected increased use of interpreters under current law assumes a 7.5% increase in funding for each year, based on the average percentage increases in the Hmong and Hispanic populations.

- Funding for higher reimbursement rates for certified interpreters is based on current usage and number of certified interpreters. The bill assumes that 40.2% of hourly reimbursement costs will be used for certified interpreters. Certified interpreters are reimbursed at a rate (\$40 per hour) that is 33.3% higher than the reimbursement rate for qualified interpreters (\$30 per hour).

- Funding to reimburse counties for interpreters in all types of cases assumes that, based

on county data, the additional cases account for 13% of all cases. Further, funding in 2005-06 assumes that it will take the Court approximately three months 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 11% of all cases. As with funding for interpreters in all cases, funding in 2005-06 for non-indigent persons assumes a three-month implementation period.

15. It should be noted that two modifications may be made to the above funding calculations:

a. The calculation for higher reimbursement rates for certified interpreters inadvertently included a potential funding shortfall for the 2004-05 fiscal year in each year of the 2005-07 biennium. Since the funding calculations for state reimbursement in all types of cases and for non-indigent persons in 2005-07 were based on percentages of increased funding under current law, these calculations were also affected.

b. Based on data collected by the Director of State Courts Office from the 15 counties, it was estimated that 11% of court interpreter costs are associated with cases involving non-indigent persons. In reviewing the data, it appears that 15.4% of court interpreter costs involved non-indigent persons.

16. Applying these two modifications, funding under the bill would be modified to provide \$325,700 GPR in 2005-06 and \$465,600 GPR in 2006-07, as follows:

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	96,100	103,300
Reimburse Counties in All Types of Cases	81,500	116,800
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>96,500</u>	<u>138,400</u>
 TOTAL	 \$325,700	 \$465,600

17. According to the Courts, the statutory modifications 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 under and comply with a court

order..."

18. 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) \$51,600 GPR in 2005-06 and \$107,100 GPR in 2006-07 for projected increase use of interpreters under current law; (b) \$96,100 GPR in 2005-06 and \$103,300 GPR in 2006-07 for higher reimbursement rates for certified (rather than qualified) interpreters under current law; and (c) \$81,500 GPR in 2005-06 and \$116,800 GPR in 2006-07 to reimburse counties for interpreters in all types of cases.

19. 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) \$51,600 GPR in 2005-06 and \$107,100 GPR in 2006-07 for projected increase use of interpreters under current law; (b) \$96,100 GPR in 2005-06 and \$103,300 GPR in 2006-07 for higher reimbursement rates for certified (rather than qualified) interpreters under current law; and (c) \$96,500 GPR in 2005-06 and \$138,400 GPR in 2006-07 to reimburse counties for interpreters provided to non-indigents.

20. If the statutory language changes are removed, increased funding for the current program (\$147,700 GPR in 2005-06 and \$210,400 GPR in 2006-07) could be provided to support the estimated annual increase in interpreter services and higher reimbursement rates for certified interpreters.

21. As indicated previously, the original calculation for higher reimbursement rates for certified interpreters included a potential funding shortfall for the 2004-05 fiscal year currently estimated at \$89,400 GPR. The Courts have indicated that a s. 13.101 request may be necessary to address the shortfall. Accordingly, since a portion of 2004-05 interpreter costs occurring prior to July 1, 2005, may be reimbursed in 2005-06, the Committee may wish to place \$89,400 GPR in 2005-06 in its supplemental appropriation for possible release to the Courts once the actual shortfall amount, if any, is determined.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to provide \$403,600 GPR in 2005-06 and \$536,900 GPR in 2006-07 to increase state reimbursement to counties for court interpreter services (foreign language interpreters and interpreters for the hearing impaired). 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.

2. Provide \$325,700 GPR in 2005-06 and \$465,600 GPR in 2006-07 to increase state reimbursement to counties for court interpreter services (foreign language interpreters and

interpreters for the hearing impaired). 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.]*

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	96,100	103,300
Reimburse Counties in All Types of Cases	81,500	116,800
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>96,500</u>	<u>138,400</u>
Total Funding	\$325,700	\$465,600
Change to Bill	-\$77,900	-\$71,300

<b>Alternative 2</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$149,200

3. Provide \$229,200 GPR in 2005-06 and \$327,200 GPR in 2006-07 to increase state reimbursement to counties for court interpreter services for indigent persons in all court proceedings. 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 that 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.

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	96,100	103,300
Reimburse Counties in All Types of Cases	81,500	116,800
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>0</u>	<u>0</u>
Total Funding	\$229,200	\$327,200
Change to Bill	-\$174,400	-\$209,700

<b>Alternative 3</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$384,100



4. Provide \$244,200 GPR in 2005-06 and \$348,800 GPR in 2006-07 to increase state reimbursement to counties for court interpreter services for all persons with limited English proficiency, regardless of indigence. 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.

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	96,100	103,300
Reimburse Counties in All Types of Cases	0	0
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>96,500</u>	<u>138,400</u>
 Total Funding	 \$244,200	 \$348,800
Change to Bill	-\$159,400	-\$188,100

<b>Alternative 4</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$347,500

5. Provide \$147,700 GPR in 2005-06 and \$210,400 GPR in 2006-07 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.

	<u>2005-06</u>	<u>2006-07</u>
Increased Use of Interpreters	\$51,600	\$107,100
Higher Reimbursement Rates for		
Certified Interpreters	96,100	103,300
Reimburse Counties in All Types of Cases	0	0
Reimburse Counties for Interpreters		
Provided to Non-indigents	<u>0</u>	<u>0</u>
 Total Funding	 \$147,700	 \$210,400
Change to Bill	-\$255,900	-\$326,500

<b>Alternative 5</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$582,400

6. In addition to alternatives 2 to 5, provide \$89,400 GPR in 2005-06 in the Joint Committee on Finances' supplemental appropriation for release to the Courts, under s. 13.101 to address any shortfall in court interpreter reimbursement funding associated with 2004-05 costs reimbursed in 2005-06.

<u>Alternative 6</u>	<u>GPR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	\$89,400

7. Delete provision.

<u>Alternative 7</u>	<u>GPR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$940,500

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