

AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 618

Introduced by Assembly Member Furutani

February 16, 2011

An act to add Article 4.5 (commencing with Section 68570) to Chapter 2 of Title 8 of the Government Code, relating to the courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 618, as amended, Furutani. Court interpreters.

Existing law requires, when a witness is incapable of understanding the English language or expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury, an interpreter to be sworn to interpret for him or her. Existing law requires the Judicial Council to conduct a study of language and interpreter use and need in court proceedings, with commentary, and to report its findings and recommendations to the Governor and to the Legislature every 5 years. Existing law requires that this study serve as the basis for determining the need to establish interpreter programs and certification and for establishing these programs and examinations through the normal budgetary process.

This bill would enact the California Language Access Bill of Rights. ~~The bill would provide that a person who is unable to understand English, and who is charged with a crime, has the right to a competent interpreter to provide exclusive, ongoing, and simultaneous translation services throughout any proceeding at which the person is physically present~~ *state the intent of the Legislature to clarify the circumstances*

in which a person who is unable to understand English, and who is charged with a crime, has the right to an exclusive interpreter provided by the court. The bill would provide that a person who is charged with a crime has a right to a hearing at any point before or during a proceeding, if there is a factual basis for doing so, to determine determination of the competence of an interpreter, or if any person's rights would be prejudiced by the use of a noncertified interpreter at any time during a proceeding if, on the basis of the interpreter's provision of interpreter services during a criminal proceeding, there is good cause to question whether the continued use of the interpreter in the proceeding may prejudice the rights of any person such that it would not be in the interest of justice or efficiency for the interpreter to continue. The bill would prohibit a non-interpreter noninterpreter staff person of the court, or any person employed by the sheriff, probation department, or any other local government entity prosecutor, jail, or corrections department of the prosecuting city or county from providing interpreter services at any time, unless he or she is a certified interpreter during a proceeding. The bill would permit the rights provided pursuant to these provisions only to be waived expressly by the person charged if the waiver is affirmatively shown to be intelligent and voluntary. The bill also would set forth legislative findings and declarations relating to ensuring an adequate supply of court interpreters without sacrificing essential standards for certification.

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. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) California is one of the most linguistically diverse states in
- 4 the nation. As language diversity in California continues to
- 5 increase, there continues to be a decline in the availability of
- 6 qualified court interpreters in the state courts. As a result, the state
- 7 faces a persistent shortage of professionally certified interpreters,
- 8 which threatens the state's ability to ensure access to justice and
- 9 equality under the law for all court users, including parties,
- 10 witnesses, and victims.
- 11 (b) Court interpreter services in criminal matters are a right —
- 12 not a privilege — guaranteed by the United States and California

1 Constitutions and statutory law. These services not only assist the
2 defendant in a criminal matter, but also witnesses and victims,
3 prosecutors, defense attorneys, and law enforcement.

4 (c) The consequences of not having sufficiently qualified
5 interpreters in the courts are well documented and can lead to
6 costly mistakes, not only for the parties to a proceeding resulting
7 in wrongful or erroneous decisions, but also the court system in
8 terms of delay, waste, and duplication of proceedings relating to
9 these avoidable errors.

10 (d) Meeting the legal equivalence standard in interpreting court
11 proceedings is an extremely difficult task that demands a high
12 level of language proficiency in two languages as well as
13 specialized cognitive and interpreting skills. Individuals who
14 possess the necessary proficiency and skill level to be court
15 interpreters are a scarce resource. Ensuring an adequate supply of
16 court interpreters can and must be accomplished without sacrificing
17 essential standards for certification.

18 SEC. 2. Article 4.5 (commencing with Section 68570) is added
19 to Chapter 2 of Title 8 of the Government Code, to read:

20

21

Article 4.5. California Language Access Bill of Rights

22

23 68570. This article shall be known, and may be cited, as the
24 California Language Access Bill of Rights.

25 ~~68571. (a) A person who is unable to understand English, and~~
26 ~~who is charged with a crime, has the right to a competent~~
27 ~~interpreter to provide exclusive, ongoing, and simultaneous~~
28 ~~translation services throughout any proceeding at which the person~~
29 ~~is physically present. For purposes of this subdivision, "exclusive"~~
30 ~~means a separate interpreter during each proceeding who is not~~
31 ~~shared with any other party, witness, or person.~~

32 ~~(b) A person who is charged with a crime has a right to a hearing~~
33 ~~at any point before or during a proceeding, if there is a factual~~
34 ~~basis for having the hearing, to determine the competence of an~~
35 ~~interpreter, or if any person's rights would be prejudiced by the~~
36 ~~use of a noncertified interpreter.~~

37 ~~(c) Notwithstanding any other provision of this article, a~~
38 ~~noninterpreter staff person of the court, or the sheriff, probation~~
39 ~~department, or any other local government entity shall not provide~~

1 ~~interpreter services at any time unless he or she is a certified~~
2 ~~interpreter.~~

3 68571. (a) *It is the intent of the Legislature to clarify the*
4 *circumstances in which a person who is unable to understand*
5 *English, and who is charged with a crime, has the right to an*
6 *exclusive interpreter provided by the court.*

7 (b) *A person who is charged with a crime has a right to a*
8 *determination of the competence of an interpreter at any time*
9 *during a proceeding if, on the basis of the interpreter's provision*
10 *of interpreter services during a criminal proceeding, there is good*
11 *cause to question whether the continued use of the interpreter in*
12 *the proceeding may prejudice the rights of any person such that*
13 *it would not be in the interest of justice or efficiency for the*
14 *interpreter to continue.*

15 (c) *Notwithstanding any other provision of this article, a*
16 *noninterpreter staff person of the court, or any person employed*
17 *by the sheriff, probation department, prosecutor, jail, or*
18 *corrections department of the prosecuting city or county shall not*
19 *provide interpreter services during a proceeding under this section.*
20 *This subdivision shall not be construed to negate or modify the*
21 *circumstances under which a court has the authority to appoint a*
22 *noncertified interpreter.*

23 (d) *The rights provided by this section may only be waived*
24 *expressly by the person charged if the waiver is affirmatively shown*
25 *to be intelligent and voluntary.*