

AMENDED IN ASSEMBLY MAY 27, 2011

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 ~~state the intent of the Legislature to clarify the circumstances in which~~ *provide that* a person who is unable to understand English, and who is charged with a crime, has the right to ~~an exclusive~~ *a competent* interpreter provided by the court *to provide*

exclusive and ongoing interpretation services throughout any proceeding as required by law. The bill would provide that a person who is charged with a crime has a right to a determination *by the court* of the competence of an interpreter at any time during a proceeding if, on the basis of the interpreter’s provision of interpreter services during a criminal proceeding, *the court determines that* there is good cause to question whether the continued use of the interpreter in the proceeding may prejudice the rights of ~~any person~~ *the person charged with the crime* such that it would not be in the interest of justice or efficiency for the interpreter to continue. The bill would prohibit a noninterpreter staff person of the court, or any person employed by the sheriff, probation department, prosecutor, jail, or corrections department of the prosecuting city or county from providing interpreter services 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
- 13 Constitutions and statutory law. These services not only assist the
- 14 defendant in a criminal matter, but also witnesses and victims,
- 15 prosecutors, defense attorneys, and law enforcement.

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

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

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

17

18 Article 4.5. California Language Access Bill of Rights

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20 68570. This article shall be known, and may be cited, as the
21 California Language Access Bill of Rights.

22 ~~68571. (a) It is the intent of the Legislature to clarify the~~
23 ~~circumstances in which a person who is unable to understand~~
24 ~~English, and who is charged with a crime, has the right to an~~
25 ~~exclusive interpreter provided by the court.~~

26 *68571. (a) A person who is unable to understand English, and*
27 *who is charged with a crime, has the right to a competent*
28 *interpreter provided by the court to provide exclusive and ongoing*
29 *interpretation services throughout any proceeding as required by*
30 *law. This includes a right not to share an interpreter with a witness.*
31 *The person charged with the crime is also entitled to a separate*
32 *interpreter not to be shared with a codefendant during any trial*
33 *proceeding, including jury instructions, and in any proceeding,*
34 *as required by law, at which witnesses are called and testimony*
35 *is taken. Any rights pursuant to this subdivision may be waived as*
36 *described in subdivision (d).*

37 (b) A person who is charged with a crime has a right to a
38 determination *by the court* of the competence of an interpreter at
39 any time during a proceeding if, on the basis of the interpreter's
40 provision of interpreter services during a criminal proceeding, *the*

1 *court determines that* there is good cause to question whether the
2 continued use of the interpreter in the proceeding may prejudice
3 the rights of ~~any person~~ *the person charged with the crime* such
4 that it would not be in the interest of justice or efficiency for the
5 interpreter to continue.

6 (c) Notwithstanding any other provision of this article, a
7 noninterpreter staff person of the court, or any person employed
8 by the sheriff, probation department, prosecutor, jail, or corrections
9 department of the prosecuting city or county shall not provide
10 interpreter services during a proceeding under this section. This
11 subdivision shall not be construed to negate or modify the
12 circumstances under which a court has the authority to appoint a
13 noncertified interpreter.

14 (d) The rights provided by this section may only be waived
15 expressly by the person charged if the waiver is affirmatively
16 shown to be intelligent and voluntary.