

AMENDED IN SENATE AUGUST 15, 2011

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 provide that a person who is unable to understand English, and who is charged with a crime, has the right to a competent

interpreter provided by the court to provide exclusive and ongoing interpretation services throughout any proceeding as required by law ~~the proceedings~~. 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 the person charged with the crime such that it would not be in the interest of justice or efficiency for the interpreter to continue, and for whom a noncertified, nonregistered interpreter has been appointed, has a right to object to the interpreter at any time during the proceeding that the interpreter appears to be unqualified. The bill would require the court to record specified information and to follow all procedures required pursuant to court rule.~~ 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.

1 (b) Court interpreter services in criminal matters are a right —
2 not a privilege — guaranteed by the United States and California
3 Constitutions and statutory law. These services not only assist the
4 defendant in a criminal matter, but also witnesses and victims,
5 prosecutors, defense attorneys, and law enforcement.

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

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

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

22
23 Article 4.5. California Language Access Bill of Rights
24

25 68570. This article shall be known, and may be cited, as the
26 California Language Access Bill of Rights.

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

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

1 ~~provision of interpreter services during a criminal proceeding, the~~
2 ~~court determines that there is good cause to question whether the~~
3 ~~continued use of the interpreter in the proceeding may prejudice~~
4 ~~the rights of the person charged with the crime such that it would~~
5 ~~not be in the interest of justice or efficiency for the interpreter to~~
6 ~~continue, and for whom a noncertified, nonregistered interpreter~~
7 ~~has been appointed pursuant to subdivision (c) of Section 68561,~~
8 ~~subdivision (d) of Section 68564, or Section 71802, has a right to~~
9 ~~object to the interpreter at any time during the proceeding that~~
10 ~~the interpreter appears to be unqualified. The court shall record~~
11 ~~in the minute order or docket all information required by court~~
12 ~~rule and any other applicable law. The court shall follow all~~
13 ~~procedures required pursuant to court rule.~~

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

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