

SENATE BILL REPORT

SB 5051

As Reported by Senate Committee On:
Law & Justice, February 9, 2023

Title: An act relating to language understanding of documents used in dissolution proceedings.

Brief Description: Concerning language understanding of documents used in dissolution proceedings.

Sponsors: Senators Wellman, Dhingra, Hasegawa, Keiser, Kuderer, Nobles, Pedersen, Rolfes, Saldaña, Warnick and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/17/23, 2/09/23 [DPS-WM].

Brief Summary of First Substitute Bill

- Requires superior courts to provide translated standard forms to a limited English proficiency party or a deaf, deaf-blind, or hard of hearing party upon request or when the court finds good cause to provide the party translated standard forms.
- Permits a superior court to order sight translation of standard forms for a limited English proficiency party or a deaf, deaf-blind, or hard of hearing party when the court finds good cause to require sight translation of standard forms.
- Requires a superior court to give special consideration on whether good cause exists to order sight translation of standard forms in matters involving the creation of a permanent parenting plan.
- Requires the Administrative Office of the Courts to develop and distribute standard forms related to petitions and orders used in dissolution proceedings and to translate such forms into the language of at least the top five significant non-English-speaking or limited English-speaking populations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5051 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: Appointment of Interpreters. A court must, absent a written waiver, appoint a certified or qualified interpreter to assist any limited English proficiency (LEP) party in a legal proceeding. A court must, absent a waiver, appoint a qualified interpreter for any party or witness in a judicial or quasi-judicial proceeding who has a hearing impairment. These requirements apply to both civil and criminal proceedings.

Costs of Interpreters. The cost of providing interpreters is typically borne by the state whenever LEP persons are parties to or are subpoenaed or summoned to appear by the state to a state proceeding. In all other legal proceedings, the cost of providing an interpreter is typically borne by the LEP person unless the person is indigent, in which case, the government entity under the authority of which the legal proceeding is conducted bears the cost.

The presiding officer of a court or other governmental entity must appoint and pay for a qualified interpreter to assist hearing impaired persons in several circumstances, including when a hearing-impaired person is a party or witness in a judicial proceeding, is the parent or guardian of a juvenile brought before the court, or is participating in a court ordered program.

Certification of Interpreters. Interpreters for LEP persons may be certified, registered, or otherwise qualified, depending on the circumstances. The Administrative Office of the Courts (AOC) certifies and registers interpreters. AOC will certify an interpreter if the certification exam is available in the interpreter's language. Otherwise, AOC will register the interpreter. Qualified interpreters are not certified or registered but can readily translate for LEP persons.

Language Access Plan. Federal anti-discrimination provisions of the 1964 Civil Rights Act—Title VI—require federal funding recipients to translate vital information to ensure LEP persons have meaningful access to federally-funded programs and activities. A document is considered vital depending on the importance of the program or service. In 2017, AOC issued a revised model language access plan (LAP). This model plan provides direction for translation services based on a translation protocol adopted by the AOC's

Interpreter Commission. According to the model LAP, court forms, notices, and applications should be translated when a local jurisdiction has a significant number of LEP persons.

If the number of LEP persons who speak a particular language in a local jurisdiction is small, providing an interpreter to orally translate documents is sufficient. This process is called sight interpretation and involves reading a source-language text out loud in the target language. For document translations, the state's language assistance plan law requires procedures for evaluating the need for translation of written materials, prioritizing those translation needs, and translating the highest priority materials. The translations procedures take into account the frequency of use of forms by the language group, and the cost of orally interpreting the forms.

Dissolution Proceedings. Dissolution and legal separation proceedings include, but are not limited to, proceedings where the court divides property and debts, awards alimony, limits one spouse's contact with children or the other spouse, enters a parenting plan, and orders child support.

Summary of Bill (First Substitute): In any matter brought under a domestic relations proceeding relating to dissolution and legal separation, a court must provide translated standard forms at no cost to a LEP party or a deaf, deaf-blind, or hard of hearing party when:

- the party requests translated standard forms; or
- the court finds good cause to provide the party translated standard forms.

A court may order sight translation of standard forms to a LEP party or a deaf, deaf-blind, or hard of hearing party when the court finds good cause to require translation of standard forms. The interpreter appointed for this purpose for a LEP party must be certified, registered, or qualified by AOC, or qualified by a judicial officer if the necessary language is not certified or registered. The interpreter for a person who is deaf, deaf-blind, or hard of hearing must be appointed pursuant to current law. An interpreter appointed for this purpose must be provided at no cost to the party.

A court must give special consideration on whether good cause exists to order a sight translation of standard forms in matters involving the creation of a permanent parenting plan.

AOC is tasked with developing and distributing standard forms for petitions and orders in domestic relations proceedings related to dissolution and legal separation. AOC is also tasked with developing and distributing information regarding domestic relations proceedings relating to dissolution and legal separation, which must include information on how a judgment or order may be vacated or modified due to fraud by another party. The standard forms and information must be translated into the language spoken by the top five significant non-English-speaking or limited English-speaking populations. The forms and

information shall be distributed to all superior court clerks, superior courts, and to the Washington Supreme Court's Interpreter Commission. The forms and information shall be updated as needed and must be made available online at no cost. The standard forms and information must also be made available at superior court clerks' offices.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Requires superior courts to provide translated standard forms to a limited English proficiency party or a deaf, deaf-blind, or hard of hearing party upon request or when the court finds good cause to provide the party translated standard forms.
- Permits a superior court to order sight translation of standard forms for a limited English proficiency party or a deaf, deaf-blind, or hard of hearing party when the court finds good cause to require sight translation of standard forms.
- Requires a superior court to give special consideration on whether good cause exists to order sight translation of standard forms in matters involving the creation of a permanent parenting plan.
- Requires the administrative office of the courts to develop and distribute standard forms related to petitions and orders used in dissolution proceedings and to translate such forms into the language of at least the top five significant non-English-speaking or limited English-speaking populations.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is the third year this bill will be heard. There are a few things that need to be tweaked on this, such as making sure there is adequate funding in terms of our judicial system for translation for people who are non-English speakers. In criminal cases, if a non-English speaker does not understand what is being said, a translation of what is happening in the court system will be provided. But, in many cases of marriage dissolution where one party is not an English speaker, an individual can be put in significant jeopardy of their rights, especially when there are children involved. Both parties should be aware of what is happening, and the implications of that. It can be tragic for someone to lose their children and not understand how they can do anything about it.

CON: Imposition of the "reason to know" standard on judges means that if a judge has reason to believe that one party has limited English proficiency, there has to be a sight

translation, which is a difficult burden on judges. Courts have remedies when there has been fraud committed in signing documents. There are many built-in mechanisms to catch these types of cases. Making sure appropriate language access is given is highly important, but this bill would negatively impact courts and their ability to provide language access services to all litigants and would greatly increase interpreter expenses. Many family law litigants reach agreements on their own and this bill would cause delays for them and other litigants. Currently, parties will make a request if they need additional translation services and there are judges who will order this to be done if they have any concerns.

Persons Testifying: PRO: Senator Lisa Wellman, Prime Sponsor.

CON: Judge Samuel Chung, Superior Court Judges' Association; Rachael DelVillar, King County Superior Court.

Persons Signed In To Testify But Not Testifying: No one.