

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1032 (Pacheco)  
Version: July 3, 2023  
Hearing Date: July 11, 2023  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Courts: court interpreters

**DIGEST**

This bill modifies the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), a statutory framework governing employer-employee relations between trial courts and court interpreters, as provided.

**EXECUTIVE SUMMARY**

Language access in an essential component of a fair justice system. All the process and protections are meaningless if a participant in a proceeding cannot understand what is being said. To that end, both federal and State law recognize the importance of providing interpreter services in court proceedings.

In the early 2000s, the State moved from a system wherein court interpretation services were primarily provided by independent contractors to one that prioritized hiring interpreters as court employees. This system was intended to provide better job security and benefits for the interpreters, as well as to provide more certainty for the courts vis-à-vis the availability of interpretation services for ongoing proceedings. According to the author and sponsor, however, courts have recently drifted away from the mandate to hire employees and have resumed relying on independent contractors, even providing independent contractors incentives not available to employees.

This bill is intended to modernize the existing laws regarding court interpreters as employees and update the framework for employee-interpreters that was put in place nearly 18 years ago. Among other things, the bill increases the ability of courts to hire translators of languages of lesser diffusion – such as languages indigenous to Mexico, which are increasingly spoken by litigants in California – and clarifies what types of bonuses and premiums employee-interpreters may, or must, receive from the courts when other court employees or independent contractor-interpreters receive the same

bonuses or premiums. The author has agreed to amend the bill to remove certain obsolete provisions and clarify when a court may hire an interpreter who speaks a language of lesser diffusion who can translate by relay interpretation.

This bill is sponsored by the California Federation of Interpreters and is supported by the Communications Workers of America, District 9. This bill is opposed by the California Coalition of Working Interpreters, the Judicial Council of California, and approximately eight individuals.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the TCIELRA, which provides for public employer-employee relations between trial courts and court interpreters. (Gov. Code, tit. 8, ch. 7.5, §§ 71800 et seq.)
- 2) Defines the following relevant terms for the TCIELRA:
  - a) "Certified interpreter" and "registered interpreter" are persons who hold a valid certificate as a certified court reporter issued by an approved entity and who interpret a language not designated by the Judicial council who have been qualified the court pursuant to specified procedures, respectively; the terms do not include sign language interpreters. (Gov. Code, §§ 71801(a), 68561, 68566.)
  - b) "Cross-assignment" and "cross-assign" refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court. (Gov. Code, § 71801(b).)
  - c) "Trial court" means the superior court in each county. (Gov. Code, § 71801(k).)
- 3) Provides a framework for the trial courts to appoint trial court employees to perform spoken language interpretation, including on cross-assignment, and for the appointment of independent contractors and court interpreters pro tempore to perform spoken language interpretation under specified circumstances; and for the terms and conditions of employment of court interpreters and for collective bargaining agreements and negotiations. (Gov. Code, §§ 71803-71829.)
- 4) Establishes rules and procedures for the appointment of certified and registered interpreters, and for when and how a noncertified or nonregistered interpreter may be appointed. (Cal. Rules of Ct., r. 2.893.)

This bill:

- 1) Adds the following definitions to TCIELRA:

- a) "Court proceedings" is a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record.
  - b) "Interpreter pro tempore" is a court interpreter who works as an intermittent employee on a day-to-day basis.
  - c) "Languages of lesser diffusion" are registered languages that do not have a bilingual interpreting exam (BIE).
  - d) "Relay interpreting" is interpretation wherein an additional interpreter of a registered or certified language is needed to communicate between the language of lesser diffusion and English.
- 2) Clarifies that the circumstances in which a trial court may appoint an independent contractor to perform spoken language interpretation include (1) when the interpreter is needed for a language of lesser diffusion but is not registered or certified in that language, and has been appointed on a temporary basis pursuant to the California Rules of Court; and (2) the interpreter is certified or registered and paid directly by the parties in a civil proceeding.
  - 3) Clarifies that priority for assignments in specified instances for employees and certain independent contractors includes priority for court locations.
  - 4) Prohibits a trial court from offering premiums to independent contractors unless the same offer has been made to pro tempore employees or part-time and full-time employees on cross-assignment.
  - 5) Permits a trial court to hire as employees interpreters of language of lesser diffusion if interpretation can be provided through relay only if the trial court has interpreted a certified interpreter of the same language pair.
  - 6) Provides that interpreters who are not certified or registered shall not be assigned to provide services as independent contractors for more than 45 court days or parts of court days within a calendar year.
  - 7) Specifies that court interpreters pro tempore may be appointed on a one-half day or full day per diem as needed.
  - 8) Modifies the court interpreter hiring requirements, requiring a court to employ as a court interpreter each person who meets all of the following criteria:
    - a) The interpreter is certified or registered.
    - b) The interpreter has applied for the position, whether permanent full time, permanent part time, or pro tempore, and has complied with reasonable requirements for submitting an application and providing documentation.
    - c) The interpreter's application is not rejected by the trial court for cause.

- 9) Permits a trial court to hire as employees interpreters of languages of lesser diffusion to perform relay interpretation.
- 10) Requires a trial court to make offers of employment to court interpreters who qualify for employment within 30 days after an application is submitted.
- 11) Eliminates a trial court's ability to hire additional court reporters pro tempore after it has considered applications under 7).
- 12) Provides that the existing statewide per diem pay rate may not be reduced, and the existing statewide compensation policies set by the Judicial Council shall be maintained and made part of the current memorandum of understanding or agreement with a recognized employee organization.
- 13) Requires that per diem rate and compensation policies for court interpreters pro tempore be a separate article within a memorandum of understanding and be bargained for at a higher rate than that of regular full-time and part-time interpreters.
- 14) Provides that a trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of their membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of any rights under TCIELRA, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.
- 15) Modifies the order of priority for applicants who are eligible for full-time or part-time positions, as follows:
  - a) First priority is given to court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during any calendar year.
  - b) Second priority is given to court interpreters in the same language who have performed work for that trial court for at least 60 court days or parts of court days during any calendar year.
  - c) Lowest priority is given to all other applicants.
- 16) Removes the provisions authorizing trial courts to require an applicant to provide sufficient documentation to establish that they are entitled to priority in hiring and requiring trial courts to make their records of past assignments available to interpreters for the purposes of obtaining that documentation.
- 17) Permits a trial court to incentivize recruitment and retention of court interpreter employees by offering at the local trial court any of the following: cost-of-living

adjustments, bonuses, stipends, or any other additional benefits; and provides that, unless otherwise stated, interpreters shall be included in bonuses extended to all other bargaining units of the local court.

18) Requires, when the regional court interpreter employment relations committee and the recognized employee organization fail to reach an agreement, the parties to engage in binding mediation or factfinding through the California State Mediation and Conciliation Service, pursuant to specified processes.

19) Deletes references and provisions relating to the regional consolidation period that took place between January 1, 2003 to July 1, 2005, and makes other nonsubstantive and conforming changes.

### COMMENTS

#### 1. Author's comment

According to the author:

AB 1032 aims to incentivize greater recruitment and retention of court interpreters as employees instead of independent contractors. It would allow court interpreters to receive bonuses and other incentives other court employees receive and help facilitate cross-assignments. Court interpreters are vital to the judicial system, serving people in over 30 different languages. AB 1032 will help the courts function at a higher level and better serve their communities. Court interpreters are crucial for parties to understand and express themselves in their native language.

#### 2. Court interpreters are essential for access to justice in California

Court interpreters “are vital to ensuring access and fairness in the trial courts.”<sup>1</sup> Without interpreters, litigants, witnesses, and other court users would be unable to understand the proceedings and effectively represent their interests. At the federal level, Title VI of the Civil Rights Act of 1964<sup>2</sup> is interpreted to prohibit practices that result in denying meaningful access to the courts by people who are limited English Proficient.<sup>3</sup>

According to the Judicial Council, California’s trial courts reported over 4.4 million interpretations between fiscal year 2014-2015 and fiscal year 2017-2018.<sup>4</sup> Spanish accounted for over 90 percent of the interpretations, followed by Vietnamese (1.47

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<sup>1</sup> SB 371 (Escutia, Ch. 1047, Stats. 2002).

<sup>2</sup> 42 U.S.C. §§ 2000d et seq.

<sup>3</sup> E.g., Exec. Order No. 13166, 65 Fed.Reg. 50121 (Aug. 11, 2000).

<sup>4</sup> Judicial Council of California, *2020 Language Need and Interpreter Use Study* (Mar. 2022), p. 2.

percent).<sup>5</sup> The remaining languages in the top ten most interpreted languages are American Sign Language (ASL), Mandarin, Cantonese, Korean, Punjabi, Russian, Arabic, and Tagalog; Hmong and Eastern Armenian are close behind.<sup>6</sup> Since 2014, several indigenous Mexican languages have entered the top 30 most interpreted languages, including Mixteco, Mixteco Alto, Mixteco Bajo, and Triqui.<sup>7</sup> The Judicial Council provides certification for ASL and 15 spoken languages<sup>8</sup> and offers a written exam and oral proficiency exam to allow individuals to be registered interpreters in 70 languages.<sup>9</sup>

In recognition of the State's linguistic diversity, the Legislature in 2014 passed AB 1657 (Gomez, Ch. 721, Stats. 2014), which expressly authorized trial courts to provide court interpreter services in civil actions, free of charge to the litigants, and required the Judicial Council to reimburse the trial courts for those services.<sup>10</sup> The bill also set forth an order of priority of case types in which interpreter services must be provided, in the event that a trial court does not have sufficient interpreters to provide for interpretations services in all civil cases.<sup>11</sup> The bill further clarified that the provision of interpretation services in civil matters must not result in a reduction in staffing or compromise the quality of interpretation in other matters in which interpreters are statutorily required to be provided, such as criminal cases.<sup>12</sup>

3. This bill updates TCIELRA to reflect the nature of court interpreting now that the regional transition period is complete

In 2002, the Legislature enacted TCIELRA, which established procedures by which the trial courts would make an orderly transition from relying on independent contractors for interpretation services to using employees for interpretation services.<sup>13</sup> TCIELRA built in a two-year "regional transition period" for the courts to put in place procedures for hiring, and to hire, court interpreters,<sup>14</sup> and included a number of provisions to ensure that the court interpreters who had been providing interpretation services most

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at p. 25.

<sup>7</sup> *Id.* at p. 38.

<sup>8</sup> The 15 certified spoken languages are Arabic, Eastern Armenian, Western Armenian, Cantonese, Farsi, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese. (Judicial Council of California, *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2020-21* (May 2022), p. 3, fn. 5.)

<sup>9</sup> *Ibid.*

<sup>10</sup> Evid. Code, § 756.

<sup>11</sup> *Id.*, § 756(b).

<sup>12</sup> *Id.*, § 756(f), (g).

<sup>13</sup> SB 371 (Escutia, Ch. 1047, Stats. 2002); Gov. Code, § 71802.

<sup>14</sup> Gov. Code, § 71801(l).

frequently as independent contractors were given the first choice of being hired as employees.<sup>15</sup> The regional transition period ended July 1, 2005.<sup>16</sup>

Despite the statutorily mandated preference for hiring interpreters as employees to provide interpretation services, independent contractors continue to perform a significant portion of the interpretation services in court. According to Judicial Council, expenditures for independent contractors comprise between one-fifth and one-quarter of their total interpreter expenditures (with a dip in 2020-2021 that coincided with the COVID-19 related reduction in cases).<sup>17</sup> The sponsor of the bill, the California Federation of Interpreters, reports that some counties use contractors in above 60 percent of cases, even for the major languages.

This bill is intended to update TCIELRA to reflect issues currently facing trial courts and interpreters, such improving access to interpretation services for languages of lesser diffusion; shortening the amount of a time an independent contractor-interpreter must have worked for a court before obtaining priority for an employee position; and providing a path to resolve disputes through binding mediation with the California Public Employment Relations Board (PERB)'s State Mediation & Conciliation Service. The bill also clarifies that courts may offer bonuses to employee-interpreters that are currently made available to other court employees, while making clear that the court may not offer premiums to independent contractor-interpreters that are not also made available to employee-interpreters. Additionally, the bill removes references to the long-expired regional transition period and provisions relating to the intra-transitional period hiring process.

A companion measure to this bill, which implements the California Court Interpreter Workforce Pilot Program and allocates \$6.8 million to encourage individuals to become court interpreters, was recently passed through the budget.<sup>18</sup>

The Judicial Council of California submitted opposition to this bill for the first time in this Committee; their comments are set forth in part below in Part 7. The sponsor of the bill, the California Federation of Interpreters (CFI) provided the following response:

The proposed/recent amendments from the author and sponsor address the bulk of the concerns around the need for flexibility in hiring independent contractors. CFI recognizes the need to fill gaps in access, but also recognizes there are ways to better utilize employees to cover language access needs.

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<sup>15</sup> *Id.*, §§ 71804-71806.

<sup>16</sup> *Id.*, § 71801(l).

<sup>17</sup> Judicial Council of California, *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2021-2022* (Jun. 2023), p. 6.

<sup>18</sup> See AB 101 (Skinner, Ch. 12, Stats. 2023).

It is also important to point out that local courts themselves have claimed that the Interpreter Act itself is a barrier to providing special bonuses to court interpreters outside of the bargaining process. For example, after COVID restrictions, multiple courts on their own initiated special gift cards for all court personnel but excluded court interpreters claiming that the statute bars such action. AB 1032 allows for the courts themselves to initiate across the board bonuses, which is not needed to be discussed in “regional” bargaining.

As set forth below, the author has agreed to amend the bill in response to some of the Judicial Council’s additional concerns. The author and sponsor have also pledged to continue working with the Judicial Council and the other opposition if and when this bill is passed to the Senate Appropriations Committee.<sup>19</sup>

## 5. Amendments

The author has agreed to amend the bill to clarify certain provisions, ensure that languages of lesser diffusion are better served, and eliminate provisions that do not make sense in the post-transition period context. The amendments are as follows:

### Amendment 1

At page 4, replace the existing Section 71801(f) with:

“Language of lesser diffusion” means a language for which there is no bilingual interpreting examination (BIE) or oral proficiency examination (OPE).

### Amendment 2

At page 5, replace the existing Section 71802(b)(1) with:

“An interpreter of a language of lesser diffusion is appointed on a temporary basis pursuant to Rule 2.893 of the California Rules of Court.”

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<sup>19</sup> The California Coalition of Working Interpreters, writing in opposition, argues that the bill does not get at the real problem: that the California courts underpay interpreters as compared to the federal courts. According to the Judicial Council’s latest report on expenditures for interpreters in the trial courts, federal courts pay \$566 for a full day and \$320 for a half day for a certified interpreter. (*Trial Court Interpreters Program Expenditure Report for Fiscal Year 2021-2022, supra*, at p. 5.) The report did not include the average salary for employee-interpreters, but the California Coalition of Working Interpreters states that interpreters in state courts are paid 40 percent less than their federal counterparts.



Amendment 3

On page 7, delete line 20 beginning with "If interpretation can be" and lines 21-26, inclusive, and insert:

"Interpreters who are not certified in a language for which there is a BIE shall not be assigned to provide services as independent contractors in those languages for more than 45 court days or parts of court days within a calendar year."

Amendment 4

On page 8, in Section 71803, add a new subdivision (b) that reads "A trial court may hire as employees interpreters of lesser diffusion to perform relay interpretation."

Amendment 4

In Section 4 of the bill, delete the amendments and repeal Section 71804.

Amendment 5

On page 9, replace the existing Section 71805(a) with: "Contractor per diem pay rates and other compensation policies shall also apply to court interpreters pro tempore. Per diem rate and compensation policies shall be a separate article within the memorandum of understanding and shall be bargained at a higher rate than that of regular full-time and part-time."

Amendment 6

On page 10, add a new subdivision (e) that reads "Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for purpose of obtaining that documentation."

6. Arguments in support

According to the California Federation of Interpreters, the bill's sponsor:

Until 2001, the overwhelming majority of California's court reporters were freelancers and not employees of the court. This independent contractor status both undermined the courts' ability to ensure court reporters were available for court users, but also denied these workers traditional collective bargaining rights. In order to convert the court interpreter workforce into an employee model, the California Legislature passed a bill in 2001 to enshrine collective

bargaining rights into statute and to construct a statewide system to ensure that court reporters would be hired by courts throughout California.

Over the years this statute has paid dividends including an expanded employee workforce in almost every county in the state. However, in recent years, with changing dynamics, courts have begun to reverse court and hire a growing percentage of independent contractors. As a result, it has become more difficult to ensure that an interpreter will always be available in a courtroom when someone is in need of language services. Independent contractors cannot be required to wait around all day in a courthouse. Some of the Court Interpreter Act provisions have become outdated and need to be updated to assist courts in recruiting, retaining, and growing the employee interpreter workforce.

AB 1032 contains a number of key changes to the Interpreter Act, including an improved ability to hire and convert independent contractor positions into employee slots, sharing of interpreter employees between neighboring counties, and the ability to offer bonuses to interpreters separate and apart from other court employees, or in conjunction with broader incentives offered to other court employees.

#### 7. Arguments in opposition

According to the Coalition of Working California Court Interpreters:

Overall, AB 1032 fails to address the fundamental cause of the courts' problem with recruiting and retaining enough fully qualified, certified and registered interpreters. It ignores underlying realities in the marketplace for skilled legal interpreters, including demand in other sectors and a history of disparate treatment and depressed court interpreter wages for both staff and contractors. Judges, lawyers, court reporters and clerks in state courts earn pay comparable to, if not higher than, their federal counterparts. Only interpreters are subject to a gaping disparity between state and federal wages. California courts pay us 40% less than our counterparts in federal courts. Lowering language access standards for indigenous populations and eroding access to jobs with adequate pay, hours and benefits would only exacerbate long-term job vacancies across the state and daily shortages that leave litigants unserved and cases unheard.

This state of affairs begs the question of whether the trial courts' decades-long disparate treatment of interpreters in pay and professional recognition is rooted in the broader systemic discrimination against linguistic minorities, based on national origin. AB 1032 would only create additional pretexts to further erode language access and due process in the trial courts:

- The Judicial Council has long sought to lower certification standards rather than pay professional interpreters fair wages that reflect the skills, knowledge and experience required to provide meaningful language

access – even though the Legislature has consistently provided funds to improve and expand language services.

- The courts are currently expanding the use of ad hoc remote interpreting without appropriate technology, restrictions or protocols, and we regularly experience the damaging impact this has on access and interpreter performance.
- Courts are increasingly using remote interpreters from out of state and even abroad, particularly for languages of lesser diffusion, including indigenous languages.

### SUPPORT

California Federation of Interpreters (sponsor)  
Communications Workers of America, District 9

### OPPOSITION

Coalition of Working California Interpreters  
Judicial Council of California  
Approximately eight individuals

### RELATED LEGISLATION

Pending Legislation: AB 432 (Fong, 2023) establishes the California Court Interpreter Workforce Pilot Program, which would be administered by the Judicial Council to develop training and increase the number of eligible applicants for employment as court interpreters, until January 1, 2030. AB 432 is pending before this Committee.

### Prior Legislation:

AB 101 (Skinner, Ch. 12, Stats. 2023) among other things, established the California Court Interpreter Workforce Pilot Program in the substantially same form as set forth in AB 432 (Fong, 2023).

SB 1155 (Hueso, Ch. 852, Stats. 2018) deleted the provision excluding small claims proceedings from the definition of a court proceeding for purposes of the requirement to use certified court interpreters, thereby extending that requirement to small claims proceedings.

AB 1657 (Gomez, Ch. 721, Stats. 2014) stated that it is imperative that courts provide interpreters to all parties who require one, and set forth the requirement that Judicial Council reimburse trial courts for interpreter services provided in civil actions.

### PRIOR VOTES:

Assembly Floor (Ayes 61, Noes 16)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Public Employment and Retirement Committee (Ayes 5, Noes 2)

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