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SENATE

{ REPORT
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STATE COURT INTERPRETER GRANT PROGRAM ACT

AUGUST 1, 2008.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 702]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 702), to authorize the Attorney General to award grants to State courts to develop and implement State courts interpreter programs, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE STATE COURT INTERPRETER GRANT PROGRAM ACT

The State Court Interpreter Grant Program Act authorizes \$15,000,000 per year over five years for a grant program to be administered by the Office of Justice Programs of the Department of Justice. The grant program will make grants to State courts to develop and implement programs to assist individuals with limited English proficiency (LEP) to access and understand State court proceedings in which they are a party.

This legislation is supported by State court judges and administrators, and access to justice advocates from around the country.¹ It would provide much needed financial assistance to States for developing and implementing effective State court interpreter programs that include training, testing and certifying court interpreters. Improving State court interpreter programs around the country will help to ensure access to justice and fair trials for individuals with limited English proficiency.

Currently, States are finding themselves in a difficult position. Qualified interpreters are in short supply because it is difficult to find individuals who are both bilingual and well-versed in legal terminology. At the same time, States continue to fall further behind as the number of Americans with limited English proficiency—and therefore the demand for court interpreter services—continues to grow. Despite their efforts, many States have been unable to keep up with the demand. The grants contained in this bill will help States to meet their obligations to provide equal access to justice with qualified and certified interpreters to ensure that LEP individuals understand court proceedings and receive fair trials.

State courts have an obligation to provide court interpreters to LEP individuals in order to satisfy the Constitution, Federal law, and Department of Justice (DOJ) regulations. Competent court interpreters are critical in all courtroom proceedings from criminal pleas and trials to civil proceedings, and especially in those involving juvenile delinquency, parental rights, domestic violence, mental commitments and guardianships.

Case law dating back more than three decades has recognized the constitutional right to an interpreter in criminal cases. State and Federal courts have held that providing an interpreter may be necessary to ensure an LEP defendant's Sixth and Fourteenth Amendment rights to confront adverse witnesses, participate in his or her own defense, and to effective assistance of counsel, as well as to ensure fundamental fairness under the Fifth Amendment's due process clause.² Under established precedent, courts must ensure that court interpreters are provided at

¹The Conference of Chief Justices and the Conference of State Court Administrators approved resolutions in support of the State Court Interpreters Grant Program Act, on November 29, 2007 and January 18, 2006, respectively. Members of the Judiciary Committee have received letters from numerous state court judges and administrators including, Chief Justice Ronald D. Castille of Pennsylvania, Judge Lynn W. Davis of Utah, Daniel J. Becker, Utah State Court Administrator, Chief Justice Kay McFarland of Kansas, and Howard Schwartz, Judiciary Administrator of Kansas.

²*Chao v. State*, 604 A.2d 1351 (De. 1992); *State v. Calderon*, 13 P.3d 871 (Kan. 2000); *State v. Rodriguez*, 682 A.2d 764 (N.J. Super. 1996); *State v. Guzman*, 712 A.2d 1233 (N.J. Super. 1998), cert. denied, 719 A.2d 1022 (1998); *People v. Avila*, 797 P.2d 803 (Colo. Ct. App. 1990). every crucial stage of criminal proceedings including jury instructions, sentencing, arraignment, entry of a guilty plea, and hearings such as those to change a plea or withdraw a guilty plea.³

In addition to constitutional requirements to provide a court interpreter, the Civil Rights Act of 1964 and Department of Justice guidance implementing title VI of the Act, require recipients of Federal financial assistance, including most State courts, to provide meaningful access to their programs and activities to LEP individuals.⁴

Section 601 of title VI of the Civil Rights Act of 1964 provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The Act directed Federal agencies that provide Federal financial assistance to any program or activity to issue rules or regulations implementing the Act. In *Lau v. Nichols*, the Supreme Court, interpreting the Department of Health, Education and Welfare’s regulations, held that title VI prohibits conduct that has a disproportionate effect on LEP individuals because such conduct constitutes national origin discrimination.⁵

In 2002, the Department of Justice promulgated regulations directly relating to title VI and LEP individuals in accordance with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”⁶ In the regulations, DOJ recognized that LEP individuals, defined as individuals who “have a limited ability to read, write, speak or understand English,” face significant barriers to accessing government benefits and services, understanding and exercising important rights, complying with applicable responsibilities, and understanding other information provided by federally funded programs and activities.⁷ According to DOJ, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition on national origin discrimination.⁸

Even in jurisdictions where English has been declared the “official language,” entities receiving Federal financial assistance are still subject to the nondiscrimination requirement of title VI and DOJ regulations pertaining to LEP individuals.⁹

In the regulations, DOJ acknowledges the particularly acute need for LEP services in a courtroom setting where credibility and accuracy are important to protect an individual’s rights and access to important services. It tells State courts that, at a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must or may be present.¹⁰ Furthermore, DOJ strongly encourages the use of certified interpreters when an individual’s rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms.¹¹

³See, e.g., *People v. Aguilar*, 677 P. 2d 1198, 1201 (Cal. 1984); *People v. Robles*, 655 N.E. 2d 172, 173 (1995); *Thanh Ton v. State*, 878 P. 2d 986 (Nev. 1994).

⁴Exec. Order No. 13166, 65 CFR 50121 (2000); Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964, 28 CFR 42.101–112 (1966); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (2002).

⁵414 U.S. 563 (1974).

⁶67 FR 41455.

⁷*Id.* at 41457.

⁸*Id.*

State courts should provide interpreters free of cost, regardless of whether the LEP individual is indigent.¹² In a recent letter from the Department of Justice's Civil Rights Division to the National Center for State Courts, DOJ emphasized that the "legally sound" approach to providing language services in State courts requires them to be provided in both civil and criminal cases and be free of cost to the party in need of such services.¹³ Despite the greater financial burden, States have responded by adopting policies to provide court interpreters regardless of the ability to pay.¹⁴

The need for language interpretation in courts is great and steadily increasing. The 2000 census reported that almost 47 million people over age five spoke a language other than English at home, a 14 percent increase from the 1990 census. Of those who responded that they spoke a language other than English at home, 21 million, or 45 percent, said that they speak English less than "very well."¹⁵

According to census data, States are facing a dramatic increase in the number of LEP individuals that they are required to assist in State courts. For example, from 1990 to 2000, Wisconsin had a 59 percent increase in the population of people who speak English less than "very well." The percentage in Illinois increased by 60 percent, California 40 percent, Iowa 92 percent, Maryland 65 percent, Massachusetts 31 percent, New York 31 percent, and Vermont 28 percent.

With the increase in population of foreign born or non-native speakers, the need for court interpreters is growing. Federal court data show that in FY 2007, there was a 17 percent increase in the number of events requiring the use of court interpreters.¹⁶ Although the National Center for State Courts does not collect nationwide interpreter data, the Center approximates that State courts are faced with at least the same, and likely greater, increase due to the larger size of State court systems and the nature of their workload.

Individual State data demonstrate the dramatic increase in the use of court interpreters. For example, in Arizona, at the Pima County Superior Court, the number of cases requiring interpretation services has nearly doubled over the last few years. In 2004, 519 criminal cases in the Superior Court required translation or interpretation. In 2007, there were more than 1,028 criminal cases needing translation or interpretation.¹⁷

The bill focuses on State court interpreter training and certification because the skills required of a court interpreter differ significantly from those required of other interpreters or translators. In addition to the important nature of court proceedings, court in-

¹²Id. at 41462.

¹³Letter from Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, to Wanda Romberger, Manager, Court Interpreting Services, National Center for State Courts (February 21, 2008) (available at <http://www.najit.org/Advocacy/DOJ%20Comment%20Letter%20on%20Bench%20Book.pdf>) (last visited May 13, 2008).

¹⁴Georgia Pabst, Courts Will Provide Interpreters More Often; State Budget Expands Funding, Milwaukee Journal Sentinel November 5, 2007.

¹⁵Census Brief, Language Use and English-Speaking Ability: 2000 (October 2003), <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf> (last visited May 13, 2008).

¹⁶2007 Annual Report of the Director, Administrative Office of the U.S. Courts at 35, <http://www.uscourts.gov/library/annualreports/2007/2007%20FINAL%20REPORT.pdf> (last visited May 13, 2008).

¹⁷Claire Conrad, Need for Court Interpreters on Rise: Specialized UA Training Efforts also Expand to Meet Surging Demand, The Arizona Daily Star, December 10, 2007.

terpretation is a highly specialized and particularly demanding form of interpretation. Although anyone with fluency in a foreign language could attempt to translate a court proceeding, the best interpreters are those that have been tested and certified to be able to give accurate, real-time interpretations of complicated court proceedings. Notably, DOJ strongly encourages States to use certified interpreters in courtrooms.¹⁸

Use of uncertified or unqualified court interpreters has resulted in serious miscarriages of justice. For example, in 2004, a Spanish-speaking man in Florida unknowingly pleaded guilty to stealing a \$125,000 dump truck when he thought he was admitting to stealing a tool box. A judge ordered a new trial for him after it was found that the error was caused by poor interpretation on the part of his interpreter.¹⁹

United States Supreme Court Justice Anthony Kennedy, testifying before the Senate Judiciary Committee in February 2007, expressed his familiarity and frustration with the problem of unqualified court interpreters. He noted situations where a long colloquy takes place between an interpreter and a witness, and then the interpreter turns to the judge or jury and simply relays “yes” or “no.” He also cited instances where bilingual jurors dispute the interpreter’s interpretation in open court.²⁰

Since 1995, the Consortium for State Court Interpreter Certification has been working to develop court interpreter examinations for their member States. To date, the Consortium has developed tests for 13 different languages: Spanish, Cantonese, Haitian Creole, Hmong, Korean, Laotian, Russian, Vietnamese, Arabic, Mandarin, Portuguese, French and Somali. The Consortium has 40 member States and by the end of 2007, 29 of them had used the examinations to test the qualifications of their interpreters.²¹

Despite these efforts, court interpreter certification varies greatly by State. Some States have highly developed training, testing and certification programs and others lag behind because of lack of adequate funding. Still others have no formal certification program at all.

States that have already developed court interpreter programs would greatly benefit from this grant program because they would be able to increase the size of their training program to meet growing demand and acquire better technology that will help them make court interpreting more effective and cost efficient.

Many States are making progress even though they still face significant challenges in providing enough certified interpreters to courts in need. Wisconsin’s court interpreter certification program began in 2004, using State money and a modest Federal grant, when certified interpreters were scarce. Now, just a few years later, Wisconsin has trained 671 interpreters and certified 51 of

¹⁸ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,461 (June 18, 2002).

¹⁹ Jordana Mishory, Court Interpreters, Setting Standards, Daily Business Review, July 19, 2006.

²⁰ Judicial Security and Independence: Hearing Before the S. Comm. on the Judiciary, 110th Cong. (Feb. 7, 2007).

²¹ Patricia Walther Griffin and Stephanie J. Cole, White Paper on Court Interpretation: Fundamental to Access to Justice, Conference of State Court Administrators (November 2007), <http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf> (last visited May 13, 2008).

them. Even with this progress, increasing demand requires the State to continue to increase the pool of interpreters and expand the variety of languages for which it certifies interpreters.²²

Other States, like Utah, struggle to meet the need for interpreters. Utah's certification program currently certifies court interpreters in Spanish, as the State has one of the fastest growing Latino populations in the country. However, the Utah Administrative Office of the Courts struggles to meet the need for interpreters of many languages due to limited resources. Utah has significant needs in Vietnamese and Tongan and has required court interpretation in more than 25 different languages.²³

Other States have only begun their certification efforts in the past few years. In 2006, Pennsylvania passed a law that created a statewide system of uniform certification for courtroom translators because availability and qualifications of interpreters had varied widely across the State. The State is now working on training their interpreters and preparing them for certification tests to be administered this year.²⁴

In Iowa, the growing need for court interpreters made it clear to State court officials that greater efforts were needed to provide certified interpreters. This prompted Iowa to begin testing interpreters in 2006. At that time, only eight of the State's 115 court interpreters were certified.²⁵ The Chief Supreme Court justice in Iowa, Justice Marsha Ternus, recently told Iowa lawmakers that the quality of Iowa's judicial system sits at a "critical juncture" hinging in part on funding for court interpreters.²⁶

At the end of 2007, South Carolina had approximately 200 interpreters working in the court system and only 22 had demonstrated that they could accurately interpret court proceedings by successfully completing the interpreter certification process. The State court system is currently trying to expand the pool of qualified interpreters by conducting its own training to certify court interpreters in Spanish.²⁷

Finally, some States are still struggling to get their programs off the ground. In Kansas, anecdotal evidence suggests that less than one-half of the people who should have had a certified court interpreter received one. In those cases where no certified interpreter was available, interpreter services were provided by a family member or a bilingual member of the community. In these cases, the person serving as the interpreter rarely had adequate knowledge of the law or court procedures to provide services comparable to those of a certified court interpreter. The Kansas Committee on Interpreters, established in 1999, recommended establishing a formal, State-operated system for the recruitment, certification, training and compensation of court interpreters. However, this is a costly endeavor and the Kansas Judicial Branch has been unsuccessful in procuring adequate funding since the committee made its rec-

²² Pabst, *supra* n. 13.

²³ Letter from Daniel J. Becker, Utah State Court Administrator, to U.S. Senator Orrin Hatch (February 6, 2008).

²⁴ Act 172 of 2006, <http://www.courts.state.pa.us/index/interpreterprogram/Default.asp>

²⁵ Michael McWilliams, Court Translators Increasingly Needed to Break the Language Barrier, *Iowa City Press-Citizen*, May 4, 2006.

²⁶ Grant Schulte, Chief Justice: Iowa Court System at Critical Point, *Des Moines Register*, January 16, 2008.

²⁷ Noelle Phillips, Classes Aim to Certify Legal Interpreters for S.C. Courts, *The State*, Oct. 16, 2007.

ommendation. Kansas is struggling to provide adequate interpreter services.²⁸

The modest funding authorized in S. 702 will provide States with new money to start or bolster their existing court interpreter programs. The grants will not merely send Federal dollars to States to pay for court interpreters, as some critics suggest. The funding will be used for assessing the need for interpreters, recruitment, training and certification of interpreters, and developing court interpreter program infrastructure. States are hard-pressed to find enough funding for interpreters to satisfy existing need. Therefore, it would be difficult or impossible for States to devote substantial resources to certify interpreters when they are struggling to simply pay for the few interpreters they have. Thus, the grants will provide states with needed capital to develop programs that will be sustainable with state funding.

In 2007, the Consortium for State Court Interpreter Certification surveyed its 40 member States. Of those States that responded, 71 percent indicated that additional budget dollars were critical for the future of their program. In order to establish and maintain viable and sustainable court interpreter programs, State courts need to conduct an expansive recruitment initiative, build the skills of bilingual individuals so that their language skills can be used for court interpreting, conduct continuing education, ethics and other training programs, and update courtroom technology for more cost-efficient and effective interpretation and translation.

This critical infrastructure for training and certifying interpreters will benefit other government entities in their efforts to serve LEP individuals. By increasing the pool of certified interpreters, it will be able to better serve the LEP population in other settings such as local law enforcement, national emergency preparedness and response, and immigration proceedings, to name a few.

In addition to helping States develop their court interpreter programs, this bill emphasizes the need for fully trained and certified interpreters. The bill recognizes that the best interpreters are those that have been tested and certified as official court interpreters.

The bill does not change or alter current law or State obligations. It establishes a grant program to be administered by the Department of Justice, Office of Justice Programs. The bill authorizes \$15,000,000 for each of the fiscal years 2008 through 2012. It authorizes \$500,000 for each of the five fiscal years to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this Act.

The grants may be used to: (1) assess regional language demands; (2) develop a court interpreter program for the State courts; (3) develop, institute, and administer language certification examinations; (4) recruit, train, and certify qualified court interpreters; (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program; and (6) engage in other related activities as prescribed by the Attorney General.

In order to be eligible for a grant under the bill, the highest State court of each State must submit an application to the designated administrator in the Office of Justice Programs. The appli-

²⁸Letter from Chief Justice Kay McFarland to U.S. Senator Sam Brownback (Apr. 4, 2008).

cation must include information that the administrator may reasonably require as well as: (1) a demonstration of need for the development, implementation or expansion of a State court interpreter program; (2) an identification of each State court in that State which would receive funds from the grant; (3) the amount of funds each State court identified would receive from the grant; and (4) the procedures the highest State court would use to directly distribute the grant funds to State courts identified in the application.

The bill creates three different types of allotments as a means of distributing the authorized funds. The first such allotment is called the “base allotment.” Any State that submits an application will receive the base allotment of \$100,000. Under the “discretionary allotment,” five million dollars will be split among States that demonstrate to the Administrator an “extraordinary” need.

Finally, under the “additional allotment,” the remaining grant dollars shall be divided proportionately among States that have submitted applications based on need as determined by the most recent census data.²⁹ Each State will get a fraction of the money based on its proportion of individuals over age five who speak a language other than English at home to the total number of people in this category from all States that have applied.

The State Court Interpreter Grant Program Act does not instruct the State in great detail on how to develop their court interpreter program. Each State has unique needs and faces unique challenges in providing court interpreters. The bill is intended to give them some flexibility, within the criteria permitted in the bill and the guidelines or regulations determined by the Attorney General or Administrator, to provide certified interpreters in State court criminal and civil proceedings.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

The State Court Interpreter Grant Program Act was first introduced by Senator Kohl (D–WI) in the 108th Congress as S. 1733. The bill was introduced again in 109th Congress and was included in S. 2611, the Comprehensive Immigration Reform Act of 2006 which passed the Senate 62 to 36 on May 25, 2006. No further action was taken in the 109th Congress.

In the 110th Congress, Senator Kohl (D–WI) introduced S. 702, the State Court Interpreter Grant Program Act. Senator Edward Kennedy (D–MA) and Senator Dick Durbin (D–IL) were original co-sponsors. After introduction, Senator Patrick Leahy (D–VT), Senator Joseph Biden (D–DE), Senator Benjamin Cardin (D–MD), and Senator Arlen Specter (R–PA) joined as co-sponsors.

B. COMMITTEE CONSIDERATION

On April 24, 2008, the Judiciary Committee met in executive session to consider the bill. Senator Kohl offered an amendment in the

²⁹The amount each State receives will be based on need to be determined by the most recent State census data for people over five years of age who speak a language other than English at home. The use of this particular census data is based on the Department of Justice’s guidance that courts must provide language assistance to individuals who “do not speak English as their primary language and who have a limited ability read, write, speak, or understand English.”

nature of a substitute that made three technical changes. The amendment updated the findings to reflect that 40 States have now developed, or are developing, qualified court interpreting programs. It also added a showing of need to the application required under subsection (c). Finally, the amendment made the “discretionary allotment” requirement consistent with the other allotments by requiring that to be eligible a State must submit an application under subsection (c). The substitute amendment was accepted by unanimous consent.

The Committee then voted to report the State Court Interpreter Grant Program Act, with an amendment in the nature of a substitute, favorably to the Senate. The Committee proceeded by roll call vote as follows:

TALLY: 14 YEAS, 5 NAYS

Yeas (14): Leahy (D-VT), Kennedy (D-MA), Biden (D-DE), Kohl (D-WI), Feinstein (D-CA), Feingold (D-WI), Schumer (D-NY), Durbin (D-IL), Cardin (D-MD), Whitehouse (D-RI), Specter (R-PA), Hatch (R-UT), Grassley (R-IA), Brownback (R-KS).

Nays (5): Kyl (R-AZ), Sessions (R-AL), Graham (R-SC), Cornyn (R-TX), Coburn (R-OK).

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the “State Court Interpreter Grant Program Act.”

Section 2. Findings

This section contains congressional findings related to the growing need for certified State court interpreters.

Section 3. State court interpreter program

Section 3, subsection (a), paragraph (1) authorizes and directs the Administrator of the Office of Justice Programs of the Department of Justice to make grants, in accordance with regulations that may be prescribed by the Attorney General, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

Paragraph (2) allocates \$500,000 each fiscal year for five years to be used to establish a court interpreter technical assistance program to assist State courts that receive grants.

Subsection (b) describes how the State courts may use the grant awards. They may be used to: (1) assess regional language demands; (2) develop a court interpreter program for the State courts; (3) develop, institute, and administer language certification exams; (4) recruit, train and certify qualified court interpreters; (4) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and (6) engage in other related activities, as prescribed by the Attorney General.

Subsection (c) describes the grant application process. Under paragraph (1), the highest State court of each State desiring a grant under the program must submit an application to the Admin-

istrator at such time, in such manner, and accompanied by such information as reasonably required by the Administrator.

Subsection (c) paragraph (2) describes the components for the application required under paragraph (1). The application must include a demonstration of the need for the development, implementation or expansion of a State court interpreter program, an identification of each State court in that State which would receive funds from the grant, the amount of funds each State court would receive from the grant, and the procedures the highest State court would use to directly distribute grant funds to State courts.

Subsection (d) creates three different allotments of funding available to States that have applications approved under subsection (c). Paragraph (1) creates the "base allotment" of \$100,000 available to each of the highest State courts of each State which has applied for funding.

Paragraph (2) creates the "discretionary allotment," in which the Administrator shall allocate \$5,000,000 to be distributed among the highest State courts of States which have extraordinary needs that are required to be addressed in order to develop, implement or expand a State court interpreter program.

Finally, paragraph (3) creates an "additional allotment" which would allocate the unallocated balance of the amount appropriated for each fiscal year to States who have submitted grant applications. The amount each State receives will be based on need to be determined by the most recent State census data for people over five years of age who speak a language other than English at home. Each State shall get an amount equal to the total calculated by multiplying the unallocated balance of the amount appropriated for each fiscal year and the ratio between the number of people over five years of age who speak a language other than English at home in the State and the number of people over five years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

This can be demonstrated by the following example. According to the 2000 U.S. Census, in all 50 States plus the District of Columbia, there were 46,951,595 people over age five who speak a language other than English at home. Assuming all 50 States, plus the District of Columbia applied for grants under subsection (c), State X that had 1,000,000 individuals over age five who speak a language other than English at home in the most recent census would receive 2.13 percent of the remaining funds. However, if only 40 States applied for the grants, the percentage would be based on the total number of individuals over age five who speak a language other than English at home from those 40 States, not the total number for all 50 States plus the District of Columbia. Thus, State X would receive a greater percentage of funding.

Paragraph (4) says that for purposes of section (d), the District of Columbia shall be treated as a State and the District of Columbia Court of Appeals shall act as the highest State court for the District of Columbia.

Section 4. Authorization of appropriations

This section authorizes appropriations of \$15,000,000 for each of the fiscal years 2008 through 2012 to carry out this Act.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 702, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

APRIL 29, 2008.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 702, the State Court Interpreter Grant Program Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 702—State Court Interpreter Grant Program Act

Summary: S. 702 would authorize the appropriation of \$15 million for each of fiscal years 2009 through 2012 for the Department of Justice to make grants to state courts for programs to assist persons with limited English proficiency. Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$47 million over the 2009–2013 period. Enacting S. 702 would not affect direct spending or revenues.

S. 702 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 702 is shown in the following table. For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2008. We assume that the amounts authorized by the bill will be appropriated by the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	15	15	15	15	0
Estimated Outlays	3	8	11	13	12

Intergovernmental and private-sector impact: S. 702 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Assuming appropriation of authorized amounts, states would benefit from almost \$50 million over the 2009–2013 period for interpreter services in courts.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: MarDestinee C. Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 702.

VI. CONCLUSION

The State Court Interpreter Grant Program Act will provide much needed assistance to State courts to develop and implement programs to assist individuals with limited English proficiency so that they will be able to access and understand the State court proceedings in which they are parties. This legislation is critical to helping States ensure access to justice and fair trials for LEP individuals.

VII. MINORITY VIEWS

MINORITY VIEWS OF SENATORS COBURN AND KYL

S. 702 authorizes \$75 million over 5 years to provide federal grants to state courts for interpreter programs. This bill is another example of the federal government spending limited federal dollars on what is an inherent state responsibility. In this instance, it seems clear the states have already largely addressed the issue—according to the bill’s own finding—as 40 states have developed, or are developing, qualified court interpreter programs. During these times of economic pressure that this government and all Americans face, every dollar Congress spends should be prioritized according to our constitutional duties.

Moreover, as written, this bill means that individuals who are bilingual—for example, those who speak another language at home, but who are also perfectly able to speak and understand English—will be included in the process of determining how much money a state will receive under this program. According to the Census Bureau, in 2000, most people who spoke a language other than English at home (55% or 25.6 million people) reported they spoke English “very well.” Furthermore, “respondents who said they spoke English ‘very well’ were considered to have no difficulty with English.”¹

Yet this bill would include these individuals in the calculation of a state’s allotment. This shows that focusing broadly on those who “speak a language other than English at their home” overestimates the number of people this program is meant to assist, and implies that language assistance is required for those who might not need it. The language of the bill should be narrowed to include only those who cannot sufficiently understand or speak English, consistent with the purpose of this bill.

Congress should not intrude upon the inherent authority of the states by making this matter a federal responsibility, which is the ultimate effect of this bill. When the federal government assumes responsibility for the states’ duties, the states’ incentive to perform those functions is inevitably diminished. There will always be a need for more court interpreters, and we appreciate the sincere efforts of the bill’s proponents to address a very real problem. However, once Congress has created a grant program to provide court interpreters at the state level, the states will look to Congress when the money runs out, rather than to their own state legislatures, as is the current case. It is the responsibility of each individual state to provide court interpreters as needed, in order to

¹“Language Use and English-Speaking Ability: 2000,” Census 2000 Brief, October 2003.

meet the needs of its citizens. We decline to wrest this authority from the states, where it should appropriately remain.

TOM COBURN.
JON KYL.

VIII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 702, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

STATE COURT INTERPRETER PROGRAM

(a) GRANTS AUTHORIZED.—

(1) *IN GENERAL.*—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the “Administrator”) shall make grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) *TECHNICAL ASSISTANCE.*—The Administrator shall allocate, for each fiscal year, \$500,000 of the amount appropriated pursuant to section 4 to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this Act.

(b) *USE OF GRANTS.*—Grants awarded under subsection (a) may be used by State courts to—

- (1) assess regional language demands;
- (2) develop a court interpreter program for the State courts;
- (3) develop, institute, and administer language certification examinations;
- (4) recruit, train, and certify qualified court interpreters;
- (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and
- (6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION.—

(1) *IN GENERAL.*—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) *STATE COURTS.*—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

(A) a demonstration of need for the development, implementation, or expansion of a State court interpreter program;

(B) an identification of each State court in that State which would receive funds from the grant;

(C) the amount of funds each State court identified under subparagraph would receive from the grant; and

(D) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (B).

(d) STATE COURT ALLOTMENTS.—

(1) *BASE ALLOTMENT.*—From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate \$100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) *DISCRETIONARY ALLOTMENT.*—From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate a total of \$5,000,000 to the highest State court of States which have an application approved under subsection (c), and that have extraordinary needs that are required to be addressed in order to develop, implement, or expand a State court interpreter program.

(3) *ADDITIONAL ALLOTMENT.*—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each of the highest State court of each State, which has an application approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to section 4; and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

(4) *TREATMENT OF DISTRICT OF COLUMBIA.*—For purposes of this section—

(A) the District of Columbia shall be treated as a State; and

(B) the District of Columbia Court of Appeals shall act as the highest State court for the District of Columbia.

AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated \$15,000,000 for each of the fiscal years 2008 through 2012 to carry out this Act.