

# WHITE PAPER

## Improving the Courts' Capacity To Serve Limited English Proficient Persons Seeking Protection Orders

*The National Center for State Courts*

*“To a minority for whom English is not the primary language, language barriers only heighten the desperation that justice is simply beyond reach, no matter what the truth or consequences.” (Florida Supreme Court, Task Force on Racial and Ethnic Bias)*

### Objective

To make recommendations and issue a call for action to improve the state courts' capacity to identify, develop, and implement a system that ensures meaningful access to services for limited English proficient individuals seeking protection orders.<sup>1</sup>

### Introduction

The United States has an increasingly heterogeneous population, with a multitude of languages represented among its populace. This diversity of languages presents challenges and underlies the increasing importance of meeting the needs of limited English proficient (LEP) individuals. The term “limited English proficient” is generally used to encompass persons who are non-English speaking as well as persons who do not speak English with sufficient fluency to function effectively in a particular setting without oral or written language assistance (Pennsylvania Supreme Court Committee 2003).

Section 601 of Title VI provides that “No person in the United States 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.” On August 11, 2000, President Clinton signed Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” that requires federally funded programs to improve access to “persons who, as a result of national origin are limited in their English proficiency.”<sup>2</sup> This Executive Order requires all agencies that receive federal funding to examine the services they provide, identify the need for services to those with limited English proficiency, and develop and implement a system to provide meaningful access to services for the LEP population. Under the Executive Order, each agency must prepare a plan to improve access to its federally funded programs and activities by eligible LEP persons.<sup>3</sup> It mandates that

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<sup>1</sup> Here “meaningful access” implies ensuring in significant ways the availability of effective and quality language resources, services, programs and processes so that equal access to justice is a fundamental right for all.

<sup>2</sup> See Executive Order No 13166, 3 C.F.R. 289 (2000).

<sup>3</sup> The Department of Justice, which has the responsibility of assisting agencies in developing plans and guidance documents, identified a four-factor analysis to help agencies determine whether the standard of “reasonable steps to ensure meaningful access” has been satisfied:

- Number or proportion of LEP persons in the eligible service population;
- Frequency of contact with the program;

all agencies and entities receiving federal funding, including the courts, ensure access to services for LEP persons.

## Statement of the problem for the courts

*“This extremely important and fundamental issue [court interpretation] has been allowed to become a ‘stepchild’ of the justice system: understudied, under funded, and in terms of its ultimate impact, little understood.” (Minnesota Supreme Court Task Force on Racial and Ethnic Bias in the Judicial System)*

Despite federal and state guidelines, most courts do not have the capacity to provide needed language services. The courts face many challenges including:

- Meeting the needs of a growing number of limited English proficient persons in its jurisdiction;
- Addressing the sheer diversity of languages other than English spoken by the LEP population; and
- Responding to public pressure for accountability and increased services from the court system.

Although many state courts in the nation have statutes, rules of court, or some other written guidelines for the provision of court interpreters for criminal defendants during court proceedings, little is known about the provision of qualified court interpreters for individuals with limited English proficiency that are seeking an order for protection. The need for interpreters, culturally sensitive staff, and language-specific documents is vital for persons who are battered and stalked and seek reprieve through protection orders.<sup>4</sup> The courts’ lack of resources, including qualified interpreters to assist LEP individuals seeking protection orders, can lead to unequal access, or, in the worst case, a complete denial of services for this LEP population. This not only compromises the safety of LEP abused petitioners, but also has a discriminatory or adverse effect on the ability of minorities (based on national origin) to meaningfully avail themselves of programs and services. As such it violates Title VI and Executive Order 13166.

## Call to action

Access to the American justice system is a fundamental right of *all* individuals in the United States. When this access is denied, limited in scope, or lower in quality for any individual or segment of the population as compared to others, then justice is effectively denied. Although many state courts have appointed task forces to study racial and ethnic biases in the courts, and there is increased awareness of the needs of the LEP population in the court system, too little is being done for the LEP person seeking protection from an abusive spouse, family member, or

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- Nature and importance of the program; and
  - Resources available and costs.

<sup>4</sup> The National Limited English Proficient (LEP) Advocacy Task Force, based in Maine, recently sent “testers” into the courts to find out if women with limited English proficiency could obtain orders of protection. The Task Force reported that in each case, the court clerks stated that: “(1) the court did not have interpreters to assist the women with the paperwork; and (2) the women should find someone to interpret and sent them away, denying the service. (Cited in an email announcement from the task force on a national telephone conference to discuss Domestic Violence, Language and Cultural Differences, and the Courts, February 24, 2003)

acquaintance. The courts' ability to assist limited English proficient petitioners essentially determines whether a petitioner makes the first step toward ending an abusive relationship or is further alienated from the justice system with personal safety jeopardized. If an individual with limited English proficiency is denied personal safety and forced to return to an abusive environment, then the courts are not living up to the promise of equal access and justice is denied. Therefore:

***We Call To Action:***

***Policy makers, judges, court clerks, attorneys, community based organizations, domestic violence service providers, anti violence and immigrant rights coalitions, and all individuals who believe in the right to justice for all:***

- ***To recognize the importance of meaningful access to services for limited English proficient individuals seeking protection orders.***
- ***To acknowledge the current gap between LEP needs and the Court's capacity to meet those needs, and the dire consequences of limiting access to the judicial system.***
- ***To draw upon the recommendations of this White Paper and avail themselves of the specific resources created to assist community organizations, the courts, and court personnel to better understand the needs of LEP individuals seeking protection orders.***
- ***To work together to build the state courts' capacity to identify, develop, and implement a comprehensive coordinated process so that meaningful access to services for limited English proficient individuals seeking protection orders becomes a reality both in policy and practice.***

## **Barriers to meaningful access**

***"The [ . . . ] court system's method of identifying and providing spoken language interpreters is inadequate to provide equal access to justice for persons with limited English proficiency and must be remedied." (Vermont Supreme Court's Committee on Fairness and Equal Access to Justice)***

The study on *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Court's Capacity to Provide Protection Orders* found that the state courts' capacity to provide services falls short of meeting the needs of the LEP population. This potentially reduces the range, efficacy, and quality of services that LEP persons receive and thereby limits their right to meaningful access to the courts. Below are some of the areas in which the courts lack capacity:

1. The courts have inadequate interpreter resources to meet the needs of the LEP population.
2. The courts have very limited diversity in the languages for which there are interpreter resources to serve those seeking protection orders.

3. The courts do not have the capacity to provide interpreters outside the courtroom for LEP persons seeking assistance with issues related to protection orders.
4. There is considerable variance between court systems in the provision of court interpreters by language with a serious paucity of viable interpreters for less common languages.
5. The courts have limited formal provision of interpreters for protection order court hearings.
6. The courts still use minors, adult family members, and friends as interpreters in protection order hearings, despite repeated recommendations by statewide task forces against doing so.
7. The courts vary widely in their standards for interpreters and translators ranging from courts that use interpreters who meet state certification guidelines to courts with no formal means to determine the qualifications of their interpreters and translators.
8. The courts have sparse informational or instructional material on ensuring that an LEP individual understands a protection order.
9. The courts rarely use language identification cards or posted signs informing the public of the availability of services, and almost never are these signs translated into languages other than English nor do they specifically mention the availability of free interpretation services for protection order cases.
10. The courts vary in the availability, quality, and comprehensiveness of language assistance plans to assist LEP persons in civil cases.
11. The courts' relationship with community based organizations (CBOs) is non-existent or weak and limited primarily to working with CBOs to inform LEP individuals of the court's services.
12. The courts have poor data collection and information management systems to assess the number of protection orders handled by individual courts or by the county, and the quality and range of service provisions to LEP persons.

## **Recommendations**

The following are recommendations to improve the courts capacity to provide meaningful access for limited English proficient petitioners who seek protection from abuse.

### ***Recommendation I: Draw upon and develop model practices and delivery systems to provide meaningful access to the courts for LEP individuals***

The quality and quantity of resources and services that the courts provide shape in significant ways the ability of LEP individuals to access the judicial system. Resources for LEP individuals that are limited in scope or poorer in quality than those provided to other persons effectively deny meaningful access. Courts must make every effort to provide an equal range and quality of resources to ensure that services are not denied on the basis of English proficiency. Some courts have designed successful models of best practice that can be replicated by other courts, large and small. We recommend that the Courts:

- Increase interpreter resources and translation materials
  - Encourage court managers to search for any local, statewide, and national resources and develop a comprehensive list of available interpreters and translators.<sup>5</sup>
  - When interpreter services are available, inform the public of the availability through posted signs, public service announcements, and orally by frontline staff that come into contact with LEP individuals seeking protection orders.
  - Use language identification cards to accurately identify the language needs of the individual.
  - Provide informational or instructional material for judges that will help the court ensure the petitioner’s understanding of the content and meaning of a protection order, including if and when to return to court; do not shirk this responsibility for persons who speak languages that are less commonly spoken, rare, or exotic.
  - Dedicate high-level support, resources, and funding for language specific outreach strategies.
  
- Create a court environment that encourages LEP individuals to access the court’s services.
  - Improve the environment that the LEP individual experiences when seeking a protection order by creating an approachable, non-intimidating environment with well trained, bilingual court staff involved in all stages of the protection order process and competent interpreters in the courtroom to provide assistance.
  - Hire court staff who are from the communities the court serves.
  - Teach cultural sensitivity and legal competency to service providers such as clerk and court staff and interpreters.
  - Make information and services user friendly and available through the use of translated signage, posters, announcements, and written instructions.
  - Use the internet and local community based organizations to gather information on languages and cultures of LEP groups in the community.
  
- Provide comprehensive training:
  - Because management of interpreter resources poses unique challenges, provide comprehensive training in best practice management techniques to court managers responsible for those resources.
  - Make training available to local interpreters, judges, court personnel, attorneys, and clerks’ office personnel on interpreter qualifications and how to assess them, when and how to request an interpreter, language and cultural diversity, and sensitivity to concerns of immigrants and other LEP persons.
  - Ensure through training that judges, court personnel, and the interpreters are aware of the ethical standards that interpreters should adhere to, especially in domestic violence situations.

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<sup>5</sup> The state may have a statewide interpreter program already in existence, with best practices and resources available. Find out who the statewide interpreter program manager is and call to inquire about those resources. If qualified court interpreters are available they should always be used for in-court proceedings, even if that means paying some travel-related expenses.

- Ensure interpreter competency:
  - Always use tested<sup>6</sup> interpreters as the first choice in appointing court interpreters if testing is available for that language. After due diligence, if this is found to be impossible, only then move to appointing a non-tested court interpreter who is on a statewide roster. If this, too, is impossible, only then should the court appoint a non-tested interpreter who is not listed on the statewide roster. In certain, limited circumstances, the court might consider using a commercial telephone interpreter service, but only if no qualified interpreter can be located, the proceeding is short, and it is the only alternative to using a child, relative, or other inappropriate bilingual individual as an interpreter.
  - Provide certified and non-certified interpreters with targeted training in protection order cases, ethics, vocabulary, and processes.
  - Avoid at all times the use of family members, friends, and minors as interpreters in any stage of the protection order process.
  
- Develop a comprehensive language assistance plan
  - Include provisions for language assistance to LEP persons in civil cases.
  - Periodically assess and reevaluate the appropriateness and efficacy of the language assistance plan.

**Recommendation II: *Develop data collection and information management systems for needs assessments and evaluations of services provided***

It is critical for the state courts to periodically gauge the quality or sufficiency of the level of service provided to LEP persons seeking protection orders. The courts should develop good information systems for data collection, as follows:

- Track the number of times a petitioner was turned away from the counter because there was no language assistance available.
- Track the number of interpreter requests, by language and by case type.
- Track the number of in-court delays or continuances that occurred because there was no language assistance available.
- Track the number of times an untrained, untested interpreter was used in a courtroom proceeding.
- Track the number of times a bilingual family member, friend, or minor was used as an interpreter at any stage of the protection order process.
- Track the number of times a translated document and/or signage would have provided a solution to a language problem.
- Track the number of times bilingual court staff was used for interpretation in a courtroom proceeding.

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<sup>6</sup> The ability and qualification of an interpreter can be tested using one of at least four recognized testing entities: The National Association of Judiciary Interpreters and Translators (NAJIT), the Consortium for State Court Interpreter Certification (CSCIC), the Federal Court Interpreter Certification Examination (FCICE) program, and the Judicial Council of California. (This list is not exhaustive.)

- Develop a reliable baseline to assess ongoing changes in the heterogeneity of the local population and the number of languages represented among its populace.
- Standardize definitions used for data collection for consistency in assessment and evaluation and to avoid misidentification or incorrect categorization.

Such documentation can illuminate ways to improve the provision of services. However, data collection and information management systems must include policies and practices that protect individual confidentiality and prevent any information sharing between agencies that can potentially jeopardize the well being, safety, and immigration status of those LEP individuals accessing the justice system.

### ***Recommendation III: Increase the courts' collaboration with community based organizations***

The number of community-based organizations working to empower abused women and other LEP persons has grown considerably in the past two decades. Hence, those organizations provide an experienced and easily accessible resource for the courts, to help develop collaborative strategies that meet the needs of the LEP community. We recommend that the courts:

- Collaborate with community based organizations to identify LEP communities that may not access the court and to better understand the barriers to access that are faced by LEP persons, including those seeking protection orders.
- Develop effective outreach strategies to inform the local LEP community of the location of courthouse and the availability of resources and services.
- Recognize representatives of community and community-based organizations as important stakeholders at the local, state, and national level, particularly in the development of a language assistance plan.
- Together with CBOs, develop strategies to increase the pool of trained, culturally and legally competent interpreters.
- Share training opportunities and possible solutions with CBOs on language and cultural issues that deter LEP individuals from accessing the courts.
- Consider whether the CBO can provide training to clerk and court staff to help them better serve the LEP population at the help desk.
- Include appropriate representatives from the CBOs in the training process, especially if one or more community based organizations is intricately involved in the local protection order process.
- Work with CBOs that have established trust and a record of working in the community.
- Seek the input of multiple community-based organizations when planning and implementing programs that enhance services for the LEP population.

## ***Recommendation IV: Initiate and support local court funding, and federal and state legislation that addresses the courts' need for additional funding to provide meaningful access to the courts for LEP individuals***

For many years, a majority of courts paid for language services from the auspices of other budget line items. The amount of funding devoted to providing qualified language assistance was minuscule when compared to other court expenses. Over the years, courts have seen the costs associated with language services grow, in parallel with the increase of LEP populations across the country. Increased funding of programs and services is a key to providing meaningful access to the courts for LEP individuals. We recommend that:

- Courts recognize that costs associated with foreign language interpreting are increasing and allocate a significant factor in the overall budget for maintaining and improving these services.
- Seek out state and federal grants to improve local interpreter programs and translation of court related documents.
- Increase the court's budget to include language identification cards and signage to inform the general public about the availability of services and translate the signs into appropriate languages.
- Use data collection reports to initiate and support funding requests.
- Support federal and state legislation that addresses the courts' need for additional funding to provide meaningful access to the courts for LEP individuals.<sup>7</sup>

## **Conclusion:**

There is an ever-growing community of court users who are being denied the protective services that should be available through the court's system, including safe shelter for the abused, protections for children, and effective enforcement procedures. It is time for the courts to increase its capacity to provide meaningful access to those services to the LEP population. Change is needed in almost all the court systems, in all jurisdictions, including urban and rural counties, highly and less populated states, and states with a large or small LEP population.

The National Center for State Courts project team, together with the project's National Advisory Board worked to create specific resources to assist community organizations, the courts, and court personnel to better understand the needs of the protection order petitioner who cannot speak English well enough to maneuver through the court's processes. These resources include:

- A model code of professional responsibility that will assist the volunteer interpreter, the bilingual employee, and the qualified court interpreter to better understand the role to be played by an interpreter at various stages of the process.
- A brochure to help the community-based organization find more resources and work more closely with the courts to help identify solutions.

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<sup>7</sup> For example, in 2005 and 2006, a Senate Bill was introduced by Senator Kohl (D-WI), that, if passed, would provide significant financial benefit to all states for the creation or improvement of statewide court interpreter programs.

- A brief and easy-to-use bench card to help judges deal with petitioners who need language assistance in order to enjoy access to the court's justice and better understand the court's decisions.

To implement the recommendations, there must be a high level commitment to the delivery of effective language resources. To move forward, there must be coordination, collaboration, and commitment among policy makers, judges, court clerks, attorneys, community based organizations, domestic violence service providers, anti-violence and immigrant rights coalitions, and all those individuals who believe in the right to justice for all. Working together, these stakeholders can help the state court system comply with Section 601 of Title VI and Executive Order 13166 and make meaningful access to the justice system a fundamental right and a reality for *all* individuals in the United States.