STATE OF NEW YORK

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Cal. No. 424

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

Introduced by Sens. ALCANTARA, HAMILTON, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the judiciary law, the family court act, the domestic relations law and the criminal procedure law, in relation to the translation of orders of protection and temporary orders of protection

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (t) of subdivision 2 of section 212 of the judiciary law, as added by chapter 237 of the laws of 2015, is relettered paragraph (u).

§ 2. Paragraph (t) of subdivision 2 of section 212 of the judiciary law, as added by chapter 367 of the laws of 2015, is relettered paragraph (v) and two new paragraphs (t) and (t-1) are added to read as follows:

(t) Make available translation services to all family and supreme courts to assist in the translation of orders of protection and temporary orders of protection, as provided in this paragraph, where the person protected by and/or the person subject to the order of protection has limited English proficiency or has a limited ability to read English:

(i) Translation services shall be made available to all family and supreme courts in the ten languages most frequently used in the courts of each judicial department in accordance with the schedule in subparagraph (ii) of this paragraph, and any additional languages that the chief administrator of the courts deems appropriate;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(ii) (A) In three languages from among the ten most frequently used in the courts of each judicial department, by January first, two thousand eighteen;

(B) In three additional languages from among the ten most frequently used in the courts of each judicial department, by June thirtieth, two thousand nineteen; and

(C) In four additional languages from among the ten most frequently used in the courts of each judicial department, by December thirty-first, two thousand twenty; and

(iii) Upon issuance of an order of protection or temporary order of protection, the court shall inquire of any person who is protected by it or subject to it, who has made an appearance, whether translation services are needed. The court shall advise the party or parties of the availability of such translation services;

(iv) The authority provided by this paragraph shall be in addition to, and shall not be deemed to diminish or reduce any rights of the parties under existing law.

(t-1) Issue reports concerning the availability of translation services where orders of protection and temporary orders of protection are issued; special pilot programs. (i) The chief administrator of the courts shall submit to the legislature, the governor, and the chief judge of the state the following reports:

(A) Not later than April first, two thousand nineteen, a report on the availability and use of translation services in the courts for orders of protection and temporary orders of protection, including but not limited to the languages for which written and oral translation is provided; the number of parties that received translated documents, broken down by language and judicial department; the number of parties receiving interpretation, broken down by language and judicial department; the number of people who requested a translated document and did not receive it; and the number of cases in which a court interpreter was used to communicate with either party and an order of protection or temporary order of protection was issued but in which a translated document was not provided to either party. Such report shall contain recommendations for further legislation relating to the availability of such translation services as the chief administrator of the courts shall deem appropriate; and

(B) Not later than April first, two thousand eighteen, a report evaluating the technical and operational issues involved in subjecting the following orders of protection and temporary orders of protection to the same requirements, relative to translation and interpretation of such orders, as are applicable to orders of protection and temporary orders of protection issued under section one hundred sixty-nine of the family court act: (I) orders of protection and temporary orders of protection issued under section 530.12 or 530.13 of the criminal procedure law; and (II) orders of protection and temporary orders of protection issued by a town or village justice court.

(ii) The office of court administration shall establish and oversee two pilot programs, as follows:

(A) In one town or village court within each judicial district, to develop best practices for the use of written translation and interpretation services for orders of protection and temporary orders of protection in the justice courts. Following consultation with the state magistrates association, the conference of mayors, the association of towns, the unified court system's advisory committee on language access, and such other parties as may be interested, the chief administrator

shall include an analysis and evaluation of this pilot program, together with a plan for its expansion throughout the justice court system, in the report required pursuant to clause (B) of subparagraph (i) of this paragraph.

(B) In one county in the city of New York and two counties outside such city, to develop best practices for the use of written translation and interpretation services for orders of protection and temporary orders of protection issued in the state-paid criminal courts of such counties. Following consultation with the state district attorneys association, representatives of the criminal defense bar, representatives of domestic violence prevention legal services providers, the unified court system's advisory committee on language access, and such other parties as may be interested, the chief administrator shall include an analysis and evaluation of this pilot program, together with a plan for its expansion throughout the state, in the report required pursuant to clause (B) of subparagraph (i) of this paragraph.

§ 3. The family court act is amended by adding a new section 169 to read as follows:

§ 169. Translation and interpretation of orders of protection. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that a court order of protection and temporary order of protection issued by the court under article three, four, five, six, seven, eight or ten of this act, is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration order of protection and temporary order of protection forms shall be translated in writing in the languages most frequently used in the courts of each judicial department in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original order or temporary order of protection issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any court order of protection or temporary order of protection issued. The authority provided herein shall be in addition to and shall not be deemed to diminish or reduce any rights of the parties under existing law.

§ 4. Subdivision 3 of section 240 of the domestic relations law is amended by adding a new paragraph a-1 to read as follows:

a-1. Translation and interpretation of orders of protection. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that a court order of protection and temporary order of protection is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration order of protection and temporary order of protection forms shall be translated in writing in the languages most frequently used in the courts of each judicial department

in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original order or temporary order of protection issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any court order of protection or temporary order of protection issued. The authority provided herein shall be in addition to and shall not be deemed to diminish or reduce any rights of the parties under existing law.

§ 5. Section 252 of the domestic relations law is amended by adding a new subdivision 1-a to read as follows:

1-a. Translation and interpretation of orders of protection. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that a court order of protection or temporary order of protection is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration order of protection and temporary order of protection forms shall be translated in writing in the languages most frequently used in the courts of each judicial department in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original order or temporary order of protection issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any court order of protection or temporary order of protection issued. The authority provided herein shall be in addition to and shall not be deemed to diminish or reduce any rights of the parties under existing law.

§ 6. The closing paragraph of subparagraph 2 of paragraph (ii) of subdivision (b) of section 214 of the family court act, as added by chapter 237 of the laws of 2015, is amended to read as follows:

Notwithstanding the foregoing, the chief administrator may not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons or organizations, or their representative or representatives, who regularly appear in proceedings in the family court of such county, in which proceedings the requirement of consent is to be eliminated, with reasonable notice and an opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph [~~(t)~~] (u) of subdivision two of section two hundred twelve of the judiciary law.

§ 7. Subparagraph (ii) of paragraph (b) of subdivision 2 of section 10.40 of the criminal procedure law, as added by chapter 237 of the laws of 2015, is amended to read as follows:

(ii) The chief administrator may eliminate the requirement of consent to participation in this program in supreme and county courts of not more than six counties provided he or she may not eliminate such requirement for a court without the consent of the district attorney, the consent of the criminal defense bar as defined in subdivision three of this section and the consent of the county clerk of the county in which such court presides.

Notwithstanding the foregoing provisions of this subparagraph, the chief administrator shall not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons and organizations, or their representative or representatives, who regularly appear in criminal actions or proceedings in the superior court of such county with reasonable notice and opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee specified in subparagraph (v) of paragraph [~~(t)~~] **(u)** of subdivision two of section two hundred twelve of the judiciary law.

§ 8. The chief administrator of the courts may promulgate rules and regulations in order to effectuate the provisions of this act, and, to the extent necessary and appropriate, exercise his or her authority pursuant to paragraph (l) of subdivision 1 of section 212 of the judiciary law to the same end.

§ 9. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to orders of protection issued on or after such effective date; provided that the amendments to section 214 of the family court act, made by section six of this act, shall not affect the expiration and reversion of such section, and shall expire therewith; provided, further, that the amendments to subparagraph (ii) of paragraph (b) of subdivision 2 of section 10.40 of the criminal procedure law made by section seven of this act, shall not affect the expiration and reversion of such section, and shall expire therewith.