

transition to video visit makes it difficult to have confidential communication.<sup>233</sup> In December 2020, 17% of surveyed attorneys said they had been unable to communicate with at least some of their in-custody clients. Moreover, the transition to remote hearings has been rocky, with defense attorneys reporting some positive and some challenging experiences. Remote hearings can make it more challenging for defense attorneys to communicate confidentially with their clients during hearings, unless breakout rooms are enabled.<sup>234</sup>

The COVID-19 pandemic has made remote access to information all the more important, as in-person visits to courts have been suspended in many areas. The Washington State Board for Judicial Administration Court Recovery Task Force conducted a survey in September 2020 to understand how courts are adapting their practice to the COVID-19 pandemic. They found that 78% of the courts surveyed reported using remote platforms for hearings, and many of those also continued to conduct in-person hearings or provided other technological support for people without internet access. Language access accommodations vary: while 71% of courts provided interpreters during remote hearings, only 34% provided interpreters for break-out discussions (such as between a litigant and their lawyer), and 34% translated written materials.<sup>235</sup> It is unclear what impact the COVID-19 pandemic has had on language barriers for users accessing the courts.

## IX. Recommendations

- To improve access to interpreter services for people with limited English Proficiency (LEP) and d/Deaf, Hard of Hearing, and DeafBlind individuals in legal proceedings and court services and programs, stakeholders should convene to do the following:

<sup>233</sup> JOHNSON & SCHWARTZ, *supra* note 62. A total of 296 defense attorneys from 34 counties in Washington State responded to a survey in December 2020 about the impact of COVID-19 on their work. *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> BJA COURT RECOVERY TASK FORCE LESSONS LEARNED COMMITTEE, CHANGING COURT PRACTICES AMIDST COVID AND BEYOND (2020), [https://www.courts.wa.gov/programs\\_orgs/pos\\_bja/Final%20Changing%20Court%20Practices%20Admist%20COVID%20Survey%20summary.pdf](https://www.courts.wa.gov/programs_orgs/pos_bja/Final%20Changing%20Court%20Practices%20Admist%20COVID%20Survey%20summary.pdf).

- Review accessibility – at all levels of court – by limited English language users statewide, including people with hearing loss, to court interpreting services, and develop an action plan to address identified barriers.
- Suggest procedures to monitor and enforce the requirement that each court develop and annually maintain a language access plan pursuant to RCW 2.43.090; address whether the Washington Administrative Office of the Courts (AOC) needs to increase staffing within the Interpreter Services Program to assist courts in creating and implementing their language access plans and in making their language access plans accessible electronically.
- Address the establishment of interpreter training programs in Washington, partnering with other state agencies and community colleges, to create dedicated language interpretation programs and to provide resources to develop new interpreters in the wide variety of languages we need to meet the language interpretation needs of government programs.
- AOC should partner in the development of a certification program for American Sign Language (ASL) court interpreter certification.
- To improve access to the courts for those with limited English proficiency, the Washington Pattern Forms Committee should help translate key court information and forms into our state’s top 37 languages (per the Office of Financial Management). To that end, the Committee should: (1) create a list of vital documents (including civil protection order requests and other court forms, information about language services, directions on how to access court in-person and remotely, etc.), and (2) determine how to make them most accessible to the people who need them. With regard to translating forms that trigger court action after filing (such as requests for protection orders), we suggest a pilot project in selected counties to test the feasibility of different approaches to gaining court action based on such translated documents.
- AOC should create guidance for and offer assistance to Washington courts in creating and maintaining accessible websites, including translations and disability accommodations.

- AOC should determine how best to acquire language data on LEP parties, witnesses, etc. from Superior, District, and Municipal courts, to enable AOC to identify and address gaps in language services delivery.